



Supreme Court of North Carolina

Phone: (919) 831-5700
Web: <https://www.nccourts.gov>

GRANT E. BUCKNER, Clerk
Justice Building, 2 E. Morgan Street
Raleigh, NC 27601

Mailing Address:
PO Box 2170
Raleigh, NC 27602

From Office of Admin. Hearings
(13MIS12404 13MIS12404)
From N.C. Court of Appeals
(04-1033 P05-866 P05-922 P12-176 P14-529 P16-263 P20-230 P23-115)
From Wake
(03CRS49691 03CRS49692 03CRS49693 03CRS49694 03CRS56350 22CVS13960 23CVD13960
24CV016374-910)

2 July 2024

Mr. David Lee Smith
Pro Se
P.O. Box 215
Maury, NC 28554

RE: In re: David Lee Smith - 580P05-31

Dear Mr. Smith:

The following order has been entered on the motion filed on the 21st of June 2024 by Defendant for Petition for Discretionary Review:

"Motion Dismissed by order of the Court in conference, this the 26th of June 2024."

Riggs, J. recused.

**s/ Allen, J.
For the Court**

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 2nd day of July 2024.

Grant E. Buckner
Clerk, Supreme Court of North Carolina


M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:
North Carolina Court of Appeals
Ms. Kimberly N. Callahan, Special Deputy Attorney General, For State of NC - (By Email)
Ms. Kathleen N. Bolton, Assistant Attorney General, For State of NC - (By Email)
Mr. David Lee Smith, For Smith, David Lee
The Honorable District Attorney
The Honorable Clerk of Superior Court, Wake County
West Publishing - (By Email)
Lexis-Nexis - (By Email)

APP. - A

FILED
DATE: May 23, 2024
TIME: 2:47:49 PM
WAKE COUNTY
CLERK OF SUPERIOR COURT
BY: G. Holland

24CV016374-910

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED
IN THE GENERAL COURT OF JUSTICE
2024 APR 28 P 12:12
SUPERIOR COURT DIVISION
WAKE CO. C.S.C.

DAVID L. SMITH ON BEHALF
OF HIMSELF AND OTHERS SIM-
ILARLY SITUATED

PLAINTIFF(S)

V.

N.C. GOVERNOR ROY A. COOPER III
JUDGE KEITH D. GREGORY
DEFENDANTS

CIVIL COMPLAINT-
PURSUANT TO N.C.G.S.
§ 1A-1 RULE 23 AND
RULE 23. CLASS ACTIONS

- STATEMENT OF CASE -

N.C. GOVERNOR ROY A. COOPER III KNEW OR SHOULD
HAVE KNOWN THAT THE N.C. GENERAL ASSEMBLY COMM-
ITTED A RACIALLY UNCONSTITUTIONAL ACTION,
BY UNLAWFULLY ASSEMBLING (4) CRIMINAL STATUTES
INTO N.C.G.S. 14-7.1, FOR STATE COURT USE IN ENHA-
NCING REPEAT OFFENDER SENTENCES, IN VIOLATION
OF N.C.G.S. A. § 1-267.1, BECAUSE DEFENDANT COOPER
FAILED TO TAKE CORRECTIVE ACTION.

WAKE COUNTY SUPERIOR COURT JUDGE KEITH D. GREG-
ORY DENIED CLASS ACCESS TO COURTS BY HAVING
RETALIATORY EX PARTE HEARING, DEPRIVING PLAINTIFF
OF HIS RIGHT TO BE HEARD AND ORDERING HIS CASE
NUMBER 22CVS013960-910 TO BE DISMISSED WITH
PREJUDICE ON UNKNOWN DATE, TIME AND GROUNDS.

APR 28

-ISSUES PRESENTED-

OVER AN ESTIMATED 40,000 REPEAT OFFENDER SENTENCES WERE UNLAWFULLY ENHANCED, FROM YEAR 1996 THROUGH DATE OF THIS DOCUMENT.

JUDGE GREGORY DENIED CLASS ACCESS TO COURT BY ORDER OF EX-PARTE DISMISSAL OF CASE 22 CVS-13960, WHILE CLASS RELEVANT MOTIONS WERE STILL PENDING, WITH MARCH 4, 2024 COURT DATE PENDING.

-SUPPORTING FACTS AND ARGUMENT-

DURING A YEAR 1985 REPEAT OFFENDER STATE OF EMERGENCY BY N.C. GOVERNOR JIM MARTIN THE N.C. GENERAL ASSEMBLY UNCONSTITUTIONALLY ASSEMBLED (4) CRIMINAL STATUTES INTO N.C.G.S. 14-7.1 FOR STATE COURT USE IN ENHANCING ALL REPEAT OFFENDER SENTENCES.

N.C. GENERAL ASSEMBLY'S ACTIONS WERE BARRED BY U.S.C. 5TH, 8TH AND 14TH AMENDMENTS AND CORRESPONDING N.C. LAWS, BECAUSE ONLY STATUTES CAN BE ASSEMBLED INTO LAWS.

NEXT PLAINTIFF ARGUES SUBJECT JUDGE GREGORY COMMITTED MISCONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE, BY EX-PARTE DISMISSING HIS CIVIL COMPLAINT WITHOUT PLAINTIFFS

KNOWLEDGE AND DENYING HIM AN OPPORTUNITY TO BE HEARD IN HIS LAWSUIT.

