

RECEIVED

OCT 18 2012

S.C. SUPREME COURT

Hon. Jean H. Toal, C.J.
S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211-1330

Re: Bryan v. S.C., Appellate Case No. 2012-212993 (2012-210866)
ALC Docket NO. 11-ALJ-04-1005AP
Gr. C. No. BRCE 0597-11

DEAR HONORABLE TOAL,

Enclosed is a "Petition For Reconsideration/ Reinstatement, hold in abeyance &/or For Remand." Please Forward a Copy to the Clerk For Filing, & to return to me a stamp/Filed copy of same.

I ASK that you give my motion CareFULL Consideration!
Thank you.

10/08/12, SC
dated
cc: R.M. Peck, III / Deputy Gen. Col.

Without Prejudice,
Y. T. B., all rights reserved,
T. Terell Bryan
#254638, SPV-319, MCC I
386 Redemption Way
McCormick, SC 29349

P.S. EXHIBITS NOT ATTACHED THEY ARE BEING COPIED.

THE SUPREME COURT OF SOUTH CAROLINA

T. Terrell Bryan, Petitioner,

v.

SCDC, Respondent.

Appellate Case No. 2012-212993 (2012-210866)
ALC Docket No. 11-AJ-04-1005AP
Grie. No. BR-11 0597-11

PETITION FOR RECONSIDERATION/ REINSTATEMENT, HOLD IN ABEYANCE &/OR FOR REMAND

The pro se Petitioner, T. Terrell Bryan, hereby moves this Honorable Court for Reconsideration &/or Reinstatement, or because he has Filed a "Proof of Service & Affidavit" that corrects the deficiencies, to hold this motion in abeyance until the S.C. Court of Appeals makes a ruling &/or **REMAND** this case to the S.C. Court of Appeals ordering that a ruling be made, & I hereby state:

ARGUMENT

1. The Petitioner is pro se & should not be held to the same strict standard as a lawyer. Alleging Failing to provide proof of service is a procedural ground that no court should **SOLELY** dismiss a pro se claim because of.

2. Per the letter/motion For Reconsideration &/or Reinstatement, under the date & ccion File it has R. M. Peete, II/Deputy General

Counsel. I did this to provide proof to the Court & parties that I served the opposing party.

3. My Case File do not show any letter where the lower Court advice me that any Filing was deficient since it was not accompanied by a proof of service. Per the attached "Proof of Service & Affidavit" & Cover letter to the S.C. Court of Appeals, I have inquired to the clerk when such advice was mailed to me. The record of my Filing with this Court alone shows that I am very diligent & that if I had received such advice, I would of promptly drafted such a simply proof of service, as I've done now!!!!

4. Per the "Proof of Service & Affidavit," the deficiency has been promptly corrected.

LAW

5. In Conley v. Gibson, 78 S.Ct. 99 (1957), the United States Supreme Court said that a pro se should be held to less strict standards than a lawyer. Cruz v. Beto, 405 U.S. 319 (1972). McCottrill v. F.E.O.C., 726 F.2d 350, (pro se litigant held to lower standard of brief-writing than attorneys) see also: U.S. CONST. 14th Amend; & S.C. Const. art. I, § 3.

6. A court is to exercise reluctance to dismiss the claim of a prisoner proceeding pro se solely on procedural grounds. Casteel v. Piescher, 8 F.3d 1050, 1055 (7th Cir. 1993) (Court erred in dismissing pro se Complaint for Failure to prosecute when pro se prisoner Failed to comply with Court order to sign pleadings & Failed to notify Court of address change.) see also: U.S. Const. 9th & 10th Amend.

7. In Woodford v. Ngo, — U.S. —, 126 S.Ct. 2378 (2006), the United

states supreme Court held that prisoner's cases cannot be penalized for something when it is not clear what they must do.

ARGUMENT II

8. This Court held in its' order that "[a]lthough Petitioner Filed a motion for reconsideration, the Court of Appeals advised him that this filing was deficient since it was not accompanied by a proof of service or the Filing Fee... Although provided with additional time to correct these deficiencies, Petitioner made no further filings with the Court of Appeals."

9. The Petitioner hereby repeats the allegations of Argument II on page 8 of 10, of the "Petition For Writ of Certiorari" to this Court. In the letter/motion for reconsideration, Petitioner complained about not having access to his legal materials, & that such could not be said to be a failure on his part but is error on Respondent. **THIS COURT SHOULD NOT ALLOW RESPONDENT TO BENEFIT FROM THEIR ERRORS.**

10. In Bryan v. SDC, ALC Docket No. 12-ALS-04-196-1J, per attached EXHIBIT #1 - step 1 grievance, Petitioner Filed a grievance on 2/03/12 about Respondent holding his legal property, & refusing to return it. When they failed to timely respond, per attached EXHIBIT #3 & #4 is the 5/15/12 Brief Petitioner Filed to get his legal materials returned to him.

