

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

Honorable TMD

Case No. 2020-CP-42-01021

Appellate Case No. 2020-000679

John Douglas Alexander, #194748,

Appellant,

vs.

Alan M. Wilson ; and The State,

Respondent.

INITIAL BRIEF

RECEIVED

JUL 07 2020

SC Court of Appeals

Appellant :

John D. Alexander
John Alexander, Pro se
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669

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State v. Martin, 321 S.C. 533, 471 S.E. 2d 134 (1995)

Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 788 (1971)

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Section 14-7-1555 S.C. Code Ann. (1976)

State v. Ward, 2019 WL 2289253

STATEMENT OF ISSUES ON APPEAL

- I. That the lower Court erred by denying and depriving the Appellant Fourteenth Amendment Due Process to meaningful access to the Court by denying his Motion To Proceed In Forma Pauperis.

- II. That the lower Court erred by dismissing the Appellant's Civil Action where the Complaint does fit within one of the Constitutional exceptions to the requirement of a filing fee and /or "the cause of action concerns a fundamental right that requires waiver of the filing fee. Rule 3(c), SCRPC

STATE OF THE FACTS

On May 26, 2011 the Appellant moved the Court of Common Pleas, Spartanburg County to Order that copies of the Grand Jury Impanelment documents, including the State's petition, supporting materials, and the impaneling Judge's Order, which led to a true bill on November 27, 2006, be produced to him. The Honorable Roger L. Couch, Presiding Judge, Seventh Judicial Circuit Ordered that the grand jury impanelment documents, including the State's petition, supporting materials, and the impaneling Judge's Order, which led to a true bill on November 27, 2006, "shall be produced to petitioner." See Designation of Matter # 5

Judge Couch's Order was not honored nor respected. Consequently, Appellant was forced into his Post-Conviction Relief Hearing absent the important evidentiary documents required to establish his - would be allegation - and burden of proof. Subsequently, the Appellant persistently sought the Court Ordered documents from the South Carolina Attorney General Office. As of July 10, 2018 the Appellant begin documenting his efforts. See Designation of Matter # 6

On November 14, 2018 the Appellant Filed a Motion For Discovery seeking the Court Ordered document pursuant to his Post-Conviction Relief Application Case No. 2018CP4203181. See Designation of Matter # 7 Then, on May 29, 2019 Appellant sent Alan Wilson another letter seeking the documents that Judge Couch Ordered that his office to produce to him.

To the contrary, Annalisa Queen, Program Assistant, Office of the Attorney General sent Appellant a letter on June 6, 2019 stating: "Your FOIA request is denied pursuant to 2017 Act No. 67 (EFF. May 19, 2017)." See Designation #9 In a separate Civil Action No. 2019 CP 2304658, to no avail, the Appellant continued to pursue the Grand Jury Impanelment Documents, including; the State's petition, supporting materials, the impaneling Judge's Order, which led to a true bill on November 27, 2006; The 911 Dispatch Emergency Taped Recording, and any and all other documents, taped recordings, etc. that the Attorney General Office possess in connection with the pretrial, trial, conviction and sentencing of the Appellant. See Designation #10, 11

Finally, on March 12, 2020 Appellant filed a Complaint before the Court of Common Pleas, Spartanburg County, Seventh Judicial Circuit. See Designation #4 And timely appeal the Order of Honorable TMD on April 20, 2020. See Designation #1

ARGUMENT

I. The Appellant asserts that he established by a preponderance of evidence by way of his E. H. Cooper Trust Account that he has been indigent for the past Four (4) years. That as a result of the South Carolina Department of Corrections refusing to pay the Appellant any funds for his labors for the past Thirteen (13) years, he is unable to pay the fees associated with filing the Complaint. Likewise, Appellant does not has any securities to cover the costs required to secure the filing fee.

Incidentally, the Appellant did - and still - proffer to allow his E. H. Cooper Trust Fund Account to be debited for the full amount of the filing fee. In chief, the Appellant argues that the Due Process Clause of the Fourteenth Amendment of the United States Constitution and subsequent Article One Section Three of the South Carolina Constitution requires that Appellant be afforded a meaningful opportunity to present a complete case before the Court of Common Pleas, Spartanburg County.

