

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston
County Common Pleas Court
Robert E. Hood, Circuit Court
Judge
Appellate Case No. 2016-000539
C.A. No.: 2015-CP-10-3416

RECEIVED

JUN 13 2016

SC Court of Appeals

LARRY G. HARVIN,
Prisoner I.D. No.: 253468, Appellant,

- Vs. -

STATE OF SOUTH CAROLINA, Respondent.

PETITION FOR REHEARING
[SCACR 221(a)]

MR. LARRY G. HARVIN

Prisoner I.D. No.: 253468

M.C.I. F-1-125-B

386 Redemption Way

McCormick, SC 29899

- Pro. Se. Petitioner

MEMORANDUM WITH CITATION OF AUTHORITIES

• Harvin submits the following citation of authorities in accord with South Carolina Appellate Court Rules ('SCACR') 240 (c)(2).

• *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (S.C. 1995)

• *Foucha v. Louisiana*, 504 U.S. 71, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992)

• *In re Mental Commitment of Mary F. - R.*, 2013 WI 92, 839 N.W.2d 581 (Wis. 2013)

• *Washington v. Glucksberg*, 521 U.S. 702, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997)

OVERVIEW

Petitioner Larry G. Harvin ('Harvin'), referencing documents before this Court and Attached hereto (bearing 'ATT.' designation, with Affidavit), Petitions this Court for a Rehearing regarding the June 1, 2016 Order of the Honorable Associate Justice Jasper M. Cureton ('Justice Cureton'), as said Order denied Harvin's 'motion to proceed in forma pauperis' pursuant to Ex parte Martin, 321 S.C. 533, 471 S.E.2d 134 (S.C. 1995), and advised Harvin to pay the filing fee "... within fifteen days of the date of this order." < see ATT.

A >, when Harvin's appeal concerns an Order of Dismissal rendered by the Honorable Circuit Court Judge Robert E. Hood ('Circuit Judge Hood'), now on Court file, Dismissing Harvin's 'Independent Action' seeking release from his Criminal Convictions that were obtained by 'Extrinsic Fraud' perpetrated by General Sessions Court Officers.

Martin allows Harvin to proceed in forma pauperis if the basis of the appeal (Harvin's lower court action before Circuit Judge Hood) "... concerns a fundamental right that requires waiver of the filing fee ." (Martin, 321 S.C., at 536, 471 S.E.2d at 135 (quoted in part)); Harvin's liberty from under Criminal Convictions obtained by 'Extrinsic Fraud' perpetrated by General Sessions Court Officers is a 'fundamental right'.

POINTS OVERLOOKED OR MISAPPREHENDED

I. Martin allows filing fees to be waived when the underlining action concerns a 'fundamental right' requiring such waiver, as Harvin's situation shows.

(a)- Harvin's 'Independent Action' Motion For Relief From Judgment Based Upon 'Fraud Upon The Court' moved for the Circuit Court of Common Pleas to entertain claims regarding "... Officers of the General Sessions Court committing 'Fraud Upon the Court' and/or 'Extrinsic Fraud'" < see ATT.

B (Highlighted Portion) (Filed June 19, 2015) > which brought about Harvin's 1998 Criminal Convictions for Murder, Armed Robbery, and Possession of a Weapon during Commission of a Violent Crime; Harvin ultimately sought release from current Criminal imprisonment obtained by way of 'Extrinsic Fraud' upon the General Sessions Court.

(b)- Circuit Judge Hood Dismissed Harvin's noted 'Independent Action' without receiving any evidence of General Sessions Court Officers having committed 'Extrinsic Fraud'; to Harvin's scant recollection of Circuit Judge Hood's actual words, Judge Hood did not believe that the Common Pleas Court had proper jurisdiction to entertain claims of 'Extrinsic

Fraud' occurring in a General Sessions Forum, which Harvin cannot understand in light of the Common Pleas Court entertaining 'Independent PCR Actions' (see South Carolina Rules of Civil Procedure ('SCRCP') 71.1(c)) regarding the General Sessions court on questions of Criminal Convictions.

(c) - Because the instant appeal seeks review of Circuit Judge Hood's Dismissal of Harvin's action (seeking release from Criminal Convictions obtained by 'Extrinsic Fraud' perpetrated by General Sessions Court Officers), and since Harvin was so granted leave to proceed In Forma Pauperis in the lower court initially [see, ATT.(s) C and D], it is quite possible that Justice Cureton Overlooked or Misapprehended the nature of Harvin's instant appellate action when imposing June 1, 2016 Order effectively denying Harvin's motion to proceed in forma pauperis - providing grounds for granting the instant Petition For Rehearing.

(d) - Harvin has a 'fundamental right' to be free from physical restraint obtained by 'Extrinsic Fraud' perpetrated in the General Sessions Court by Officers therein; borrowing language from other sources, "Liberty is a fundamental right,..." < see In re Mental Commitment of Mary F.-R.,

2013 WI 92, 839 N.W. 2d 581 (Wis. 2013) (citing Foucha v. Louisiana, 504 U.S. 71, 80, 112 S.Ct. 1780, 1785, 118 L.Ed. 2d 437 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action")); accord Washington v. Glucksberg, 521 U.S. 702, 721, 117 S.Ct. 2258, 2268, 138 L.Ed. 2d 772 (1997) ("... the Fourteenth Amendment 'forbids the government to infringe ... 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.'") >.

CONCLUSION

Ex parte Martin's 'fundamental rights' clause allows Harvin to proceed in forma pauperis in seeking review of Circuit Judge Hood's February 3, 2016 Dismissal of Harvin's 'Independent Action' for relief of release from Criminal Convictions obtained by General Sessions Court Officers committing 'Extrinsic Fraud'.

