

The State of South Carolina
IN The Court of Appeals

Appeal From Richland County
Court of Common Pleas

R. Keith Kelly Circuit Court Judge

Case # 2016-CP-400-7010

Henry Lee Bradley #141371 Appellant,

V.

South Carolina Dept of Corrections Respondent

Supplemental Record on Appeal

RECEIVED

JAN 04 2022

SC Court of Appeals

Henry L. Bradley
Henry Lee Bradley #141371
BR CI MA-128
4460 Broadriver Road
Columbia, S.C. 29210

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Henry Bradley,
PLAINTIFF

V.

S. C. DEPT. OF CORRECTIONS, Sharon
Sutton in individual and official
capacity, Gregory Washington in
official and individual capacity,
Barbara Blunt in individual and
official capacity, ANTHONY SANDERS
#273311, Sharod Frazier #324410,
ANTHONY RIGGINS #178886, and
James Wilson #155975.

DEFENDANTS.

COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

2015 CP 400 3008
CASE No. _____

Summons

RECEIVED
RICHLAND COUNTY
FILED
2015 JUN -1 PM 12:00
2015 MAY 18 PM 12:06
RCS/D
JEANETTE W. HERRING
C.C.P. & D.S.

To The above respondents:

You are hereby summoned and required to answer the attached
Complaint, a copy of which is herewith served upon you, and
you are required to serve a copy of your answer upon the above
named petitioner at B.R.C.I. 4460 Broad River Rd. Columbia, S.C.
29210 within thirty (30) days after the date of service.

If you fail to answer the petition within the aforesaid time,
judgment by default will be rendered against you for the relief
sought in the Complaint.

Date 4-17-15

Respectfully Submitted,

Henry L. Bradley

Henry Lee Bradley #41371
B.R.C.I. mont-212
4460 Broad River Road
Columbia, S.C. 29210

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Henry Bradley,

PLAINTIFF

v.

S.C. Dept. of Corrections, Sharonda
Sutton in individual and official
capacity, Gregory Washington in official
and individual capacity, Barbara Blunt
in individual and official capacity,
Anthony Sanders # 273311, Sharod Frazier
324410, Anthony Riggins # 178886,
and James Wilson # 155975,

DEFENDANTS.

COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

2015-CR-400-3008
CASE NO

COMPLAINT

2015 MAY 18 PM 12:01
RICHLAND COUNTY
JANETTE W. HARRIS
CLERK C.C.P. & C.D.

COMES NOW the Plaintiff, Henry Bradley, for his cause of
actions against the above-named Defendants and will respectfully
show unto this honorable Court the followings:

A. PARTIES

1. At all times relevant to this Complaint, Plaintiff Henry
Bradley was incarcerated at the Broad River Correctional Prison
in Columbia, South Carolina and under the care, supervision
and control of the Defendants S.C. Dept. of Corrections,
Sharonda Sutton, Gregory Washington and Barbara Blunt.

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Additionally, the Defendants Anthony Sanders # 273311, Sharod Frazier # 324410, Anthony Riggins # 178886, and James Wilmon # 155975 were incarcerated at the Broad River Correctional Prison at all times relevant to this Complaint when these Defendants assaulted the Plaintiff.

2. The Defendant S.C, Dept. of Corrections is a State agency, duly organized and existing under the laws of the State of South Carolina and is situated in Richland County.

3. The Defendants Sharonda Sutton, Gregory Washington, and Barbara Blunt are employees of the S.C. Dept. of Corrections which is a State agency, duly organized and existing under the laws of the State of South Carolina and is situated in Richland County.

B. JURISDICTION

4. Jurisdiction in this Court is proper as all parties are residents of Richland County, South Carolina, and the actions complained of took place in Richland County, South Carolina, and all injuries inflicted upon the Plaintiff took place in Richland County, South Carolina.

C. VENUE

5. Venue is proper in this County as Defendants reside and are doing business in Richland County, South Carolina, the acts complained of took place in part or in whole in this county and the injuries inflicted upon the Plaintiff occurred in this county.

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D. BACKGROUND

6. Plaintiff, Henry Bradley, brings this action pursuant to South Carolina Code Annotated 15-78-10, et. seq. otherwise known as the South Carolina Tort Claim Act.

7. On or about May 20, 2013 the defendant Sutton was informed by correctional officer L. Agrave and P.I.-1 plant supervisor Larry Thompson that Plaintiff Bradley's safety and life is being threatened by SCDC inmate Anthony Sanders and the threat is credible and achievable.

8. On or about May 20, 2013 the Defendant Sutton was personally and directly informed by the Plaintiff Bradley that Bradley's safety, security and life is being threatened by SCDC inmate Anthony Sanders and the threat is credible and achievable.

9. The Defendant Sutton failed to act to secure the safety, security, health and life of Plaintiff Bradley from being assailed by Anthony Sanders, Sharod Frazier, Anthony Riggins, and James Wilson.

10. On or about May 20, 2013 the Defendant Washington was personally and directly informed that Plaintiff Bradley's safety, security, and life is being threatened by SCDC inmate Anthony Sanders and the threat is credible and achievable.

