

**FORM 13
BRIEF OF APPELLANT***

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

RECEIVED
SEP 30 2015
SC Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Frank Addy, Circuit Court Judge

Case No. 2014-002532

Anthony Derone Richardson

Appellant,

V.

Jackie Swindler,

Respondent.

[INITIAL] BRIEF OF APPELLANT

Pro. SE Anthony Derone Richardson
P.O Box 221
Newberry, SC. 29108

* Under Rule 267(e), SCACR, the cover of the final briefs should be the following colors: brief of appellant - blue; brief of respondent - red; reply brief - gray; and amicus curiae or intervenor - green.

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Arguments

1. BECAUSE APPELLANT RAISED THE ISSUE BUT THE JUDGE ERROR IN FAILURE TO apply the standards for obtaining a stay pending appeal to the facts before this Court AND The APPELLANT WAS entitled to the entry of a stay BUT THE JUDGE REFUSE TO STAY BUT INSTEAD RULED ON THE CASE INSPITE OF THE PENDING PCR CASE PENDING at the time

2. BECAUSE APPELLANT DENIED ANY remedy for alleged due process violation claim in this lawsuit is judicial review he is seeking by appealing his criminal conviction in denial of his right to jury trial can be monetary ward under 42 U.S.C 1983 and the 14 amendment. However, the Plaintiff pled guilty before the defendant in his office result in impose a sentence agreed by defendant and the plaintiff as a result of the defendant waive the Appellant right , and later on the defendant sought a bench warrant to have APPELLANT arrested is a impose sentence. Monetary relief for ordinary compensatory damages is fundamental to legal relief subject to the right to a jury trial. Indeed, the text of the Seventh Amendment reflects the need for monetary damages as part of the controversy. U.S. Const. Amend. VII and Seventh Amendment guarantees the right to trial by jury . State court are bound by the seventh amendment.

2.Because the APPELLANT DENIED Under Rule 56 it's proper for a party to make a motion summary judgment if there are no facts in dispute. The judge did not sentence me, but the Respondent did which is a chief of police the defendant Mr. Swindler which conducted a bench trail according to the Exhibits. Now, when evaluating and determining the validity of forcibility of this restricted covenant, the law is well established. (1) the right to a Speedy Trial; (2) the right to a public trial; (3) the right to an impartial jury; (4) the right to be informed of pending charges; (5) the right to confront and to cross-examine adverse witnesses; (6) the right to compel favorable witnesses to testify at trial through the subpoena power of the judiciary; and (7) the right to legal counsel. Ratified in 1791, the Sixth Amendment originally applied only to criminal actions brought by the federal government. THE APPELLANT WAS CLEARLY ENTITLED TO MOTION OF SUMMARY JUDGEMENT.

ecutions” to which the Sixth Amendment applied (for the modern rule see Bloom v. Illinois, 391

4.BECAUSE THE APPELLANT DENIAL OF deprivation of the APPELLANT right to a jury

trial because he has suffered "denial of his right to a fair trial, due to not having a jury of my peers under the Sixth Amendment after according to Exhibit B which the plaintiff requested a jury trial in writing and the defendant violated my right in conducting a bench trial on 2/20/2013 on Exhibit E which states I was found guilty at a bench trial on the same day of the Jury selection 2/20/2013 which was conducted by the Chief of Police Mr. Swindler.

5. BECAUSE THE APPELLANT WAS DENIED AND has Suffered and already done suffer a deprivation of his right to jury trial and even appeal pending will not be adequate remedy because the damage has already been done.

6. BECAUSE THE APPELLANT WAS DENIED summary judgment in APPELLANT favor is appropriate because Mr. Swindler has pled various affirmative defenses, any of which, if successful, would seriously violate the code of law of South Carolina code 14-25-45 in impose sentence upon Plaintiff within these limits singularly and the seventh amendment Seventh Amendment guarantees the right to trial by jury.

