

The South Carolina Court of Appeals
Appellate Case No. 2016-001421

James B. Wersing* 273527 _____ appellant,

VS.

S.C.D.C. _____ Respondent,

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Motion
to Rehear and Alter or Amend

AUG 24 2016

SC Court of Appeals

Note on or about 8/8/16 Appellant received "Order" filed 8/5/16 stating denial of his motion to proceed in forma pauperis, it cited Ex parte Martin, 471 S.E.2d 134 (1995) and holding filing fee must be paid within fifteen (15) days.

Consider, Appellant provided conclusive evidence of his poverty, thereby giving "due notice" of his inability to pay fees and costs. Further see this Court's ruling in Kabe v. State, 501 S.E.2d 228 (Ct. app. 1998) holding when an order has the "effect of discontinuing the action" then it is essentially a "final order" and therefore motion can then be made to alter or amend. Consider Statute § 14-3-330 and see Rule 240(j) SC ACR which states motion to alter or amend is the proper way to address such circumstance. Note State v. Keads, 39 SC 553, 175 S.E. 802 (1893) held proper time to make such a showing would be when the motion to dismiss the appeal was made, or at least before the remittitur was sent down. Therefore the Appellant's Motion is timely filed.

Arguments

Appellant asks this Court note Martin is irrelevant in part to the case at bar because it ruled only on State

statutes § 24-27-100 and § 24-27-150 do not allow inmates to proceed under partial payment law because these statutes were held not to apply to this Appeals Court or the S.C. Supreme Court. Appellant argues against precedent and points out inmates are no longer allowed to appeal to the circuit court from an ALC judgement. This means indigent inmates are being denied access to judicial appeal; this violates the Equal Protection Clause and many other rights guaranteed by the U.S. and S.C. constitutions.

The Martin case is relevant to our current where it ruled, "Further, where certain fundamental rights are involved the Constitution requires an indigent be allowed access to the courts." Appellant's appeal will indeed claim he has a constitutional right to proceed *in forma pauperis*. Consider Black's Law Dictionary 8th Ed. (2004) held that fundamental and constitutional rights are used interchangeably by the courts.

As to Appellant's Constitutional/fundamental right to so proceed see, Burns v. Ohio, 360 U.S. 252 (1959) holding appeal cannot be denied for inability to pay fees. (emphasis added), note Douglas v. Calif., 372 U.S. 353 (1963) states "Unfairness results only in indigent are singled out by the state and denied meaningful access to the appellant system because of their poverty." Also see An re Premis, 436 U.S. 412 (1978) held court access is a fundamental right and Bush v. Lucas, 462 U.S. 367 (1983) held appellant review is a right.

Locally Al-Shabazz v. State, 527 S.E. 742 (S.C. 2000) held inmates are entitled to judicial review to determine if the agency decision was arbitrary, capricious or from bias. Per Black's 8th Ed. (2004) entitlement and right have the same meaning. Consider this case concerns state-created property interest and both Al-Shabazz and Furtick v. S.C.D.C., 649 S.E. 35 (S.C. 2007) held taking of liberty or property can only be determined by disciplinary procedures and due process guarantees. The record in this case shows this deprivation of prop-

erty was authorized at the institutional level but no pre-deprivation hearing was held by the agency nor was this case heard on the merits by the ALC.

Conclusion

Appellant asks that this Court allow him to proceed in forma pauperis based on his meritorious arguments and citations of authority. If this Court rules against his cause of action, it is requested this Court give reasonable explanation for its decision and offer citations of supporting law so as to provide a proper record for the reviewing State and Federal Courts.

Dated: _____

Respectfully Submitted,
James P. Weersing Pro Se

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Certificate of Service

Docket No. 2016-001421

I hereby certify that a copy of the foregoing motion was this date served upon the following by placing it with the institution mail room to be sent to the Respondent's last known address; General Counsel, S.C.D.C. 4444 Broad River Rd. Columbia, S.C. 29221.

Dated: 8/21/16

Signed: James P. Weersing Pro Se

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