11. The Defendant Washington failed to act to secure the safety, security, health and life of Plaintiff Bradley from being assailed by Anthony Sanders, Sharod Frazier, Anthony Riggins and James Wilson.

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12. On or about May 26, 2013 the Defendant Anthony Riggins physically assaulted Plaintiff Bradley and held Plaintiff down on the platform stairs in the Monticello Dorm of the Broad River Prison to make the Plaintiff vulnerable to and to facilitate the stabbing assault of Anthony Sanders upon the Plaintiff. The assault on Plaintiff by Riggins was unprovoked and indefensible; it did inflict bruising, swelling, contusions and wounds.

13. On or about May 26, 2013 the Defendant James Wilson physically assaulted Plaintiff Bradley and held Plaintiff down on the platform stairs in the Monticello Dorm of the Broad River Prison to make the Plaintiff vulnerable to and to facilitate the stabbing assault of Anthony Sanders upon the Plaintiff. The assault on Plaintiff by Wilson was unprovoked and indefensible; it did inflict bruising, swelling, contusions and wounds.

14. On or about May 26, 2013 the Defendant Frazier did supply a homemade metallic knife to Anthony Sanders knowing that Plaintiff Bradley would be the victim Sanders intended to stab, wound and attempt to kill with this homemade metallic knife. Defendant Frazier gave Sanders the homemade metallic knife with the specific intentions to assist Sanders in stabbing, wounding and attempting to kill Plaintiff Bradley.

15. On or about May 26, 2013 the Defendant Barbara Blunt did allow inmate Anthony Sanders to gain access through a secured wing door of the Monticello Dorm on Broad River Prison at least twice in order for Sanders to get the homemade metallic knife from Frazier with which to stab and assault Plaintiff Bradley; also in order for Sanders to notify his confederates Riggins and Wilson to assist him in stabbing and assaulting Plaintiff Bradley.

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16. As a direct and proximate cause of the Defendants, S.C. Dept. of Corrections and Sharonda Sutton, and Gregory Washington, and Barbara Blunt, gross negligence the Plaintiff sustained serious physical injuries to his body including but not limited to loss of full use of range of motion of his torso and back, resultant pain and impairment, and has suffered and will in the future suffer other losses and damages; economic loss from loss of employment work time.

17. As a direct and proximate cause of the Defendants, Anthony Sanders and Sharod Fraziers and Anthony Riggins and James Wilson, physical assault the Plaintiff sustained serious physical injuries to his body including but not limited to loss of full use of range of motion of his torso and back, resultant pain and impairment, and has suffered and will in the future suffer other losses and damages; economic loss from loss of employment work time.

FOR A FIRST CAUSE OF ACTION: GROSS NEGLIGENCE

18. The Plaintiff incorporates by reference all facts and allegations set forth in paragraphs 1 through 17 above as though fully set forth herein.

19. On or about May 20, 2013, at all times relevant herein, the Plaintiff Bradley was in the care, custody and control of the Defendants S.C. Dept. of Corrections and Sharonda Sutton and Gregory Washington and Barbara Blunt.

20. At all times relevant hereto, the Defendants S.C. Dept. of Corrections and Sharonda Sutton and Gregory Washington and Barbara Blunt were acting within the scope of their employment and in the

furtherance of the Defendant S.C. Dept. of Corrections' business and financial interests.

21. That at all times relevant hereto, the Defendants S.C. Dept. of Corrections and Sharonda Sutton and Gregory Washington and Barbara Blunt, as custodians of the Plaintiff, Bradley, owed him a duty of care while in thier custody and control.

22. That the Defendant S.C. Dept. of Corrections, and its employees and agents, violated its duty of care with the grossly negligent manner in which they faied to protect the safety, security, health and life of Plaintiff Henry Bradley.

23. That the Defendants Sharonda Sutton, Gregory Washington and Barbara Blunt violated thier duty of care with the grossly negligent manner in which they failed to protect the safety, security, health and life of Plaintiff Henry Bradley.

24. Due to the Defendants S.C. Dept. of Corrections and Sharonda Sutton and Gregory Washington and Barbara Blunt breach of thier duty to protect the Plaintiff, and due to thier grossly negligent actions, Plaintiff sustained the injuries as stated above in Paragraph 16.

25. That the Defendants Anthony Sanders, Anthony Riggins and James Wilson unlawfully and with no provocation assaulted Plaintiff Bradley.

26. Due to the Defendants Anthony Sanders, Anthony Riggins and James Wilson's unprovoked and unlawful assault the Plaintiff sustained the injuries as stated above in Paragraph 17.

WHEREFORE the Plaintiff, Henry Bradley, demands judgment of and against the Defendants S.C. Dept. of Corrections, Sharonda Sutton, Gregory Washington, Barbara Blunt, Anthony Sanders, Anthony Riggins, and James Wilson in actual, future and punitive damages in the amount determined by the trial of facts, plus such other and further relief this Court deems appropriate.

