

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, III, Circuit Court Judge

Case No. 2016-CP-46-2414

Ralph L. Erwin,

Appellant,

v.

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

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE TRIAL COURT PROPERLY DISMISSED APPELLANT'S COMPLAINT BECAUSE IT IS BARRED BY RES JUDICATA.
2. WHETHER THE TRIAL COURT PROPERLY DISMISSED APPELLANT'S COMPLAINT BECAUSE APPELLANT'S CLAIM IS BARRED BY COLLATERAL ESTOPPEL.
3. WHETHER THE TRIAL COURT PROPERLY DISMISSED APPELLANT'S COMPLAINT BECAUSE APPELLANT'S CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS.
4. WHETHER THE TRIAL COURT PROPERLY DISMISSED APPELLANT'S COMPLAINT BECAUSE APPELLANT'S CLAIM IS LEGALLY DEFECTIVE.
5. WHETHER THE TRIAL COURT PROPERLY DISMISSED APPELLANT'S COMPLAINT BECAUSE RESPONDENTS ARE ENTITLED TO SOVEREIGN IMMUNITY UNDER THE SOUTH CAROLINA TORT CLAIMS ACT.

STATEMENT OF THE CASE

Appellant pled guilty to murdering Eula Fields in York County, South Carolina, and on March 24, 1961 was sentenced to confinement for life. (Compl. p. 2, Exh. 1). On June 17, 1971, Appellant was granted parole. (Jan. 7, 2008 Report and Recommendation p. 2). His parole was revoked on August 20, 1975. (*Id.*) Appellant was granted parole a second time on January 20, 1982 and was declared an absconder on January 12, 1983. (*Id.*; Compl. Exh. 2). On July 24, 1985, Appellant was apprehended and his revocation of parole affirmed by the parole board. (*Id.*) Appellant served an additional twenty-two (22) years. Appellant was paroled for a third time in 2007. (Compl. p. 2, Exh. 2). Appellant currently remains out on parole.

Between 2003 and 2016, Appellant filed actions in both state and federal courts against the State of South Carolina and the South Carolina Department of Probation, Parole and Pardon Services relating to the length of his sentence and his continued parole supervision. Appellant has repeatedly asserted that when he was convicted in 1961, a life sentence was limited to a term of thirty years. (Compl. p. 4). Appellant incorrectly relies upon a 1942 Annual Report of the South Carolina Attorney General in which the Attorney General expresses guidance to the Director of the South Carolina Probation and Parole Board as to when it “may” consider granting parole. (S.C. Att’y Gen. Op., 312-313 (1942); Compl. Exh. 3-B).

Appellant’s Prior Actions

On October 22, 2003, Appellant filed a post-conviction relief application contending that: “The statute of limitations has run out on the sentence.” (May 16, 2012 Order, p. 2). That action was dismissed as successive and time barred by the Honorable Judge Lee S. Alford. (*Id.*, p. 6.).

In a 2007 habeas corpus petition, *Erwin v. State*, C.A. No.: 6:07-959-RBH (2007), Appellant contended that: “At the time petitioner received his life sentence, the amount of time

to be served on a life sentence was thirty years with some or most defendants actually serving 12 years.” (Jan. 7, 2008 Report and Recommendation, p. 5). United States District Judge R. Bryan Harwell granted the State of South Carolina’s motion for summary judgment by order of February 28, 2008. (Feb. 28, 2008 Order).

In 2009, Appellant filed another application for post-conviction relief. *Erwin v. South Carolina*, 2009-CP-46-4556. The court found Appellant’s claim barred by res judicata noting that: “The Applicant specifically raised the allegation that ‘the statute of limitations has run out on [his] sentence in his 2003 PCR application’ and that the Court had denied the application because it found ‘no merit to his claims.’” (July 3, 2012 Order).

In *Erwin v. State*, C.A. No.: 6:11-cv-01070-RBH (2011), Appellant filed another habeas corpus petition again contending that the “statute of limitations has ‘run out’ on sentence.” (May 11, 2011 Report and Recommendation). The United States District Court dismissed the petition without prejudice. (June 2, 2011 Order).

Yet again, in *Erwin v. State*, C.A. No.: 6:11-cv-02146-RBH (2011), Appellant contended, “the statute of limitations has run out on sentence.” (Sept. 16, 2011 Report and Recommendation, p. 2). The United States District Court for the District of South Carolina again dismissed Appellant’s habeas corpus petition without prejudice. (Oct. 11, 2011 Order).

