

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

G. THOMAS COOPER, Jr., CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2013-002306

Basil W. Akbar, Appellant,

v.

South Carolina Department of Corrections, Bill Byers, Martha Roof, Debrah Long, Lisia Johnson, Ann and John Doe, Respondents.

PRO SE FINAL BRIEF

RECORD ON APPEAL

BASIL W. AKBAR, # 065498
LEE COUNTY CORR INST.
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STATEMENT OF ISSUES ON APPEAL

I. The lower courts erred, and abused its discretion in denying Appellant's Motion to Compel Discovery; Requests and Prayer for Damages; and ruling he fail to state facts sufficient to constitute a cause of action; and granting Respondents Motion to Dismiss, and Summary Judgment, when justiciability controversy exist.

II. The lower courts erred, and abused its discretion in failing to rule that Respondent's unlawfully deprived him of personal property and fail to make his Work Release Escrow Account transparent as a punishment, denying rights guaranteeing him by Art. I § 3 of the South Carolina Constitution; and Fifth, Eight, and Fourteenth Amendment of the United States Constitution.

III. The Lower Courts erred, and abused its discretion in failing to rule that Respondent's conduct constituted default and reprisal, where Respondents fail to process grievance and/or process grievance within fix time at each stage, and safeguard against reprisal, denying rights guaranteeing him by Art. I § 3 of the South Carolina Constitution; and First, Fifth, Eight, and Fourteenth Amendments of the United States Constitution.

IV. The lower courts erred, and abused its discretion in failing to rule that Respondents' conduct violated Appellant's rights by closing his account void notice, and fraudulently appropriating his work release escrow savings account, denying rights guaranteeing him by Art. I, § 3 of the South Carolina Constitution; and Fifth, Eight, and Fourteenth Amendments of the United States Constitution.

V. The lower courts erred, and abused its discretion in failing to rule that the Respondents' conduct impeded/hindered Appellant's ability to grieve Civil Rights and Civil Liberty claims, and access to court(s), denying right guaranteeing him by First, Fifth, Eight, and Fourteenth Amendments of the United States Constitution.

STATEMENT OF THE CASE/FACTS

The Appellant plead guilty to murder in 1971, and received a parolable life sentence. From July 1979 thru April 1981 he were assigned to SCDC's Work release Programs, and employed at Owens Electric and Steel Company. Weekly deductions was taken from weekly earnings for mandatory Long Term Escrow Savings Account, and room & board until released on parole April 8, 1981, however balance of Escrow Account was not release, but told funds would be release upon pardon [S.C. Code § 24-21-950 (c)], or completing 5 years under supervised parole. On April 1985, his conditional parole was revoked, however at all times relevant the Appellant was still in legal custody of the South Carolina Department of Corrections (SCDC), Sanders V. Mac Dougal, 244 SC 160, 135 S.E.2d 836

On October 22, 2008, the Appellant initiated correspondence with SCDCs Financial Business Office, and second request December 1, 2008, to no reply. After numerous phone calls via family members until June 18, 2009, request to staff member (request) seeking to make work release Escrow account transparent went unaddressed.

Respondents' then asserted that said funds were deposit into his SCDC E.H. Cooper Trust Account [March 30, 1994], which was incorrect. In fact seven (\$7.00) dollars relating to grievance reimbursement for lost property [GA-LCI-030-94] was deposit at said time. On July 7, 2009, a corrective request by certified

mail was forwarded to SCDC financial branch pursuant to S.C. Code §§ 30-4-10 thru 30-4-110 (F.O.I.A.), no reply. Numerous grievance was filed and return unprocess, citing agency policy GA-01.12, "You have fifteen (15) days from the date of alleged incident to file grievance on this issue," and suggested to submit request to Lee County Institution business office. He was then informed for the first, that said account was closed and archived when released in 1981, as a result additional grievances was filed. Appellant sought to have his E.H. Cooper Work Release Mandatory Escrow Savings Account made transparent to him, status and balance of which SCDC Head Quarters Financial Branch refused. Leaving him to believe that funds in account [#065498] to be missing, or unjustly seized without notice, or consent, and that Respondents unconstitutionally conspired repeatedly to deprive him of personal property, access to grievance system, and account upon insufficient reasons, SEE, S.C. Code Ann. § 16-5-60 (1985).

