

THE SOUTH CAROLINA COURT OF APPEALS

BOBBY JOE BARTON,
#163629 APPELLANT,

APPELLATE CASE NO. 2018-001812

MOTION TO REMAND

TO THE

LOWER COURT

RECEIVED

FEB 21 2019

SC Court of Appeals

V.
CHERYL A. SMITH,
TAYLOR DAVIS GILLIAM,
RESPONDENT.

THE APPELLANT MOVE UPON THE COURT OF APPEALS DUE TO THE FACTS THAT THE APPEAL WOULD BE PREMATURE AS COMPARED TO OR IN COMPARISON TO "EX PARTE MARTIN," 321 S.C. 533, 471 S.E.2d 134 (1995) (THE SUPREME COURT HELD THAT (1.) THE APPEAL WAS PREMATURE WHERE THE CIR. CT. JUDGE NEVER RULED ON WHETHER THE PETITIONER WOULD BE ALLOWED TO PROCEED IN FORMA PAUPERIS, AND (2.) WHEN AN INDIGENT LITIGANT FILES A MOTION TO PROCEED IN FORMA PAUPERIS AND THE COMPLAINT DOES NOT APPEAR TO FIT WITHIN A STATUTORY OR CONSTITUTIONAL EXCEPTION TO THE REQUIREMENT OF A FILING FEE, THE CLERK OF COURT [MUST] SUBMIT THE MOTION TO A JUDGE FOR A RULING, AS TO WHETHER THE COMPLAINT FITS WITHIN A STATUTORY EXCEPTION OR CONCERN, A FUNDAMENTAL RIGHT THAT REQUIRE THE WAIVER OF THE FILING FEE.)

THE PETITIONER STATES THAT THE ISSUE IS EXACTLY THE SAME HERE IN CASE AT HAND DUE TO THE FACT THAT IT IS APPARENT THAT THE CIRCUIT COURT JUDGE HERE HAS NEVER RULED ON WHETHER THE PETITIONER WOULD BE ALLOWED TO PROCEED IN FORMA PAUPERIS. SINCE THE JUDGE HAS NOT RULED ON THIS ISSUE AND THIS AND THIS IS THE ISSUE, THE APPELLANT HAS BROUGHT BEFORE THE COURT OF APPEALS. THE PETITIONER IS RESPECTFULLY REQUESTING THIS CASE BE REMANDED BACK TO THE LOWER COURT FOR THAT COURT TO MAKE A RULING ON WHETHER THE JUDGE WILL GRANT OR DENY THE MOTION TO PROCEED IN FORMA PAUPERIS AND TO COMPLY WITH THE 59(c) MOTION ON FACTS AND FINDINGS SUPPORTED BY CONCLUSION OF LAW.

THE APPELLANT IS INDIGENT AND IS NOT ABLE TO A FILING FEE TO THE

COURT OF APPEALS JUST AS HE WAS NOT ABLE TO PAY THE FILING FEE IN THE LOWER COURT. HOWEVER PETITIONER FILED ALL THE NECESSARY PAPERS WORK UPON THE COURT, DEFENDANTS, AND THE REPRESENTATIVES.

THE APPELLANT IS ENCLDSING DOCUMENTS FOR THE COURT TO INSPECT. See: "MOTION AND AFFIDAVIT TO PROCEED IN FORMA PAUPERIS" (FORM SCCA-405 CP (10/10) NOTARIZED ON 9TH DAY OF AUGUST, 2018 BY TAMARA CONWELL) HOWEVER NONE OF THE THREE (3) BOXES ARE CHECKED NEITHER IS THERE A CIRCUIT JUDGES' SIGNATURE. THE APPELLANT ASK THE COURT TO NOTE THERE IS AN ASSIGNED CASE NO: 2018-CP-23-04584;

THE APPELLANT IS ENCLDSING DOCUMENTS FOR THE COURT TO INSPECT. See: "JUDGMENT IN A CIVIL CASE (FORM SCCA SCRCP FORM 4C (REVISED 2/17) NONE OF THE SIX (6) BOXES ARE CHECKED, ESPECIALLY BOX #2 "DECISION" BY THE COURT "NEITHER IS THERE ANY ADDITIONAL INFORMATION ON PAGE (2) AS INDICATED WHICH IS ATTACHED HOWEVER THE SIGNATURE BY THE CLERK OF COURT PAUL B. WICKEN SIMER BUT NO FURTHER INSTRUCTIONS OR EXPLANATIONS.

