

In the State of South Carolina

In the Court of Appeals

Appeal from the Administrative Law Court

S. Phillip Lenski, Administrative Law Judge

Case No. B-ALJ-15-0025-AP

Jeremiah DiCapua, #105096, . . . . . Appellant,

v.

South Carolina Department of  
Probation, Parole and Pardon Services, . . . . . Respondent.

Motion to Proceed In Forma Pauperis

I, Jeremiah DiCapua, hereby motion for leave to proceed in this appeal without payment of fees or costs or security therefore. In support of my motion I declare under penalty of perjury that the following facts are true:

- (1) I am the Appellant 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 therefore.

Also in support, please see my memorandum, attached, demonstrating I am entitled to proceed as matter of law.

Jeremiah DiCapua  
Appellant

Sworn to and subscribed before me  
this 19 day of May, 2014.

J. Franklin

Notary Public

my Commission expires: 12-16-2019

The State of South Carolina  
In the Court of Appeals

Appeal from the Administrative Law Court

S. Phillip Lenski, Administrative Law Judge

Case No. 13-ALS-15-0025-AP

Jeremiah DiCapua, #105096, . . . . . Appellant,

v.

South Carolina Department of  
Probation, Parole and Pardon Services, . . . . . Respondent.

---

Memorandum of Law In Support  
of Motion to Proceed In Forma Pauperis

---

Jeremiah DiCapua #105096  
McCormick CI  
386 Redemption Way  
McCormick SC 29899  
Appearing ProSe

Tommy Evans, Jr., Esq.  
S.C. Dept. Prob., Par. & Pdn. Svs.  
P.O. Box 50666  
Columbia, SC 29250  
Counsel for Respondents

## Table of Contents

	<u>Page</u>
Statement of the Case . . . . .	1
Questions Presented . . . . .	2
Argument . . . . .	3
Conclusion . . . . .	5

## Table of Cases

<u>Barton v. DPPS</u> , 404 S.C. 398, 745 S.E.2d 110 (2013) . . . . .	4
<u>Ex Parte Martin v. State</u> , 321 S.C. 533, 471 S.E.2d 134 (1995) . . . . .	4
<u>Sandin v. Conner</u> , 515 U.S. 472, 115 S.Ct. 2293 (1995) . . . . .	4
<u>Sullivan v. SCDC</u> , 355 S.C. 437, 446, 586 S.E.2d 124, 128 (2003) . . . . .	3

## Other Authorities

S.C. Code Ann. § 1-23-380 . . . . .	4
-------------------------------------	---

## Statement of the Case

Note: The following is a synopsis of facts relevant only to the motion for Leave to Proceed In Forma Pauperis. Appellant/Movant reserves the right to enlarge this narrative as needed to effectively prosecute the appeal if granted such leave by this court.

Appellant was released from prison by Respondent on parole on August 9, 2000. Due to conviction and sentencing on two (2) drug charges, Appellant's parole was revoked on July 25, 2007. On February 23, 2011 Appellant's convictions and sentences were vacated. During his two (2) parole hearings since February, 2011, Respondents have advised the Parole Board the two (2) drug convictions and sentences are still valid. Respondents have thus far refused to advise the Parole Board the convictions have been vacated. The Parole Board would not accept Appellant's word or his documents as evidence sufficient to compel them to disregard the incorrect agency records.

## Questions Presented

I. Whether the Parole Board denying Appellant parole, which had before been revoked due to drug convictions that have since been vacated, presents a prima facie case of an "atypical or significant hardship on the inmate in relation to the ordinary incidents of prison life" entitling Appellant to In Forma Pauperis status?

II. Whether common law requires the appellate court to entertain allegations parole was denied upon unlawful procedure even though the ALC could not provide such review?

## Argument

I. The Parole Board denying Appellant parole, which had before been revoked due to drug convictions that since have been vacated, presents a prima facie case of an "atypical or significant hardship on the inmate in relation to the ordinary incidents of prison life" entitling Appellant to In Forma Pauperis status.

If Respondent was to advise the Parole Board Appellant's drug convictions have been vacated, and if the Appellant had appeared at a parole revocation hearing rather than a parole hearing, the Board would have no reason to revoke Appellant's parole. Under these circumstances, Appellant retains the state-created liberty interest in parole granted him in 2000.

Respondent's refusal to advise the Parole Board the convictions are vacated imposes an "atypical [and] significant hardship" which denies Appellant due process of law.

When an agency action imposes such hardship, there exists a constitutional issue involving fundamental rights which justifies granting In Forma Pauperis status. Sullivan v. SCDC, 335 S.C. 437, 446, 586 S.E.2d 124,

12B (2003); citing Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293 (1995). See also, Ex Parte Martin v. State, 321 S.C. 533, 471 S.E.2d 134 (1995).

II. Common law requires the appellate court to entertain allegations parole was denied upon unlawful procedure even though the ALC could not provide such review.

In Barton v. DPPPS, 404 S.C. 395, 745 S.E.2d 110 (2013), the ALC did not have jurisdiction to entertain her allegations parole had been denied upon unlawful procedure. S.C. Code § 1-23-380. The Supreme Court held:

"The standard of review is the Administrative Act",  
Barton, supra.

In its order, the ALC stated this case is unique, but that it lacked the jurisdiction or the authority to render a decision on Petitioner's claims. This court has jurisdiction to decide whether the Parole Board basing its decision on facts no longer valid was based upon unlawful procedure. S.C. Code Ann. § 1-23-380(A)(6)(c).

## Conclusion

Wherefore, having demonstrated a prima facie case of an atypical and significant hardship involving Appellant's fundamental rights, Appellant prays that this Court grant him leave to proceed In Forma Pauperis in this action and that this Court grant him any such and further relief as may be deemed appropriate and just.

Respectfully submitted:

Jeremiah D. Capua

Jeremiah D. Capua, #105096, ProSe

McCormick CI

386 Redemption Way

McCormick, SC 29809

Dated: May 19, 2014