STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

CORDELL J. MADDOX, JR., CIRCUIT COURT JUDGE

Appellate Case No. 2016-000945
Trial Court No. 05-CP-40-1931

ISIAH JAMES, JR., Appellant,

VS.

SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES (SCDPPPS), Respondent.

TO: Tommy Evans, Jr.
POB 50666
Columbia, SC 29250

NOTICE OF MOTION(S) FOR PAUPER STATUS RECONSIDERATION, REHEARING AND REINSTATEMENT OF APPEAL

There was the 24 June 2016 'order' issued for the Court which in short granted 'prisoner pro se status' but denied pauper status "pursuant to Ex parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995)." Ex Parte: Martin v. State, 471 S.E2d 134, 135 (1995) set forth, "Further, where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts. Compare Boddie v. Connecticut, 401 U.S. 371". It is further apparent the court overlooked the aspect(s) and concept(s) of law set forth

above herein and the order of the lower court.

The 3-29-16 'order' stated, "Plaintiff have since filed a motion for relief under rule 60(b)(5) of the South Carolina Rules of Civil Procedure" (p. 2) Further, the Court erred holding, he "is also not entitled relief pursuant to Rule 60 due to the length of time expired from the Court's decision" (p. 3) James raised the initial James-Cooper claim via 7-10-2008 Rule 60(b)(5) Motion where Judge Lee's 3-29-06 order stressed:

> insofar as Plaintiff is arguing that the Parole Board's decision to reject him for parole at his regularly scheduled hearing was arbitrary and capricous (see p. 2 attached)

Furthermore, "a valid judgment decided on the merits, was issued by the Honorable Ralph King Anderson, III in the South Carolina Administrative Law Court, dated May 19, 2005. (footnote omitted) Such judgment dismissed the identical claim which Plaintiff attempts herein to reassert against the South Carolina Department of Probation, Parole and Pardon Services. Plaintiff did not appeal that decision and it has become final." (See pp. 3-4 attached) Rule 60(b)(5) strongly concerns the event or situation where a prior decision or etc. was reversed, overturned or set aside.

This is what appellant has accomplished with 5-19-05 ALC order versus Judge Lee's 3-29-06 order. See Justice Cureton's 3-1-16 order which points to 5-19-05 order of ALJ Anderson. The Cooper and James decisions point to the liberty (interests) annexed thereto issue(s). Wherefore, pauper status should be re-considered and granted; reinstatement given without consideration of habeas issue 2.

This 19 day of August 2016.

/s/ Isiah James, Jr.

Isiah JAMES, Jr., 096883
WCI, 1C 6B, 4340 Broad River Road
Columbia, SC 29210

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the said 'Motion to Reconsider Pauper Status and Re-instatement' to be mailed, postage prepaid, to respondent's attorney who is set forth above herein this 20 day of August 2016.

S/ Isiah James, Jr.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS CASE NO: 2005-CP-40-1931
Isiah James, Jr., #96883 Plaintiff, v. South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS), Defendant.	**ORDER**

A hearing on Defendant's Motion for Summary Judgment was held before this Court on February 2, 2006 in the Richland County Court of Common Pleas. Stephen L. Hall, Esquire represented the Defendant. Plaintiff appeared *pro se*.

Plaintiff asserts in his Complaint that the Defendant South Carolina Department of Probation, Parole and Pardon Services Parole Board ("Board") improperly denied him parole after a March 9, 2005 parole hearing. Plaintiff alleges that the Parole Board improperly commenced his parole hearing without forming a quorum, and negligently conducted its investigation prior to denying him parole. Plaintiff further contends that the Defendant applied certain laws *ex post facto* which denied him the right to annual parole hearings (as opposed to one hearing every two years). Defendant moved for summary judgment on the following grounds: (1) Plaintiff fails to state facts sufficient to constitute a cause of action; (2) Defendant has not violated any of Plaintiff's constitutionally protected rights; (3) the South Carolina Department of Probation, Parole and Pardon Services is immune from suit under the South Carolina Tort Claims Act, and (4) Plaintiff's claims are barred by res judicata or collateral estoppel.

After hearing oral argument from both parties, reviewing Defendant's motion for summary judgment, and considering the relevant case law, the motion is granted.

