

FORM 4

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF LEE
IN THE COURT OF COMMON PLEAS

CASE NO. 2006-CP-31- 287

PATRICK BOOKER
PLAINTIFF(S)

SC DEPT. OF CORRECTIONS
DEFENDANT(S)

CHECK ONE:

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

X **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ACTION DISMISSED. (CHECK REASON) Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other: .

ACTION STRICKEN. (CHECK REASON) () Rule 40(j) SCRPC; () Bankruptcy; arbitration award; () Other **JUDGMENT BY DEFAULT**

IT IS ORDERED AND ADJUDGED X See attached order; Statement of Judgment by the Court:

Dated at Bishopville, South Carolina, this 22ND day of July, 2008

PRESIDING JUDGE

This judgment was entered on the 22ND day of July, 2008 and a copy mailed first class this 22ND day of July, 2008 to attorneys of record or to parties (when appearing pro se) as follows:

PRO SE
ATTORNEY(S) FOR THE PLAINTIFF(S)

BRADFORD ANDREWS
ATTORNEY(S) FOR THE DEFENDANT(S)

James Davis
CLERK OF COURT

JR

Common Pleas
Clerk : James I Davis
123 South Main Street
Bishopville, SC 290100387
(803) 484-5341

Received From: Patrick Booker

Date : 11/18/2015

RECEIPT # 227125
Clerk: c31cwatkin

Paying for: Patrick Booker,

Payment Type: Money Order \$12.00 Reference # 23210168422

Total Paid 12.00 Comment:

Total Received \$12.00
Change Due \$0.00





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NOV 30 2015

The South Carolina Court of Appeals ^{SC} Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 04, 2015

Patrick Booker, 297590
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

Re: Patrick L. Booker v. SCDC
Appellate Case No. 2015-002252

Dear Mr. Booker:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal. Please provide the order denying your motion for reconsideration and the judgements dated April 9, 2008 and August 4, 2008.
- The required filing fee has not been submitted. The correct filing fee is \$100.00.

Very truly yours,

A handwritten signature in black ink that reads "Jenny Abbott Kitchings". The signature is written in a cursive style and includes a large, stylized flourish at the end.

CLERK

cc: Samuel F. Arthur, III, Esquire



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NOV 30 2015

State of South Carolina
The Circuit Court of the Third Judicial Circuit
SC Court of Appeals

R. FERRELL COTHRAN, JR.
JUDGE

16 SOUTH BROOKS STREET
MANNING, SOUTH CAROLINA 29102
TELEPHONE: (803) 435-2450
FAX: (803) 435-2461
E-MAIL: rcothranj@sccourts.org

May 29, 2015

Patrick L. Booker, # 297590
Perry Correctional Institution
Post Office Box 252
Pelzer, SC 29162



Re: Patrick Booker vs. SC Dept. of Corrections
Case No.: 06-CP-31-287

Dear Mr. Booker:

A hearing was held before me on April 9, 2008 at the Lee County Courthouse at which time I granted the Defendant's Motion for Summary Judgment. You filed a Motion for me to reconsider and I denied that Motion on August 4, 2008. There are no pending Motions before me at this time that has not been ruled on.

Sincerely,

R. Ferrell Cothran, Jr.

jgb

cc: James I. Davis, Lee County Clerk of Court

Certified as a True Copy

James I. Davis
Clerk Court of Common Pleas
and General Sessions, Lee
County, South Carolina

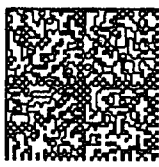
Patrick L. Booker, 297590
McCormick Correctional Institute (F5 - Cell 54)
386 Redemption Way
McCormick, SC 29899

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NOV 30 2015

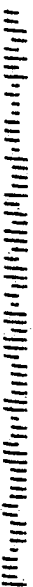
SC Court of Appeals Appeals

Attn: Ms. V. Claire Allen, Deputy Clerk
P.O. Box 11629
Columbia, S.C. 29211



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DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

MCCORMICK CORRECTIONAL INSTITUTE
S.C. DEPARTMENT OF CORRECTIONS

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

IN THE COURT OF COMMON PLEAS

C/A NO.: 06-CP-31-287

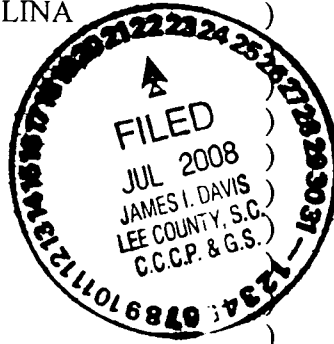
Patrick L. Booker,

Plaintiff,

vs.

