

The State of South Carolina
In the Court of Appeals

Appeal from Richland County

Court of Common Pleas

D. Craig Brown Circuit Court Judge

Case No: 2016-001606

RECEIVED

MAY 01 2018

SC Court of Appeals

Tyrone Perry - - - - - Appellant

v

South Carolina Dept. of Corrections Respondent

MOTION TO REINSTATE

I Tyrone Perry appeal the order [judgment] of the Honorable D Craig Brown dated June 14, 2016. I received written notice of the entry of this order on June 21, 2016. I filed a 59(e) motion with Richland County Clerk of Court June 22, 2016. I did not receive a response to this motion 59(e) until April 20, 2018 but I received it from the mailroom on April 24, 2018.

My case was dismissed November 7, 2016 without prejudice and the remittitur sent to the lower court January 12, 2017. Even though the trial judge had 10 days to alter or amend his judgment it took mine nearly two years. I had to write the S.C. Supreme Court, Commission on Judicial Misconduct, and the Disciplinary Counsel just to get a response the law permits. My 59(e) was denied so the same day I filed a Petition for Rehearing, another 59(e) and a 59(B). I'm a mental health layman housed in Gilliam Psychiatric Hospital. We can't get law books and I have no idea how to use the law computer. But I wish to appeal the judge's order and denial of my 59(e) motion. My issues for appeal are not reserved for appellate review if the judge don't reach the merits as to what was testified to at court. The trial court did not so I filed a timely 59(e) motion to have my issues encompassed and preserved for appellate review. The judge had 10 days to alter or amend his judgment as to what was testified to.

but elected not to. I can't raise issues for the first time on appeal that weren't ruled on or that a 59(e) motion wasn't drafted on. I feel as if the judge was being impartial, and bias and that's the reason for my filing my Petition for Rehearing, another 59(e) and 59(b) motions. I'm simply seeking justice. I don't know if by filing those motions it will preclude me from this appeal until a hearing or ruling is made on them, but I do WISH to proceed with my appeal process. I know the Honorable Courts can't offer legal advice, but I hope I can be pointed in the right direction of am I proceeding correctly or which set of Rules to go on. We're currently on lockdown due to the riot at Lee County.

S# Tyrone Perry #307793

Tyrone Perry 307793

Kirkland Corr Institute

4344 Broad River Rd GP14-149

Columbia S.C. 29210

Office of General Counsel

Stephen H. Lunsford

4444 Broad River Rd / P.O. Box 21787

Columbia S.C. 29221

Attorney for Respondent

This 27th day of April 2018

The State of South Carolina
In the Court of Appeals

Appeal from Richland County
Court of Common Pleas
D. Craig Brown Circuit Court Judge

Case No: 2016:001606

RECEIVED
MAY 01 2018
SC Court of Appeals

Tyrone Perry ----- Appellant

v

South Carolina Dept. of Corrections Respondent

PROOF OF SERVICE

I certify that I have served the Motion to Reinstate by depositing a copy of it in the U.S. mail postage prepaid to the following:

S.C. Court of Appeals
Jenny Abbott Kitchings, Clerk
P.O. Box 11629
Columbia S.C. 29211

Office of General Counsel
Stephen H. Lunsford
4444 Broad River Rd / P.O. Box 21787
Columbia S.C. 29221

This 27th day of April 2018

s/ Tyrone Perry 307793

Tyrone Perry 307793
4344 Broad River Rd GPH-149
Columbia S.C. 29210

I Tyrone Perry certify and verify under the penalty of perjury the foregoing is true and correct 28 U.S.C.A. 1746

State of South Carolina

In the Court of Appeals

Tyrone Perry

Case # 2016-001606

Appellant

✓

Affidavit by Tyrone Perry

South Carolina Department
of Corrections

Respondent

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SC Court of Appeals

Personally appeared before me, Tyrone Perry, who being duly sworn deposes the following:

- 1) I am a prisoner at Kirkland Corr. Institute at Gilliam Psychiatric Hospital in SCDC
- 2) On June 9, 2016 I went to my hearing about my personal property at Richland County Court of Common Pleas
- 3) On June 14, 2016 my case was dismissed by Judge D. Craig Brown
- 4) I was served notice of the dismissal from the institutional mailroom on June 21, 2016.
- 5) On June 22, 2016 I sent out my timely filed 59(e) motion and it was debited to my account
- 6) On November 7, 2016 the Court of Appeals dismissed my appeal without prejudice while the 59(e) motion was pending.
- 7) On January 12, 2017 the remittitur was sent to the lower court.
- 8) On April 20, 2018 D. Craig Brown denied my 59(e) motion
- 9) The Appellant received Notice of this dismissal on April 24, 2018
- 10) On April 24, 2018 the Appellant filed a Petition for Rehearing, another 59(e), and a 59(b) within the allotted 10 days per the rule

- 11) The Appellant wrote to Jeannette McBride Clerk of Court Richland County numerous times inquiring about the status of the 59(e) motion
- 12) The Appellant wrote Judge D. Craig Brown in his home town of Florence inquiring about the status of his 59(e) motion
- 13) The Appellant wrote the Court of Appeals and S.C. Supreme Ct about the status of his 59(e) motion being ruled on.
- 14) The Appellant wrote the Disciplinary Council and Commission on Judicial Misconduct before he finally got a ruling on his timely filed 59(e) motion.
- 15) The Appellant believes he being denied due process and equal protection of the law

the attached exhibits the respondents already have. But they consist of the Appellant's attempts to have his case properly heard and ALL the merits reached.

This 27th day of April 2018

s/w Tyrone Perry 307793
Tyrone Perry 307793
4344 Broad River Rd GPA-149
Columbia S.C. 29210

I Tyrone Perry 307793 certify and verify under
the penalty of perjury the foregoing is true and correct
28 U.S.C.A. 1746.

** Inmate is not required to have the funds in his/her account to pay for the materials; however, his/her account must be debited for all materials s/he elects to receive.

Item	Amount
Envelope	
Pen	
Paper	
Postage (Flat)	2
Other	

Petition for Rehearing, 59(c), 59(B)
Case # 2015-CP-40-6789

LEGAL MATERIALS
Jeanette McBride
P.O. Box 2766
Cola S.C. 29202

D. Craig Brown
180 N. Irby St
Florence S.C. 29501

Office of General Counsel
Stephen H. Lunsford
4444 Broad River Rd.
Cola S.C. 29221

To be completed by
SCDC staff:

Cost
2.42
Sub-Total: 2.42

PHOTOCOPIES

** Inmate may be required to have funds in his/her account. See SCDC Procedure GA-01.03(OP), "Inmate Access to the Courts," to determine if inmate may receive copies with/without funds.

Item	Amount
Photocopies	

To be completed by
SCDC staff:

Cost

TOTAL

Inmate's Signature

Tyrone Perry

Mailroom/Canteen Signature (Request filled by)

01-24-18
Date

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SC Court of Appeals

White - Inmate
Canary - Mailroom/Canteen Employee

SCDC Form 10-14 (November 1998)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Tyrone Perry,)
#307793)
)
Plaintiff,)
)
v.)
)
South Carolina Department of)
Corrections,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Matter No. 2015-CP-40-6739

RECEIVED

MAY 01 2018

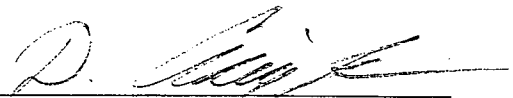
SC Court of Appeals

**ORDER DENYING MOTION
TO RECONSIDER**

This matter comes before the court upon Plaintiff's Motion to Reconsider, alter and/or amend order and judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Upon consideration of the aforementioned Motion to Reconsider, relevant case law, and other matters of record the Court finds that the Motion to Reconsider should be DENIED.

