

**RECEIVED**

**JAN 25 2017**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**S.C. SUPREME COURT**

---

APPEAL FROM THE CIRCUIT COURT  
The Honorable Cordell J. Maddox, Circuit Court Judge  
Appellate Case No. 2016-000945  
Case No. 05-CP-40-02795

---

Appellate Case No. 2017-000050

---

S.C. DEPARTMENT OF PROBATION, PAROLE  
AND PARDON SERVICES.....RESPONDENT

v.

ISIAH JAMES JR.....PETITIONER

---

**RETURN TO PETITION FOR WRIT OF CERTIORARI**

---

**Tommy Evans, Jr.**  
**Assistant General Counsel**

**South Carolina Department of Probation,  
Parole and Pardon Services  
P.O. Box 50666  
Columbia, South Carolina 29250  
(803) 734-9220**

**ATTORNEY FOR RESPONDENT**

**TABLE OF CONTENTS**

Table of authorities.....i

Statement of the case.....1

Arguments

    1. The Petitioner failed to file this writ within the time limit imposed under the rules; therefore, it should be subject to dismissal.....3

    2. The Petitioner was not entitled to proceed with his appeal *in forma pauperis*.....4

    3. The Petitioner never revealed a cause of action where relief can be granted so this cause of action was properly dismissed by the lower court.....5

Conclusion.....7

**TABLE OF AUHORITIES**

**CASES**

*Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780 (1971).....4

*Furtick v. S.C. Dept. of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003).....4

*Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex*, 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed 668 (1979).....4

*James v. S.C. Dept. of Probation, Parole and Pardon Services*, 376 S.C. 392, 656 S.E.2d 399 (2008).....2

*Martin v. State*, 321 S.C. 533, 471 S.E.2d 134 (1995).....4

*Ortwein v. Schwab*, 410 U.S. 656, 93 S.Ct. 1172 (1973).....4

*Sullivan v. S.C. Dept. of Corrections*, 355 S.C. 437, 586 S.E.2d 124 (2003).....4

*United States v. Kras*, 409 U.S. 434, 93 S.Ct. 631 (1971).....4

**RULES**

Rule 242(c) SCACR.....3

Rule 242(b) SCACR.....5

Rule 260(a) SCACR.....4

**STATUTES**

S.C. Code Ann. §14-9-210(Supp. 2015).....5

## STATEMENT OF THE CASE

On October 25, 1978, the Petitioner along with his co-defendant Maurice Mack robbed the victims with a pistol taking a quantity of marijuana. During the commission of this robbery both victims were shot and killed. The Petitioner and his co-defendant were later arrested and charged with two counts of murder and armed robbery. They both were later indicted by the Sumter County Grand Jury for each offense.

On June 18, 1979, the Petitioner appeared before the Honorable Dan F. Laney pleading to two counts of voluntary manslaughter, and one count of armed robbery. Upon the conclusion of this appearance the Court sentenced the Petitioner to a thirty year period of incarceration for each count of voluntary manslaughter, and twenty-five (25) years imprisonment for armed robbery. The Court ordered that each of these offenses are to be served consecutively, giving the Petitioner a total sentence of eighty-five (85) years. Pursuant to South Carolina law the Petitioner became eligible for parole upon the service of ten (10) years imprisonment. The Petitioner initially became eligible for parole on February 17, 1988.<sup>1</sup> At the conclusion of this hearing the Board decided to deny the Petitioner an opportunity to be released on parole. Petitioner has appeared before the Board an additional eight times each resulting in a denial of parole.<sup>2</sup>

In 2003 after waiving his parole hearing, the Petitioner filed a notice of appeal before the Administrative Law Court. Within this appeal the Petitioner alleged that he was unlawfully being allowed to appear before the Board bi-annually. On May 19, 2005, the Honorable Ralph King Anderson, II, Chief Administrative Law Judge issued an order dismissing the Petitioner's appeal. After this decision the Petitioner filed a notice of appeal before the South Carolina Court of

---

<sup>1</sup> Due to good time credits the Petitioner became eligible for parole upon the service of 9 years.

<sup>2</sup> The Plaintiff waived his hearings on March 5, 2003, March 7, 2007, March 4, 2009, June 5, 2013, and July 22, 2015, he is scheduled to appear before the Board again on July 22, 2017.

Appeals. In the case of *James v. S.C. Dept. of Probation, Parole, and Pardon Services*, 376 S.C. 392, 656 S.E.2d 399 (2008), the Court of Appeals decided that subjecting the Petitioner to biannual hearings was the law at the time he committed the offense, so there exist no violation of ex post facto.

Upon receiving this Court of Appeals decision the Petitioner decided to file a summons and complaint against the Respondent in the Richland County Court of Common Pleas. Within this complaint the Petitioner alleged the denial of parole violated ex post facto and denied him his constitutional rights. Upon receipt of this complaint, the Respondent filed a motion for summary judgment. On March 29, 2006, the Honorable Alison Renee Lee issued an order granting the Respondent's motion for summary judgment.

Upon being denied this avenue for relief the Petitioner later filed a petition for writ for habeas corpus in the United States District Court. Another motion for summary judgment was filed and granted by the Honorable Terry L. Wooton, United States District Judge.<sup>3</sup>

The Petitioner later filed a notice of motion and motion for relief pursuant to rule 60(b)(5) of the South Carolina rules of civil procedure, and another petition for writ for habeas corpus. Within this motion the Petitioner argued that he is entitled relief pursuant to Rule 60 of the South Carolina rules of civil procedure, because when convicted the Court did not have jurisdiction. The Respondent filed a motion for summary judgment which was granted by the Honorable Cordell J. Maddox. Upon this granting of summary judgment the Petitioner filed a notice of appeal before the South Carolina Court of Appeals which was later dismissed due to his failure to pay filing fees.

The Petitioner now files this petition for writ of certiorari before the South Carolina Supreme Court. The Respondent will argue that the Petitioner filed this petition beyond the time

---

<sup>3</sup> The Petitioner has filed a petition for writ of certiorari before the United States Supreme Court.

allowed pursuant to the rules, that the Court of Appeals was correct in the denial of *in forma paupers*, and the Petitioner failed to present a cause of action where relief can be given. This conviction and sentence was lawful pursuant to South Carolina law; the Petitioner's cause of action was rightfully dismissed by the lower court, and the Court of Appeals lawfully denied the Appellant's appeal. This petition for writ of certiorari be subject to denial.

### ARGUMENTS

- 1. The Petitioner failed to file this writ within the time limit imposed under the rules; therefore, it should be subject to dismissal.**

The Petitioner has filed this petition for writ of certiorari before this Court seeking a determination regarding the decision of the Court of Appeals and the Circuit Court. The Respondent argues that the Petitioner failed to file this petition within the time limit imposed under the rules; therefore, this petition should be denied.

The South Carolina Court of Appeals dismissed this matter per order signed by the Clerk on August 16, 2016. Upon being notified of this dismissal the Petitioner decided to file a motion for reconsideration which was denied on November 7, 2016. The Petitioner did not file this petition for writ of certiorari until January 7, 2017, some sixty (60) days after the final order denying the reconsideration issued by the Court of Appeals. This petition was filed well beyond the time limit imposed under the South Carolina Appellate Court rules. A petition for writ of certiorari shall be served on opposing counsel and filed with proof of service with the Clerk of Court of Appeals and the Clerk of Supreme Court within thirty (30) days after the petition for rehearing or reinstatement is finally decided by the Court of Appeals. Rule 242(c)SCACR. The Petitioner failed to file this petition until sixty (60) days after the final decision of the Court of Appeals. Since the Petitioner failed to file this petition within the thirty day time limit imposed under the rules this petition should be denied. Whenever it appears that an appellant or a petitioner has failed to comply with

the requirements of these Rules the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. Rule 260(a) SCACR.

**2. The Petitioner was not entitled to proceed with his appeal *in forma pauperis*.**

The Petitioner requested for the Court of Appeals to allow him to proceed with his appeal without payment of required filing fees. The Court of Appeals rightfully denied the Petitioner's ability to proceed *in forma pauperis*.

In the absence of a statutory provision allowing a general waiver of filing fees, motion to proceed *in forma pauperis* may only be granted, where specifically authorized by statute, or required by constitutional provisions. *Martin v. State*, 321 S.C. 533, 471 S.E.2d 134 (1995). The Petitioner has cited no statutory authorization for the waiver of filing fees in appellant actions.

