

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Circuit Court

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2017-002636
C.A. No.: 2017-CP-23-1463

RECEIVED
FEB 23 2018
SC Court of Appeals

Harold Ayton, #283022.....Appellant,

vs.

South Carolina Department of Corrections, Brian Sterling, and
Scott Lewis,.....Respondents.

RETURN TO APPELLANT'S MOTION TO PROCEED IN FORMA PAUPERIS

Respondents South Carolina Department of Corrections, Brian Sterling, and Scott Lewis (Respondents) hereby respond to Appellant Harold Ayton's (Appellant) Motion to Proceed in forma pauperis, which is captioned "The Appellant Motion and Affidavit to Proceed Without Payment of Cost and Fees". Initially, Respondents would advise the Court that the undersigned counsel has never been served with a copy of the Appellant's Motion, which appears to have been filed and/or received by the Court on February 8, 2018. After receiving a copy of correspondence from the Court addressed to the Appellant, advising him of deficiencies with his certificate of service for this Motion, the undersigned counsel's office contacted the Court and subsequently

obtained a copy of the Appellant's Motion on February 20, 2018 from the Court's website.

In his Motion and attached Affidavit, the Appellant seeks to proceed with his appeal in the above-captioned matter "without payment of fees or costs on account of his poverty." See Appellant's Motion to Proceed Without Payment of Costs and Fees. The Appellant's Affidavit in Support of his Motion sets forth that he has no money or income. See Affidavit in Support of Motion to Proceed Without Payment of Costs and Fees.

In the underlying case, the Appellant filed **a civil action seeking damages** under alleged causes of action for: 1. Trover and Replevin; 2. Nuisance; 3. Conversion; 4. Detinue; 5. False Imprisonment; 6. Outrage Mental Anguish; and 7. Gross Negligence. See Exhibit A (Complaint). The thrust of the Appellant's causes of action was that he was improperly imprisoned and wanted monetary damages for being incarcerated after pleading guilty and being sentenced. Id. The Honorable Perry H. Gravely granted the Respondents' Motion to Dismiss in the underlying action. See Exhibit B (Order).

South Carolina law is clear on this issue. As set forth in Martin v. State, 321 S.C. 533, 535-36, 471 S.E.2d 134, 134-35 (1995), in the absence of a statutory provision allowing the general waiver of filing fees, we conclude motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions. Id.; citing Tahtinen v. Superior Court, Pinal County, 130 Ariz. 513, 637 P.2d 723 (1981); Steinkamp v. Jacque, 36 Conn.Sup. 37, 410 A.2d 489 (1979); 1986 Op.S.C.Att'y Gen. No. 86-44 at 131. Appellant Ayton's

case does not fit within one of the statutory or constitutional exceptions to the requirement of a filing fee set forth in Martin and his case does not concern a fundamental right that requires waiver of the filing fee. Id.

Further, in the case of Martin v. S.C. Dep't of Corr., 350 S.C. 196, 197–98, 565 S.E.2d 756, 757 (2001), the South Carolina Supreme Court held:

Upon examination of sections 24-27-100 and 24-27-150, it is clear that **the institution of a payment plan in order to finance filing fees is intended only for use at the trial court level.** The plain language of section 24-27-100 states that the payment plan was enacted for the purpose of assisting indigent prisoners when they “bring a civil action or proceeding.” **By definition, civil actions or proceedings are brought at the trial court level. In contrast, filing an appeal or petition for a writ of certiorari does not constitute “bringing a civil action” but simply seeks review of a civil action that has been concluded in the trial court.** Accordingly, the payment plan laid out in sections 24-27-100 and 24-27-150 is not applicable to filing fees incurred at either the Supreme Court or the Court of Appeals.

Id. (Emphasis added).

Based on the foregoing, South Carolina law is clear that Appellant Ayton cannot proceed in this appeal without paying the required filing fee, paying for the transcript from the hearing held at the circuit court, and paying any additional costs and fees associated with his appeal. Therefore, counsel for the Respondents respectfully request that the Appellant’s Motion to Proceed Without Payment of Cost and Fees be denied. Further, if the Appellant is unable to pay the required fees and costs, the undersigned counsel for the Respondents respectfully requests that Mr. Ayton’s appeal be dismissed.

[Signature appears on following page.]

