

The State of South Carolina
In the Court of Appeals

Appellate Case No. 2014-002173

Anthony Erving,
Appellant,
vs.
S.C.D.C.,
Respondant,

Motion
Request to Alter and Amend
per
Rule 59(e)

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SC Court of Appeals

Procedure and Standing

Appellant asks Court note that "Order" of denial filed 1/23/15 and received 1/26/15 is immediately appealable because it in effect dismiss action due to appellant indigency. See Lake v. State, 333 S.C. 382, 510 S.E.2d 228 (S.C. App. 1998) Appellant claims standing because "injury" is directly attributable to the Court's error of basing its decision on an inapplicable case. See Allen v. Wright, 468 U.S. 710, 104 S.Ct. 3315 (1984). Note Rule 59(e) is... "Proper procedure for correcting factual errors in an order is to file a motion to alter or amend pursuant to the Rules of Civil Procedure. See Smith v. NCCI, Inc., 369 S.C. 236, 631 S.E.2d 268 (S.C. App. 2006).

Argument and Law

Appellant seeks reconsideration because of two clear errors in the Court's Order. Initially, note appellant argues he did not file a motion to proceed "in forma pauperis"; he is not asking that the state waive the filing fee but rather that due to his proven poverty he be allowed to make partial

payments until the fee is paid. He asks careful review of his pleadings by this Court; due to the Clerk's refusal to turn copies of his filings he can't state with certainty the exact wording. He does reasonably believe, and his intention was, to plead for a partial payment plan similar to that of the Federal courts where 20% is taken as funds come available. The second Court error is to dismiss his cause based on the holdings of *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995); this dismissal was based on "statutory law" where as this appellant claims State and Federal Constitutional Right. While appellant's pleading may not have been as careful as a professional attorney consider that he is due "liberal interpretation" of pleadings due to pro se status.

Appellant argue all judicial review falls under the "minimum procedures" mandated by our State and Federal constitutions and U.S. Supreme Court law. Per *Bounds v. Smith* 430 U.S. 817, 97 S.Ct. 1491 (1977) hold court access must be "adequate, effective and meaningful." also "It is now established beyond a doubt that prisoners have a constitutional right of access to the courts." (note courts, plural) Reason and logic dictate the very concept of suits and grievances is to vindicate legal rights. It is undeniable fact that multitudes of cases are not properly and legally decided until they reach the appeal level. The right to access would have to include appeal if it is to be even remotely considered adequate, effective and meaningful.

As to *Bounds* "constitutional right to access" consider *Muniz v. Giarratano*, 492 U.S. 1, 109 S.Ct. 2768 (1989) which cited the Due Process Clause, the Equal Protection Clause, the First Amendment and the Privileges and Immunities Clause of the IV Article of the U.S. Constitutional as a basis. *Wolff v. McDonnell*

418 U.S. 539, 94 S.Ct. 2963 (1974) held that such access was not criminal only but also for other fundamental and civil rights. As to S.C. laws note that our constitution is as strict as the U.S. Constitution and mirrors it almost exactly; therefore it naturally follows that the S.C. Constitution also guarantees court access at all levels in order to vindicate litigants rights.

as to the specific issue of partial payment of filing fee notice how our own Fourth Circuit ruled in Roller v. State, 107 F.3d 227 (4th Cir. 1997) or the Sixth Circuit in Hampton Hobbs, 106 F.3d 1281 (6th Cir. 1997); "Therefore a prisoner without funds will not be denied access to a federal court because of his poverty," and "...in no event shall a prisoner be prohibited from bringing a civil action... for the reason that the prisoner has no assets."

Relief Request

In view of the above arguments of fact, law and logic, Your Honor is asked to alter and amend her judgement and rescind the Order of denial. Further that Your Honor allow the Appellant to proceed promptly on partial payments of reasonable amounts, so done to allow a minimum of further delay and further prejudice to his cause of action.

If not; appellant ask Your Honor rehear this matter and base her Order on the Constitutional issues raised in the pleadings so as to enable proper appellate review.

Date 2/4/2015

Respectfully Submitted,
Anthony Erwing
Anthony Erwing Pro Se

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Certificate of Service

I, Anthony Erving, do hereby certify that copies of the above document were deposited with Mail Room personell at Kershaw Correctional for delivery to both the Clerk of Court of the S.C. Appeals Court and copies for General Counsel for S.C.D.C., so sent to them at their last known addresses

Date: 2/4/2015

Signed: Anthony Erving

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