

Robert Palmer
PLAINTIFF(S)

State of South Carolina, et al.
DEFENDANT(S)

SC Court of Appeals

Submitted by: Benjamin H. Culbertson, Presiding Judge	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Plaintiff's Motion for Reconsideration dated 11/22/2016 is DENIED.
(This motion is decided without oral arguments.)

ORDER INFORMATION

This order ends does not-end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson

Benjamin H. Culbertson, Circuit Court Judge
SCRPC Form 4C (03/2013)

2148
Judge Code

Feb. 15, 2017
Date

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SC Court of Appeals

COPY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Robert Palmer,)
)
 Plaintiff,)
)
 vs.)
)
 State of South Carolina, Horry)
 County, and David Weaver,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 C/A NO.: 2016-CP-26-01614

2016 NOV 17 PM 3:12
 Horry County
 Clerk of Court
 Kelly M. Thomas

**ORDER OF DISMISSAL
 AS TO
 THE STATE OF SOUTH CAROLINA**

THIS MATTER CAME BEFORE the Court on June 14, 2016 pursuant to the Defendant State of South Carolina's Notice of Motion and Motion to Dismiss. The State of South Carolina, and all named Defendants, were represented by Lisa A. Thomas, Esquire, of the law firm of Thompson & Henry, P.A. The Plaintiff was represented by Gene M. Connell, Jr., Esquire, of the law firm of Kelaher, Connell & Connor, P.C.

This matter arose after Plaintiff was charged, tried by a jury, and convicted of homicide by child abuse. He appealed to the South Carolina Supreme Court who vacated his conviction, *State v. Palmer*, 413 SC 410 (2015). The Supreme Court opinion stated there was no evidence Palmer was present when the victim was injured or alone with the victim later and aware of the victim's injuries. Plaintiff contends he was wrongly convicted and held for four years.

He brings this suit as to the State of South Carolina alleging that the prosecutor in his criminal trial charged and prosecuted him with no evidence he had committed the crimes. He contends there was no probable cause to charge him because the prosecutor proceeded under a theory that they did not know which of the two Defendants was the principal and which aided

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and abetted after witnessing the injuries to the child, and failed to seek help.

Plaintiff brings this action for false imprisonment, negligence, malicious prosecution, false arrest, and a violation of his civil rights under 42 U.S.C.A. § 1983. Further, he seeks a declaratory judgment that the State of South Carolina and United States Constitutions provide remedies for wrongful conviction including damages, even though South Carolina has no statutory scheme for wrongful conviction.

DEFENDANT'S ARGUMENT

The State of South Carolina argued it is entitled to dismissal pursuant to the South Carolina Rules of Civil Procedure, Rule 12(b)(6) for several reasons. This action is based on the decisions of a prosecutor in charging and trying a defendant.

The Tort Claims Act is the exclusive remedy in a suit against the state for the actions of an employee, S.C. Code Ann § 15-78-70. The exclusions from the waiver of immunity enumerated in the Tort Claims Act state in part, the governmental entity is not liable for a loss resulting from legislative, judicial, or quasi-judicial action or inaction, S.C. Code § 15-78-60(1). Furthermore, "a prosecutor's typical duties are 'judicial' or 'quasi-judicial' in nature." *Williams v. Condon*, 347 S.C. 227, 249, 553 S.E.2d 496 (SC App. 2001). The solicitor is entitled to common law prosecutorial immunity as well. The Plaintiff has not alleged that any employees of the State of South Carolina committed any wrongdoing or acted outside the course and scope of their employment. The prosecutor's decision making occurred as a quasi-judicial function.

In addition, the State asserted this matter should be dismissed due to common law

prosecutorial immunity. The Tort Claims Act states that all other immunities applicable to a governmental entity, its employees, and agents are expressly preserved, S.C. Code Ann. § 15-78-20(b).

The State argued the 42 U.S.C.A. § 1983 cause of action must be dismissed as no "person" as defined by the statute was named.

Finally, the South Carolina Court of Appeals has definitively ruled on all these issues in *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (SC App. 2001). The Court noted that S.C. Code § 15-78-20(b) expressly preserves common law judicial immunity (Id. at 247). The Court of Appeals recognized that the United States Supreme Court concluded that state prosecutors are clothed with immunity and they enjoy absolute immunity (Id at 241).

The Court of Appeals concluded a prosecutor in the employ of the state is immune from personal liability under § 1983 or the South Carolina Tort Claims Act for actions relating to the prosecution of an individual as a criminal defendant while acting as an advocate (Id at 250).

The Court of Appeals further concluded a prosecutor could not be sued in his or her official capacity under either § 1983 or the South Carolina Tort Claims Act for money damages when their actions were judicial or quasi-judicial in nature (Id at 250).