First, Plaintiff has failed to state facts sufficient to constitute a cause of action. He is alleging a claim for wrongful denial of parole. However, the Plaintiff has no protected right to the granting of parole, only a right to a hearing on parole in the first instance. Plaintiff has no right to bring an action alleging the wrongful decision of the Parole Board in denying him parole. It is fundamental that "every court has the power and duty to determine whether or not it has jurisdiction of a cause presented to it for determination." Bridges v. Wvandotte Worsted Co., 243 S.C. 1, 132 S.E.2d 18, 21 (1962).

The Court's jurisdiction to hear claims involving decisions of the Department is d from two recent decisions of the South Carolina Supreme Court, Al-Shabazz v. State, 338 S.C 527 S.E.2d 742 (2000), and Furtick v. S.C. Dep't of Probation, Parole, and Pardon Service S.C. 594, 576 S.E.2d 146 (2003). In Al-Shabazz, the Supreme Court created a new aven which inmates could seek review of final decisions of the Department of Corrections in collateral" matters, i.e., matters in which an inmate does not challenge the validity of a conv or sentence, by appealing those decisions to the Administrative Law Court ("ALC") and ultin to the circuit court pursuant to the Administrative Procedures Act. 338 S.C. at 376, 527 S.E 754.

In Furtick, the Supreme Court addressed an inmate's appeal to the ALC fr determination by the Department of Probation, Parole and Pardon Services that he was statu ineligible for parole as a violent offender under S.C. Code Ann. § 24-1-640. The Court held th order to determine whether an inmate's claim against the Department is entitled to review b ALC under the procedures set forth in Al-Shabazz, it is first necessary to determine whethe inmate has a "liberty interest in gaining access to the parole board." 352 S.C. at 598, 576 S.E. 149. The Court decided that the "*permanent* denial of parole *eligibility*" by the Depart "implicates a liberty interest sufficient to require at least minimal due process." Id. (empha original). Therefore, the Court extended the right to appellate review by the ALC unde Shabazz to encompass claims against the Department involving the permanent denial of p eligibility. The Supreme Court noted, however, that although an inmate has a liberty intere parole *eligibility* pursuant to S.C. Code Ann. § 24-21-620, the statute creates no such liberty int in parole. Furtick, 352 S.C. at 595, 576 S.E.2d at 149 n. 4 (emphasis added).

Since no liberty interest is implicated when a potentially eligible inmate is denied parol the Board, an inmate has no right to appeal or otherwise complain of the denial of parole to ALC or ultimately to the circuit court under Furtick, but instead must await his or her next pa hearing. See id. ("Section 24-21-620 also provides the procedure to follow when the B determines not to grant parole for *a potentially eligible* inmate: [u]pon a negative determination, prisoner's case shall be reviewed every twelve months thereafter for the purpose of s determination.") (Emphasis in original).

In this case, insofar as Plaintiff is arguing that the Parole Board's decision to reject hi parole at his regularly scheduled hearing was arbitrary and capricious, such a claim does not in a determination by the Department that he is permanently ineligible for parole and is therefor a cognizable cause of action under Furtick. Additionally, even if this were a situation involvi

determination that Plaintiff was permanently ineligible, the proper procedure under Al-Shabazz is to initially bring an action to the ALC, and not the circuit court.

Plaintiff also argues that the Defendant applied certain laws *ex post facto* which denied him the right to annual parole hearings (as opposed to one hearing every two years). S.C. Code Ann. § 24-21-645, enacted in 1986, changed parole review for violent offenders from annual to biannual. The Plaintiff argues that the Board is retroactively applying this section to him, because at the time he committed the offenses for which he is incarcerated, that section had not been enacted. The Plaintiff is currently incarcerated for crimes committed in 1978, when there was no statute which governed the frequency of parole hearings. Instead, the frequency of parole hearings was a matter committed to the discretion of the Board. The Board's policy manual in effect at the time of the Plaintiff's offense, the relevant portion of which is attached to the Defendant's motion as Exhibit 6, states that review would be conducted every twenty-four months in the case of prisoners serving sentences of 30 years or more. Therefore, there is no *ex post facto* violation because the Board is properly applying the law in effect at the time of Appellant's crimes, rather than retroactively applying Section 24-21-645. Furthermore, the amendments to S.C. Code Ann. § 24-21-620, which first provided annual parole review for parole eligible inmates, were not enacted until 1981, several years after Plaintiff's crimes were committed.