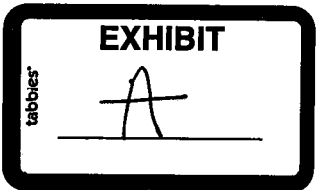
Respectfully submitted,

CLARKSON, WALSH & COULTER, P.A.



James P. Walsh (S.C. Bar No. 15180)
P. Christopher Smith, Jr. (S.C. Bar No. 74086)
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Attorneys for Respondents

Greenville, South Carolina
February 21, 2018



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

CASE No: 2017-CP-23-01463

HAROLD AYTON
Plaintiff

v.

South Carolina Dept. of CORR
BRIAN STERLING, Director
SCOTT LEWIS, WARDEN
Defendant

COMPLAINT

PRESEIZURE HEARING AND
JURY TRIAL DEMANDED

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2017 MAR 3 PM 3 37

*Comes now the Plaintiff Harold Ayton prose who files this complaint against the above named de-
fendants in support therefore Plaintiff would allege, plead and show unto the court the following*

PARTIES AND JURISDICTION

- 1) Plaintiff Harold Ayton is incarcerated within the South Carolina Dept. of Corrections housed at Perry Correctional Institution located at 430 Oaklawn Rd Pelzer, SC 29669.
- 2) Defendant South Carolina Dept. of Corrections is a governmental entity of the state in South Carolina.
- 3) Defendant Brian Sterling is an employee of the South Carolina Dept. of Corrections who hold the rank and power as Head Director during all times relevant and Plaintiff is suing Defendant Brian Sterling in her individual and official capacity.
- 4) Defendant Scott Lewis is an employee of the South Carolina Dept. of Corrections who hold the rank and power as Warden of Perry Correctional during all times relevant and Plaintiff is suing Defendant Scott Lewis in her individual and official capacity.

The court has jurisdiction over the subject matter of the action against South Carolina Dept. of Corrections in accordance with the South Carolina Tort Claims Act 15-78-10 seq, while the court has jurisdiction of the civil rights action against S.C.D.C. Director Brian Sterling, and Perry Correctional Inst Warden Scott Lewis in accordance with the South Carolina Tort Claims Act Code 15-78-10 under the courts original jurisdiction over civil cases pursuant to Article 5 sec 11 of the South Carolina State Constitution and South Carolina Statute Code 15-77-50 and 15-69-10 seq Claim and Delivery of South Carolina Code of Law.

CASE INTRODUCTION

This is a civil action filed by Harold Ayton who is incarcerated in a state prison and he's requesting damages under South Carolina Tort Claims Act 15-78-10 seq, pursuant to Article 5 sec 11 of the South Carolina State Constitution, and South Carolina Statute Code 15-77-50, alleging Gross Negligence, Conversion, Trover and Replevin, Detinue, False Imprisonment, and Outrage Mental Anguish in violation of state law as well Claim and Delivery recovery of personal property under South Carolina Statute Code 15-69-10.

STATEMENT OF FACT

Plaintiff Harold Ayton submits exhibit showing that he was not indicted by a legal proper grand jury, and thus the December 4, 2012 Trial and Plea hearing was a Sham Pleading Illegal Process because the solicitor impersonating a government officials or employees, or by persons falsely asserting authority of law when no court of general sessions was in session accordance to S.C. Statute Code 14-5-735. And it is unlawful for a person to impersonate a state or local official or employee or a law enforcement officer in connection with a sham legal process. A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor if, knowing that his conduct is illegal, he:

- 1) Subject another to arrest, detention, search, seizure, mistreatment, dispossession assessment, lien, or other infringement of personal or property rights. Sham Legal Process means the issuance, display, delivery, distribution, reliance on as lawful authority, or other use of an instrument that is not lawfully issued whether or not the instrument is produced for inspection or actually exists, which purports to; and this is a violation S.C. Statute Code 16-17-735, and the Commitment Order and Sentence is void and the South Carolina Dept. of Corrections has him falsely imprisoned under fraudulent and void unindicted indictments and is also void.

Plaintiff Harold Ayton submits that S.C.D.C. Director Brian Sterling has been notify about the Sentence Commitment Order is void and fraudulent and that Director Sterling has refused to release Harold Ayton from his custody. Plaintiff Harold Ayton complaint prays for damages for his continue illegal confinement.

