

The state of South Carolina  
in The Court of Appeals

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Appeal From Greenville County  
Court of Common Pleas  
D. Garrison Hill, Circuit Court Judge

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Case no: 2013-CP-23-05028

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Benjamin Heyward #165514 •• Appellant,  
v,

South Carolina Dept of Corrections •• Respondent,

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notice of Appeal

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Benjamin Heyward #165514  
Lieber Corr Inst  
P.O. Box 205  
Ridgeville, SC 29472  
Appellant, pro se.

DOYLE, JATE, & McDade, P.A.  
J. Victor McDade  
P.O. Box 2125  
Anderson, SC 29622  
Attorney for Respondent SCDC

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DEC 15 2014

SC Court of Appeals

## Appellant

pursuant to Jones v. City of Columbia 1301 S.C. 62, 389 S.E. 2d (1990). Appellant Benjamin Hegward #165514, pro se, hereby appeals the order of Judgment dated November 24, 2014 of Judge D. Garrison Hill. A copy of this order is attached as exhibit D and E.

## I Background

The appellant is an state prisoner, with the south Carolina Department of Corrections (SCDC). He's 47 years old. He is currently housed at Lieber Correctional institution, located in Ridgeville South Carolina.

Appellant filed an south Carolina Tort claim Act, pursuant to 15-78-10 et seq, upon basis of the gross negligence. The appellant seek relief on punitive and compensatory damages, and the proper medical treatment for his injured right knee.

on November 19, 2014 the appellant went before Greenville County Circuit Judge D. Garrison Hill, upon Respondent motion for summary Judgment.

The Judge denied the appellant motion for summary Judgment.

## II Standard of Appeals

In determining the Appellant Appeal this court must on appeal consider the evidence and all reasonable inferences which can be drawn therefrom in the light most

Favorable of the non-moving party Timmons v. McCutcheon 284 S.C. 4 324 S.E. 2d, 319, some courts hold that sufficient evidence existed in this court.

### III statement of facts

on December 31, 2012 while at perry correctional institution the appellant was provided with An permanent bottom bunk pass by medical STAFF, see Exhibit-A, encounter 250 of appellant medical record.

The appellant was provided with An bottom bunk pass, Due to difficulty of going up and down from the top bunk and always having lower back pain.

on march 27 2013, the appellant were moved into A two man cell in the special management unit (SMU), and assigned to the top bunk because his cellmate inmate Davis was assigned to the bottom bunk, Due to having An bottom bunk pass. see Exhibit-C of appellant Step one grievance, and appellant's (depo., pg 19, lines 3-24).

The appellant told Lieutenant (LT) Lasley he's restricted from the top bunk because he have An bottom bunk pass and he needed A bottom bunk (Appellant's depo., pg. 20, 21 lines 1-10). LT. Lasley told appellant to tell him something else. The appellant then told LT. Lasley if he didn't believe him, he can call medical or operation to find out

if appellant was bottom bunk pass only, LT, Lasley refused to call medical or operation, and also refused to move appellant to An bottom bunk.

The appellant told LT, Dean he was top bunk restricted and he needed An bottom bunk. LT, Dean told appellant I have nothing to do with that, and refused to move appellant to An bottom bunk. Appellant's depo., pg 21, lines 12-19). on march 30, 2013 the appellant was getting down from the top bunk when he slipped and fell to the floor and injured his right knee, see Exhibit - B, encounter 261 of appellant medical record.

The appellant right knee was swollen for three weeks and it is still injured to this day.

The appellant can not run or work out due to his injured right knee, and so much pain.

A. Appellant was entitled to Summary Judgment under South Carolina tort claim Act... 15-78-10 et seq.

Appellant first contended that he was entitled to Summary Judgment on all causes of action under section 15-78-60 (3) and (4) of the tort claim Act.

Section 15-78-60 provides the governmental entity is not liable for a loss resulting from (1), execution, enforcement, or implementation of the order of any

court or execution, enforcement or lawful implementation of any process. (2) adoption enforcement or compliance with any law or failure to adopt or enforce any law, whether valid or invalid including, but not limited to any charter provision, ordinance resolution rule, regulation or written policies.

when interpreting a statute, the court's primary function is to ascertain the intention of the legislature the words used in the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation Gilstrap v. South Carolina budget and control board, 423 S.E. 2d 101 (1992).

The facts in the records established that the appellant had slipped and fell onto the floor off the top bunk. The respondent do not fall within the exception provisions of section 15-78-60(3) and (4) consequently, therefore, appellant was entitled to summary judgment under the Tort claim Act 15-78-10 et seq.

B. There was genuine issue of material fact, therefore appellant was entitled to summary judgment...  
The appellant next contended that he deserves summary judgment because material facts are disputed.

summary Judgment should be granted only where it is perfectly clear that there where genuine issue of material facts exists and inquiry into facts is desirable to clarify application of the law Bates v. City of Columbia 301 S.C. 320, 391 S.E. 2d 733 (1990).

"The hearing Judge finds that there were no genuine issue of material facts as to whether defendant/SCDC alleged negligence in double booking the lower bunk proximately damaged Appellant." see exhibit - D.

"There were no double booking the lower bunk." There was a top bunk and a bottom bunk. see exhibit - C...

The appellant fell as he was getting down from the top bunk, and he made this clear to Judge Hill at the hearing. The appellant is entitled to his summary Judgment as a matter of law.

### conclusion

Based on the foregoing statements, facts, legal authorities, and pursuant to Jones v. City of Columbia 301 S.C. 62 389 S.E. 2d 662 (1990).

Appellant respectfully requests this court to reverse the hearing court's decision, and grant his appeal.

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proof of service

The undersigned pro se Appellant hereby certifies he has served a true and correct copy of the enclosed notice of appeal on the party whose address appears below, by placing the aforesaid in a properly addressed first-class postage and placed in the U.S. mail this Thursday of December 11 2014.

J. Victor McDade

P.O. Box 2125

Anderson, SC 29622

Attorney for Respondent, SCDC.

Respectfully Submitted

~~Benjamin Heyward~~

Benjamin Heyward #165514

S.C. Court of Appeals  
P.O. Box 11629  
Columbia SC 29211

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RE: Benjamin Heyward v. SCDC  
C.A. NO. 2013-CP-23-05028

Dear Clerk:

Enclosed please find the original notice of Appeal of the appellant in the above referenced case. "please file the original." appellant have his copy. Attached to the notice of appeal is appellant medical records, step one grievance, and his deposition transcript as exhibits in the above referenced case. I have also enclosed an copy of the defendant motion for Summary Judgment as exhibits, F, G, and H... I appreciate your assistance and thank you for your attention to this matter.

with kindest regards, I am

cc: J. Victor McDade

P.O. Box 2125

Anderson, SC 29622

Attorney for Respondent, SCDC.

Date 12/11/14

Sincerely,

Benjamin Heyward  
Benjamin Heyward #165514

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S. C. Court of Appeals  
Clerk of Court

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