South Carolina Department of Corrections,

Defendant.



ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court upon Motion of counsel for the Defendant seeking summary judgment pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure*. A hearing on this matter was conducted April 9, 2008 at the Lee County Courthouse. Plaintiff, Patrick L. Booker, appeared *pro se*. Bradford C. Andrews appeared on behalf of Defendant, South Carolina Department of Corrections. For the reasons set forth below, Defendant's Motion is granted.

STATEMENT OF THE CASE

Plaintiff, Patrick L. Booker, was, at all times relevant to the events alleged in this action, incarcerated with the South Carolina Department of Corrections (SCDC) at the Lee County Correctional Institute. Plaintiff alleged that Defendant violated both the South Carolina and the United States Constitutions and was grossly negligent when officers placed fellow inmate Jimmy Duncan in an outdoor recreation unit with Plaintiff who was then assaulted by Inmate Duncan.

R. J. [unclear]

Certified as a True Copy

James I. Davis
Clerk Court of Common Pleas
and General Sessions, Lee
County, South Carolina

PROCEDURAL HISTORY

Plaintiff brought a federal action pursuant to 42 U.S.C. § 1983 alleging violations of his Eighth Amendment right. Specifically, he brought allegations of deliberate indifference to a substantial risk of serious harm to an inmate. Plaintiff's federal 1983 claim was dismissed via summary judgment. *See* C.A. No. 2:07-456-HMH-RSC. In the case at bar, Plaintiff brings the same allegations under the gross negligence exception to the South Carolina Tort Claims Act (SCTCA).

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Baird vs. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). Rule 56 of the *South Carolina Rules of Civil Procedure* requires the entry of summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

A party opposing a properly supported Motion for Summary Judgment may not rest on the mere allegations or denials of his pleading, but must set forth or point to specific facts showing there is a genuine issue of material fact. *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct.App.2003). Thus the existence of a mere scintilla of evidence in support of a non-moving party's position is not sufficient to overcome a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

STATEMENT OF FACTS

The following are the relevant facts as alleged by the Plaintiff in his Complaint and Affidavit testimony.

At the time relevant to Plaintiff's Complaint, Plaintiff was housed at Lee Correctional Institution, assigned to the Special Management Unit (SMU) for disciplinary detention. On July 7, 2005 at approximately 8:30 a.m., Plaintiff, along with three other inmates, Randy Johnson, Jerome James, and Jimmy Duncan were handcuffed behind their backs and escorted from the special management unit (SMU) to the outside recreation cage. Johnson, James, and Duncan were housed in SMU because they were designated Level One Security Detention. When the defendant officers with their prisoners reached the recreational cages, defendant Officer Richburg directed Plaintiff and Inmate Duncan into a recreation cage.

After Plaintiff and Inmate Duncan were inside, Richburg locked the cage with a padlock and removed the handcuffs from Duncan. Duncan immediately went for the Plaintiff and struck the Plaintiff in the head, face and stomach areas which caused the Plaintiff to lose his balance and fall to the floor. Plaintiff struck his head on the floor and injured his back when he fell on his own handcuffs.

R. J. C.
Immediately, Officer Kendrick and Richburg got into the cage, administered chemical munitions, separated the prisoners, and stopped the assault. The total elapsed time of the entire incident was no more than one minute. Shortly thereafter, Plaintiff was escorted to medical. The nurse's notes show that she found a "two inch abrasion noted to L elbow. 1/8 inch abrasion to R elbow. 1/8 inch laceration noted to R thumb. Small abrasion to R third and fifth knuckle into L wrist." (Medical records of Patrick Booker,

#297590, encounter 58, dated 07/07/05, page 18). One week later the Plaintiff complained that his back had been injured during the incident with Duncan. On July 15, 2005, the Plaintiff complained of pain to his back, and a nurse found, "no erythema or swelling to the area." *Id.*, (encounter 60, 07/15/05, pages 17-18). After the Plaintiff's transfer to McCormick Correctional Institution, medical personnel found "...no neurodeficits, no adema, discoloration, deformities or bruising noted. No muscle spasms present..." *Id.*, (encounter 62, dated 07/27/05, page 17). After several complaints about pain to his back, the Plaintiff was referred to a radiologist, who took an x-ray of his lumbar spine which revealed "... lumbar vertebral bodies are in good alignment. There is no evidence of fracture of subluxation." (Drs. Note, page 75). The doctor's impression was that the Plaintiff had a "normal lumbar spine." *Id.* Thereafter, the Plaintiff complained of back pain on one other occasion, when it was noted that there were "... no neurodeficites noted, no trauma. Seen by Dr. Lewis for same problem received Phenelgesic and Robaxin...stable. No deformities, adema or discoloration noted. Ambulating well." *Id.*, (encounter 74, dated 10/31/05, page 13).

