

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

JAN 05 2021

S.C. SUPREME COURT

DEC 21 2020

COURT OF APPEALS

APPEAL FROM THE S.C. COURT OF APPEALS  
TROY BURKS 160726 APPELLANT.

v.  
S.C. DEPT OF CORRECTIONS, Respondent.

APPELLATE CASE NO. 2020-061293

NOTICE is hereby given that Troy Burks #160726 does hereby appeal the final decision of the Administrative Law Court Honorable Judge D.B. Durden dated August 4, 2020 and received the order to dismiss on July 15, 2020. The Plaintiff replied with a Declaration in Opposition to Order for Dismissal with/and Initial Brief July 24, 2020. The ALC final order reached the Plaintiff on August 4, 2020 with a ruling that motions for reconsiderations are prohibited. A copy is attached.

The Plaintiff was restricted from the law library or any movement at the prison due to the COVID-19 virus which had the entire prison under a total lock down status. The Plaintiff erroneously filed a notice of appeal to the U.S. District Court, after asking the U.S. District Court to transfer his notice of appeal to the S.C. State Appeal Court he learned he had to make the notice of appeal himself. After the Plaintiff received the order from the S.C. Court of Appeals on November 4, 2020 he filed a new in compliance proof of service on November 14, 2020 when he did not receive any

REPLY, ON DECEMBER 12, 2020 he filed a motion for RECONSIDERATION with a supporting AFFIDAVIT but TO NO REPLY which now require the Appellant to file his NOTICE OF APPEAL to the S.C. Supreme Court.

Troy Burks  
Troy Burks 140724  
PENNA CORR. INST.  
430 OAKLAWN RD.  
PELZER, SC 29469

OTHER RESPONDENTS:

S. C. COURT OF APPEALS

S. C. ADMINISTRATIVE LAW COURT

SCDC GENERAL COUNSEL OFFICE

DECEMBER 23, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Troy Banks 160726, hereby apply for leave to  
proceed in this action without prepayment of fees or costs or security therefor. In support of my  
application I declare under penalty of perjury that the following facts are true:

- (1)  I am the applicant in this action and I believe I am entitled to redress.
- (2)  Because of my poverty I am unable to pay the costs of said proceeding or give  
security thereof.

Troy Banks  
Applicant

SWORN or affirmed to and subscribed before me this

21st day of August, 2020.

Jamarcus Conwell  
Notary Public

My Commission Expires: Sept-25-2023

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DEC 31 2020  
SC Court of Appeals

RECEIVED

Q3A104

AUG 19 2020

P.C.I. MAILROOM

FINANCIAL CERTIFICATE FOR THE DISTRICT OF SOUTH CAROLINA (for use in § 1983, Bivens, and non-habeas civil actions filed by prisoners)

I request that an authorized officer of the institution in which I am confined, or other person designated to review financial information in relation to inmate trust funds, complete this Certificate. If I have insufficient funds in my account that prohibit me from paying the full filing fee required by 28 U.S.C. § 1914 (currently \$350.00), I will send with my complaint an initial installment payment, required by 28 U.S.C. § 1915, equal to the amount calculated and entered on line four by the authorized officer signing this form.

I recognize that by filing this case, I am required to pay the full filing fee (or the remaining unpaid portion of the filing fee by installments if necessary) under 28 U.S.C. § 1915(b) even though I am requesting to proceed in forma pauperis. I authorize and consent to collection of the filing fee in accordance with 28 U.S.C. § 1915 until the filing fee is paid in full.

Troy Burks

INMATE NAME (PRINTED)

160726

INMATE (PRISONER) NUMBER

[Signature]

INMATE SIGNATURE

Perry Corp Inst

PLACE OF CONFINEMENT

- (1) Average monthly deposits to the inmate's account.....\$ 0
(2) Average monthly balance in the inmate's account calculated for the prior six months period. ....\$ 0
(3) Current Balance .....\$ 0
(4) Initial Installment Payment (Take 20 percent of the greater of lines 1 or 2).....\$ 0

SCDC-FINANCIAL ACCTG 2020 AUG 20 PM 2:53

I hereby certify that as of this date, the above-financial information is accurate for the above named inmate.

