The State of South Carolina
In The Court of Appeals

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SC 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.

Reply Brief of Appellant

Ralph L. Erwin
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Apartment Number 38-B
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(864) 494-2269
Appellant

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Statement of Issues on Appeal

1. Did The Trial Court Err By Dismissing Appellant's Complaint because of Res Judicata.?

2. Did The Trial Court Err in Determining Appellant's Complaint was Barred By Collateral Estoppel.?

3. Did Trial Court improperly Determine Appellant's Complaint was Barred by Statute of Limitations?

4. Did Trial Court Err in Ruling Appellant's Claim was Defective?

5. Did The Trial Court Err in Ruling The Respondent's Are not Liable For Their Action under The South Carolina Tort Claims Act?

STATEMENT OF THE CASE

Appellant Pled guilty To murder in The York County Court of Common plea on March 24, 1961 And was sentenced To Life. (Compl.- P. 2, Exh. 1) On June 17, 1971, Appellant was granted Parole, After doing one (1) Third (3rd) of his Life Sentence. So it is evident That Appellant was not Sentenced To Life Without Parole. Appellant Parole was revoked on August 20, 1975 And returned back To Prison And Continued Serving the Same Life Sentence. (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 was 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. Appellant was once going up for parole each year After or, Until They Came up with The Omnibus Crime Bill Act of 1986. In The early 1990's Appellant

Filed A (P.C.R.) Post Conviction Relief Action based on the Parole Board Changing his Parole revocation hearings from once each year To once every Two years. Appellant Appeard before The Hon. Judge William H. Ballenger in 1992, For A hearing on This Post Conviction Relief hearing. (Compl. Exh. 2, Transcript P. 5-Lines 9-11).

Just Before Judge Ballenger Started the hearing on the P.C.R. This was his exact Word: He said Mr. Erwin I See you have Violated your Parole Twice on this Life Sentence, Appellant responded by Saying, Yes Sir. He Then Said how Long were you out before you Violated Parole the First Time? Appellant Said Two (2) years. He Then asked Appellant how Long was he out before he Violated parole the second Time? Before Appellant Could respond Judge Ballenger interrupted by Saying, it doesnt make Any difference because I believe that The Statute of Limitation on A Life Sentence when you Caught yours was Thirty (30) years. He didnt Stop there, He went on To Tell The Attorney For The State, Ms. Lisa Jefferson, Assistant Attorney General, That They needed To Check into that matter.

AT That Time in January 1992 he Continued my Case until the next Term of Post Conviction Relief hearing So the Parole Attorney Could do Further research. In December 1992 Appellant went back on the Continuous. At That Time A different Judge was presiding over The Appellants Case. Appellant was not in Court AT That Time five (5) minutes before the Hon. Judge Thomas J. Erwin dismissed his Case And nothing was mentioned AT That Time in which Judge Ballenger had informed The Court on About The Thirty (30) year Statute of Limitation on A Life Sentence. Appellant Knew That A Judge of his Character would not have brought That Fact To the Courts Attention if he didnt Know what he was Talking About. That's why Appellant Filed So Many petitions base on That issue Alone.

In 2012 Appellant wrote The University of South Carolina School of Law requesting Section 11 of The Act Creating The Parole Board. To his Surprise he received A 1942 Annual Report of The South Carolina Attorney General's office To The General Assembly of South Carolina. On The Front Page it has A receipt of when Appellant received it, (Complaint P. 4, Exhibit 3 B).

Arguments

1. The Trial Court Erred By Concluding Appellant's Claim is Barred by Res Judicata

The Trial Court Erred By dismissing Appellant's Claim on Res Judicata.
Even Though The Appellant has brought A number of Action based on The identical Claim And involving The Same Respondents, Appellant has never been Allowed To proceed with his claim based on the merits. When Appellant Appeared before The Hon. Judge S. Jackson Kimball, III, on November 17, 2016 For A hearing, Judge Kimball Agreed That Appellant has never had A hearing on the merits of his Actions. (T. P. 8, Lines 15-23). If An order merely Affects A form of Procedure, it does not involve the merits. Because of This Appellant was denied the due process of Law As guaranteed By the State And Federal Laws. (Blakely v. Frazier, 11, S.C. 122, 134).

