

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit & Court Judge

Case No.: 2015 - CP - 40 - 3563

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OCT 31 2016

Kevin J. Daniels, #247291, Appellant,
SC Court of Appeals

v.

Bryan Stirling, et. al., Respondents.

APPELLANT'S REPLY TO RESPONDENT'S RETURN
TO APPELLANT'S MOTION TO PROCEED IN
FORMA PAUPERIS

Appellant should be allowed to proceed in forma pauperis without being required to pay the filing fee and without being required to give security therefore in this case. Rule 240(D), SCACR, South Carolina Appellate Court Rule, 240(D), states, "In extraordinary cases, the appellate court may relieve a party from paying the filing fee." Appellant is an indigent prisoner who was granted in forma pauperis status in the circuit court on the date and time the original complaint was filed in this matter.

In the Complaint Appellant raises Constitutional issues of medical negligence, deliberate indifference to a serious medical need, and intentional infliction of mental and emotional distress on appellant by the defendants/ Respondents, in the case below in the Court of Common Pleas. The Respondents acted with deliberate indifference to a serious medical need prison condition exposing Appellant to an unreasonable risk of serious harm. In Helling v. McKinney, 509 U.S. 25, 33 (1993) the U.S. Supreme Court held that, "To prove an Eighth Amendment claim violation, the prison officials must act with deliberate indifference to a prison condition that exposes a prisoner to an unreasonable risk of serious harm." Appellant calls this Honorable Court's attention to the U.S. Supreme Court's holding in Bounds v. Smith, 430 U.S. 817, 821, 97 S. Ct. 1491 (1977) in which the Court explaining held, "It is now established beyond doubt that prisoners have a constitutional right of access to the courts." Indeed the Courts have cited the Due Process Clause, The Equal Protection Clause, The First Amendment, and The Privileges and Immunities Clause of Article IV of the U.S. Constitution as the basis of the right of access to the courts by all classes of prisoners, including, indigent prisoners such as the Appellant, in this case. Murray v. Giarratano, 492 U.S. 1, 11, n.6, 109 S. Ct. 2765, (1989); John L. v. Adams, 969 F. 2d 228, 231, 232, (6th Cir. 1992); Peterkin v. Jeffes, 855 F. 2d 1021, 1036, n. 18 (3rd Cir. 1988); Simmons v. Dickhaut, 804 F. 2d 182, 183 (1st Cir. 1986); Gomez v. Myers, 627 F. Supp. 183, 187 (E.D. Tex. 1985); see Adams v. James, 784 F. 2d 1077, 1081-82 (11th Cir. 1986) ("Litigation —

"undertaken in good faith by a prisoner motivated to bring about social change and protect constitutional rights in the prison enjoys First Amendment protection."

Appellant is clearly entitled to proceed in this case without prepayment of the filing fee as Appellant was granted in forma pauperis (IFP) status by the Court when he filed the Original Summons and Complaint in this action, and in view of Rule 240(D), SCACR.

The Respondents reliance on the South Carolina Supreme Court's ruling in Martin v. South Carolina Department of Corrections, 350 S.C. 196, 565 S.E.2d 756(2001) is misplaced in this case as support for their (Respondents) argument that this Court should require payment of the filing fee before Appellant may proceed with this case because in Martin v. State, 350 S.C. 196, 565 S.E.2d 756(2001) the indigent prisoner in that case faced an entirely different set of facts than the Appellant in this matter. First, the prisoner in Martin, id. was appealing the denial of his request for IFP status by the Clerk of the Court of Common Pleas when he attempted to initially file the Complaint in that action. He argued that the Clerk of Court was without authority to grant or deny his request for IFP status without submitting that request for IFP status to a Circuit Court Judge.

Appellant in the case at hand was granted leave to proceed in forma pauperis status by the Court

when Appellant initially filed the Summons and Complaint in this action. Because of the above mentioned facts the Appellant in this case is in a much different position than that of the prisoner in Martin v. State, supra. Appellant requests this Court to grant him permission to proceed without paying the filing fee in this case pursuant to the Court's discretionary powers under Rule 240(D), SCACR because it is in the public's interest. Appellant an impoverished prisoner seeks in his complaint to hold State prison officials responsible for violations of clearly established State and Federal laws concerning medical care and treatment by prison authorities of the Appellant. It's always in the public interest for prison officials to obey the law. Respect for law, particularly by officials responsible for the administration of the state's correctional system is in itself a matter of the highest public interest.

