

LEGAL MAIL

IN THE SOUTH CAROLINA COURT
FOR THE STATE OF SOUTH CAROLINA

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SC Court of Appeals

Akeem Alim-Nafis Abdullah-Malik)	CASE No. <u>2015-002412</u>
Petitioner-Pro-Se)	
Appellant)	
U.)	PETITION REHEARING
)	PURSUANT
)	SCAFCR 240(j),
)	221(a)...
Bruce M. Bryant, et al)	CONSTITUTION
Respondent(s))	AMENDMENT II & XIV

COMES NOW, Akeem Alim-Nafis Abdullah-Malik, Petitioner-Pro-Se (HEREINAFTER) Petitioner moves this Honorable Court ("Court") Pursuant to SCAFCR 221(a) & 240(j) Petitions REHEARING & EN BANC CONSISTENT WITH CONST AMEND II & XIV.

JURISDICTION

Petitioner asserts THE RIGHTS OF DUE PROCESS & EQUAL PROTECTION OF LAWS & ACCESS TO COURTS & SCAFCR 221(a) & 240(j) AS the ("Courts") HAS ORIGINAL & PERSONAL JURISDICTION TO HEAR THIS MATTER OF REHEARING & REHEARING EN BANC. STEMMING

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from a ORDER Signed by Jasper Curran AP
FOR THE COURT. SEE ATTACHED ORDER. THE ORDER
Signed & Filed 3/3/16. Assumed by Petitioner
to mean 2/3/16. being 3/3/16 hasn't arrived
as of date. Moreover the ORDER constitute pet-
itioner's right to seek REHEARING & REHEARING
En Banc. As a matter of Rule, Law & Consti-
tutional Protections. WHICH REHEARING & REHEARING
En Banc would authorize the ("courts") to
have Jurisdiction. See ATTACHMENT "ORDER" (A)

STATEMENT OF CASE

Petitioner filed Rule to Show Cause,
MOTION & AFFIDAVIT TO Proceed IN FORMA PAUPERIS
Summons & PRISONER INDIGENT STATUS Notorized
& Proof of Services. IN THE COURT OF Common
Pleas For 16th Judicial Circuit YORK COUNTY, Forfeitures

THE CLERK OF COURT return the Petition
with ORDER Signed by CHIEF Administrative Judge
DENIED IN FORMA PAUPERIS. With instructions to
meet a filing fee of \$150.00. See ATTACHMENT (B)

Petitioner APPEALED the matter IN A
TIMELY MANNER & Forwarded the ORIGINAL,
Copies, & PROOF OF SERVICES to THE COURT
OF APPEALS & THE LOWER COURT OF Common
Pleas.

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Pursuant TO THE INMATE LITIGATION ACT
ILA & Prisoner Pro-Se Status announced in
Davis v. State, 342 S.E.2d 60 (1980) and Johnson
v. STATE 364 SE2d 201 (1988) & S.C. Code of
1976 § 24-27-100 & § 24-27-150 & Due Process,
& Equal Protection of Law.

THE ORDER rendered here in instance isn't
applicable under the standards THE ("Court") efforts
to URGE under SCACR 203 (b) (1), 263 applies
to petitioner. is a preposterous ruling. requiring reversal
& Remand TO THE Lower Court for Processing
under Inmate Litigation Act (ILA) & Prisoner
Pro-Se Status. Pursuant TO § 24-27-100, &
24-27-150, Davis v. STATE 342 S.E.2d 60 (1980) and
Johnson v. STATE 364 SE2d 201 (1988) TO include
to provide constitutional protection for the petitioner.

ARGUMENT

Petitioner invokes Plain & Clear Error on
behalf of Dismissing Petitioner Appeal. WITH the
ORDER claiming Proof of Service was not
provided to all respondents.

IN instance a forefront NO Respondent
was required service beyond the ("courts")
as petitioner served both THE COURT OF Appeals
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of THE Lower Courts. At THIS & afore mentioned time.

