

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Appellate Case No. 2017-000909

Ronald Coulter, #300410,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

PETITION FOR REHEARING

The appellant herein respectfully moves this Court, pursuant to Rule 221, SCACR, for an order reversing the denial of the appellant's motion to proceed in forma pauperis. As a result of the appellant's inability to pay the required filing fee in this action, the Court's denial of the above-mentioned motion has the effect of dismissing or finally deciding the appellant's appeal.

The appellant respectfully shows this Court that the following factual or legal matters may have been overlooked or misapprehended:

1. The Court's reliance on Ex parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995), as the authority for denial of the motion to proceed in forma pauperis was ambiguous.

The Martin Court concluded that "motions to proceed in forma pauperis may only be granted where specifically authorized by

RECEIVED
JUN 02 2017
SC Court of Appeals

statute or required by constitutional provisions." Id. at 535, 471 S.E.2d at 134-35 (citations omitted). The Martin Court also noted that "where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts." Id.

In identifying examples where access to the courts were constitutionally required, the Martin Court ultimately summarized that, "[T]he examples given are not exhaustive but are illustrations of when a motion to proceed in forma pauperis must be granted by a judge. Other statutory exceptions and other fundamental rights may require the waiver of filing fees for indigents." Id. at 535, n.1, 471 S.E.2d at 135, n.1.

This Court's denial of the indigent appellant's motion to proceed in forma pauperis in an appeal involving an alleged Takings Clause violation under the Fifth Amendment of the United States Constitution, in the absence of a determination that no fundamental constitutional right is involved, undermines the very proposition expressed by the Martin Court.

2. The waiver of the filing fee for the instant appellate case should be constitutionally required.

The instant appeal involves a fundamental right, as clearly outlined in the Bill of Rights of the U.S. Constitution, to hold and enjoy lawful property. The Fifth Amendment specifically protects an individual's right to hold and enjoy lawful property. The last clause explicitly guarantees that private property cannot be appropriated for public use without fair compensation.

In this appeal brought under the Administrative Procedures Act (APA), the appellant challenges the lawfulness of the South Carolina Department of Correction's (SCDC's) garnishment of non-wage funds from his prison account, without consent, or just compensation, in order to fund the State's DNA Database.

The test of ownership of money or property is the right to dispose thereof. The appellant clearly has the right, pursuant to SCDC's fund account policy, to dispose of the available non wage

funds in his prison account. Furthermore, this Court is well aware that federal courts have clearly recognized that a prisoner has a protected property interest in his prison trust account. See Burks v. Pate, 119 Fed. Appx. 447 (4th Cir. 2005); McMahan v. International Association of Iron Workers, 858 F.Supp. 529 (D.S.C.1994); Shinault v. Hawks, 776 F.3d 1027 (2015); Johnson v. Dept. of Public Safety and Correctional Services, 885 F.Supp. 817 (1995); Schneider v. California Department of Corrections, 151 F.3d 1194 (1998); Richmond v. Stigile, 22 F.Supp.2d 476; Phillips v. Washington Legal Foundation, 118 S.Ct. 1925 (1998); and Webb's Fabulous Pharmacies, Inc. v. Beckwith, 101 S.Ct. 446 (1980).

To conclude that this appellate case does not involve a fundamental constitutional right requiring the indigent appellant to be allowed access to the courts would be counterintuitive.

Conclusion

For the reasons set forth above, the appellant asks that this Court grant a rehearing of the appellant's motion to proceed in forma pauperis and review the motion accordingly.

May 31, 2017.

Respectfully submitted,



Ronald Coulter, #300410
Ridgeland CI, CA-25
P.O. Box 2039
Ridgeland, SC 29936

Appellant, Pro Se

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

JUN 02 2017

D. Craig Brown, Circuit Court Judge **SC Court of Appeals**

Appellate Case No. 2017-000909

Ronald Coulter, #300410,

Appellant,

v.

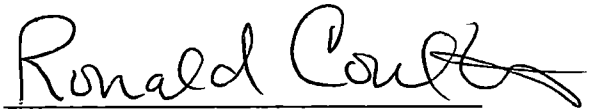
South Carolina Department of Corrections,

Respondent.

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on the South Carolina Department of Corrections by depositing a copy of it in the United States Mail, postage prepaid, on May 31, 2017, addressed to the attorney of record: Stephen H. Lunsford, General Counsel, SCDC, P.O. Box 21787, Columbia, SC 29221.

May 31, 2017.

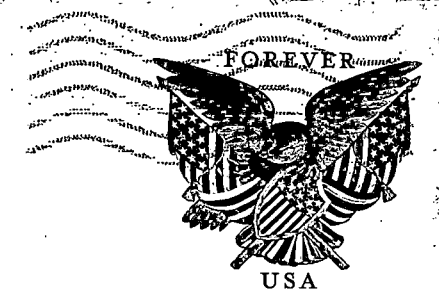


Ronald Coulter, #300410
Ridgeland CI, CA-25
P.O. Box 2039
Ridgeland, SC 29936

Appellant, Pro Se

Ronald Coulter #300410
Ridgeland CI, CA-25
P.O. Box 2039
Ridgeland, SC 29936

CHARLESTON SC 294
31 MAY 2017 PM 1 L



RECEIVED

RIDGELAND CORRECTIONAL
INSTITUTION

JUN 02 2017

SC Court of Appeals

Jenny A. Kitchings, Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC

MAY 30 2017

Mailroom

LEGAL
MAIL

29211+1629

29211-1629