Therefore, Plaintiff's Motion for Reconsideration is hereby DENIED.

IT IS, SO ORDERED.



The Honorable D. Craig Brown
12th Judicial Circuit

April 20, 2018
Florence County, South Carolina



State of South Carolina
The Circuit Court of the Twelfth Judicial Circuit

D. Craig Brown
Judge

City-County Complex, MSC-CC
180 North Irby Street
Florence, SC 29501
Phone: (843) 679-7156
Fax: (843) 679-7157
cbrownj@sccourts.org

April 20, 2018

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MAY 01 2018

SC Court of Appeals

Ms. Jeanette McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, SC 29202

Re: Tyrone Perry v. South Carolina Department of Corrections
C/A No.: 2015-CP-40-6739

Dear Ms. McBride:

Enclosed please find an Order Denying Mr. Tyrone Perry's Motion to Reconsider. Please file the original and send certified clocked copies to all parties of record. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Craig Brown", with a long horizontal flourish extending to the right.

The Honorable D. Craig Brown

cc: Mr. Tyrone Perry, with enclosure
cc: Mr. Stephen Lunsford, Esq., with enclosure

Enc.

State of South Carolina

County of Richland

Tyrone Perry # 307793

In the Court of Common Pleas

C/A No: 2015-CP-40-6789

Plaintiff

v

SCDC

Defendant

Petition for Rehearing

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MAY 01 2018
SC Court of Appeals

On April 20, 2018 Judge D Craig Brown dismissed my 59(e) motion. The plaintiff received this dismissal from the institutional mailroom on April 24, 2018. On June 14 2016 the Judge dismissed the plaintiff's case. The plaintiff filed a timely 59(e) motion on June 22, 2016

In the Judge's order it's stating the plaintiff is requesting the court to overturn SCDC's final agency decision in the form of a step 2 grievance. Then the order states the plaintiff didn't appeal that final agency decision to the Administrative Law Court. The order states the appropriate court Plaintiff should appeal to is the ALC once the plaintiff exhausted all administrative remedies. The plaintiff testified that SCDC policy and procedure states the agency has 171 days from beginning to end to complete the grievance policy per its own policy. One 45 day extension may be granted if the agency needs more time. Pursuant to Norton v - Opening Break of Aiken Inc 443 SE2d 406 Regulations have the force of law. Also see Clark v - S.C. Dept of Public Safety 578 SE2d 16 for failure to follow laws or policies. If the plaintiff followed all rules, regulations, and policies, but the agency failed to abide by their own policies. The trial judge did not rule on this in his original order so the plaintiff filed a timely 59(e) motion addressing this issue so that the merits could be reached and the issue be preserved for appellate review. If the issue is not ruled on the plaintiff can't raise it to the appellate courts for the trial courts failure to rule on it. Any way by the agency's failure to respond in its allotted time technically by law the plaintiff exhaust his administrative remedies. The plaintiff can't proceed to the Administrative Law Court without a final order and SCDC failed to give a final order in the allotted

171 and pursuant to Rule 59(C) of the Administrative Law Court my case would not have even got processed without this final order. So the Judge's order was clearly erroneous