On December 31, 2010, the Appellant filed a timely S.C. Administrative Law Court (ALC) Notice of Appeal. Contending that, (1) Respondents had procedurally defaulted. (2) SCDC violated his 1st, 4th, 8th and 14th Amendments right...fail to make account transparent to him as punishment.(3) SCDC entity and Lee County Institution grievance clerk's impeded his right to grieve Civil Right claim and Civil Liberty, and access to legal remedies concerning financial mistake...Escrow Account, and (4) SCDCs conduct violated his due process right by closing

his account void notice and fraudulently appropriated...Escrow Account. In addition the Appellant sought discovery pursuant to Rule 21 ALC. The ALC's order of dismissal filed April 28, 2011, alleged he fail to exhaust administrative remedies prior to bring matter before the ALC.

On May 18, 2011, the Appellant file Notice of Verified claim [No.75046] for damages, was file with Budget and Control Board, pursuant to S.C. Code §15-78-80 (d), within one year after loss discovered, or within three years of the date the loss...§15-78-110. Appellant file complaint in the Court of Common Pleas January 16, 2013 regarding Tort violation upon constitutional grounds, and negligent operation of duties, §15-78-60 (25), and §15-78-70 (b). Service was perfected by Richland County Sheriffs Department, and Restricted Mail.

ARGUMENT #I

The lower courts erred, and abused its discretion in denying Appellant's motion to compel discovery; requests/prayer for damages, and ruling he fail to state facts sufficient to constitute a cause of action; and granting respondent's motion to dismiss, and summary judgment, when justiciability controversy existed, denying rights guaranteeing him by Art. I, §3 of South Carolina Constitution; and First, Fifth, Eighth, and Fourteenth Amendment United States Constitution.

The Appellant is grieved by the lower courts order/judgment, S.C. Code §18-1-30; Rule 201 (b) SCACR; Burns V. Garder, 328 SC 608, 493 S.E.2d 356, and prejudicially and injuriously affected by the ruling. Where it operates on his rights of property, Bivens V. Knight, 254 SC 10, 173 S.E.2d 150, and where a justiciability controversy exist, Byrd V. Irmo High School, 321 SC 426, 468 S.E.2d 861, substantial due process rights violated. SEE ALSO, Johnson V. State, 331 SC 489, 486 S.E.2d 915.

A. **Discovery:** The lower courts erred, and abused its discretion in denying Appellant's discovery upon an erroneous pretext that claim was barred by time limitation contrary to the record, and where notice of account closure was not made privy/official until February 9, 2009 (see additional supporting facts outlined below). Moreover, the courts oversighted that all times relevant he were still in legal custody of the SCDC,

Wilson V. Flaherty, 689 F.3d 332 (4th Cir.); Jones V. Cunningham, 835 S.Ct. 373; Cooks V. State, 326 SC 171, 485 S.E.2d 374.

Furthermore, the court/respondents cannot fairly suppress/conceal discovery material favorable to him...and then argue or rule Appellant fail to establish, or provide evidence in support when inhibiting has ability to utilize discovery process, S.C. Code §16-5-60; State V. Needs, 333 SC 134, 508 S.E.2d 857; Abney V. M^CGinnis, 380 F.3d 663, 667; James V. Davis, 2006 WL 2171082. Failure to disclose relevant material undermine confidence in court's decision, because there is a reasonable probability that there would have been a different result had the evidence been disclosed.

