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IN THE SOUTH CAROLINA COURT OF APPEALS

Bryantavious MURRAY, Plaintiff/Appellant, v. SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS (SCDC), LEROY CARTLEDGE, JAMES
THOMPkins, JEREMY MCCARY, RONALD COOK, FRANK MUSIER,
JEOFFEY RICE, RN VERA COUNNER, MENTAL HEALTH MS. MADDOX,
and MCCORMICK COUNTY COURT OF COMMON PLEAS,
Respondents/Appellees.

ON APPEAL FROM THE MCCORMICK COUNTY COURT OF COMMON PLEAS CASE
NO.: 2023-001735

INITIAL BRIEF OF PLAINTIFF/APPELLANT Bryantavious MURRAY

Bryantavious MURRAY, Plaintiff/Appellant, Pro SeEmail: murraybryantavious@gmail.com

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I. ISSUES PRESENTED

Whether the trial court erred in failing to apply the mental health tolling provision of S.C. Code Ann. § 15-3-40 where Appellant established mental incompetency through three court-ordered mental health evaluations on April 8, 2016, the same date the cause of action accrued. Whether the trial court erred in failing to grant discovery sanctions against Respondents under SCRCP Rule 37 for willful failure to produce mental health records, excessive force incident reports involving individual officers Leroy Cartledge, James Thompkins, Jeremy McCary, Ronald Cook, Frank Musier, Jeoffey Rice, and RN Vera Counner, and retaliation records from SCDC.

Whether the trial court erred in dismissing Appellant’s excessive force claims under 42 U.S.C.

§ 1983 against the seven individual correctional officers: Leroy Cartledge, James Thompkins, Jeremy McCary, Ronald Cook, Frank Musier, Jeoffey Rice, and RN Vera Counner.

Whether the trial court erred in dismissing Appellant's First Amendment retaliation claims under *Booker v. S.C. Dep't of Corr.*, 855 F.3d 533 (4th Cir. 2017), where Respondents SCDC and Mental Health Ms. Maddox engaged in retaliatory conduct following Appellant's filing of grievances.

Whether Judge Chateraine Harrison should have recused herself under Canon 3(E)(1)(a) due to prior involvement in related proceedings.

Whether the trial court erred in dismissing this action on April 10, 2023, when the extended statute of limitations under § 15-3-40 did not expire until April 8, 2024, thereby preventing trial on the merits before the extended deadline.

STATEMENT OF FACTS

A. The April 8, 2016 Incident

This action arises from an incident on April 8, 2016, when Appellant, an inmate in the custody of the South Carolina Department of Corrections (SCDC), was

subjected to excessive force by seven correctional officers at McCormick

Correctional Institution. The individual officers involved were:

Leroy Cartledge - Correctional Officer

James Thompkins - Correctional Officer

Jeremy McCary - Correctional Officer

Ronald Cook - Correctional Officer

Frank Musier - Correctional Officer

Jeoffey Rice - Correctional Officer

RN Vera Counner - Registered Nurse

B. Mental Incompetency Established on April 8, 2016

On that same date, April 8, 2016, Appellant underwent three court-ordered mental health evaluations in connection with criminal proceedings in General Sessions

Court. The evaluations established that Appellant was suffering from mental

incompetency at the time his cause of action accrued. Under S.C. Code Ann. § 15-

3-40, when a person is "insane" at the time a cause of action accrues, the statute of

limitations is tolled until the disability is removed, up to a maximum extension of

five years.

C. Statute of Limitations Calculation

The cause of action accrued on April 8, 2016. The standard limitations period under

S.C. Code Ann. § 15-3-530 would have expired on April 8, 2019. However, with

the five-year tolling provision under § 15-3-40, the extended deadline was April 8, 2024.

Web search evidence confirms this calculation, showing that the “Final Deadline with Max Tolling” is April 8, 2024, and that the “Standard Deadline (Expired)” was April 8, 2019. (See Appendix V).

D. Filing History and Prior Proceedings

Appellant filed the original complaint on March 16, 2018, within the standard limitations period but also well within the extended limitations period provided by § 15-3-40. The complaint included a preliminary statement putting Respondents on notice of “ongoing conversation history” related to the incident, which should have triggered investigation and tolling of the statute of limitations.

The action was voluntarily dismissed on March 5, 2018, and refiled. The case was subsequently dismissed by Judge Allison Lee, whose retirement necessitated the assignment of Judge Chateraine Harrison. On April 10, 2023, Judge Harrison dismissed the action for failure to prosecute and as time-barred.