[Signature]

Authorized Officer's Signature

8/21/2020

Date

Regan Coathon, Fiscal Analyst I

Authorized Officer's Name and Title

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Troy Burks, #160726,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 20-ALJ-04-0292-AP  
Grievance No. PCI 0057-20

ORDER OF DISMISSAL

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SC Court of Appeals

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JAN 05 2021

S.C. SUPREME COURT

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed by Troy Burks (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or SCDC). Appellant seeks review of the Department's Step 2 Grievance decision in regards to a disciplinary matter. The SCDC decision indicates that Appellant was not sanctioned any accrued good time. Additionally, Appellant has not alleged the infringement of any other state-created liberty or property interest.

This Court reviews Department grievance decisions pursuant to the South Carolina Supreme Court decision in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Under the Al-Shabazz line of cases, this Court may only review matters related to a state-created liberty or property interest. See id., 338 S.C. at 368-69; 527 S.E.2d at 749-50 (vesting the ALC with jurisdiction over the loss of state-created liberty interests such as accrued good time credit); Wicker v. S.C. Dept. of Corrs., 360 S.C. 421, 602 S.E.2d 56 (2004) (holding that inmate had a right to procedural due process in matters involving a state-created right to property such as wages). Specifically, the South Carolina Supreme Court has stated that summary dismissal of an otherwise properly perfected inmate appeal "may be appropriate where the inmate's grievance does not implicate a **state-created** liberty or property interest." Slezak v. S.C. Dept. of Corrs., 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004) (citation omitted) (emphasis added). The Supreme Court has further stated that "there is a difference between an inmate's *forfeiture of accrued* sentence-related credits versus the *withholding of unearned, potentially available* sentence-related credits." Howard v. S.C. Dept. of Corrs., 399 S.C. 618, 629, 733 S.E.2d 211, 217 (2012) (emphasis in original). An inmate does not acquire a liberty interest in good time until it is earned. Id.

Because Appellant has not been sanctioned with the loss of any accrued good time, it is appropriate to dismiss this disciplinary appeal.

FILED

July 15, 2020

SC ADMINISTRATIVE LAW COURT

**ORDER**

**THEREFORE, IT IS HEREBY ORDERED** that this appeal is **DISMISSED, WITH PREJUDICE.**

**AND IT IS SO ORDERED.**

A rectangular area containing a handwritten signature in cursive script, which appears to read "Deborah Brooks Durden".

Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

July 15, 2020  
Columbia, South Carolina

TROY BURKS #160726,  
Appellant,

vs.

SOUTH CAROLINA DEPT. of CORRECTIONS,  
Respondent.

RECEIVED  
DEC 21 2021  
SC COURT of Appeals

DOCKET NO. 20-ALJ-04-0292-AP  
GRIEVANCE NO. PCE:0052-20

DECLARATION IN OPPOSITION  
TO ORDER TO DISMISS

Motions for Reconsideration  
are Prohibited.  
See ALC Rule 65.

INITIAL BRIEF

This matter is before SOUTH CAROLINA ADMINISTRATIVE LAW COURT (ALC OR COURT) PURSUANT TO THE NOTICE OF APPEAL BY APPELLANT ABOVE NAMED, WHO IS INCARCERATED WITH THE SOUTH CAROLINA DEPT OF CORRECTIONS (SCDC),

THE APPELLANT APPEALS FROM THE DECISION IN THE STEP 2 GRIEVANCE WHICH AFFIRMED HIS CONVICTIONS FOR (903) THE TRAFFICKING, SCDC POLICE DP-22-14 DISCIPLINARY SYSTEM.

HE WAS NOT SANCTIONED WITH THE LOSS OF ANY GOOD TIME CREDITS, BUT HE DID MAKE CLAIMS FOR THE LOSS OF OTHER STATE CREATED LIBERTY OR PROPERTY INTEREST AND CONTENTS HIS SENTENCE RELATED POINTS OR CREDITS OR CUSTODY STATUS HAS BEEN UNJUSTLY RECALCULATED. THERE IS CLEARLY SIGNIFICANT STATE CREATED LIBERTY INTEREST IMPLICATED HERE.

NOW APPELLANT MOVES HONORABLE COURT THAT SCDC AND RESPONDENTS ORDER TO DISMISS WITH PREJUDICE AND CLAIMS FROM THEIR NEW POST LITIGATION PROMULGATIONS IS OVER REACHING. THE RESPONDENT IS NOT ENTITLED TO ANY DISMISSAL ORDER SIMPLY BECAUSE ALL OF THE STATED DEFENSE ARE INAPPLICABLE IN THIS CASE. THE COURT HAS MISAPPLIED THESE RULES 12(b)(1-5). THIS ACTION NO LESS THAN ANY OTHER COMPLAINT FILED IN COURTS MAY NOT BE DISMISSED ON THE PLEADING UNLESS IT APPEARS TO A CERTAINTY THE APPELLEE WOULD NOT BE ENTITLED TO RECOVER UNDER ANY STATE OF FACTS WHICH COULD BE PROVEN IN SUPPORT OF HIS CLAIM. COOK v. NICHOL INC. v. PLEASANT CLUB (5 CR. 1971) 451 F.2d 505; HAINES v. KERNER, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed. 2nd 659; CONLEY v. GIBSON, 355 U.S. 4178 S.Ct. 99, 2 L.Ed. 2nd 80; CRUZ v. BETO, 405 U.S. 139(B) MOTION TO DISMISS THE WELL PLEADED ALLEGATION OF THE COMPLAINT MUST BE ACCEPTED AS TRUE. COOPER v. PATE, 378 U.S. 546, 84 S.Ct. 1733, 12 L.Ed. 2nd 1030. THE APPELLANT ASSERTS HE WAS NOT ONLY DENIED ELEMENTS OF

TBD

Fundamental Fairness, Constitutional Due Process of Right and Liberty interest, when a STATE LAW REQUIRE A SUBSTANTIVE FACTUAL PREDICATE FOR A TYPICAL RESTRICTED CONFINEMENT, WHEN THE PROCEDURES WERE INVOKED IN MY CASE, IT WAS NOT TREATED WITH THE CONSIDERATION THAT WAS CONTEMPLATED EITHER THE STATUTES SCDC POLICY OP-22.14 INMATE DISCIPLINARY SYSTEM OR DUE PROCESS CLAUSE.

THE POWERS AND DUTIES OF THE ADMINISTRATIVE LAW JUDGE UPON ASSIGNMENT OF THE CASE THE JUDGE SHALL RULE ON ALL MOTIONS, PRESIDE AT THE CONTESTED CASE HEARING, RULE ON THE ADMISSIBILITY OF EVIDENCE, REQUIRE THE PARTIES TO SUBMIT BRIEFS WHEN APPROPRIATE, ISSUE ORDERS AND RULINGS TO ENSURE THE ORDERLY CONDUCT OF THE PROCEEDING AND ISSUES PRESENTED AND THE TYPES OF PROFF LIKELY TO BE INTRODUCED SO THAT THE MATTER BE FULLY AND FAIRLY PRESENTED. THE APPELLANT CHALLENGES THE SUFFICIENCY OF THE COURT'S ORDER, BASED ON THE ARGUMENT THAT THE CRITERIA USED WERE IN VIOLATION. THE COURT DID NOT APPLY ABC RULE 58 ON RECORD AFTER FINAL DECISION WHICH SHOULD CONSIST OF:

- A. All documents filed.
- B. All evidence received or considered, including copies of all relevant sentencing sheets, copies of specific policies relied upon by Agency:
- C. A STATEMENT OF MATTERS JUDICALLY NOTICED:
- D. All Proffers of Proof of excluded evidence:
- E. THE FINAL ORDER
- F. ANY TRANSCRIPT TAKEN OF THE TESTIMONY

AN INDIVIDUAL HAS A RIGHT TO ALC REVIEW OF A FINAL DECISION OF THE AGENCY WHEN THAT DECISION AFFECTS LIBERTY INTEREST FOR WHICH DUE PROCESS IS REQUIRED. SEE FURTECK v. SC. DEPT. OF PROBATION, PARAGRAPHS 52 S.C. 594, 576 S.E.2d 146, 149, 150 (2003).

Appellant contends the STATE acted ARBITRARILY and CAPRICIOUSLY when it moved to deprive him of life, liberty, and property without due process of law and will cause irreparable injury when it moved to impair his appeal on July 9, 2020.

Abuse of discretion occurs when there is NO EVIDENCE to support the judges factual conclusions or when ruling is based on errors of law. Appellant has not been offered any evidence showing that the STATE violated his due process rights. While the 14th Amendment does not confer a liberty interest in Parole itself, it does protect a liberty interest in Parole Eligibility conferred by statute. Wilkinson v. Dotson, 544 U.S. 74 (2005). Even if a Parole statute creates a liberty interest an inmate is entitled to minimal procedure. Van v. Angelone, 73 F.3d 519, 522 (4th Cir. 1996). A finding of Involuntariness can be made where the States Order lacks an ARGUABLE basis either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992). A Order based on meritless legal theory may be dismissed sua sponte under 28 U.S.C. § 1915(e)(2)(B). See Neitzke v. Williams, 490 U.S. 319, 337 (1989).

