

The State of South Carolina  
In The Supreme Court

Appeal From The South Carolina Court of Appeals

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SEP 08 2017

Appellate Case no. 2017-000850

SC Court of Appeals

Willie Asbury,

Appellant,

v.

South Carolina Department of  
Probation, Parole & Pardon Services,

Respondent.

Petition of Certiorari

Statement of Case

Appellant were indicted and convicted of murder and kidnaping in York County South Carolina in 1993. Appellant initial parole eligibility date 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 Probation, Parole, and Pardon Services (Board) denial of August 10, 2016 parole review. 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 it's original brief. On March 17, 2017 the ALJ denied relief. On April 6, 2017 Appellant timely filed notice of appeal. On April 11, 2017 appeal was place on court docket. On May 5, 2017, the court of appeal denied request for forma pauperis. On May 23, 2017 Appellant timely filed petition for re-hearing. On May 23, 2017 court of appeal dismissed appeal as untimely. On June 8, 2017 petition for re-hearing was place of court docket. On August 9, 2017, the court of appeal denied petition for re-hearing. This petition follows.

### Statement of Facts

Relevant to this court ruling, the material facts underlying

the court of Appeal denial of motion to proceed in forma pauperis and re-hearing. Is the parole board customs, practice's, and policies denying appellant the statutory (§ 24-21-610) required psychological evaluation by an duly license psychologist or psychiatrist before his parole review.

And the material facts of the board failure in it's final order denying parole, to provide the statutory (§ 1-23-350; § 24-21-640) required underlying facts that explain and connects it's finding of facts to it's conclusion of law, drawn from those findings. Material facts that give rise to an question of constitutionality, of the board final order denying parole, and the court of appeal final order denying access to the courts.

### ISSUE'S PRESENTED

Whether the court of Appeal denial of request for forma pauperis, was a abuse of it's discretion, which denied appellant access to the court.

Whether the court of Appeal denial of request for forma pauperis, conflicts with the S.C. SUPREME COURT decision in In RE MAXTON, 478 S.E. 2d 679 (S.C. 1996).

## Argument's

### I.

Appellant submit that the S.C. Court of Appeal final order conflicts with the clearly established legal precedent of the S.C. Supreme Court in IN RE MAXTON, 478 S.E. 2d 679 (S.C. 1996).

A conflict which give rise to the substantial Federal and state constitutional issue of access to the court that is directly involved. And certiorari review by this court is necessary to secure and maintain uniformity of the court decision, S.C.A.C.R. Rule 242(b)(3)(4)(5).

Appellant submit that the court of appeal in its analysis of his request for forma pauperis under Ex Parte MARTIN, overlooked and misapprehended the fact that this 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 his forma pauperis request is the only avenue by which he are able to validate his first amendment right to access to the courts. The court of appeal final order is suppressive, denies the right to be heard, and access to court to have the merits of con-

stitutional claims adjudicated by the appellate courts.

Appellant submit that in comparison his state and federal court filing do not reach the level of repetitive filings as in IN RE MAXTON, SUPRA. Appellant has filed three PCR's; one of which was successful; two state habeas corpus; two federal habeas corpus, one of which was dismissed for failure to exhaust, without prejudice;

Two 28 U.S.C. § 2244 motions, neither of which was determined to be repetitive, numerous, or totally frivolous, see, Williams v. State, 354 S.C. 630, 583 S.E. 2d 52 (S.C. 2003), Lakes v. State, SUPRA.

Appellate submit that to the extent funds are appropriated by the S.C. General Assembly, court costs and expenses shall be made available to an indigent defendant, S.C. Code Ann. § 17-37-60 (1976).

Appellant submit that the court of appeal in its May 5, 2017 final order failure to provide or cite any underlying factual findings and conclusion of law, that shows petition and request for forma pauperis is frivolous and rise to the level of

Repetitive and abusive filings of Maxton, or those cases cited in Maxton, is an abuse of its discretion that denies appellant access to the courts.

SCAAR, Rule 221 (c).

### Conclusion

The Court of Appeal denial of forma pauperis effectively dismissed his appeal from the Administrative Law Court, because appellant only means of filing the appeal was in forma pauperis, Williams v. State, supra.

As such, this court should remand to Court of Appeal, with instructions to re-instate appeal.

Respectfully submitted,

Wileie Asberry

Date:

September 5<sup>th</sup>, 2017

The State of South Carolina  
In The Supreme Court

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Appeal From The South Carolina Court of Appeal

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Appellate Case No. 2017-000852

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Willie Asbury,

Appellant,

v.

South Carolina Dept. of Probation,

Parole & Pardon Services,

Respondent.