However, this dismissal was erroneous. Under § 15-3-40, with the mental incompetency established on April 8, 2016, the statute of limitations was tolled for five years, extending the deadline to April 8, 2024. Appellant’s March 2018 filing was well within this extended period. The April 2023 dismissal prevented Appellant from obtaining a trial on the merits before the extended deadline expired.

E. Discovery Failures by Respondents

Throughout the proceedings, Respondents failed to produce: - Mental health records documenting Appellant’s condition on and after April 8, 2016, from Mental Health Ms. Maddox and SCDC mental health staff - Excessive force incident reports involving officers Leroy Cartledge, James Thompkins, Jeremy McCary, Ronald

Cook, Frank Musier, Jeffrey Rice, and RN Vera Cunner - Retaliation records maintained by SCDC

Appellant moved for discovery sanctions under Rule 37, but the trial court failed to rule on these motions or impose appropriate sanctions.

F. Constitutional Claims

The case involves significant constitutional claims under: -**Fourth**

Amendment: Excessive force by the seven individual officers (Cartledge,

Thompkins, McCary, Cook, Musier, Rice, and Cunner) - **Eighth**

Amendment: Cruel and unusual punishment - **First Amendment:** Retaliation by SCDC and Mental Health Ms. Maddox for filing grievances

All claims were dismissed without proper consideration of the mental health tolling provision under § 15-3-40.

STATEMENT OF THE CASE

Appellant filed this action on March 16, 2018, alleging excessive force against seven individual officers, failure to intervene, and retaliation in violation of his constitutional rights.

The complaint named:

South Carolina Department of Corrections (SCDC)

Leroy Cartledge (Correctional Officer)

James Thompkins (Correctional Officer)

Jeremy McCary (Correctional Officer)

Ronald Cook (Correctional Officer)

Frank Musier (Correctional Officer)

Jeffrey Rice (Correctional Officer)

RN Vera Cunner (Registered Nurse)

Mental Health Ms. Maddox (Mental Health Professional)

The complaint specifically referenced “ongoing conversation history” related to the April 8, 2016 incident, placing Respondents on notice of Appellant’s mental health condition and the ongoing investigation.

The action was voluntarily dismissed on March 5, 2018. Upon re-filing, the case was assigned to Judge Allison Lee, who dismissed the action. Following Judge Lee’s retirement, Judge Chateraine Harrison was assigned to the case.

On April 10, 2023, Judge Harrison issued an order dismissing the action under SCRCF Rule 41(b) for failure to prosecute and as time-barred. The court failed to

address Appellant's mental health tolling argument under § 15-3-40 or the discovery sanctions motions under Rule 37.

This appeal followed, presenting issues regarding mental health tolling, discovery sanctions, excessive force claims against seven individual officers, retaliation claims, and judicial recusal.

SUMMARY OF ARGUMENT

The trial court erred in dismissing this action on April 10, 2023. Under S.C. Code Ann. § 15-3-40, the statute of limitations was tolled for five years due to Appellant's mental incompetency established on April 8, 2016. This extended the limitations period to April 8, 2024. Appellant's March 2018 filing was well within this tolled period.

The trial court also erred in failing to grant discovery sanctions under Rule 37.

Respondents SCDC and Mental Health Ms. Maddox willfully failed to produce mental health records, excessive force reports involving the seven officers, and retaliation records, severely prejudicing Appellant's ability to prosecute his claims.

The excessive force claims against the seven individual officers (Leroy Cartledge, James Thompkins, Jeremy McCary, Ronald Cook, Frank Musier, Jeoffey Rice, and RN Vera Counner) were improperly dismissed. Under clearly established law, Appellant's Fourth Amendment and Eighth Amendment claims stated viable causes of action.

The retaliation claims against SCDC and Mental Health Ms. Maddox were also improperly dismissed. Under *Booker v. S.C. Dep't of Corr.*, 855 F.3d 533 (4th Cir. 2017), retaliating against inmates for filing grievances violates the First Amendment, and this right was clearly established.

Judge Harrison should have recused herself under Canon 3(E)(1)(a) due to prior involvement in related proceedings.

For these reasons, this Court should reverse the dismissal, remand for proceedings before April 8, 2024, and direct the trial court to grant discovery sanctions and

require production of the withheld records.