Plaintiff Harold Ayton submits that he sent letters to the Newberry County Clerk of Court on August 17, 2015 and September 22, 2015 concerning the grand jury impanel documents and the clerk did not respond back and by this shows that Plaintiff Harold Ayton is falsely imprisoned. (See All Exhibit)

Plaintiff Harold Ayton also submitted two motions to the Attorney General Office on November 2, 2015 and March 2, 2016 for disclosure of the Grand Jury Impanel Documents and the Attorney General did not respond back and by the exhibit shows that Plaintiff Harold Ayton is falsely imprisoned.

Plaintiff Harold Ayton sent Defendant Director Brian Sterling a inquiry notice via electronic kiosk at S.C.D.C. HeadQuarters a notice to release him from his custody on the grounds submitted in this complaint and Defendant Director Brian Sterling has failed to release Plaintiff Harold Ayton.

Plaintiff Harold Ayton is currently suffering from Paranoia, Schizophrenia, Mental Anguish, Depression, Fear, Anxiety, Stress, Loss of Apatite, Restlessness, Confusion due to Defendants Brian Sterling conduct of failing to release him.

CONTINUANCE OF THE
STATEMENT OF FACT

On December 26, 2010 Plaintiff Harold Ayton did send SCDC Director Brian Sterling a inquiry request via a electronic kiosk notifying him that he was being illegally Kidnapped (Falsely Imprisoned) within the South Carolina Dept of Correction due to the fact the plaintiff Unindicted Fraudulent Indictment has never been before a legal proper GRAND jury. Plaintiff did notify the South Carolina Dept of Correction legal Dept. at SCDC HeadQuarter via electronic kiosk that SCDC does has him Falsely Imprison illegally due to a Illegal Void Commitment Order Contract and requested that Dir. Sterling to contact the Attorney General of South Carolina Alan Wilson via phone or letter requesting that the Attorney General Office to produce the necessary legal grand jury impanelment documentation that proves that on September 2, 2011, Harold Ayton was indicted by a legal proper GRAND jury and that it was a Special Term order by the South Carolina Supreme Court because the S.C. Court of Administration stated there wasn't a court of General Sessions that convened on September 2, 2011 See Attached Exhibit: the Judicial Circuit Court Calander for the 8th Circuit of Newberry County

Plaintiff further requested that SCDC Director. Sterling that the plaintiff Harold Ayton is being illegally detained in South Carolina Dept. of Correction due to Unindicted Fraudulent Indictment and a Illegal Void Commitment Order by the Newberry County Court of General Sessions and is requesting to be release immediately as of now in 2017 or plaintiff will file a civil tort action for Conversion, Trover, Replevin, Gross Negligence and False Imprisonment, it's now been 28 days and defendant Sterling has not released Harold Ayton out of SCDC custody, and SCDC still has Harold Ayton Illegally False Imprison under Unindicted Indictments *2011-65-36-0631 through 0634 by the Newberry County Court of General Sessions and the fraudulently indictments are signed by a signature of Cindy Mah Newberry County Foreman Plaintiff Harold Ayton under DURESS was taken to sham trial and plea hearing on December 4, 2012 and convicted for 2 counts of Criminal Sexual Conduct on a Minor in a First Degree and 2 counts of Exploitation of a Minor in a First Degree Plaintiff Harold Ayton nor his non-appointed counsel Charles Verner signed the

FRAUDULENT UNINDICTED INDICTMENT. (See Attached Exhibit: Indictment Sheet)

Pursuant to S.C. Statute Code 14-7-177 (2003) a defendant has a right to obtain documents pertaining to the impanelment of the grand jury which indicted him, impanelment documents including the state of South Carolina supporting materials and impaneling judges order may be released to a defendant prior to trial upon a timely request or an applicant on Post Conviction Relief case. Plaintiff is currently on Post Conviction Relief case # 2015-CP-36-00021 in the Newberry County Court of Common Pleas.

Moreover, on a couple occasion the plaintiff wrote to the Newberry County Clerk via a letter on August 17, 2015 and September 22, 2015, concerning the grand jury impanel document, and still up to this date the Newberry Clerk of Court hasn't produced the requested grand jury impanel document, nor did they responded to the letter. (See Attached Exhibit: Both Letters to the Clerk of Courts)

These letters serves as a prima facie evidence that no such grand jury impanel documents exist nor did the grand jury legally convened.

Moreover, on a couple occasion the plaintiff wrote the Attorney General Office via Motion on November 2, 2015 and March 2, 2016, concerning the grand jury impanel document, and still up to this date the Attorney General hasn't produced the requested grand jury impanel document, nor did they responded to the motions. (See Attached Exhibit: Both Motions to the Attorney General Office.)

