

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

RECEIVED

Deborah Brooks Durden, Administrative Law Judge JUN 15 2020

Appellate Case No. 2020-000658 SC Court of Appeals

Michael J. Pettinato,.....Appellant,

v.

South Carolina Department of Probation,
Parole and Pardon Services,.....Respondent,

MOTION FOR RECONSIDERATION

Michael J. Pettinato, the above Appellant, respectfully moves this Honorable Court to Reconsider its Order, dated May 28, 2020 and received by Pettinato on June 2, 2020, in which this Court denied Appellant's Request To Proceed In Forma Pauperis and ordered Pettinato to pay the filing fee within fifteen (15) days of the date of the order to avoid dismissal of this Appeal.

Appellant ("Appellant or Pettinato") would respectfully show this Honorable Court the following:

This case originated in the S.C. Dep't of Probation, Parole and Pardon Services (the "Department") as it pertains to a practice or policy of the Parole Board (The "Board") and/or the Department to, among other things, use unlawful procedure and failing to adhere to the Parole Statutes when considering Pettinato for parole. See Michael J. Pettinato v. S.C. Department

of Probation, Parole and Pardon Services, Docket No. 19-ALJ-15-0039-AP.

The Administrative Law Court ("ALC") arbitrarily denied Pettinato Parole on three occasions over a six year period as a Policy Or Practice of using Unlawful Procedure, exceeding its authority and intentionally failing to adhere to statutory criteria.

The ALC arbitrarily and capriciously DENIED Pettinato's Motion To Proceed In Forma Pauperis and his Motion To Enlarge his Initial Brief in that court, which caused Pettinato to forfeit issues that he wished to raise on this appeal. The ALC also disregarded Pettinato's arguments in favor of the frivolous and wholly incredible arguments of Respondent, and completely disregarded the relevant facts.

Pettinato appealed to this Court as permitted by the Administrative Procedures Act as he wished to seek redress for the denial of fair parole consideration, the unlawful arbitrary decisions of the Board, and the failure of the Board to adhere to State Statutes as asserted above. He timely filed and served upon the Respondent, a Notice of Appeal, a Request To Proceed In Forma Pauperis and an Affidavit In Support Of Request To Proceed In Forma Pauperis [attached hereto and incorporated into the record by reference] with this Court.

Pettinato's Affidavit In Support also requested that the Court, if it intended to deny his Request To Proceed In Forma Pauperis, nonetheless permit him to proceed and allow SCDC to deduct money from his Prison Trust Account as the Federal Courts do in Prison Civil Rights Cases [and the lower State Courts do in civil action], since Pettinato receives money from family members from time to time. However, this Court denied the Request To Proceed In Forma Pauperis citing only Ex Parte Martin, 321 S.C. 533, 471 S.E.2d 134, (1995). See Order dated May 28, 2020 attached hereto and

incorporated into the record by reference.

Pettinato submits that this Appeal concerns the unlawful Practice and/or Policy of the Department and the Board as it pertains to Parole.

The Board uses unlawful procedure, fails to adhere to the Statutory Criteria, fails to provide a fair parole consideration hearing, arbitrarily and capriciously fabricates reasons to deny parole, flatly refuses to provide a Parole "Hearing" as defined by and within the meaning of, the law, and the Board issues arbitrary and capricious decisions without reliance on any evidence, much more or less "substantial evidence," to support its decision and, the Board fails to give "reasons" for the denial of parole as required by law, while the Courts continue to turn a blind eye to this lawlessness and reject arguments [by mere "inmates" who probably are stupid and don't know the law] that it compel State Agencies to comply with the law, which is one of the very reasons for the "I Can't Breathe Movement" that is currently in the news.

Pettinato has a right:

1. To be free from the Arbitrary and Capricious denial of "Parole Eligibility," "to gain Access to the Parole Board [which must be meaningful], "to Fair Parole Consideration" and a "right to require the Board to adhere to Statutory Criteria," as well as to restrict their actions to the authority vested to the Board by the General Assembly. See e.g. Furtick v. S.C. Dep't of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2009); Sullivan v. S.C. Dep't of Probation, Parole and Pardon Services, 355 S.C. 437, 586 S.E.2d 124 (2003); James v. S.C. Dep't of Probation, Parole and Pardon Services, 376 S.C. 392, 656 S.E.2d 399 (Ct. App. 2008); Cooper v. S.C. Dep't of Probation, Parole and Pardon Services, 377 S.C. 489, 661 S.E.2d 106 (2008); Block v. Potter, 631 F.2d 233 (3d Cir. 1980).

