

The State of South Carolina
In The Court of Appeals

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MAR 07 2017

SC Court of Appeals

Appeal From York County
Court of Common Plea

S. Jackson Kimball, Equity Court Judge

Case No: 2016-CP-46-2414

Ralph L. Erwin, Appellant

V.

South Carolina Dept. of Probation, Parole &
Pardon Services & State of South Carolina,
Respondents.

Record on Appeal

Ralph L. Erwin

140 W. Centennial St.

Apt. #38-B

Spartanburg, S.C. 29303

864-494-2269

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Complaint

(In its Entirety including Caption and Signature)

Appellant's Exhibit 1

(Indictment in its Entirety including Caption And Signature.)

Appellant's Exhibit 2

(Institutional Record in its Entirety including Caption And Signature.)

Appellant's Exhibit 3A

(Act # 562 P.1456, Section 11 P.1460.)

Appellant's Exhibit 3B

(In its Entirety including Caption And Signature.)

Appellant's Exhibit 4A

(PP. 41-42 Lines 28-31, Lines 1-2.)

Appellant Exhibits 4B

(In its Entirety including Caption And Signature.)

Answer To Complaint e.g.

(Motion To Dismiss in its Entirety including -

Caption and Signature.)

Objection To Answer, e.g.

(In its Entirety including Caption And
Signature.)

Exhibit #1 With Objection

(In its Entirety including Caption And Sign-
ature.)

Transcript

(Opening Statement beginning at PP. 2-22.)

Final Order

(In its Entirety including Caption And
Signature.)

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2016 AUG 29 PM 1:34
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

STATE of South Carolina
County of York

Ralph L. Erwin #051231
Applicant,

V.
S.C. Dept. of Probation,

Parole & Pardon Board &

STATE of South Carolina
Respondents.

South Carolina Tort
Claims Act

Case No: 2016CP46-2414

Complaint
False Imprisonment

STATEMENT of the CASE

The Tort of False Imprisonment is Another lineal descendent of The Action of Trespass. (Prosser Section 11). The South Carolina Supreme Court has STATED That To establish A Cause of Action For False Imprisonment Applicant must Prove That: (1) defendant restrained Applicant; (2) The restraint WAS intentional; And (3) The restraint WAS un Lawful. (32 AM. Jur. 2D False Imprisonment Section 12) 2007).

(1)

The Applicant in this Particular matter is going to attempt to do just that as follows:

FACTS #1

Hopefully for sake of time the Applicant has forwarded a copy of his chronology from another case and has enjoined it alone with his complaint. Applicant Ralph L. Erwin, in 1961 Plead guilty to murder with the recommendation of mercy of the court. Applicant was sentenced to life imprisonment with parole being a constitutional part of the Applicant's sentence. Applicant now resides at 140 W. Centennial St, Apt. #38-B, Spartanburg S.C. 29303 where he has been under the jurisdiction of the S.C. Dept of Parole, Probation & Pardon Services since 2007 till present. When Applicant was sentenced he was not sentenced to life without parole. (See Exhibit #1)

In fact when Applicant was sentenced he was sentenced as a Non-Violant

offender. (See Also Exhibit #2 Institutional Record). Since The S.C. Dept. of Probation, Parole, & Pardon Services have Applicant on Parole it is obvious he is being Restrained. The Attorney General Alone with the S.C. Dept. of Probation, Parole & Pardon Service Are Saying The Applicant is on Parole for the Balance of his entire Life which is incorrect According To Statute. This ACT establishes their ACTIONS Are intentional.

FACTS #2

When Applicant Received his Life Sentence In 1961 A Life Sentence WAS basically AN Indeterminate Sentence. The South Carolina General Assembly Created the Parole Board In 1942. (See Exhibit #3-A) Act No. 562.

During This Same year The General Assembly Needed To determine The Amount of years A Life Term would be For Parole Purposes since A Person had To do A certain Amount of years

To be Considered For Parole. IT WAS determined AT THAT TIME THAT A Life Sentence WAS Considered THE SAME AS A THIRTY (30) YEAR Sentence. (See Exhibit #3-B ATTORNEY General ANNUAL Report To THE General Assembly Addressing THIS SAME issue, NOT ONLY To THE Parole Board but, ALSO To THE General Assembly).

No Where in THIS Act is it saying THAT Life means Till THE death of THE defendant. No other Authority have Jurisdiction To Suspend THAT Law besides THE Legislative Committee.

As of THE Present date No other Statute became effective To Change Section 11 of THE Act Creating THE Parole Board besides Section 16-3-20 Which does STATE THAT Life means Till death. However, THE Applicant in THIS Case had Already served THIRTY years before THIS Act became effective.

Moreover, See WHAT Our Very own South Carolina Supreme Court has Compared A THIRTY Year Sentence To. (See Exhibits

4-A AND 4-B) Page 41-42).

Conclusion

The essence of A CLAIM of False Imprisonment is The UNLAWFUL interference with The Plaintiff's Personal Liberty, The Foundation of The Cause of Action is The Right which even A guilty man has To be Protected Against ANY UNLAWFUL RESTRAINT of his Personal Liberty. Plaintiff in This Action States That he has been unlawfully RESTRAINED of his Liberty For The Past Twenty (24) years by The S.C. Dept. of Probation, Parole AND Pardon Services AND The State of South Carolina. For All The REASONS STATED Above The Applicant In This Case Would ASK This Court To AWARD him A TOTAL of \$3,000,000.00 in TOTAL For Pain AND Suffering, emotional distress, Loss of Life, AND \$3,000,000.00 For Punitive DAMAGES.

The Applicant would Also ASK This Court To AWARD him \$400.00 he had To Pay For A Psychological examination by The S.C. Parole Board.

And Also monies he has Paid To The Parole Board For Supervision Fees Since he WAS LAST Paroled in 2007. Finally As This Court Can Witness From The Financial Summons From The defendants Attached To This Complaint, There is no doubt in The Plaintiffs mind That This is The Purpose of these Unconstitutional Acts That They Should pay For because They Are definately intentional. For All The Reasons Stated Above The Applicant Pray That he will be And Should be AWARDED his Request in This MATTER.

Ralph L. Erwin
Ralph L. Erwin #051231
148 W. Centennial St.
Apt. #38-B

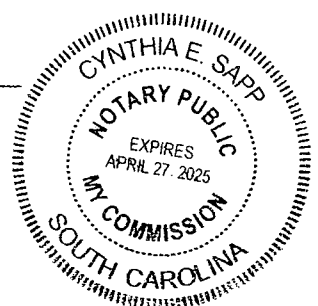
August 12 2016

Sworn To And Subscribed Spartanburg, SC,
before me this 12 day 29303
of August, 2016. Ph. # 864-504-4704

Cynthia E Sapp
Notary Public

My Commission Expires April 27, 2025

(6)



Exhibit

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

RALPH L. ERWIN,

Plaintiff,

v.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE, AND PARDON
SERVICES, and STATE OF SOUTH
CAROLINA,

Defendants.

IN THE COURT OF COMMON PLEAS

CHRONOLOGY

C.A. No. 2013-CP-42-1355

Date	Event
March 16, 1942	Attorney General responded to letter from SC Probation & Parole Board asking: “Whether a life term prisoner can be released by our Board before service of at least five years of his sentence, and whether or not our Board has under the creating Act any authority to take official action on a case where the sentence was for one year or less.” “If a prisoner is a life term: he is treated as if his sentence had been for thirty years. If the life term’s sentence had been for thirty years when when he shall have served one-third of a thirty year sentence plus five years, minus three years allowed for good time, the life term would be entitled to have his case considered. That is the life term will have to serve at least twelve years of his life term sentence.”
March 24, 1961	Pled guilty to murder sentenced to life under 1952 murder statute §16-52 which provided: Whoever is guilty of murder shall suffer the punishment of death; provided however, that in any case in which the prisoner is found guilty of murder the jury may fins a special

	verdict recommending him to the mercy of the court, whereupon, the punishment shall be reduced to imprisonment in the penitentiary with hard labor during the whole lifetime of the prisoner. §55-614 Effect of Parole provided: Any prisoner who shall have been paroled shall be subject during the remainder of his original term of imprisonment, up to the maximum, to the conditions and restrictions imposed in the order of parole or by law imposed. Every such paroled prisoner shall remain in the legal custody of the Board and may at any time in the order of the Board be imprisoned as and where therein designated.
June 16, 1971	First parole
August 20, 1975	Parole revoked
January 20, 1982	Second parole
July 24, 1985	Parole revoked
October 10, 1991	First PCR relating to retroactive effect of 1986 Criminal Justice Improvement Act
October 22, 2003	Second PCR raising: • "I was convicted under a statute which is unconstitutional" • "The statute of limitations has run out on the sentence" Dismissed as successive and time barred.
March 2007	Third parole
April 10, 2007	Filed first habeas corpus petition in federal court raising: • "I was convicted under a statute that was declared unconstitutional" • "Statute of limitations has run out on his life sentence" Summary judgment granted (time barred). 6:07-cv-00959-RBH
October 19, 2009	Filed Third PCR raising: "The Statute of Limitation has run out on the sentence."
June 2011	Filed second habeas corpus action in federal court raising: • Statute of limitation has run out on sentence

	• Cruel and unusual punishment Dismissed by Judge Harwell (successive). 6:11-cv-01070-RBH
June 2011	Filed third habeas corpus action in federal court raising: • "Ex post facto violation – the statute of limitations has run out on his sentence" • "Cruel and unusual punishment – violation of 14th and 8th Amendments" Dismissed by Judge Harwell. 6:11-cv-02146-RBH
February 17, 2012	Filed fourth habeas corpus petition contending that he was challenging "the expiration date of the sentence has expired." Dismissed by Judge Harwell. 6:12-cv-00437-RBH
June 2012	Filed 1983 civil rights action against defendants contending that his sentence has expired. Dismissed by Judge Harwell due to 11 th amendment immunity.
August 1, 2012	Final order of Judge Alford regarding third PCR finding that the issue regarding the length of sentence was addressed in 2003 and res judicata barred the claim
March 18, 2013	Mailed "Memorandum in support thereof" to Attorney General's office and South Carolina Department of Probation, Parole and Pardon Services

I (the) Ralph Leroy Erwin
hereby appear in my (our) own proper person(s) and plead guilty to the within indictment

or to
Witness:
Tom B. Williams
C. C. P. and G. S.

Ralph Leroy Erwin 819 Atlanta

EXHIBIT #1

The Sentence of the Court is that the Defendant(s)

Ralph Leroy Erwin be confined at hard labor upon the Public Works of York County for a period of thirty days commencing at once at 10:00 a.m. with time for the period in the State Penitentiary or pay a fine in the amount of

day of January 1961
Presiding Judge

The State of South Carolina,
County of YORK

COURT OF GENERAL SESSIONS
JANUARY Term, 19 61

THE STATE
vs.

RALPH LEROY ERWIN

INDICTMENT FOR
MURDER

GEORGE E. COLEMAN
Solicitor

Tom Bies
Tom Hargrave
Foreman of Grand Jury

WITNESSES

Clifton Fields

Elizabeth Hicks

Ed Groves

Grover Noe S

Edna Allison S

646

VERDICT

Guilty with
the intent of
the killing of
the victim
Charles W. Presler
Foreman

45

64

The State of South Carolina,

County of YORK

S. 25—INDICTMENT FOR MURDER
THE STATE SOVEREIGNTY, PROTECTIVE OF

At a Court of General Sessions, begun and holden in and for the County of YORK

in the State of South Carolina,

YORK COUNTY

Court House, in the County and State aforesaid,

said, on the FIRST Monday of JANUARY

in the year of our Lord one thousand nine hundred and SIXTY-ONE.

The Jurors of and for the County aforesaid, in the State aforesaid, upon their oath, Present:

That RALPH LEROY ERWIN, late of the County and State aforesaid,

on the 24th day of December

in the year of our Lord one thousand nine hundred and sixty with force

and arms, at York County Courthouse in the County

York

and State of South Carolina

in and upon one Mrs. Eula Fields, late of the County and State aforesaid,

feloniously, wilfully and of his malice aforethought, did make an assault, and that the said

Ralph Leroy Erwin

did then and there feloniously

wilfully and of his malice aforethought with a loaded shotgun

shoot, hit, penetrate and wound; giving to the

Mrs. Eula Fields

thereby in and upon the

body, head and limbs

her of late the said Mrs. Eula Fields

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JAN 25 1961
CLERK
STATE OF SOUTH CAROLINA

one mortal wound; of which said mortal wound
 the said Mrs. Eula Fields did then and there die on the 21st day of December, 1960
 in the County of York, State of South Carolina.

CERTIFIED TRUE COPY
 2003 OCT 23 AM 11:18
 DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

And so the Jurors aforesaid, upon their oath aforesaid, do say that the said

Ralph Leroy Erwin

her ~~from~~ the said Mrs. Eula Fields then and there
 in the manner and by the means aforesaid, feloniously, wilfully and of his malice aforethought, did kill
 and murder, against the form of the Statute in such case made and provided, and against the peace and
 dignity of the State.

George F. Coleman
 GEORGE F. COLEMAN

Solicitor.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF GENERAL SESSIONS

The sentence of the court is that you, Ralph Leroy Erwin, be confined
at hard labor in the State Penitentiary during your whole life time.


JAMES M. BRAILSFORD, JR.
Presiding Judge
6th Judicial Circuit

March 24, 1961
York, S. C.

