

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEAL

APPELLATE CASE No. 2017-000852

Willie Asbury,

Appellant,

vs.

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

Respondent.

PETITION FOR RE-HEARING

RECEIVED

MAY 26 2017

SC Court of Appeals

STATEMENT OF CASE

Appellant were indicted and convicted of murder and kidnapping in York County South Carolina in 1993. Appellant initial eligibility date for parole was January 2, 2012. Subsequently, Appellant have had parole reviews and denied parole on May 9, 2012; May 15, 2014 and August 10, 2016, respectively.

Appellant filed a petition for reconsideration on August 19, 2016, from the Probation, Parole, Pardon Services (Board) denial of parole. On August 31, 2016, Appellant received an letter dated August 29, 2016, from the agency General Counsel labeling petition for reconsideration as a "letter", refusing to file and acknowledge petition as an request for reconsideration, instead,

place petition in Appellant prison file for future parole reviews.

Appellant received on September 23, 2016, the agency final order dated September 20, 2016, denying his petition for reconsideration. On January 16, 2017, Appellant filed his original brief with the administrative law judge, On February 13, 2017, Respondent filed its original brief. On March 17, 2017 ALJ denied relief. On April 6, 2017 Appellant timely filed notice of appeal. ON April 11, 2017 appeal were placed on Court docket. On May 5, 2017 the Court of Appeal denied request for forma pauperis. This petition follows.

ISSUE' PRESENTED

Whether the Court denial of request for forma pauperis, were a abuse of its discretion, which denied Appellant access to the Court.

Whether the Court denial of request for forma pauperis, conflicts with the South Carolina decision in In Re Maxton, 478 S.E.2d 679 (S.C. 1996).

ARGUMENT'S

I.

It is Appellant claim that the S.C. Court of Appeal overlooked and misapprehended (SCACR, Rule 221 (a), where the S.C. Supreme Court clearly established its legal precedent and procedures to be followed when this Court consider an prisoner request to proceed in forma pauperis, see, In re Maxton, supra.

Appellant submit that this Court order, dated May 5, 2017 denying his request for forma pauperis is vague, arbitrary, capricious and a abuse of the Courts discretion. The Court failure in its May 5, 2017 order to cite any underlying factual findings and conclusion of law, facts that shows Appellant petition and request for forma pauperis, is faviolous and rise to the level of repetitive and abusive filings of Maxton, or those cases cited in Maxton, is an abuse of this Courts discretion that denys Appellant access to the Court, SCACR, Rule 221 (c).

ARGUMENT'S cont.

II.

It is Appellant claim that this Court in its analysis of his request for forma pauperis under Ex Parte Martin, overlooked and misapprehended the fact that the S.C. Supreme Court in its decision clearly established that where certain fundamental rights, (as access to court), are involved the S.C. Constitution requires that an indigent prisoner be allowed access to court, Id. at 535, 471 S.E.2d 135.

Appellant submit that this Court order dated May 5, 2017, denying his request for forma pauperis effectively discontinued his appeal from the administrative law judge, because his only means of filing the appeal was in forma pauperis, SCACR, Rule 221 (c), also see Wake v. State, 510 S.E.2d 228 (S.C. 1998).

Therefore, the absence of factual findings by this Court of repetitive and abusive filings by Appellant in this Court, the Court's May 5, 2017 order denies Appellant access to the Court, is arbitrary and a abuse of discretion, see Wake v. State, supra.

III.

Appellant submit that the mere fact that his appeal and request for forma pauperis were filed and placed on the Court docket on April 11, 2017, and laid on the docket for three (3) weeks before a judge denied his request for forma pauperis on May 5, 2017, shows that the judge's order (with no factual findings as required by law) denying request for forma pauperis were simply another dilatory and harassing tactic, with no concern for the resolution of the merits of Appellant constitutional claims.

Appellant submit that an frivolous appeal is one " which involves legal points not arguable on their merits ", Olympia Co. v. Celotex Corp., 771 F.2d

888, 893 (5th cir. 1985). And the judge's order dated May 5, 2017, void of any factual findings showing that appeal and request for forma pauperis, rose to the level of repetitive and abusive filings prohibited by Maxton, was for the purpose of harassment or out of sheer obstinacy.

CONCLUSION

Based on the above foregoing reasons this Court should vacate Judge's May 5, 2017 order, and re-schedule appeal for Briefing.

Respectfully Submitted,

Willie Casbury

The South Carolina Court of Appeals

Willie Asbury #200788, Appellant,

v.

South Carolina Department of Probation, Parole and
Pardon Services, Respondent.

Appellate Case No. 2017-000852

ORDER

The motion to proceed *in forma pauperis* is denied pursuant to *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). The filing fee must be paid within fifteen days of the date of this order.



FOR THE COURT

Columbia, South Carolina

cc:

Willie Asbury #200788

Tommy Evans, Jr., Esquire

Jana E. Shealy

FILED

May 5, 2017

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEAL

APPELLATE CASE No. 2017-000852

Willie Asbury,

Appellant,

vs.

South Carolina Department of Probation,
Parole, Pardon Services,

Respondent.

PROOF OF SERVICE

I, Willie Asbury, states under the penalty of perjury that I mailed one (1) copy of Appellant, Petition For Re-Hearing, to the addresses listed below by placing them in the prison mailing system, on the 23rd of May 2017.

Jenny Abbott Kitching, Clerk
S.C. Court of Appeal
P.O. Box 11629
Columbia, South Carolina 29211

Office of the General Counsel
S.C. Dept. of Probation, Parole, Pardon Service
2221 Devine St., Suite 600
P.O. Box 50666
Columbia, South Carolina 29250

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Respectfully Submitted,

Willie Asbury

Date: May ^{2d} 23, 2017

Jenny Abbott Kitching, Clerk
S.C. Court of Appeal
P.O. Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

Re: Willie Asbury v. S.C. Dept. of Probation, Parole, Pardon Services
Appellate Case No. 2017-000852

Dear Honorable Clerk:

Enclosed please find one copy of Appellant Petition For Re-Hearing, to be filed in the above cited action.

Your assistance in this matter would be greatly appreciated.

Respectfully Submitted,

Willie Asbury

THE STATE OF CALIFORNIA