Pettinato submits that this Court's decision denying his Motion To Proceed In Forma Pauperis or denying him the ability to proceed with this Appeal based on his poverty and/or inability to pay the filing fee up front, denies Pettinato Due Process, Equal Protection Of The Laws, is violative of the Privileges and Immunities Clause of both, the Federal and State Constitutions, and, appears to be in conflict with decisions of the United States Supreme Court. See e.g., Shapiro v. Thompson, 394 U.S. 618, 634 (2000); Lewis v. Casey, 518 U.S. 343, 346 (1983) (Access to the Court is a fundamental right); M.L.B. v. S.L.J., 519 U.S. 102, ___ (1996) (Just as a State may not block an indigent petty offender's access to an Appeal afforded others, Mayer v. Chicago, 404 U.S. 189, 195-196 (1971), so it may not deny M.L.B. because of her poverty, appellate review of the sufficiency of the evidence on which the trial court based its parental determination decree); Rinaldi v. Yeager, 384 U.S. 305, 310 (1966). The decision to Deny Pettinato's Request To Proceed In Forma Pauperis acts only to impeded Pettinato's open and equal access to an appeal that is provided to others with money.

Pettinato points out that the U.S. Supreme Court has noted that "serious Constitutional questions" may arise if a person is left without a forum for adjudicating his constitutional claims. See e.g., Colcano-Martinez v. INS., 533 U.S. 348, 351 (2001).

Pettinato requested fee waiver forms or any other forms necessary for him to file his legal documents with the ALC and the Court of Appeals, however, his requests were ignored.

Pettinato, at the time of his imprisonment in 1994, was stripped [unlawfully] of his Social Security Disability payments, based on the often used assertions of the State [and Federal] Governments' that the State

must assume responsibility for the custody and care of its prisoners. See e.g., Article XII, § 2 of the South Carolina Constitution, ("the General Assembly shall provide ... for the custody, maintenance, health, welfare, education and rehabilitation of the inmates").

First, the State should be required to waive Pettinato's legal fees since he has to bring legal action based on the State's failure to abide by the Constitution and Laws of the U.S. and its own Constitution and Statutes and since the State is responsible for Pettinato because of having him incarcerated and the State, no doubt, took part in depriving him of his money.

Pettinato most certainly has raised issues concerning "Fundamental Constitutional Rights" and his right to Petition the Government for Redress of Grievances is itself a Fundamental Constitutional Right for which the State proposes to deprive Pettinato of without Due Process of Law by simply denying him his Constitutional right to be heard in this Court, without even allowing him to fully brief the issue or adequately argue why this Court should allow him to proceed without payment of costs and fees.

Pettinato also Points out that this is not a case in which he decided to sue a State Agency for want of something better to do, but rather, the only means and method he is aware of that he thought the Courts would allow for him to DEFEND against unlawful State Action as it pertains to the DPPPS.

Even if this Court should uphold its prior Order to Deny Pettinato's Request To Proceed In Forma Pauperis, it should nonetheless, allow Pettinato a means and method to have money deducted from his Prison Trust Account as the lower State Courts do, [see Attached State Form] and give Pettinato additional time in which to either obtain a Certified Copy of his Trust Account or to make other arrangements in which to pay the filing fee. This

Court is well aware that due to the pandemic, people are out of work and struggling to make a living, as well as struggling to stay alive. This Court is also aware that since Pettinato is a poor person [See Affidavit In Support of Request To Proceed In Forma Pauperis] that he will have to ask family members for money and they most likely will help him pay the fees, but need time as well because of being out of work. In fact, one of Pettinato's daughter's has stated only yesterday that she will help pay the filing fee if given time but she is drawing unemployment because she is out of work due to the Corona Virus. Thus, fifteen (15) days is not a sufficient amount of time in which to allow Pettinato to come up with the filing fee, under "all of the circumstances" and this Court should grant a reasonable amount of time for Pettinato to make arrangements to pay the filing fee and/or submit the proper forms.

Pettinato also asks that this Court accept this filing even if it is received and/or filed "OUT OF TIME" because Pettinato prepared it and mailed it during the time allotted by prison officials and prison conditions.

The Institutional Law Library has only been open about 1 to 2 days per week over the course of the past month, one of the main causes being the shortage of Staff due to the Corona Virus Pandemic. Since the date that Pettinato received the Order DENYING his "Request To Proceed In Forma Pauperis" [June 2, 2020], Pettinato has repeatedly sought access to the Prison Law Library and asked Prison Officials repeatedly for adequate access, only to be denied adequate access because the one Officer who is regularly assigned to that post, is used for transportation runs, medical runs, or additional security, again, due to the situation concerning the Corona Virus. Thus, Pettinato through no fault of his own, has been denied adequate access to the Law Library and/or one of the two (2) West Law Computers

so he has been unable to adequately research the issues of what Motions he may file in this Court, as well as how and when to file them. More specifically, the Law Library has only been open for about 4 hours per day, on about 3 days since June 2, 2020, with about 4 to 6 Inmates attending each whereas they must share only 2 working West Law Computers and otherwise outdated Law Books.

Pettinato has no experience in litigating in this Court, he avers that this is his first Appeal to this Court [other than prior PCR matters] and this Appeal is not frivolous in any sense of the term.

Finally, Pettinato points out once again, that a dismissal of this action because he is poor and cannot afford to pay fees up front, among other things, denies him his Constitutional Right to Petition the Government For Redress of Grievances, his right of Access to the Courts and his Due Process and Equal Protection rights to be heard at a meaningful time and in a meaningful manner.

I, Michael J. Pettinato, herein swear under penalty of perjury that the facts stated herein are true and correct, that those facts stated herein based upon information and belief are believed by me to be true, that even though I am inexperienced in bringing and maintaining legal actions and that I am a poor person, I intend to appeal any adverse rulings in this matter to the extent permitted by law in that neither this Court, nor the Respondent whom this Court appears to represent, will be prejudiced in any way if Pettinato is permitted to exercise his Constitutional Rights to be heard in a meaningful time and a meaningful manner, of which Pettinato should not have to beg and of which he is also outraged over the unequal justice that is dispensed in this State based on, among other things, one's ability to PAY.

For the reasons stated above and based on the legal documents on file with this Court and the Administrative Law Court in this matter, Pettinato requests that this Court grant the following relief:

1. That this Court reconsider its order and GRANT Pettinato's Request To Proceed In Forma Pauperis;

2. Or in the alternative, that this Court Grant Pettinato a reasonable amount of time in which to obtain, prepare and submit to this Court, the Cost waiver forms that he requested from the lower court and the Clerk of the Court of Appeals, as well as a Certified Copy of his Trust Account; or;


3. That this Court Grant Pettinato a reasonable amount of time [as opposed to 15 days] in which to make other arrangements to pay the filing fee, of which Pettinato has never been notified of the exact amount; or,

4. That this Court find that fundamental rights are involved, or at least that Pettinato should be entitled to a reasonable amount of time and an opportunity to argue why the denial of his Request To Proceed In Forma Pauperis" should not be DENIED by this Court; or,

5. That this Court Grant any such other and further relief as is fair and just under all of the relevant circumstances.

Respectfully, Submitted,

June 12, 2020
Turbeville, South Carolina


Michael J. Pettinato, #218405
Turbeville Corr., Inst., SNB-150
1578 Clarence Coker Highway
Turbeville, SC 29162
Appellant, Pro Se



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 28, 2020

Michael J. Pettinato, 218405
Turbeville Correctional Inst.
P.O. Box 252
Turbeville SC 29162

Re: Michael J. Pettinato, #218405 v. SCDPPPS
Appellate Case No. 2020-000658

Dear Mr. Pettinato:

Enclosed is the Court's decision on the motion to proceed in forma pauperis. Failure to comply with the Court's request will result in the dismissal of this appeal.

Very truly yours,

V. Claire Allen

CLERK

cc: Matthew C. Buchanan, Esquire

The South Carolina Court of Appeals

Michael J. Pettinato, #218405, Appellant,

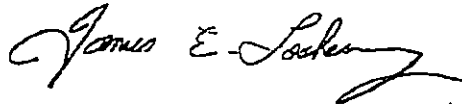
v.

South Carolina Department of Probation, Parole, and
Pardon Services, Respondent.

Appellate Case No. 2020-000658

ORDER

The motion to proceed *in forma pauperis* is denied pursuant to *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). The filing fee must be paid within fifteen days of the date of this order.



FOR THE COURT

Columbia, South Carolina

cc:
Michael J. Pettinato, 218405
Matthew C. Buchanan, Esquire

FILED
May 28 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
Docket No. 19-ALJ-15-0039

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SC Court of Appeals

**APPEAL OF THE FINAL DECISION
OF THE ADMINISTRATIVE LAW COURT**

Honorable Deborah Brooks Durden, Administrative Law Judge

S.C. DEPARTMENT OF PROBATION,
PAROLE AND PARDON SERVICES,.....RESPONDENT

v.

MICHAEL J. PETTINATO, #218405,.....APPELLANT

REQUEST TO PROCEED IN FORMA PAUPERIS

Michael J. Pettinato, the above Appellant, herein moves this Court for an Order allowing him to pursue this Appeal as a poor person upon the grounds asserted below and the grounds asserted in his Affidavit In Support Of Request To Proceed In Forma Pauperis, annexed hereto.

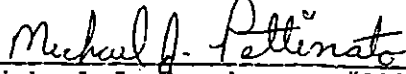
Appellant would respectfully show this Honorable Court the following:

1. Appellant has insufficient income and property to enable him to either prepay or pay the costs, fees, and expenses to pursue this action;
2. Appellant believes that he is entitled to redress; and,
3. Appellant believes that the issues raised in this Appeal involve among other things, the violation of Fundamental Constitutional Rights and Statutory Rights, as well as what may be considered to be Novel Issues.

WHEREFORE, Appellant **PRAYS** that this Honorable Court **GRANT** the relief requested herein and **GRANT** any such other and further relief this Court deems fair, just and proper.

April 13, 2020
Turbeville, South Carolina

Respectfully Submitted,


Michael J. Pettinato, #218405
Turbeville C.I., SNB-150
1578 Clarence Coker Highway
Turbeville, SC 29162

Appellant, Pro Se

3. I have insufficient income and property to enable me to prepay or pay the costs, fees, and all other expenses to pursue this action;

4. I have been incarcerated for 26 years and I am not gainfully employed;

5. I have not been gainfully employed since approximately 2008 at which time I was participating in the Prison Industries Program;

6. In the **past twelve months** I have:

- (a) Received NO MONEY from any Business, Profession, or form of self-employment;
- (b) Received NO MONEY from Rent Payments, Interest Or Dividends other than Interest [Approximately \$ 16.00] that I earned on the funds held in my E.H. Cooper Trust Account;
- (c) Received NO MONEY from Pensions, Annuities, or Life Insurance Payments;
- (d) Received approximately \$2,000.00 in monthly monetary Gifts of anywhere from \$20.00 to \$500.00 from family members;
- (e) Received NO MONEY from any type of Public Assistance; and,
- (f) Received Gifts in the Form of two (2) Food Packages at a total cost of approximately \$570.00 from three Brothers, One Sister and One Daughter;

7. I do not have money in a Checking or Savings Account other than \$1.00 that is in my E.H. Cooper Trust Account at the time that I complete this Affidavit;

8. I do not own and Real Estate, Stocks, Bonds, Notes, Automobiles, or other valuable Property, to include any ordinary Household Furnishings or Clothing;

9. I have no one who is dependent upon me for support.

10. I am incarcerated and have been for twenty-six (26) years and thus, I pay no rent or utilities;

11. Any monetary gifts that I receive from family members is used to purchase food items, hygiene items and other items for me from the SCDC Canteen or through outside vendors;

12. I must pay co-pay fees for medical treatment and prescription medicines [about 9 each month] of which I pay on an average of about \$20.00 per month out of the monetary gifts from family;

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13. The issues in my case are described in documents that have been filed with the Administrative Law Court; and I have enclosed and attached hereto, a copy of the five MAIN ISSUES that were raised in the Administrative Law Court and of which I intend to raise in this Court should I be GRANTED permission to prosecute this Appeal;

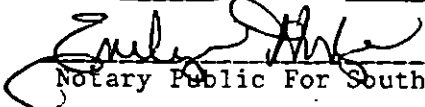
14. A Sixth Issue I wish to bring before this Court is the issue of the Administrative Law Judge's arbitrary denial of my Motion To Proceed In Forma Pauperis in that Court [I was not required to pay the \$25.00 filing fee] although I requested to be provided with a Request For Waiver Of Fees or similar form and I was the same as informed that I did not need it as that was the first Appeal that I filed in that Court in 2019;

15. A Seventh Issue I wish to Appeal is the arbitrary denial of my Motion To Enlarge my Initial Brief, which prejudiced me by preventing me from fully and adequately Briefing all issues that were presented and causing me to be compelled to delete issues that I intended to raise on appeal, when neither Respondents nor the Court would have been prejudiced and whereas Respondents did not object to the Motion;

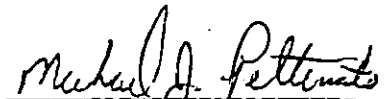
16. A possible Eighth Issue would be the issue of the Administrative Law Judge apparently disregarding my arguments in part when she addressed the issues in her order whereas she failed to address certain portions of my argument which is apparent by the phrasing of her Order Dismissing my Appeal.