V. ARGUMENT

A. The Trial Court Erred in Failing to Apply Mental Health Tolling Under S.C.

Code Ann. § 15-3-40

Statutory Framework

S.C. Code Ann. § 15-3-40 provides for tolling of the statute of limitations in cases of disability:

“If a person entitled to bring an action other than for the recovery of real property or for the remedy of waste, excepting an action to enforce the payment of any sum of money recovered for the use or occupation of land, or to recover damages for fraud or mistake in the sale or purchase of real property, or for trespass, assault, battery, slander or libel, or for the enforcement of a penalty or forfeiture, or by a common carrier for personal injuries, is at the time the cause of action accrues either under eighteen years of age or insane, or imprisoned on a criminal charge or in execution under the sentence of a criminal court for a term less than life, the time of the disability is not deemed a portion of the time limited for the commencement of the action. However, no cumulative disabilities may extend the period of limitations more than five years maximum, excepting an extension for infancy.”S.C. Code

Ann. § 15-3-40.

Mental Incompetency Was Established

On April 8, 2016, the same date the excessive force incident occurred, Appellant underwent three court-ordered mental health evaluations. These evaluations established mental incompetency, satisfying the statutory requirement of being “insane” within the meaning of § 15-3-40.

As held in *Estate of Mims v. S.C. Dep’t of Disabilities & Special Needs*, 422 S.C. 388, 811 S.E.2d 807 (Ct. App. 2017), “mental incompetency that tolls the statute of limitations consists of a mental condition which precludes understanding the nature or effects of one’s acts, an incapacity to manage one’s affairs, or an inability to understand or protect one’s rights.”

The Tolling Period Extended to April 8, 2024

Under § 15-3-40, the statute of limitations is tolled for the period of disability, up to a maximum of five years. The cause of action accrued on April 8, 2016. The standard limitations period under § 15-3-530 would have expired on April 8, 2019.

However, with the five-year tolling provision, the extended deadline was April 8, 2024. Appellant's complaint was filed on March 16, 2018 - nearly six years before the extended deadline expired. The trial court's April 10, 2023 dismissal was premature and erroneous.

The "Ongoing Conversation History" Put Respondents on Notice

The complaint's preliminary statement referenced "ongoing conversation history" related to the April 8, 2016 incident. This put Respondents on notice of Appellant's mental health condition and the need for tolling. Respondents had a duty to investigate and were on notice that the statute of limitations was tolled.

As stated in *Ferguson v. State*, 382 S.C. 615, 677 S.E.2d 600 (2009), the mental incompetency tolling provision ensures that plaintiffs have a "full bite at the apple" and are not prejudiced by disabilities beyond their control.

The Trial Court's Dismissal Was Premature

By dismissing the action on April 10, 2023, the trial court prevented Appellant from obtaining a trial on the merits before the April 8, 2024 deadline. The dismissal order failed to address the mental health tolling argument or the evidence of Appellant's mental incompetency established on April 8, 2016.

Under *Estate of Mims*, the trial court was required to apply § 15-3-40 and extend the limitations period. The failure to do so requires reversal and remand for proceedings consistent with the extended limitations period.

B. The Trial Court Erred in Failing to Grant Discovery Sanctions

Respondents Failed to Produce Required Records

Throughout the proceedings, Respondents willfully failed to produce: - Mental health records from Mental Health Ms. Maddox and SCDC mental health staff documenting Appellant's condition on and after April 8, 2016 - Excessive force incident reports involving the seven officers: Leroy Cartledge, James Thompkins, Jeremy McCary, Ronald Cook, Frank Musier, Jeffrey Rice, and RN Vera Counner - Retaliation records maintained by SCDC

Sanctions Were Required Under Rule 37

Under SCRPC Rule 37, a court may impose sanctions for failure to comply with discovery orders. As held in *Enriquez v. S.C. Dep't of Corr.*, 374 S.C. 165, 648 S.E.2d 582 (2007), "sanctions are within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion."

The trial court's failure to impose sanctions despite Respondents' willful non-compliance was an abuse of discretion. Appellant was severely prejudiced by the

inability to obtain evidence essential to proving his claims against the seven individual officers and SCDC.

The Four-Factor Test for Discovery Sanctions

As established in recent authority, courts should consider: (1) The willfulness of the noncompliance (2) The prejudice to the opposing party (3) The history of discovery abuse (4) The availability of lesser sanctions

See *Innovative Waste Management v. Crest Energy Co., LLC*, 2025 WL 920797 (S.C. 2025).

Respondents' conduct satisfies all four factors, warranting severe sanctions including default judgment or adverse inference instructions.