However, where the lower Court denied and deprived the Appellant Indigent / Pauper status after he substantiated that he falls within those criterias are but a convenient means to deny the Appellant due process to access to the court. The Due Process Clause requires that Appellant shall have a "reasonable" opportunity to be heard on his Civil Action before any legally binding decree, order or Judgment can be made affecting his rights. See State v. Brown, 178

S.C. 294, 300, 182 S.E. 2d 838 (1935) At present, the Appellant has not been provided a reasonable or meaningful opportunity to be heard or present a complete case before the lower Court.

II. The Appellant contends under State v. Martin, 321 S.C. 533, 471 S.E. 2d 134 (1995) ("Where certain fundamental rights are involved, the Constitution warrants that an indigent be allowed access to the Courts.") Compare Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 788, 28 L.Ed. 2d 113 (1971). The Appellant claims that this Honorable Court of Appeals can and should presume that a fundamental right is involved where on September 14, 2018 Appellant Filed a Post-Conviction Relief Application, Case Action No. 2018CP42203181. Pursuant to Evans v. State, 363 S.C. 495, 611 S.E. 2d 510 (2005), the Supreme Court held:

"We conclude impanelment documents, including the State's petition, supporting materials, and the impanelment Judge's Order, may be released to a defendant prior to trial upon a timely request or "to an applicant in a PCR hearing"... Release of the documents may be appropriate because (A) Section 14-7-1770 is not a complete prohibition on the release of the information; (B) release of the documents usually is not prohibited by secrecy provisions or other concerns following the issuance of a true bill of indictment; and (C) a defendant has the right to review the documents to determine whether to timely challenge the legality of the State grand jury which indicted him."

As such, a fundamental right as well as prima facie genuine issue exist because the Appellant is lawfully entitled to his grand Jury information. As a matter of law, on November 21, 2011 the Honorable Roger L. Couch, Circuit Judge Ordered "that the grand Jury impanelment documents, including the State's petition, supporting materials, and the impaneling Judge's Order, which led to a true bill on November 27, 2006, shall be produced to Appellant." See Designation of Matter No. # 5

Important, by way and through "Due Diligence" for the past Nine (9) years the Appellant has sought to obtain his grand Jury impanelment information from the Respondent under the provisions of State v. Gunn, 437 S.E. 2d 75 (1993); Statute Section 14-7-1700 S.C. Code Ann. (1976); 1987 Act No. 150 Sec 1 eff. from and after February 8, 1989; Statute Section 14-7-1720 (A) and (D); Rule 5, S.C.R. Crim.P. ("a defendant has the right to review and to reproduce the stenographically or electronically recorded materials."); State v. Green, 337 S.C. 67, 522 S.E.2d 602 (1999) "A defendant is permitted to obtain and review all evidence which was considered in handing down an indictment."

Final, see also Statute Section 14-9-210 S.C. Code Ann. (1976); 2017 S.C. H.B. 3870 (NS) March 1, 2017 to Amend Section 14-7-1550 S.C. Code Ann. (1976); 2017 S.C. H.B. 3880 (NS) (To Amend The Code of Laws of S.C. 1976, By adding Section 14-7-1555 So as to require a record of testimony and other proceedings of the Grand Jury. "The furnishing of a copy to the defendant."); State v.

CONCLUSION

Wherefore, it is prayed that the Court of Appeals Reverse the lower Court's decision. Remand the case back to the lower Court with instructions to Grant Appellant's Motion To Proceed In Forma Pauperis. Or, in the alternative, Order the Respondent to produce to the Appellant the Grand Jury Impanelment Documents, including the State's petition, supporting materials, and the impaneling Judge's Order, which led to a true bill on November 27, 2006; as well as the 911 Emergency Dispatch Taped Recording, and all other documents, C.D.s, taped recordings, etc. in the Respondent possession in connection with the pretrial, trial, conviction and sentencing. And grant any other relief it deem Just and proper.

Dated 7/2/20

Respectfully Submitted,
John D. Alexander

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PROOF OF SERVICE

I, John Alexander, certify that the Initial Brief today this 2 day of ~~June~~ July, 2020 was sent United States Postal Services, prepaid, to Alan M. Wilson, Attorney General, The Attorney General Office, Post Office Box 11549, Columbia, SC 29211. And to The South Carolina Court of Appeals, Clerk's Office, Post Office Box 11629, Columbia, SC 29211.

Respectfully Submitted,

John D. Alexander

Sworn and Subscribed

this 2nd day of July, 2020

Mary C. Coker

Notary Public

My Commission Expires 1-23-2023

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