Exhibit #2

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 02/15/12
OMCOMITA RELEASE DATE SCREEN C023981
SCDC# > 51231 LOC: SPARTANBURG
ERWIN, RALPH LEROY SCDC CLASSIFICATION...: NON-VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
SEXUAL PREDATOR...:
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:
CURRENT SENTENCE: CONSECUTIVE SENTENCE ...
LIFE CURRENT SENT START DATE: 03/24/1961
PROJECTED COMPLETION DATES
MAXOUT DATE: 99/99/9999
YOY SIX YEAR DATE: CURRENT EWC ..
INITIAL PAROLE DATE: 01/16/1979 CURRENT EEC ..
NEXT PAROLE HEARING DATE: 02/07/2008

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ..: 000
TOTAL SERVICE TIME EARNED ...: 000000

PFKEYS: 5: HISTORY OF DATE CHANGES

4-© 1 Sess-1 167.7:50.33

SCDC1424

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SPARTANBURG COUNTY
2014 AUG 27 AM 9:24
M. HUFF BLACKLEY

SCHE # 51231 (CONTINUED)

[illegible][illegible]

START DATE	END DATE
10/1/77	10/1/77
10/2/77	10/2/77
10/3/77	10/3/77
10/4/77	10/4/77
10/5/77	10/5/77
10/6/77	10/6/77
10/7/77	10/7/77
10/8/77	10/8/77
10/9/77	10/9/77
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10/27/77	10/27/77
10/28/77	10/28/77
10/29/77	10/29/77
10/30/77	10/30/77
10/31/77	10/31/77

TERMINATION
REASON
RELEASED/PARDIED
INMATE REQUEST
INSTIT TRANSFER
INSTIT TRANSFER
INSTIT TRANSFER
INMATE REQUEST
REMOVAL FROM 7 DAY CREDIT
INSTIT TRANSFER
INSTIT TRANSFER
LATERAL TRANSFER
COURT
INSTIT TRANSFER
DEMOTION
PROMOTION
PROMOTION
INSTIT TRANSFER
- PROMOTION -
INSTIT TRANSFER
INMATE REQUEST
INMATE REQUEST
PROMOTION
RELEASED/PARDIED
INSTIT TRANSFER
INSTIT TRANSFER
TERM CODE CHG TO 13

10B
10F
YF5
YF5
YF5
YF5
YF5
YF5
YF7
YF7
YF5
YF5
YF5
YF7
YF7
YF7
YF7
YF7
YF7

FNN
DATE

TERMINATION
REASON :

SCHOOL ASSIGNMENT: *****
***** END OF REPORT *****

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SPARTANBURG COUNTY
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THOMAS BLACKLEY

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 02/15/12

FRUITN, RALPH LEROY FBI # 7974920 SID# SC00076575 SCDC # 51231

00239

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

INSTITUTION: SPARTANBURG CO

SECURITY/CLUST: 2 MINIMUM IN

CURR INCARC SENT: 1999 YRS 0 MOS 0 DYS

CENTRAL MONITORING: NO

SOCIAL SECURITY #: [REDACTED] 4099

NORM: 0000

RACE: B SEX: M

PROB MAXOUT DATE: 99/99/9999

PROB PAROLE DATE: 02/07/2008

ENC JOR: NO CURRENT JOR

EDUC PGM: NO CURR EDUC PROGRAM

ENC LEVEL: 0 EEC LEVEL:

ASSIGNMENT: BUILDING #1

CURRENT PROGRAM: LONG TERM OFFENDERS GROUP

AGE: 48 DATE OF BIRTH: 1/1/43

PREVIOUS NUMBERS:

* NO PREVIOUS NUMBERS *

CURRENT OFFENSES

SENTENCE

YRS MOS DYS COUNTY

SENTENCE

START V/NO CATEGORY

ESCAPE

1 0 0 RICHMOND

11/1/1978 II

4

MURDER BEFORE 1977, JUNE

999 99 999 YORK

3/24/1961 II

5

RITOR COMMITMENTS OVER 90 DAYS:

11/13/77

*POSSESS STOLEN PROPERTY

0 YRS 6 MOS 0 DYS

4/3/73

*BREAK-ENT W/INTENT-STEAL

7 YRS 0 MOS 0 DYS

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINERS

NO DETAINERS

ESCAPES:

1/12/83

OTHER ESCAPE RELATED CODE NOT IN TABLE

4/7/77

ESCAPE CLASS II

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

STORY OF MOVEMENTS:

3/15/77

SPARTANBURG CO

PAROLE

PAROLE BOARD ACTION

2/7/77

ALLENDALE

INCARCERATED

ADMINISTRATIVE

2/7/77

RIDGELAND

INCARCERATED

COURT/PAROLE HEARING VIA

2/15/76

ALLENDALE

INCARCERATED

ADMINISTRATIVE

2/15/76

RIDGELAND

INCARCERATED

COURT/PAROLE HEARING VIA

10/6/75

ALLENDALE

INCARCERATED

ADMINISTRATIVE

6/12/72

PERRY

INCARCERATED

ADMINISTRATIVE

8/14/94

ALLENDALE

INCARCERATED

ADMINISTRATIVE

8/31/95

TRENTON

INCARCERATED

ADMINISTRATIVE

10/22/92

TYGER RIVER LOW

INCARCERATED

RETURN FROM COURT

10/19/92

YORK CO

ADTH ABSENCE (AWI)

TO COURT

6/19/92

TYGER RIVER LOW

INCARCERATED

ADMINISTRATIVE

6/12/92

YORK CO

ADTH ABSENCE (AWI)

TO COURT

3/7/90

TYGER RIVER LOW

INCARCERATED

ADMINISTRATIVE

3/3/89

WATERFEE RIVER

INCARCERATED

ADMINISTRATIVE

5/24/88

BROAD RIVER

INCARCERATED

ADMINISTRATIVE

8/30/85

CENTRAL

INCARCERATED

ADMINISTRATIVE

7/24/85

MIDLANDS R&F

INCARCERATED

PAROLE VIOLATOR

7/24/85

RICHMOND CO

PAROLE

RETURN FROM ABSCONTION

1/12/83

UNK

DEAD TIME

WARRANT ISSUED

1/3/82

NORTH CAROLINA

PAROLE

PAROLE BOARD ACTION

12/6/81

CENTRAL

INCARCERATED

ADMINISTRATIVE

12/3/80

MIDLANDS R&F

INCARCERATED

DISCIPLINARY

3/19/80

FAIRFIELD CO DE

INCARCERATED

ADMINISTRATIVE

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Exhibit #3-A

until the sum of Seven Thousand, Five Hundred (\$7,500.00) Dollars, or a sum similar to the one to be borrowed, is available as a donation from the P.W.A. or some other Governmental Agency. The note so executed is hereby secured by one half ($\frac{1}{2}$) of one (1) mill of the millage fixed in Section 6 of Section 1 of the Act herein amended. This one half ($\frac{1}{2}$) mill when collected by the Treasurer of Sumter County shall be applied by him as collected at the end of each month upon the payment of the said note, or notes."

SECTION 2: Repeal.—All Acts or parts of Acts inconsistent herewith are hereby repealed.

SECTION 3: Time effective.—This Act shall take effect upon its approval by the Governor.

Approved the 6 day of Oct 1941

(R547, S141, H444, of 1941)

No. 562

AN ACT to Provide for the Suspension of Sentences and Use of Probation in Criminal Cases; to Provide for the Creation of the South Carolina Probation and Parole Board and to Prescribe Its Duties and Powers and the Terms of Office and Compensation of the Members; to Provide for the Appointment of a Supervisor of Probation and Parole and Probation Officers and to Prescribe Their Powers, Duties, Terms of Office and Compensation, and to Devolve the Powers, Duties and Authorities of the Pardoning Board of This State Upon the South Carolina Probation and Parole Board.

BE IT ENACTED by the General Assembly of the State of South Carolina:

SECTION 1: After conviction or plea except where punishment is death or life imprisonment judges of courts of record with criminal jurisdiction may suspend sentence and place defendant on probation or may impose fine and place defendant on probation.—That after conviction or plea for any offense, except a crime punishable by death or life imprisonment, the judge of any Court of record with criminal jurisdiction at the time of sentence may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant in probation.

SECTION 2: Probation officer report on offenses and defendants.—That, when directed by the Court, the probation officer shall fully investigate and report to the Court in writing the circumstances of the offense and the criminal record, social history, and present condition of the defendant, including, whenever practicable, the findings of a physical and mental examination of the defendant. When the services of a probation officer are available to the Court, no defendant charged with a felony, and, unless the Court shall direct otherwise in individual cases, no other defendant shall be placed on probation or released under suspension of sentence until the report of such investigation shall have been presented to and considered by the Court.

SECTION 3: Conditions of probation.—That the Court shall determine and may impose, by order duly entered, and may at any time modify the conditions of probation and may include among them the following or any other: That the probationer shall:

- (a) Refrain from the violation of any State or Federal penal laws;
- (b) Avoid injurious or vicious habits;
- (c) Avoid persons or places of disreputable or harmful character;
- (d) Permit the probation officer to visit at his home or elsewhere;
- (f) Work faithfully at suitable employment as far as possible;
- (h) Pay a fine in one or several sums as directed by the Court;
- (j) Support his dependents;
- (k) Follow the probation officer's instructions and advise regarding recreational and social activities.

SECTION 4: Period of probation or suspension of sentence—discharge—arrest probationers—revoke dispose of case.—That the period of probation or suspension of sentence shall not exceed a period of five years and shall be determined by the Judge of the Court and may be continued or extended within the above limit. Upon the satisfactory fulfillment of the conditions of probation or suspension of sentence the Court shall by order duly entered discharge the defendant. At any time during the period of probation or suspension of sentence, the Court may issue or cause the issuing of a warrant and cause the defendant to be arrested for violating any of the conditions of probation or suspension of sentence. Any police officer, or other officer with power of arrest, upon the request of the probation officer, may arrest a probationer. In case of an arrest the arresting

officer shall have a written warrant by said probation officer setting forth that the probationer has, in his judgment, violated the conditions of probation and said statement shall be warrant for the detention of said probationer in the county jail, or other appropriate place of detention, until said probationer can be brought before the Judge of the Court. Such probation officer shall forthwith report such arrest and detention to the Judge of the Court and submit in writing a report showing in what manner the probationer has violated his probation. Upon such arrest, the Court shall cause the defendant to be brought before it and may revoke the probation or suspension of sentence and shall proceed to deal with the case as if there had been no probation or suspension of sentence.

SECTION 5: The South Carolina probation and parole board—pay—term—appointment—vacancy—duties and powers of pardoning board devolved on.—The South Carolina Probation and Parole Board shall consist of one member from each Congressional District of the State, and they shall serve without salary but shall receive actual traveling expenses and Ten (\$10.00) Dollars per day while in the performance of their official duties. The terms of office of the members of said Board shall be for a period of four (4) years and until their respective successors are appointed and qualified. The members of said Board shall be appointed by the Governor with the advice and consent of the Senate. All vacancies occurring among the members of said Board shall be filled as soon as practicable by the Governor by appointment with the advice and consent of the Senate for the unexpired term. The said Board shall elect annually between January 15th and January 30th, a Chairman from its members. All powers, duties and authorities of the Pardoning Board of this State are hereby devolved upon the said The South Carolina Probation and Parole Board.

SECTION 7: Supervisor of probation and parole—assistants.—That the said South Carolina Probation and Parole Board is authorized and empowered to appoint a Supervisor of Probation and Parole, who shall serve as its executive secretary, and shall receive a salary of not less than Three Thousand Six Hundred (\$3,600.00) Dollars nor more than Four Thousand (\$4,000.00) Dollars per annum, payable semi-annually, and shall also be paid traveling and other necessary expenses in the performance of his official duties, and who shall give his entire time to the work. When the necessity of the service requires, it shall appoint one or more assistants and fix their salaries.

The person appointed as Supervisor of Probation and Parole shall be qualified by academic preparation equivalent to that represented by graduation from an institution of recognized standing, or (2) by skill and any equivalent combination of training and experience.

SECTION 8. Supervisor—appoint probation officers and clerical help—duties and powers.—That the Supervisor of Probation and Parole shall appoint, subject to the approval of the South Carolina Board of Probation and Parole, such probation officers as are required for service in the State, and such clerical assistance as may be necessary.

The Supervisor of Probation and Parole shall direct the work of the probation officers appointed under this Act. He shall consult and co-operate with the Courts and institutions in the development of methods and procedure in the administration of probation and parole; and shall arrange conference of probation officers and judges. He shall make an annual written report with statistical and other information to the South Carolina Probation and Parole Board and the Governor.

SECTION 9: Probation officers — work under supervisor — salaries—expenses—oath.—That probation officers appointed under this Act shall be assigned to serve in such Courts or districts or otherwise as the Supervisor of Probation and Parole may determine. They shall be paid salaries, to be fixed by the South Carolina Board of Probation and Parole not to exceed Two Thousand One Hundred (\$2,100.00) Dollars per annum, payable semi-monthly, and shall also be paid traveling and other necessary expenses incurred in the performance of their official duties as probation officers when such expense accounts have been authorized and approved by the Supervisor of Probation and Parole. Each person appointed as a probation officer shall take an oath of office as required by State officers, and shall be noted of record by the Clerk of Court.