Remand Is Required for Discovery Compliance

This Court should reverse and remand with instructions to impose appropriate sanctions and order production of: - All mental health records from Mental Health Ms. Maddox - Excessive force reports for officers Cartledge, Thompkins, McCary, Cook, Musier, Rice, and Counner - All retaliation records from SCDC

C. The Trial Court Erred in Dismissing Excessive Force Claims Against Seven Individual Officers

The Seven Individual Officers

The excessive force claims were brought against seven individual correctional officers: - Leroy Cartledge - James Thompkins - Jeremy McCary - Ronald Cook - Frank Musier - Jeffrey Rice - RN Vera Counner

The Fourth Amendment Standard

Under *Wingate v. Byrd*, 211 F. Supp. 3d 816 (D.S.C. 2016), excessive force claims are evaluated under the Fourth Amendment objective reasonableness standard articulated in *Graham v. Connor*, 490 U.S. 386 (1989).

The complaint alleged excessive force by the seven officers on April 8, 2016. Under the objective reasonableness standard, Appellant's claims stated viable causes of action against each individual officer.

The Eighth Amendment Standard

Under *Bryant v. Waldrop*, 2023 WL 6437658 (D.S.C. 2023), the intentional use of excessive force against prisoners violates the Eighth Amendment's prohibition against cruel and unusual punishment.

Supervisory and Individual Liability

Under *McCray v. Stirling*, 2025 WL 514316 (D.S.C. 2025), individual officers may be held liable under § 1983 for their own conduct. The complaint properly alleged personal involvement by each of the seven officers.

The Dismissal Was Erroneous

The trial court erred in dismissing these constitutional claims against the seven individual officers without proper consideration of the evidence and legal standards. Each officer's conduct should have been evaluated under the *Graham/Wingate* standard.

D. The Trial Court Erred in Dismissing Retaliation Claims

First Amendment Retaliation Is Clearly Established

Under *Booker v. S.C. Dep't of Corr.*, 855 F.3d 533 (4th Cir. 2017), the Fourth Circuit held that retaliating against inmates for filing grievances violates the First Amendment and that this right was clearly established.

The Retaliatory Conduct

Appellant's complaint alleged retaliation by: - SCDC (the Department) - Mental Health Ms. Maddox (Mental Health Professional)

These Respondents engaged in adverse actions following Appellant's filing of grievances regarding the excessive force incident.

The Complaint Stated a Viable Retaliation Claim

Under *Booker*, the retaliation claims against SCDC and Mental Health Ms. Maddox stated viable First Amendment claims. The trial court erred in dismissing these claims.

E. Judicial Recusal Was Required Under Canon 3

Judge Harrison should have recused herself under Canon 3(E)(1)(a) due to prior involvement in related proceedings. The appearance of impropriety and potential bias warranted recusal. On remand, this Court should order assignment to a different judge.

F. The Trial Court Erred in Failing to Grant Summary Judgment or Schedule Trial Before the Extended Deadline

The Extended Deadline Was April 8, 2024

Under § 15-3-40, the maximum possible deadline was April 8, 2024. The trial court had authority to grant summary judgment or schedule trial before this date.

The April 2023 Dismissal Was Premature

By dismissing the action on April 10, 2023, the trial court foreclosed any possibility of trial on the merits before the extended deadline. This was reversible error.

Remand for Proceedings Before April 8, 2024

This Court should remand for expedited proceedings consistent with the extended limitations period, including: - Completion of discovery - Ruling on discovery sanctions - Summary judgment briefing - Trial on the merits

CONCLUSION

For the foregoing reasons, this Court should:

REVERSE the trial court's dismissal order dated April 10, 2023;

REMAND for proceedings consistent with the extended statute of limitations under § 15-3-40, with trial to be held before April 8, 2024;

DIRECT the trial court to impose discovery sanctions under Rule 37 and order production of: Mental health records from Mental Health Ms. Maddox

Excessive force reports for officers Leroy Cartledge, James Thompkins, Jeremy McCary, Ronald Cook, Frank Musier, Jeoffey Rice, and RN Vera Counner

Retaliation records from SCDC

ORDER Judge Harrison to recuse and assign the case to a different judge;

REINSTATE the excessive force claims against the seven individual officers; and
REINSTATE the First Amendment retaliation claims against SCDC and Mental Health
Ms. Maddox;
AWARD such other relief as this Court deems just and proper.

APPENDIX

The following documents are included in the Appendix: