

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Altony Brooks (SCDC #313000),

Plaintiff,

v.

South Carolina Department of Corrections,  
Ofc. Ledwell, Warden Sutton, Lieutenant  
Carter, Sgt. Davenport, Warden Stevenson,  
and Captain Pack,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2018CP4003479

ORDER DENYING  
PLAINTIFF'S MOTION TO ALTER OR AMEND

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SC Court of Appeals

RICHLAND COUNTY  
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This matter came before the Court upon "Motion and Affidavit to Alter or Amend Judgment" filed by Plaintiff on March 25, 2019. The Court DENIES the motion without oral argument, pursuant to Rule 59(f) of the South Carolina Rules of Civil Procedure.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

At all times relevant to this action, Plaintiff has been an inmate detained at the South Carolina Department of Corrections. On August 13, 2015, he filed a Complaint in federal court against all of the defendants named in this action. *See Brooks v. South Carolina Dep't of Corr.*, 9:15-cv-03195-PMD-BM. In that action, Plaintiff alleged several causes of action against Defendants – pursuant to 42 U.S.C. §1983 and the South Carolina Tort Claims Act – including violation of his constitutional rights (use of excessive force, failure to protect, deliberate indifference, and cruel and unusual punishment), gross negligence (failure to train and supervise), and assault and battery. *Id.*

By Order and subsequent judgment on September 29, 2016, the United States District Court dismissed Plaintiff's case without prejudice. The federal claims were dismissed for failure



to exhaust available administrative remedies, and the Court recommended that the state law claims be pursued in state court. On July 3, 2018, Plaintiff filed the Complaint in this action, which is comprised of one page entitled "Refiling of Case to State Court of State Court Claims and Notice" coupled with a photocopy of the federal Complaint.

Also on July 3, 2018, Plaintiff submitted a Motion and Affidavit to Proceed *In Forma Pauperis*. The motion was denied by Order filed on July 6, 2018, and signed by the Honorable Robert Hood, who was then acting in his capacity as Chief Administrative Judge. Despite the denial, Plaintiff failed to pay the requisite filing fee to the Clerk of Court and, therefore, never properly commenced this action pursuant to Rule 3 of the South Carolina Rules of Civil Procedure. As a result, by Order filed March 11, 2019, this action was dismissed.

Applicant now seeks reconsideration of this Court's July 6, 2018 and March 11, 2019 Orders, arguing that they amount to a denial of his right to due process.

**I. Plaintiff's Motion is Not Timely**

The South Carolina Rules of Civil Procedure state, "A motion to alter or amend the judgment *shall* be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC. "The established case law is that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." *In re Beard*, 359 S.C. 351, 358, 597 S.E.2d 835, 838 (Ct. App. 2004) (citing *Pittman v. Republic Leasing Co.*, 351 S.C. 429, 432, 570 S.E.2d 187, 189; *Ness v. Eckerd Corp.*, 350 S.C. 399, 402, 566 S.E.2d 193, 195 (Ct. App. 2002)). "Although trial judges retain jurisdiction to alter judgements on their own initiative for ten days if a Rule 59(e), SCRPC, motion is filed, after ten days that jurisdiction is lost." *Ness*, 350 S.C. at 402, 566 S.E.2d at 195.

The Court issued its Order denying Plaintiff's Motion to Proceed *In Forma Pauperis* on July 6, 2018. Plaintiff didn't request reconsideration until March 25, 2019 – more than nine months later, and certainly well outside of the ten-day requirement. Therefore, this Court lacks jurisdiction to alter its July 6, 2018 Order; and Plaintiff's motion must be denied.

**II. Applicant's Substantive Argument – Due Process**

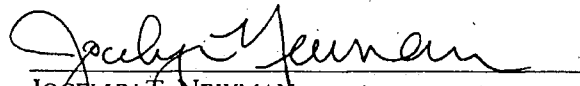
Even assuming that this Court has jurisdiction to alter its judgment, Plaintiff's motion would be denied.

"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." *Martin v. State of South Carolina*, 321 S.C. 533, 535, 471 S.E.2d 134, 134-35 (1995) (citations omitted). "Further, where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts." *Id.* at 535, 471 S.E.2d at 135.

In this case, however it is undisputed that only Plaintiff's state law tort claims are proper before this Court. In fact, the direction to the "state court claims" appears in the title of the Complaint. Because no fundamental rights are implicated by the limited waiver of sovereign immunity that is the South Carolina Tort Claims Act, no waiver of filing fees is required of this Court.

IT IS, THEREFORE, ORDERED that Plaintiff's Motion to Alter or Amend is DENIED.

AND IT IS SO ORDERED.

  
JOCELYN T. NEWMAN  
Chief Administrative Judge

March 26, 2019  
Columbia, South Carolina.