DATE: 4-17-15

Henry I. Bradley
HENRY BRADLEY # 141371

Broad River Corr. Inst.
4460 Broad River Road
Columbia, S.C. 29210

17th April 2015
Steven J. Pafford
Nov 14 2024

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

C/A NO.: 2015-CP-40-03008

Henry Bradley

Plaintiff,

v.

S.C. Dept. of Corrections, Sharonda Sutton in individual and official capacity, Gregory Washington in official and individual capacity, Barbara Blunt in individual and official capacity, Anthony Sanders #273311, Sharod Frazier #324410, Anthony Riggins #178886, and James Wilson #155975,

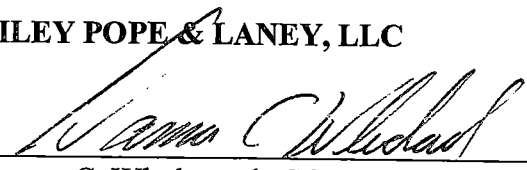
Defendants.

**NOTICE OF MOTION
AND
SCDC DEFENDANTS' MOTION TO
DISMISS**

YOU WILL PLEASE TAKE NOTICE that Defendants South Carolina Department of Corrections ("SCDC"), Sharonda Sutton, Gregory Washington, and Barbara Blunt, by and through their undersigned counsel, do hereby move pursuant to Rules 3(a), 12(b)(2), (5) and (6), SCRCP, and S.C. Code § 15-78-70(c), for an Order dismissing these defendants on the following grounds: (1) insufficiency of service of process over these Defendants as required by Rule 4(d)(5); (2) no action has been commenced as defined by Rule 3(a), SCRCP; and (3) the Defendants Sutton, Washington and Blunt were at all times relevant employees of SCDC and are entitled to dismissal under the S.C. Tot Claims Act. Defendants further request that the dismissal be with prejudice as the applicable statute of limitations has run since the filing of this action and more than 120 days has expired since the filing of this action.

This motion is further based upon the laws, rules and statutes of the State of South Carolina, the pleadings filed in this matter, and such other material as this court may deem just and proper.

RILEY POPE & LANEY, LLC



Damon C. Wlodarczyk, SC Bar No. 70460
Post Office Box 11412
Columbia, South Carolina 29211
Telephone (803) 799-9993
Facsimile (803) 239-1414

Attorneys for Defendants SCDC, Sutton,
Washington, and Blunt

Columbia, South Carolina
December 3, 2015

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JAN 04 2021
SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
C/A NO.: 2015-CP-40-03008

Henry Bradley

Plaintiff,

v.

S.C. Dept. of Corrections, Sharonda Sutton
in individual and official capacity, Gregory
Washington in official and individual
capacity, Barbara Blunt in individual and
official capacity, Anthony Sanders
#273311, Sharod Frazier #324410, Anthony
Riggins #178886, and James Wilson
#155975,

Defendants.

**MEMORANDUM IN SUPPORT OF
SCDC DEFENDANTS' MOTION TO
DISMISS**

This matter is before the Court on a Motion to Dismiss pursuant to Rules 3(a), 12(b)(2), (5) and (6), SCRCP, and S.C. Code § 15-78-70(c), which seeks an Order dismissing the above-captioned action as to the Defendants South Carolina Department of Corrections ("SCDC"), Sharonda Sutton, Gregory Washington, and Barbara Blunt on the following grounds: (1) insufficiency of service of process over these Defendants as required by Rule 4(d)(5); (2) no action has been commenced as defined by Rule 3(a), SCRCP; and (3)) the Defendants Sutton, Washington and Blunt were at all times relevant employees of SCDC and are entitled to dismissal under the S.C. Tot Claims Act.

This matter involves an allegation of inmate versus inmate assault that allegedly occurred on May 26, 2013 at the Broad River Correctional Institution. [Complaint]. The action was filed on May 18, 2015, approximately eight (8) days prior to the expiration of

the two (2) year statute of limitations provided by the S.C. Tort Claims Act. See S.C. Code § 15-78-110.

The Defendants SCDC, Washington and Blunt were *allegedly* served by delivering a copy of the Summons and Complaint to the Office of General Counsel for SCDC as evidenced by the Affidavits on file with the Court. Defendant Sutton was served by delivery a copy of the Summons and Complaint to a person a suitable age and discretion residing with her also evidenced by the Affidavit on file with the Court.

However, Plaintiff did not deliver a copy of the Summons and Complaint to the South Carolina Attorney General's Office in Columbia via certified or registered mail as required by Rule 4(d)(5), SCRPC.

An Answer was filed on behalf of these defendants which raised, in part, the affirmative defenses of insufficient service of process, lack of *in personum* jurisdiction, expiration of the applicable statute of limitations under the S.C. Tort Claims Act and dismissal of the SCDC employee defendants under the S.C. Tort Claims Act. [Answer].

More than 120 days have passed since the filing of this action and no discovery has been exchanged at this time.

ANALYSIS

I. Defendants Sutton, Washington and Blunt were at all times relevant to the allegations in the Complaint employees of SCDC and, therefore, should be dismissed as required by the S.C. Tort Claims Act.

