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JUL 01 2015

SC Court of Appeals

The Supreme Court of South Carolina
Hayward L. ROGERS, 278510, Appellant,

VS.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2015-001223

Appeal From South Carolina Court of Appeals, Appellate

Case No. 2015-000374; Trial Case No. 2015-ALJ-04005311

PETITION FOR WRIT OF CERTIORARI

Hayward L. ROGERS, 278510

PERRY CORR. INST.

430 Oaklawn Road

Pelzer, S.C. 29669

Hayward L. Rogers
PRO SE

QUESTION PRESENTED

1, Did The COURT OF APPEALS ERR in dismissing The above ACTION because appellANT could not pay The REQUIRED FILING Fee?

STATEMENT OF FACTS

This matter ORIGINATED FROM a GRIEVANCE Filed WITH The South CAROLINA DEPARTMENT OF CORRECTIONS which denied The matter and a appeal was PERFECTED WITH The South CAROLINA ADMINISTRATIVE LAW COURT, which denied and dismiss The matter FOR Lack of Subject Matter JURISDICTION.

The appellANT alleged in his GRIEVANCE :

That his conviction and Sentence is in violation of The CONSTITUTION OF The UNITED STATES and The CONSTITUTION and Laws of This STATE;

illegally The PETITIONER presented undisputed evidence That he was convicted of ASSAULT and battery WITH INTENT TO KILL without PRESENTMENT by The GRAND JURY, and without PROOF beyond a Reasonable doubt.

Moreover, The Lower COURT ERRED in sentencing appellANT To Life without parole under 17-25-45, by use of a PRIOR MOST SERIOUS conviction FROM 1979.

2.

1993 ACTS and JOINT RESOLUTIONS, No. 184, p. 3239. Section 266 of The ACTs STATE AS FOLLOWS CONCERNING THE PROSPECTIVE APPLICATION OF THE CRIME CLASSIFICATION ACT:

The PROVISIONS OF THIS ACT OTHER THAN S.C. CODE ANN. 16-1-60(B), APPLY PROSPECTIVELY TO CRIMES AND OFFENSES COMMITTED AFTER THE EFFECTIVE DATE OF THE ACT (1-1-1994).

The PROVISIONS OF SUB-SECTION 16-1-60 (B) APPLY RETROACTIVELY TO ALL PERSONS CONVICTED UNDER THE LAWS OF THIS STATE.

BECAUSE 16-1-60 WAS NOT PASSED UNTIL 1986, ANY CRIMES COMMITTED BEFORE THAT DATE WILL NO LONGER BE CLASSIFIED AS "VIOLENT OFFENSES." AS A RESULT 24-21-640 SHOULD NOT BE APPLICABLE TO APPELLANT'S CONVICTION FOR ASSAULT AND BATTERY WITH INTENT TO KILL, BECAUSE APPELLANT'S 1979 CONVICTION FOR ASSAULT AND BATTERY WITH INTENT TO KILL WAS NOT CLASSIFIED AS "MOST SERIOUS OR VIOLENT" IN 1979.

THEREFORE HE SHOULD HAVE BEEN PAROLE ELIGIBLE AFTER JANUARY 1, 1994. SEE, STATE V. ATKINS, 360 S.E.2d 302 (S.C. 1987); STATE V. TORRENCE, 406 S.E.2d 315 (S.C. 1991). FURTHER, THE USE OF THE "1979" PRIOR VIOLATES THE EX POST FACTO LAWS, AND VIOLATES THE SEPARATION OF POWERS DOCTRINE. IT IS CLEARLY THAT APPELLANT'S LIFE WITHOUT PAROLE IS A VIOLATION OF THE EX POST FACTO BECAUSE THE PRIOR OCCURRED BEFORE PASSAGE OF THE RELIDIVIST STATUTE. STATE V. KISER, 343

3,

S.E.2d 292 (S.C. 1986); STATE V. JONES, 543 S.E.2d 541 (S.C. 2001); SOLEM V. HELM, 103 S.Ct. 3001 (1983).

Al-Shabazz v. State, 527 S.E.2d 742 (S.C. 2000), and TOTT V. STATE, 290 S.E.2d 414 (S.C. 1982), AFTER Al-Shabazz, only two non-collateral matters are cognizable in PCR: (1), a claim that the applicant's sentence expired or (2), a claim that the applicant's probation, parole, or conditional release has been unlawfully revoked.

Costs key 132 (1). When indigent litigant files motion to proceed in forma pauperis and complaint does not appear to fit within statutory or constitutional exception to requirement of filing fee, clerk of court must submit motion to judge for ruling as to whether complaint fits within statutory exception or concerns fundamental right that requires waiver of filing fee. S.C.R.C.P. Rule 3 (c).

The appellant's complaint does fit within the statutory exceptions of concerns and fundamental rights that requires waiver of filing fee, and appellant prays that this court grant the waiver in the interest of justice.

where certain fundamental rights are involved, the constitution requires that an indigent be allowed

4,

ACCESS TO THE COURTS. Compare, *Boddie v. Connecticut*,
91 S.Ct. 780 (1971).

I do declare under the penalty of perjury that
all of the foregoing is true, and correct to the
best of my knowledge.

CONCLUSION

Based on the foregoing arguments and supporting
opinions the Appellant's motion to proceed in
Forma Pauperis should be granted to allow
access to the court to be heard on his constitutional
violations.

Raymond L. Rogers

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Hayward L. ROGERS, Appellant, 278510,

VS.

South Carolina Department of CORRECTIONS, Respondent,

Appeal FROM South Carolina COURT OF Appeals

Case No. 2015-000374; Trial Case No. 2015-ALJ-040053ID

CERTIFICATE OF SERVICE

The undersigned hereby does CERTIFY that on this herein date
a copy of the PETITION FOR ~~WRIT~~ WRIT OF CERTIORARI was served
upon opposing counsel with CERTIFICATE OF SERVICE by
placing a copy in the U.S. mail postage prepaid.

June 24, 2015

Hayward L. Rogers

MR. Hayward L. Rogers' 278510.
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Pelzer, S.C. 29669

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Post Office Box 11629
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P.C.I. MAILROOM

LEGAL MAIL

THE DEPARTMENT OF CORRECTIONS HAS
NOT CENSORED THIS ITEM, THEREFORE,
THE DEPARTMENT DOES NOT ASSUME
RESPONSIBILITY FOR ITS WRITTEN CONTENTS.
S. C. DEPARTMENT OF CORRECTIONS