THE NOTICE OF APPEAL WAS before the Lower due to Lower Court Denying Petitioner to Proceed IN FORMA PAUPERIS. Therefore THE Summons WAS NOT EVER ORDER UPON ANY Respondant WITHIN THE Petition at that & this instance. In spite the case WAS assigned a number the case wasn't "Ripe" for Scheduling, Hearings, or Appearance. Orders OF TRANSPORT THE NOTICE OF APPEAL WAS a MATTER that Lower Court Judge overlooked the means of a Prisoner provide & incorporated has the Right TO ACCESS THE Courts even IN the event he is "Indigent" The Inmate Litigation Act (ILA) does not restrict Access TO Courts. IT makes a Provision to have the Prisoner Account deducted & his account made deductible. Upon Prisoner obtaining monies to secure the debts occurred. IN furtherance this is a CIVIL Proceeding that when Judgement IS ISSUED AGAINST IS Responsible for Costs & Judgement. OF ALL OCCURRING

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THIS MATTER WAS NEVER ORDERED SUMMONS SERVED UPON DEFENDANTS. SIMPLY DUE TO THE NEGATION OF THE LOWER COURT TO PERMIT THE MATTER TO PROCEED. BY DENYING THE PRISONER DUE PROCESS & EQUAL PROTECTION OF LAWS. A COMMON PRACTICE IN THE 16th JUDICIAL CIRCUIT OF YORK COUNTY. REFERENCED MATTERS PRISON & TO DATE WITH PETITIONERS NAME & PETITIONER NAME ON IT. MALICIOUS INTENT, ~~UNPRECEDENTED~~, ARBITRARY ~~ADJUDICATION~~, & WANTON ACTIONS INDUCED UPON PETITIONER WHILE INCARCERATED IN YORK COUNTY. & ALL PROCEEDINGS HELD IN YORK COUNTY JURISDICTION THAT HOLDS PETITIONERS NAME UPON IT.

THE MATTER OF MATERIAL FACT IS THAT THE 'UNRIPESS' OF THE NOTICE OF APPEAL & SERVICE WAS IN FACT SERVED UPON ALL REQUIRED PARTIES. PURSUANT TO SCACR 203(b)(1) (APPEAL FROM THE COURT OF COMMON PLEAS), 243(b), 263. & SCRCP 3(b)

HOWEVER, THE "COURT" HERE IN INSTANCE WOULD ASSUME THAT PETITIONER WAS REQUIRED TO HAVE PROOF OF SERVICE BEYOND THE SCOPE OF STATUTORY & LEGAL AUTHORITY. WHEREFORE ALL REQUIRED PARTIES AT THAT & THIS JUNCTURE WAS ONLY THE COURT OF APPEAL & THE LOWER COURTS.

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Which in fact was ~~THE~~ COURT OF APPEALS & THE COURT OF COMMON PLEAS. Whereas, it exactly what the petitioner did do in a timely manner pursuant to SCALR - 203(b)(1).

IN furtherance no defendant had been issued summons, or Rule to Show Cause, AFFIDAVITS, NOR MOTION TO Proceed IN FORMA PAUPERIS, NOR POWER OF ATTORNEY Process. Simply due to CHIEF Administrative Judge had denied the petitioner the Right TO Proceed IN FORMA PAUPERIS Pursuant TO (ILA) a Prisoner Pro-Se Status Announced in DAVIS v. State (cite omitted) & Johnson v. State (cite omitted) & S.C. Code of 1976 § 24-27-100 & § 24-27-150. Leaves the NOTICE OF Appeal (Respondents) THE Lower Court OF Common Pleas & COURT OF APPEALS (Respondents) at this juncture. THE GLASS WAS NOT YET FULL. NOT EVEN HALF FULL. Empty due to NO OTHER PARTY required was NOT YET ORDERED Service OF Summons. THE Respondents were THE Lower Courts & CHIEF Administrative Judge Residing THE Courts. Beris his residency was THE Court OF Common Pleas THE 'Courts were served' & THE S.C. COURT OF APPEALS THE Higher Court OF REVIEW OF A INTERLOCUTOR APPEAL "NOT YET RIPE" All required PARTIES were ISSUED NOTICE OF Appeal & Summons Timely ...