CIRCUIT COURT JUDGE "PERRY H. GRAVELY" HAS HIS SIGNATURE ON THIS FORM, HOWEVER THE JUDGMENT FORM IS BLANK WITH NO INSTRUCTIONS AS TO WHETHER HE IS RULING IN FAVOR OF OR AGAINST THE PETITIONER WHICH MAKES THE DOCUMENT VOID WITH NO AUTHORITY.

THE APPELLANT ASK THE COURTS' INDULGENCE AND REQUEST THE HONORABLE COURT TO NOT AS THE COURT HELD IN "EX PARTE MARTIN" THAT THE CLERK OF COURT FAILED TO COMPLY WITH THE RULEING WHICH PROVIDES: THE CLERK "MUST" (MANDATORY LANGUAGE) SUBMIT THE MOTION TO A JUDGE FOR A RULING, AS TO WHETHER THE COMPLAINT FITS WITHIN A STATUTORY EXCEPTION OR CONCERN, A FUNDAMENTAL RIGHT THAT REQUIRE THE WAIVER OF THE FILING FEE.

THE APPELLANT IS SUBMITTING FOUR (4) COPIES OF DOCUMENTS FILED IN THE COURT OF COMMON PLEAS: 1) COVER SHEET, 2) A (2) PAGE JUDGMENT (FORM 4).

3) MOTION TO PROCEED IN FORMA PAUPERIS (CASE NO: 2018-CP-23-04584), &
4) AN INMATE FINANCIAL CERTIFIED STATEMENT, ALSO; 5.) A COVER LETTER
TO PAUL B. WICKENSIMER (SERVICE, SUMMONS, & COMPLAINT).

THE APPELLANT BRINGS TO THE ATTENTION OF THE HONORABLE COURT THAT HE IS INDIGENT AND IS UNABLE TO PAY THE FILING FEE IN FULL PAYMENT AND IN "MARTIN V. S.C. DEPT. OF CORR." 565 S.E. 2D 757 (S.C. 2001) THE PLAIN LANGUAGE OF SECTION § 24-21-100 STATES THAT THE PAYMENT PLAN WAS ENACTED FOR THE PURPOSE OF ASSISTING INDIGENT PRISONERS WHEN THEY BRING A CIVIL ACTION OR PROCEEDINGS.

ALSO IN "MATTHEWS V. ELDRIDGE" 96 S. 4, 893 (1976) (FUNDAMENTAL REQUIREMENT OF DUE PROCESS IS OPPORTUNITY TO BE HEARD AT MEANINGFUL TIME AND IN MEANINGFUL MANNER. U.S. C.A. CONST. AMEND 5th & 14th. (CONST. LAW) ALSO FINANCIAL COST ALONE SUCH AS FILING FEE IS NOT CONTROLLING WEIGHT IN DETERMINING WHETHER DUE PROCESS REQUIRES PARTICULAR PROCEDURAL SAFEGUARDS PRIOR TO SOME ADMINISTRATIVE DECISION BUT GOVERNMENT INTEREST AND HENCE THAT OF PUBLIC, IN CONSERVING SCARCE FISCAL AND ADMINISTRATIVE RESOURCES IS FACTORS WHICH MUST BE WEIGHED. See; "BODDIE V. CONNECTICUT," 401 U.S. 371, 91 S.Ct. 780 (1971) (ACCESS TO THE COURT IS SEEN OR VIEWED AS ELEMENT OF DUE PROCESS.) ALSO DUE PROCESS OF LAW PROHIBITS A STATE FROM DENYING, SOLELY BECAUSE INABILITY TO PAY COURT FEES AND COSTS, ACCESS TO ITS COURTS TO INDIGENTS WHO, IN GOOD FAITH, SEEK JUDICIAL REDRESS. See; "GRIFFIN V. ILLINOIS," 351 U.S. 12, 76 S.Ct. 585 (1956)

THE APPELLANT RESPECTFULLY STATES THAT HE IS NOT A LAWYER BUT A LAYMAN AND HAS ALL INTENTIONS OF FOLLOWING THE HONORABLE COURT'S INSTRUCTIONS, THEREFORE IF IT'S SOME DOCUMENT THAT WAS NOT PROVIDED IN THE MOTION TO PROCEED IN FORMA PAUPERIS, THE COURT ONLY HAVE TO STATE THIS AND THE APPELLANT WOULD COMPLY WITH THAT HOWEVER CONCERNING DENYING THE MOTION TO PROCEED BASED SOLELY UPON THE FILING FEE, APPELLANT BELIEVES THIS VIOLATES THE GOOD FAITH TO BE HEARD AND