SECTION 10: Probation officers—duties and powers.—That a probation officer shall investigate all cases referred to him for investigation by the Judges of the Courts or by the Supervisor of Probation and Parole, and shall report in writing thereon. He shall furnish to each person released on probation under his supervision a written statement of the conditions of probation and shall instruct him regarding the same. Such officer shall keep informed concerning the conduct and condition of each person on probation or parole under

his supervision by visiting, requiring reports, and in other ways, and shall report thereon in writing as often as the Court or Supervisor of Probation and Parole may require. Such officer shall use all practicable and suitable methods, not inconsistent with the conditions imposed by the Court or the Supervisor of Probation and Parole, to aid and encourage persons on probation or parole to bring about improvement in their conduct and condition. Such officer shall keep detailed records of his work; shall make such reports in writing to the Supervisor of Probation and Parole as he may require; and shall perform such other duties as the Supervisor of Probation and Parole may require. A probation officer shall have, in the execution of his duties, the powers of arrest and to the extent necessary for the performance of his duties the same right to execute process as is now given, or that may hereafter be given by law, to the sheriffs of this State. In the performance of his duties of probation and parole investigation and supervision he shall be regarded as the official representative of the Court and the South Carolina Board of Probation and Parole.

SECTION 11: Cases board act on.—That in all cases cognizable of this Act, the South Carolina Probation and Parole Board, with the approval of the Governor, may upon ten days' written notice to the Solicitor and Judge who participated in the trial of the prisoner, parole any prisoner convicted of a felony and imprisoned in the State Penitentiary, in any jail or upon the public works of any County, who if sentenced for less than life, shall have served at least one-third of the term for which he was sentenced, not deducting any allowance of time for good behavior, or who, if sentenced for life, shall have served five years less the diminution which would have been allowed for good conduct, pursuant to law, had his sentence been for thirty years, or who, if he is a first offender and is sentenced for an indeterminate term, shall have served the minimum for which he was sentenced not deducting any allowance for time for good behavior or who, if sentenced for more than one year, shall have served one-third of the term for which he was sentenced, not deducting any allowance of time for good behavior. That, after a prisoner has served one-third of his sentence, if such sentence exceed one year, it is made mandatory that the Board review his case, irrespective of whether or not any application has been made therefor, for the purpose of determining whether or not any such prisoner is entitled to any of the

provided for in this Act

SECTION 12: Prisoners parole—conditions—board determine violations—no arguments or appearances—effect of cancelling parole.—That the South Carolina Probation and Parole Board is required to carefully consider the record of the prisoner, before and after imprisonment, and, no such prisoner shall be paroled until it shall appear, to the satisfaction of said Board, that the prisoner has shown a disposition to reform; that, in the future, he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interests of society will not be impaired thereby; and that suitable employment has been secured for him; and the paroled prisoner, shall as often as may be required, render a written report to said Board giving such information as may be required by the Board which shall be approved by the person in whose employment the prisoner may be at the time.

That the South Carolina Probation and Parole Board shall issue an order in quadruplicate signed by each member of the Board which, if countersigned by the Governor (and the acceptance of the prisoner noted thereon by his signature) directing the officer, officers or Board having the supervision and control of the prisoner to forthwith release the prisoner on parole, and the prisoner shall serve the remainder of his term of imprisonment up to the maximum, subject to the conditions and restrictions hereinafter imposed. Every such paroled prisoner shall remain in the legal custody of the Board and may at any time, on the order of the Board, be reimprisoned in said prison or such other jail or camp as may be designated by the said Board.

That the South Carolina Probation and Parole Board shall be the sole judge as to whether or not a parole has been violated and no appeal therefrom shall be allowed.

That the said Board shall not permit arguments or appearances, nor shall it have any other hearing than upon the records prescribed by this Act.

That, upon failure of any prisoner released on parole under the provisions of this Act, to do, or refrain from doing, any of the things set forth and required to be done by and under the terms of said parole, the said order of parole shall be cancelled, and the prisoner shall thereupon and thereafter have the status of an escaped convict; be arrested without a warrant, and be required to serve the part of the sentence that shall remain unserved, and be ineligible to parole thereafter under this Act.

SECTION 13: Term of parole—prisoners released on good behavior.—That any prisoner hereafter sentenced, who may be paroled under authority of this Act, shall continue on parole until the expiration of the maximum term or terms specified in his sentence without deduction of such allowance for good conduct as is or may hereafter be provided for by law.

Any prisoner who shall have served the term or terms for which he shall hereafter be sentenced, less deductions allowed therefrom for good conduct, shall upon release be treated as if released on parole and shall be subject to all provisions of law relating to the parole of prisoners under this Act until the expiration of the maximum term or terms specified in his sentence; *Provided*, That this Section shall not operate to prevent delivery of a prisoner to the authorities of any State otherwise entitled to his custody.

SECTION 14: Public agencies and officials cooperate—supervisor make surveys—records of prisoners.—That it is hereby made the duty of every city, county or State official or department to render all assistance and cooperation within his or its fundamental power which may further the objects of this Act. The South Carolina Probation and Parole Board, the Supervisor of Probation and Parole, and the probation officers are authorized to seek the cooperation of such officials and departments, and especially of the sheriffs, jailers, magistrates, police officials and institutional officers. The Supervisor of Probation and Parole is authorized to conduct surveys of the State Penitentiary, county jails and camps and shall obtain such information as will enable the Board to intelligently pass upon all applications for parole. It shall be the duty of the Superintendent of the State Penitentiary, wardens, jailers, sheriffs, supervisors or such officer in whose control a prisoner may be committed, to aid and assist the Supervisor of Probation and Parole and the probation officers in such surveys.

That it shall be the duty of the Superintendent of the State Penitentiary, where the prisoner is confined in the State Penitentiary; or to the sheriff of the county, where the person is confined in county jail; of the county Supervisor, or the chairman of the Governing Board of the county; if there be no County Supervisor, where the prisoner is confined upon the chaingang of any county, to keep a record of the industry, habits and deportment of any such prisoner, as well as any other information which may have theretofore been requested of such officer by the South Carolina Probation and Parole

Board or the Supervisor of Probation and Parole, and to furnish the same upon request of the Board or of the Supervisor.

SECTION 15: Information received by probation officers.—That all information and data obtained in the discharge of official duty by any probation officer shall be privileged information, shall not be receivable as evidence in any court, and shall not be disclosed directly or indirectly to anyone other than the judge or to others entitled under this Act to receive reports, unless and until otherwise ordered by a judge of the Court or the Supervisor of Probation and Parole.

SECTION 16: Appropriation.—For the purpose of paying salaries and expenses necessary for carrying out the provisions of this Act, the sum of Twenty-seven Thousand (\$27,000.00) Dollars, if so much be necessary, is hereby appropriated.

SECTION 17: Offices for probation officers.—That the Governing body of each county in which a probation officer serves, shall provide in or near the court house, suitable office space for such officer.

SECTION 18: Persons not admit to parole.—That no person shall be admitted to parole under the terms of this Act whose sentence expires prior to January 1, 1941.

SECTION 19: Effect on powers of pardoning board.—That nothing in this Act shall be construed as changing or altering any of the present powers of the Pardoning Board of this State.

SECTION 20: Repeal.—That all other laws or parts of laws inconsistent with this Act are hereby repealed.

SECTION 21: Time effective.—That this Act shall take full force and effect from and after the date of its approval by the Governor.

Approved the 18 day of October, 1941

(RS 571, H141, S174, of 1941)

No. 563

AN ACT to Amend an Act Entitled "An Act to Provide for the Suspension of Sentences and Use of Probation in Criminal Cases; to Provide for the Creation of the South Carolina Probation and Parole Board and to Prescribe Its Duties and Powers and the Terms of Office and Compensation of the

Exhibit # 3B

Social Security No.										Date						Receipt 407379

Received From: Ralph Erwin

Code	Dept.	Fund	Class	Amount	
	32000	E400	48450	6	50

By: Megan Brown Total

Description: photocopies x 3 + s/h # 048819

ANNUAL REPORT
OF THE
ATTORNEY GENERAL
FOR THE
STATE OF SOUTH CAROLINA
TO THE
GENERAL ASSEMBLY
FOR THE
PERIOD BEGINNING JULY 1, 1941 AND
ENDING JUNE 30, 1942

JOHN M. DANIEL
ATTORNEY GENERAL

M. J. HOUGH
ASSISTANT ATTORNEY GENERAL

T. C. CALLISON
ASSISTANT ATTORNEY GENERAL

MRS. IDESSA H. NEWMAN
SECRETARY AND LAW CLERK

MRS. SADYE B. DAVIS
STENOGRAPHER

SOLICITORS

JULIAN S. WOLFE, First Circuit	HUGH BEASLEY, Eighth Circuit
B. D. CARTER, Second Circuit	ROBT. MCC. FIGG, JR., Ninth Circuit
FRANK A. McLEOD, Third Circuit	RUFUS W. FANT, Tenth Circuit
S. S. TISON, Fourth Circuit	JEFF D. GRIFFITH, Eleventh Circuit
A. F. SPIGNER, Fifth Circuit	J. REUBEN LONG, Twelfth Circuit
W. G. FINLEY, Sixth Circuit	ROBT. T. ASHMORE, Thirteenth Circuit
SAMUEL R. WATT, Seventh Circuit	RANDOLPH MURDAUGH, JR., Fourteenth Circuit

the jury must be unanimous in its verdict. It was not the intention of the General Assembly to make it easy for a person to be released. Such doubt as will cause a member of the Board to be unwilling to *recommend parole* will be sufficient to prevent such parole—until such time as the Board can act unanimously.

Yours very truly,

JOHN M. DANIEL,
Attorney General.

Release Of Persons—Life Termers And Those Sentenced For One Year Or Less

March 16, 1942.

Hon. J. C. Todd, Director, South Carolina Probation and Parole Board, Columbia, S. C.

My dear Mr. Todd: This will acknowledge receipt of your letter of March 9, reading as follows:

"Two questions of importance have arisen in the operation of our department on which we trust you will give us your written opinion.

Namely, whether a life term prisoner can be released by our Board before the service of at least five years of his sentence, and whether or not our Board has under the creating Act any authority to take official action on a case where the sentence was for one year or less.

Please review this Act and give us at your earliest possible convenience your official interpretation on these two matters."

In reply, I advise that Section 11, of the Act creating your Board, reads, in part:

"That in all cases cognizable of this Act, the South Carolina Probation and Parole Board—may—parole any prisoner convicted of a *felony* and imprisoned in the State Penitentiary, in any jail or upon the public works of any county, who if sentenced for *less than life*, shall have served at least *one-third* of the term for which he was sentenced, not deducting any allowance of time for good behavior, or who, if *sentenced for life*, shall have served five years less the diminution which would have been *allowed for good con-*

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SOUTH CAROLINA
20 OCT 8 1942
H. E. BLACKLEY

duct, pursuant to law, had his sentence been for thirty years", etc.

From the above it is my opinion that where a sentence for felony is for less than life—

(1) The prisoner must serve at least one-third of the term for which he was sentenced, not deducting any allowance of time for good behavior.

If the prisoner is a life term: he is treated as if his sentence had been for thirty years. If the life term's sentence had been for thirty years then when he shall have served one-third of a thirty year sentence plus five years, minus three years allowed for good time, the life term would be entitled to have his case considered. That is the life-term will have to serve at least twelve years of his life term sentence.

Yours very truly,

JOHN M. DANIEL,
Attorney General.

REGISTRATION OF BIRTHS—(New Law)

Act Provides For Registration With Clerk Of Court Of Births

April 22, 1942.

Mrs. Lena M. Clyburn, Deputy Clerk of Court, Camden, S. C.

My dear Mrs. Clyburn: This will acknowledge receipt of your letter of April 10, reading as follows:

"Act 107 of the Acts of 1939 and amendment passed at 1941 (1942) Sessions of General Assembly designated as House Bill No. 1073, provides for registration with the Clerks of Court data regarding the date of birth, etc.

Can I register this data contained in a family Bible showing that a person was born in another State, said person offering such proof of birth being a citizen and qualified elector of South Carolina and residing in Kershaw County?

Section three of the original Act above referred to uses the words 'any citizen of this State' in its opening sentence."

In reply I advise that Act No. 107 of the Acts of 1939, is an Act entitled:

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H. HOPE BLACKLEY

stituted grand jury would be entitled to a writ. The court denied relief finding a sufficient timely objection and no objection until after.

Code provides that no irregularity in the selection is sufficient to set aside a conviction unless the irregularity is prejudicial or unless objection is made. The defendants were obviously not prejudiced; thus if the illegality was a mere irregularity, the timely objection amounted to a waiver under the law. The defendants contended that the illegal grand jury was a defect, thus voiding the proceedings. In rejecting the objection, the court noted that a defect "which does not prevent the trial from being a fair trial" is not a defect. The court found that twelve competent jurors, by whose votes the defendant was convicted, and which could have been cured if the court had been called to it at the time, or promptly after the empaneling of a competent grand jury, were present.³¹

Instructions

In *White*³² the defendant did not testify in his own defense. The trial judge upon request refused to charge the jury on the failure of an accused to testify could not be considered as an issue of first impression, although dictum in the case suggested that the instruction should be given.

The instruction need not be given unless requested. The trial judge's belief that the instruction could be prejudicial. However, the court correctly held that the instruction under the circumstances of a particular situation is helpful to the defendant, is best left to the trial judge.

Habeas Corpus

In *State*³⁵ the defendant appealed the denial of a writ of habeas corpus sought on the grounds that the solicitor

ANN. § 38-214 (1962).

Langbein, 242 S.C. 316, 320, 130 S.E.2d 847, 849 (1963).

38, 133 S.E.2d 320 (1963).

Langbein, 158 S.C. 251, 155 S.E. 409 (1930).

38, 130 S.E.2d 906 (1963).

knowingly used and encouraged false testimony. It was claimed that the testimony of three eye witnesses was so clearly "untrue and obviously prejudicially influenced" that the solicitor must have known of its falsity. The court correctly affirmed the denial, pointing out that the allegations were conclusional and amounted to no more than an attack on the credibility of the witnesses.³⁶ Although the use of knowingly perjured testimony by the prosecuting authorities is a denial of due process,³⁷ the petition must allege sufficient facts to establish a prima facie case.

A petition for writ of habeas corpus was filed in *Wyatt v. State*³⁸ alleging a number of conclusions with little factual support. The major contention was that the defendant did not consent to a guilty plea with a recommendation of mercy for the murder of his wife. The court affirmed the lower court's denial, primarily because the trial court closely questioned the defendant about his understanding of the guilty plea. The court also strengthened *Crosby v. State*³⁹ by implying lack of effective assistance of counsel is a denial of due process, but the defendant must show "counsel's purported representation was such as to make the trial a farce and a mocking of justice."⁴⁰

In *Hayes* and *Wyatt* the court reaffirmed the principle that the sufficiency or insufficiency of the evidence supporting guilt cannot be raised in a habeas corpus proceeding. The sole issue is whether the judgment, under which the petitioner is confined, is void.

Miscellaneous

In several cases⁴¹ the court refused to review allegedly excessive sentences. This view can be justified where pre-sentence investigation places the trial judge in a superior position for evaluation.

The South Carolina Supreme Court held in a prior case that excessive sentences could violate the constitutional provision against cruel and unusual punishment.⁴² It ruled unconstitutional a thirty-year sentence for burglary where the jury recommended

35. *Id.* at 330; 130 S.E.2d at 907.

37. *Mooney v. Holohan*, 294 U.S. 103 (1935).

38. 243 S.C. 197, 133 S.E.2d 120 (1963).

39. 241 S.C. 40, 126 S.E.2d 843 (1963).

40. 243 S.C. 197, 200, 133 S.E.2d 120, 121 (1963).

41. *State v. Kirby*, 244 S.C. 67, 135 S.E.2d 361 (1964). *State v. Bass*, 242 S.C. 193, 130 S.E.2d 481 (1963).

42. *State v. Kimbrough*, 212 S.C. 348, 46 S.E.2d 273 (1948).

Exhibit #4A

mercy, the defendant had no prior record, and the thirty-year sentence amounted to a life term to the defendant in question.⁴³ While following a justified limitation on sentencing, the court consistently refuses to substitute appellate for trial court judgment on the issue of punishment.

In *State v. Hyde*⁴⁴ the court correctly reaffirmed the view that a person need not own the premises to be guilty of storing whiskey thereon. The court also noted in *Hyde* that the failure of the defense counsel to object to the instructions waived any defects.

The waiver of objections due to actions of the defense counsel was an issue in several other cases. In *State v. McCravy*⁴⁵ the court held that where the defendant agreed to be tried upon two separate indictments at the same time he cannot complain of any prejudice resulting to him. In *State v. Chasteen*⁴⁶ the court rejected the defendant's claim of prejudicial testimony because the testimony was brought out by his defense counsel. Similarly, in *State v. Young*⁴⁷ the failure to object to testimony waived any error in its admission. Also in *Young* the court noted that failure to object to the indictment waived any nonjurisdictional defects.

DOMESTIC RELATIONS

JAMES F. DREHER*

Ever since the passage of the South Carolina Divorce Act of 1949 there has been curbstome debate among lawyers as to whether the legislature had the power, in view of the marriage constitutional amendment² of that year that divorces were allowed³ on the ground of "desertion," to limit the divorces for desertion to cases where the desertion was for a period of one year. The point was raised in the famous case of *Simonds v. Simonds*,³ but the court did not feel it necessary to decide it and the question would remain one of academic interest forever. In *Nolletti v. Nolletti*⁴ the point was finally decided in favor of the position that most practitioners had predicted. Mrs. Nolletti's husband had left her only one month before she brought her divorce action. She admitted that she was not entitled to a divorce on the ground of the statute but maintained that its one-year requirement was unconstitutional. The South Carolina Supreme Court unanimously rejected the argument. It pointed out that the statute was a limitation upon legislative power, not a grant of such power, so that the effect of the 1949 Act was to prohibit the legislature from authorizing divorces on grounds other than those enumerated, rather than to prescribe conditions for the granting of divorces. The requirement that a desertion must exist for at least one year before it matures into a cause of action is in keeping with our public policy of refusing to grant divorces on trivial grounds and is analogous, according to Justice Lewis, who wrote the opinion, to the rule which has been established in applying the statute, that a divorce should ordinarily be granted on the uncorroborated testimony of one party. The date of the opinion was July 11, 1963, and from the day that Mr. Nolletti left home, which was the date allowed Mrs. Nolletti to obtain her divorce shortly thereafter, the date was handed down. The delay may not have been to her detriment but it permitted the solution of a long-standing problem.

* Lecturer in Law, University of South Carolina.

43. *Ibid.*

44. 242 S.C. 372, 131 S.E.2d 96 (1963).

45. 242 S.C. 506, 131 S.E.2d 687 (1963).

46. 242 S.C. 198, 130 S.E.2d 473 (1963).

47. 243 S.C. 187, 133 S.E.2d 210 (1963).

1. S.C. CODE ANN. §§ 20-101 to -148 (1962).

2. S.C. CONST., art. 17, § 3.

3. 229 S.C. 376, 93 S.E.2d 107 (1956).

4. 243 S.C. 20, 132 S.E.2d 11 (1963).

Exhibit # 4-B

Westlaw

AMJUR PARDON § 94
59 Am. Jur. 2d Pardon and Parole § 94

Page 1

American Jurisprudence, Second Edition
Database updated November 2011

Pardon and Parole
Anne M. Payne, J.D.

III. Parole
A. In General
3. Scope of Parole Power
c. Determining Eligibility

Topic Summary Correlation Table References

§ 94. Time for granting

West's Key Number Digest

West's Key Number Digest, Pardon and Parole ↪ 50

A.L.R. Library

United States Parole Commission Guidelines for federal prisoners, 61 A.L.R. Fed. 135.

In the absence of any constitutional or statutory provision to the contrary, the power of parole may be exercised at any time that the person or board in whom it is vested may see fit. In some jurisdictions, the statutory grant of power implies this by vesting the power in one department of government at the time of conviction, and in another department at all other times.[1]

In some jurisdictions, the time for granting parole is limited by a statutory provision requiring a convict to serve the minimum term of **sentence** before application may be made to the parole board for a parole, and under such a provision a prisoner cannot be paroled before serving the minimum **sentence**.[2] In still other jurisdictions, the statute makes the maximum term for the offense in question the test in determining the time when a convict shall become eligible for parole, and under such a provision, a definite time fixed by the jury for punishment in a criminal case becomes the maximum time for the purpose of determining the right of parole.[3]

When a statute requires that a presumptive parole release "date" be established, the parole authority may not set a release date at "life." [4] Moreover, where the statute requires that such a presumptive parole release date be established for every inmate eligible for parole consideration, within a specified period of time after the date of initial confinement, regardless of when a prisoner may actually be released on parole, a rule of the parole authority that it will not assign presumptive parole release dates to persons serving mandatory minimum **sentences** until they have served the mandatory minimum **sentence** is invalid.[5]

In calculating a prisoner's parole eligibility date under an **indeterminate sentence**, the period may be tolled until the completion of a definite **sentence** of actual incarceration for a different, although related, crime.[6] A

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Stephanie H. Burton
sburton@gibbesburton.com



October 17, 2016

The Honorable David Hamilton
York County Clerk of Court
P.O. Box 649
York, SC 29745

Re: Ralph L. Erwin v. South Carolina Department of Probation, Parole, and Pardon Services
and State of South Carolina
C. A. No.: 2016-CP-46-2414

Dear Mr. Hamilton:

We are enclosing for filing the original and one copy of the following:

1. Motion Information Form and Coversheet;
2. Defendants' Motion to Dismiss and Motion for Sanctions; and
3. Our Certificate of Service.

We are also enclosing our firm's check in the amount of \$25.00 for the required motion filing fee. We would appreciate you filing these papers and returning the clocked copies to us in the enclosed envelope. By copy of this letter, we are serving a copy of these documents on Mr. Erwin.

With kind regards,

Yours very truly,

GIBBES BURTON, LLC

Stephanie H. Burton

SHB/bre

Enclosures

cc: Mr. Ralph L. Erwin (w/enclosures)(by US Mail)

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Ralph L. Erwin,

() Plaintiff

v.

South Carolina Department of Probation, Parole
and Pardon Services, and State of South Carolina

(x) Defendants

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-46-2414

**MOTION INFORMATION FORM
AND COVER SHEET**

check box above indicating submitting party

name, SC Bar no. and address of plaintiff's attorney

Ralph L. Erwin, Pro Se
140 W. Centennial St. Apt. 38-B
Spartanburg, SC 29303

name, SC Bar no. and address of defendant's attorney

Stephanie H. Burton (#13089)
Gibbes Burton, LLC
308 East Saint John Street
Spartanburg, SC 29302
telephone: 864-327-5000
fax: 864-342-6884
e-mail: sburton@gibbesburton.com

(x) MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)

FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Defendants' Motion to Dismiss and Motion for Sanctions

Estimated Time Needed: 30 minutes

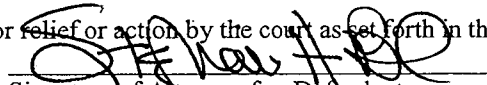
Court Reporter Needed: YES

SECTION II: Motion Type

(x) Written motion attached

FORM Motion --

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for Defendant

10.17.16
Date submitted

SECTION III: Motion Fee

(X) PAID - AMOUNT: \$25.00

EXEMPT: Rule to Show Cause in Child or Spousal Support

(check reason) Domestic Abuse or Abuse and Neglect

Indigent Status State Agency v. Indigent Party

Sexually Violent Predator Act Post-Conviction Relief

Motion for Stay in Bankruptcy

Motion for Publication Motion for Execution (Rule 69, SCRCP)

Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.

Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____

(print name)

MOTION FEE COLLECTED: _____

CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF YORK

RALPH L. ERWIN,

Plaintiff,

v.

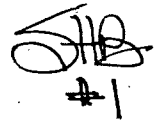
SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE, AND PARDON
SERVICES, and STATE OF SOUTH
CAROLINA,

Defendants.

IN THE COURT OF COMMON PLEAS

**DEFENDANTS' MOTION TO DISMISS
AND MOTION FOR SANCTIONS**

C.A. No. 2016-CP-46-2414

Handwritten signature and initials, possibly "SIB" and "41".

TO: PLAINTIFF RALPH L. ERWIN, PRO SE:

Defendants South Carolina Department of Probation, Parole, and Pardon Services and the State of South Carolina will move the Court, at such date and time as the Court shall direct, pursuant to Rules 12(b)(2), 12(b)(3), 12(b)(4), and 12(b)(6) of the South Carolina Rules of Civil Procedure, for an order dismissing Plaintiff's claims against Defendants as a matter of law. Defendants will also move the Court, at such date and time as the Court shall direct, pursuant to Rules 11 and 12 of the South Carolina Rules of Civil Procedure and the South Carolina Frivolous Civil Proceedings and Sanctions Act, S.C. Code Ann. §15-36-10 *et seq*, for an order imposing sanctions upon Plaintiff, and pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, for an order enjoining Plaintiff from filing further actions against Defendants without first posting bond. These motions will be made upon the following grounds:

1. Plaintiff's claims against the State of South Carolina are barred by collateral estoppel and res judicata.

2. Plaintiff's claims against Defendant Probation, Parole, and Pardon Services are barred by collateral estoppel and res judicata.

— 3. Plaintiff's claims against Defendants are barred by the applicable statute of limitations.

— 4. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against Defendants.

— 5. Plaintiff's claims against Defendants are barred by the applicable exceptions to the waiver of sovereign immunity under the South Carolina Tort Claims Act §§ 15-78-60(1), (2), (3), (4), and (21).

SHB
#2

— 6. Plaintiff's claim for punitive damages is barred by S.C. Code § 15-78-120.

7. Defendants are entitled to an order dismissing Plaintiff's claims against Defendants as a matter of law.

8. Plaintiff has initiated at least nine prior actions alleging the same claims. Plaintiff made substantially the same allegations in a PCR action filed on October 22, 2003, a habeas corpus petition filed on April 10, 2007, a PCR action filed on October 19, 2009, two habeas corpus petitions filed in June 2011, a habeas corpus petition filed on February 17, 2012, a §1983 action filed in June 2012, a state tort action filed on March 18, 2013, a state tort claim filed on October 8, 2013, and a state tort claim filed on August 27, 2014.

— 9. The courts have repeatedly dismissed Plaintiff's claims and, most recently, found that such claims are barred by the statute of limitations. Despite this, Plaintiff continues to file meritless repetitive claims.

10. The State of South Carolina and the South Carolina Department of Probation, Parole, and Pardon Services were defendants in most of the prior actions.

11. / Plaintiff does not have a good faith basis to file this action. He fails to state any proper legal claim and asks for relief that the Court cannot grant. Additionally, his claims are barred by the statute of limitations, res judicata, and collateral estoppel.

12. Defendants will suffer irreparable injury because they have been forced to repeatedly incur expenses defending against Plaintiff's duplicative actions.

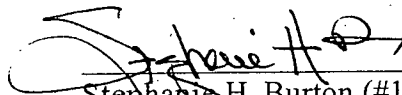
SHB
#3

13. Remedies at law are not adequate.

14. Considering the balance of hardships between the parties, injunctive relief is warranted. Defendants suffer hardship in being required to repeatedly defend actions by Plaintiff.

15. The public interest would be served by granting a permanent injunction enjoining Plaintiff from filing future actions without first posting bond.

These motions are based upon the pleadings filed in this action and upon applicable common and statutory law.



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Attorneys for Defendants South Carolina

Department of Probation, Parole and Pardon

Services and State of South Carolina

October 17, 2016
Spartanburg, South Carolina

October 21, 2016

York County Clerk of Court
P.O. Box 649
York, S.C. 29745

FILED-RECEIVED
2016 OCT 21 PM 12:01
DAVID HAMILTON
Clerk of Court
YORK COUNTY, SC

Re: Ralph L. Erwin v. S.C. Department of Probation,
Parole & Pardon Services AND STATE of South
Carolina
C.A. No.: 2016-CP-46-2414

Dear Clerk of Court:

Enclosed For Filing you will find The Plaintiffs
Objections To The Defendants Motion To Dismiss,
AND MOTION For SANCTIONS AND INFORMATION Form.

CC: Ms. Stephanie H. Burton

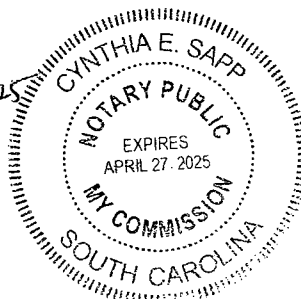
Sworn and subscribed before me

On this 21 day of October, 2016

Cynthia E. Sapp

Notary Public of South Carolina

My Commission Expires April 27 2025



Very Truly Yours,
Ralph L. Erwin

In The Court of Common Pleas

STATE of South Carolina
County of York

FILED - RECEIVED
2016 OCT 21 PM 12:01
DAVID HAMILTON
C.C.P. & S.
YORK COUNTY, SC

CASE NO: 2016-CP-46-2414

Ralph L. Erwin #51231
Applicant,

v.

SC. Dept. of Probation, Parole
& Pardon Services & STATE of
South Carolina
Respondents.

In Opposition To Defendants'
Motion To Dismiss And
Sanctions And Motion
Information Form And Cover-
Sheet

Plaintiff in the above named case comes before this Honorable Court in opposition to the Defendants Motion To Dismiss and Motion For Sanctions And Motion Information Form And Cover sheet and would show unto this Honorable Court the following: (1) The Applicant's Summons And Complaint was served upon the Defendants on 9-15-2016, As this Court has on file. The Defendants were notified that they had 30 days to respond in which they failed to do so as their motion was dated on 10-17-2016. The Plaintiff did not receive notice by Defendants where they had requested any additional

Time, nor was he notified by the Court where any additional time was requested. By Law the Defendant's motions should not be allowed because they were not timely delivered by Law.

(2). Plaintiff's claims against the State of South Carolina are not barred by collateral estoppel and res judicata. While it is true the Plaintiff has filed numerous petitions concerning this same matter, not once has the Plaintiff been afforded a hearing on the merits of his cases. The South Carolina Supreme Court has ruled that where a Judge's order disposing of case on merits it was held that it constituted a denial of due process because, whether the pleading of the respondents be treated as an answer or merely as a return, applicants were entitled to be heard after a trial of the facts held either before the circuit judge or before a master in the manner prescribed by Law. *Lathan v. York*, 210 S.C. 565, 43 S.E.2d 467 (1947). Constitution of S.C. Art. I Section 5. The due process Law guaranteed by the State and Federal Constitutions, when applied to

Procedure in the Courts of the Land, requires both Notice And The right To be heard. Furthermore This is A Continuing Cause of Action And While Limitations begin To run AT The Occurrence of The First Actual damage, the Land Owner May AT Any Time recover For injury To his Land which occurred within The Statutory Period. (Hilton v. Duke Power Co. 254 F. 2d 118 (1958) reh. denied 255 F. 2d 840 (1958)). Additionally, under Procedural due Process Concepts, A hearing must be Appropriate To The Nature of The Case, And From this Flows The Principle That The STATE Cannot preclude The right To Litigate An issue Central To A Statutory Violation or deprivation of A property Interest. (U.S.C.A. Const. Amend. 14 section 1; Const. ART. 3 Section 10). (3). The South Carolina Appellate Courts have Not yet ruled on The defense of Waiver And Estoppel in A False Imprisonment Case. (4). The Plaintiff's Claims Against The Defendants Are Not barred by The Applicable Statute of Limitations As A new Violation occurs each day The Plaintiff is being denied his Freedom of Movement. Also see

Exhibit #1 Limitations Period.

5. The Tort Claims Act Waives Sovereign Immunity For Torts Committed by the STATE, its political Subdivisions, And governmental employees. (See Exhibits #2)

(6). Punitive Damages Serve To Punish defendants For reckless, willful, wanton, or malicious Conduct. (324 S.C. 149, 152, 478 S.E. 2d 57, 58 (1996). Thus, The Plaintiff in This Action Are Allowed Recovery of Punitive Damages. (See Exhibit #3)

Plaintiff Also State That in 1993 he Filed A 1983 Civil Action in The United States District Court based on These Same issues. Which WAS Later dismissed For Eleventh Amendment Bar. See Erwin V. Warden Johnson, et al. Case No: 3:94-1066-0AK.

So The Defendant has Known of These Unconstitutional Acts Since 1992, And have intentionally Denied Their wrongdoing. Additionally, The S.C. Dept. of Probation, Parole, And Pardon Services Are fully Aware

OF SITUATIONS SUCH AS THESE. (See Hinton
V. South Carolina Dept. of Probation, Parole AND
Pardon Services (S.C. App. 2004) 357 S.C. 327,
592 S.E. 2d 335). The South Carolina
Supreme Court has disposed of An Appeal
From An Award of Punitive Damages in the
Following Language: The Arrest was uncalled
for AND the Conduct of defendants was high-
handed AND in Reckless disregard of
Plaintiff's rights, CAUSING her needless
humiliation. For All the reasons stated
Above the Plaintiff would ASK this
Court to Disregard the Defendants'
Motions AND Allow this Case to Proceed
To Trial. This will the Applicant Forever
Pray.

Ralph L. Erwin
RALPH L. ERWIN
140 W. CENTENNIAL ST,
APT. #38-B
SPARTANBURG, S.C.
29303

October 21 2016

CC: Stephanie H. Burton
Attorney For Defendants
308 EAST SAINT JOHN STREET
SPARTANBURG, S.C. 29302

Sworn To And Subscribed
before me this 21 day
of October, 2016

Cynthia E. Sapp
Notary Public



My Commission Expires April 27 2025

Exhibit #1

FALSE IMPRISONMENT

§ 108

West's A.L.R. Digest, False Imprisonment ⇨ 16 to 31, 38 to 42

Trial Strategy

False Imprisonment—Failure To Take Arrestee Before Magistrate Without Unreasonable Or Unnecessary Delay, 26 Am. Jur. Proof of Facts 2d 617

Forms

Am. Jur. Pleading and Practice Forms, False Imprisonment §§ 5 to 108

1. In General

§ 108 Limitations period

Research References

West's Key Number Digest, False Imprisonment ⇨ 18

When statute of limitations begins to run against action for false imprisonment or false arrest, 49 A.L.R.2d 922

An action for false imprisonment generally accrues, for limitations purposes, on the termination of the imprisonment or confinement, and not the completion of the proceedings resulting from the arrest.¹ The statute runs from the time of release on the basis that false imprisonment is a continuing tort.² However, in other jurisdictions, the statute runs from the date of the arrest or the order of commitment, rather than from the date of release,³ and the statute is not tolled because the plaintiff was imprisoned.⁴

Under the prevailing rule, the statute runs from the time when the imprisonment terminated, rather than when the person subsequently learned that the arrest had been illegal.⁵ Duress allegedly preventing a plaintiff from commencing the action within the prescribed time,

[Section 108]

¹Warren v. Byrne, 699 F.2d 95 (2d Cir. 1983); Kirwan v. State, 31 Conn. Supp. 46, 320 A.2d 837 (Super. Ct. 1974), judgment aff'd, 168 Conn. 498, 363 A.2d 56 (1975); Matovina v. Hult, 125 Ind. App. 236, 123 N.E.2d 893 (1955); De Bouchel v. Koss Const. Co., 177 La. 841, 149 So. 496 (1933); Jedziewski v. Jordan, 157 Me. 352, 172 A.2d 636 (1961) (release upon recognizance); O'Fallon v. Pollard, 427 N.W.2d 809 (N.D. 1988); Belflower v. Blackshere, 1955 OK 74, 281 P.2d 423, 49 A.L.R.2d 917 (Okla. 1955); Nave v. City of Seattle, 68 Wash. 2d 721, 415 P.2d 93 (1966); Oosterwyk v. Bucholtz, 250 Wis. 521, 27 N.W.2d 361 (1947).

²Bennett v. Ohio Dept. of Rehab. & Corr., 60 Ohio St. 3d 107, 573 N.E.2d 633 (1991); Adler v. Beverly Hills Hospital,

594 S.W.2d 153 (Tex. Civ. App. Dallas 1980).

³Brewster v. Woodward & Lothrop, Inc., 530 F.2d 1016 (D.C. Cir. 1976); Buvens v. Buvens, 286 So. 2d 144 (La. Ct. App. 3d Cir. 1973); Heron v. Strader, 361 Md. 258, 761 A.2d 56 (2000); Evans v. Chipps, 56 N.C. App. 232, 287 S.E.2d 426 (1982) (overruled on other grounds by, Fowler v. Valencourt, 334 N.C. 345, 435 S.E.2d 530 (1993)) (when sentenced to prison, as the plaintiff would necessarily have known of the injury forming the basis of the actions).

⁴Hileman v. Knable, 266 F. Supp. 317 (M.D. Pa. 1967) (applying Pennsylvania law).

⁵Collins v. Los Angeles County, 241 Cal. App. 2d 451, 50 Cal. Rptr. 586 (2d Dist. 1966).

even if proved, will not toll the statute.⁶

While the limitation period for actions for false arrest, false imprisonment, and wrongful detention are generally the same,⁷ a distinction has been made between false imprisonment and false arrest, with a false imprisonment claim accruing upon release from detention, while false arrest accrues at the time of arraignment.⁸ A plaintiff may not avoid the limitation on a false arrest claim by recharacterizing it as malicious prosecution.⁹

◆ **Observation:** An issue may arise, in the absence of a specific statute of limitations on false imprisonment, whether the limitation period for actions against public officers, as opposed to more general limitation statutes concerning other civil actions, applies.¹⁰

Where an action for false imprisonment is brought under the Federal Civil Rights Act provision creating a private right of action for acts done under color of state law,¹¹ there being no federal statute of limitations applicable to such actions,¹² the state statute of limitations should be applied.¹³

Designation of a party to the complaint as "John Doe," and subsequent naming of the individual so designated as a party to the action does relate back to preserve the claim from the bar of a statute of limitation.¹⁴

§ 109 Jurisdiction and venue

Research References

West's Key Number Digest, False Imprisonment ☞17

Venue of actions or proceedings against public officers, 48 A.L.R.2d 423

Depending on the pertinent statute, the proper place to bring a false imprisonment action may be the county in which the cause of ac-

⁶Jastrzebski v. City of New York, 423 F. Supp. 669 (S.D. N.Y. 1976) (applying New York law).

⁷Cowdrey v. City of Eastborough, Kan., 730 F.2d 1376 (10th Cir. 1984); Jenkins v. Daniels, 751 P.2d 19 (Alaska 1988); City of Mound Bayou v. Johnson, 562 So. 2d 1212 (Miss. 1990); Tucker v. Kroger Co., 133 Ohio App. 3d 140, 726 N.E.2d 1111 (10th Dist. Franklin County 1999).

⁸Jastrzebski v. City of New York, 423 F. Supp. 669 (S.D. N.Y. 1976) (applying New York law).

Generally, as to the distinction between false imprisonment and false ar-

rest, see § 3.

⁹Williams v. Heavener, 217 F.3d 529 (7th Cir. 2000).

¹⁰Jenkins v. Daniels, 751 P.2d 19 (Alaska 1988); Fowler v. Valencourt, 334 N.C. 345, 435 S.E.2d 530 (1993).

¹¹42 U.S.C.A. § 1983, discussed in Am. Jur. 2d, Civil Rights § 62.

¹²Am. Jur. 2d, Civil Rights § 127.

¹³King v. Otasco, Inc., 861 F.2d 438, 12 Fed. R. Serv. 3d 824 (5th Cir. 1988); Ketchum v. City of West Memphis, Ark., 974 F.2d 81 (8th Cir. 1992).

¹⁴Leaon v. Washington County, 397 N.W.2d 867 (Minn. 1986).

INVOICE

To: Mr. Ralph L. Erwin
140 W. Centennial Street, Apt. #38-B
Spartanburg, South Carolina 29303

From: Shannon E. McGilberry
16th Circuit Court Reporter
P.O. Box 522
Clover, S.C. 29710

Date: 1/06/17

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
Orig. Transcript	Ralph L. Erwin v. State of S.C., et al 2016- CP-46-2414 (22 pp. @ 3.25 per page)	\$71.50

Postage (USPS Priority Mail)	6.45
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Total	\$77.95
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Amount Received	\$136.45
Amount Refunded	\$58.50

Thank you.

STATE OF SOUTH CAROLINA

IN THE FAMILY COURT

COUNTY OF YORK

CASE NO. 2016-CP-46-2414

RALPH L. ERWIN,

Plaintiff,

-vs-

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PARDON AND PAROLE
SERVICES and the STATE OF
SOUTH CAROLINA,

Defendants.

TRANSCRIPT OF RECORD

November 17, 2016
York, South Carolina

B E F O R E:

Honorable S. Jackson Kimball, III, Judge.

A P P E A R A N C E S:

Mr. Ralph Erwin
Pro Se Plaintiff
Spartanburg, South Carolina

Mr. Taylor Heath
Attorney at Law
Attorney for the Defendants
Spartanburg, South Carolina

Shannon E. McGilberry, CVR-M
Court Reporter

1 THE COURT: All right. This is case number 2016-CP-46-
2 2414, Ralph L. Erwin against the South Carolina Department
3 of Probation, Parole, and so forth. This is the defendants'
4 motion, all the defendants, motion to dismiss. So, Mr.
5 Heath, you go first.

6 MR. HEATH: Yes, sir. We also have a motion for
7 sanctions, too, but regarding the motion to dismiss first,
8 --

9 THE COURT: I don't remember that. Is it separate or
10 is it in the --

11 MR. HEATH: I think it was included with the motion to
12 dismiss. I have a copy if you need it.

13 THE COURT: That wouldn't surprise me. Oh. Are you
14 talking about the injunctive relief?

15 MR. HEATH: Yes, sir.

16 THE COURT: Yes. Okay. Okay.

17 MR. HEATH: My apologies. Yes, sir.

18 THE COURT: Yes. Okay. Go ahead.

19 MR. HEATH: Your Honor, I also have materials as well
20 that might be helpful for this, if I may.

21 (WHEREUPON, Mr. Heath passed documents to the Court for
22 review.)

23 MR. HEATH: Tabs 1 through 11 is the chronology for
24 helping the procedural history of this case.

25 THE COURT: Well, there was a procedural history

1 THE COURT: Well, there was a procedural history
2 attached to Mr. Erwin's --

3 MR. HEATH: Yes, sir. It's the same thing, but with
4 the orders.

5 THE COURT: All right.

6 MR. HEATH: But, Your Honor, to sum this up, this is
7 the plaintiff's, total now, tenth attempt to bring this
8 action against the defendants, eight actions against the
9 State. This will be the second one against the Department
10 of Parole, Probation and Pardon Services.

11 He brings a tort claim here today, but all of his prior
12 actions have actually been related to the same cause of
13 action, which is his continued parole supervision. He
14 believes that the defendants have violated his
15 constitutional rights and have committed tortuous acts
16 against him over the years. He believes that the statute of
17 limitations has run out on his sentence when he was -- he
18 pled guilty in 1961 and received a life sentence then and he
19 believes now that the statute of limitations has run out and
20 it should have only been a thirty-year sentence and that in
21 1992 it actually expired.

22 The defendants here are moving to dismiss on the
23 grounds of *res judicata* first. This involves the same
24 parties over the years. It involves the same claim brought
25 in different forms and it all comes from the same

1 transaction or occurrence that have been brought up in all
2 these prior actions, which is, again, regarding the statute
3 of limitations running out on his sentence.

4 THE COURT: As I read the record, the -- while this is
5 the tenth time or one or more of them have been PCR
6 petitions and then one was a 1983 case in federal court;
7 right?

8 MR. HEATH: Yes, sir. Three PCR actions, four habeas
9 corpus actions and one Section 1983 action and then two tort
10 actions involved today.

11 THE COURT: All right.

12 MR. HEATH: So regarding *res judicata* in particular,
13 though, the plaintiff believes that the merits of his claim
14 haven't been heard, but regarding a third PCR action in
15 2009, Judge Alford specifically talked about his discussing
16 that discussion point of the statute of limitations running
17 out and that case was dismissed with prejudice as being
18 barred by *res judicata*. Obviously, when it's dismissed with
19 prejudice, it obviously means that it's been indicated or it
20 indicates that it's been adjudicated on its merits.

21 Further, after that, in 2014, Judge Mark Hayes also
22 barred it for being *res judicata*, 'cause, again, it's the
23 same claim, just happening again in a different form at a
24 later date and so the defendants think that *res judicata*
25 alone should bar it, but if not that, we also have

1 collateral estoppel. Again, it's the same claim for the
2 same issues in every single case. No matter which way he
3 tweaks it, in what form he puts it in, everything is the
4 same. The issues have already been brought up, they've
5 already been talked about and discussed and they've already
6 been ruled on in these prior actions. So between *res*
7 *judicata*, collateral estoppel, those should bar it.

8 In addition, the statute of limitations does bar it.
9 Even the evidence has shown that the plaintiff alleges he
10 found out in 1992 that a potential claim could have occurred
11 then and now, I mean, it's been time barred many times.

12 THE COURT: Meaning the law changed?

13 MR. HEATH: Yes, sir, but he claims that the judge made
14 a comment to him that the statute of limitations had ran out
15 at that time, again, what he perceives was his thirty-year
16 limit and so then, in 1992, he should have been on alert,
17 but now we're at 2016, so it's still very much time barred
18 under either the personal injury statute of limitations or,
19 like, the federal one, which we have a case in there, Wilson
20 v. Garcia, if we had to compare.

21 So it's been time barred, in addition to *res judicata*
22 and collateral estoppel. It should be barred for not having
23 a cause of action from his Complaint because of the facts.

24 It's this -- he's incorrect in his interpretation of
25 what a statute of limitations is and then, in addition to

1 all those, we think that the defendants fall under the
2 exceptions to the waiver of immunity, since it's a tort
3 claim, under the South Carolina Tort Claims Act. In 15-78-
4 60 it provides the exceptions, one specifically, number 4,
5 that a government entity is not liable when they are either
6 acting or enacting in compliance with any law.

7 Well, here the plaintiff alleges that the defendants
8 were acting in compliance with a statute that was deemed
9 unconstitutional regarding his sentence, which is -- and
10 this is exactly the type of action that falls under that
11 exception, because the parole board is trying to do their
12 best to comply with that law, same with the sentencing
13 group, complying with the law, and therefore, the exception
14 should be liberally construed in favor of immunity, as the
15 case law suggests, and so the plaintiff's claim should be
16 barred for that. And then --

17 THE COURT: Under the statute, the statute that deals
18 with the fact that parole -- I'll state it -- hopefully
19 state it simply, that parole lasts 'til your sentence is
20 completed is still good?

21 MR. HEATH: Yes, sir. And that the statute, I think,
22 he cites to as well simply talks about when you have someone
23 who has a life sentence, for purposes of determining parole,
24 they deem it a thirty-year mark and I think that's where the
25 confusion is there for him, but that doesn't mean that his

1 life sentence is obviously a thirty-year mark, just doing
2 that for purposes of categorizing a life sentence person.
3 So that's where --

4 THE COURT: Well, and it doesn't deal with -- it
5 doesn't transfer that, what, that sort of a revamping of
6 that statute to the parole -- to the pardon and parole
7 people. In other words, does the thirty-year -- would a
8 person who's sentenced now to life -- a person who's
9 sentenced now to life get out in thirty years as long as
10 it's not life without parole. Right?

11 MR. HEATH: Yes, sir. I'm guessing so, Sir.

12 THE COURT: You're guessing so?

13 MR. HEATH: Well, I haven't read the statute.

14 THE COURT: But there's no statute saying that the
15 parole -- determination of the length of parole is reduced
16 to thirty years?

17 MR. HEATH: No, sir. In fact, it, again, just
18 categorizes it so that parole, and I emphasize the word
19 "may" be considered. I mean, it is an option by the parole
20 board, according to the statute. They don't even have to.

21 THE COURT: Parole somebody?

22 MR. HEATH: Yes, sir. That is --

23 THE COURT: Of course not.

24 MR. HEATH: Right. So that was what I was going to
25 emphasize as well.

1 THE COURT: Okay. All right. Let me hear from Mr.
2 Erwin.

3 MR. HEATH: Yes, sir.

4 THE COURT: Mr. Erwin?

5 MR. ERWIN: Yes, sir. Your Honor, this is something
6 completely new to me, but --

7 THE COURT: What's new to you?

8 MR. ERWIN: Representing myself in court right now.

9 THE COURT: I thought you represented yourself in all
10 these other times, too, did you not?

11 MR. ERWIN: Actually, I never had a -- I've never had a
12 hearing. I don't know --

13 THE COURT: Well, this is -- you've had hearings like
14 this, have you not?

15 MR. ERWIN: No, sir, not on -- not on the merits of the
16 case.

17 THE COURT: No. I know there hadn't been a hearing on
18 the merits of the case, but you've had hearings like this
19 one, where a judge was asked to decide, as a matter of law,
20 to throw the -- to dismiss the case; right?

21 MR. ERWIN: Yes, sir. I had one of those, I think it
22 was in two thousand -- 2014 in Spartanburg. I think that's
23 when it was.

24 THE COURT: All right.

25 MR. ERWIN: But the reason I mentioned the merits of

1 the case, I got here some stuff that I had wrote down, the
2 constitutional law. I think it's the United States
3 Constitution. It's under the -- under Procedural Due
4 Process concept, a hearing must be appropriate to the nature
5 of the case and from this flows the principle that the State
6 cannot refuse the right to litigate an issue central to a
7 statutory violation or deprivation of a property interest
8 and this is coming from USCA Constitution Amend 14, section
9 11, Constitution Article 3, section 10. And I also -- also
10 mention that in the -- in my objections to their motion to
11 dismiss. I've sent some stuff in concerning that on that
12 same issue, because, I mean, like I said, I've never had a
13 hearing on the issue for this case.

14 THE COURT: You've never had a trial?

15 MR. ERWIN: No, sir.

16 THE COURT: Right.

17 MR. ERWIN: And according to my understanding is that
18 what the -- it's what the -- what the United States Supreme
19 Court is saying that that's one of the main issues, is that
20 you have to have -- they supposed to give you a hearing on
21 the merits of the case and so from that flows everything
22 else. Everything else falls from the merits of the case.

23 THE COURT: Well, everything you read me just a minute
24 ago is absolutely correct, but it does not mean that you're
25 entitled to a trial every time. If somebody -- if somebody

1 presents a case that doesn't -- that the law doesn't
2 recognize, the other side can ask that the case be
3 dismissed, because the law doesn't give that kind of relief
4 and that's essentially -- well, that's what has happened ten
5 times before.

6 MR. ERWIN: I understand -- I think I understand what
7 you're saying, Your Honor, but what they're saying is,
8 according to what I'm reading here, if I've -- if I've never
9 had a hearing on the merits of the case, then I've been
10 denied due process through the whole court.

11 THE COURT: Well, that's what I'm trying to tell you.
12 What you read me is absolutely correct, but that does not
13 mean that there's a constitutional right to have a trial of
14 a case that doesn't have any legal basis for it---

15 MR. ERWIN: Uh-huh.

16 THE COURT: ---and that's what, essentially, what the
17 defendants are saying in this case, you're not -- that a
18 trial is not necessary, because the law doesn't recognize
19 the kind of case you want to bring.

20 MR. ERWIN: You said I'm not -- I don't know if I
21 understand what you're saying. You say the law don't --

22 THE COURT: They're saying that there's no necessity
23 that there be a trial, because at this point the law does
24 not recognize -- will not recognize the case that you want
25 to bring. That's what they're saying. Is that fair?

1 MR. HEATH: Yes, Your Honor.

2 THE COURT: All right.

3 MR. ERWIN: But that's why -- that's why I brought it,
4 Your Honor, under the Torts Claim Act.

5 THE COURT: I understand that.

6 MR. ERWIN: I learned -- I learned back in 1992, like
7 you said while ago, it's on record where I filed the 1983
8 against them concerning the same issue and --

9 THE COURT: But see, Mr. Erwin, the tort claims act,
10 among other things, has a two-year statute of limitations.

11 MR. ERWIN: But I've got evidence in the case as well
12 stating that the statute of limitations don't begin to run
13 until you have to -- until you've been released from prison,
14 but see, as long as -- life with --

15 THE COURT: You were released in 2007, weren't you?

16 MR. ERWIN: I'm still on parole right now.

17 THE COURT: Well, I know that. Weren't you released
18 from prison in 2007?

19 MR. ERWIN: Yes, sir, on parole.

20 THE COURT: Yes, sir. Okay.

21 MR. ERWIN: And so what -- actually, my parole -- I
22 should have -- the sentence should have been completed in
23 1992, as he read while ago, but I've got in -- I got in the
24 Complaint where the Attorney General of the State of South
25 Carolina, he informed -- he sent a letter. If you look at

1 it, you'll see where he sent this. It's a 1942 -- it's
2 where he's talking about the life sentence is the same as a
3 thirty-year sentence. He -- and he said that -- let me see
4 if I can find this in here.

