

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2020-CP-36-00506

Terence L. Rush,
Plaintiff/Appellant,

v.
Michael B. Stribble, Individually
and his Official Capacity as
Sergeant at the Newberry County
Sheriff's Office,

Respondent/Appellee.

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON

APPEAL-
RECEIVED

JAN 04 2021

Provided to Walton CI
On 12-23-21 for Mailing
Date

By (officer initials) meSD

I, DESIGNATION

SC Court of Appeals

I, the Plaintiff/Appellant, Terence L. Rush, respectfully file(s) this Designation of Matter to be included in the Record on Appeal and states: That there is no transcripts of any hearings to my written pleadings and motions because there was no hearing(s). see attachment(s) from Cheryl A. Smith, CVR-M and the order of Dismissal dated July 9, 2021. That does not mean that I do not have evidence in the form of certified copies of the record from the Clerk of Court of my written pleadings, affidavit, exhibits that prove that I am not a white male that the deputies was looking for that that fact alone gave them no right to trespass on my property and interrogate me without probable cause especially once they saw that I was black.

THEREFORE, the ENTIRE CERTIFIED RECORD, my initial Appeal Brief with the Plaintiff's Reply Brief to Order to Dismiss attached to my initial Brief as Exhibit A, the Complaint (R. Pg. 006-033), the Affidavit of Terence L. Rush, the Exhibits showing the description of Corey Pena vs. Terence L. Rush, Summons (R. Pg. 006-033), Request of Joinder of Newberry County Sheriff Office for just adjudication (R. Pg. 076-079), Request for Appointment of an Alternative Dispute Resolution Neutral (R. Pg. 074-075), Claimant's First Request for Production of Documents at al Respondent's Names (R. Pg. 072-073), Request for Clerk to Enter Judgment of Default against Michael B. Stribble (R. Pg. 069-071), Arrest Affidavit Exhibit (R. Pg. 110-111), Amended Complaint (R. Pg. 093-118), the Directions to the Clerk (R. Pg. 164-165), the Order of Dismissal (R. Pg. 154-161), the Defendants Memorandum in support

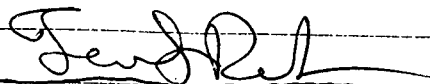
of the Order for Dismissal (R. Pg. 123-132), the Exhibit of the Plaintiff's Reply Brief to the Order of Dismissal included in Initial Brief, and basically the ENTIRE RECORD dated from October 16, 2020 and end September 2, 2021 of R. Pages 006-166 listed on back lower corner of record with all communications correspondences to show that I should never have been subject to such treatment without probable cause since the Newberry County Sheriff's Office Deputies saw that I was black and not white.

The Appellant's Initial Brief has already been received and it is the Appellant's desire that this Record be used to sustain his reason for granting him a hearing and arbitration and mediation because he would not have suffered any loss were it not for the Newberry County Sheriff's Office Deputies.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing designation of matter to be included in the Record on Appeal has been furnished by U.S. Mail after placing it in the hands of Walton Correctional Legal Mailroom Official _____, to be delivered to Elizabeth P. Folk, Clerk of Court Newberry County, P.O. Drawer 10, Newberry, S.C. 29108, The South Carolina Court of Appeals, P.O. Box 11629, Columbia, S.C. 29211, David Allan DeMaster's, Esquire, P.O. Box 8568, Columbia, S.C. 29202-8568, South Carolina Court Administration Calhoun Bldg., 1220 Senate St., Ste. 200, Columbia, SC 29201, and Cheryl A. Smith, CVR-M, Circuit Court Reporter, P.O. Box 80032, Simpsonville, S.C. 29680 on this _____ day of December, 2021.

Respectfully Submitted,



Terence L. Rush, Plaintiff/Appellant
% RUSH, TERENCE L. # E03490
Walton Correctional Institution
691 Institution Road
Defunick Springs, FL 32433

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JAN 04 2021

SC Court of Appeals

Cheryl A. Smith, CVR-M

PO Box 80032
Simpsonville, SC 29680

E-mail: casmith@sccourts.org

October 21, 2021

Terence Lanar Rush
Walton Correctional Inst.
691 Institution Road
Defuniak Springs, FL 32433

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SC Court of Appeals

RE: Transcript Request, Terence L. Rush v. Michael B. Stribble, Individually and in his Official capacity as Sergeant at the Newberry County Sheriff's Office
Case #2020-CP-36-00506

Dear Mr. Rush,

Court Administration forwarded to me your transcript request for a hearing in your case that, as stated in your request, occurred on July 9, 2021. Court Administration forwarded this request to me as they thought I was the court reporter for the hearing.