Constitutional provisions only require the granting of a motion to proceed *in forma pauperis* when a fundamental right is involved. *Martin, supra*. Compare to *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780 (1971)(cost waived in divorce action.); with *United States v. Kras*, 409 U.S. 434, 93 S.Ct. 631 (1971)(costs not waived in bankruptcy action); or *Ortwein v. Schwab*, 410 U.S. 656, 93 S.Ct. 1172 (1973)(costs not waived in a welfare action). Here, the Petitioner is seeking relief regarding the Department's discretionary decision to deny parole. No constitutional right was implicated. *Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex*, 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed. 668 (1979)(holding that there is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence); *Sullivan v. S.C. Dept. of Corrections*, 355 S.C. 437, 586 S.E.2d 124 (2003)(finding there is neither a presumption of parole, nor a right to parole); *Furtick v. S.C. Dept. of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003)(noting there is no constitutionally protected Fourteenth Amendment liberty interest in parole.)

There exist no statutory law that allows the waiver of fees or the guaranteed right to have the case presented before this Honorable Court. The Petitioner argues that the Court of Appeals erred in the denial of this request to proceed *in forma pauperis*. The lower Court's denial of this case to proceed *in forma pauperis* was lawful and should result in a denial of this petition for writ of certiorari.

**3. The Petitioner never revealed a cause of action where relief can be granted so this cause of action was properly dismissed by the lower court.**

The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered: (1) Where there are novel questions of law; (2) Where there is a dissent in the decision of the Court of Appeals; (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court; (4) Where substantial constitutional issues are directly involved; (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. Rule 242(b) SCACR. The allegations raised by the Petitioner does not apply to any of these above referenced reasons as to why this Court may grant writs of certiorari, so this petition should be denied.

The Petitioner continues to argue that the Circuit Court Judge that presided over his case in 1979 failed to have jurisdiction over his case at the time he appeared before the Court. This argument has no merit and was properly dismissed by the lower Court.

The Petitioner was indicted by the Sumter County Grand Jury for the offenses of armed robbery, and murder. All cases in which bill of indictment are so found shall stand for trial by the county court as though found by the grand jury while in attendance upon the county court. S.C. Code Ann. §14-9-210 (Supp. 2015) The Court had jurisdiction over this cause of action so the

Petitioner was not entitled to a reversal by the Court of Appeals nor should this writ be granted by this Court.

The Petitioner has presented no evidence or wrongdoing by the lower Court. The Plaintiff was arrested in Sumter County for the offenses of murder and armed robbery, he was indicted by the Sumter County Grand Jury, and later appeared in the Sumter County Court of General Sessions. There exist no violation of the law in the prosecution of this case. This claim has no merit and was correctly rejected by the lower Court. There was nothing presented revealing unfairness or any violation of the Petitioner's rights. The Petitioner has failed to show the Court any action committed by the State reveals a denial of fairness or a miscarriage of justice; therefore, this petition should be subject to denial.


**CONCLUSION**

For all the reasons set forth above, the Respondent submits this Court should deny this Petition for Writ of Certiorari, and allow this case to remain as properly decided by the Court of Appeals. If the Court grants this Petition for Writ of Certiorari, the Respondent would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

Tommy Evans, Jr.  
Assistant General Counsel

South Carolina Department of Probation,  
Parole and Pardon Services  
P.O. Box 50666  
Columbia, South Carolina 29250  
(803) 734-9220

BY:  \_\_\_\_\_  
Tommy Evans, Jr.  
Assistant General Counsel

Columbia, South Carolina  
January 23, 2017

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

JAN 25 2017

APPEAL FROM THE CIRCUIT COURT  
The Honorable Cordell J. Maddox, Circuit Court Judge  
Appellate Case No. 2016-000945  
Case No. 05-CP-40-02795

S.C. SUPREME COURT

Appellate Case No. 2017-000050

S.C. DEPARTMENT OF PROBATION, PAROLE  
AND PARDON SERVICES.....RESPONDENT

v.

ISIAH JAMES JR.....PETITIONER

**CERTIFICATE OF SERVICE**

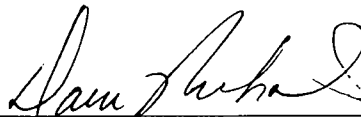
I, Dawn K. Nichols, Executive Assistant, hereby certify that this 23rd day of January, 2017,

I served the following documents by first class mail, postage prepaid as follows:

1. Respondent's Return to Petition for Writ of Certiorari; and
2. Certificate of Service;

I further certify that all parties required by Rule to be served have been served

Isiah James, Jr., #96883  
Goodman Correctional Institution-B-2-39B  
4556 Broad River Road  
Columbia, S.C. 29210



**Dawn K. Nichols,**  
**Executive Assistant**  
S. C. Department of Probation, Parole and Pardon Services  
P. O. Box 50666  
Columbia, South Carolina 29250  
(803) 734-9220