

State of South Carolina
In the Court of Appeals
On appeal from ALC No. 16-ALJ-04-394-AP

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SC Court of Appeals

James B. Weersing, _____ Appellant,

VS.

S.C.D.C., _____ Respondant,

Motion to Proceed In Forma Pauperis

Appellant seeks to proceed In Forma Pauperis without requirement to prepay fees or costs or give security; he states due to his poverty he is unable to pay costs; further he reasonably believes entitlement/right to redress under law. Notice; Appellant filed for a report of his Cooper Trust Account and upon receipt he will promptly file it with the C.O.C.; until such time see attached "affirmation of indigency."

Whereas it is the practice of this Court to not allow inmates to proceed in forma pauperis citing Ex Parte Martin, 471 S.E.2d 134 (S.C. 1995) and Martin v. S.C.D.C. 565 S.E.2d 756 (S.C. 2001), appellant argues these cases are not applicable here because Martin claimed right to proceed under statute whereas Appellant claims right under constitutional rights. On this issue note Martin unambiguously held "... where fundamental rights are involved the constitution requires an indigent to be allowed access to the courts."

While Martin provides no list of "fundamental rights" toward allowing inmates to proceed, in the appellants case there are multiple examples of violation of "fundamental rights" that are relevant and applicable to his cause. Note right to due process denied in taking of property; right to meaningful redress of grievances in that agency's responses ignored policy and law; freedom from cruel and unusual punishment in taking of coats during cold, rainy weather;

equal protection, in that not all inmates coats were confiscated; right to fair and unbiased adjudication where AJS dismissal was based on no evidence, liberty, not property and was prematurely made.

Consider case law on fundamental rights, Ross v. Moffitt, 417 U.S. 600 (1974) "Fundamental fairness entitles indigent defendants to an opportunity to present their claims fairly within the adversary system.."; Johnson v. Avery, 393 U.S. 483 (1969) "Person's in prison, like other individuals, have a right to petition the government for redress of grievances..." see same in Hudson v. Michigan, 126 S.Ct. 2159 (2006); Lewis v. Casey, 518 U.S. 343 (1996) "The Constitution guarantees that prisoners, like all citizens, have a reasonable, adequate opportunity to raise constitutional claims before impartial judges."

Directly on point in indigent filing cases see, Burn v. Ohio, 360 U.S. 252 (1959) holding appeals can't be denied for inability to pay fees; Douglas v. California, 372 U.S. 353 (1963) "Unfairness results if indigents are singled out by the state and denied meaningful access to the appellate system because of their poverty." This year our U.S. Supreme Court could easily have been speaking directly to S.C. and of Martin when in Baucov. Samuels, 136 S.Ct. 627 (2016) "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 to pay the initial filing fee."

Relief Request

In light of the above facts, arguments and applicable laws, appellant asks this Court to grant In forma pauperis status in this case as soon as proof of indigency is secured from S.C.D.C. Cooper Trust accounting or on the basis of this Appellant's affidavit.

Dated: 7/1/16

Respectfully Submitted,
James D. Weersing Pro Se

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

Affirmation of Indigency

May this Court consider this Affidavit of declaration in support of request to proceed In Forma Pauperis;

- 1.) I am incarcerated at Kershaw Correctional and have no job which pays any form of income.
- 2.) I have no sources of earned income, cash, accounts, stocks, real estate, automobiles or other property of value.
- 3.) I have received gifts in an amount less than \$350.00 over the past twelve months.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct.

Dated: 7/1/16 Signed: James B. Weersing

Certificate of Service

I do hereby swear and affirm copies of this document were served on the C.O.C. of the S.C. Appeals Court and on S.C.D.C. General Counsel at their last known addresses.

Dated: 7/1/16 Signed: James B. Weersing