

STATE OF SOUTH CAROLINA
In The Court of Appeals

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MAY 24 2018

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2018-000097

John White, #80622,.....Appellant.

v.

State of South Carolina,.....Respondent.

MOTION TO DISMISS APPEAL

&

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS¹

The State files this motion to dismiss under Rule 240(a), SCACR, and asks this Court to dismiss this appeal.

¹ Under Rule 240(c)(1)-(3), a motion shall include a certificate of service, a memorandum with citation of authorities, and, “where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions.” Although the Record on Appeal or Appendix has not been filed, the State does not think affidavits or other documents are necessary, because the motion and memorandum only reference Judge McFaddin’s Order, the Appellant’s Initial Brief, and the Appellant’s Petition to the Circuit Court, which have all already been submitted to the court. If the court disagrees, the State will accordingly supplement the motion and memorandum.

TABLE OF AUTHORITIES

South Carolina Cases

Ex parte Martin, 321 S.C. 533, 535, 471 S.E.2d 134, 135 (1995)..... 3

State v. Walls, 348 S.C. 26, 558 S.E.2d 524 (2002).....3

South Carolina Statutes

S.C. Code Ann. §24-27-400.....5

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Background Facts

The Appellant, White, appeals the denial of his motion to proceed *in forma pauperis* in a case where he asks the court to rule that he (1) “do not be on the sexual registry” and (2) for an “[O]rder for SCDC to remove it from the Plaintiff Management System Release date screen.” (Petition p.2 in 2017-CP-43-2476²). In his initial brief Mr. White argues:

“1. §24-27-400; Indigent Persons

This Chapter is inapplicable to any case in which the constitution of the united states or the constitution of South Carolina Requires an indigent person be allowed access to the courts.

2. Appellant do not have the Funds available to pay the costs of filing. SEE Exhibit (C) Inmate Trust Fund Account Report S.C. Code of Law §24-27-100.”

(Appellant’s Initial Brief p. 2).

Discussion

The Appellant is not entitled to proceed *in forma pauperis*. §24-27-400 only requires that an indigent person be allowed access to the courts where the Constitution of the United States or the Constitution of South Carolina requires it. S.C. Code Ann. §24-27-400. Additionally, *Ex parte Martin*, held that absent a statutory waiver of filing fees, motions to proceed *in forma pauperis* may only be granted where specifically authorized by statute or required by constitutional provisions. *Ex parte Martin*, 321 S.C. 533, 535, 471 S.E.2d 134, 135 (1995). The Appellant does not state any statutes or constitutional provisions that require waiving the filing fee in an action to determine whether someone is required to register as a sex offender. He only argues that he does not have the funds to pay the costs of filing.

² Mr. White’s primary argument in his Circuit Court petition is that the Sex Offender Registry Act should not apply to him because the law came into effect 20 years after he was convicted. This argument has already been decided in *State v. Walls* when the South Carolina Supreme Court ruled that the Sex Offender Registry Act does not violate the ex post facto clause. *State v. Walls*, 348 S.C. 26, 558 S.E.2d 524 (2002).

Conclusion

Because the Appellant has not made any argument that would entitle him to proceed *in forma pauperis*, this court should dismiss Mr. White's appeal.

Respectfully submitted,

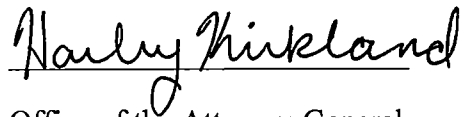
ALAN WILSON
Attorney General

Jeffrey W. Young
Chief Deputy Attorney General

Harley Kirkland
Assistant Attorney General

Kevin Desmond Maroney
Assistant Attorney General

May 24, 2018



Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
803.734.0406

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CERTIFICATE OF SERVICE

I certify that I served the Appellant, Mr. White, with a copy of the Motion to Dismiss and Memorandum in Support by depositing a copy of the motion in the United States Mail, postage prepaid. The document was sent to the following address:

Mr. John White, #80622
Turbeville C.I. / SA-132-B
1578 Clarence Coker Highway
Turbeville, SC 29162

[The signature block is on the next page.]

Respectfully submitted,

ALAN WILSON
Attorney General

Jeffrey W. Young
Chief Deputy Attorney General

Harley Kirkland
Assistant Attorney General

Kevin Desmond Maroney
Assistant Attorney General

May 24, 2018

Harley Kirkland

Office of the Attorney General
P.O. Box 11549
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803.734.0406