Second, notwithstanding the holding above regarding Plaintiff's claim concerning the Parole Board's decision, this Court further holds that the Plaintiff's claim is barred by the doctrine of *res judicata*. *Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Plum Creek Development Co., Inc. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106, 109 (1999). Under the doctrine of *res judicata*, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Id. (internal citation omitted). *Res judicata* requires three elements: (1) the judgment must be final, valid, and on the merits; (2) the parties in the subsequent action must be identical in the first; (3) the second action must involve matters properly included in the first action. As shown in Exhibit 4 to the Affidavit of J. Benjamin Aplin, filed in support of Defendant's motion for summary judgment, a valid judgment decided on the merits, was issued by the Honorable Ralph King Anderson, III in the South Carolina Administrative Law Court, dated May 19, 2005.[1] Such judgment dismissed the identical claim which

[1] Plaintiff filed a claim with the Administrative Law Court on August 23, 2003 asserting that the South Carolina Board of Parole and Pardons had improperly rejected him for parole, and in any event had improperly denied him his right to annual parole hearings, instead providing him with such hearing once every two years.

Plaintiff attempts herein to reassert against the South Carolina Department of Probation, Parole and Pardon Services. Plaintiff did not appeal that decision and it has become final. This suit involves the same parole hearing as evidence by the ALC and the Honorable Ralph King Anderson being named as parties to this suit. However, they were dismissed as parties based on absolute immunity. Thus, this Court dismisses Plaintiff's claim pursuant to the doctrine of *res judicata.*

Third, this Court holds that the Defendant is immune from suit in this case under S.C. Code Ann. § 15-78-60(1). Under this subsection of the South Carolina Tort Claims Act, a governmental entity is not liable for a loss resulting from judicial or quasi-judicial action. In the case at bar, the Parole Board clearly was performing at least a quasi-judicial act when it convened to consider Plaintiff's parole, making it immune from liability under Section 15-78-60(1). According to the Affidavit of Tammy Moorer, submitted with Defendant's Motion for Summary Judgment, a parole case summary was prepared pursuant to Departmental procedures and practices and duly considered by the Parole Board. Accordingly, this Court finds that the Defendant is immune from suit under the aforementioned provisions of the South Carolina Tort Claims Act.

Finally, and in the alternative to the grounds stated above, this Court holds that Defendant is entitled to immunity pursuant to S.C. Code Ann. § 15-78-60(5). Under Section 15-78-60(5), the Defendant is immune from suit for the exercise of discretion within the course and scope of the employment of its employees. Discretionary immunity is applicable when the government entity, when faced with alternatives, made a conscious choice utilizing professionally accepted standards appropriate to resolve the issue before it. Strange v. South Carolina Department of Highways and Public Transportation, 314 S.C. 427, 445 S.E.2d 439 (1994). Court holdings have read discretionary immunity in conjunction with this section and its gross negligence standard. Gross negligence has been interpreted by the South Carolina Supreme Court as the "failure to give slight care." Jackson v. South Carolina Department of Corrections, 301 S.C. 125, 390 S.E.2d 467 (Ct. App. 1989), certiorari granted, affirmed 302 S.C. 519, 397 S.E.2d 377 (1990); Etheredge v. Richland School District 1, 341 S.C. 307, 534 S.E.2d 275 (2000).

In this case, the Board properly considered the relevant information concerning Plaintiff's parole, and made an informed discretionary decision to deny Plaintiff's parole. See Affidavit of J. Benjamin Aplin, including Exhibit 5. The Board applied the applicable state statutes, and Departmental policy and procedure in making its decision, and clearly explained to Plaintiff in writing the grounds for its decision. Id. Further, while the review or consideration for parole is a right granted by statute, parole is only a privilege. Steele v. Benjamin, 363 S.C. 66, 606 S.E.2d 499 (Ct. App. 2004).

The South Carolina Court of Appeals

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SC Court of Appeals

Isiah James, Jr., Appellant,

v.

South Carolina Department of Probation, Parole and Pardon Services, Respondent.

Appellate Case No. 2016-000146

ORDER

Appellant is attempting to appeal the circuit court's order, which held that the Parole Board failed to consider the appropriate criteria for parole determinations and remanded the case to the Parole Board for a new determination regarding Appellant's parole. Because Appellant is not aggrieved by the circuit court's order, this appeal is dismissed. *See* Rule 201(b), SCACR ("Only a party aggrieved by an order, judgment, sentence, or decision may appeal."). The remittitur will be sent as provided in Rule 221, SCACR.

FOR THE COURT

Columbia, South Carolina

FILED

cc:
Isiah James, Jr., #96883
Tommy Evans, Jr., Esquire

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