SOUTH CAROLINA TORT CLAIMS ACT

The South Carolina Tort Claims Act waives governmental immunity for certain acts by governmental employees. The exceptions to this waiver of immunity are in S.C. Code 15-78-60.

The governmental entity is not liable for a loss resulting from:

- (5) the exercise of discretion of judgment by the governmental entity or employee or the performance or failure to perform any act or service

which is in the discretion of judgment of the governmental entity or employee;

(25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, **except when the responsibility or duty is exercised in a grossly negligent manner.**

In *Jackson v. South Carolina Department of Corrections*, 301 S.C. 125, 390 S.E.2d 377 (1990), the Supreme Court of South Carolina held that these two sections must be read in conjunction with one another. Therefore, looking at the definition of gross negligence is necessary to be able to interpret this section fully. "Gross negligence has been defined as the 'the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do'." *Duncan v. Hampton County School District*, 517 S.E.2d 449, 335 S.C. 535 (1999). This section applies to this action the Plaintiff has brought in this Complaint because he is complaining of the actions of an employee of the South Carolina Department of Corrections, a governmental entity. The South Carolina Department of Corrections and its employees are immune from any liability unless its employees act in a grossly negligent way.

Essentially, in order to survive summary judgment, Plaintiff must present sufficient evidence to create a genuine issue of fact as to whether Defendant was aware of a known risk of harm to Plaintiff, and consciously and intentionally failed to protect him from that risk of harm. The Plaintiff has presented no evidence of a specific risk of harm

posed by Inmate Duncan of which the Plaintiff's were aware. The Affidavit testimony of Defendant Officer Richburg is as follows:

"At no time prior to this incident was I informed by Inmate Booker or any other inmate of corrections officer that Inmate Duncan posed a threat to Inmate Booker. To the best of my recollection, Inmates Booker and Duncan, whose cells in SMU were beside one another, spoke to each other often and in a friendly manner. Inmate Duncan's attack on Inmate Booker came as a complete surprise to me; I had absolutely no notice that such an attack was going to occur." See *Affidavit of Crystal Richburg, para. 6, (Attached as Exhibit C)*.

The affidavit testimony of Defendant Officer Debra Gregg is as follows:

"As a corrections officer whose duty it was to patrol the SMU area, I had an occasion to observe Inmates Duncan and Booker often. The two inmates' cells were side-by-side, and I observed the two talking to one another in a friendly manner. I had no indication that Inmate Duncan wanted to fight or attack Inmate Booker. No inmate or other officer ever informed me that they believed Inmate Duncan was going to attack Inmate Booker. Inmate Booker never informed me or anyone else to my knowledge that he feared that Inmate Duncan was going to attack him." See *Affidavit of Debra Gregg, para. 3, (Attached as Exhibit D)*.


Furthermore, it is undisputed that as soon as Inmate Duncan attacked the Plaintiff, the Defendants successfully stopped the attack and protected the Plaintiff from injury.

Plaintiff has presented no evidence or allegation that SCDC personnel had any knowledge whatsoever of any risk of harm to Plaintiff posed by Inmate Duncan. Defendants' pairing of Plaintiff and Inmate Duncan in the same recreation cage was inadvertent, and as such does not rise to the level of intentional, conscious conduct which is required to state a claim under the gross negligence exception to the South Carolina Tort Claims Act.

RULING

Because Plaintiff has failed to allege facts evidencing an “intentional, conscious failure to do something which it is incumbent upon [Defendant] to do or the doing of a thing intentionally that one ought not to do,” Defendant is afforded the governmental immunity provided by the South Carolina Tort Claims Act, and is entitled to summary judgment. Accordingly,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment of the Defendant South Carolina Department of Corrections be and is hereby granted.


HONORABLE R. FERRELL COTHMAN, JR.,
THIRD JUDICIAL CIRCUIT

AT CHAMBERS:

Manning, South Carolina

July 16, 2008