IF NOT THE COURT OF APPEALS WOULD NOT BE THE APPROPRIATE JURISDICTION AND DOES NOT HAVE THE AUTHORITY REGARDING THIS UNRESOLVED STATE LEVEL MATTER AT THIS TIME. See; "EX PARTE MARTIN V. A.T. & T.", 321 S.C. 533, 471 S.E. 2d 134 (1995)

THE APPELLANT BELIEVES THAT HE HAS SHOWN "JUST CAUSE" WHY THE COURT OF APPEALS REMAND TO THE LOWER COURT FOR FINALITY OF SAID CASE AND ORDER THE CLERK OF COURT AND CIRCUIT JUDGE TO FULLFILL THE PROCESS, OBLIGATION AND DUTY WHICH IS MANDATORY BEFORE AN APPEAL COURT CAN RULE (HEAR) IN JUDICIAL PROCESS OF IT'S COURT.

THE APPELLANT IS ENCLASING "A COPY OF OUTER ENVELOPE" IN WHICH HE RECEIVED THE "NOTICE" FROM THE COURT OF APPEALS. (See; EXHIBIT #1 WHICH HAS A FEBRUARY 5TH, 2019 DATE AND NOTIFYING APPELLANT OF (15) DAYS, PLUS PRESIDENT DAY (2/18/19)), THEREFORE RESPONDING DEADLINE WOULD BE FEBRUARY 21, 2019)

WHEREFORE, THE APPELLANT PRAYS THIS COURT WILL GRANT HIS MOTION TO REMAND TO THE LOWER COURT FOR FINALITY PROCESSING AND ANY OTHER SUCH RELIEF THE COURT MAY DEEM JUST AND PROPER.

DATED; 19TH DAY OF FEBRUARY, 2019

RESPECTFULLY SUBMITTED,



BOBBY JOE BARTON #163629

PERRY CORR. INST.

430 OAKLAWN RD.

PELZER, SC 29667-9363

CC: ~~XXXXXXXXXX~~

A. TODD DARWIN, ESQUIRE

BOBBY JOE BARTON, APPELLANT

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

BOBBY JOE BARTON

Plaintiff(s)

CHERYL A. SMITH, ^{VS.} CVR - M.
& TAYLOR DAVIS GILLIAM,

IND. & OFFICIAL CAP., ETC. Defendant(s)

(Please Print)

Submitted By: BOBBY JOE BARTON

Address: PERRY CURR. INST.
430 DAKLAWN RD.
PELZER, SC 29669

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018-CP-23-04584

RECEIVED
CLERK OF COURT
COURT HOUSE
COLUMBIA, SC
SEP 11 2018

SC Bar #: _____
Telephone #: _____
Fax #: _____
Other: _____
E-mail: _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|---|
| <p>Contracts</p> <input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> Employment (120)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <input type="checkbox"/> Dental Malpractice (200)
<input checked="" type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI- _____
<input type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <input type="checkbox"/> Assault/Slander/Libel (300)
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Other (399) | <p>Real Property</p> <input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) |
|--|---|---|---|

- | | | | |
|--|--|--|---|
| <p>Inmate Petitions</p> <input type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) | <p>Administrative Law/Relief</p> <input type="checkbox"/> Reinstate Drv. License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture-Consent Order (850)
<input type="checkbox"/> Other (899) | <p>Judgments/Settlements</p> <input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript of Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)
<input type="checkbox"/> Confession of Judgment (770)
<input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)
<input type="checkbox"/> Other (799) | <p>Appeals</p> <input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Public Service Commission (990)
<input type="checkbox"/> Employment Security Commission (991)
<input type="checkbox"/> Other (999) |
|--|--|--|---|
- Special/Complex /Other
- | | |
|--|--|
| <input type="checkbox"/> Environmental (600)
<input type="checkbox"/> Automobile Arb. (610)
<input type="checkbox"/> Medical (620)
<input type="checkbox"/> Other (699)
<input type="checkbox"/> Sexual Predator (510) | <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Foreign Subpoenas (650)
<input type="checkbox"/> Motion to Quash Subpoena in Out-of-County Action (660) |
|--|--|

Submitting Party Signature:

Bobby Joe Barton

Date:

8/10/18

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP2304584

Bobby Joe Barton

Cheryl A Smith
Taylor Davis Gilliam

18 SEP 7 AM 10:50
Paul Wickensmer - DOC 811 SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

I HEREBY DIRECT THE CLERK OF COURT TO FILE THE ABOVE CASE AND COLLECT THE FILING FEE IN ACCORDANCE WITH S.C. CODE ANN. STATUTE 24 27 100 ET. SEQ.