In Ex parte Rice the South Carolina Supreme Court held that a prisoner was denied due process by family court's refusal to allow him to proceed in divorce action without payment of costs, although family court judge concluded that prisoner was not indigent because he had a total monthly income of \$36.50 and expenses of \$35.00, it would have taken prisoner almost four years to save \$55.00 filing fee for divorce and \$15.00 for service of process by Sheriff's department. Ex parte Rice, 307 S. C. 469, 415 S. E. 2d 819 (March 25, 1992).

In the Supreme Court of South Carolina's ruling in Ex parte Rice, 415 S. E. 2d 819, 819 (S.C. 1992) the Court explained holding, "In our opinion, -

"petitioner is clearly being denied due process by the family court's refusal to allow him to proceed without payment of costs." Ex Parte Rice, 307 S. C. 469, 470 (March 25, 1992).

In Sullivan v. South Carolina Department of Corrections, the Supreme Court of South Carolina concluded minimal due process is required for a prisoner's state created liberty interests, which are ^{not} necessarily limited to sentence credit issues and major disciplinary decisions; a condition of confinement could implicate a state created liberty interest. — Sullivan v. SCDC, 355 S. C. 437, 443 (2003).

Appellant in this case has implicated a state created liberty interest as he has raised in his original complaint the issues of medical negligence, *inter alia*, which are considered prison conditions, that are considered fundamental rights if violated, because they're protected by the Due Process Clause and other Constitutional provisions.

The facts of the prisoner's case in Sullivan, *supra* differ from Appellant's in this case because the prisoner in Sullivan, *supra* did not raise a claim which involved a state created liberty interest nor, did his claim involve a fundamental right. The Appellant, this case, was granted IFP status when he filed the original complaint concerning medical negligence at a prison condition, involving a state created liberty interest which is a fundamental right protected by the Due Process Clause.

CONCLUSION

For the foregoing reasons, the Appellant asks this Honorable Court to permit Appellant to proceed without payment of the Filing Fees, and grant Appellant any such other and further relief the Court deems just and proper.

Respectfully submitted,



Kevin J. Daniels #247291

Appellant, pro se

Turbeville Correctional Institution

1578 Clarence Coke Highway

Turbeville, South Carolina 29162

Date: ~~10/24/16~~ 10/24/16

Other Counsel of Record:
Andrew F. Lindemann, Esquire
Attorney - at - Law
P.O. Box 8568
Columbia, S.C. 29202-8568

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

Case No. 2015-CP-40-3563

Kevin J. Daniels, #247291,

RECEIVED Appellant,

OCT 31 2016

v.

SC Court of Appeals

Bryan Stirling, et. al.,

Respondent.

PROOF OF SERVICE

I, Kevin J. Daniels, #247291, certify that I have served Appellant's Reply To Respondent's Return To Appellant's Motion To Proceed In Forma Pauperis on Andrew F. Lindemann, Attorney For Respondents by placing a copy of it in the United States Mail, postage prepaid, on 10/24/16, addressed to: Andrew F. Lindemann, Attorney at Law, P. O. Box 8568, Columbia, S. C. (29202) 8568.

si. Kevin J. Daniels

Kevin J. Daniels, #247291
Appellant, pro se
Turbeville C. I., SB-Rm 170
1578 Clarence Coker Hwy.
Turbeville, S. C. 29162
Date: 10/24/16

Sworn to and subscribed before
me this 24TH day of October,

2016

Victoria Malone

NOTARY PUBLIC OF SOUTH CAROLINA

My commission expires: _____

May 24, 2026

Kevin J. Daniels, #247291
Turbeville C. I., SB-Rm. 170
1578 Clarence Coker Hwy,
Turbeville, S. C. 29162
October 24, 2016

Jenny Abbott Kitchings, Clerk
S. C. Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

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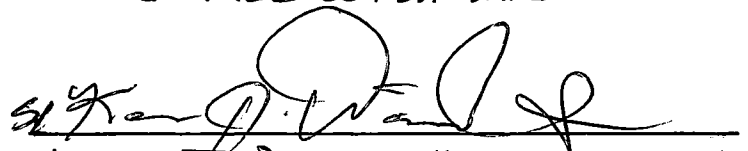
OCT 31 2016

SC Court of Appeals


Re: Kevin J. Daniels v. Bryan Stirling
Case No. 2015-CP-40-3563

Dear Ms. Kitchings:

Please find enclosed Appellant's Reply To Respondent's Return To Appellant's Motion To Proceed In Forma Pauperis with Proof of Service of same. Please file and return a clock stamped copy of the enclosed to me for my records. Thank you for your assistance with this matter.
Sincerely,


Kevin J. Daniels, #247291
Appellant, pro se
Date: 10/24/16

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