Appellant brings this action challenging the STATE and Respondent have violated his Constitutional rights, STATE STATUTES, Policies, liberty interests, due process of rights, and inmates access to court. This unlawful conviction by the STATE would not protect his liberty interest in being hired to work in the Prison Industry to receive the much needed minimal wage of \$7.00 an hour.

SOME PRISON CONDITION EXCEED THE SENTENCE IN SUCH AN UNEXPECTED MANNER AS TO GIVE RISE TO PROTECTION BY THE DUE PROCESS CLAUSE OF ITS OWN FORCE. THEY ARE SO SEVERE IN KIND OF DEGREE OR SO REMOVED FROM THE ORIGINAL TERM OF CONFINEMENT THAT THEY AMOUNT TO DENIVATION OF LIBERTY REGARDLESS OF THE TERM OF STATE LAW.

THIS CASE MUST BE GUIDED BY PRINCIPLES ARTICULATED BY THE SUPREME COURT AND SCDC POLICY OP-22.14 THAT PROHIBIT INMATES FROM BEING DEPRIVED OF PROTECTED PROPERTY RIGHTS AND DEPRIVATION IS CONSTITUTIONALLY IMPROPER. IN ACCORDANCE WITH AGENCY POLICY OP-22.14 INMATE DISCIPLINARY SYSTEM THERE ARE RULES AND FACTORS MUST BE CONSIDERED AND FOLLOWED. THE DUE PROCESS CLAUSE OF 14TH AMENDMENT PROHIBITS A STATE FROM DEPRIVING ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS LAW. THERE ARE TWO PARTS OF THIS CLAUSE (1) SUBSTANTIVE DUE PROCESS AND PROCEDURAL DUE PROCESS IT HAS TWO PARTS. FIRST, YOU HAVE TO SHOW LIBERTY INTEREST. (2ND) MUST SHOW I SHOULD HAVE GOTTEN MORE PROCEDURE THAN I RECEIVED. INMATES HAVE A LIBERTY INTEREST WHEN PRISON ACTIONS INTERFERE WITH OR VIOLATE HIS CONSTITUTIONALLY PROTECTED RIGHTS OR RESULTS IN CONDITIONS OF CONFINEMENT THATS MUCH WORSE THAN NORMAL FOR INMATES, OR SUBJECT HIM TO TREATMENT OR CONDITIONS THAT ARE AN ATYPICAL AND SIGNIFICANT HARDSHIP IN RELATION TO THE ORDINARY INCIDENT OF PRISON LIFE, THEN THEY MUST PROVIDE HIM WITH SOME REAL AND FAIR LEVEL OF PROCESS.

ON 11/21/20 THE SCDC'S DISCIPLINARY HEARING OFFICER MR. TURNER CONDUCT AND ACTIONS NOT ONLY DENIED THE APPELLANT HIS DUE PROCESS OF LAW BUT HE ALSO WILLFULLY AND INTENTIONALLY VIOLATED SECTIONS 19.2 AND 19.3 AND 16. AND 8.2.2 AND 14 WITHOUT OBSERVING THE

the safeguards of due process in Wolff v. McDonnell, 443 U.S. 519 (1979).  
The DHO's refusal to call Appellant's witness denied due process  
calling his witness was not unduly hazardous to institutions safety  
or correctional goals. Wolff witness was not unnecessary or irrelevant,  
witness with personal knowledge of incident in question denies due  
process and violates Appellant's liberty interest by violating constitutional  
protected right. — A week before the day of the hearing  
the Appellant's room mate, MARK Wingo #269107 had given the coun-  
sel substitute MR. McCARTY a written and verbal statement ad-  
mitting he owned the illegal drug and had placed it in my boots  
while I was out in the church service for a KIROAS BELLATION.  
The D.H.O would not allow the Appellant's witness at the hearing nor would  
he allow the written evidence and documentation at the hearing.  
The reason the DHO violated rule 8.2.4 and 14.3 relating to Appellant's  
witness was because the D-H-O did not want a white inmate take  
a guilty charge to help have the charges dismissed on a black inmate.  
If Appellant's witness or any evidence is denied by the D-H-O the  
official must write his/her reasons for the denial on the SCDC  
Form 19-69.

Moreover in violation of sections 14.7 and 14.3, the D-H-O allowed  
an inadmissible witness a DFC-MILLER give detailed and false testi-  
mony at hearing. He was allowed to lie about questioning the  
Appellant on the day of the incident and that he found the drugs  
in Appellant's boots but Policy and rules only allow the search  
team officer to search or question any inmate, not DFC-MILLER.