These Motions serves as a prima facie evidence that no such grand jury impanel documents exist nor did the grand jury legally convened.

Moreover, on a couple occasion the plaintiff wrote to the South Carolina Court of Administration via letter on January 5, 2015 and September 22, 2015, concerning the grand jury impanel document, and they told me that i need to obtain it by the Newberry Clerk of Courts (See Attached Exhibit: Both Response Letters From the Court of Administration.)

There Silence can only be equated with fraud where there is a legal and moral duty to speak where an letter is left unanswered would be intentionally misleading U.S. v. Tweel, 550 F.2d 297-300 (1977).

There failure to provide the documents requested herein shall be a prima facie evidence by tacit agreement that no such authority exist as to the above entitled case and that a fraud continues void ab initio as to the ongoing unlawful imprison of Harold Aytton, and is without authority of law and any and all damages caused by officers

AND AGENTS OF THE STATE OF SOUTH CAROLINA FRAUDULENT SEIZURE AND UNLAWFUL IMPRISONMENT OF HAROLD AYTON ARE SET BY TREVANT V. CITY OF TAMPA, 741 F.2d 330 (1984), VIA TORT CLAIM AND ARE DUE AND PAYABLE IMMEDIATELY.

I FURTHER CONTEND THAT IT IS UNLAWFUL FOR A PERSON TO IMPERSONATE A STATE OR LOCAL OFFICIAL OR EMPLOYEE OR A LAW ENFORCEMENT OFFICER IN CONNECTION WITH A SHAM LEGAL PROCESS. A PERSON ACTING OR PURPORTING TO ACT IN AN OFFICIAL CAPACITY OR TAKING ADVANTAGE OF SUCH ACTUAL OR PURPORTED CAPACITY COMMITS A MISDEMEANOR IF, KNOWING THAT HIS CONDUCT IS ILLEGAL, HE: 1) SUBJECT ANOTHER TO ARREST, DETENTION, SEARCH, SEIZURE, MISTREATMENT, DISPOSSESSION, ASSESSMENT, LIEN, OR OTHER INFRINGEMENT OF PERSONAL OR PROPERTY RIGHTS.

SHAM LEGAL PROCESS MEANS THE ISSUANCE, DISPLAY, DELIVERY, DISTRIBUTION, RELIANCE ON AS LAWFUL AUTHORITY, OR OTHER USE OF AN INSTRUMENT THAT IS NOT LAWFULLY ISSUED WHETHER OR NOT THE INSTRUMENT IS PRODUCED FOR INSPECTION OR ACTUALLY EXISTS WHICH PURPORTS TO:

SHAM LEGAL PROCESSES INVOLVING PERSONS IMPERSONATING GOVERNMENT OFFICIALS OR EMPLOYEES, OR BY PERSONS FALSELY ASSERTING AUTHORITY OF LAWS, REMEDIES, A PERSON WHO IS INJURED BY A SHAM LEGAL PROCESS INVOLVING A VIOLATION OF SECTION 16-17-735 HAS THE FOLLOWING CIVIL REMEDIES AGAINST THE PERSON WHO COMMITTED THE VIOLATION OR WHO CAUSED THE VIOLATION TO BE COMMITTED

1) ACTUAL DAMAGES; 2) PUNITIVE DAMAGES; 3) COSTS; AND 4) REASONABLE ATTORNEY'S FEES THE AMOUNT OF THE RECOVERY FOR THE PLAINTIFF IS NOT DETERMINATIVE OF THE ATTORNEY FEES. ACCORDANCE TO S.C. STATUTE CODE 15-75-60

I FURTHER REQUEST THE ATTORNEY GENERAL AGREE TO GRANT PLAINTIFF HAROLD AYTON RELIEF ON THE GROUNDS THAT THE COURT OF NEWBERRY COUNTY COURT OF GENERAL SESSIONS LACKED JURISDICTION AND THAT THE SOLICITOR PRESENTED FRAUDULENT TESTIMONY AND FRAUD ON THE DEFECTIVE COURT IN A SHAM PLEADING ILLEGAL PROCESS INVOLVING PERSONS IMPERSONATING GOVERNMENT OFFICIALS OR EMPLOYEES, OR BY PERSONS FALSELY ASSERTING AUTHORITY OF LAW IN CASE NUMBERS: 2011-GS-36-0631 THROUGH 0634, WHEN THERE WAS NO MATERIAL EVIDENCE OF SUCH GRAND JURY WAS NEVER HELD ON SEPTEMBER 2, 2011