When the lower courts refuses to allow an offer of proof, the Appellate Court will address the merits of the appeal if it can determine from the record what the evidence intent to show, State V. Schmitdt, 288 SC 301, 342 S.E.2d 401. Discovery Material in Appellant's case would show, weekly check deposit, SCDC Policy/Statute mandating withdrawal from wages for room and board, savings account, interest bearing account, that Escrow account was not release or closed, and misappropriated funds. Discovery material not only refute respondent's defense...but is the subject matter of the Appellant's case, where he initially sought to have account information made transparent to him. Liberty Interest is found in funds in Prison Account...and may not be deprived of those funds void due process, Regnold V. Wagner, 128 F.3d 166, 179; Higgen V. Beyer, 293 F.3d 633, 603.

B. RESPONDENTS' MOTION TO DISMISS: The Lower Courts erred, and abused its discretion in granting Rule 12 (b) Motion. A judge in the civil setting may dismiss a claim when the defendant demonstrate the plaintiff has failed to state facts sufficient to constitute a cause of action. However, the motion will not be sustained if the facts alleged, and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case, State V. Onorato, 318 SC 297, 457 S.E.2d 601; Brown V. Leverette, 291 SC 364, 353 S.E.2d 697

C. RESPONDENTS; SUMMARY JUDGMENT: The Lower Courts erred, and abused its discretion in granting Summary Judgment. Where further inquiry into the facts of the case is desirable to clarify the application of the law, Middleborough..V. Montedison, 320 SC 470, 465 S.E.2d 765 (Ct. App. 1995). Further, Summary Judgment should not be granted even when there is no dispute as to the evidentiary facts, if there is a dispute as to the conclusions to be drawn therefrom, Mac Farlane V. Manly, 274 SC 392, 264 S.E.2d 838. If the court can reasonably read the pleadings to state a valid claim on which Appellant could prevail it should do so despite his failure to cite proper legal authority, his confusion of various legal theories, poor syntar and sentence construction, or his unfamiliarity with pleadings with pleadings requirements, Haines V. Kerner, 404 U.S. 519, 520-21.

The court should take Judicial Notice that Respondents' [Janice Kenealy, and Noel Herbert] Affidavits in support of

Summary Judgment in fact corroborate/substantiate much of the Plaintiff-Appellant's claims at pertinent part avers that, "Appellant was assigned to work release between June 1997 - April 1981," thus clearly inconsistent with affirmative defense, and made in bad faith, Rule 56 (g), SCRCP. Abuse of discretion raised where the judge in his case issuing the order was controlled by an error of law, and where the order is based on factual conclusions that are without evidentiary support, BB & T. V. Taylor, 369 SC 548, 551, 633 S.E.2d 501, 502-08.

ARGUMENT #II

The Lower Courts erred, and abused its discretion in failing to rule that Respondents unlawfully deprived him of personal property; and fail to make his Work Release Escrow Account transparent as a punishment, denying rights guaranteeing him by Art. I, § 3 of South Carolina Constitution; and Fifth, Eighth, and Fourteenth Amendments of the United States Constitution.

In the state of South Carolina Work Release Program was signed into law March 6, 1966, under Title 24 of 1976 S.C. Code of Laws, permitting Appellant to work in community on jobs between 1979 thru 1981, mandating that Escrow Savings Account be established for each inmate participant. At all times relevant the Appellant was in legal custody of SCDC, Cooks V. State, id.; Sanders V. Mac Dougal, id.; Wilson V. Flaherty, id.

The Lower Court erred in failing to take Judicial Notice of South Carolina statutorial provisions in effect governing Work Release Proviso, and operation at time in question, instead cited an amended (1994) version not effect, or not applicable, clear error in law/facts.

Under the SCDC's definition of Policy Employee Account ADM-15.12: Section 17.4, Reporting mistake in account, if an inmate thinks a mistake has been made with his/her account, an SCDC form 19-11 (inmate request to staff member) must be completed and turned into the Institutional Cooper Trust Fund designee no later than 75 calendar days..."