7. BECAUSE THE APPELLANT WAS DENIED that Chief of police Mr. Swindler conducting a bench trial is ambiguous because it is reasonably susceptible to only one interpretation. The existence of an ambiguity is a question of law for the Court. *Ins. Co. of N. Am. v. Hilton Hotels U.S.A., Inc.*, 908 F. Supp. 809, 814 (D. Nev. 1995) (citing *Margrave*, 878 P.2d at 293).

8. BECAUSE THE APPELLANT DENIED violation of his due process right to a trial by jury is not barred Fed.R.Civ.P. 15(a) gives a plaintiff one opportunity to amend as of right before a Plaintiff case is dismiss. THE JUDGE DENIED THE APPELLANT THE RIGHT TO AMEND

BECAUSE THE APPELLANT WAS DENIED FOR FAILURE TO FILE DIRECT APPEAL the RESPONDENT fails to protect the APPELLANT rights adequately BECAUSE EVERY APPELANT IN A CRIMINAL COURT IS ENTITLED UNDER THE SIXTH AMENDMENT TO BE REPRESENTED BY ATTORNEY, HOWEVER APPELLANT COULD NOT HAVE DIRECT APPEAL, and WITH THE RESPONDENT NOT SECURE THE APPELLANT RIGHTS.

9. Because the Appellant denied the right to appointed counsel to raise frivolous arguments on **direct appeal**, U.S. 353, 356 (1963). A petitioner is entitled to counsel during his first direct appeal as of right, but proceed pro se after his direct appeal. However, since the Respondent was not a Judge but a Police and there is no way appellant rights could have been reserved. Sixth Amendment right to counsel doctrine. An appellant desire to argue that of his constitutional right to counsel by not being furnished by counsel in order to file a direct appeal.

10. Because the Appellant denied the right the factual question exist for the Judge and Jury to decide and argues that summary judgment was improper because genuine issues of material fact remain to be determined.

11. Because the Appellant denied the right to even consider the opposition to motion for summary judgement was not even ruled on of even considered.

12. Because the Appellant was denied and the trial court erred when it granted Respondent motion for summary judgment where there were genuine issues of fact in dispute and where the appellee and was not entitled to judgment as a matter of law. The motion for relief from judgment was premised on excusable neglect under Civ.R. 60(B)(1). –

13. Because the Appellant denied the trial court abused its discretion and committed reversible error

14. Because the Appellant denied R. 60(B)(1), arguing excusable neglect in failing to respond to the motion for summary judgment after filing a opposition

15. Research reveals a similar case involving the argument that the failure of a trial court to read or consider a parties' opposition brief in ruling on a pending dispositive motion, thereby calling into question whether the trial court made a mistake in its ruling on the merits of the pending motion, constitutes grounds for relief from judgment under Civ.R. 60(B)(1) and (5). - See more at: <http://caselaw.findlaw.com/oh-court-of-appeals/1087592.html#sthash.X9YMxFFt.dpuf>

TABLE OF AUTHORITIES*

CASES

see Bloom v. Illinois, 391 U.S. 194 (1968)), 2

(Press-Enterprise I). 364 U.S. 29 (1960). 37 Waller v. Georgia, 467 U.S. 39, 47 (1984)
(indicating that the Press-Enterprise I standard governs such 6th Amendment cases)2

State v. Ebert, 456 S.C. 789, 123 S.E.2d 456 (1963).....2

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S.C. Code Ann. § 11-22-300 (1976).....2

S.C. Code Ann. § 22-33-400 (1985).....2

fleming v. rose 350 s.c. 488, 493,2

OTHER AUTHORITIES

RESTATEMENT (SECOND) OF CONTRACTS Section 100 (1981)2

RESTATEMENT (SECOND) OF PROPERTY Section 200 (1981)2

RESTATEMENT (SECOND) OF TORTS Section 300 (1981).....2

*The authorities cited are fictitious and intended to show the form of citation only.