In looking at the Terms of Court posted on the sccourts.org Web site, I do not find that there was any Common Pleas court held in Newberry County for the week of July 5th which would include July 9th.

I did look on the Public Index for Newberry County under your case and did find the attached Order of Dismissal that was filed, and it was dated July 9, 2021. I have included a copy with this letter. It does state in the first paragraph, "In lieu of a hearing...."

If you do have a hearing date other than July 9, 2021, that a hearing occurred on, please resubmit your request to Court Administration or however you initially submitted your Transcript Request Form and request the transcript for the hearing on that date. I will speak on behalf of all court reporters employed by the South Carolina Judicial Branch that it is imperative we have a hearing date in order to produce a transcript for your case. All of our records are filed by date.

Sorry I couldn't be of more assistance to you.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl Smith".

Cheryl Smith, CVR-M
Circuit Court Reporter

Enclosures

Cc: transcripts@sccourts.org

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
Terence L. Rush,)
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)
Plaintiff,)
)
v.)
)
Michael B. Stribble, Individually and in)
his Official capacity as Sergeant at the)
Newberry County Sheriff's Office,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
Civil Action Number: 2020-CP-36-00506

ORDER OF DISMISSAL

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SC Court of Appeals

This matter came before the Court on a Motion to Dismiss filed by Defendant on March 10, 2021. In lieu of a hearing, the Court has considered the arguments presented through the parties' briefs and the entirety of the records before this Court, including all filings made by all parties. The Court finds that Plaintiff's claims against Defendant must be dismissed as a matter of law, as is set out in detail herein, and that Defendant's pending motion must be, and hereby is, **GRANTED.**

Plaintiff Terrence L. Rush, proceeding *pro se*, filed this action on November 16, 2020. In his Complaint, Plaintiff sets forth allegations that appear to allege Defendant used improper methods in arresting Plaintiff on October 15, 2015. This stems from his allegations that Defendant claimed to have an arrest warrant for a "Corey Pena." Plaintiff denied being "Corey Pena" and gave Defendant and other uniformed officers a false name. Eventually, Plaintiff allowed Defendant to scan his finger, allowing Defendant to learn Plaintiff's true identity and that he was wanted for attempted murder in Florida. At that point, he was arrested and subsequently issued a ticket for providing false information from police. Plaintiff was then transported to the Newberry County Detention Center and then to Florida on a Fugitive from

Justice Warrant issued by a Newberry County Magistrate. Plaintiff then filed this subject lawsuit and attempts to bring a claim of "Fraud" against Defendant. Defendant has moved for dismissal of Plaintiff's claims, asserting Defendant is an improper party in this action, that Plaintiff's claims are barred by the applicable statute of limitations, and that punitive damages and attorney's fees are barred by the South Carolina Tort Claims Act.

DISCUSSION

1. Plaintiff's Complaint is barred by the two-year Statute of Limitations provided in the South Carolina Tort Claims Act.

Initially, Plaintiff's claims are barred by the applicable Statute of Limitations. Because this action is brought against an employee of the Sheriff of Newberry County, it is governed by the South Carolina Tort Claims Act ("Tort Claims Act"). The Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Ann. § 15-78-70(a). Under the Tort Claims Act, the statute of limitations for suit against a state agency or its employees is two years after the "date the loss was or should have been discovered." S.C. Code Ann. § 15-78-110. If the action is not brought within the required statute of limitations it is "forever barred." *Id.*

A loss should be discovered when the "circumstances would put a person of common knowledge and experience on notice that some right has been invaded, or that some claim against another party might exist." *Joubert v. DSS*, 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). "The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of [the] wrongdoer." *Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994).