with a misapplication of the facts as testified to at the hearing. Under 12(B)(1) Subject Matter Jurisdiction is defined as the power to hear and determine cases of the general class to which the proceedings in question belong. This authority is distinct from the doctrine of exhaustion of administrative remedies, which is generally considered a rule of POLICY, convenience and discretion, rather than one of law, and is not jurisdictional. Additionally the doctrine of exhaustion of administrative remedies is often leveraged to avoid interference with the orderly performance of administrative functions. Consequently a failure to exhaust administrative remedies goes to the prematurity of a case not subject matter jurisdiction. *Capital City Ins Co - v - BP Staff Inc* 674 SE2d 524, 529. In the Judge's original order of dismissal he references *Al-Shabazz - v - State* 527 SE2d 742. Although this case does not apply to me because 1) I was not disciplined and punishment wasn't imposed, and 2) Prison officials didn't erroneously calculate my sentence, sentence related credits, or custody status. I have a mandatory day for day sentence. And I never went to the DHO for a major rule. In infraction. Under SCDC policy OP 22.19 Search of Inmates 7.1 when searching an inmate's living area and/or personal property the inmate should be present to observe the search. SCDC is in default and the plaintiff followed all SCDC policies and protocol but is being held accountable for SCDC failures to abide by their own policies which are bound by title 24 24-1-10 - 24-1-140. The legislative intent is for prison and jails so the due process and equal protection claim is attached. I'm currently housed in William Psychiatric Hospital GPH and im a mental health layman with no access to the law library or legal materials like that. I hope im doing this right because im yelling back and forth on how to proceed. Pursuant to *Johnson - v - Ozmint* 567 F Supp 806, 820 it recognizes that completion of step 2 grievance exhaust administrative remedies and doesn't require inmate to go to ALC.

This 24th day of April 2018

S/s Tyrone Perry 307793
Tyrone Perry 307793
4344 Broad River Rd GPH-149
Columbia S.C. 29210

State of South Carolina

In the Court of Common Pleas

County of Richland

Tyrone Perry # 307793

c/a No. 2015-CP-40-6739

Plaintiff

v

59(e) Motion Rule

SCDC

Defendant

On June 14, 2016 the Judge dismissed the plaintiff's case. The plaintiff timely filed a 59(e) motion on June 22, 2016. On April 20, 2018 Judge D. Craig Brown dismissed my 59(e) motion with no hearing or motivation. I received this dismissal from the mailroom April 24, 2018

Under Rule 59(e) the judgment must be served no later than 10 days after the receipt of written notice of entry of the order. This is the only procedure for a party to amend judgment. There's no procedure contrary judgment *Norris v. Heyward* 434 SE2d 264. Rule 59(e) provides for a motion to alter or amend judgment and preserve the record for appeal *Pelican Building Center v. Dutton* 427 SE2d 673. Under Rule 59(e) the trial judge may alter or amend an order for a period of 10 days after the entry of judgment. *Doran v. Doran* 343 SE2d 618. An issue must have been raised to and ruled upon by the trial court in order to be preserved for appellate review. *BMW of North America v. Complete Auto Recon Services* 731 SE2d 902, 908. I testified in court that SCDC was in violation of their own policies, rules, and procedures. They had 171 days to respond from beginning to end in their own grievance policy. They had the option to request for an extension but never used that option. Per ALC rule 59(c) I can't proceed to the ALC with no final decision. And SCDC did not respond in the allotted time frame Per their policy. Pursuant to *Johnson v. Ozmint* 367 F Supp 806, 820 it recognizes that completion of step 2 grievance exhausts administrative remedies and doesn't require inmates to further appeal to the ALC. The judge failed to reach the merits that pursuant to *Norton v. Opening Break of Aiken Inc* 443 SE2d 401 Regulations have the force of law and also *Clark v. S.C. Dept of Public Safety*

578 SE2d 16 for failure to follow laws and policies. SCDC was the cause of the default it was no fault of my own. And the judge erroneously applied Al-Shabazz -U- State 527 SE2d 742 because I was not punished for a major disciplinary infraction and I wasn't challenging sentence related credits, my custody status, officials didnt erroneously calculate my sentence. So 12(B)(1) didnt apply to my case nor Al-Shabazz -U- State. Trial Counsel had 10 days to alter or amend judgment before he lost jurisdiction so I feel this matter and dismissal of this motion Rule 59(e) was a conflict of interest. I look forward to the proper ruling to satisfy Due Process

Conclusion

For the foregoing reason the plaintiff request this Court to properly alter and amend judgment and preserve for appellate review or Grant a New Jury trial

This 24th day of April 2018

S+ Tyrone Perry 307793
Tyrone Perry 307793
4344 Broad River Rd BPH-149
Columbia SC 29210

