

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appellate Case No. 2017-001709

RECEIVED
SEP 26 2017
SC Court of Appeals

Leroy A. McKenzie, #300416, Appellant,

v.

South Carolina Department of Corrections, Respondent.

MOTION FOR REVIEW OF DENIAL OF MOTION TO
PROCEED IN FORMA PAUPERIS

COMES NOW, Leroy A. McKenzie, #300416, Appellant in the above captioned. Appellant resides at a public institution, indigent pro se, inmate filed a notice of appeal and motion to proceed in forma pauperis. SC Court of Appeals Order dated September 13, 2017 and received by Appellant on September 15, 2017, Denied the motion to proceed in forma pauperis pursuant to Ex parte Martin, 321 SC 533, 471 SE2d 134 (1995). . .barring indigent inmate from petitioning court for violations of Constitutional rights under the Eighth Amendment proscriptions against cruel and unusual punishment, the Fourteenth Amendment Due Process Clause and Americans with Disabilities Act (ADA) Title II and prohibition against retaliation for assertion of the same, and First Amendment rights for barring access to petitioning the court by requiring indigent Appellant to prepay a filing to protect these fundamental interest that are at stake.

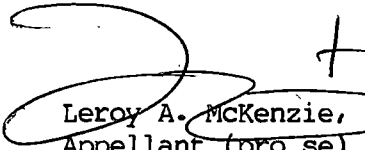
MOREOVER; 42USCA §1997(e)(a) requires mandatory exhaustion of state inmates available grievance remedies for these Constitutional and ADA claims to the State's highest court. The State Court precedent *Ex parte Martin* (Supra), does not discuss or express an opinion that addresses the exhaustion requirement concerns that §1997(e)(a) impose on state prisoners, nor does it provide waiver of exhaustion in instances when an indigent inmate can not pay a filing fee and the State in comity must have the first opportunity to address Appellant's Constitutional and ADA claims in light of the State's duty to provide medical care to the inmates of its' prisons. (See SC Const. Art. XII, Sec 2, Sec 9; SC Code of Laws §24-1-20, 130, and 140; SCDC Policy HS-18.01(6), HS-18.15(1.1). These are several provisions in South Carolina which generally concern the custody and care of prisoners. It can be said that existing in South Carolina are provisions of law which express a general intent by Legislature that all convicted prisoners be afforded adequate medical services. (. . .it cannot be seriously questioned that SCDC has the authority and duty in the area of providing health services to inmates.)(1986WL289656 S.C.A.G)

Appellant, from the outset and now, hereby, press a claim that he has a fundamental right of access to the court for available redress as a result of alleged SC Const. Art. XII, Sec 2, Sec 9; and Eighth Amend. violations for medical care and treatment and he has suffered actual injury (loss of 30 lbs.) deteriorating health, which necessitate a fee waiver. See *M.L.B. v. S.L.J.*, 519 US 102, 113, 117 Sct 555, 562-64, 136 LEd2d 473 (1996)(indicating fee waivers are required in a "narrow category of civil cases" where litigant has a "fundamental interest" at stake.)

In this case Appellant's indigency and desire for medical/health care is beyond dispute. The requirement that the Appellant resort to the state process is entirely a state created matter, thus, must afford indigent Appellant access to the means it has prescribed for doing so. The Court of Appeals Order "denying" in forma pauperis standing to Appellant had effectively foreclosed access to the courts of South Carolina and will discontinue the action because indigent inmate's (Appellant's) only means of bringing the action was in forma pauperis and pro se. If indigent Appellant would not be granted leave to proceed in forma pauperis to file an appeal to the State's highest court from the grievance system as such, further attempts to exhaust pursuant to 42USC §1997(e)(a) would be futile. (See Gray v. Zook, 806 F3d 783, 798; Knight v. State of WVa, 921 F2d 1251; Teague v. Lane, 498 US 288(1989); Snethen v. Nix, 736 F2d 1241, 1245 (8th Cir. 1984); Wiley v. Stowers, 647 F2d 642, 647 (6th Cir. 1981).

PRAYER FOR RELIEF

Appellant, based on his proposition in applying such legal principles should be granted leave to proceed in forma pauperis and a construction consistent with laws and caselaw should be reviewed by this Court in these circumstances.



Leroy A. McKenzie, #300416
Appellant (pro se)

Lieber Cor. Inst./SA-62
P.O. Box 205
Ridgeville, SC 29472

Dorchester, South Carolina
September 21, 2017

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PROOF OF SERVICE

I certify that I have served the Motion for Review of Denial of Motion to Proceed In Forma Pauperis on David Tatarsky, Esquire, by depositing a copy of it in the Lieber Cor. Inst. Mailroom (Inter-Agency Mail) on September 21, 2017, addressed to David Tatarsky, General Counsel (SCDC), 4444 Broad River Road, P.O. Box 21787, Columbia, SC 29221-1787.


Leroy A. McKenzie, #300416
Appellant (pro se)

Lieber Cor. Inst./SA-62
P.O. Box 205
Ridgeville, SC 29472

Dorchester, South Carolina
September 21st, 2017

Mr. Leroy A. McKenzie, #300416
Lieber Cor. Inst./SA-62
P.O. Box 205
Ridgeville, SC 29472

September 21, 2017

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SC Court of Appeals

Honorable V. Claire Allen
Deputy Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

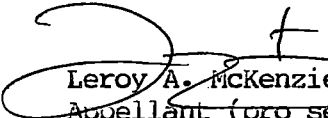
Re: Leroy A. McKenzie, #300416 v. South Carolina Department of Corrections
(Appellate Case No. 2017-001709)

Dear Ms. Allen,

Please find enclosed a Appellant's record, Motion for Review of Denial of Motion to Proceed In Forma Pauperis and Proof of Service, that was this day served on Respondents and is hereby filed with the court pursuant to Order dated September 13, 2017, Hon. James E. Lockemy and your letter dated September 18, 2017. I am kindly requesting a review in this matter because my indigent status will not change in the foreseeable future.

Thank you for your time and consideration in this matter.

Sincerely,


Leroy A. McKenzie, #300416
Appellant (pro se)

Mr. Leroy A. Mc Kenzie #300416
Lieber Cor. Inst. / SA-62
P.O. Box 205
Ridgville, SC 29472

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Hon. V. Claire Allen, Clerk
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