

In the South Carolina Court of Appeals
On appeal from S.C.D.C. and the ALC

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FEB 18 2016

Appellate Case No. 2016-000173 SC Court of Appeals
Appellant

James B. Weersing #273527

v.s.

South Carolina Dept. of Corrections Respondant

Application to Proceed
In Forma Pauperis

I, James B. Weersing the appellant in the above titled case make request to proceed in forma pauperis due to the fact that I am unable to pay the costs of these proceedings and reasonably believe I am entitled to the relief I will be seeking on appeal.

Please consider the attached "Inmate Trust Fund Account Report" which is proof per se that I am in fact indigent. I do swear and affirm per 28 USC § 1915 that I have no other income nor any accounts nor any regular source of income that would provide payment of filing fees, nor do I have any prospects for future earnings as my current max-out is in 2071.

Dated: 2/11/16

Signed: James B. Weersing

James B. Weersing, Appellant
#273527 KRCI 5B-15
4848 Goldmine Hwy.
Kershaw, S.C. 29067

Sworn to before me on
the 11th day of February
2016.

Signed: Cedra A. Amos

My Commission Expires December 22, 2018

Expires: _____

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Kershaw
C.I.

JAN 21 2016

**INMATE TRUST FUND ACCOUNT REPORT
for SOUTH CAROLINA COURT FILING FEES**

SCDC-FINANCIAL ACCTG

INSTRUCTIONS TO INMATE: Complete top portion then give to your mailroom. When returned from Accounting, you must mail this form with any payment to the Court.

By signing my name below, I am asking the Financial Accounting Office of the South Carolina Department of Corrections to complete this report. In accordance with SC Code of Laws §24-27-100 and 150, I authorize payment of the full filing fee. If I have insufficient funds in my account at this time to pay the court's full filing fee, I authorize SCDC to deduct the initial and subsequent payments until payment is completed.

SBIS

INMATE NAME (print): James B. Weersing

SCDC # 273527 - INMATE SIGNATURE: James B. Weersing

I plan to file this action in the SC County of Richland

The section below is for SCDC - Financial Accounting Branch's use ONLY.

- (1) Total deposits to inmate's account for preceding six months' period* \$ 21.74
- (2) Twenty percent (20%) of line 1 \$ 4.35
- (3) Account balance - current date \$ 0
- (4) PAYMENT AMOUNT **
(lesser of line 2 or line 3)
Enclosed check # _____ \$ 0

****NOTE to COURT:** If payment is for partial fee, Court must notify SCDC once case is accepted and filed. Send notice with case # and balance owed to address below. SCDC will NOT process any additional payments until notification is received from Court.

South Carolina Department of Corrections
Financial Accounting - Room 234
PO Box 21787
Columbia, SC 29221-1787

*Admission date is noted here if inmate incarcerated less than six months 1/1/16

[Signature]

1-15-16

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Appellate Case No. 2016-000173

SC Court of Appeals

James B. Weersing, #273527
Appellant,

vs.

South Carolina Dept. of Corrections,
Respondant.

Brief:
In Support of Motion
to Proceed
In Forma Pauperis

Consider this Court has cited Ex Parte Martin, 321 S.C. 533, 471 S.E.2d 134 (S.C. 1995) as an excuse to deny in forma pauperis status in inmate appeals from the ALC. Note Martin ruled that the statutes he cited did not grant in forma pauperis status, but also held that certain statutes do so authorize; also some fundamental constitutional rights warrant such proceeding by inmates.

In the case at bar Appellant argues entitlement to proceed based on statute, case law and by fundamental right. As to state statute, note § 1-23-380 and § 1-23-610 which unambiguously state entitlement/right to judicial review to "a party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1, § 22.; note "an appeal is to the court of appeals." and "appeal in these matters is by right." Consider, State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991) "Words of statute must be given their ordinary meaning."

As to state case law subject specific note Al-Shabazz v. State, 338 S.C. 334, 649 S.E.2d 35 (S.C. 2000) and Furtick v. S.C.D.C. 374 S.C. 334, 649 S.E.2d 35 (S.C. 2007) stating, "We have explained that judicial review must be available to determine if prison officials acted arbitrarily, capriciously or with

personal bias." Consider the record in this case shows arbitrary and biased rulings by both the Respondant and the AJS. The S.C.D.C.'s Step 1 and Step 2 grievances demonstrate the use of inapplicable policy and violation of policy in their decisions. The AJS's dismissal was made based on an error in fact and multiple errors of law. Note Order of Dismissal was adjudicated prior to receipt of the record or the responsive pleading. By evaluating the evidence of only one party no logical conclusion can be reached; because the AJS failed to heed this critical point of law his decision was arbitrary. Because the AJS failed to follow applicable law or to determine the basic fact behind his decision shows he was prejudiced against the inmate cause and showed biased support for the agency's unlawful act. Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12, 507 S.E. 2d 328 (1998) held "... abuse of discretion occurs when the ruling is based on an error of law or factual conclusions that is without evidentiary support.

Federally see Ross v. Muffitt, 417 U.S. 600, 945 Ct 2437 (1974) where the Court held the 14th Amend. requires the states appellate systems be "free of unreasoned distinctions" and "indigents have an adequate opportunity to present their claims fairly within the adversary system." also case specific "The State cannot adopt procedures which leave the indigent defendant entirely cut off from any appeal at all." and cannot "... extend to such indigent defendants merely a meaningless ritual while others in better economic circumstances have a meaningful appeal. Note Douglas v. Calif., 372 U.S. 358, 83 S. Ct. 814 (1963) holding "Unfairness results only if indigents are singled out by the State and denied meaningful access to the appellate system because of their poverty."

Further consider that several fundamental rights are raised in this case. Notice the 1st Amend.

Right to Freedom of Religion was violated by the agency and the 14th Amend. Right to Due Process as to state-created property interest, the Equal Protection Clause was also abridged as was the Right to Fair Judicial Process.

Appellant is unschooled in law but does reasonably believe he has made a legally sufficient argument of right to proceed in forma pauperis. In the event this Court should rule against him he asked that his well-plead and referenced arguments be judicially addressed to comply with § 1-23-350 and § 1-23-380 to aid in any appeal he may wish to pursue.

Dated: 2/11/16

Signed: James B. Weersing Pro Se

James B. Weersing, #273527
KRCI SB-15
4848 Goldmine Hwy.
Kershaw, S.C. 29067

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SC Court of Appeals

Certificate of Service

The appellant in the above titled case does swear and affirm that he placed certain court documents with S.C.D.C. mailroom Offices to be forwarded to the S.C. Court of Appeals at P.O. Box 11629, Columbia, S.C. 29211 and S.C.D.C. General Counsel at 4444 Broad River Rd., Columbia, S.C. 29211 as is required by Court Rule and Law.

Dated: 2/11/16

Signed: James B. Weersing, Appellant Pro Se

Court Copies



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 02, 2016

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SC Court of Appeals

James B. Weersing; #273527
KRCI SB-15
4849 Goldmine Hwy
Kershaw SC 29067

Re: James Weersing v. SCDC
Appellate Case No. 2016-000173

Dear Mr. Weersing:

Upon reviewing your notice of appeal, the following deficiency or 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:

- The required filing fee has not been submitted. The correct filing fee is \$100.00.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: South Carolina Department of Corrections/ Office of General Counsel
Jana E. Shealy

James B. Worsing
73527 KRCI SB-15
848 Old mine Hwy.
Crawford, S.C. 29067

Inter-Agency-Mail

S.C. Appeals Court
1220 Senate St.
Columbia S.C. 29201

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SC Court of Appeals

Attn: Clerk