Sworn to and Subscribed to before me

this 13th day of April, 2020.


Notary Public For South Carolina

My Commission Expires: 5-18-26



Michael J. Pettinato, #218405
Turbeville C.I., SNB-150
1578 Clarence Coker Highway
Turbeville, SC 29162

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**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): _____

SCDC# _____ INMATE SIGNATURE: _____

I plan to file this action in the SC County of _____

The section below is for SCDC - Financial Accounting Branch's use ONLY.

- (1) Total deposits to inmate's account for preceding six months' period* \$ _____
- (2) Twenty percent (20%) of line 1 \$ _____
- (3) Account balance - current date \$ _____
- (4) PAYMENT AMOUNT **
(lesser of line 2 or line 3)
Enclosed check # _____ \$ _____

****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 ____/____/____.

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT JUN 15 2020

Deborah Brooks Durden, Administrative Law Judge **SC Court of Appeals**

ALC Case No. 19-ALJ-15-0039

Appellate Case No. 2020-000658

Michael J. Pettinato, 218405,Appellant,

v.

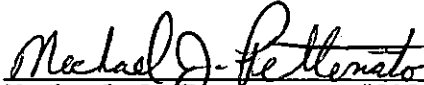
South Carolina Department of Probation,
Parole and Pardon Services,Respondent,

CERTIFICATE OF SERVICE

I, Michael J. Pettinato, herein swear under penalty of perjury that I have on this date served a true copy of a Motion For Reconsideration, the Letter and Order purporting to DENY Pettinato's "Motion To Proceed In Forma Pauperis," a "Request To Proceed In Forma Pauperis," an "Affidavit In Support Of Request To Proceed In Forma Pauperis," and a Certificate Of Service of same, upon the Respondent's Attorney Of Record, by hand delivering same to the Postal Clerk at the Turbeville C.I., for deposit into the United States Mail, First Class Postage prepaid, and addressed to:

South Carolina Department of Probation,
Parole and Pardon Services
Attn: Matthew C. Buchanan, Esquire
General Counsel
2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, SC 29250

June 12, 2020
Turbeville, South Carolina


Michael J. Pettinato, #218405
Turbeville Corr., Inst., SNB-150,
1578 Clarence Coker Highway
Turbeville, SC 29162
Appellant, Pro Se

Michael J. Pettinato, #218405
Turbeville Corr., Inst., SNB-150
1578 Clarence Coker Highway
Turbeville, SC 29162

June 12, 2020

South Carolina Court of Appeals
Honorable Jenny Abbott Kitchings, Clerk
P.O. Box 11629
Columbia, SC 29211

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JUN 15 2020
SC Court of Appeals

RE: MOTION FOR RECONSIDERATION
Michael J. Pettinato v. SCDPPPS
Docket No. 19-15-ALJ-0039
Appellate Case No. 2020-000658

Dear Ms. Kitchings:

Enclosed for filing in the above referenced case, please find a MOTION FOR RECONSIDERATION, a copy of the Letter and Order purporting to DENY Pettinato's "motion to proceed in forma pauperis," a copy of the "Request To Proceed In Forma Pauperis," an "Affidavit In Support Of Request To Proceed In Forma Pauperis" and a CERTIFICATE OF SERVICE of same upon Respondent's counsel of record.

Also enclosed, please find an additional copy of those documents that I would like you to please clock-stamp and return to me for my records, if you would be so kind as to do so. I have enclosed a self-addressed, postage prepaid envelope for your convenience, as is customary for those of us who are able to obtain same, even though we may be indigent.

Thank You in advance for your assistance in this matter.

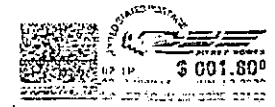
Respectfully,



Michael J. Pettinato

cc: Matthew C. Buchanan, Esquire
FILE

1578 Clarence Coker Hwy.
Turbeville, SC 29162



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Honorable Jenny A. Kitchin, SC Court of Appeals
Clerk, South Carolina Court of Appeals
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