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JAN 11 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

CORBELL J. MADDOX, JR., CIRCUIT COURT JUDGE

Isiah James, Jr., Petitioner,

v,

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

PETITION FOR WRIT OF CERTIORARI
TO SOUTH CAROLINA COURT OF
APPEALS

Other Counsel of Record:

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Case(s)

SUPREMACY

UNION

Cook v. Taylor,
252 S.E.2d 983 (1978) ... 6

Cooper v. SCOPPPS,
661 S.E.2d 106 (2008) ... 3

Davis v. Parkview Apartments,
762 S.E.2d 5535 (2014) ... 6

Ex Parte Martin
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James v. SCOPPPS,
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State v. Blakely
758 S.E.2d 29 (S.C. App. 2013) ... 5

State v. Gentry,
610 S.E.2d 494 (2005) ... 6

State v. Hewins,
760 S.E.2d 811 (2014) ... 6

CERTIFICATE OF PETITIONER

Petitioner hereby certifies that the petition for rehearing was made and finally ruled on by the court of appeals' panel on 7 November 2016 (see 12.16.16 letter of Deputy Allen) which shows service on or after 12.16.16.

QUESTION(S) PRESENTED

- I. Does the 'liberty interest' announced or set forth in Furtick and Cooper warrant in forma pauperis status when a pre-se prisoner seeks appellate review as matter of legal right(s)?
- II. Whether the Court of Appeals and Court's Panel erred denying petitioner's motion to proceed in forma pauperis, rehearing and reconsideration request on pauper status?
- III. Did the (LANEY) Court act in want of jurisdiction on the armed robbery indictment?

STATEMENT OF THE CASE

There was the 12-14-78 arrest of James who was charged and indicted for two (2) count(s) of murder and one count of armed robbery (therein consolidated or joint indictment(s)) after pre-trial proceeding(s) petitioner entered guilty pleas to armed robbery and two(2) count(s) of voluntary manslaughter in Sumter County. The (LANEY) court imposed 30, 30 and 25 year sentence consecutively. James became eligible for parole release on or about 2-17-88; it was disapproved. He made subsequent application(s) for parole release.

When he was denied parole release in March 2001; he brought the

action (appeal) before the Administrative Law Court (ALC) raising the claim(s) or issue(s) which included the JAMES-Gepper claim or issue. There was extreme delay, in-action therewith the ALC. He made the March 9, 2005 application for parole release (proceedings) which was dis-approved so he brought the complaint (tert-claim) in Richland County Circuit Court where mandamus, declaratory relief and etc. were sought.

When the Administrative Law Judge (ALJ) was served with the action or shortly before the initial hearing ALJ Andersen issued the 5-19-05 order* for respondent which was timely appealed to Richland County Circuit Court. Respondent's attorney filed for summary judgment concerning complaint and cause(s) of action after 2-2-06 hearing¹ circuit court judge issued 3-29-06 order of Dismissal² which was timely appealed to South Carolina Court of Appeals. See James v. SCBPPPS, 656 S.E.2d 399, (S.C. App. 2008).³

*ALJ Andersen's order related, "insofar as Appellant is arguing that the Parole Board's decision to reject him for parole at his regularly scheduled hearing was arbitrary and capricious, such a claim does not involve a determination by the Department that he is permanently ineligible for parole and is therefore not appealable to the Court under Furtick". (Order p. 3, App. p. 4)

¹At the 2-2-06 hearing respondent's attorney stated: I think Judge Andersen sees a much better job than I could ever attempt to do for the Court. I would urge the court to view that, (tr. excerpt p. 12 ll. 20-22, App. p. 8)

²Judge Lee's order (p. 1) dictated, "Plaintiff has no right to bring an action alleging the wrongful decision of the Parole Board in denying him parole. (App. p. 10) The order (p. 4) stressed, "this Court dismisses Plaintiff's claim pursuant to the doctrine of res judicata." (App. p. 13)

³The decision set forth "FN". James also challenges the circuit court's rulings regarding the application of the doctrine of res judicate and the South Carolina Tert Claim Act." Id. at 401

The appeal from the ALC got mis-placed, probably because the change of the law (appellate jurisdiction) and the clerk of the ALC failure to adhere to court rule(s) regarding appeals therefrom. There was the 8-31-11 hearing and the circuit court judge granted respondent's motion to dismiss after subsequent appeal(s) James obtained a reversal in the High Court. Memorandum Opinion No. 2014-MO-012 (5-14-14). The (BARBER) Court granted petitioner's appeal (in part) on 12-5-14.

He filed a habeas corpus motion on or about 15 October 2015 which supplemented the initial 7-10-08 Rule 60(b)(5) Motion (see App. pp. 15-16) A hearing was conducted on 2-25-16 @ 2:00 pm; the circuit court judge issued 3-29-16 'order'. Petitioner appealed to South Carolina Court of Appeals and pauper status was denied on 6-24-16; he sought reconsideration therewith rehearing and the Court's panel issued 11-7-16 order; he comes to this Court for appellate and judicial review.

ARGUMENT(S)

1. THE LIBERTY INTEREST ANNOUNCED OR SET FORTH IN FURTICK AND COOPER WARRANT IN FORMA PAUPERIS STATUS WHEN A PRO SE PRISONER SEEK APPELLATE REVIEW AS MATTER OF RIGHT

The liberty interest announced or set forth in Furtick and Cooper warrant in forma pauperis status when a pro se prisoner seeks appellate review as matter of right. Cooper v. SCPPPS, 661 S.E.2d 106, 112 (2008) Cooper holds, "We find the apparent failure by the Parole Board to consider the requisite statutory criteria in rendering its decision constitutes an infringement of

a state-created liberty interest and, thus warrants minimum due process procedure."