2. The Trial Court Erred By determining Appellant's Claim Was Barred by Collateral Estoppel

The Trial Court Erred in Dismissing Appellant's Claim on Collateral Estoppel. Due process prohibits Some Litigants who never had the Chance To Present Their evidence And Arguments on The Claim, despite one or more existing Adjudications of Identical issue which Stand Squarely Against their position. (U.S.C.A. Const. Amend. 14)
Where one is not Party To Prior Action, only way he can be precluded from relitigating issue is if he is "privity" in Another.
One in "privity" is one whose Legal interest were Litigated in Former proceeding. Since The Court Agreed That Appellant has never had A hearing on the merits of his Actions (T.P. 8, Lines 15-23) Appellant Claim should not have been dismissed on Collateral Estoppel. (Roberts V. Recovery Bureau, Inc. 450 S.E. 2d 616 (S.C. App. 1994), (Henderson V. Wyatt, 8 S.C. 112)

3. The Trial Court Erred when it dismissed Appellants' Claim because of Statute of Limitations

The Trial Court Erred by dismissing Appellants' Claim base on Statute of Limitations An Action For False imprisonment generally Accrues, For Limitations purposes, on the Termination of imprisonment or Confinement And not the Completion of the proceedings resulting From the Arrest. (Warren V. Byrne, 699 F.2d (2d Cir. 1983) The Statute runs From The time of release on the basis That False imprisonment is A Continuing Tort. (Bennett V. Ohio Dept. of Rehab. & Corr. 60 Ohio St. 3d 107).

Under The Continuing Crime doctrine, The Span Of Confinement begins when The unlawful detention is initiated, And ends only when The Victim both Feels And is in Fact, Free From detention. (Am. Jur. 2d Section 157) Appellant is not Free because he's on parole And doing Time in the streets. (Am. Jur. 2d Section 108)

4. The Trial Court Erred in ruling Appellant's Claim is Defective

The Trial Court erred in ruling Appellant's Claim is defective. Until 1942, The only sentence in South Carolina For Murder was Either death or Life in prison. In 1942 The General Assembly Created The South Carolina Parole Board. During That Time in All Cases Cognizable under That Chapter The Probation, Parole and Pardon Board may, upon Ten days' written notice To The Solicitor And Judge who participated in the Trial of Any prisoner, parole such prisoner Convicted of A Felony And imprisoned in The State Penitentiary, in Any Jail or upon The Public Works of Any County, Could be Paroled After Service of One Third of his maximum Sentence. At That Time if A person Caught A Life Sentence They needed To decide how many years he would have To do For being eligible For Parole Since A Life

sentence didnt specify A Certain Amount of years. In South Carolina The Most A Class A Felony Carries is Thirty (30) years. I'm Assuming That's why They decided To Put A Person with A Life sentence As A Thirty (30) year sentence because That what they did. (Compl. PP. 3,4, Exhibits 3A, Sect. 11 of Act No. 562, 3B Annual Report of The Attorney General of South Carolina, To the General Assembly And Addressing The South Carolina Parole Board)

The Attorney General made it So Clear That even A Child Could understand it. He Said A Life Sentence was Considered The Same As A Thirty (30) year Sentence. (Hinton V. Dept. of Probation, Parole 357 S.C. 327 (App.-2004) If A Statute's Language is Plain And unambiguous, And Conveys A Clear And definite meaning There is no need To employ rules of Statutory interpretation and the Court has "no" right To Look for or impose Another meaning. (Hinton V. Dept. of probation Parole 357 S.C. 327 (App. 2004)

Our Very own South Carolina Supreme Court has stated that Parole is to be based On the entire sentence. Appellant did Ten (10) years when He went up For Parole His First Time up, which Amounts To one Third of A Thirty (30) Year Mark. (Id. Exh. 2 of Compl.) Notice what our Very own South Carolina Supreme Court Compares A Thirty (30) year sentence To. (Compl. Exhibit 4A, PP. 41, 42)

The Supreme Court, Little John, J., Held That when prisoner is sentenced To A Term of years, And sentence is Suspended After Service of portion of That Term, Application For parole May be made only After service of one-Third of entire sentence. Appellant First made parole After Ten (10) years on his Life sentence (Id.)

5. The Trial Court Erred By ruling Respondents Are not held Liable For Their Actions under The Tort Claims Act.

The Trial Court Erred by ruling Respondents' Are not held Liable For Their Actions under The Tort Claims Act.
On or After January 1, 1989, A Person, when bringing An Action Against A governmental entity under The Provisions of This Chapter, Shall name As A party defendant on The Agency or political Subdivision For which the employee was Acting And is not required To name The employee individually. In the event That The employee is individually named, The Agency or political Subdivision For which The employee was Acting must be Substituted As The party defendant. In Appellant's Claim it has nothing To do with An Individual but rather Two (2) Agencies in The South Carolina Dept. of Probation, Parole And Pardon Services And The State of South Carolina-(S.C. Code Section 15-78-70)

Conclusion

For All The reasons stated Above Appellant would Ask This Court To Award him his request he has Asked For in his Complaint. For This will The Appellant Forever Pray.

Respectfully Submitted

March 13, 2017

/s/ Ralph L. Erwin

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Verification of Service By Mail

I Ralph L. Erwin, First being duly Sworn under OATH, depose and says That I did Place in The U.S. Mail, Postage Paid an exact Copy of A Reply brief, with Designation of matter on The Following:

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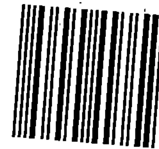

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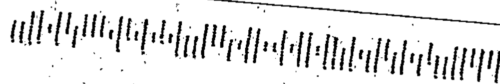

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