

The South Carolina Court of Appeals

RECEIVED

Appellate Case No. 2016-000173

APR 15 2016

Jasper W. Cureton, Presiding Judge

SC Court of Appeals

---

Motion to Alter or Amend Judge per Rule 59(c).

---

Appellant seeks relief from Your Honor's "Order" of dismissal dated 3/29/16, see attached. Per Doe v. Done, 478 S.E.2d 854 (S.C. App. 1996) "The proper procedure for correcting factual errors in an order is to file a motion to alter or amend pursuant to Rule 59(c).

Notice issues raised in "motion to proceed" are not re-addressed but their review is requested. Consider this Court's Order of denial was based entirely on Ex Parte Martin, 471 S.E.2d 134 (S.C. 1995), however that case is irrelevant to the issues raised in appellant's Motion to proceed. Carefully consider Ex Parte Martin, and its sister case Martin v. S.C. D.C., 565 S.E.2d 756 (S.C. 2001) clearly and unambiguously held, "... where certain fundamental rights are involved the constitution requires an indigent be allowed access to the courts." State v. Blackmon, 403 S.E.2d 660 (S.C. 1991) and more recently Jay v. Arvail, 673 S.E.2d 418 (S.C. 2009) held words must be given their plain and ordinary meaning without forced interpretation.

While the "Martin" cases made no definitive list of which "fundamental rights" warranted proceeding in forma pauperis, notice Appellant's case and his "Motion to Proceed" contained multiple examples. Consider meaningful redress of grievances, due process, right to be heard, right to court access, religious freedom right

fair adjudication. Whereas the ALC judge knowing and false allegation of failure to exhaust, right to a impartial judge is implicated by issues of this case.

Whereas Your Honor's Order did not address or adjudicate based on any of the facts and law raised in the Appellant's Motion and the case cited was not relevant it would follow his Motion was not heard in a meaningful way. Consider there is little difference in the S.C. and U.S. Constitutions as to right to redress of grievances and Johnson v. Avery, 393 U.S. 483 (1969) held "Persons in prison, like other individuals, have a right to petition the government for redress of grievances which, of course, includes access of prisoners to the courts for the purpose of presenting their complaints." and see Ross v. Moffitt, 94 S.Ct. 2437 (1974) held "Fundamental fairness entitles indigent defendants to an opportunity to present their claims fairly within the adversary system."

Along similar lines the federal courts, in cases like Roller v. Gunn, 107 F.3d 227 (4th Cir. 1997) and Druce v. Samuels, 136 S.Ct. 627 (2016) have held, "In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means of paying the initial filing fee." Yet in South Carolina indigent prisoners are not allowed to proceed to the appellate level. Carefully consider case law like Ranger Fuel Corp. v. W. Virginia Human Rights Comm., 376 S.E.2d 154 (W.Va. 1989) "It is a failure of due process when government extends to aggrieved citizens certain rights (redress of grievances) but then makes those rights a nullity by failing to provide a remedy."

### Relief Request:

appellant prays Your Honor review the issues

raised in his "Motion to Proceed" and this "Motion to Alter", this should demonstrate a need and a right for this case to proceed and to be fairly adjudged on its merits by this Appellate Court. However if adjudication of this case on its merits is refused the appellant asks You Honor make a new order which makes specific finding of facts and states, expressly, your conclusions of law relating to each issue presented. Appellant argues this is essential to aid in his future appeals in the interest of receiving a just conclusion to this legal matter.

Respectfully Submitted,

James B. Weersing Pro Se

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

Presiding Judge

Attn: Presiding Judge Jasper W. Cureton  
P.O. Box 11629  
Columbia, S.C. 29211

Dated: 4/3/16

RECEIVED

From: James B. Weersing #273527 appellant Pro Se  
KRCI SB-15  
4848 Goldmine Hwy.  
Kershaw, S.C. 29067

APR 15 2016

SC Court of Appeals

R.E. Appellate Case No. 2016-000173 / Motion to Alter or Amend

Dear Sir,

I ask you to carefully review my filings thus far in the above stated case. I do not believe I have received the liberal construction allowed for pro se filings in my motion to proceed in forma pauperis. Therefore I now ask for fair and lawful adjudication of the enclosed Motion to Alter or Amend. Thank you in advance for your prompt response to this matter that has now dragged on for over two (2) years on what was a simple grievance matter.

Respectfully Submitted,  
James B. Weersing Pro Se

# The South Carolina Court of Appeals

James B. Weersing, # 273572, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2016-000173

---

## ORDER

---

The motion to proceed *in forma pauperis* is denied pursuant to *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). The filing fee must be paid within fifteen days of the date of this order.

  
FOR THE COURT

Columbia, South Carolina


cc:

James B. Weersing, #273527

Jana E. Shealy

South Carolina Department of Corrections/ Office of General Counsel

**FILED**

3/29/16 



JENNY ABBOTT KITCHINGS, CLERK  
 POST OFFICE BOX 11629  
 COLUMBIA, SOUTH CAROLINA 29211

South Carolina Court of Appeals

ECOM 280834.9062

Hasler  
 03/29/2016  
**US POSTAGE**  
 \$00.485  
 FIRST-CLASS MAIL  
 ZIP 29201  
 011D12602824

JAMES B. WEERSING, #273527  
 KRCI SB-15  
 4849 GOLDMINE HWY  
 KERSHAW SC 29067

**RECEIVED**  
 MAR 31 2016  
 KRCI  
 MAILROOM



JENNY ABBOTT KITCHINGS, CLERK  
 POST OFFICE BOX 11629  
 COLUMBIA, SOUTH CAROLINA 29211

South Carolina Court of Appeals

JAMES B. WEERSING, #273527  
 KRCI SB-15  
 4849 GOLDMINE HWY  
 KERSHAW SC 29067

Hasler  
 03/29/2016  
**US POSTAGE**  
 \$00.485  
 FIRST-CLASS MAIL  
 ZIP 29201  
 011D12602824

**RECEIVED**  
 MAR 31 2016

2906738062 RC03

