The State of South Carolina
In The Supreme Court

Appeal From The South Carolina Court of Appeal

Appellate Case no. 2017-000852

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 kidnapping 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, were 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 it's analysis of his Request for forma pauperis under Ex Parte Martin, overlooked and misapprehended the fact that this court in it's 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 determine 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. § 17-27-80 (1976).

Appellant submit that the court of Appeal in it's 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 it's discretion that denys Appellant Access to the courts. SCALR. 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-instated Appeal.

Respectfully submitted.

Willie Asbury

Date:

September 5th, 2017