S.C. Code § 15-78-70(c) provides in part:

On or after January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee

individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant. . . .

In the present action, Plaintiff alleges and Defendants admit they were employees of SCDC. [Complaint, ¶ 3; Answer, Third Defense ¶ 2]. Therefore, S.C. Code § 15-78-70(c) requires the Defendants Sutton, Washington and Blunt be removed from this action as the appropriate department has been named.

II. This matter should be dismissed as to Defendant SCDC for insufficiency of service of process.

There is no record of a copy of the Summons and Complaint being mailed to the South Carolina Attorney General via registered or certified mail as required by Rule 4(d)(5), SCRCP.

SCDC is an administrative agency of the State of South Carolina. S.C. Code Ann.

§ 24-1-30. Rule 4(d)(5), SCRCP, provides:

State officer or Agency. Upon an officer or agency of the State by delivering a copy of the summons and complaint to such officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

Service is not effective unless a copy of the summons and complaint is delivered to a person of suitable position and discretion within the agency *and* unless a copy of the summons and complaint sent to the Attorney General at Columbia by registered or certified mail. Maybin v. Northside Corr. Ctr., 891 F.2d 72, 73 (4th Cir. 1989); Shaw v. Beaufort Cnty. Sheriff's Office, Civ. Action No. 9:05-3253SB, 2007 WL 2903940

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(D.S.C. Oct. 1, 2007) affd. 299 F. App'x 260 (4th Cir. 2008); Crowder v. Franklin, 2005-UP-588, 2005 WL 7084852 (Ct. App. 2005).

Rule 4(d)(5), SCRCF, is analogous to and conforms to Fed. R. Civ. P. 4(i)(2), which addresses service on an agency of the United States. Fed. R. Civ. P. 4(i)(2) has a similar requirement in that in order to perfect service, a copy of the summons and complaint must be sent by registered or certified mail to the Attorney General for the United States in Washington, D.C. See Lemmon v. Soc. Sec. Admin., 20 F.R.D. 215, 217 (E.D.S.C. 1957) (restating that both the delivery to the United States Attorney *and* the mailing to the Attorney General are *mandatory requirements*).

In light of the fact that the Plaintiff did not mail a copy of the Summons and Complaint via registered or certified mail to the South Carolina Attorney General at Columbia, service has not been effected and this Court lacks personal jurisdiction over the Defendant SCDC. Moreover, since more than 120 days has passed since the filing of the Summons and Complaint and the two (2) year statute of limitations expired on or about May 26, 2015, the action has not been timely commenced and the case should be dismissed as to SCDC with prejudice. See Rule 3(a)(2), SCRCF (a civil action is commenced when the summons and complaint are filed with the clerk of court and . . . (2) if not served within the statute of limitations, actual service must be accomplished not later than 120 days after filing).

CONCLUSION

For the reasons set forth, Defendants Sutton, Washington and Blunt should be dismissed as required by S.C. Code § 15-78-70(c). Furthermore, Defendant SCDC should be dismissed with prejudice.

RILEY POPE & LANEY, LLC



Damon C. Wlodarczyk, SC Bar No. 70460
Post Office Box 11412
Columbia, South Carolina 29211
Telephone (803) 799-9993
Facsimile (803) 239-1414

Attorneys for Defendants SCDC, Sutton,
Washington, and Blunt

Columbia, South Carolina
December 3, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

C/A NO.: 2016-CP-40-07010

Henry Lee Bradley,

Plaintiff,

v.

**ANSWER
(JURY TRIAL DEMANDED)**

South Carolina Department of Corrections,

Defendant.

(Our File No.: 5021.01316)

Defendant by and through their undersigned counsel and by way of Answer to Plaintiff's Complaint, herein allege as follows:

FOR A FIRST DEFENSE

1. That there is insufficient service of process on the Defendant and, therefore, this court lacks *in personum* jurisdiction as to the Defendant.

FOR A SECOND DEFENSE

1. At all times relevant to the Complaint, Defendants did not engage in any conduct which in any way violated or infringed upon Plaintiff's rights under the United States Constitution or any other Federal right, privilege or immunity.

FOR A THIRD DEFENSE

1. That each and every allegation contained in the Complaint not specifically admitted, denied, or otherwise qualified is hereby denied and strict proof demanded.

2. That paragraphs 1 through 6 are admitted upon information and belief.

3. That Defendants are without sufficient knowledge or information to admit or deny the allegations in paragraphs 7 through 21 and, therefore, those allegations are denied and strict proof is demanded.

4. That paragraphs 22 through 28 are denied.

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FOR A FOURTH DEFENSE

1. Plaintiff has failed to pursue and exhaust appropriate administrative remedies.

FOR A FIFTH DEFENSE

1. Defendant is entitled to immunity from Plaintiff's claims pursuant to the Eleventh Amendment of the United States Constitution.

FOR A SIXTH DEFENSE

1. Defendants is entitled to sovereign immunity from Plaintiff's claims under the United States Constitution, the South Carolina Constitution, common law and as excepted by S.C. Code Ann. § 15-78-60.