NOTICE: ANY RESPONSE TO THIS INQUIRY MUST BE SENT TO THE PLAINTIFF EXACTLY AS FOLLOWS

HAROLD AYTON SCDC#353371
PERRY CORRECTIONAL INSTITUTION
430 OAKLAWN RD
SELZER, SC 29669

Executed this _____ day of _____ 2017

Sincerely

Harold Ayton

CLAIMS

TROVER AND REPLEVIN

A) DEFENDANTS S.C.D.C. DIRECTOR BRIAN STERLING AND WARDEN SCOTT LEWIS ARE LIABLE FOR TROVER AND REPLEVIN FOR HAVING PLAINTIFF IN THEIR POSSESSION AND NOT HAVING RIGHTFUL AUTHORITY AND NOT RELEASING PLAINTIFF HAROLD AYTON OUT OF THEIR CUSTODY UPON PLAINTIFF HAROLD AYTON REQUEST, ALL IN VIOLATION OF STATE LAW.

NUISANCE

B) DEFENDANTS S.C.D.C. DIRECTOR BRIAN STERLING AND WARDEN SCOTT LEWIS ARE LIABLE FOR NUISANCE IN PREVENTING PLAINTIFF HAROLD AYTON FROM LIBERTIES OF FREEDOM, MINGLING, ENJOYING THE BENEFITS OF SOCIETY AND DESTURBING THE FREE USE OF HIS PROPERTIES AND NATURAL RIGHTS, AND DEFENDANTS ARE LIABLE.

CONVERSION

C) DEFENDANTS S.C.D.C. DIRECTOR BRIAN STERLING AND WARDEN SCOTT LEWIS ARE LIABLE FOR CONVERSION IN NOT RELEASING THE PLAINTIFF HAROLD AYTON OUT OF THEIR CUSTODY WHEN THEY WERE PROPERLY NOTIFIED THAT THE PLAINTIFF WAS BEING FALSELY IMPRISONED UNDER A FRAUDULENT UNINDICTED INDICTMENT BY A SHOW PENDING ILLEGAL PROCESS AND A ILLEGAL FRAUDULENT COMMITMENT ORDER SENTENCE SHEET ALL IN VIOLATION OF STATE LAW

DETINUE

D) DEFENDANTS S.C.D.C. DIRECTOR BRIAN STERLING AND WARDEN SCOTT LEWIS ARE LIABLE FOR DETINUE AND ARE IN POSSESSION OF PLAINTIFF HAROLD AYTON AND PLAINTIFF HAROLD AYTON SEEMS RETURN OF HIS PERSON FROM BEING FALSELY IMPRISONMENT, ALL IN VIOLATION OF STATE LAW.

FALSE IMPRISONMENT

E) DEFENDANTS S.C.D.C. DIRECTOR BRIAN STERLING AND WARDEN SCOTT LEWIS ARE LIABLE FOR FALSE IMPRISONMENT BY ACCEPTING A ILLEGAL FRAUDULENT COMMITMENT ORDER SENTENCE SHEET AND BY STILL REFUSING TO CHECK INTO THE MATTER WITH THE ATTORNEY GENERAL AFTER THE PLAINTIFF HAROLD AYTON REQUESTED THEM TO DO SO AND BY NOT RELEASING PLAINTIFF HAROLD AYTON WHEN THEY WAS NOTIFY THAT THEY DIDN'T HAVE LAWFUL AUTHORITY TO HOLD HIM IN THEIR POSSESSION, ALL IN VIOLATION OF STATE LAW.