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Motion To Proceed In Forma Pauperis

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1. I, Willie Asbury, being duly sworn states that I am the appellant in the above cited action. And I do not have the funds available to pay costs of filing in this matter.

2. This forma pauperis request represent the only means appellant have to file his appeal.

3. This forma pauper's Request is the only avenue by which Appellant are able to validate his first amendment right to access to the courts.

4. The two issues presented in Appellant is a novelty.

5. There is no legal precedent, and there have been no adjudication of the merits of similar's issues in the S.C. Judiciary.

6. The final order's of Agency, Administrative Law Judge, and S.C. Court of Appeal, conflicts with this court's legal precedent, S.C. Const. Art. I, § 3, and review by this full court is necessary to secure and maintain uniformity of the lower court and administrative tribunal.

I hereby request that this request to proceed in forma pauperis and appeal be allowed to be filed without pre-payment of costs.

Respectfully submitted,  
Willie Asbury

The State of South Carolina  
In The Supreme Court

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Appeal From The South Carolina Court of Appeal

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Appellate Case No. 2017-000853

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**RECEIVED**

SEP 08 2017

SC Court of Appeals

Willie Asbury,

Appellant,

v.

South Carolina Department of  
Probation, Parole, Pardon Services,

Respondent.

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Proof of Service

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I, Willie Asbury, states under penalty of perjury that I mailed one (1) copy of petition for certiorari, to the addresses listed below by placing them in the prison mailing system on September 5<sup>th</sup>, 2017.

Jenny Abbott Kitching, Clerk

S.C. Court of Appeals

P.O. Box 11639

Columbia, South Carolina 29211

South Carolina Supreme Court, Clerk

P.O. Box 11330

Columbia, South Carolina 29211

Office of the General Counsel

S.C. Dept. of Probation, Parole & Pardon Service

2221 Devins St. Suite 600

P.O. Box 50666

Columbia, South Carolina 29250

Respectfully Submitted,

Willie Ashberg

Date:

September 5<sup>th</sup>, 2017

Witnessed and subscribed before me this  
5<sup>th</sup> day of September, 2017  
Willie Ashberg (L.S.)  
Notary Public for South Carolina

My Commission Expires: 5-18-26

# 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

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## ORDER

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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.

Deadline  
5-23-17

  
FOR THE COURT

Columbia, South Carolina

cc:

Willie Asbury #200788

Tommy Evans, Jr., Esquire

Jana E. Shealy

**FILED**

May 5, 2017

# The South Carolina Court of Appeals

Willie Asbury #200788, Appellant,

v.

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

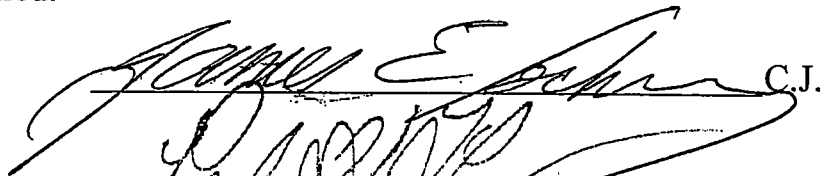
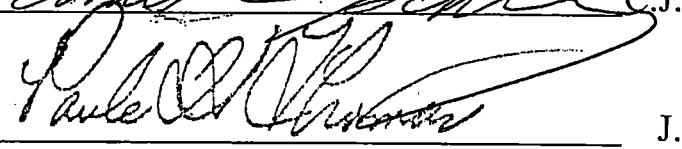

Appellate Case No. 2017-000852

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## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

  
C.J.  
  
J.  
  
J.

Columbia, South Carolina

cc:  
Willie Asbury #200788  
Tommy Evans, Jr., Esquire  
Jana E. Shealy

**FILED**

August 9, 2017

DATE:

September 5<sup>th</sup>, 2017

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

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SEP 08 2017

SC Court of Appeals

RE: WILLIE ASBURY v. S.C. DEPT. OF PROBATION, PAROLE, PARDON, & RR.  
APPELLATE NO. 2017-000852

DEAR HONORABLE CLERK:

Enclosed please find one copy of Appellant  
petition for certiorari, motion to proceed in forma pa-  
uperis, to be filed in the above cited action.

Your assistance in this matter would be  
greatly appreciated.

Respectfully submitted,

Willie Asbury

D. P. [unclear] 200788 11768  
Turbeville, South Carolina 29162



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SEP 06 2017  
MAIL ROOM  
TURBEVILLE SC

Jenny A. [unclear] Clerk  
SC Court of Appeals  
PO Box 11629  
Columbia, South Carolina

29211

