

**The State of South Carolina  
In The Court of Appeals  
Appeal From York County  
Court of Common Pleas**

**RECEIVED**  
APR 27 2017  
SC Court of Appeals

**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.

(Final) Brief of Appellant

**Ralph L. Erwin**  
140 West Centennial Street  
Apartment Number 38-B  
Spartanburg, SC 29303  
(864) 494-2269  
Appellant

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## STATEMENT OF ISSUES ON APPEAL

1. Did The TRIAL COURT Err in Ruling That Appellants' CLAIM is BARRED By Res JUDICATA
2. Did the TRIAL COURT Err in Ruling That Appellants' CLAIM is BARRED By COLLATERAL ESTOPPEL
3. Did the TRIAL COURT Err in Ruling That Appellants' CLAIM is BARRED By STATUTE OF LIMITATIONS
4. Did The TRIAL COURT Err in Ruling That Appellant's CLAIM is Legally Defective
5. Did The TRIAL COURT Err in Ruling That Respondents Are Entitled To Sovereign Immunity Under The South CAROLINA TORT CLAIMS ACT.

## STATEMENT OF THE CASE

On August 29, 2016, Appellant RALPH L. ERWIN Filed A Complaint For False Imprisonment Against The South Carolina Probation, Parole And Pardon Services, And The STATE OF South Carolina. This Action WAS Filed in York County, S.C., under The South Carolina Tort Claims Act.

On September 19, 2016, Appellant Filed with The York County Clerk of Court A Verification of Service AND mailed Copies To Ms. Stephanie H. Burton, Attorney For The Respondents. On October 17, 2016 Ms. Burton Filed with The Clerk of Court her Answer To The Complaint in The Form of A Motion To Dismiss based on COLLATERAL ESTOPPEL, RES JUDICATA AND STATUTE OF LIMITATION, AS Well AS A Motion For Sanctions. On October 21, 2016, Appellant Filed An Objection To That Motion To Dismiss.

On November 17, 2016 Appellant WAS given A hearing on That Motion To Dismiss AND For Sanctions before The Honorable S. JACKSON KIMBALL, III, Equity Court Judge of York

County, South Carolina. On such date Judge Kimball dismissed Appellant's Action based on Collateral Estoppel, Res Judicata and Statute of Limitations. For Sanctions Judge Kimball Order that Appellant never be allowed to file the Claim again in this State. Appellant in his Action had requested to be awarded a combine total of six (6) million dollars for damages, four (4) hundred dollars he paid the Parole Board for a psychological test he was ordered to take before being released on parole, and monies he had paid for supervision fees since being out on parole in 2007. On December 12, 2016, Appellant filed with the York County Clerk a Notice of Appeal and sent copies to the South Carolina Court of Appeals and also to the Respondent's Attorney, Ms. Stephanie H. Burton, 308 East Saint John Street, Spartanburg, South Carolina 29302.

### STATEMENT OF FACTS

On or about March 24, 1961, Appellant Ralph L. Erwin, Plead guilty to Murder, With the recommendation of mercy of the Court, And was Sentenced To Life in Prison. R. Exhibit #1, To Complaint, PP. 65, 68

Appellant served Ten (10) years And Three (3) months, And was paroled in June 16, 1971 R. Exhibit #2 To Complaint Id P. 70, Line 7

So Parole was a Constitutional Part of Appellants' Sentence. When Appellant received his Life Sentence in 1961, A Life Sentence was basically An indeterminate sentence. In 1942, The General Assembly of South Carolina Created The South Carolina Probation, Parole And Pardon Services. R. Exhibit #3A, To Complaint, P. 74, Section 11, Lines 18-38.

Also, during that same year, The Attorney General of The State of South Carolina in A response To A Letter To The Parole Board And Also An Annual Report of The Attorney General, To The General Assembly Addressed in Term of years What A Life Sentence was. R. Exhibit #3B, Annual Report of The Attorney General For The State of South Carolina To The General

Assembly, PP. 76-78.

Appellant was paroled twice on this life sentence and parole was revoked twice. He was paroled in June 1971 and parole was revoked in 1975. Appellant was granted parole again in 1982 and parole was revoked the second time in 1985. Each time Appellant's parole was revoked he continued serving this same life sentence.

While in prison in 1991, Appellant filed a post conviction relief based on the Parole Board changing his revocation hearings from once each year to once each two years. Before the hearing convened the Honorable Judge William H. Ballenger asked Appellant how long he was out each time before his parole was revoked. Judge Ballenger then said it didn't matter because he said he believed the statute of limitation on a life sentence was thirty (30) years when Appellant caught his in 1961. He went on to tell the attorney for the state, Ms. Lisa G. Jefferson, of the Attorney General's office that they needed to check into that

matter. He then ordered A Continuous UNTIL  
The next Term of Post Conviction Relief in  
which the Case was dismissed by Judge THOMAS  
J. Ervin. R. Appendix, Order of Continuance of  
August 25, 1992, PP. 8, 9, Transcript of Continuance  
of October 19, 1992, PP. 10-16.