LEGAL ANALYSIS

Petitioner in comparison to Ex Parte

HENRY W. MARTIN JR., Appellant v. THE STATE,
Respondent In Re Henry W. Martin, Jr. #190394,
Plaintiff v. AT&T TELEPHONE Co, INC, SOUTHERN
BELL TELEPHONE Co, INC, Zero Plus Dialing,
Co, INC; Parker EVANS, Commissioner of
Williams L. Wallace, LEE CJ Defendants.

Supreme Court of South Carolina (1995) THE Supreme Court held that (1) the appeal was premature when the circuit court never ruled on whether the inmate would be allowed to proceed in forma pauperis and (2) when a indigent files a motion to proceed in forma pauperis and the complaint does not appear to fit within a statutory or constitutional exception to the requirement of a filing fee, the clerk of court must submit a motion to a judge for a ruling as to whether the complaint fits within a statutory exception or concerns of fundamental right that requires the waiver of the filing fee. "Appeal dismissed and MATTER REMAINS" 471 SE.2d 134

1. Appeal and ERROR Key 337(1)

Appeal from court clerk's return in inmate's petition to proceed in forma pauperis was premature where circuit court judge never ruled on whether inmate would be allowed to proceed without payment of costs SCRPC 3(c) hrc 2 of 13

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2. Costs key 128, 129

Motion to proceed in forma pauperis may only be granted when specifically authorized by statute or required by constitutional provision SCRPC 3(c).

3. Costs key 132

The issue is not what is questioned as to whether the inmate's complaint fits into the statutory provision. Must submit motion to judge for ruling as to whether the complaint fits into statutory provision - is concern of fundamental rights that requires waiver of filing fee

Note * SCRPC 3(c) is replaced by SCRPC 3(b)

Among the statutory provisions requiring waiver fees are SC Codes § 8-21-310(1) § 17-27-60, § 20-7-1440, § 44-41-34(B). Further when a certain fundamental right is involved, the Constitution requires that an indigent be allowed to access the courts. Compare Boddie v. Connecticut 401 US 371, 91 S.Ct 780, 28 L.Ed

See Ex Parte John Wayne RICE, Petitioner
Supreme Court of South Carolina (1992)

Remanded with instruction. Supreme Court held Prisoner was denied due process by family court refusal to allow him to proceed without payments out cost. Remanded with instruction * 405 S.E.2d 819

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HENRY MARTIN, JR Petitioner v.
South Carolina Department of Corrections (SCDC)
565 SE. 2d 756, 757.

2. CLERK OF COURT Key 17

THE Statute governing a payment plan if a indigent prisoner brings a civil action do not apply to filing fee incurred at either the Supreme Court or Court of Appeals SC Code § 24-27-100, § 24-27-150 SCACR 226(e).

ORDER

* [2] Upon examination of sections § 24-27-100 and § 24-27-150 it is clear the institution of payment plan in order to finance filing fees is only intended for use at the trial court level. THE . PLAN LANGUAGE of section 24-27-100 states that the payment plan was enacted for the purpose of assisting indigent prisoners when they bring a civil action of proceedings. By definition, civil actions are brought at the trial court actions. Not applicable to Supreme Court or Court of Appeals.

IN aforementioned Petitioner rest as A MATTER OF STATUTORY PROVISION, CONSTITUTIONAL

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a Fundamental Right Provision of MATTER OF LAW tilts to FAVOR OF Petitioner & Plaintiff Akeem Alim-Nafis Abdullah-Malik.

