

STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2013-002306

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SEP 06 2016

SC Court of Appeals

Basil W. Akbar, #065498

Appellant,

v.

South Carolina Dept of Corrections

Respondent.

APPELLANT'S OBJECTION TO RESPONDENT'S RETURN TO APPELLANT'S
PETITION FOR REHEARING AND REHEARING EN BANC

On August 23, 2016, the Appellant recieved copy of Respondent's Return to Appellant's Petition for Rehearing and Rehearing En Banc. Now submits the following objections, and reason why petition should not be dismissed.

Courts generally hold Pro Se pleadings to a less stringent standard than those drafted by lawyers, Hughes v Rowe, 101 SCt 178; Haines v Kerner, 92 SCt 594. The Appellant adamantly submits that he stated with specificity and particularity points overlooked or misapprehended by the Court, Kennedy v South Carolina Retirement Sys., SC Sup Ct Order dated July 23, 2001 (Shearhouse Adv Sh No 27 at 61). Rule 240, SCACR, does not apply to any matters where counsel is required by law to pursue an appeal or Petition for Writ of Certiorari, even though the matter maybe frivolous, See, Jean H. Toal, Shahin Vafai Robert A. Muckenfuss, Appellate Practice in South Carolina, 260 (2002) (citing Anders v California, 386 US 738). Likewise, Civil Appeals is not frivolous when a complaint is not malicious, or filed for an improper purpose, or does not amount to an abuse of the legal system. A complaint is legally frivolous only if it fails to raise an "arguable Question of Law", or is based on an "indisputably meritless legal theory", Neitzke v Williams, 490 US 319, at 327-28.

The Appellant hereby, hereof incorporate as if verbatim Appellant's Brief; Affidavit in Support of Brief; Exhibits; Appellant's Objection to

Respondent's Final Brief in its Entirety; and Petition for Rehearing and Rehearing En Banc, and further submits that the Lower Court erred and abuse of discretion occurred where its decision is controlled by an error of law, and is based on an unsupported factual conclusions. Pursuant to the South Carolina Constitution, an Appellate Court reviews findings of fact in an equity matter taking its own view of the evidence. Father v South Carolina Dept of Soc Servs., 353 SC 254, 578 SE 2d 11 (2003).

The Lower Court misapprehended the Appellant's Statute of Limitation defense outlined in the record, demonstrating "reliance" upon Respondent's representation waiting reliance period to make withdrawal from work-release account that he fail to complete, caused Appellant's position, further serve as a substitute for consideration, and equitable tolling available, because Appellant was induced/tricked by the Respondent, as he argued from the inception in complaint; and where Appellant exercised due diligence, but unable to obtain vital information bearing on the existence of his claim. Equitable tolling applies principally to this case because Appellant was actively mislead by the Respondent regarding cause of action and prevented in an extraordinary way from asserting his rights. The Lower Court furthered overlooked that at all times relevant Appellant was in legal custody of the Respondent. Sanders v MacDougal, 135 SE 2d 836 (1964); Wilson v Flaherty, 689 F 3d 332 (4th Cir 2012). Where testimony is conflicting upon the application of the statute of limitation, the Question becomes an issue of fact for the jury, Brown v Finger, 240 SC 102, 124 SE 2d 781; Arant v Kressler, 327 SC 225, 489 SE 2d 206. Whether a claimant knew or should have known he has a cause of action is a question for the jury. Johnston v Bowen, 313 SC 61, 437 SE 2d 45 (1993). Therefore the Court erred in applying statute of limitation.

The Respondent erroneously alleges that Appellant did not raise "equitable tolling" as an issue in his brief and is not preserved for Appellate review. Respondent's argument is flawed, to the contrary Appellant's pleadings concur with the "Sine Qua Non" of an equitable tolling claim showing "circumstances preventing advancement of claims; preventing obtaining vital information bearing on claims; due diligence and actively pursuing remedies" . . . warrant application of the Equitable Tolling Doctrine in instant case, See, Pelzer v State of South Carolina, (Shearhouse Adv Sh No 23, June 9, 2008, Opin No 4399, pg 83); See Also, Hopkins v Floyd's

Wholesale, 299 SC 127, 382 SE 2d 907 (1989).


The Lower Court overlooked that Respondent's does not address the substance or essentials of the case, rather dilatory/technical objections . . . frivolous defense that has no basis in fact or law to defeat Appellant's meritorious claims. Under Rule 11(a), SCRCP, a Party/the Party's Attorney may be sanctioned for filing a frivolous pleading, or other paper, or making frivolous arguments, Runyon v Wright, 322 SC 15, 471 SE 2d 160. The Party/Attorney may also be sanction for filing a pleading, motion, or other papers in bad faith whether or not there is good ground to support it. Id. The Lower Court's Order is contrary to Laws that does not authorize a Court; Tribunal; or Jury to render because the conclusion drawn is not justified by the evidence, thus, repugnant to the express working of State Laws; Rules; Regulations; and both State and Federal Constitutional Rights guarantee of the Fifth and Fourteenth Amendments,

The Appellant hereby deny any and all averments by Respondent not specified with specificity is denied, and demand strict proof.

WHEREFORE, Appellant respectfully ask this Honorable Court grant Appellant's Petition for Rehearing and Rehearing En Banc.

Respectfully submitted,


Date: August 31, 2016

s/ 
Basil W. Akbar, #065498, Pro Se
Lee County Institution
990 Wisacky Highway, F6B 2213
Bishopville, SC 29010

CERTIFICATE OF SERVICE

I, Basil W. Akbar, Pro Se, hereby certify that a copy of Appellant's Objection to Respondent's Return to Appellant's Petition for Rehearing and Rehearing in Banc, was served on Respondent by the United States Postal Service, postage prepaid at: Daniel R. Settana, Jr., Attorney at Law, 1303 Blanding Street, Columbia, SC 29201.

Date: August 31, 2016

s/ 
Basil W. Akbar, #065498, Pro Se
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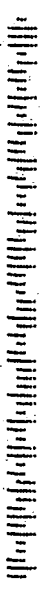
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