

The State of South Carolina

In the Court of Appeals

Appeal from York County

Court of Common Pleas

RECEIVED

JUL 24 2017

SC Court of Appeals

S. Jackson Kimball, III, Equality Court Judge

Appellate Case no. 2016-002534

Case no. 2016-CP-46-2414

Ralph L. Erwin, _____ Appellant,

v.

South Carolina Department of Probation,

Parole and Pardon Services, and State

Of South Carolina, _____ Respondents.

(Amended) Final Brief

Ralph L. Erwin

Ralph L. Erwin

140 West Centennial Street

Apartment 38-B

Spartanburg South Carolina 29303

864-494-2269- Appellant

TABLE OF CONTENTS

Table of Authorities _____	ii
STATEMENT OF ISSUES ON APPEAL _____	1
STATEMENT OF THE CASE _____	2
Arguments	
1. The TRIAL COURT Erred in ruling THAT Appellant's Claim is Barred by Res JUDICATA _____	4
2. The TRIAL COURT Erred in ruling Appellant's Claim is Barred by Collateral ESTOPPEL _____	6
3. The TRIAL COURT Erred in ruling Appellant's Claim is barred by STATUTE OF LIMITATION _____	7
Conclusion _____	9

Table of Authorities

CASES

Gore V. Gormans Inc., 148 F. Supp. 241 (W. D. Mo. 1956)	5
Thompkins V. Missouri, K+T. Ry. Co. 211 F. 391 (C.C.A. 8th Cir. 1914)	5
Roberts V. Recovery Bureau, Inc. S.C. App. 1994 316 S.C. 492	6
STATE V. Brown (S.C. 1935) 178 S.C. 294, 182 S.E. 838, 56 S.Ct. 750	7
BARTLETT V. STATE, 711 N.E. 2d 497 Ind. (1999)	7
Boyd V. STATE, 766 N.E. 2d 396 Ind. (Ct. App. 2002)	8
Bennett V. Ohio Dept. of Rehab. + Corr. 60 Ohio St. 3d 107, 573 N.E. 2d 633 (1991)	8
Knight V. Waggoner, 359 S.C. 492, 597 S.E. 2d 894 (Ct. App. 2004)	8

STATUTES

U.S.C.A. Const. Amend 14	6
Am. Jur. 2d Section 108 Limitation Period	9

STATEMENT of issues on Appeal

1. Did The Trial Court Err in Ruling That Appellant Action WAS Barred By Collateral Estoppel
2. Did The Trial Court Err in Ruling That Appellant Action WAS Barred By Res Judicata
3. Did The Trial Court Err in Ruling That Appellant Action WAS Barred By Statute of Limitation

STATEMENT OF THE CASE

ON August 29, 2016, Appellant RALPH L. Erwin, Filed A COMPLAINT For False Imprisonment Against The South Carolina Department of Probation, Parole AND Pardon Services, AND The STATE of South Carolina. This ACTION WAS Filed in The York County Court of Common Pleas, under The South Carolina Tort Claims Act. On September 19, 2016, Appellant Filed with The Clerk of Court, York County, S.C. A Verification of Service, with Copies mailed To Ms. Stephanie H. Burton, Attorney For 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 AND For SANCTIONS. On October 21, 2016 Appellant Filed AN OBJECTION To This Motion To Dismiss.

On November 17, 2016, Appellant WAS given A hearing On This MOTION To Dismiss And For SANCTIONS before Honorable S. JACKSON Kimball, III, Equity Court Judge Of York County South CAROLINA.

On Such date Judge Kimball dismissed Appellants' ACTION based on COLLATERAL ESTOPPEL, RES JUDICATA AND STATUTE OF LIMITATION.

For SANCTIONS Judge Kimball ordered THAT Appellant NEVER be Allowed To File This ACTION Again.

Appellant in his ACTION had requested he be AWARDED A Combine TOTAL of Six (6) Million dollars For DAMAGES, Plus Four (4) hundred dollars he WAS ordered To Pay The Parole Board For A PSYCHOLOGICAL TEST he WAS ordered To TAKE, AND For Monies he had PAID For Supervision Fees Since being 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 Mailed Copies To The Attorney For The Respondents, Ms. Stephanie H. Burton AT 308 EAST SAINT JOHN STREET, SPARTANBURG SOUTH CAROLINA 29302.

