

The South Carolina Court of Appeals

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Appellate Case No. 2016-000173

Jasper W. Curston, Presiding Judge

JUN 29 2016

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 it's 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 Gay 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 AHC 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. Moffett, 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 judgement 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 appeal 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

The South Carolina Court of Appeals

James B. Weersing, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2016-000173

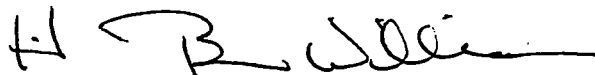
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ORDER

On March 29, 2016, this court issued an order denying Appellant's motion to proceed *in forma pauperis* and requiring Appellant to pay the filing fee for his appeal within fifteen days. Appellant has now filed a "Motion to Alter or Amend Judge per Rule 59(e)" in which Appellant challenges the denial of his request to proceed *in forma pauperis* and urges this court to allow his case to proceed or to issue a more specific order. We construe the motion as a request for this court to reconsider its denial of Appellant's motion to proceed *in forma pauperis* and, consequently, we decline to entertain the motion. See Rule 240(i), SCACR ("The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal."). Appellant shall submit his filing fee within ten days or this appeal will be dismissed.¹



FOR THE COURT

Columbia, South Carolina

FILED

June 17, 2016

¹ This court will consider Appellant's request for an enlargement of time once Appellant submits his notice of appeal filing fee.

The South Carolina Court of Appeals

James B. Weersing, # 273572, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2016-000173

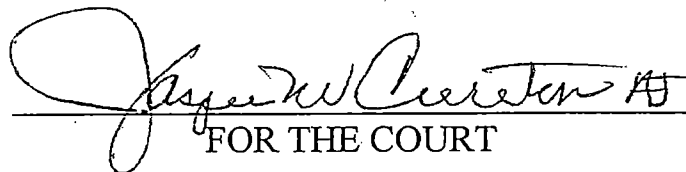
ORDER

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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

FILED

3/29/16 

cc:

James B. Weersing, #273527

Jana E. Shealy

South Carolina Department of Corrections/ Office of General Counsel

In the South Carolina Court of Appeals
Case No. 2016-000173

James P. Weersing, _____ Appellant

vs.

S.C.D.C., _____ Respondant

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SC Court of Appeals

Motion to Alter or Amend
per Rule 59(e) SCRPC and Rule 240(j) SCACR

Please carefully consider case history thus far, where this action comes before this Court on appeal from AKC dismissal. Note Intent to Appeal and to proceed in forma pauperis were submitted along with conclusive proof of indigency; but on 3/29/16 Judge Curston denied indigent status, see Record on Appeal (ROA). On 4/13/16 Appellant filed Motion to Alter or Amend due to his inability to pursue his cause of action without such status, he also alleged Judge Curston's case law to be inapplicable, see ROA.

Argument/Law

Notice original motion contained well plead, easily understood arguments of law and fact supporting his "substantial rights" to proceed including multiple cites of applicable case law, but Judge Willis's Order of 6/17/16 ignores the merits of the 59(e), see attached. Instead Order cites Rule 240(i) SCACR which in actuality holds for the appellant's cause in that it basically says the Appeals Court will entertain the appellant's motion because Judge Curston's Order as well as Judge Willis's Order both have the effect of dismissing this Appellant's cause of action. Appellant argues Judge Willis's Order is illogical;

any reasonable person of average intelligence would construe that if a Defendant has proven his inability to pay a filing fee yet the court refuses to allow him to proceed without such payment then the Court's Order has estopped him and in essence and in fact denied his claimed right to appeal. Consider also that Rule 240(i) and Lake v. State, 501 S.E.2d 228 (Ct. App. 1998) hold said Order "discontinues the action" that Judge Curston's Order was immediately appealable and consider Rule 240(j) clearly and unambiguously states filing a Rule 59(e) is the proper procedure to attack such Order; thus Judge Willis's Order can only be seen as arbitrary, biased and or with intent to delay.

Relief:

That this Court promptly and lawfully adjudicate the merits of the issues clearly raised in both 59(e) motions and that said Order/Orders be altered and amended to allow appellant to proceed in forma pauperis with his appeal. In the alternative he asks this Court to adjudicate the issue he has raised to allow the S.C. Supreme Court to comprehend this Court's reasoning and basis for incomprehensible Orders. Further, please specify that the Order issued is the "Final Order" so the jurisdiction of the Supreme Court is plain.

Dated: 6/27/16 Signed: James B. Weersing Pro Se
James B. Weersing
#273527 KRCI/SB-15

Proof of Service

I James B. Weersing do swear and affirm on June 27, 2016 sent copy of the above document to S.C.D.C. General Counsel at 4444 Broad River Rd. Columbia, S.C. 29221.

Signed: James B. Weersing

To: Ms. J. A. Kitchings C.O.C.
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

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

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SC Court of Appeals

Re: Filing of 59(e) in response to "Order" filed 6/17/16 and concerning Missing Documents from filings in Case No. 2016-173.

Dear Ms. Kitchings, Inclosed, see motion 59(e) whereas this legal matter is well over two (2) years old please try to see it is adjudicated promptly on the merits raised.

When I filed my Intent to Appeal six (6) months ago I enclosed "Appellant Copies" to be Filed & stamped. It is now clear this is unlikely to happen therefore I ask for their prompt return. Consider I ask for their return in my 4/3/16 letter but to date have not received them. Please just date stamp them with the date you received them and send them back. It seems doubtful they will ever be filed.

Thank you, in advance, for your help in this matter and your prompt response to my legal concerns.

Dated: 6/27/16 Signed: James B. Weersing Pro Se

WV, S.C. 29067

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attn. J.A. Kitchings C.O.C.
P.O. Box 11629
Columbia, S.C. 29211