In 2012, Plaintiff filed a federal civil rights action against these Respondents contending that his life sentence was really a sentence for thirty years and that he had been improperly confined for more than thirty years. By order dated February 12, 2013, the United States District Court dismissed the Complaint because the Eleventh Amendment barred the claims. *Erwin v. South Carolina Dept. of Probation, Parole & Pardon Serv.*, No. 6:12-3457-RBH-KFM. (Jan. 29, 2013 Report and Recommendation; Feb. 12, 2013 Order)

Appellant filed yet another petition for habeas corpus in 2012. *Erwin v. State*, C.A. No.: 6:12-cv-00437-RBH (2012). He again contended that his life sentence is really a sentence for thirty years and that his sentence had expired. (March 7, 2012 Report and Recommendation). The United States District Court once again dismissed Appellant's habeas corpus petition. (April 13, 2012 Order).

In 2013, Appellant filed a state court tort action in the Spartanburg County Court of Common Pleas against both of these Respondents asserting the same allegations that he asserts in this case. *Erwin v. South Carolina Dept. of Probation, Parole & Pardon Serv. et al.*, 2013 CP-42-4133. The trial court in that case ultimately dismissed Appellant's Complaint finding that: (1) Appellant's Complaint failed to state facts sufficient to constitute a cause of action; (2) the statute of limitations barred his claims; (3) his claims were barred by res judicata; (4) his claims were barred by collateral estoppel; and (5) his claims were barred by the South Carolina Tort Claims Act. (June 16, 2014 Order). Appellant did not file notice of appeal from that order but instead filed this lawsuit.

Current Action

This Action presents yet another similar lawsuit in which Appellant contends that his life sentence is really a sentence of thirty years and that he should not be on continued parole supervision. On August 15, 2016, Appellant filed this Complaint. (Compl.) Respondents were served with the Summons and Complaint on September 15, 2016. On October 17, 2016, Respondents filed a motion to dismiss. (Mot. to Dismiss) Respondents also sought sanctions and injunctive relief given the excessive and duplicative nature of Appellant's lawsuits. *Id.*

On November 17, 2016, the trial court held a hearing on Respondents' motions. The trial court issued an order dated December 9, 2016, dismissing Appellant's action. (Dec. 9, 2016

Order). The trial court ruled that Appellant's claim had previously been adjudicated and is barred by res judicata. (Dec. 9, 2016 Order, p. 3). The trial court also concluded that Appellant has raised this issue previously and that the issue had been actually and necessarily litigated in prior actions and was therefore barred under the doctrine of collateral estoppel. *Id.* Additionally, the court dismissed the claim because Appellant's claim is barred by the applicable statute of limitations, fails to raise a cognizable legal claim, and is barred by the exceptions to the waiver of sovereign immunity contained in the South Carolina Tort Claims Act. (Dec. 9, 2016 Order). The trial court also granted Respondents' motion for sanctions under the South Carolina Frivolous Civil Proceedings Sanctions Act because Appellant's claim is repetitive and frivolous. *Id.* at 6-7. On December 12, 2016, Appellant filed notice of appeal.

ARGUMENTS

I. THE TRIAL COURT CORRECTLY CONCLUDED THAT APPELLANT'S CLAIM IS BARRED BY RES JUDICATA.

The trial court properly determined that Appellant's claim is barred by res judicata because it involves the same parties – the State and the Department of Probation, Parole and Pardon Services – that have been involved in other actions filed by Appellant. Likewise, the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties – Appellant's flawed contention that his life sentence is really a sentence of thirty years. *See Plum Creek Dev. Co. Inc. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). While Appellant believes that a hearing on the “merits of his actions” has never occurred, his claim presents only a legal question – whether his life sentence was really a thirty-year sentence – and that legal question has been repeatedly addressed.

As is evident from the prior actions filed by Appellant in state and federal courts, Appellant has repeatedly raised the same issue - that his life sentence for murder is really a sentence of thirty years. Every action that Appellant filed has included the State of South Carolina as a party. In his 2013 tort action filed in the Spartanburg Court of Common Pleas, Appellant sued both of these same Respondents asserting the very same claims and his claims were fully adjudicated in that case. This issue involving these same parties has been adjudicated and Appellant's claims are barred by res judicata.

The trial court here properly determined that Plaintiff's contention that he was really sentenced to only thirty years has been addressed repeatedly. The trial court properly found his claim barred by res judicata and the decision should be affirmed.