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO STOP THIS CASE PENDING APPEAL UNDER Younger doctrine from criminal to civil proceedings in which the state had an important interest, the Court has applied this abstention doctrine to pending state administrative proceedings. The trial judge err in refusing to stay the case until the P.C.R hearing was held.
2. Did the Trial judge abuse his power In Younger, plaintiffs sought a federal injunction against a state criminal prosecution on the ground that the state statute alleged to have been violated was unconstitutionally vague. The trail judge rule in spite of and has cause damage.
3. Did Trial judge use abuse remarks in threatening the Appellant TO SANCTION THE APPELLANT?
4. Did trial judge failure to grant motion of summary judgement IN FAVOR OF APPELLANT
5. Did trial judge failure to govern this case under the younger doctrine, however this case is not barred BECAUSE AT THE TIME THE SAME CASE WAS RUNNING PARRELLE WITH THIS CASE IN THE PCR CASE IN WHICH THE SAME JUDGE HEARD THE PCR CASE AND DISMISSED THE CASE INSTEAD.
6. Did trial judge not adequately consider appellant allegations before dismissing the case INSPITE OF A CLEARLY VIOLATION OF THE LAW Criminal defendants have several constitutional rights. Perhaps the most essential protection is the requirement that the prosecution prove guilt beyond a reasonable doubt. But defendants have other rights, too, including the rights to or receive adequate representation : by attorney was denied therefore the appellant was nit protected or rights been protected after the appellant in writing requested a jury trial was denied should have been granted Motion for Summary Judgement and the other rights was denied.
7. • remain silent
8. • confront witnesses
9. • have a public trial
10. • have a jury trial
11. • have a speedy trial
12. • be represented by an attorney
13. • receive adequate representation
14. • not be tried twice for the same offense ("double jeopardy").

STATEMENT OF THE CASE

Mr. Richardson is suing Chief of Police, Mr. Swindler for violation of my South Carolina rule 38, code 14-25-45 in impose sentence upon APPELLANT within these limits singularly jury and my six, seven, 14 amendment rights. Right to Jury trial, Right to compel, is entitled to a right to confront witness, to question his or her witness. Alleyne v. United States just ruled that six amendment requires a jury, not a judge or police, to make factual findings that raise the minimum sentence to offense. 350 S.C. 488, 493, 567 s.e.2d 857, 860 2002 and the defendant violated plaintiff Six Amendment and Seventh Amendment guarantees the right to trial by jury. Plaintiff pled guilty before the defendant in his office as a result in impose a sentence agreed by defendant and the plaintiff. The defendant waive the Plaintiff right to jury trial after requesting jury trial in writing in the present of the municipal judge and according to the Appendix and impose sentence on the Plaintiff after signing his initial , however later on the defendant sought a bench warrant to have Plaintiff arrested is a impose sentence, and to initials his name beside the plaintiff name also violated a clearly established law under s.c. code 14-25-45 in impose sentence upon Plaintiff within these limits singular. Magistrates and municipal judges may impose sentences within these limits ... joined with an offense over which the summary court judge has no jurisdiction. ... However, S.C. Code Ann. 17-13-40(B Monetary relief for ordinary compensatory damages is fundamental to legal relief subject to the right to a jury trial. Indeed, the text of the Seventh Amendment reflects the need for monetary damages as part of the controversy. U.S. Const. Amend. VII and Seventh Amendment guarantees the right to trial by jury. State court are bound by the seventh amendment This is where Mr. Swindler decided to impose sentence upon plaintiff, and waive plaintiff right to confront his witness, or accuser without consent of the plaintiff. Plaintiff suffered because Ms. Swindler had violated plaintiff right to jury trial, and defendant impose sentence upon plaintiff. During the discovery process, the Plaintiff acknowledged that he initial the impose sentence sheet rather sign it. According to Appendix A,B,C Fed.R.Civ.P. 56(c); Appellant complaint for the reasons stated in Appellant Motion for Summary Judgment, which is being filed simultaneously herewith. The Appellant was arrested on December 11, 2012 for trespass after notice. However, because the Appellant appeal still pending, there has been no final decision as to whether the Appellant was entitled to jury trial at the time of this trial however according to Appendix A, B, C that the Appellant is entitled to a Jury Trial after the request is writing, and that no document on record showing that the Appellant waive his Jury trial request. The respondent failure to appoint the Appellant an attorney, therefore the Appellant could not have known about a direct appeal, without attorney been appoint to the Appellant. Accordingly, civil cause of action has occurred.

