

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW JUDGE DIVISION
J. Phillip LenSKI, Administrative Law Judge

Case No. 13-ALJ-04-0968-IJ

The South Carolina Department of Corrections Respondent

v.

Bernard S. Jackson Appellant.

MOTION TO PROCEED WITHOUT PAYMENT OF COSTS AND
AFFIDAVIT IN SUPPORT THEREOF.

I hereby apply for leave to proceed in the above referenced action
without prepayment of fees or costs or security thereof. In
support of this motion, I declare, under the penalty of perjury
that the following facts are true:

(1) I am the applicant in this action and I believe I am
entitled to redress.

(2) Because of my poverty I am unable to pay the costs of
said proceeding or give security thereof.

DATE: April 15, 2014
Greenville County

Respectfully Submitted
Bernard S. Jackson
Bernard S. Jackson
APPELLANT

SWORN AND SUBSCRIBED BEFORE ME
THIS 15th DAY OF April 2014

Nancy C. Merchant
NOTARY PUBLIC

MY commission expires 1-23-2027.

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S. Phibbip Lenski, Administrative Law Judge

Case No. 13-ALS-04-0968-IS

The South Carolina Department of Corrections..... Respondent.

v.

Bernard S. Jackson..... Appellant.

MEMORANDUM IN SUPPORT OF MOTION TO PROCEED WITHOUT
PREPAYMENT OF COSTS AND SECURITY THERE OF.

Now comes Appellant, pro-se, who hereby presents his memorandum in support of motion to proceed without prepayment of costs and security thereof, humbly submitting the same to this Honorable Court for its consideration:

(1) Appellant has perfected and served upon all parties properly, a notice of appeal and motion to proceed without prepayment with affidavit of indigency.

(2) pursuant to S.C. code of law Ann. § 1-23-610 (A), Appellant is entitled to review of decisions from the Administrative Law Court as a matter of right, and reviews of this nature are to be heard in the Court of Appeals.

(3) Moreover, as shown in the statutory language of § 1-23-610 subsection (C), six (6) subjective criterion may qualify cases for appellate consideration:

"... if the finding, conclusion or decision is: (a) in violation of constitutional or statutory provision, (b) in excess of the statutory authority of the agency, (c) made upon unlawful procedure, (d) affected by other error of law, (e) clearly erroneous in view of reliable, probative and substantial evidence on the whole record, or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

In light of this criterion, appellant believes that examples (a) through (f) are present in the instant case and therefore would qualify the ALC dismissal for appellate review.

(4) Pursuant to S.C. Code of Laws Ann. § 24-27-100; Filing Fees, which reads in relevant part:

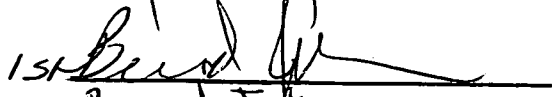
"... if a prisoner brings a civil action or proceeding, the court upon filing..." (emphasis added)

Appellant believes that the statute clearly includes him as one who falls squarely into the S.C. court of appeals interpretation and application of Wicker v. S.C.D.C. 360 S.C. 428, 534, 602 S.E2d. 56, 58 (2004) and Ex parte Martin, 321 S.C. 533, 535, 471 S.E2d. 134-35 (1995) because appellate underlying appeal involves an allegation that he was deprived of a Liberty interest that will affect a favorable outcome at his pending parole hearing as a result of a major disciplinary proceeding that was done in an arbitrary and capricious manner and violated constitutional and statutory provisions, and the ALJ's decision to dismiss Appellant's appeal is clearly erroneous in view of the whole record.

(5) Appellant believes he has shown to respondents and this Court sufficient grounds and supporting statutory/constitutional authority to further advance his case.

Wherefore the disposition of the foregoing examples, Appellant humbly prays the court would grant his motion to proceed in forma pauperis pursuant to S.C. code Ann. § 24-27-100 as a matter of right.

Respectfully Submitted.


Bernard Jackson
Appellant - Prose

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the motions to proceed without pre-payment of costs and security thereof and memorandum in support of motions was this day served upon the following individuals by placing a copy of the same in the U.S. Mail, postage prepaid, and sent to his last known address as follows:

S.C. Court of Appeals
Hon. Kenneth Richstad
P.O. Box 11629
Columbia, SC 29201-1629

Office of General Counsel
David Tatarsky, SCDC
P.O. Box 21787/444 B.R.R.
Columbia, SC 29221-1787

Date: April 15, 2014
Greenville, County

1st 
Bernard Jackson
Appellant