II. THE TRIAL COURT PROPERLY DETERMINED THAT APPELLANT'S CLAIM IS BARRED BY 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. South Carolina DOT*, 385 S.C. 550, 554, 684 S.E.2d 779 (Ct. App. 2009). Appellant has raised the same issue in numerous proceedings since 2003. Because the issue of length of sentence has already been actually and necessarily litigated in previous actions, Appellant is precluded from raising the same claim in this subsequent action. *Richburg v. Baughman*, 290 S.C. 43, 351 S.E.2d 164 (1986). Accordingly, the decision of the trial court dismissing Appellant's claim should be affirmed.

III. THE TRIAL COURT PROPERLY DETERMINED THAT APPELLANT'S COMPLAINT IS BARRED BY THE STATUTE OF LIMITATIONS.

Any action brought pursuant to the South Carolina Tort Claims Act, like this Action, is barred unless commenced within two years after the date the loss was or should have been discovered. S.C. Code § 15-78-110 (1986). The discovery rule applies to cases brought pursuant to the South Carolina Tort Claims Act. *See Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999). Accordingly, the two-year statute of limitations runs from the date that Appellant either knew or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct of Respondents. *Bayle v. South Carolina Dep't of Trans.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).

It is abundantly clear here that prior to August 15, 2014 (two years before this action was filed), Appellant believed that his life sentence was really a sentence of thirty years and that he should no longer be under parole supervision. As evidenced by his many prior lawsuits, Appellant has raised this issue constantly since 2003. Since at least 2003, Appellant has known that the State

of South Carolina and the South Carolina Department of Probation, Parole and Pardon Services believe that he was sentenced for life and not for thirty years. His claim accrued many years ago and it is barred by the statute of limitations. The decision of the trial correct was correct and should be affirmed.

IV. APPELLANT'S CLAIM IS LEGALLY DEFECTIVE

Appellant's claim of false imprisonment is legally flawed. To prevail under a false imprisonment theory, a plaintiff must establish that: (1) the defendant restrained him; (2) the restraint was intentional; and (3) **the restraint was unlawful**. *Argoe v. Three Rivers Behavioral Health, L.L.C.*, 392 S.C. 462, 473, 710 S.E.2d 67, 73 (2011). Appellant's Complaint fails to establish these required elements because Appellant incorrectly presumes that his life sentence was really a thirty-year sentence.

Appellant admits that he pled guilty to murder in 1961 and received a life sentence. (Compl. Exh. 1) However, Appellant incorrectly argues that his life sentence is actually a thirty-year sentence based upon his flawed reading of a 1942 opinion of the South Carolina Attorney General.

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)

On the issue of continued parole supervision, the South Carolina Code required parole to the end of the prisoner's sentence:

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).

Appellant's term of imprisonment was life and he is subject to parole for his lifetime.

In 1942, the South Carolina Attorney General addressed an inquiry from the Director of the South Carolina Probation & Parole Board regarding when a prisoner could first be considered for parole by the Board. Because a life sentence has no defined term, the question arose how to calculate the first date of parole eligibility. In this context, the South Carolina Attorney General wrote:

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.

(Compl. Exh 3-B)

The Attorney General offered no opinion that someone sentenced to life had only to serve a total of thirty years nor did he offer any opinion that one sentenced to life would no longer be under parole supervision after serving thirty years. Appellant misconstrues the opinion and the statutes. The trial court properly concluded that Appellant's Complaint states no valid legal claim. Accordingly, the decision of the trial court must be affirmed.

V. RESPONDENTS ARE ENTITLED TO SOVEREIGN IMMUNITY UNDER THE SOUTH CAROLINA TORT CLAIMS ACT.

The Trial Court also properly concluded that Appellant's tort claim is barred under the exceptions to the limited waiver of sovereign immunity in the South Carolina Tort Claims Act. (Dec. 9, 2016 Order, p. 5). 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 person 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)

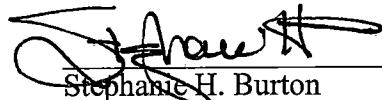
As the trial court correctly concluded, it is apparent that the parole of Appellant and implementation of his sentence as ordered by the court at the time of his guilty plea falls within these exceptions to the waiver of sovereign immunity. Accordingly, Appellant's claim is barred and the decision of the trial court should be affirmed.

CONCLUSION

For the reasons stated above, this Court must affirm the Order of the trial court dismissing Appellant's Complaint.

March 8, 2017

Respectfully submitted,



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