5 THE COURT: Well, you don't need to. I've read
6 everything that you've given me. You gave me a big old
7 stack of things and I read every word of it and it's all in
8 there.

9 MR. ERWIN: But what --

10 THE COURT: Mr. Erwin, as far as I know, and I know,
11 because as a young lawyer, I had a case that involved this,
12 the only relief for a person that has a life sentence in
13 terms of being outside, being released from the supervision
14 of the State, is a pardon and I represented a gentleman
15 many, many years ago who didn't know he had a pardon. He
16 thought he was -- he thought he was going back to jail for a
17 parole violation of a life sentence and, unbeknownst to him,
18 he had gotten a pardon from the governor. I guess they used
19 to routinely issue those. I don't -- after a period of
20 time. I don't know. But I've reviewed everything you said
21 and you -- first of all, you've had a number of judges,
22 different judges, consider the same facts. What you're
23 telling me today, you've presented a number of times already
24 to other judges and they have ruled on that, not in your
25 favor. And I -- as far as I know, there's never been an

1 appeal of those rulings, so they are what we call a final
2 ruling or a final order in the case. Because that's so, you
3 are no longer entitled to the relief you seek, because other
4 judges have ruled on it, on the same facts and the same
5 people, you and the State, you on one hand, the State on the
6 other side, because other judges have ruled on that, you no
7 longer have the right to bring this claim.

8 MR. ERWIN: I would like to say this, Your Honor. That
9 was my emphasis (sic) on -- for stating this here on the
10 merits, because they have never -- no court that I've been
11 before so far have ruled on the merits of the case.

12 THE COURT: Well, they have. It just hasn't required a
13 trial. They've ruled on the merits. They've ruled that the
14 merits of the case are that, as a matter of law, you are not
15 entitled to be released from parole, because your sentence
16 has not been completed and, of course, your sentence won't
17 be completed until your death.

18 MR. ERWIN: Your Honor, that's the -- that's the
19 statute that's in effect right now, section --

20 THE COURT: It was in -- it's been effect since I was a
21 young lawyer and that's a long, long time.

22 MR. ERWIN: The one that -- the only statute that I
23 remember and recall being in effect where it said that 'til
24 your death and that's section 16-3-20. That came into
25 effect in 1994 -- '93 or '94.

1 THE COURT: I can tell you that from about 1972 to this
2 day, parole of a life sentence is not completed until the --
3 'til the individual passes away.

4 MR. ERWIN: But that's totally opposite, Your Honor, of
5 what the South Carolina Legislative Committee addressed in
6 1942 when they first created the parole board and it's the
7 same thing that the Attorney General of the State of South
8 Carolina addressed during that same year when they first
9 created the parole board. The, you know, Attorney General
10 states that -- well, I'm going to say it this way: a life
11 sentence, during the time that I caught my life sentence,
12 was, basically, a indeterminate sentence, didn't have no
13 certain amount of years. So when they came up with the
14 parole board, they had to put a life -- they had to decide
15 how many years a person with a life sentence was going to
16 have to do before he came up for parole, so that -- and
17 during that time they said that a person with a life
18 sentence was considered the same as a person with a thirty-
19 year sentence. So, I mean, I can't -- I can't get it no
20 clearer than that.

21 THE COURT: But that doesn't mean that you get -- that
22 you get released from parole after thirty years.

23 MR. ERWIN: Well, from what that's saying, --

24 THE COURT: In fact, you served longer than thirty
25 years.

1 MR. ERWIN: From what that's saying, Your Honor, I'm
2 getting that they saying that a life sentence, again, is the
3 same as a thirty-year sentence and that being the case, you
4 can't do no more than thirty years.

5 THE COURT: Well, you did.

6 MR. ERWIN: And that's why I'm here now, because I feel
7 like it's illegal, according to what --

8 THE COURT: Well, that's -- Mr. Erwin, a number of
9 judges have heard this argument, because I've reviewed the
10 material and in no -- and they ruled against you. Those --
11 the orders of those judges is final, just like a jury
12 verdict's final, and I am not entitled to change that. The
13 law does not permit me to go back and, essentially, hear
14 those cases again. So I'm granting the defendant's motion
15 to dismiss the case.

16 You've had a full hearing on your argument somewhere
17 from eight to ten times.

18 MR. ERWIN: I would like -- I would like -- I would ask
19 that if that's so, I would like -- I would ask that the
20 defendant show where I have been -- had given a hearing on
21 those items.

22 THE COURT: He's handed me up a handful of orders that
23 resulted from hearings.

24 MR. ERWIN: I remember -- I remember him saying --

25 THE COURT: All right. I'm going to stop you.

1 MR. ERWIN: Sir?

2 THE COURT: You told me just a minute ago that you had
3 a hearing in 2014 in front of Judge Mark Hayes in
4 Spartanburg.

5 MR. ERWIN: And he dismissed that, not -- not --

6 THE COURT: That's correct.

7 MR. ERWIN: -- not on the issues, but he dismissed --
8 actually, what he said was that I wasn't allowed to -- the
9 reason he dismissed that then was because I wasn't allowed
10 to file for free.

11 THE COURT: Well, you see, he was the ninth judge to
12 hear this case, I'm the tenth one, and my view of where you
13 stand is the same as his and I'm going to grant the
14 defendant's motion to dismiss.

15 Now, Mr. Heath, you pointed out the fact that in your
16 motion to dismiss you've asked for injunctive relief.

17 MR. HEATH: Yes, Your Honor.

18 THE COURT: What do you want to do?

19 MR. HEATH: Your Honor, under tab 6 I have Rule 11 and
20 the South Carolina Protections Against Frivolous Acts and I,
21 on behalf of the defendants, request that we put a permanent
22 injunction in place from this, essentially, from ever
23 happening again. These orders need to be final in their
24 clearest form. This just needs to be done. We don't seek
25 any form of attorney's fees or costs, anything like that.

1 We just want, under your discretion, just some injunctive
2 relief from this happening anymore. It's been years. The
3 defendants are having to pay more money, putting more time
4 into this and it's been clear and stated as best that it can
5 be.

6 THE COURT: Well, there's another statute, and I didn't
7 pull it, that also -- well, you've given me a case. I'm
8 looking for a statute.

9 MR. HEATH: Under tab 6, not of the chronology -- I'm
10 sorry -- of the case law packet, there should be.

11 THE COURT: Oh, I'm sorry. The case law?

12 MR. HEATH: Yes, sir. There's two separate. I should
13 have put a label on it.

14 THE COURT: Well, let me see.

15 MR. HEATH: Number 6 should be only --

16 THE COURT: You can have a seat, Mr. Erwin.

17 MR. HEATH: Number 6 is only for sanctions and the
18 first one is Rule 11, which -- I'm sorry -- I'll put a thing
19 on it next time, but should be a separate tab.

20 THE COURT: All right. Hang on. I'm sorry. Here we
21 go. Here we go.

22 MR. HEATH: Rule 11 talks, under the South Carolina
23 Rules of Civil Procedure, --

24 THE COURT: Well, there's a statute that sort of
25 corresponds with the rule.

1 MR. HEATH: That's behind Rule 11; yes, sir. That will
2 be 15-36-10.

3 THE COURT: Ten.

4 MR. HEATH: Yes, sir. And under G(4), in particular,
5 it talks about what a trial court can and can't do in terms
6 of -- when it comes to sanctions and the last one talks
7 about non-monetary relief and it says may include injunctive
8 relief and that's what we seek here.

9 THE COURT: Okay. All right. All right. Mr. Erwin,--
10 -

11 MR. ERWIN: Yes, sir.

12 THE COURT: ---I'm also going to have Mr. Heath provide
13 me with a proposed order that says that you are instructed
14 not to file this claim again. If you file the claim again,
15 you will be in contempt of court. If you're in contempt of
16 court, you can wind up going back to jail. We need to put a
17 stop to this. You're not entitled to the relief you are now
18 seeking and you've been told that by a number of judges a
19 number of times before. Do you have any question about
20 that?

21 MR. ERWIN: Not about that. I would like to ask you
22 one question concerning the issue and that is if I were able
23 to appeal this decision here to South Carolina Supreme
24 Court?

25 THE COURT: Yes, sir. You certainly are.

1 MR. ERWIN: One other question, Your Honor, that just
2 come to me. The South Carolina Supreme Court has stated
3 that, and maybe I heard you mention this earlier, that the
4 -- that parole has to be based on the entire sentence.
5 That's what the South Carolina Supreme Court states. Now, I
6 wonder if --

7 THE COURT: That's right.

8 MR. ERWIN: -- I wonder if parole in ten years, the
9 first time, so ten years is one-third of thirty.

10 THE COURT: Right.

11 MR. ERWIN: So everything that I'm saying is pointing
12 exactly to what this Attorney General stated to the
13 Legislative Committee.

14 THE COURT: All right. We're not going to go there
15 now.

16 MR. ERWIN: Sir?

17 THE COURT: I want to be sure you understand me. I'm
18 dismissing your case. I'm also ordering you not to file it
19 again in any court in this state. If you do, the judge that
20 hears that can find you in contempt of court and you could
21 be incarcerated. I'm also -- also put in the order that the
22 Clerk of Court is instructed not to accept any such filing.
23 That's -- there's another statute that provides that. I
24 can't remember the number. The Clerk of Court's authorized
25 and directed to reject any attempted filing of another

1 action by Mr. Erwin. Now, my jurisdiction for that purpose
2 is only in York County. Do you have any question you want
3 to ask me about what I've ruled?

4 MR. ERWIN: No, sir.

5 THE COURT: What are age you, Mr. Erwin?

6 MR. ERWIN: Seventy-three.

7 THE COURT: All right. If there's no questions, -- do
8 you have any question about an order?

9 MR. HEATH: No, Your Honor.

10 THE COURT: All right. Make the appropriate findings
11 and, you know, be consistent with your brief. All right.
12 That's all.

13 MR. HEATH: Thank you, Your Honor.

14 THE COURT: The hearing's concluded.

15 MR. ERWIN: Could I ask one more question, Your Honor?

16 THE COURT: Yes, sir.

17 MR. ERWIN: Concerning the transcript, would I be able
18 to get a copy of that?

19 THE COURT: The answer to that is yes, but you have to
20 request it. This is the court reporter. You have to
21 request it and there's a charge for that. I don't know how
22 they charge for it. I don't have anything to do with it.
23 Yes, sir, you are entitled to a transcript.

24 MR. ERWIN: When could I do that?

25 THE COURT: Well, you just have to -- you have to

1 contact Ms. McGilberry, not now, because we've got other
2 hearings to hear.

3 MR. ERWIN: But that's who I --

4 THE COURT: You can get her contact information from
5 the lady up front there.

6 MR. ERWIN: Okay.

7 THE COURT: Okay?

8 MR. ERWIN: Yes, sir.

9 THE COURT: Thank you.

10 MR. ERWIN: Thank you, Sir.

11 MR. HEATH: Thank you, Your Honor.

12 (END OF REQUESTED TRANSCRIPT)

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STATE OF SOUTH CAROLINA)

) C E R T I F I C A T E

COUNTY OF YORK)

I, the undersigned Shannon E. McGilberry, official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 17th day of November, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

In witness whereof, I have hereunto subscribed my name, this 6th day of January, 2017.



Shannon E. McGilberry, CVR-M

My Commission Expires:

April 16, 2017

Stephanie H. Burton
sburton@gibbesburton.com



December 12, 2016

Mr. Ralph Erwin
140 W. Centennial St.
Apt. #38-B
Spartanburg, SC 29303

Re: Ralph L. Erwin v. South Carolina Department of Probation, Parole, and Pardon Services
and State of South Carolina
C. A. No.: 2016-CP-46-2414

Dear Mr. Erwin:

We are enclosing and serving upon you a copy of the Order Granting Defendants' Motion to Dismiss and Motion for Sanctions.

With kind regards,

Yours very truly,

GIBBES BURTON, LLC

Stephanie H. Burton

SHB/tph
Enclosure

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-46-2414

Ralph L. ERWIN

FILED-RECEIVED

2016 DEC -7 AM 8:35

S.C. DEPARTMENT of Probation, Parole, and Pardon
Services, and

PLAINTIFF(S)

DAVID HARRINGTON
C.C.C.P. 2016
YORK COUNTY, SCThe STATE of South Carolina
DEFENDANT(S)

Submitted by: the Court

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

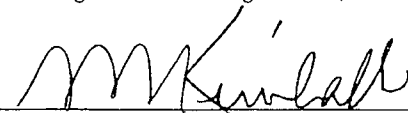
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Defendant	Plaintiff	\$ 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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Special Circuit Court Judge

3063

Judge Code

12/6/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 7 day of Dec, 20 16 and a copy mailed first class or placed in the appropriate attorney's box on this 7 day of Dec, 20 16 to attorneys of record or to parties (when appearing pro se) as follows:

Ralph Erwin
40 W Centennial St, Apt 38B
Spartanburg, SC 29303
ATTORNEY(S) FOR THE PLAINTIFF(S)
Appearing Pro Se

Stephanie Burton
308 E St. John St
Spartanburg, SC 29302
ATTORNEY(S) FOR THE DEFENDANT(S)
Laurel Mamula
CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[illegible]

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED-RECEIVED
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IN THE COURT OF COMMON PLEAS

Ralph L. Erwin,

Plaintiff,

v.