OUTRAGE MENTAL ANGUISH

F) DEFENDANTS S.C.D.C. DIRECTOR BRIAN STERLING AND WARDEN SCOTT LEWIS ARE LIABLE FOR OUTRAGE MENTAL ANGUISH BECAUSE PLAINTIFF HAROLD AYTON HAS ADVISED BOTH DEFENDANTS OF THE SAME, AND THEY BOTH HAVE FAILED TO RELEASE PLAINTIFF HAROLD AYTON ON THE GROUNDS ARTICULATED THROUGHOUT THIS COMPLAINT IN ITS ENTIRETY. PLAINTIFF HAROLD AYTON IS CURRENTLY SUFFERING FROM PARANOID, MENTAL ANGUISH, DEPRESSION, SCHIZOPHRENIA, FEAR DUE TO THE DEFENDANTS CONDUCT OF FAILING TO RELEASE HIM. PLAINTIFF HAROLD AYTON SUIJURIS THAT HAROLD AYTON THE LIVING BREATHING MAN IS RIGHTFUL OWNER OF HAROLD AYTON AND THAT THE SOUTH CAROLINA DEPT. OF CORRECTIONS IS NOT THE OWNER OF HAROLD AYTON AND REQUESTED AND DEMANDED S.C.D.C. TO RELEASE OF HIS LIVING BREATHING BODY, NATURAL BEING FROM S.C.D.C. S.C.D.C. HAS CREATED A NUISANCE IN FAILING TO RELEASE PLAINTIFF HAROLD AYTON AND HAS PREVENTED HIM FROM ENJOYING LIBERTIES OF LIFE AND FREE FROM SEIZURE OF HIS LOCOMOTION AND ENJOYMENTS OF ALL OF SOCIETIES BENEFITS, AND S.C.D.C. AND THE DEFENDANTS ARE LIABLE.

GROSS NEGLIGENCE

G) DEFENDANTS S.C.D.C. DIRECTOR BRIAN STERLING AND WARDEN SCOTT LEWIS ARE ALL LIABLE FOR GROSS NEGLIGENCE IN VIOLATION OF 15-78-60 (25) OF S.C. CODE OF LAWS WHEN THEY BREACHED THEIR DUTY OF CARE PROVIDED BY 24-1-20; 24-1-130 OF S.C. CODE OF LAWS WHEN THEY FAILED TO RELEASE PLAINTIFF HAROLD AYTON KNOWING HE'S FALSE IMPRISONED ILLEGALLY AND WHEN PLAINTIFF ADVISED THEM THAT HE WAS ILLEGALLY FALSE IMPRISONED UNDER FRAUDULENT UNINDICTED INDICTMENTS AND A VOID FRAUDULENT COMMITMENT ORDER SENTENCE SHEET AND S.C.D.C. DIRECTOR BRIAN STERLING AND PERRY CORRECTIONAL INST WARDEN SCOTT LEWIS STILL FAILED TO RELEASE PLAINTIFF HAROLD AYTON, ALL ARE IN VIOLATION OF STATE LAW.

PRAYER FOR RELIEF

ISSUE A INJUNCTION STATING

THAT PLAINTIFF IS TO BE RELEASE FROM THE CUSTODY OF S.C.D.C. IMMEDIATELY ON THE GROUNDS THAT HE'S ILLEGALLY FALSE IMPRISONED UNDER A ILLEGAL UNINDICTED FRAUDULENT INDICTMENTS AND A ILLEGAL FRAUDULENT COMMITMENT ORDER SENTENCE SHEET AND THAT S.C.D.C. HAS FAILED TO RELEASE HIM AS THEY HAVE NO LAWFUL AUTHORITY TO KEEP HIM IN THEIR CUSTODY.

1) AWARD COMPENSATORY DAMAGES IN THE FOLLOWING AMOUNTS \$ _____ JOINTLY AND SEVERALLY AGAINST DEFENDANT S.C.D.C. DIRECTOR, BRIAN STERLING AND WARDEN SCOTT LEWIS FOR CONVERSION IN VIOLATION OF STATE LAW.

2) \$ _____ JOINTLY AND SEVERALLY AGAINST S.C.D.C. DIRECTOR, BRIAN STERLING AND WARDEN SCOTT LEWIS FOR TROVER AND REPLEVIN IN VIOLATION OF STATE LAW.

3) \$ _____ JOINTLY AND SEVERALLY AGAINST S.C.D.C. DIRECTOR, BRIAN STERLING AND WARDEN SCOTT LEWIS FOR GROSS NEGLIGENCE IN VIOLATION OF STATE LAW.

4) \$ _____ JOINTLY AND SEVERALLY AGAINST S.C.D.C. DIRECTOR, BRIAN STERLING AND WARDEN SCOTT LEWIS FOR MENTAL ANGUISH IN VIOLATION OF STATE LAW.

5) \$ _____ JOINTLY AND SEVERALLY AGAINST S.C.D.C. DIRECTOR, BRIAN STERLING AND WARDEN SCOTT LEWIS FOR FALSE IMPRISONMENT IN VIOLATION OF STATE LAW.