Section 17.4.3, "SCDC investigation of Account Mistake, the

Institutional Cooper Trust Fund designee will give the inmate the result of its review, or correct the error within ten working days...the Financial Account Branch will notify the inmate in writing within ten working days. The Financial Branch will either correct the mistake or explain why the account is correct and record the necessary adjustment to the account."

Based upon the defined regulation, the Respondents fail to adhere, furthered violation of Liberty Interest Rights Entitlement, and grossly violated Appellant's substantial Due Process Rights, where regulation use language of unmistakable mandatory characters that certain actions be taken, Castaneda V. Henman, 914 F.2d 981.

ARGUMENT III

The Lower Court erred, and abused its discretion in failing to rule that Respondents conduct constituted default, and reprisal where Respondents fail to process grievances, and/or process grievance within fix time at each stage, and safeguard against reprisal, denying rights guaranteeing him by Art. I. § 3 of South Carolina Constitution; and First, Fifth, Eight and Fourteenth Amendments of the United States Constitution.

Where the Respondents willfully and wantonly fail to discharge ministerial duties regarding grievance procedure, and keeping within time restrains...and exceeded the power conferred upon the Respondents by [SCDC Policy GA-01.12] clearly established regulation, and arbitrarily and capriciously exceed authority and failing to act within the definition of GA-01.12, at pertinent part:

"Grievance will be processed from initiation to final disposition within 125 days...maximum extension given 90 days."

Prison officials must process grievance within time...there must be a fixed limit at each stage...and safeguard against reprisal, Underwood V. Wilson, 151 F.3d 292. Administrators must follow their own regulations to comply with due process, Harrah V. Leverette, 271 S.E.2d 222. Otherwise prevent him from

seeking his administrative remedy, Abney V. McGinnis, 380 F.3d 663, 667. Also, grievance maybe considered exhausted under "PLRA", when a prisoner file a grievance...but has not received a timely determination, SEE, Boyd V. CORR. CORP OF America, 380 F.3d 989, 996, 125 S.Ct. 1639. Failure to respond to grievance within the time limits contained in the policy renders an administrative remedy unavailable. Jernigan V. Stuchell, 304 F.3d 1030, 1032; Lewis V. Washington, 300 F.3d 829, 833. Appellant's grievance [Lee C.I.-1598-10] filed June 7, 2010 went [300 days] unaddressed, and [175 days] passed fix time limit and as reprisal he was released from his rehabilitation Prison Industries Work Program, loss wages, and harass with bogus contraband charge for inquiring about status of account.

Moreover, the Respondents' defaulting is a complete bar of their affirmative defense...estoppel creates an inhibition, or inability to assert defense. Therefore, Respondents' cannot technically petition for dismissal and/or Summary Judgment while in default, because it cut short the rights to legal dispute, ---V.---, 303 A.2d 139, 140, furthered denied him equal protection of the law.

ARGUMENT #IV

The Lower Courts erred, and abused its discretion in failing to rule that Respondents' conduct violated Appellant's rights by closing his account void notice; and fraudulently appropriated his Work Release Escrow Savings account, denying rights guaranteeing him by Art. I § 3 South Carolina Constitution; and Fifth, Eighth, and Fourteenth Amendment of the United States Constitution.

The Appellant's contentions is that the Respondent/Financial Account Branch is charged with fiduciary duty and obligation to him, the beneficiary of [account #065498] Work Release Mandatory Escrow Savings Account, when never closed said account. The court must be mindful that Appellant were released on parole the same day, and still in legal custody of the SCDC, SEE, Sanders V. Mac Dougal, id, and was not given notice of intent...or closure of account until February 9, 2009.

Pursuant to the SCDC's definition of policy Employee Account ADM-15.12, "Close out of Inmate Account," at pertinent part:

Section 13.1, Checks requested for delivery by institution to inmate prior to release.

Section 13.1.4, No release check will be automatically cut by Financial Account Branch Personnel for any institution. Inmates are responsible for requesting their funds at last two weeks prior to release.

Section 20, Work Release Program Inmate, unclaimed accounts...letter will be sent to the last known address of the account f the account holder whose balance is \$50.00, or more.