When Appellant was sentenced in 1961, Section 11  
of The Act Creating The Parole Board was still in  
effect. That statute did not change until the  
Present statute came into effect. R.T.P. 100, Lines  
22-25. Some time between 1942, and 1961,  
Some other Authority took into their own hands  
to change that law as we can see from  
Appellant institutional record when he first entered  
Prison, his "MAXOUT DATE". R. Exhibit #2 To Complaint,  
P. 69. The power of Suspending The Laws, or the  
execution of The Laws, shall never be exercised  
but by The General Assembly. South Carolina  
Constitution Article I Section 24.

When A Change in The Law retroactively Alters The definition of A Crime or increases The punishment for A Crime, An ex post Facto Violation Occurs. South Carolina Constitution, Art. 1 Section 4(13).

All These illegal Acts Are done for A reason because They Are definitely intentional. R. Complaint, P. 64, Lines 3-9, Appendix, Exhibit To Complaint, P. 17. The State of South Carolina receive So many Thousands of Dollars each Year, Plus The Parole Board receives Supervision Fees As Long As An inmate is on parole. Also, there is Authority That States when A presumptive parole release "date" be established, The parole Authority may not set A release date AT "Life". Parole is To be based on A definite Sentence of Actual incarceration. R. Exhibit #4B To Complaint, P. 81.

When The Honorable Judge William Ballenger informed Appellant in 1991, That The Statute of Limitation on A Life Sentence when Appellant Caught his was Thirty (30) years, Appellant Filed Numerous Claims in State and Federal Courts based on that issue alone. After Appellant was granted parole in 2007, he wrote The University of South Carolina Law School in Columbia, S.C. To request Section 11 of The Act Creating The South Carolina Parole Board. In response to Appellants' request, he received The Annual report of The Attorney General of The State of South Carolina To The General Assembly, and To The South Carolina Parole Board Addressing that very same issue with A receipt of when it was mailed To Appellant. R. Complaint, Exhibit #3 B To Complaint, PP. 76-78.

After receiving This Report of The Attorney General, Appellant filed his First Tort Claims Act on These same issues in Spartanburg, South Carolina.

AT THAT hearing in the Conclusion of Law, IT WAS STATED Respondents never received A Summon AND Complaint, but LATTER STATED THAT They did. R. Order of June 16, 2014, P. 11, Line 6- P. 12, Line 9. THAT CASE WAS dismissed.

LATER THAT SAME year Appellant filed A Second TORT CLAIMS ACT, based on the SAME issue. This Time the Case was dismissed because The Judge SAID THAT The Allegation made do NOT fit within one of the STATUTORY exceptions providing for A WAIVER of fees AND The Cause of Action does NOT concern ANY fundamental right THAT requires WAIVER of The filing fee. R. Appendix To Record on Appeal, Order of October 7, 2014, P. 1-2, T. P. 103, Line 7-10.

Each CLAIM Appellant has brought under The South Carolina TORT CLAIMS ACT IT APPEARS THAT EACH Judge has ATTEMPTED TO PROTECT The Respondents.

## Argument

### 1. The Trial Court Erred in Ruling That Appellants' Claim is Barred By Res Judicata

Appellant Alleges That Circuit Court Erred When it dismissed his Tort Claims Act Against The South Carolina Department of Probation, Parole AND Pardon Services AND The STATE of South Carolina For Res Judicata. Res Judicata is AN ISSUE THAT has been definitively settled by Judicial decision. There Are Three essential elements To Res Judicata; 1. An earlier decision on The issue, 2. A final Judgment on The merits, AND 3. The involvement of The same parties in privity with The original parties. Even Though This Complaint involves The same parties in closely related cases, recovery in one does not bar recovery in the other. (Gore v. Gorman's Inc., 148 F. Supp. 241 (W.D. Mo. 1956)). Also, The Judge Admitted AT The hearing That Appellant Never had A Trial on The merits on none of his Claims. (R.T.P. 95 Lines 13-23).

ALSO, A MATTER THAT WAS IN ISSUE AND DETERMINED IN A PRIOR PROCEEDING MAY BE RES JUDICATA IN AN ACTION FOR FALSE IMPRISONMENT. (Witherspoon v. U.S., 838 F.2d 803 (5th Cir. 1988) (Prior Civil rights Litigation)).