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

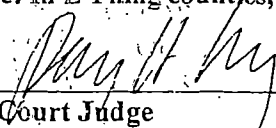
If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge



Judge Code

2755

Date

9/6/18
9/5/2018

9-7-18

For Clerk of Court Office Use Only

9-7-18

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Bobby Joe Barton Perry Correctional Institute 430 Oaklawn Rd Pelzer, SC 29669

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

Court Reporter

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Yerry

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): BOBBY JOE BARTON

SCDC # 163629 INMATE SIGNATURE: Bobby Joe Barton

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 \$ -0.01
- (4) PAYMENT AMOUNT **
(lesser of line 2 or line 3)
Enclosed check # \$ 0

SCDC-FINANCIAL ACCOUNTING
2018 SEP 19 AM 9:34

****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 / /

Peggy Cantz
Prepared by Financial Accounting Branch - SCDC

9/19/18
Date cfile\scotrus\prepared 7/97

AUGUST 27, 2018

ATTN: PAUL B. WICKENSIMER, ESQUIRE
CLERK OF COURT, CT. OF COMMON PLEAS
305 E. NORTH ST.
GREENVILLE, SC 29601

FROM: BOBBY JOE BARTON, PRO SE PETITIONER

Re: SERVICE, SUMMONS, & COMPLAINT (2018-CP-23-04584)

DEAR CLERK,

I'VE FILED A TORT CLAIM IN YOUR COURT OF COMMON PLEAS AGAINST CHERYL A. SMITH & TAYLOR D. GILHAM, DEFENDANTS ON AUGUST 14, 2018. I SUBMITTED ALL THE NECESSARY PAPER WORK INCLUDING AN EXTRA COPY TO BE CLOCK STAMPED AND RETURN TO ME WITH A CASE NUMBER. I ALSO INCLUDED AN INMATE FINANCIAL STATEMENT ALONG WITH AN APPLICATION FOR IN FORMA PAUPERIS. I RESPECTFULLY ASK THE COURT TO PLEASE BE MINDFUL OF § 24-27-100 WHICH PROVIDES FOR THE COURT TO ASSIST ME AN INDIGENT INMATE AT BRING MY CIVIL ACTION TO THE TRIAL COURT LEVEL. I AM ENCLOSED COPIES OF CERTIFIED RETURN RECEIPT TO PROVE BOTH DEFENDANTS HAVE BEEN SERVED PROPERLY. I ALSO ASK THE COURT TO BE MINDFUL THAT I AM SELF REPRESENTATION AND WHAT EVER THE ACTION THE COURT MAY TAKE, I WOULD LIKE THE COURT TO PLEASE GRANT ME THE SAME COURTESY THAT IS GIVEN TO AN ATTORNEY. I THANK YOU AND YOUR OFFICE FOR YOUR COOPERATION REGARDING THIS MATTER.

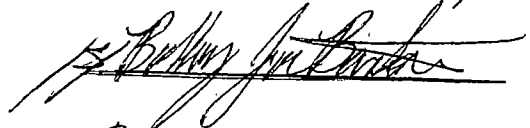
RECEIVED

AUG 28 2018

P.C.I. MAILROOM

CC: BOBBY JOE BARTON, PRO SE PETITIONER

RESPECTFULLY SUBMITTED,



BOBBY JOE BARTON, #163629

PERRY CORR. INST. (03A-201)

430 OAKLAWN Rd.

PECKER, SC 29669-9363

[EXHIBIT #1]



South Carolina Court of Appeals
JENNY ABBOTT KITCHINGS, CLERK
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

RECEIVED

FEB 05 2019

P.C.I. MAILROOM

Hasler
02/01/2019
US POSTAGE \$00.50⁰

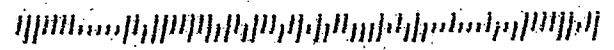


ZIP 29201
011D12602824

BOBBY JOE BARTON, #163629
PERRY CORRECTIONAL INST. (Q-3-B101)
430 OAKLAWN ROAD
PELZER SC 29669

3 A221

2966938704 0099



SOUTH CAROLINA COURT OF APPEALS

BOBBY JOE BARTON
#163629 APPELLANT,

VS.

CHERYL A. SMITH, &
TAYLOR D. GILLIAM,
RESPONDENTS.

