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INMATE TRUST FUND ACCOUNT REPORT for SOUTH CAROLINA COURT FILING FEES

INSTRUCTIONS TO INMATE: Complete top portion then give to your mailroom. When returned from Accounting, you must mail this form with any payment to the Court.

By signing my name below, I am asking the Financial Accounting Office of the South Carolina Department of Corrections to complete this report. In accordance with SC Code of Laws §24-27-100 and 150, I authorize payment of the full filing fee. If I have insufficient funds in my account at this time to pay the court's full filing fee, I authorize SCDC to deduct the initial and subsequent payments until payment is completed.

INMATE NAME (print): Harold Ayton **2017-CP-23-01463**

SCDC # 353371 INMATE SIGNATURE: *Harold Ayton*

I plan to file this action in the SC County of Greenville

The section below is for SCDC - Financial Accounting Branch's use ONLY.

- (1) Total deposits to inmate's account for preceding six months' period* \$ 0
- (2) Twenty percent (20%) of line 1 \$ 0
- (3) Account balance - current date \$ 0
- (4) PAYMENT AMOUNT **
(Less of line 2 or line 3)
Enclosed check # \$ 0

SCDC-FINANCIAL ACCTG
2017 JUN 26
APR 11:02

RECEIVED
DEC 29 2017
SC Court of Appeals

****NOTE to COURT:** If payment is for partial fee, Court must notify SCDC once case is accepted and filed. Send notice with case # and balance owed to address below. SCDC will NOT process any additional payments until notification is received from Court.

South Carolina Department of Corrections
Financial Accounting - Room 234
PO Box 21787
Columbia, SC 29221-1787

*Admission date is noted here if inmate incarcerated less than six months 1/1

Prepared by *[Signature]* Date 1/6/17
©2015 scsnus0 prepared 797

Habeas Corpus

FJ
Fery

AO 240 (1/94)

4. Do you have any cash or checking or savings accounts? Yes No

If "Yes" state the total amount. n/a

5. Do you own any real estate, stocks, bonds, securities, other financial instruments, motor vehicles or other valuable property? Yes No

If "Yes" describe the property and state its value.

6. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support.

FILED - CLERK OF COURT
RENNELLSVILLE CO. S.C.
JUL B. WICKENSIMIR
2017 JAN 3 PM 3 18

I declare under penalty of perjury that the above information is true and correct.

SCDC-FINANCIAL ANCTG
2017 JAN -6 AM
DATE 12/14/16

[Signature] # 353371
SIGNATURE OF APPLICANT

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CERTIFICATE

(Incarcerated applicants only)
(To be completed by the institution of incarceration)

I certify that the applicant named herein has the sum of \$ 0 on account to his/her credit at (name of institution) SC Dept Correction. I further certify that the applicant has the following securities to his/her credit: N/A. I further certify that during the past six months the applicant's average balance was \$ 0.

[Signature] *J Smith for Acty* *1/6/17*

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
CASE NO. 2017-CP-23-1463

Harold Ayton, #283022,)
Plaintiff,)

**ORDER GRANTING THE
DEFENDANTS' MOTION TO DISMISS
AND DENYING THE PLAINTIFF'S
MOTIONS FOR SUMMARY JUDGMENT**

vs.)

South Carolina Department of)
Corrections, Brian Sterling, and)
Scott Lewis,)

Defendants.)

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DEC 29 2017

SC Court of Appeals

FILED IN COURT OF COMMON PLEAS
PAUL W. STANLEY
GREENVILLE, SOUTH CAROLINA
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This matter came before the undersigned on September 20, 2017 for a hearing on dispositive motions filed by all parties. Present for the Plaintiff was Harold Ayton. Present for the Defendants was P. Christopher Smith, Jr. of Clarkson, Walsh & Coulter, P.A. After oral arguments on the motions, I hereby grant the Defendants' Motion to Dismiss and deny the Plaintiff's Motions for Summary Judgment.

Facts

The entire thrust of the Plaintiff's Complaint is that he is being falsely imprisoned. On the face of his Complaint, the events that led up to his imprisonment occurred on December 4, 2012. This was the apparent date of his guilty plea and sentencing. The actual arrest that forms the basis of his causes of action, all of which are based on an alleged false imprisonment (meaning if the false imprisonment claim fails, all claims fail) occurred well before this date.

The Plaintiff's allegations in his Complaint include admissions that he pled guilty on December 4, 2012 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.

pk

Copies made

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).

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.

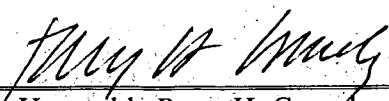
Order

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.

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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)

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

Harold Ayton, #283022)

Plaintiff,)

vs.)

South Carolina Department of Corrections,)
Brian Sterling, and Scott Lewis)

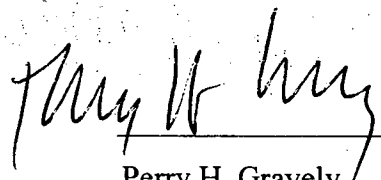
Defendants.)

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND**

FILED
2017 DEC 29 PM 1:23

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. Gravelly
Presiding Judge

Greenville, South Carolina

December 4, 2017

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