

The State of South Carolina  
In the Supreme Court

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AUG 13 2013

S.C. SUPREME COURT

Appeal from Richland County  
Court of Common Pleas  
Allison R. Lee Circuit Court Judge  
CA 2019-000086 / 2015-CP-40-6787

Tyrone Perry

Appellant

vs

SCDC

Respondent

[Initial] Brief of Appellant

s. Tyrone Perry

Tyrone Perry

430 Oaklawn Rd Q3A-204

Pelzer S.C. 29669

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## Table of Authorities

SCRCP

Rule 9(A)

Constitution

14<sup>th</sup> Amendment

South Carolina Article 1 section 3

### Statement of issues on Appeal

- 1) Did the circuit court err in making the appellant proceed although appellant raised Rule 9(A) to his incompetence
- 2) Did the circuit court violate the appellant's due process and equal protection of law

## Statement of the Case

On March 8, 2015 the appellant injured himself and was took out of the dorm Edisto-B side and placed in the holding cell in operations. The appellant sat for hours in the holding cell in general populations and asked for his property to be inventoried in front of him. It was not after hours of waiting so the appellant injured himself more in the holding cell. The appellant was taken to RHU. After about a three week stay the appellant was returned to population to discover over 300.00 worth of his personal property was missing. The appellant executed the grievance system who failed to reply to time frames set out by policy so the appellant filed with the court of common pleas. The defendants ask for removal to federal court and this case went to federal court. The appellant prevailed and the case was remanded to state court. The appellant was involuntarily admitted to the mental hospital GPH on 1-16-18. Once there the appellant had little to NO access to research material or law clerks. The respondents filed motion after motion to have the case heard while the appellant was in the mental hospital. On May 21, 2018 the appellant was made to proceed although he motioned prior and told the Judge verbatim he was mentally incompetent. This appeal follows.

## FACTS

On 1-16-18 the appellant was involuntarily committed to the mental hospital GPH. The appellant was only allowed to access the Westlaw computer one time from January 2018 until May 2018 but the appellant had two cases pending. This case and case number 2015-CP-42-4338. On the night of May 20, 2018 the appellant received a halohal and geason shot for mental health problems. A few hours later the appellant was taken to Richland County Court of Common Pleas. The Appellant informed the Judge he was incompetent and showed the bandage that covered the injected area. The Judge made the Appellant proceed violating due process and SCRCP Rule 9 (A). No fiduciary nor mental health statement was there and the appellant made this known to the judge and the fact the appellant was housed in a mental hospital.

## Arguments

I Pursuant to Rule 9(A) of SCRPC and FRCP it's necessary to AVER the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party..... I am a party in this suit and I told the Judge verbatim I was housed in a mental hospital under the influence of heavily sedative drugs and I had NO fiduciary or mental health statement, and I was incompetent. I invoked Rule 9(A) and the Judge made me proceed or have my case be dismissed with NO discovery or nothing. This is a direct Rule and procedural violation and invokes due process of my rights.

II The appellant Procedural due process rights were violated when the trial court elected to make the appellant proceed when he was incompetent although the Appellant invoked Rule 9(A) with specific negative averment, but the trial court violated fundamental fairness by not granting an extension or waiting until the appellant was competent. This Rule violation invokes due process and equal protection safe guards. So the plaintiff due process was violated by the trial court. No mental health statement was presented, no mental health fiduciary and the fact that the appellant was housed in a mental hospital was not objected to. So the FACTS were overlooked in this case

## Conclusion

FOR THE REASONS STATED, this court should reverse the judgment of the trial court of common pleas and vacate the order and remand back to the trial court to retry the Appellant after granting him adequate discovery, or replace the 300.00 monetary value, pay the costs of court and 5000.00 in liability damage.

sx Tyrone Perry  
Tyrone Perry  
430 Oaklawn Rd Q3A-204  
Pelzer S.C. 29664

this 8<sup>th</sup> day of August 2019

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Proof of Service

I certify that I have served this initial brief of appellant by depositing a copy of it in the U.S. mail postage prepaid to the following:

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This 8<sup>th</sup> day of August 2019