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JAN 02 2018

S.C. SUPREME COURT

*Perry Correctional Inst
Harold Ayton #353371
430 Oaklawn Rd
Pelzer, SC 29669*

*SC. Supreme Court
P.O. Box 11330
Columbia, SC 29211*

12-22-17

*Re: Harold Ayton v. South Carolina Dept of Corr Et AL
C/A No. 2017-CP-23-01463*

Dear Clerk:

*ENCLOSED FOR FILING, please FIND AN ORIGINAL AND ONE (1) copy of a Notice of Appeal and
PROOF OF DELIVERY in the above case number.*

Thank you FOR your assistance with this matter

With kindest regards

Sincerely



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JAN 02 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

H. Perry Gravely, Presiding Circuit Judge-Greenville County
(13th Circuit Term)

Tort Action Complaint CIA Number:
2017-CP-23-01463

Harold Ayton #353371

Plaintiff

v.

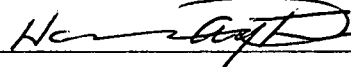
South Carolina Dept of
Corrections Et. al.

Defendants

NOTICE OF APPEAL

Harold Ayton #353371 appeals the decision and Order dated October 27, 2017. Plaintiff received written entry of this Order on November 8, 2017, and the denied Rule 59(e) Order on December 11, 2017. Plaintiff demands and request a de novo review hearing.

Date: 12-22-17



Harold Ayton #353371
Perry Correctional Inst
430 Oaklawn Rd
Pelzer, SC 29669

Other Counsel of Record
Jame P. Walsh
P.O. Box 6728
Greenville, SC 29606

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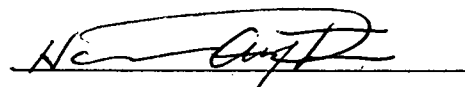
South Carolina Dept of
Corrections Et AL

Defendants

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the South Carolina Supreme Court by depositing a copy of it in the U.S. Mail, postage prepaid, on December 22, 2017 addressed to P.O. Box 11330, Columbia, SC 29211.

Date: 12-22-17



Harold Ayton # 353371

430 Oaklawn Rd

Pelzer, SC 29669

Standard

The ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602-03 (1995); citing State Board of Medical Examiners v. Fenwick Hall, Inc., 300 S.C. 274, 387 S.E.2d 458 (1990). A Rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. Id.; citing Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).

Statute of Limitations

The Defendants are "governmental entities" or employees of governmental entities acting within the course and scope of their employment as defined in the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-30(d). The Act, which governs all tort claims against governmental entities, see, e.g., Pollard v. County of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct.App.1994); Searcy v. Dep't of Educ. Transp. Div., 303 S.C. 544, 402 S.E.2d 486 (Ct.App.1991), provides a strict statute of limitations period:

Except as provided for in Section 15-3-40 [which is not applicable to this case], any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 185-86, 534 S.E.2d 1, 6 (Ct. App. 2000); citing S.C. Code Ann. § 15-78-110 (Supp.1999). The Tort Claims Act contains a general two-year statute of limitations. Id.

pk

On the face of his Complaint, the Plaintiff alleges that the acts which led to his alleged false imprisonment, which forms the basis of all of his causes of action, occurred on December 4, 2012, over four years ago. The physical act of the arrest occurred much earlier. Any lawsuit for false imprisonment must have been filed within two years of the date of the arrest. Due to the Plaintiff's delay of greater than four years in the filing of this lawsuit, it must be dismissed due to the fact that it was not timely filed within the applicable statute of limitations.

False Imprisonment

The Plaintiff's Complaint must set forth allegations to satisfy the requisite elements of his causes of action. See Stiles, supra. Based on a plain reading of the Plaintiff's Complaint, it is clear that all of his alleged causes of action arise out of his imprisonment, and his allegations that his imprisonment is improper. Therefore, if his false imprisonment claim fails, all of his claims must fail since they are based on the premise that he is falsely imprisoned.

The essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification. Law v. S.C. Dep't of Corr., 368 S.C. 424, 440-41, 629 S.E.2d 642, 651 (2006); citing Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990); Thomas v. Colonial Stores, Inc., 236 S.C. 95, 113 S.E.2d 337 (1960). To prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) **the restraint was unlawful**. Id. (emphasis added); citing Gist v. Berkeley County Sheriff's Dep't, 336 S.C. 611, 521 S.E.2d 163 (Ct.App.1999); Jones by Robinson v. Winn-Dixie Greenville, Inc., 318 S.C. 171, 456 S.E.2d 429 (Ct.App.1995); Caldwell v. K-Mart Corp., 306 S.C. 27, 410 S.E.2d 21 (Ct.App.1991); see also Jones, 301 S.C. at 64, 389 S.E.2d at 663 (an action for false imprisonment cannot be maintained where one is arrested by lawful authority).

PHW

The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest. *Id.*; citing *Gist*, 336 S.C. at 615, 521 S.E.2d at 165. Probable cause is defined as **a good faith belief that a person is guilty of a crime** when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. *Id.* (emphasis added); citing *Jones v. City of Columbia*, 301 S.C. at 65, 389 S.E.2d at 663. Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion. *Id.*; citing *Parrott*, 246 S.C. at 323, 143 S.E.2d at 609.

Probable cause means “the extent of such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he has been charged, and only those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should be considered.” *Id.* at 436. In determining the existence of probable cause, the facts must be “regarded from the point of view of the party prosecuting; the question is not what the actual facts were, but what he honestly believed them to be.” *Id.*; quoting *Eaves*, 277 S.C. at 478, 289 S.E.2d at 415–16 (citing 54 C.J.S. *Malicious Prosecution* § 20, p. 977). South Carolina has long embraced the rule that a true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution. *Id.*; citing *Kinton*, 274 S.C. at 182, 262 S.E.2d at 728. As stated above, although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion. *Id.*; citing *Parrott*, 246 S.C. at 323, 143 S.E.2d at 609.

The *Law* case involved facts where the indictments against Appellants were nolle prossed because “[t]he arresting agency has chosen to pursue these charges in federal court.” *Law v. S.C.*

Dep't of Corr., 368 S.C. 424, 433, 629 S.E.2d 642, 647 (2006). In Law, the Court held that probable cause existed and, as a result, the arrests were lawful, meaning the Appellant could not satisfy the elements of a cause of action for false imprisonment regardless of the fact that the state court indictments were nolle prossed. Id. at 442-443.

In the instant case, on the face of the Plaintiff's Complaint, he admits that **he pled guilty**. To satisfy probable cause and to demonstrate the restraint of the Plaintiff was lawful, thereby preventing the Plaintiff from satisfying a requisite element of his case, the Defendants only have to show that there was a good faith belief that the Plaintiff was guilty of a crime at the time of arrest, when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. See Law, supra. The fact that the Plaintiff admitted guilt through his guilty plea leaves no doubt that there was a good faith belief of guilt at the time of arrest. Further, the fact that the Plaintiff acknowledges his guilty plea on the face of his Complaint is fatal to his case due to the fact that he cannot satisfy a requisite element of his cause of action for false imprisonment. Also, the Plaintiff attached copies of his true bills of indictment and his sentencing sheets to his Complaint as exhibits. Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion. Id.; citing Parrott, 246 S.C. at 323, 143 S.E.2d at 609.

In this case, the Plaintiff has improperly filed a cause of action for false imprisonment against the above-referenced Defendants. These Defendants are not proper Defendants for such a case. Further, on the face of the Plaintiff's Complaint, the Plaintiff sets forth facts which are fatal to his case. Based on the foregoing, the Plaintiff's Complaint is dismissed with prejudice.

Judicial Estoppel

Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. Cothran v. Brown, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004); citing Colleton Reg. Hosp. v. MRS Med. Rev. Sys., 866 F.Supp. 896, 900 (D.S.C.1994).

The following elements are necessary for the doctrine to apply: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. Id. at 215-16, 592 S.E.2d at 632; citing Carrigg v. Cannon, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct.App.2001).

Based on the face of the Complaint, the Plaintiff pled guilty in his criminal case for two counts of criminal sexual conduct on a minor in the first degree and two counts of exploitation of a minor in the first degree. By pleading guilty, the Plaintiff avoided a trial and potentially avoided longer sentences. The Plaintiff now seeks to argue that he is falsely imprisoned, seeking to be released from prison and apparently seeking monetary damages.