FACTS

Just to lay out some of the facts of the case, this matter comes before the Court when Mr. Richardson is suing Chief of Police, Mr. Swindler for violation of my south Carolina rule 38, code 14-25-45 in impose sentence upon Appellant within these limits singularly jury and my six, seven, 14 amendment rights. Respondent violated Mr. Richardson Right to Jury trial, Right to compel, is entitled to a right to confront witness, to question his or her witness Alleyne v. United States just ruled that six amendment requires a jury, not a judge or police, to make factual findings that raise the minimum sentence to offense. 350 S.C. 488, 493, 567 s.e.2d 857, 860 2002 and the defendant

violated plaintiff Six Amendment and Seventh Amendment guarantees the right to trial by jury. In Initial Briefs, these references shall be made in the manner specified by Rule 208(b) (4), SCACR. In the Final Briefs, these references shall be to the page and line number of the Record on Appeal (i.e., R.p. 37, lines 7-8). Rules 211(b) (1), SCACR.]

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ARGUMENTS

I. Because the Respondent denied Appellant rights acting as a Judge failure to provide Appellant rights under the South Carolina six amendment rights, in which assure the Appellant the right to Attorney in order to secure Appellant rights. The text of the Seventh Amendment reflects the need for monetary damages as part of the controversy. U.S. Const. Amend. VII and Seventh Amendment guarantees the right to trial by jury. State court are bound by the seventh amendment This is where Mr. Swindler decided to impose sentence upon plaintiff, and waive plaintiff right to confront his witness, or accuser without consent of the plaintiff. Plaintiff suffered because Ms. Swindler had violated plaintiff right to jury trial, and defendant impose sentence upon plaintiff. During the discovery process, the Plaintiff acknowledged that he initial the impose sentence sheet rather sign it. According to Appendix A,B,C Fed.R.Civ.P. 56(c); Appellant complaint for the reasons stated in the Appellant Motion for Summary Judgment, which is being filed simultaneously herewith. The Appellant was arrested on December 11, 2012 for trespass after notice. However, because the Plaintiff appeal still pending, there has been no final decision as to whether the Plaintiff was entitled to jury trial, however according to Appendix A,B,C that the Plaintiff is entitled to a Jury Trial after the request is writing, and that no document on record showing that the Plaintiff waive his Jury trial request. Accordingly, civil cause of action has.

Judge Err, in dismissal Appellant claim BECAUSE THE APPELLANT FAILURE TO FILE DIRECT APPEAL WITHOUT BEEN APPOINTED ATTORNEY BY THE RESPONDENT WOULD IMPOSSIBLE FOR THE APPELLANT TO FILE DIRECT APPEAL

II. BECAUSE THE TRIAL Judge ERRED in denying that There are facts in dispute, under Fleming v. rose 350 s.c. 488, 493, in determine whether any triable issue of facts exists, the evidence and all inferences, which can reasonably be drawn therefrom, must be viewed in the light most favorable to the nonmoving party. If trail able issues exist, those issues most go to the jury. young v. s.c dept. of corr.

1. Trial Judge ERRED

[Set out discussion and citations of authority.]

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court and grant the Appellant Motion for Summary Judgement..

Respectfully submitted,

Aug. 31, 2015

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9-29-15

**FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Frank Addy, Circuit Court Judge

Case No. 2014-002532

Anthony Derone Richardson,

Appellant,

V.

Jackie Swindler,

Respondent.

PROOF OF SERVICE

I certify that I have served Brief of Appellant, form 13, form 14 on Morrison Law Firm : 7453 Irmo Dr # B, Columbia, SC 29212 depositing a copy of it in the United States Mail, postage prepaid, on 9/29/2015, addressed to his attorney of record, on Morrison Law Firm : 7453 Irmo Dr # B, Columbia, SC 29212.

9/29/2015

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Anthony Derone Richardson 9-29-15

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SEP 20

SC Court of Appeals

TO:

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