THE D-H-O WAS SO DETERMINED TO ILLEGALLY CONVICT THE APPELLANT HE WOULD NOT ALLOW THE COUNSEL SUBSTITUTE, MR McCARTER ASSIST THE APPELLANT ALTHOUGH THE COMPLEXITY OF THE ISSUE WOULD MAKE IT UNLIKELY THE APPELLANT COULD COLLECT OR PRESENT THE EVIDENCE NECESSARY FOR AN ADEQUATE COMPREHENSION OF THE CASE. THE APPELLANT SHOWS THE D-H-O HAS ALSO WILLFULLY VIOLATED SECTION 8.1.4, 8.2.4, AND 13.2, 14.7 AND 18.1.3. FOX v. COUGHLIN, 893 F.2d 475 (1990). THE APPELLANT'S ROOM MATE MARK WINGO 269107 ADMITTED THE COUNSEL SUBSTITUTE AND THE D-H-O, MR TURNER TOLD HIM THEY DID NOT WANT TO SEE A WHITE INMATE TO ~~OWN UP~~ TO CHARGE AND HELP A BLACK INMATE.

UNFAIR PREJUDICE AS USED IN RULE 403 RELEVANCY 1.6 ALLOWING THE EXCLUSION OF EVIDENCE IF ITS PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE MEANS AN UNDUCE TENDENCY TO SUGGEST DECISION ON AN IMPROPER BASIS. SEE: STATE v. STOKES (SC 2009) 2009 WL 367581; STATE v. DWENS 552 S.E. 2d 745.

THE APPELLANT'S INTEREST IN DEMONSTRATING HIS INNOCENCE WITH THIS NEW EVIDENCE PROVIDED A LIBERTY INTEREST, AS REQUIRED TO RAISE A DUE PROCESS CHALLENGE TO THE STATES REFUSAL TO GIVE HIM ACCESS TO HIS ROOM MATE WINGO'S WRITTEN STATEMENTS ADMITTING HIS OWNERSHIP OF THE ILLEGAL DRUG.

THE APPELLANT HAS NOT FAILED TO SHOW THE STATE AND RESPONDENTS HAVE VIOLATED CLEARLY ESTABLISHED CONSTITUTIONAL OR STATUTORY RIGHTS. APPELLANT HAD LIBERTY INTEREST VIOLATED WHEN PRISON INTEREST VIOLATED CONSTITUTIONAL PROTECTED RIGHTS.

W.C.

## Conclusion

It can be proven the SCDC employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm or a crime involving moral turpitude.

This illegal conviction will not only stop and interfere with his eligible to work in the Prison Industry for minimal wages but it also will add to the length of his sentence by stopping and interfering with his parole, it also stopped his being reclassified to a level-2 institute, Tiger River, who have two Prison Industry plants paying minimal wages, but it also resulted in conditions of confinement that are much worse by ordering him to be restricted to cell restriction with sanctions against his visitation privileges and ineligible to be a part of institution programs like Jump Start, AA, Christian Fellowship, KIROAS services, etc.

A failure to provide a meaningful explanation of the finding of guilty denies due process. The only evidence at hearing was the false inadmissible testimony of SCDC officer Miller, no further explanation. Superintendent v. Hill, 458 U.S. 421 (1982).

THE HONORABLE COURT SHOULD VACATE THE ORDER OF DISMISSAL BECAUSE APPELLANT'S CLAIM IS NOT BARRED BY ISSUE PRECLUSION AND BECAUSE GENUINE ISSUES OF MATERIAL FACT APPEAR IN THE RECORD AS TO THE REMAINING APPELLANT

FOR THE GOING REASONS THE COURT SHOULD NOT GRANT RESPONDENT'S ORDER. THE AMOUNT OF INJURY DUE APPELLANT MUST BE DETERMINED AT TRIAL.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNED THIS 24<sup>th</sup> DAY OF JULY 2020

27 Bls

CC:

SCDC

OFFICE OF GENERAL COUNSEL

4444 BROAD RIVER RD.

COLUMBIA, SC 29201

TRAVIS BUNKER #160726

PERRY CORR-INSTR.

430 DAKINSON RD.

PELZER, SC 29669

C.C.X.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Troy Burks,

Plaintiff,

vs.

South Carolina Department of  
Corrections and Administrative  
Law Court,

Defendants.