Based on the SCDC's defined regulations governing Work Release Savings Account, Respondents' could not cut check immediately on day release on parole, or close account without written notice, nor logical request or presume parole in advance. Respondents' conduct violated Entitled Liberty Interest....Substantial Due Process...and Constitutional Rights.

ARGUMENT #V

The Lower Courts erred, and abused its discretion in failing to rule the Respondents' conduct hindered Appellant's ability to grieve Civil Rights and Civil Liberty Claims, and access to the court(s), denying rights guaranteeing him by First, Fifth, Eighth, and Fourteenth Amendments of the United States Constitution.

The Appellant submits that he is not challenging the constitutional right of the institutional grievance system. Instead is challenging the constitutional rights belonging to him by virtue of his Civil Rights as a citizen and social equality, and Civil Liberty amenability to civil action and enforcement of personal rights based on tort, etc., pertaining to the rights and duties, and the right to legal proceedings concerning these rights.

The Respondents' arbitrary capriciously repeated irrational acts and omission that directly impeded and obstructed the due course of justice (§ 16-5-60), and subverted Appellant's attempts in exhausting administrated remedies, where the Prison Litigation Reform Act, or Civil Rights of Institutionalized Prison Act, requires to advance complaint, and unlawfully infringing upon his Free Speech, legal action, and property rights as he sought the status and balance of his financial account, redress relief and recovery. Appellant must be allowed to enter proof of

allegation of the Agency proceedings not shown in record, SEE, S.C. Code Ann. § 1-23-380 (A) (5); Ross V. Medical Univ. of S.C., 317 SC 377, 380, 453 S.E.2d 880, 882; Evans V. State, 344 SC 6, 543 S.E.2d 547.

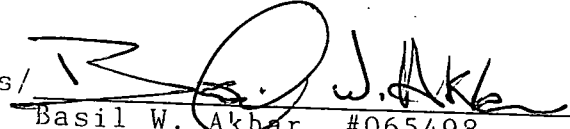
Furthermore, SCDC's E.H. Cooper Trust Funds Account Policy does not contain a clause that bar/limit rights to seek transparency/status of personal account. The Appellant contend he has an absolute unqualified right to access savings account, nor does a General inquiry depend upon whether an incident had occurred as alluded. However, no incident existed to grieve until April 28, 2010 when he was first...and officially informed [April 28, 2010] of irregularity in his Work Release Escrow Savings Account. Therefore, claims of conspiracy against Civil Rights/Civil Liberty; Liberty Interest, State Laws, Regulations; State and Federal Constitutional violations are proper before the Courts.

Finally, the Appellant submits that pursuant to S.C. Code Ann. § 24-1-220, requires that suit be brought in name of Director, and when multiple defendants are alleged in an Joint tortfeasor is named as party in addition to the Government Entity...the trier of the facts must return a special verdict specifying the proportion of monetary liability of each defendant whom liability is determined, S.C. Code § 15-78-100 (c), for said reasons are properly named in complaint.

9

CONCLUSION

The Appellant submits for the following reasons, respectfully that the court should reverse the Lower Courts' order/judgment; and order Work Release Account be made transparent; grant Discovery Motion; Order Recovery of funds deposit into account with interest; all cost incurred; punitive damages jointly/severally against all named Defendants-Respondents in complaint; and grant Declaratory and Injunctive Relief.

/s/ 
Basil W. Akbar, #065498
Lee County Corr. Institution

Certificate of Service

The undersigned hereby certifies that a copy of Appellant's Pro Se ~~Final~~ Brief of Appellant was duly served on Defendants-Respondents' Counsel of record by the United States Postal Service, postage prepaid at:

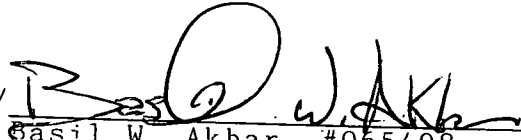
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