Respectfully Submitted,

/s/ L. Harvin

Mr. Larry G. Harvin

Prisoner I.D. No.: 253468

MCC.I. F.1 - 125.B

386 Redemption Way

McCormick, SC 29899

6 - 8 - 16
DATE

STATE OF SOUTH CAROLINA
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SC Court of Appeals

LARRY G. HARVIN,
Prisoner I.D. No.: 253468,

Appellant,

- Vs. -

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT TO ATTACHMENTS

I, Larry G. Harvin, do Declare as True before below-signed
Notary Public on below-noted date, that noted Documents so
Attached to my 'Petition For Rehearing' are True and Exact
photocopies of the Original documents they are presented
as: and, save bearing an 'ATT.' styling, for referencing
purposes, said Documents have not been altered or
tampered with in any manner.

Sworn to as True before

me this 08 day of June, 2016

15/ [Signature]
Notary Public, South Carolina

* My Commission Expires: 12-16-2019

15/ [Signature]
Mr. Larry G. Harvin
Prisoner I.D. No.: 253468
M.C.I. F.1-125.B
386 Redemption Way
McCormick, SC 29899

The South Carolina Court of Appeals

Larry G. Harvin, Appellant,

v.

The State of South Carolina, Respondent.

Appellate Case No. 2016-000539

ORDER

First, because this Court has received a copy of the order on appeal, Appellant's request for an extension of time to provide the order is moot. Second, Appellant's 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:

Larry G. Harvin, 00253468

Alan McCrory Wilson, Esquire

Johanna Catalina Valenzuela, Esquire

FILED
SF ce/1/16

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

9th JUDICIAL CIRCUIT

LARRY G. HARVIN
Prisoner I.D. No.: 253468,
MOVANT,

C.A. No.: 2015-CP-10-3416

- Vs. -

STATE OF SOUTH CAROLINA,
RESPONDENT.

"INDEPENDENT ACTION"
MOTION FOR RELIEF FROM
JUDGMENT BASED UPON
"FRAUD UPON THE COURT"
[SCRPC 60 (b)]

FILED
2015 JUN 19 PM 1:22
JULIE J. ARMSTRONG
CLERK OF COURT

ABOVE CAPTIONED MOVANT ("Harvin") brings the instant action under South Carolina Rules of Civil Procedure ("SCRPC") 60(b) - stating, "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court." - seeking relief from his 1998 Criminal Convictions for Murder (no. 97-GS-10-4288), Armed Robbery (no. 97-GS-10-4290), and Possession of a Weapon During Commission of a Violent Crime (no. 97-GS-10-4289) based upon Officers of the General Sessions Court committing 'Fraud Upon the Court' and/or 'Extrinsic Fraud' as alleged in the verified 'Memorandum Supporting...' and 'ATTACHMENTS' conjoined hereto, for setting forth 'clear and convincing circumstantial proof' of 'Fraud Upon Court'.

vs/ L. Harvin
Larry G. Harvin
Prisoner I.D. No.: 253468
M.C.I. F.I-125-B
386 Redemption Way
McCormick, SC 29899

5 - 19 - 15
DATE

2015-CP-10-3416

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

LARRY G. HARVIN)
< Prisoner I.D. No.: 253468 >)

Plaintiff)

Vs.)

STATE OF SOUTH CAROLINA)

Defendant)

IN THE CIRCUIT COURT

9TH JUDICIAL CIRCUIT

MOTION AND AFFIDAVIT
TO PROCEED IN FORMA
PAUPERIS

FILED
2015 JUN 16 PM 3:08
JULIE J. ARMSTRONG
CLERK OF COURT

I, Larry G. Harvin, being duly sworn, state that I am the plaintiff and that I do not have the funds available to pay for the cost of filing this action.

L. Harvin
Signature of the plaintiff

Sworn to and subscribed before me this
10 day of June 2015, 2005

J. Cranley
Notary Public for South Carolina
My commission expires: 12/6/2019

ORDER

Leave is (granted) (denied) to proceed in forma pauperis.

Date: 6/19/15

R. Mally
Circuit Court Judge

FILED
2015 JUN 19 PM 1:22
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
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LARRY G. HARVIN,
Prisoner I.D. No.: 253468, Appellant,

- Vs. -

STATE OF SOUTH CAROLINA, Respondent.

AFFIDAVIT OF SERVICE

I Certify and Declare before below-signed Notary Public that, while forwarding my Original 'Petition For Rehearing' with 'Attachments' to the Clerk, S.C. Court of Appeals (P.O. Box 11629, Columbia, SC 29211), I also forwarded an Exact copy of same materials to 'Johanna Catalina Valenzuela, Esq., Asst. S.C. Atty. Gen.', (P.O. Box 11549, Columbia, SC 29211) by depositing both sets of documents into the custody of the M^C.I.

Mail Room Clerk (below-signed Notary Public) for immediate deposit into the U.S. Mail System with sufficient Postage attached.

L. G. Harvin

Mr. Larry G. Harvin
Prisoner I.D. No. 253468
M^C.I. F.I-125'B
386 Redemption Way
M^CCormick, SC 29899

Sworn and Subscribed to

before me this 08

day of June, 2016

151 *J. Franklin*

Notary Public, South Carolina

* My Commission Expires: 12-16-2019

Mr. Larry G. Harvin
Prisoner I. D. No.: 253468
M.C.I. F. 1- 125-B

McCormick Correctional Institute
336 Redemption Way
McCormick, SC 29899

Attn: - Clerk, S. C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

LEGAL -
MAIL