Argument

1. The Trial Court Erred by Dismissing Appellants' Action on 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 based ON Res Judicata. Res Judicata is AN issue THAT has been definitively settled by Judicial decision. There Are Three (3) essential elements To Res Judicata; 1. An earlier decision on The issues, 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. Gormans' Inc., 148 F. Supp. 241 (W.D. Mo. 1956).

Also, Judge Kimball Admitted AT The hearing THAT Appellant never had A Trial on The Merits on Any of Appellant Claims, R.T.P. 95 Lines 13-23.

The Record of Prior Proceedings before A Magistrate may be Admissible To defeat The Claim or Mitigate damages. Thompkins V. Missouri, K&T. Ry. Co. 211 F. 391 (C.C.A. 8th Cir. 1914)

Additionally, in AN order of July 30, 2012, Judge Lee S. Alford STATED THAT Appellant received AN evidentiary hearing in 1991, based on This issue. R. Appendix, P.P. 6-7.

However, Judge Alford's Assumption in THAT regard is entirely wrong. THAT Case had Absolutely nothing To do with This Case.

Appellant had filed a Post Conviction Relief based on the Parole Board changing his Parole revocation hearings from once each year to once each two (2) years. R. Appendix, PP. 8-15.

2. The Trial Court Erred in ruling Appellant's Case is barred by Collateral Estoppel

Appellant Alleges that Circuit Court Erred by dismissing his Tort Claims Complaint Against The South Carolina Department of Probation, Parole and Pardon Services, and The State of South Carolina based on 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 issues which stand squarely against their position. Roberts v. Recovery Bureau, Inc. (S.C. App. 1994) 316 S.C. 492.
U.S.C.A. Const. Amend 14.

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, (182 S.E. 838, 56 S. CT. 750).

3. The Trial Court Erred in ruling THAT Appellant's CLAIM is Barred by STATUTE OF LIMITATION.

Appellant Alleges THAT Circuit Court Erred by ruling his Complaint WAS 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 Limitation 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. Bennett v. Ohio Dept. of Rehab. & Corr., 60 Ohio St. 3d 107, 573 N.E. 2d 633 (1991).

Where There Are Continuing Abateable Invasions of Property, The injury is Continuous And each encroachment gives rise To The right To File A New Claim. Knight v. Waggoner, 359 S.C. 492, 597 S.E. 2d 894 (Ct. App. 2004).

Under The Prevailing rule, The STATUTE runs From The Time When The imprisonment Terminated, rather Than When The Person

Subsequently Learned That The Arrest had been illegal. Am. Jur. 2d Section 108 Limitation Period.

Finally, As This Court Can Witness, Not one Of The Orders From The Past In The record On Appeal, Can Verify Where Appellant has been given An opportunity To have his Claim heard in Any Court.

Conclusion

The errors identified in each of the foregoing sections of this brief individually And in their cumulative effect prejudiced The Appellant And deprived him of The due Process of Law And Justice Administered Without unnecessary delay. For This Reason Appellant would Ask This Court To reverse The Lower Courts decision And Award him his request in his Complaint. For This will The Appellant Forever Pray.

Respectfully Submitted

Ralph L. Erwin,

Ralph L. Erwin

140 West Centennial Street

Apartment 38-B

Spartanburg, South Carolina

29303

(864) 494-2269

Appellant

July 21, 2017

The STATE of South Carolina
In The Court of Appeals

Appeal From York County
Court of Common Pleas

RECEIVED

JUL 24 2017

SC Court of Appeals

S. JACKSON KIMBALL, III, Equity Court Judge

Appellate Case No. 2016-002534
Case No. 2016-CP-46-2414

Ralph L. Erwin, _____ Appellant,
v.

S. CAROLINA Department of Probation, Parole
And Pardon Services And State of
South Carolina, _____ Respondents.

The undersigned certify that this Final Brief Complies
With Rule 211(b), SCACR.

July 21, 2017

Ralph L. Erwin
Ralph L. Erwin
140 West Centennial ST
Apt. # 38-B
Spartanburg, S.C. 29303
(864) 494-2269