FOR A SEVENTH DEFENSE

1. Plaintiff's claims for punitive damages violate the United States and South Carolina Constitutions and are further barred by the South Carolina Tort Claims Act.

FOR AN EIGHTH DEFENSE

1. Defendant, at all times relevant hereto and during the performance or non-performance of the acts alleged in the Complaint, did not perform any acts, or fail to perform any acts, in bad faith, in a malicious manner, with corrupt motives, or with deliberate indifference and, therefore, is immune from suit.

FOR A NINTH DEFENSE

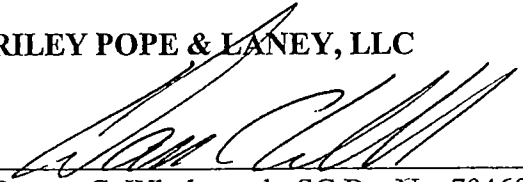
1. That the Plaintiff's claims are barred by the applicable statute of limitations under the common law and as provided by S.C. Code Ann. § 15-78-110.

FOR A TENTH DEFENSE

1. That Plaintiff's claims are barred by the doctrines of *res judicata*, judicial estoppel and/or collateral estoppel.

WHEREFORE, having fully responded to Plaintiff's Complaint, Defendant requests that the same be dismissed with fees and costs awarded to Defendant, and for such other and further relief as this Court may deem just and proper.

RILEY POPE & LANEY, LLC



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Post Office Box 11412
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Telephone (803) 799-9993
Facsimile (803) 239-1414

Attorneys for Defendant

Columbia, South Carolina

May 5, 2017

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Henry Lee Bradley,

Plaintiff,

v.

South Carolina Department of Corrections,

Defendant.

(Our File No.: 5021.01316)

IN THE COURT OF COMMON PLEAS

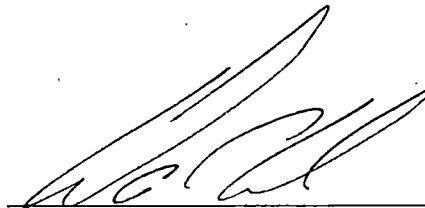
C/A NO.: 2016-CP-40-07010

CERTIFICATE OF SERVICE

This is to certify that I, Monique W. Trifos, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the person named below the attached **Answer** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

(NOT ATTORNEY-CLIENT MAIL)

Henry Lee Bradley #141371
Broad River Correctional Institution
Murray - 169
4460 Broad River Road
Columbia, SC 29210



Damon C. Wlodarczyk

Columbia, South Carolina
May 5, 2017

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

C/A NO.: 2016-CP-40-07010

Henry Lee Bradley,

Plaintiff,

v.

**NOTICE OF MOTION
AND DEFENDANT'S MOTION TO
DISMISS**

South Carolina Department of Corrections,

Defendant.

(Our File No.: 5021.01316)

YOU WILL PLEASE TAKE NOTICE that Defendant South Carolina Department of Corrections ("SCDC"), by and through its undersigned counsel, does hereby move pursuant to Rules 12(b)(6), SCRCP, and S.C. Code § 15-78-110, for an Order dismissing this case on the ground that the applicable statute of limitations has run prior to the filing of this action and, therefore, the action is time-barred.

Plaintiff alleges in his Complaint that the acts or omissions giving rise to his cause of action took place on or before May 26, 2013. [Complaint, ¶¶ 8, 9, 10, 12, 13, 14, 15, 16]. Plaintiff alleges that he seeks relief against SCDC, a government agency, as allowed by the South Carolina Tort Claims Act (the "Act"). [Complaint, ¶ 7].

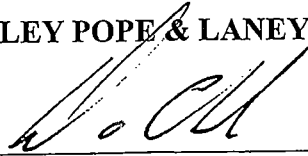
The Act provides in part, ". . .any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered. . . ." S.C. Code § 15-78-110.

Based upon the facts alleged in the Complaint, Plaintiff's claim is time-barred.

This motion is further based upon the laws, rules and statutes of the State of South Carolina, the pleadings filed in this matter, and such other material as this court may deem just and proper.

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RILEY POPE & LANEY, LLC



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Post Office Box 11412
Columbia, South Carolina 29211
Telephone (803) 799-9993
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Attorneys for Defendant

Columbia, South Carolina
January 5, 2017

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-07010

Henry Lee Bradley,

Plaintiff,

v.

South Carolina Department of Corrections,

Defendant.

MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT

2018 OCT -1 PM 1:57
FILED
RICHLAND COUNTY
JEANNETTE W. MCBRIDE
C.C.P. S.C.

(Our File No.: 5021.01316)

Plaintiff alleges in his Complaint that the acts or omissions giving rise to his cause of action took place on or before May 26, 2013. [Complaint, ¶¶ 8, 9, 10, 12, 13, 14 , 15; 16]. Plaintiff alleges that he seeks relief against SCDC, a government agency, as allowed by the South Carolina Tort Claims Act (the “Act”). [Complaint, ¶ 7].