11. Per attached EXHIBIT #5 - step 1 grievance, with EXHIBIT #1 & #2 attached, Sgt. Cotter took my legal materials when I came to Perry on 1/23/12, the very next day validated me a "Folk Nation," then Cotter did an incident report lying saying he did not go

through my property until 2/10/12. He kept majority of my property until about May of 2012. THIS WAS INTENTIONAL

LAW

12. Several courts have held that Plaintiff's action may not be dismissed because of act(s) of the defendants. Ounmire v. DePasaval, 2005 WL 4050175, at *1 (W.O. Pa. Oct. 21, 2005) (denying motion to dismiss for non-exhaustion in light of Plaintiff's objections that prison officials had failed to comply with their own procedures); Shanreed-inurramined v. Dipolj, 393 F.Supp.2d 40, 47 (D. Mass. 2005) ("Having failed to abide by the strictures of their own regulations, defendants should not be allowed to claim Plaintiff's noncompliance as a bar."); Scott v. Cal. Supreme Ct., 2006 WL 2460737, at *7 (E.O. Cal. Aug. 23, 2006) (holding that a prisoner who relied on officials' misinformation & sought relief in state court had exhausted, notwithstanding officials' subsequent issuance of an untimely decision which he did not appeal; "Prison official cannot effectively thwart an Inmate's attempt to exhaust a claim by failing to follow their own regulations & then later require him to begin the exhaustion process again once they decide to follow the regulations.")

CONCLUSION

13. WHEREFORE, the Petitioner prays that the Court 1) order Respondant to make a reply THEN 2) Grant Reconsideration &/or Reinstatement, or 3.) because he has failed to correct the deficiencies, hold any ruling in abeyance until the S.C. Court of Appeals makes a ruling, &/or 4.) REMAND this case to the S.C.

to the s.c. Court of Appeals ordering that a ruling be made.

AFFIDAVIT

14. I hereby affirm under penalty of perjury, 28 U.S.C. §1776 & 18 U.S.C. §1621, that every thing in this petition is true & correct.

10/08/12, s.c.
dated

Without prejudice,
x. T. Terrell Bryan, all rights reserved,
T. Terrell Bryan
#254038, SMC-819, MCC-E
388 Redemption Way
McCords, OK, s.c. 73899

Sworn to before me this

_____ day of _____, 2012

_____ (L.S.)

My Commission Expires: _____

PROOF OF SERVICE

I hereby certify that I served a copy of this on: R.M. Peele, III / Deputy General Counsel (Inter Agency Mail).

10/23/12, s.c.
dated

Without prejudice,
x. T. Terrell Bryan, all rights reserved,
T. Terrell Bryan

THE SOUTH CAROLINA COURT OF APPEALS

T. Terrell Bryan,

Appellant,

v.

SCOC,

Respondent.

The Honorable John D. McLeod
S.C. Administrative Law Court
Grie. No. BR 11 0597-11
ALC Docket No. 11-ALS-04-1005AP
Appellate Case No. 2012-210850

PROOF OF SERVICE & AFFIDAVIT

1. I, T. Terrell Bryan, hereby certify that I served a copy of the 4/23/12 letter/motion For Reconsideration &/or Reinstatement on: R.M. Peck, III / Deputy, General Counsel, on 4/23/12. This is evident where under the date & cc: on file it has his name. This is to provide proof to the Court & parties that I served the opposing party.
2. My case file do not show any letter where this court advised me that my filing was deficient since it was not accompanied by a proof of service. Per the cover letter I have inquired to the clerk when such advice was mailed to me. If I had received same then it would of been nothing for me to draft a simple proof of service as above.
3. WHEREFORE, at the order of S.C. Supreme Court or on it's own, I pray this court investigate into when the advice was sent &/or reinstate this appeal since the deficiency is now

Corrected.

10/23/12, SC
dated

Without Prejudice,
X. T-PA, all rights reserved,
T. Terrell Bryan
#254638, SMOU-B19, MCCI
385 Redemption Way
McCormick, SC 29399

AFFIDAVIT

I hereby affirm under penalty of perjury, 28 U.S.C. §1746
& 18 U.S.C. §1621, that above stated is true & correct.

Sworn to before me this
_____ day of _____, 2012

Without Prejudice
X. T-PA, all rights reserved,
T. Terrell Bryan

_____ (L.S.)

My Commission Expires: _____

2ND PROOF OF SERVICE

I hereby certify that I served a copy of this on: R.M.
Peck, III / Deputy, General Counsel (Enter Agency Mail).

10/23/12, SC
dated

Without Prejudice,
X. T-PA, all rights reserved,
T. Terrell Bryan

~~Handwritten scribbles~~

AMS

Hon. Jean H. Toal, C.J.

~~S. T. Terrell Bryan~~

#254538, SMU-319, MCCC
366 Redemption Way
McCormick, SC 29899

~~Terrell Bryan~~
~~Handwritten scribbles~~

Hon. Jean H. Toal, C.J.

~~U.S. Supreme Court~~

P.O. Box 11330
Columbia, SC 29211-1330

RECEIVED

OCT 08 2012

MCCI
MAIL ROOM

RECEIVED
DEPARTMENT DOES NOT ASSUME
LIABILITY FOR ITS CONTENT

WARDEN
MCCORMICK CORRECTIONAL INSTITUTE
DEPARTMENT OF CORRECTIONS