This is a related proceeding involving the same party (Plaintiff Harold Ayton). The Plaintiff's positions are totally inconsistent and his current position is being made in an intentional effort to mislead the Court. As a result, the Plaintiff is judicially estopped from arguing that he is falsely imprisoned.

Based on the foregoing, the Plaintiff is judicially estopped from alleging that he was falsely imprisoned. As a result, the Plaintiff's Complaint is dismissed with prejudice.

Remaining Causes of Action

The Plaintiff's claims, which are all based upon the premise that he is falsely imprisoned, must fail by the failure of the False Imprisonment claim. Additionally, the Plaintiff's Complaint fails to set forth facts and allegations to satisfy the requisite elements of each of his causes of action. The Plaintiff has failed to plead facts to support his causes of action for: 1. Trover and Replevin, 2. Nuisance, 3. Conversion, 4. Detinue, 5. Outrage/Mental Anguish, and 6. Gross Negligence. The thrust of the Plaintiff's Complaint is that he should not be incarcerated as a result of his guilty plea to two counts of criminal sexual conduct on a minor in the first degree and two counts of exploitation of a minor in the first degree. The alleged facts do not satisfy the requisite elements of any cause of action and, as a result, the Plaintiff's Complaint is dismissed with prejudice.

Summary Judgment

As referenced above, the Plaintiff filed Motions for Summary Judgment in this case. Regarding the Plaintiff's Motion for Summary Judgment, I find that the Plaintiff failed to present any evidence to support the elements of his causes of action alleged in this case. I also find that the Plaintiff failed to show that he is entitled to judgment as a matter of law. Therefore, the Plaintiff's Motion for Summary Judgment is denied.

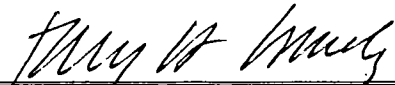
Order

Based on the foregoing, IT IS ORDERED that the Defendants' Motion to Dismiss is GRANTED WITH PREJUDICE.

IT IS FURTHER ORDERED that the Plaintiff's Motion for Summary Judgment is DENIED.

DMH 7

IT IS SO ORDERED.



The Honorable Perry H. Gravely
Presiding Judge

Date: Oct 27, 2017
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
)
Harold Ayton, #283022)
)
)
Plaintiff,)
)
)
vs.)
)
South Carolina Department of Corrections,)
Brian Sterling, and Scott Lewis)
)
)
Defendants.)
)
_____)

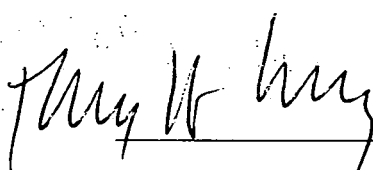
IN THE COURT OF COMMON PLEAS
Case No. 2017-CP-23-01463

**ORDER DENYING PLAINTIFFS
MOTION TO ALTER OR AMEND**

FILED
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This matter comes before the Court upon the Plaintiff's Motion to Alter or Amend Judgement of the Order Granting Defendants' Motion to Dismiss and Denying Plaintiff's Motion for Summary Judgment, filed on November 1, 2017. After fully considering said Motion, this Court finds that oral argument is not needed for a final determination of this Motion. The Court has reviewed the file and there does not appear to be any additional evidence or grounds to support an amendment to the Order previously filed in this matter. Therefore, the Plaintiff's Motion to Alter or Amendment Judgment is DENIED.

IT IS SO ORDERED!



Perry H. Gravely
Presiding Judge

Greenville, South Carolina

December 4, 2017

PERRY CORRECTIONAL INST
HAROLD AYTON #3533714213
430 OAKLAWN Rd
PELZER, SC 29669

IMS

S.C. SUPREME COURT
P.O. Box 11330
Columbia, SC 29211

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DEC 27 2017

PCI Mailroom



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THE DEPARTMENT OF CORRECTIONS HAS
NOT INSPECTED OR CENSORED THIS ITEM.
THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR ITS CONTENTS.
PERRY CORRECTIONAL INSTITUTION
DEPARTMENT OF CORRECTIONS