APPELLATE CASE NO: 2018-001812

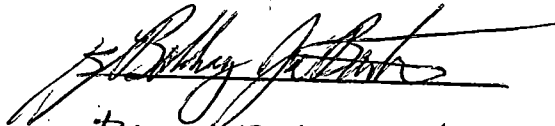
"CERTIFICATE OF SERVICE"

THE HEREBY UNDERSIGNED STATE UNDER THE PENALTY OF PERJURY THAT HE HAS SERVED A "MOTION TO REMAND TO THE LOWER COURT FOR FINALITY OF PROCEEDINGS" UPON JENNY ABBOTT KITCHINGS, CLERK OF SC COURT OF APPEALS @ 1220 SENATE ST., CALHOUN BLDG, COLUMBIA, SC & A TRUE EXACT COPY TO RESPONDENTS REPRESENTATIVE ADDRESSED BELOW

ATTN: A. TODD DARWIN, ESQUIRE
C/O HOLCOMBE BENAR, P.A.
P.O. DRAWER 1897
SPARTANBURG, SC 29304

RECEIVED
FEB 21 2019
SC Court of Appeals

THIS ACTION WAS ACCOMPLISHED BY HAND DELIVERED TO MS. CONWELL / MS. MERCHANT, PERRY CORR. MAIL ROOM PERSONEL TO DEPOSIT IN THE UNITED STATES POSTAL SERVICE ON 19th DAY OF FEBRUARY, 2019.


BOBBY JOE BARTON #163629
PERRY CORR. INST.
430 OAKLEIGH RD
PELZER, SC 29669.

CC: A. TODD DARWIN, ESQUIRE
BOBBY JOE BARTON, APPELLANT

"FEBRUARY 19, 2019"

ATTN: JENNY ABBOTT KITCHING, CLERK
S.C. COURT OF APPEALS
P.O. BOX 11629
COLUMBIA, SC 29211

RECEIVED
FEB 21 2019
SC Court of Appeals

FROM: BOBBY JOE BARTON, #163629

APPELLATE CASE NO: 2018-001812

Re: MOTION TO REMAND TO LOWER COURT & ORDER DEMAND OFF FILING FEE!

DEAR MADAM CLERK,

I RECEIVED YOUR DENIAL OF PROCEEDING IN FORMA PAUPERIS AND THE ORDER DEMANDING FILING FEE WITHIN (15) DAYS OR WILL RESULT IN DISMISSAL OF MY CASE. HOWEVER WITH ALL RESPECT TO YOU AND YOUR OFFICE AS COMPARED TO "EX PARTE MARTIN V. A.T. & T.", 321 SC 533, 471 S.E.2d. 134 (1995) (THE SUPREME COURT HELD THAT THE APPEAL WAS PREMATURE DUE TO THE FACT THAT THE CLERK AND/OR CIRCUIT JUDGE DID NOT COMPLETE THEIR OBLIGATIONS AND DUTY WHICH IS MANDATORY LANGUAGE I MUST SUBMIT TO THE JUDGE FOR HIS RULING AS TO WHETHER THE COMPLAINT FITS WITHIN A STATUTORY EXCEPTION THAT THE 13TH CIRCUIT COURT HAS FAILED TO DO. THEREFORE FOR THE SAKE OF CORRECTNESS, I'VE FILED THE MOTION FOR YOU TO REMAND TO THE LOWER COURT. See, "TAYLOR, DELATOR", 281 F.3d 844, 850-1 (2002) (THE Ct. HELD, WHEN NO FUNDS EXISTS WHEN THE INITIAL FEE ORDER IS MADE, THE COURT IS NOT AUTHORIZED TO DISMISS AN ACTION AS A SANCTION FOR THE FAILURE TO PAY THE INITIAL FEE.

THE APPELLANT THANK YOU IN ADVANCE FOR YOUR TIME AND ASSISTANCE REGARDING THIS MATTER AND TO BE MINDFUL THE ORDER WAS NOT RECEIVED UNTIL FEB. 3, 2019 AND THE HOLIDAY OF FEBRUARY 18, 2019.

RESPECTFULLY SUBMITTED,



BOBBY JOE BARTON
#163629

BOBBY BARTON, #163629
PERRY CORR. INST. (D-3-A-221)
430 OAKLAWN RD.
PELZER, SC 29669-9363

RECEIVED

FEB 21 2019

SC Court of Appeals

ATTN: JENNY ABBOTT KITCHINGS, CLERK

S. C. COURT OF APPEALS

C/O 1220 SENATE ST.

CALHOUN BLDG.

COLUMBIA, SC 29201

LEGAL MAIL

RECEIVED

FEB 19 2019

P.C.I. MAILROOM