6) \$ _____ JOINTLY AND SEVERALLY AGAINST S.C.D.C. DIRECTOR, BRIAN STERLING AND WARDEN SCOTT LEWIS FOR DETINUE IN VIOLATION OF STATE LAW.

7) \$ _____ JOINTLY AND SEVERALLY AGAINST S.C.D.C. DIRECTOR, BRIAN STERLING AND WARDEN SCOTT LEWIS FOR NUISANCE IN VIOLATION OF STATE LAW.

8) \$ _____ JOINTLY AND SEVERALLY AGAINST S.C.D.C. DIRECTOR, BRIAN STERLING AND WARDEN SCOTT LEWIS FOR CLAIM AND DELIVERY IN VIOLATION OF STATE LAW.

9) \$ _____ AWARD PUNITIVE DAMAGE IN THE AMOUNTS EACH AGAINST DEFENDANTS DIRECTOR BRIAN STERLING AND WARDEN SCOTT LEWIS AND S.C.D.C. FOR VIOLATION OF STATE LAW.

Dated _____

Signature Herbert

VERIFICATION

I have read the FOREGOING complaint and hereby verify the matters alleged therein are true and except as to matters alleged on information and belief and as to those I believe them to be true. I certify under penalty and perjury that the FOREGOING is true and correct.

Signature: Harold Ayton

Date: 1-24-17

HAROLD AYTON 353371

PERRY CORR INST

430 OAKLAWN RD

PELZER, SC 29669

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

CASE No: 2017-CP-23-01463

HAROLD AYTON
PLAINTIFF

v.

SOUTH CAROLINA DEPT. OF CORR
BRIAN STERLING, Director
SCOTT LEWIS, WARDEN
DEFENDANT

SUMMONS

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2017 MAR 3 PM 3 36

TO: DEFENDANTS	ADDRESS	DEFENDANTS
SCDC PERRY CORRECTIONAL INST	430 OAKLAWN RD	SOUTH CAROLINA ATTORNEY GENERAL
WARDEN SCOTT LEWIS	PELZER, SC 29669	ALAN WILSON
DEFENDANTS	ADDRESS	ADDRESS
SOUTH CAROLINA DEPT. OF CORR	P.O. BOX 21787	REMBERT DENNIS BUILDING
DIRECTOR BRIAN STERLING	4444 BEGON RIVER RD	P.O. BOX 11549
	COLUMBIA, SC 29210	COLUMBIA, SC 29211

A LAWSUIT HAS BEEN FILED AGAINST YOU FOR CLAIM AND DELIVERY YOU ARE HEREBY SUMMONS AND REQUIRED TO SERVE UPON PLAINTIFF WHO ADDRESS IS

PLAINTIFF	ADDRESS
HAROLD AYTON	430 OAKLAWN RD
PERRY CORRECTIONAL INST	PELZER, SC 29669

AN ANSWER TO THE COMPLAINT WHICH IS HEREWITH SERVED ON YOU WITHIN TWENTY (20) DAYS AFTER SERVICE IF YOU FAIL TO DO SO JUDGMENT BY DEFAULT WILL BE TAKEN AGAINST YOU FOR RELIEF IN THE COMPLAINT.


SIGNATURE

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

2017-CP-23-01463

HAROLD AYTON
Plaintiff

CASE No: _____

v.

CERTIFICATE OF SERVICE

SOUTH CAROLINA DEPT. OF CORR
BRIAN STERLING, DIRECTOR
SCOTT LEWIS, WARDEN
Defendants

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2017 JAN 3 PM 3 37

I Harold Ayton hereby certify that I have served upon the Greenville Clerk of Court of Common Pleas the Summons, Notice, Civil Complaint, Affidavit and Requisites, Attachment, Bond, Affidavit etc., by depositing a copy of it in the United States Mail, postage prepaid, to the address of 308 North St., Greenville, SC 29601 on January 24, 2017.



Harold Ayton
Perry Corr Inst
430 Oaklawn Rd
Pelzer, SC 29669

Sworn and subscribe before me this

24 day of January 2017
Tamara Conwell
Notary Public

My Commission Expires Sept 25 - 2023

STATE OF SOUTH CAROLINA
County of Greenville

HAROLD AYTON
PLAINTIFF

v.