2. The Trial Court Erred in Ruling That Appellants' Claim is Barred By Collateral Estoppel

Appellant Alleges That Circuit Court Erred When It Dismissed His Tort Claims Complaint Against South Carolina Department of Probation, Parole and Pardon Services, AND THE STATE OF SOUTH CAROLINA FOR COLLATERAL ESTOPPEL. Due Process prohibits estopping some litigants who never had a chance to present their evidence and arguments on a claim, despite one or more existing adjudications of the identical issue which stand squarely against their position. (Roberts v. Recovery Bureau, Inc. (S.C. App. 1994) 316 S.C. 492)

Due Process of Law requires that a person shall have a reasonable opportunity to be heard

before A Legally Appointed And qualified impartial Tribunal before Any binding decree, order or Judgment Can be made Affecting his right To Life, Liberty, or property. (STATE V. BROWN, (S.C. 1935) 178 S.C. 294), (U.S.C.A. Const. Amend 14).

### 3. The Trial Court Erred in Ruling That Appellants' Claim is Barred By Statute of Limitation

Appellant Alleges That Circuit Court Erred in Ruling his Complaint is Barred By Statute of Limitation. The Span of A Confinement begins when the UNLAWFUL detention is initiated, And ends only when the Victim both feels And is in fact, Free from detention, (BARTLETT V. STATE, 711 N.E. 2d 497 Ind. (1999)), And A Seperate Confinement begins when the detention of the Victim is reestablished, (Boyd V. STATE, 766 N.E. 2d 396 (Ind. Ct. App. 2002)).

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. The Statute runs  
from the Time of Release on the basis that  
False imprisonment is A Continuing Tort.  
Under the prevailing rule, the Statute run from  
the Time when the imprisonment Terminated,  
rather than when the Person subsequently  
Learned that the Arrest had been illegal. (Am.  
Jur. Section 108 Limitation Period)

4. The Trial Court Erred By ruling that Appellants  
Claim is Legally Defective

Appellant Alleges that Circuit Court Erred by  
Ruling his Claim is Legally Defective.

The Court Stated that Parole Last Till your  
Sentence is Completed. (R.T.P. 93 Lines 17-20)

Mr. Heath, Substituting Attorney for Ms.  
Stephanie H. Burton Confirms. Not only does  
He, Mr. Heath Confirm that Parole Last Till

Your Sentence is Completed, He Also Confirm The Very Fact of what Appellants' Claim is All About, that They deem A Life Sentence A thirty (30) year mark. (R.I. P. 93, Lines 21-25) To constitute A False Imprisonment it is essential that there be some restraint of the Person. (Vandiveer v. Charters, 110 Cal. App. 347, 294 P. 440 (3d Dist. 1930)) This entails the deprivation of Liberty of movement, or Freedom to remain in a place of one's Lawful choice. (Hughes v. Pullman, 2001 MT 216, 306 MONT. 420, 36 P. 3d 339 (2001)).

#### 5. The Trial Court Erred in Ruling That Respondents Are Entitled To Sovereign Immunity

Appellant Alleges That Trial Court Erred in Ruling that Respondents Are Entitled To Sovereign Immunity. The South Carolina Tort Claims Act Waives Sovereign Immunity For Torts Committed by The State, its Political Subdivisions, And governmental employees Acting Within the scope of their official duties, with numerous exceptions. (South Carolina Tort Claims Act Section 15-78-40(3)) In order To establish Absolute discretionary Immunity Under the Tort Claims Act, The

governmental entity must Prove That The governmental employees, faced with ALTERNATIVES, Actually Weighed Competing Considerations And made A Conscious Choice; Furthermore, The governmental entity must Show That in Weighing The Competing Considerations And Alternatives, IT UTILIZED Accepted professional Standards Appropriate To resolve The issue before Them. (South Carolina Tort Claims Act Section 15-78-40(5)) Because They Are Still disputing This ACTION IT Shows They have NOT done THAT. A person when bringing AN ACTION AGAINST A governmental entity under The provisions of This Chapter, Shall NAME AS A PARTY defendant only The Agency or political Subdivision for which The employee WAS Acting And is NOT required To name The employee individually. (South Carolina Tort Claims Act Section 15-78-70(C))

## Conclusion

For The reasons STATED Above, This Court  
Should reverse The Judgment of The Circuit  
Court AND AWARD Appellant his request in his  
Complaint.

April 25, 2017

Respectfully Submitted

Ralph L. Erwin

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Appellant

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Certificate of Appellant.

The undersigned certified that this Final Brief Complies  
with Rule 211(b), SCACR.

April 25, 2017

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Supplemental Record

To Be included in The Record on Appeal

Appellant Proposes The Following be included in  
The Record on Appeal:

1. Order of October 7, 2014
2. Order of July 30, 2012
3. Order of Continuance of August 25, 1992
4. Transcript of Continuance of October 19, 1992
5. Exhibit To Complaint

I Certify That This designation of MATTER CONTAINS  
NO MATTER which is irrelevant To This Appeal.

April 25, 2017

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