- 1) The Act provides in part, “. . .any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered. . . .” S.C. Code § 15-78-110.
- 2) The action was filed more than two (2) years after the injury occurred and there are no facts to support the equitable tolling of the statute of limitations and, therefore, the claim is time barred per S.C. Code § 15-78-110;
- 3) Plaintiff cannot show a genuine issue of material fact to support his allegation of gross negligence.

I. The statute of limitations was not equitably tolled and, therefore, the claims are time barred.

On May 26, 2013, Plaintiff was stabbed by a fellow inmate. Plaintiff filed a lawsuit on May 18, 2015, alleging gross negligence against the Department of Corrections and its

employees for failing to protect him. The claim was brought under the S.C. Tort Claims Act. (Exhibit 1). The Complaint was filed eight (8) days before the statute of limitations was served. The Complaint was delivered to SCDC but was never served on the Attorney General's Office as required by Rule 4, SCRPC.

On December 7, 2015, Defendants filed and served a Motion to Dismiss and Memorandum in Support specifically pointing out the service error. Plaintiff admitted receiving the motion and memo and yet took no steps to correct the service error. (Exhibit 2 & 3, pp 73-87).

On July 22, 2016, Judge Manning issued an Order dismissing the case as to SCDC for lack of proper service. The dismissal was without prejudice. (Exhibit 4).

On December 6, 2016, Plaintiff filed the present action against SCDC based upon the same facts alleged in the 2015 Complaint. Defendant moved to dismiss the case as it was time barred. However, there was an issue with whether equitable tolling should apply and the motion was denied to allow the case to proceed with discovery.

Defendant now moves for summary judgment as the case is time barred.

“[I]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations.” 54 C.J.S. *Limitations of Actions* § 115 (2005). “Equitable tolling is a nonstatutory tolling theory which suspends a limitations period.” *Ocana v. Am. Furniture Co.*, 135 N.M. 539, 91 P.3d 58, 66 (2004). 4 Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. *Rodriguez v. Superior Court*, 176 Cal.App.4th 1461, 98 Cal.Rptr.3d 728 (2009). “Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period ‘to ensure fundamental practicality and fairness.’ ” *Id.* at 736 (citation omitted).

5 The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. *Ocana*, 91 P.3d at 65; *see also* 54 C.J.S. *Limitations of Actions* § 115 (“The party who seeks to invoke equitable tolling bears the devoir of persuasion and must, therefore, establish a compelling basis for awarding such relief.”).

*116 It has been observed that “[e]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control.” *Ocana*, 91 P.3d at 66. However, jurisdictions have considered tolling in a variety of contexts and have developed differing parameters for its application.⁶ *See, e.g., Irbyv. **33 Fairbanks Gold Mining, Inc.*, 203 P.3d 1138, 1143 (Alaska 2009) (“Under the doctrine of equitable tolling, when a party has more than one legal remedy available, the statute of limitations is tolled while the party pursues one of the possible remedies.”); *Abbott v. State*, 979 P.2d 994, 998 (Alaska 1999) (“Federal precedent equitably tolls the limitations period in three circumstances: (1) where the plaintiff has actively pursued his or her judicial remedies by filing a timely but defective pleading; (2) where extraordinary circumstances outside the plaintiff’s control make it impossible for the plaintiff to timely assert his or her claim; or (3) where the plaintiff, by exercising reasonable diligence, could not have discovered essential information bearing on his or her claim.” (footnotes omitted)); *Kaplan v. Morgan Stanley & Co.*, 186 Vt. 605, —, 987 A.2d 258, 264 (2009) (2009 WL 2401952) (“Equitable tolling applies either where the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering the facts essential to the filing of a timely lawsuit, or where the plaintiff has timely raised the same claim in the wrong forum.”) (citing *Beecher v. Stratton Corp.*, 170 Vt. 137, 743 A.2d 1093, 1098 (1999)); *cf. Machules v. Dep’t of Admin.*, 523 So.2d 1132, 1134 (Fla.1988) (stating the doctrine of equitable tolling, unlike equitable estoppel, does not require deception or misrepresentation by the defendant; rather, it serves to ameliorate the harsh results that sometimes flow from a strict, literalistic application of administrative time limits).

Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 115–16, 687 S.E.2d 29, 32–33 (2009).

Plaintiff was put notice on December 7, 2015, of the defective service issue. Plaintiff took no steps to correct the defective service issue. To the extent there should be any equitable tolling, the tolling should only be from the date of the filing of the Complaint to the date Plaintiff was put on notice of the defect, which is 203 days. Therefore, Plaintiff had until June 24, 2016 to correct the defect applying tolling principles, which was prior to the July 22, 2016 final order. Accordingly, to the extent equitable tolling applies, the case is still time barred.

