

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

Case No. 12-ALJ-04-0902-AP

Joseph Barfield, # 175267,.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

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APR 25 2013

SC Court of Appeals

RETURN TO MOTION TO PROCEED IN FORMA PAUPERIS

COMES NOW, respondent, South Carolina Department of Corrections (SCDC), and respectfully requests the Court DENY appellant's motion to proceed in forma pauperis. In support, SCDC shows the Court as follows:

1. This matter is before the Court pursuant to appellant's appeal from a decision of the Administrative Law Court (ALC) summarily dismissing appellant's appeal pursuant to Furtick v. SCDC, 374 S.C. 334, 649 S.E.2d 35 (2007) (ruling the ALC may summarily dismiss an appeal that does not implicate a state-created liberty or property interest).
2. In the underlying final agency decision, SCDC upheld the determination that appellant did not qualify for treatment for Hepatitis C. SCDC's decision explained

that the Department must consider many factors when deciding the proper treatment plan for Hepatitis C, including previous drug and alcohol charges and mental health issues. See also Moore v. Bennett, 777 F. Supp. 2d 969, 980-81 (E.D.N.C. 2011) (explaining the complexity in determining the appropriate therapy for an inmate diagnosed with Hepatitis C and ruling prison authorities were not deliberately indifferent to a medical need by not providing treatment). Appellant did not qualify for treatment because of a prior disciplinary conviction.

3. In the current motion, appellant seeks to appeal from the ALC's decision without paying the filing fee.
4. In the absence of a statutory provision allowing the general waiver of filing fees, a motion to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions. See In re Martin, 321 S.C. 533, 535, 471 S.E.2d 134, 134 (1995).
5. In the case at hand, there is no specific authorization in statute to proceed without paying the filing fee. See Sullivan v. SCDC, 355 S.C. 437, 446, 586 S.E.2d 124, 128 (2003).
6. Moreover, this is not a case in which the constitution requires an indigent be allowed access to the courts. See id. (determining there is no constitutional requirement that a court waive of filing fees in appeals from decisions of the ALC in inmate grievance cases); see also Martin, 321 S.C. at 535-36, 471 S.E.2d at 134 (comparing Boddie v. Connecticut, 401 U.S. 371 (1971) (an indigent must be given access to courts in divorce action) and Smith v. Bennett, 365 U.S. 708 (1961) (an indigent prisoner may

not be required to pay a filing fee for petitioning for a writ of habeas corpus) with Ortwein v. Schwab, 410 U.S. 656 (1973) (no constitutional violation in requiring payment of appellate filing fee by indigents seeking review of an adverse welfare decision) and United States v. Kras, 409 U.S. 434 (1973) (no constitutional violation in requiring payment of filing fee by indigent in bankruptcy action).

WHEREFORE, for the foregoing reasons, respectfully requests the Court DENY appellant's motion to proceed in forma pauperis.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Attorney for Respondent



Christopher Florian
Deputy General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, SC 29221-1787
(803) 896-8508

Columbia, South Carolina
April 23, 2013

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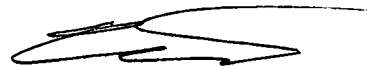
v.

South Carolina Department of Corrections.....Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Return to Letter to the Appellant by depositing a copy of same in the United States Mail, postage prepaid, on April 23, 2013, addressed to the appellant as follows:

Mr. Joseph Barfield, # 175267
Evans Correctional Institution
P.O. Box 2951202
Bennettsville, SC 29512



Christopher D. Florian, Esquire
Deputy General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, SC 29221-1787
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