The State argued the declaratory judgment action should be dismissed because Plaintiff's attempt to have the judiciary construct a law for wrongful conviction, when he admits the state does not have such a statutory scheme, under the guise of a declaratory judgment action, is clearly outside the scope of the Declaratory Judgment Act (S.C. Code Ann § 15-53-10) and authority of the judiciary. Plaintiff invites the judiciary to invade the province of the legislature with no precedent nor statutory authority.

PLAINTIFF'S ARGUMENT

The Plaintiff, Robert Palmer, argued that this case presented novel issues and novel issues should never be decided on a 12(b)(6) motion. He cited *Chestnut v. AVX Corporation*, 413 S.C. 224, 776 S.E.2d 82 (2015) wherein he claims the South Carolina Supreme Court held that when novel issues are raised they should never be resolved by the trial court on a motion to dismiss for failure to state facts sufficient to constitute a cause of action.

Plaintiff argues the State of South Carolina should not be dismissed as a named Defendant because Plaintiff is making a constitutional claim and the tort claims act does not limit the constitution. He also cites numerous cases allowing suits against municipalities.

Plaintiff contends in *Connick v. Thompson*, 131 S.Ct. 1350, 1356 (2011) the United States Supreme Court allowed suit for malicious prosecution and § 1983 for failure to train a prosecutor. He interprets the case to state a pattern of violations by untrained employees is necessary to demonstrate deliberate indifference for purposes of failure to train. Plaintiff asserts the Prosecutor's decision to charge under an erroneous theory of the law amounts to a policy subjecting the state to liability and demonstrates a failure to train.

Plaintiff argues that Article I, Section 3 of the South Carolina Constitution protects Plaintiff's right to a remedy in this case and that Article 1, Section 10 provides Plaintiff a remedy for wrongful conviction.

Likewise, Plaintiff contends the US Constitution provides a remedy under the Fifth Amendment. He asserts that if just compensation is required for taking property for public use, that there should be compensation for depriving a person of his liberty, especially since no state law provides it. He also analogizes it to a *Bivens* action under the Fourth Amendment insisting there is an implied cause of action for a violation of a person's right to be free from an unreasonable search and seizure, *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 455 F.2d 1339 (1972).

DEFENDANT'S RESPONSE

Defendant State of South Carolina asserts this action does not present novel issues and was definitively decided as to both state and federal causes of action by *Williams v. Condon*, 347 S.C. 227, 249, 553 S.E.2d 496 (SC App. 2001).

The cases cited in Plaintiff's memorandum for the proposition of not dismissing the State, all pertain to municipalities. It has long been settled law that municipalities may be subject to § 1983 suits under the circumstances set forth in case law. Plaintiff cites no cases extending authority for such suits to states.

Plaintiff's reliance on *Connick v. Thompson*, 131 S.Ct. 1350, 1356 (2011) is misplaced. In *Connick*, the prosecutor was sued individually, not the state. Also, a one time decision by a prosecutor regarding the handling and charging in his case does not evidence a pattern of misinterpreting the law or failure to properly train.

Both state and federal legislatures have not crafted any remedy for wrongful conviction. The fact that Plaintiff's conviction was vacated does not entitle him to damages from any state or federal law or common law. The fact that some states may have statutory remedies has no

precedential value in South Carolina.

Plaintiff received due process. His conviction was vacated and he was released. He received all the due process available in South Carolina. Furthermore, South Carolina was not silent on the issue. Prosecutorial immunity is preserved in both sections 15-78-60(1) and 15-78-20(b) of the Tort Claims Act.

Plaintiff's analogies to the State and US Constitutions lack statutory or case law support. The South Carolina Court of Appeals explicitly declined to extend it as to the Tort Claims Act and 42 U.S.C.A. § 1983 in *Williams v. Condon*, 347 S.C. 227, 249, 553 S.E.2d 496 (SC App. 2001).

CONCLUSIONS

1. The State is immune from suit under the Tort Claims Act. S.C. Code Ann. §§ 15-78-20(b) and 15-78-70(c).
2. Suit against the State is barred by prosecutorial immunity. *Williams v. Condon*, 347 S.C. 227, 249, 553 S.E.2d 496 (SC App. 2001) and § 15-78-60(1) (no liability for judicial or quasi-judicial action).
3. The State is not a person subject to suit under 42 U.S.C.A. § 1983, and sovereign immunity bars this suit.
4. Plaintiff has failed to state any claim upon which relief may be granted as to the Defendant State of South Carolina.

ORDER

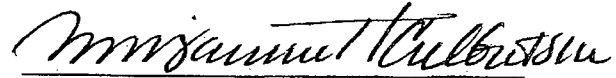
Based on the Complaint presented and arguments of counsel, it is hereby

ORDERED that Defendant The State of South Carolina is hereby dismissed with

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[Signature]

prejudice from the above-captioned matter pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*, and that the declaratory judgment action is dismissed.

IT IS SO ORDERED.



Benjamin H. Culbertson
Judge for the Fifteenth Judicial Circuit

Nov. 10, 2016
Conway, South Carolina
(Georgetown)