II. There is no evidence of gross negligence.

On May 26, 2013, Plaintiff was sucker punched by another inmate whom he knew. The punch occurred as the inmates were returning to their cells. The punch occurred in front of a corrections officer who told the inmates to know it off. The Plaintiff returned to his cell. The Plaintiff testified that he thought the incident was offer and had no inclination that the other inmate would return and stab him. The Plaintiff stated that if he had concerns, he would have reported it to a corrections officer. (Exhibit 3, pp. 46-51)

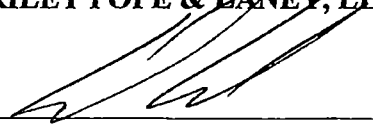
“A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing.” *Jackson v. S.C. Dep't of Corr.*, 301 S.C. 125, 126, 390 S.E.2d 467, 468 (Ct. App. 1989), *cert. granted, decision aff'd*, 302 S.C. 519, 397 S.E.2d 377 (1990).

Given the Plaintiff did not have any concern following the minor altercation with the other inmate, there is no evidence that Defendant is guilty of gross negligence and, therefore, Defendant is entitled to judgment as a matter of law.

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Attorneys for Defendant

Columbia, South Carolina
September 27, 2018

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 HENRY LEE BRADLEY #11171)
 Plaintiff)
 v.)
 SOUTH CAROLINA DEPARTMENT)
 OF CORRECTION.)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 CASE NO: 2016-CP-40-27010
 MOTION TO AMEND RULE 59-E
 RESPONSE TO SUMMARY JUDGMENT
 DENYING EQUITABLE TOLLING

SOUTH CAROLINA DEPARTMENT OF CORRECTION
 Defendant.

Now comes Plaintiff before this honorable Court, Pro Se, Pursuant to The S.C. Tort Claims Act (The Act) on Motion to amend response to Summary Judgment Denying Equitable Tolling.

on March 26, 2013 Plaintiff was stabbed by a Fellow inmate. on March 18, 2015 Plaintiff Filed a Lawsuit against The S.C. Dept. of Corrections and IT's officers for Gross Negligence for failing to protect him. Case No: 2015-CR-400-3008.

Again IT MUST be noted that Plaintiff Filed This Complaint eight (8) days before the Two (2) year Statute of Limitations had expired.

on December 7, 2015 The defendant Filed a motion to dismiss alleging that The Complaint was served improperly.

on July 22, 2016 Judge Manning issued an order dismissing The Case for lack of Service. The dismissal was without Prejudice.

ON November 22, 2016 Plaintiff Filed a Second Complaint based on the same facts alleged in the first Complaint, Case No: 2016-CP-400-7010.

on January 5, 2017 The defendant submitted a motion to dismiss the second Complaint solely on the issue of statute of limitation being exceeded. on April 6, 2017 a hearing was held on the defendant's motion to dismiss before Hon: Judge Jean Toal. Judge Toal denied the defendant motion to dismiss concluding that the second Complaint is in accord with Judge Manning Ruling. EXHIBIT A

on March 14, 2018 The defendant submitted a motion for Summary Judgment for the second Complaint being time barred and for Plaintiff not having evidence of gross negligence. on September 28, 2018 The defendant submitted a memorandum in support of the March 14, 2018 Summary Judgment.

Plaintiff's "Response" to defendant's motion for Summary Now follows:

STATUTE OF LIMITATIONS

on the statute of limitations issue, Plaintiff argues that he filed his initial Complaint on May 18, 2015 (8 days before the statute of limitation was exceeded). The Complaint was dismissed without prejudice on July 22, 2016.

IT IS SETTLED IN SOUTH CAROLINA, THAT WHEN AN ACTION IS DISMISSED WITHOUT PREJUDICE, THE STATUTE OF LIMITATION WILL BAR A SUBSEQUENT SUIT IF THE STATUTE RUNS IN THE INTERIM Norris v. State 335 S.C. 30, 33, 515 S.E. 2d 523, 524-25 (1999).

HOWEVER, IF A DEFENDANT CONSENTS TO THE ACTION BEING DISMISSED WITHOUT PREJUDICE AFTER THE STATUTE OF LIMITATION HAD RUN, THE DEFENDANT IS ESTOPPED FROM ASSERTING THE DEFENSE OF STATUTE OF LIMITATIONS BEING EXCEEDED WHEN PLAINTIFF REFILED HIS COMPLAINT Carter v. State, 337 S.C. at 18, 522, S.E. 2d at 342-43 (1999).

FURTHER, THE DEFENDANT VIOLATED RULE 43-L OF THE S.C. CIRCUIT COURT RULES OF PRACTICE BY RAISING THE DEFENSE OF STATUTE OF LIMITATIONS BEING EXCEEDED A SECOND TIME AFTER IT WAS DENIED BY JUDGE TOAL AT THE JULY 6, 2017 MOTION HEARING. JUDGE TOAL (CLERK) STATED IN HER ORDER THAT THE SECOND COMPLAINT IS IN ACCORD WITH JUDGE MANNING'S RULING.