C/A No.: 1:20-3153-DCN-SVH

ORDER AND NOTICE

RECEIVED  
DEC 3 1 2020  
SC COURT OF APPEALS

Troy Burks ("Plaintiff"), proceeding pro se and in forma pauperis, filed a document entitled "Notice of Appeal" that has been construed as a complaint in this court. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civ. Rule 73.02(B)(2)(e) (D.S.C.), the undersigned is authorized to review such complaints for relief and submit findings and recommendations to the district judge.

I. Factual Background

Plaintiff states he is appealing the final decision of the South Carolina Administrative Law Court's decision dismissing his request for review of a disciplinary decision. [ECF No. 1; 1-1 at 9-10]. Plaintiff alleges he was unlawfully accused and convicted of possession of an illegal drug that he never

possessed. *Id.* He claims that in so convicting him, Defendants have violated his constitutional rights. *Id.*

## II. Discussion

### A. Standard of Review

Plaintiff filed his complaint pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss a case upon a finding that the action fails to state a claim on which relief may be granted or is frivolous or malicious. 28 U.S.C. § 1915(e)(2)(B)(i), (ii). A finding of frivolity can be made where the complaint lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992). A claim based on a meritless legal theory may be dismissed sua sponte under 28 U.S.C. § 1915(e)(2)(B). *See Neitzke v. Williams*, 490 U.S. 319, 327 (1989).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). In evaluating a pro se complaint, the plaintiff’s allegations are assumed to be true. *Fine v. City of N.Y.*, 529 F.2d 70, 74 (2d Cir. 1975). The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the



## 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](http://www.sccourts.org)

September 29, 2020

Troy Burks, 160726  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer SC 29669

Re: Troy Burks, #160726 v. SCDC  
Appellate Case No. 2020-001293

Dear Mr. Burks:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The required filing fee has not been submitted. The correct filing fee is \$250.00.
- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR. Opposing counsel must be copied on all documents.
- A proof of service showing that a copy has been served on the Administrative Law Court has not been provided as required by Rule 203(e), SCACR.

Very truly yours,

*Catherine Jamieson, deputy*  
CLERK



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
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September 29, 2020

Troy Burks, 160726  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer SC 29669

Re: Troy Burks, #160726 v. SCDC  
Appellate Case No. 2020-001293

Dear Mr. Burks:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at [www.sccourts.org/courtreg](http://www.sccourts.org/courtreg). Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at [www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02](http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02). Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review

filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

**Troy Burks, #160726, Appellant,**

v.

**South Carolina Department of Corrections, Respondent.**

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

*Christina Catoe Bigelow, deputy*  
CLERK

cc: Christina Catoe Bigelow, Esquire

cc: Christina Catoe Bigelow, Esquire



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
CHIEF DEPUTY CLERK

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October 19, 2020

Troy Burks, 160726  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer SC 29669

Re: Troy Burks, #160726 v. SCDC  
Appellate Case No. 2020-001293

Dear Mr. Burks:

The Court is in receipt of your documents that is presumed to be in response to the Court's deficiency letter dated September 29, 2020. The deficiencies outlined in the Court's letter of September 29, 2020 must be corrected in its entirety. A proof of service of the notice of appeal showing service on the respondent must be filed. This is the Court's second request for this correction. Failure to comply with the Court's request will result in the dismissal of this appeal.

Very truly yours,

*Catherine Jamison, deputy*

CLERK

cc: Christina Catoe Bigelow, Esquire

# The South Carolina Court of Appeals

Troy Burks, #160726, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2020-001293

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## ORDER

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This appeal arises out of an order of the Administrative Law Court dismissing Appellant's appeal on July 15, 2020. Appellant received notice of the order on August 4, 2020. The proof of service provided with the notice of appeal shows service on October 28, 2020. Because the notice of appeal was not timely served, the appeal is dismissed. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14, 602 S.E.2d 772, 775 (2004) (noting timely service of the notice of appeal is a jurisdictional requirement); Rule 203(b)(6), SCACR ("When a statute allows a decision of the administrative law court or agency (administrative tribunal) to be appealed directly to the Supreme Court or the Court of Appeals, the notice of appeal shall be served on the agency, the administrative law court (if it has been involved in the case) and all parties of record within thirty (30) days after receipt of the decision."). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

  
FOR THE COURT

Columbia, South Carolina

cc:

*Nov 14, 2020*  
*Dec 12, 20*  
Troy Burks, 160726  
Christina Catoe Bigelow, Esquire

**FILED**  
**Nov 04 2020**