Conclusion

Petitioner here on REHEARING & RE HEARING EN BANC relies on CONSTITUTIONAL PROTECTIONS & Auerments IN LAW & ORDER rendered without Jurisdiction.

Petitioner NOTICE OF APPEAL ONLY required Service TO Lower Courts & COURT OF APPEALS AS ONLY required parties. Being the Clerk followed the process in Ex parte Henry W. Martin, Jr. Appellant v. THE STATE 471 SE.2d 134. However CHIEF Administrative Judge Erdoes & Overlooked INMATE Litigation Act (ILA), Prisoner Pro-Se STATUS. P S C Code § 21-27-100, & § 24-27-150. In spite Petitioner case was not Ex parte John Rice, Petitioner 415 SE.2d 819. THE U.S.C. A Const Amend-14, Required fundamental fairness & access to courts. In spite Indigent. Alike Henry Martin, Jr

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§ 65 SE. 2d 756, 757. with amendments to Case Rules. The plain language of SC Code § 24-27-100, & § 24-27-150 is clear for the use of the trial court level & enacted for the purpose of assisting indigent prisoners when they "bring a civil action" or proceedings. By definition civil actions are brought at trial level.

(Emphasis added) Section 24-27-150 describes how to implement the payment plan. If the prisoner's trust account is insufficient to cover filing fee.

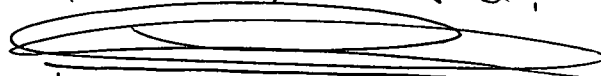
Petitioner was denied this basic fundamental right at trial court level contrary to statutory provision, & Petitioner appeal was dismissed erroneous due to service requirements were met based upon lower trial court had denied access to courts & violated petitioner ~~V~~ IV Const Amend. Rights Access to Courts, leaving Courts of Appeal & lower Courts only parties at that instance & present do have been reviewed on matter of SCACR & 203(b)(1).

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WHEREFORE, the foregoing Issues
of Legal Authority. This MATTER SHOULD
BE GRANTED, ORDER REMAND TO
THE Lower Courts. GRANTING IN FORMA
PAUPERIS a SCHEDULING A HEARING, a TRANSPORT
OF PRISONER TO BE HEARD OF ILLEGAL
FORFEITURE a CONFISCATION OF PROPERTY
ILLEGAL a COMPENSATION. GRANTING
REVERSAL OF MEMORANDUM ORDER
DISMISSAL Petitioner NOTICE OF APPEAL absent
ORIGINAL a Personal Jurisdiction where PROOF
OF SERVICE was served on Existing Parties
absent IN FORMA PAUPERIS Invoked . . .

This 11th day of ~~January~~ month
January Thirtieth + Sixteenth year

Respectfully submitted,


Akeem Alim-Nafis Abdullah-Malik
Ridgeland Correctional Institute
5th Correctional Road
Ridgeland, South Carolina 29836

CC: Camp Common Pleas
16th Judicial Circuit York Court
PO Box 649
York, South Carolina 29241

CC: All Required Parties

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IN THE STATE OF SOUTH CAROLINA
THE COURT OF APPEALS

REHEARING & REHEARING EN BANC

APPEALED FROM YORK COUNTY
COURT OF COMMON PLEAS

JOHN C. HAYES III, CHIEF Administrative Judge

Appellate Case No. 2015-002412


Akeem Alim-Nafis Abdullah-Malik Appellant

v.

SHERIFF Bruce M. Bryant et al Respondents

PROOF OF SERVICE

I do certify I have deposited & served (1) Original RE-HEARING & RE HEARING EN BANC by depositing in the U.S. Mail, with prepaid postage on February 11th, 2016 IN THE S.C. COURT OF APPEALS PO Box 11629 & CC: York County Court Common Pleas PO Box 647, York, South Carolina 29241 & All Respondent Parties.
February 11th, 2016

5/17 

Counsel of Record
Akeem Alim-Nafis Abdullah-Malik
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