SOUTH CAROLINA DEPT OF CORR
BRION STERLING Director
DEFENDANT

IN THE COURT OF COMMON PLEAS

Case No:


Notice

2017-CP-23-01463

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2017 JAN 3 PM 3 36

As in accordance with S.C. Statute Code 15-9-30, this notice is inserted with the summons and notified defendants that any party who shall fail to answer the complaint within 20 days after service of the summons the plaintiff will apply to the court for relief demanded in the complaint.

I declare under penalty and perjury that the foregoing is true and correct executed at Pelzer SC 29669 on this 24 day of January 2016

s/ 
Harold Ayton
Perry Corr Inst
430 Oaklawn Rd
Pelzer, SC 29669

SC ATTORNEY GENERAL'S OFFICE
REMBERT C. DENNIS BUILDING
1000 ASSEMBLY STREET, RM 519
COLUMBIA, SOUTH CAROLINA

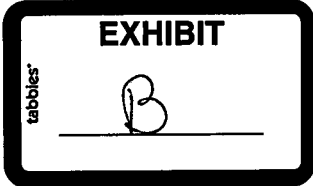
HAND DELIVERY

RECEIVED BY:

P BROCK

4/12/17
DATE

10:20
TIME



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-23-1463

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

ENTERED COMPUTER

FILED
 2017 NOV - 1 PM 1:18

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.

pkh

Copies mailed

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. Dept. 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.*

PLZ

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.

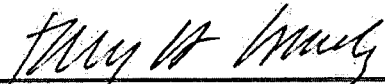
Order

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.

DMZ 7

IT IS SO ORDERED.



The Honorable Perry H. Gravely
Presiding Judge

Date: Oct 27, 2017
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Circuit Court

Perry H. Gravely, Circuit Court Judge

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FEB 23 2018
SC Court of Appeals

Appellate Case No. 2017-002636
C.A. No.: 2017-CP-23-1463

Harold Ayton, #283022.....Appellant,

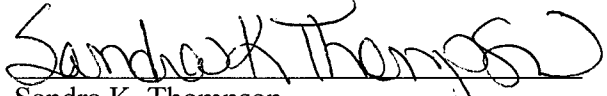
vs.

South Carolina Department of Corrections, Brian Sterling, and
Scott Lewis,.....Respondents.

CERTIFICATE OF SERVICE

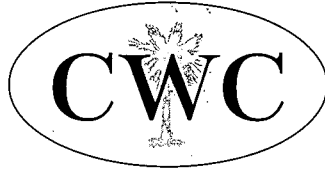
I, Sandra K. Thompson, Paralegal to James P. Walsh and P. Christopher Smith, Jr., do hereby certify that I have caused to be served upon the pro se Appellant a true and accurate copy of **RESPONDENTS' RETURN TO APPELLANT'S MOTION TO PROCEED IN FORMA PAUPERIS ALONG WITH OUR CERTIFICATE OF SERVICE FOR SAME** in the within matter by depositing a copy of the aforementioned documents in the United States mail, First Class, in an envelope with due and proper postage affixed thereto and addressed as shown below on this 21st day of February, 2018:

**Harold Ayton 353371
Perry Correctional Institute
430 Oaklawn Road
Pelzer, SC 29669**

A handwritten signature in black ink that reads "Sandra K. Thompson". The signature is written in a cursive style with a large, looping "S" at the beginning and a "D" at the end.

Sandra K. Thompson
Paralegal to James P. Walsh and P. Christopher
Smith, Jr.

Greenville, SC



CLARKSON | WALSH | COULTER

Attorneys at Law

P. CHRISTOPHER SMITH, JR.

csmith@clarksonwalsh.com

864-232-4400 Phone

February 21, 2018

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211-1629

Re: Harold Ayton, #283022 vs. South Carolina Department of Corrections, et al.
Appellate Case No.: 2017-002636

Dear Ms. Kitchings:

Please find enclosed for filing Respondents' Return to Appellant's Motion to Proceed In Forma Pauperis in the above-referenced matter along with our Certificate of Service serving same on the pro se Appellant.

As always, we appreciate your assistance in this matter. Should you have any questions, please let us know.

With kind regards, we remain

Very truly yours,

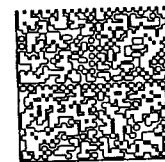
Clarkson, Walsh & Coulter, P.A.

P. Christopher Smith, Jr.

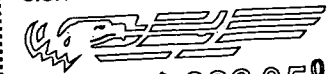
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Enclosures
cc: Harold Ayton (w/enclosures)

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
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