State of South Carolina
County of Richland

Tyrone Perry # 307793

In the Court of Common Pleas

CIA NO 2015-CP-40-6789

Plaintiff

v

SCDC

Defendant

Motion Rule 59 (B)

On June 14, 2016 the Judge dismissed the plaintiff's case. The Plaintiff filed a timely 59(e) motion on June 22, 2016. On April 20, 2018 Judge D. Craig Brown dismissed my 59(e) motion. The plaintiff received this dismissal from the institutional mailroom on April 24, 2018.

Under Rule 59(B) in non-jury actions the motion shall be made not later than 10 days after the receipt of written notice of the entry of judgment or of the filing of an order disposing of the action, if no judgment has been entered. I testified at court that SCDC didn't respond to their own policies and procedures and put themselves in default. If the plaintiff followed ALL SCDC rules, regulations, and protocols and the failure of SCDC to respond in a timely manner to their own time frames hindered the plaintiff from getting a final decision to proceed to the Administrative Law Court. Even though SCDC had the option to request for an extension if more time was needed no extension was requested. Pursuant to Johnson v. Ozmint 567 F.Supp 806, 820 it recognizes that completion of a step 2 guidance exhaust administrative remedies and doesn't require inmates to further appeal to ALC. So the Judge's ruling was clearly erroneous with the facts and evidence presented and court and the judge abuse his discretion by denying the plaintiff's 59(e) motion with no hearing or justification as to why. So the plaintiff moves under Rule 59(B) for a New Trial.

This 24th day of April 2018.

s/v Tyrone Perry 307793
Tyrone Perry 307793
4344 Browns River Rd GPH-144
Columbia SC 29210

State of South Carolina

County of Richland

Tyrone Perry #307793

Plaintiff

v

SCDC

Defendant

In the Court of Common Pleas

CIA NO 2018-CP-40-6789

Proof of Service

I certify that I have served this Rule 59(e), Petition for Rehearing, and Rule 59(B) by depositing a copy of it in the U.S. mail postage prepaid to the following:

Jeanette McBride
Clerk of Court of Richland County
P.O. Box 2766
Columbia S.C. 29202

Office of General Counsel
Stephen Lunsford
4444 Broad River Rd
Columbia S.C. 29221

D. Craig Brown
City-County Complex MSC-C
180 North Irby Street
Florence S.C. 29501

This 24th day of April 2018

sw

Tyrone Perry 307793

Tyrone Perry 307793

4344 Broad River Rd GPH-149

Columbia S.C. 29210

The State of South Carolina
In the Court of Appeals

Appeal from Richland County
Court of Common Pleas

D. Craig Brown Circuit Court Judge

Case No: 2016:001606

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Tyrone Perry - - - - - Appellant

v

South Carolina Department of Corrections - - - Respondent

PROOF OF SERVICE

I certify that I have served the affidavit by Appellant by depositing a copy of it in the U.S. mail postage prepaid to the following

S.C. Court of Appeals
Jenny Abbott Kitchings, Clerk
P.O. Box 11629
Columbia S.C. 29211

Office of General Counsel
Stephen H Lunsford
4444 Broad River Rd / P.O. Box 21787
Columbia S.C. 29221

This 27th day of April 2018

sv Tyrone Perry 307793
Tyrone Perry 307793
4344 Broad River Rd GPH-149
Columbia S.C. 29210

LEGAL
MAIL
ONLY

Tyrone Perry # 307793
Kirkland Corr. Institute
4344 BroadRiver Rd GPH-149
Columbia S.C. 29210

Confidential Legal Mail

Inter Agency Mail

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APR 30 2018

KIRKLAND R&E CENTER
MAILROOM

South Carolina Court of Appeals

Jenny Abbott Kitchings, Clerk

P.O. Box 11629

Columbia S.C. 29211

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SC Court of Appeals

Agency Mail