The court of appeals' 6-24-16 'order' ruled, "the motion to proceed in forma pauper is denied pursuant to Ex Parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995)" (App. p. 21) Even though James may not have cited Cooper therein the motion to proceed in forma pauperis. Ex Parte Martin does not hold that an indigent may be arbitrarily and capriciously denied pauper status which is what the court of appeals order ruled.

In Ex Parte: Martin v. State, 471 S.E.2d 134, 135 (1995), the Court wrote, "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, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971)." Therefore, the ruling is unconstitutional in James's appeal. (See App. pp. 28)

2. COURT OF APPEALS AND COURT'S PANEL ERRED DENYING PETITIONER'S MOTION TO PROCEED IN FORMA PAUPERIS, REHEARING AND RECONSIDERATION REQUEST ON PAUPER STATUS

The court of appeals and court's panel erred denying James's motion to proceed in forma pauperis, rehearing and reconsideration request on pauper status. The order (see App. p. 28) pointed, "there is no basis for reinstating or granting a rehearing. The 'order' (p. 3) of the circuit court averred:

The Plaintiff is also not entitled relief pursuant to Rule 60 due to the length of time expired from the Court's decision to the filing of the motion. Pursuant to Rule 60, the 'motion shall be made within a reasonable time.' Rule 60 SCRPC. Nine years have elapsed, this cannot be considered reasonable when seek relief. App.

p. 24

The 3-29-16 order failed to note as it is set forth in the statement of the case (p. 3) that James filed and served the Rule 60(b)(5) Motion the summer (7.10.08) of 2008 shortly thereafter the Cooper decision; it cannot be faulted or pointed to petitioner that the circuit court failed to go forward, proceed with the initial motion which had to be supplemented on 10-15-15 to secure a hearing but the James decision of 12-5-14 (see App. pp. 17-21) was not received by petitioner until January 2016; it was received in time to present at the 2-26-16 hearing.

Which shows (contrary to Judge Lee's 3-29-06 order (p. 4); it stated "Plaintiff did not appeal that decision and it has become final") that he was successful in securing a reversal of ALJ Anderson's 5-19-05 order (App. pp. 18) More it was the basis of Judge Lee's decision and Court of Appeals' decision--res judicata.

3. THE (LANEY) COURT ACTED IN WANT OF JURISDICTION ON THE ARMED ROBBERY INDICTMENT

The (LANEY) Court acted in want of jurisdiction on the armed robbery indictment; again there was the consolidated indictment(s) for homicide, The State v. Maurice Mack et al., no. 79GS43-139 (Annexed hereto) which was true-billed at the March 1979 term of Court of General Sessions of Sumter County. The government chose the joint arraignment on 3-26-79. State v. Blakely, 752 S.E.2d 29, at 35 (S.C. App. 2013) (for a discussion on South Carolina mandatory joinder rule).

Petitioner proceeded to pre-trial proceeding before the (FINNEY) court on 6-1-79 (see Excerpt(s) from tr. p. 3 ll. 1-3) There was a Brady (discovery) ruling therein for Mack (p. 35 ll. 17-20); Solicitor of Third Judicial Circuit commented or set forth:

The information for his defense in the armed robbery case, the case has been called and will be called as murder.
(p. 35 ll. 2-4)

What is important under rule(s) of law, the FINNEY Court adhered thereto the law of the case doctrine from more than one point of view concerning Mack and followed the Cook v. Taylor, 252 S.E.2d 923 (1978) rule (of law). There were other motion(s) therein, severance and etc. Blakely supra since the guilty pleas were jointly on June 18, 1979; it is apparent separation was denied. Moreover, South Carolina has no plain error rule. see State v. Gentry, 610 S.E.2d 494 (2005) but see also State v. Hewins, 760 S.E.2d 814, 821 (2014) And the government did not appeal pre-trial ruling(s).

The Laney Court adhered to the law of the case for Mack and he deviated on James; even more he violated the long standing Rule 60 of Circuit Court Rules of Practice (CCRP) and relevant case law(s) by going forward without jurisdiction, contrary to res judicata doctrine on armed robbery indictment. See indictment no. 79GS43-141 annexed hereto Further evenmore pre-trial discovery, can/may/has established, set forth the law of the case. Davis v. Parkview Apartments, 762 S.E.2d 535, 543 (2014); Hewins supra. Fover dictates, commands that a circuit court judge has to have power to have adequate, suf-

ficient jurisdiction. In Re Estate of Hever, 754 S.E.2d 875, 8 (2014). The record(s) demonstrate, shows and set forth (on its face) that Laney had inadequate, no jurisdiction on the armed robbery indictment as a matter of South Carolina law(s)..

Since petitioner's 60 year sentence has expired as of 2016 (see 'Conviction Summary' annexed hereto); he should be released forthwith--immediately.

This 7 day of January 2017.

/s/ *Isiah James, Jr.*

Isiah James, Jr., 096883

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the PETITION FOR WRIT OF HABEAS CORPUS to be mailed, postage prepaid, to the parties set forth below herein this 7 day of January 2017.

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