IT CAN REASONABLY BE INFERRED THAT JUDGE MANNING'S RULING WAS BASED ON THE EQUITABLE TOLLING DOCTRINE, WHEN HE DISMISSED ACTION WITHOUT PREJUDICE FOR THE LACK OF SERVICE.

which was in accordance with the doctrine of equitable Tolling. ("under the doctrine of equitable Tolling, when a party has more than one legal remedy available, the statute of limitations is tolled while the party pursues one of the possible remedies"); Abbott v. State, 979 P.2d 944, 998 (Alaska 1999) ("Federal precedent equitably tolls the limitations period in three circumstances: (1) where the plaintiff has actively pursued his or her judicial remedy by filing a timely but defective pleading, which was preserved with the court's decision to dismiss without prejudice, allowing for the curing of the infirmity.

Again Rule 43-L states: when an application for an order is made to any judge and such is refused in whole or in part, no subsequent application upon the same set of facts shall be made to any other judge. (which was the case by the defendant's here). And if upon any such subsequent application an order is made, the order shall be revoked. Rule 43-L S.C. Circuit Court Rules of Practice

GROSS NEGLIGENCE

PLAINTIFF asserts that there is evidence of gross negligence.

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In their memorandum in support of summary judgment, the defendant misconstrued the facts.

The dormitory where Plaintiff is housed consists of 2 wings, side A (left side), and side B (right side). Each wing has an officer, one of the officer's responsibilities is to ensure that whatever side the inmate is assigned, there is where he remains unless authorized by an official. Each side has a color code, and is attached to each inmates ID card, that is attached to a designated area on his uniform, for clear view by officers for determination.

Five days prior to incident, Plaintiff notified Assoc. Warden S. Sutton, in the presence of officer L. Arave, and Prison Industry Plant Supervisor MR. Larry Thompson, concerning the threats of bodily harm by Jim Anthony Sanders. Plaintiff was assured by the warden that the situation would be addressed. However, to no satisfactory remedy. Exhibit B.

Five (5) days subsequent, Plaintiff was assaulted by way of stabbing and in serious condition. Exhibit C (See attachments) The break down in security, was due to the deliberate indifference, and incompetence by the administration and staff at the Broad River Correctional Institution (S.C.D.C.)



Inmates, was allowed to meander from his designated living area, to an unauthorized area, where assault transpired.

After assault inmates returned to assigned area and the wings of the dormitory were secured by both officers. Two of the inmates from the other side of the that came to help with the assault on Plaintiff who holding Plaintiff down who being stab came through secured door. Exhibit-

Plaintiff was immediately transported to the local hospital for treatment to serious stab wounds. Exhibit - d

Upon release from hospital, the prison administration transferred Plaintiff to another dormitory for his recuperation and safety.

Again it must be noted that five days prior to incident, Plaintiff informed several officials of the eminent-dangers.

Therefore, since the defendant's motion for summary judgment is without merit and is improper before this court.

Plaintiff now ask as a matter of law, defendant's motion for summary judgment be dismissed.

Respectfully Submitted,

~~Henry Lee Bradley~~
 Henry Lee Bradley #141371
 BRCI MA-191
 4460 Broad River Rd.
 Columbia, S.C. 29210

Date JULY 25, 2019

STATE OF South Carolina
 COUNTY OF Richland
 Henry Lee Bradley #141371
 Plaintiff,
 V.
 South Carolina Department
 of Correction,
 Defendant.

) IN THE COURT OF Common Pleas
)
) Case No: 2016-CP-40-07010
)
) PLAINTIFF'S NOTICE OF motion and
) MOTION TO Amend and Reconsider
) PURSUANT TO Rule 52 and Rule
) 59 E.S.C Rules of Civ. Proc.
)
)
)

To The Honorable Judge Kelly of Richland County
 The Court of Common Pleas.

Please TAKE NOTICE THAT PLAINTIFF in the above-
 captioned matter do hereby respectfully motion this
 Honorable Court to amend and reconsider its Ruling
 in its order, submitted to Plaintiff on/for about:

Date July 25 2019

S. Stanley F. Bryant
 Henry Lee Bradley
 BR CI MA 191
 4460 Broad River Rd.
 Columbia, S.C. 29210

STATE OF SOUTH Carolina }
 COUNTY OF Richland }
 Henry Lee Bradley #141371 }
 V. }
 South Carolina Dept. of }
 Corrections. }

IN The Court of Common Pleas
 Case# 2016-CP-400-7010

Proof of Service

The above named Plaintiff hereby certifies that he has served one copy each of his "Response" to the defendant memorandum in support of summary judgment upon the Hon. R. Keith Kelly P.O. Box 2766 Columbia, S.C. 29202-2766 and upon Damon C. Wlodarczyk Esq. P.O. Box 11412 Columbia, S.C. 29205 by placing one copy each in the U.S. mail prepaid.

Date July 25, 2019

S. Henry Lee Bradley
 Henry Lee Bradley #141371
 B.R.C.I. MA-191
 4460 Broad River Rd
 Columbia, S.C. 29210

CERTIFICATE OF APPELLANT

I UNDERSIGNED and hereby CERTIFY That
The Supplemental Record on Appeal Contains
All The Material Proposed To be included by
any of The parties and NOT ANY other Material.

Date. JANUARY 1, 2022

Henry L. Bradley
Henry Lee Bradley #141371
BRCI MA 128
4460 Broadriver Road
Columbia, S.C. 29210

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