South Carolina Department of Probation,
Parole and Pardon Services, and the State of
South Carolina,

Defendants:

DAVID HAMILTON
C.C.P. 265
YORK COUNTY

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS AND MOTION
FOR SANCTIONS**

Case No. 2016-CP-46-2414

This matter came before the Court on November 17, 2016, upon Defendants' Motion to Dismiss and Motion for Sanctions. Plaintiff appeared *pro se*. Taylor P. Heath appeared on behalf of the Defendants. Based on the record presented and the arguments of the parties, I make the following findings and conclusions.

FACTUAL/PROCEDURAL BACKGROUND

On March 24, 1961, Plaintiff pled guilty to a charge of murder in York County, South Carolina, and was sentenced to life imprisonment. (Compl. p. 2.)

Between 2003 and 2016, Plaintiff filed nine separate actions against the State of South Carolina, and two actions against the South Carolina Department of Probation, Parole and Pardon Services. In all of these actions, Plaintiff alleged claims related to his continued parole supervision. See *Erwin v. State*, 2003-CP-4602824 (2003) (Post-conviction relief case, dismissed by the Court); *Erwin v. State*, C.A. No.: 6:07-959-RBH (2007) (Habeas corpus petition, summary judgment granted); *Erwin v. State*, 2009-CP-4604556 (2009) (Post-conviction relief case, dismissed by the Court); *Erwin v. State*, C.A. No.: 6:11-cv-01070-RBH (2011) (Habeas corpus petition, dismissed by the Court); *Erwin v. State*, C.A. No.: 6:11-cv-02146-RBH (2011) (Habeas corpus petition, dismissed by the Court); *Erwin v. State*, C.A. No.: 6:12-cv-00437-RBH (2012) (Habeas corpus petition, dismissed as successive); *Erwin v. State*, C.A. No.: 6:12-3457-RBH-KFM (2012) (§1983 claim, dismissed on 11th amendment immunity grounds); *Erwin v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 2013-CP-42-1355 (2013) (Dismissed

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for lack of jurisdiction); *Erwin v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 2013-CP-42-4133 (2014) (Tort claim, dismissed by the Court).

On August 15, 2016, Plaintiff filed this tort claim against the South Carolina Department of Probation, Parole and Pardon Services and the State of South Carolina. (Compl. p. 1.) Plaintiff alleges in this complaint that the South Carolina Department of Probation, Parole, and Pardon Services ("Department"), and the State of South Carolina ("State") have committed tortious acts by requiring him to submit to parole supervision. (Compl. pgs. 3-5.) Plaintiff believes that his life sentence was limited to thirty years, and therefore expired in March of 1992. (Compl. pgs. 3-5.) Thus, Plaintiff asserts that he should no longer be on parole and subject to the restrictions and conditions imposed by parole status.

DISCUSSION/ANALYSIS

I. PLAINTIFF'S CLAIMS ARE BARRED BY RES JUDICATA

Plaintiff's claim against the State and the Department are barred by the doctrine of *res judicata*. "Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Plum Creek Dev. Co. Inc. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). Plaintiff has raised the issue of his continued parole supervision in multiple prior actions involving the State and the Department.

On May 16, 2012, in the final order of dismissal in the post-conviction relief action against the State, Judge Lee S. Alford enumerated how Plaintiff had raised the issue regarding the length of his sentence in his 2003 PCR application. In that regard, Judge Alford's order states:

That action was denied and dismissed as this Court found no merit to [Plaintiff's] claims. Thus, this issue is precluded from being raised in a subsequent action involving the same parties and the same claim. The public interest in the finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, the Court denies and dismisses these claims as barred by *res judicata*. (See 2009-CP-46-04556.)

On June 16, 2014, in the final order of dismissal in the 2014 tort action brought in state court against the State, Judge J. Mark Hayes found Plaintiff's claim to be barred under the doctrine of *res judicata*. He concluded that the same claim was being brought regarding the

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length of Plaintiff's sentence, that the same parties were involved in the actions, and that the previous claims were adjudicated on the merits. Additionally, Judge Hayes concluded that Plaintiff's tort claim was barred for reasons in addition to *res judicata*: under the doctrine of collateral estoppel; under the applicable statute of limitations; for failing to state facts sufficient to constitute a cause of action; under the exceptions to the waiver of sovereign immunity under the South Carolina Tort Claims Act; and, the punitive damages claim being barred under the South Carolina Tort Claims Act.

Based on the foregoing discussion, I find and conclude that Plaintiff's claims have previously been adjudicated, and that he is barred from raising the same claim in this action against the State and the Department, or in any future similar action.

II. PLAINTIFF'S CLAIMS AGAINST THE STATE AND THE DEPARTMENT ARE BARRED BY COLLATERAL ESTOPPEL

Plaintiff's claim is also barred by the doctrine of non-mutual, defensive collateral estoppel. A party asserting collateral estoppel as a defense must demonstrate that "... the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Carolina Renewal, Inc. v. S.C. DOT*, 385 S.C. 550, 554, 684 S.E.2d 779 (Ct. App. 2009).

In this action, Plaintiff is barred from bringing this same claim against the State and the Department because the issue of length of sentence has been actually and necessarily litigated in a previous law suit, and therefore, is precluded in any subsequent action based on a different claim. *Richburg v. Baughman*, 290 S.C. 431, 351 S.E.2d 164 (1986).

Plaintiff has raised the same issue in numerous proceedings since 2003, and the issue has already been actually and necessarily litigated in prior actions. Therefore, Plaintiff's claim against the State and the Department is barred under the doctrine of collateral estoppel.

III. PLAINTIFF'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS

South Carolina has adopted the "discovery rule." Accordingly, the statute of limitations "... runs from the date the injury is discoverable by the exercise of reasonable diligence." *Republic Contracting Corp. v. S.C. Dep't of Highways and Pub. Transp.*, 332 S.C. 197, 207, 503 S.E.2d 761, 766 (1998). An injured party must act promptly when the facts and circumstances of the injury would place a reasonable person on notice that a claim might exist. *Id.*

Any action brought pursuant to the South Carolina Tort Claims Act is barred unless

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commenced within two years after the date the loss was or should have been discovered. S.C. Code Ann. § 15-78-110 (1976, as amended). The Act provides the exclusive remedy for any tort committed by a governmental entity, its employees, or its agents. S.C. Code Ann. §15-78-20. As already noted, Plaintiff has raised the same issue in actions that date back to 2003. *See Erwin v. State*, 2003-CP-4602824 (2003).

Plaintiff claims that in 1992, he became aware through (his interpretation of) a judge's comments that his sentence carried a maximum term of thirty years. Thus, by his own admission, Plaintiff has had knowledge of any claim or "loss" for over twenty years. This far exceeds the allotted two years to bring an action. Plaintiff's claim has expired, and is barred under the statute of limitations.

IV. PLAINTIFF'S COMPLAINT FAILS TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION

I also find and conclude that Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against either the State, or the Department.

Plaintiff claims that his life sentence is actually a thirty-year term sentence.¹ However, Plaintiff admits that he pled guilty to the charge of murder in 1961, and received a life sentence. The statute in effect at the time of his guilty plea provided:

Whoever is guilty of murder shall suffer the punishment of death; *provided, however*, that in any case in which the prisoner is found guilty of murder the jury may find a special verdict recommending him to the mercy of the court, whereupon the punishment shall be reduced to imprisonment in the penitentiary with hard labor during the whole lifetime of the prisoner. (S.C. Code § 16-52 (1952).)

Further, as to the issue of continued parole supervision, the law required:

Any prisoner who shall have been paroled shall be subject during the remainder of his original term of imprisonment, up to the maximum, to the conditions and restrictions imposed in the order of parole or by law imposed. Every such paroled prisoner shall remain in the legal custody of the Board and may at any time on the order of the Board be imprisoned as and where therein designated. (S.C. Code § 55-614 (1952).)

After examining the complaint and the attached exhibits, I conclude that Plaintiff has

¹ Plaintiff misapplies the phrase "statute of limitation" when describing his damages. *See* Compl. p. 4 ("The Statute of Limitation on a Life Sentence was Thirty (30) years.").

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failed to raise a cognizable claim.² Despite Plaintiff's assertions that his term of imprisonment is only thirty years, the sentence he received was a life sentence that will run until the end of his natural life.

V. **EXCEPTIONS TO THE WAIVER OF SOVEREIGN IMMUNITY UNDER THE SOUTH CAROLINA TORT CLAIMS ACT**

The South Carolina Tort Claims Act includes a number of exceptions to the limited waiver of sovereign immunity. Under the Act, a governmental entity is not liable for losses resulting from:

- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
 - (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
 - (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies; and
 - (21) the decision to or implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity, including but not limited to a prisoner, inmate, juvenile, patient, or client or the escape of these persons.
- (S.C. Code § 15-78-60 (2), (3), (4), (21).)

These sections apply to the State and the Department in this action. It follows that Plaintiff's tort claim is barred under these exceptions to the waiver of sovereign immunity.

VI. **PLAINTIFF'S CLAIM FOR PUNITIVE DAMAGES IS BARRED BY SOUTH CAROLINA TORT CLAIMS ACT**

S.C. Code §15-78-120 specifies that a claim for punitive damages is barred under the South Carolina Tort Claims Act. Thus, Plaintiff's request for punitive damages against Defendants is barred under the South Carolina Tort Claims Act.

² Plaintiff relies upon an Annual Report of the Attorney General. Annual Report of the Attorney General for the State of South Carolina to the General Assembly, 312-13 (1942). In the annual report, the Attorney General expresses guidance to the Director of the South Carolina Probation & Parole Board as to when it "may" consider granting parole to a prisoner. The last paragraph provides that in the case of a "life term," he is treated as if his sentence had been for thirty years, and thus cannot have his case considered until he has served at least 12 years of his sentence. This opinion does not change his original life sentence; nor does it require the Board to grant him parole. The opinion simply advises the Board of the earliest date when it "may" grant parole. The thirty year period is simply specified as the benchmark from which the earliest parole date is to be calculated. Obviously, it would not be possible to calculate a percentage of a "life" sentence to determine when parole eligibility attaches.

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VII. APPROPRIATE SANCTIONS

Defendants' request for sanctions is permitted and appropriate under the South Carolina Frivolous Civil Proceedings Sanctions Act. S.C. Code Ann. §15-36-10 (1976, as amended). Plaintiff has repeatedly filed petitions raising identical claims to those previously dismissed. I conclude that the serial filings are frivolous.

The circuit court has a wide discretion in ordering sanctions, and may impose a sanction on "a party, a party's attorney, or both for filing a pleading, motion, or other paper to cause delay or when no good grounds exist to support the filing." See Rule 11, SCRCP; *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). Forms of sanctions may include a directive of a nonmonetary nature designed to deter the party from bringing any future frivolous actions. *Id.* Under the South Carolina Frivolous Civil Proceedings Sanctions Act, injunctive relief is a proper nonmonetary sanction that can be used to deter future frivolous actions. See S.C. Code §15-35-10(G)(3).

The United States Supreme Court has denied litigants who have filed repetitive, frivolous petitions the right to proceed *in forma pauperis*, resulting in the litigants having to pay the required filing fee with that Court. *In re Whitaker*, 513 U.S. 1 (1994); *In re Anderson*, 511 U.S. 364 (1994); *In re Demos*, 500 U.S. 16 (1991); *In re Sindram*, 498 U.S. 177 (1991); *In re McDonald*, 489 U.S. 180 (1989). Other courts have required that the abusive litigant file an affidavit certifying that he believes the petition raises an original claim or is nonfrivolous before accepting filings from the litigant. *Abdul-Akbar v. Watson*, 901 F.2d 329 (3d Cir.1990).

In this case, I find and conclude that injunctive relief is appropriate. Thus, I conclude that Plaintiff, and anyone acting on his behalf, should be ordered not to file any action that is related, directly or indirectly, to the issue regarding the Plaintiff's continued parole supervision or status. Violation of such order will be deemed contempt of court, and subject the violator to punishment for contempt of court, including imprisonment.

Further, I find and conclude that the Clerk of Court in York County should refuse to accept further filings from petitioner related to the subject matter of this action. However, this direction shall not preclude Plaintiff from filing any appeal of this order.

ORDER

Therefore, based on the findings and conclusions herein, it is ordered as follows:

1. Defendants' Motion to Dismiss and Motion for Sanctions are granted, and this

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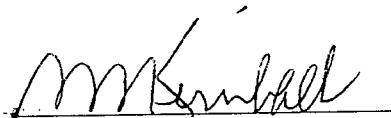
action is dismissed with prejudice.

2. Neither Plaintiff, nor anyone acting on his behalf, shall file any action that is related, directly or indirectly, to the issue regarding the Plaintiff's continued parole supervision or status. Violation of such order will be deemed contempt of court, and subject the violator to punishment for contempt of court, including imprisonment.

3. The Clerk of Court of York County is directed to refuse to accept further filings from petitioner related to the subject matter of this action, except for any appeal of this order.

AND IT IS SO ORDERED.

December 2, 2016



S. Jackson Kimball
Special Circuit Court Judge
York County

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Certificate of Appellant

The undersigned hereby certifies that
The Record on Appeal Contains All Material
Proposed To be included by Any of
The Parties And Not Any Other Material.

MARCH 6, 2017

/s/ Ralph L. Erwin

Ralph L. Erwin

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Appellant