

THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

Civil Action No. 13-CP-40-0301

RECEIVED
SEP 07 2016
SC Court of Appeals

Basil W. Akbar, #065498,

Appellant,

v.

South Carolina Department of Corrections,
Bill Byers, Martha Roof, Debrah Long,
Lisia Johnson, Ann and John Doe,

Respondents.

**RESPONDENTS' MOTION TO STRIKE APPELLANT'S OBJECTION TO
RESPONDENTS' RETURN TO APPELLANT'S PETITION FOR REHEARING AND
REHEARING EN BANC**

Rule 240 of the South Carolina Appellant Court Rules governs motions and petitions filed with the Court. Specifically, Rule 240(d), SCACR, sets for the requirements for the filing of motions and petitions. Furthermore, Rules 240(e) and (f) set forth the requirements for filing returns and replies to motions, respectively. Pursuant to Rule 240(f), SCACR, in pertinent part, “[t]he moving party shall have five (5) days from the date of service of a return to file an original and six (6) copies of a reply with the clerk and serve on all parties a copy of the reply.” A

“[f]ailure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition.” Rule 240(g), SCACR.

Previously, Appellant filed a “Petition for Rehearing and Rehearing En Banc” with the Court (hereinafter “Petition”). On August 19, 2016, Respondents timely filed and served their Return to Appellant’s Petition. On September 6, 2016, the undersigned counsel for Respondents received the attached document from Appellant entitled “Appellant’s Objection to Respondent’s Return to Appellant’s Petition for Rehearing and Rehearing En Banc.” *See* Exhibit A. This document was signed by Appellant on August 31, 2016, and received by the Lee Correctional Institution mailroom on September 2, 2016. *See id.* In this document, Appellant states that he received Respondents’ Return on August 23, 2016. *Id.* While this document is titled an “Objection,” it essentially is Appellant’s Reply to Respondents’ Return to his Petition.

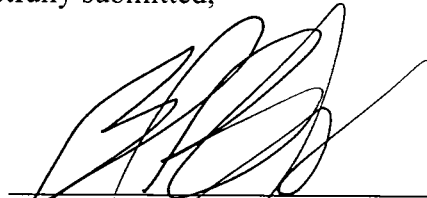
It is clear that this document, regardless of its title, fails to comply with the strict requirements of the South Carolina Appellant Court Rules. If, in fact, this is considered by the Court to be Appellant’s Reply to Respondents’ Return, Appellant has clearly failed to timely file this document. According to Rule 240(f), SCACR, Appellant had five (5) days from the date of service of the Return to file his Reply. Appellant’s deadline to file his Reply, therefore, was August 24, 2016. Appellant did not sign this document until seven (7) days after this filing deadline, and it was not received in the Lee Correctional Institution mailroom until nine (9) days after the filing deadline. *See* Exhibit B. Even giving Appellant the benefit of the doubt and calculating the date of service as August 23, 2016 (the date upon which Appellant states he received the Respondents’ Return), he still did not sign this document until eight (8) days later. *See* Exhibit A. Clearly, Appellant has failed to file this document within the strict amount of



time prescribed in Rule 240, SCACR. Therefore, Respondents respectfully move this Court to strike this document from the Record in this appeal.

Based upon the foregoing reasons, Respondents respectfully request that the Court strike the "Objection" filed by the Appellant from this matter and grant the Respondents' Motion.

Respectfully submitted,



Daniel R. Settana, Jr.
Brandon P. Jones
McKay, Cauthen, Settana & Stublely, P.A.
1303 Blanding Street; P.O. Drawer 7217
Columbia, SC 29202
(803) 256-4645
Attorneys for Respondents

Columbia, South Carolina
September 7, 2016

THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

Civil Action No. 13-CP-40-0301

Basil W. Akbar, #65498,

Appellant,

v.

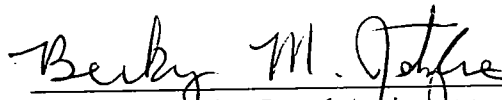
South Carolina Department of Corrections,
Bill Byers, Martha Roof, Debrah Long,
Lisia Johnson, Ann and John Doe,

Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 7, 2016, a copy of the foregoing **RESPONDENTS' MOTION TO STRIKE APPELLANT'S OBJECTION TO RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR REHEARING AND REHEARING EN BANC** was served on the Pro Se Appellant by mailing a copy of same in the United States Mail, via certified mail, return receipt requested, proper postage prepaid, addressed as follows:

Basil W. Akbar, #65498
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010



Becky M. Jetzke, Legal Assistant to:
Daniel R. Settana, Jr.
Brandon P. Jones
McKay, Cauthen, Settana & Stublely, P.A.
1303 Blanding Street; P.O. Drawer 7217
Columbia, SC 29202
Attorneys for Respondents

EXHIBIT A

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

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).

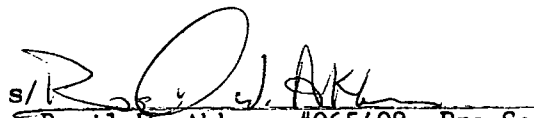
The Lower Court overlooked that Respondent's does not address the substance or essentials of the case, rather dilatory/technical objections . . . frivolous defense that has no basis in fact or law to defeat Appellant's meritorious claims. Under Rule 11(a), SCRCP, a Party/the Party's Attorney may be sanctioned 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

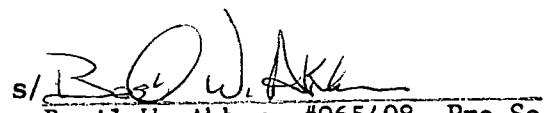
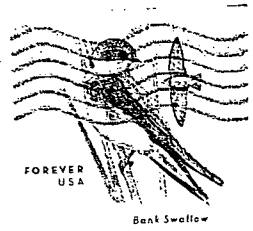

s/ Basil W. Akbar, #065498, Pro Se
Lee County Institution
990 Wisacky Hwy, F6B 2213
Bishopville, SC 29010

EXHIBIT B

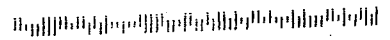
Basil W. Akbar #065498, F-6B 2213
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COLUMBIA, SC 29203
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Mr. Daniel R. Settano, Jr.
Attorney At Law
1303 Blanding Street
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BJones@McKayFirm.com

September 7, 2016

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED
SEP 07 2016
SC Court of Appeals

Re: Basil Akbar v. SCDC, Bill Byers, Martha Roof, Debrah Long,
Lisia Johnson, Ann and John Doe
SC Appeal No.: 2013-002306
Richland Co. Case No: 2013-CP-40-0301
Claim No: 75046
Our File No: 9-372

Dear Ms. Kitchings:

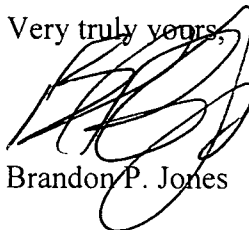
Please find enclosed for filing the original and seven (7) copies of *Respondents' Motion to Strike Appellant's Objection to Respondent's Return to Appellant's Petition for Rehearing and Rehearing En Banc* in reference to the above-referenced matter. Please return one (1) clocked-in copy to me via my courier.

By copy of this letter, I am serving the *pro se* Appellant with the same.

Thank you for your assistance. Should you have any questions or concerns, do not hesitate to contact me.

With kindest regards, I am,

Very truly yours,



Brandon P. Jones

BPJ/bmj

Enclosures

cc: Basil Akbar, #65498 (w/encl.; via Certified/Return Receipt Requested)