In this case, Plaintiff was arrested on October 2, 2015 for being a fugitive from justice and for providing false information to police. The second charge stems from Defendant's

attempt to serve an arrest warrant on a “Corey Pena” on Plaintiff and asking him for his identity. When asked by officers his name, he told them he was “Alfred T. Jackson.” Plaintiff does not deny that he gave Defendant the wrong identity when first asked to identify himself or dispute the validity of the arrest warrant. At the time of Plaintiff’s arrest on October 2, 2015, he knew that he was not “Corey Pena” so any alleged discovery of “fraud” some five years after his arrest is without merit. Plaintiff did not need to see a photograph of “Corey Pena” to determine that he was not “Corey Pena” so any argument to the contrary fails.

Plaintiff’s cause of action in this case is “fraud” and the allegations are solely related to the arrest on October 2, 2015. Any injury due to the alleged actions of Defendant were discovered by Plaintiff on that date. Plaintiff initiated this action on November 16, 2020, more than five years after the date he was arrested and three years past the running of the two-year statute of limitations provided for in the Tort Claims Act. The Court, therefore, finds that Plaintiff’s claims are barred by the statute of limitations and should be dismissed.

2. Defendant is not a proper party pursuant to S.C. Code Ann. § 15-78-10¹

The Tort Claims Act, S.C. Code Ann., § 15-78-10, *et seq.*, provides various immunities for employees of governmental actors. Chief among these immunities is the absolute immunity provided to individual employees contained within S.C. Code Ann., § 15-78-70. Pursuant to subsection 15-78-70(a), individual employees are not subject to suit as personal defendants for the alleged tort claims committed within the course and scope of their employment.

Plaintiff named Defendant Michael B. Stribble as an individual defendant in this case. The record reflects that Defendant was employed by the Sheriff of Newberry County at the time of the incident. Pursuant to Section 15-78-70(a), individuals who qualify as employees are not

¹ Even if Plaintiff had named the proper party (Sheriff of Newberry County), his claims would still be barred by the statute of limitations.

subject to suit as personal defendants for the alleged tort claims committed within the course and scope of their employment. While Plaintiff alleges in his Complaint that Defendant “acted in bad faith” and outside the course and scope of his employment during Plaintiff’s arrest, the Court finds those arguments unavailing. The record is clear that Plaintiff gave false information to law enforcement personnel, including Defendant, when he identified himself as “Alfred T. Jackson”. Plaintiff does not deny this allegation. The Court finds this action by Plaintiff to be telling and shows that if any falsity was committed that day, it was by Plaintiff, not Defendant. Therefore, Defendant is also entitled to be dismissed on this ground as well.

CONCLUSION

Therefore, the Court finds that Defendant’s Motion to Dismiss is **GRANTED**, and Plaintiff’s Complaint must be, and hereby is, **DISMISSED WITH PREJUDICE**².

AND IT IS SO ORDERED

The Honorable Donald B. Hocker
Presiding Circuit Court Judge

_____, 2021
Laurens, South Carolina

² Defendant also asserted a third ground in his motion regarding punitive damages and attorney’s fees. The Court finds that the plain language of § 15-78-120 bars these types of damages. Since the Court has found that Plaintiff’s claims must be dismissed, these portions of the Complaint would be stricken as well, but no further ruling or analysis is needed.



Newberry Common Pleas

Case Caption: Terence L Rush VS Michael B Stribble , defendant, et al
Case Number: 2020CP3600506
Type: Order/Dismissal

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

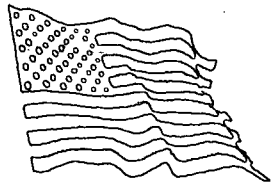
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SC Court of Appeals

RUSH, TERENCE, DC# E03490

Walton Correctional Institution
691 Institution Rd.
DeFuniak Springs, FL 32433
LEGAL MAIL

MAILED
FROM A
CORRECTIONAL
INSTITUTION



Hasler FIRST-CLASS MAIL
12/27/2021
US POSTAGE \$000.73⁰⁰



ZIP 32433
011E11685669

SOUTH CAROLINA COURT OF APPEALS
JENNY ABBOTT KITCHINGS
P.O. Box 11629
COLUMBIA, S.C 29211

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