

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 dismissal of this appeal on procedural grounds. The appellant respectfully shows this Court that the following may have been misapprehended or overlooked:

1. The Court's failure to address the appellant's motion to proceed in forma pauperis in its final order of dismissal has diminished the appellant's ability to raise, on certiorari, this Court's ambiguous reliance on Ex parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995), as the authority for denying the initial IFP motion in an appellate action involving a fundamental constitutional right embodied in the Bill of Rights of the United States Constitution.

The appellant, in his IFP motion, cited Ex parte Martin as the authority giving this Court the discretion to grant his IFP

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motion. On May 18, 2017, this Court denied, without explanation, the appellant's IFP motion pursuant to the very same Ex parte Martin Court. The appellant subsequently filed an apparent timely petition for rehearing on the Court's denial of the initial IFP motion. The appellant pointed out that the Ex parte Martin Court noted that "where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts." Id., 321 S.C. at 535, 471 S.E.2d at 134-35.

The appellant also pointed out that the Supreme 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 135, n.1, 471 S.E.2d at 135, n.1.

In the past, it has been this Court's practice to return improper petitions for rehearing immediately, non-filed, that failed to comply with Rule 240(i), SCACR. However, in the instant case, this Court not only accepted the petition for rehearing, but also entertained a court requested return to the petition for rehearing on behalf of the respondent, as well as a reply from the appellant. The Court then issued an order, on July 19, 2017, indicating that it will not entertain the rehearing petition because it did not have the effect of dismissing or deciding the instant appeal; thereby, rendering the appellant's lodged objections to the IFP denial meaningless.

The exclusion of the filing and denial of the IFP motion from the Court's order of dismissal implies a blatant disregard,

by the appellant, to pay the filing fee, and diminishes the appellant's ability to seek review of an alleged deprivation of interest encompassed by the Fourteenth Amendment's protection of property, as well as the denial of the IFP motion pursuant to Ex parte Martin, supra.

This Court had the discretion to grant the IFP motion, pursuant to the Supreme Court's instructions in Ex parte Martin. In the alternative, this Court, at the very least, could have made a determination that no fundamental constitutional right was involved in the appeal warranting the waiver of the filing fee.

2. The Court, in its final order of dismissal, gave no consideration to the appellant's previously filed motion for leave to use the lower court record and dispense with Rules 209 and 210, SCACR.

The appellant declared that he is indigent and financially unable to meet the requirements of Rule 210, SCACR. The appellant offered, in the alternative, that this Court allow this case to be heard on the lower court record because it contains all of the pleadings, orders, exhibits, and other materials which may be properly included in the record on appeal, including any cross-designations made by the respondent.

The appellant also added that the lower court record could provide the basis for this Court's review of the lower court's findings, conclusions, or decisions under the standard of review established by the Administrative Procedures Act. Cf. S.C Code Ann. § 1-23-380(A)(6)(e).

In addition, on May 22, 2017, the appellant, in response to the Court's May 15, 2017 deficiency notice, informed the Court that the designation of matter was not included because the aforementioned motion to dispense was still pending at the time of the deadline for the initial brief.

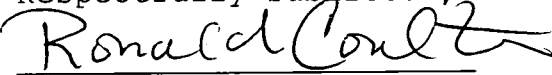
The exclusion of the filing and denial of the appellant's motion to use the record below and dispense with Rules 209 and 210, SCACR, from the Court's final order of dismissal, again, implies a blatant disregard, by the appellant, to meet the procedural requirements, and diminishes the appellant's ability to seek review of this Court's denial of that motion.

To deny the incarcerated indigent appellant the opportunity to seek appellate review of an alleged infringement of constitutional dimensions, in an internal prison matter, because he is financially unable to produce the record on appeal intimates the denial of equal protection of the laws in violation of the Fourteenth Amendment.

Conclusion

For the reasons set forth above, the appellant asks that this Court grant a rehearing of the Court's order of dismissal in the instant appeal.

August 7, 2017.

Respectfully submitted,

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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 August 7, 2017, addressed to the attorney of record: Melissa J. Arnold, Office of General Counsel, SCDC, P.O. Box 21787, Columbia, SC 29221.

August 7, 2017.



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