PLAINTIFF WAS NOT NOTIFIED WHEN HIS LAWSUIT WAS DISMISSED.

PLAINTIFF WAS NOT INFORMED WHY HIS LAWSUIT WAS DISMISSED.

PLAINTIFF STILL HAD MOTIONS PENDING IN THE LAWSUIT.

SEE ~~MAGENKNECHT~~ V. U.S., 533 F.3D 412, 417-18 (6TH CIR. 2008) (COURT ERRED IN DISMISSING PRO-SE COMPLAINT AND SHOULD HAVE ALLOWED PLAINTIFF TO AMEND CLAIM EVEN THOUGH IT MAY ULTIMATELY BE FOUND TO LACK MERIT).

-N.C. G. S. §7A-456(A) AND §7A-66-

PLAINTIFF SWEARS UNDER PENALTY OF PERJURY DATA ABOVE IS TRUE AND CORRECT, APRIL 19, 2024.

-RELIEF REQUESTED-

PLAINTIFF DOES HEREBY REQUEST DEFENDANT N.C. GOVERNOR ROY A. COOPER III TO ISSUE AN EMERGENCY EXECUTIVE ORDER, CAUSING CONSOLIDATION OF ALL N.C. HABITUAL FELON CONSECUTIVE SENTENCES, OR ALTERNATIVELY TRANSFER CASE TO (3) JUDGE PANEL FOR PROCESS. P.(3)

- CERTIFICATE OF SERVICE -

PLAINTIFF DOES HEREBY CERTIFY HE SENT COPY OF
DOCUMENT TO N.C. GOVERNOR ROY A. COOPER III 4294
N.S.C. RALEIGH N.C. 27699-4294 AND JUDGE KEITH
D. GREGORY P.O. BOX 351 RALEIGH N.C. 27602, BY
U.S. MAIL APRIL 19, 2024.

DAVID L. SMITH
0375340

P.O. BOX 215

MAURY N.C.

28554

X David L. Smith

PLAINTIFF'S SIGNATURE

FILED
DATE: May 23, 2024
TIME: 2:51:06 PM
WAKE COUNTY

STATE OF NORTH CAROLINA

CLERK OF SUPERIOR COURT

File No.

24CV016374-910

WAKE

BY: G. Holland
County

In The General Court Of Justice
☐ District ☒ Superior Court Division

Name Of Plaintiff **DAVID L. SMITH OTHERS
SIMILARLY SITUATED**

VERSUS

Name Of Defendant **M. C. GOVERNOR RITA CORNER
JUDGE KEITH D. GREENY**

PETITION TO PROCEED
AS AN INDIGENT

G.S. 1-110; 7A-228

AFFIDAVIT

(check one of the four boxes below)

☒ **Petition To Assert Claims** - As a party in the above entitled action, I affirm that I am financially unable to advance the required costs for the prosecution of the claims I have asserted. Therefore, I now petition the Court for an order allowing me to assert my claims as an indigent.

☒ I am an inmate in the custody of the Division of Prisons of the Department of Adult Correction.

(NOTE TO CLERK: If this block is checked, this Petition must be submitted to a Superior Court Judge for disposition provided on the reverse.)

☒ **Petition To File Motions** - As a party in the above entitled action, I affirm that I am financially unable to advance the required costs to file a notice of hearing on a motion. Therefore, I now petition the Court for an order allowing me to file my motion as an indigent.

☐ **Petition To Appeal** - As the individual appellant in the above entitled small claims action, I affirm that I am financially unable to pay the cost for the appeal of this action from small claims to district court. Therefore, I now petition the Court for an order allowing me to appeal this action to district court as an indigent.

☐ **Petition To File Expunction Petition** - As the petitioner in the above entitled action, I affirm that I am financially unable to advance the required costs to file an expunction petition. Therefore, I now petition the Court for an order allowing me to file my expunction petition as an indigent.

(check one or more of the boxes below as applicable)

☐ I am presently a recipient of

☐ Supplemental Nutrition Assistance Program (SNAP/food stamps).

☐ Temporary Assistance for Needy Families (TANF).

☐ Supplemental Security Income (SSI).

☐ I am represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons, or I am represented by private counsel working on behalf of such a legal services organization. (Attach a letter from your legal services attorney or have your attorney sign the certificate below.)

☐ Although I am not a recipient of SNAP/food stamps, TANF, or SSI, nor am I represented by legal services, I am financially unable to advance the costs of filing this action or appeal.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

May 14, 2024

Date

Signature

5/14/2024 [Signature]

Signature Of Petitioner

[Signature]

Title Of Person Authorized To Administer Oaths

County Clerk Case Manager

Name And Address Of Petitioner (type or print)

Date Commission Expires

9/16/26

SEAL

PUBLIC

CERTIFICATE OF LEGAL SERVICES/PRO BONO REPRESENTATION

I certify that the above named petitioner is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons or is represented by private counsel working on behalf of or under the auspices of such legal services organization.

Date

Signature

Name And Address (type or print)

ORDER

Based on the Affidavit appearing above, it is ORDERED that:

☐ the petitioner is authorized to assert claims, to appeal, or file notices of hearing or petitions in this action as an indigent.

☐ the petition is denied.

Date

Signature

☐ Assistant CSC

☐ Clerk Of Superior Court

☐ Judge

☐ Magistrate (for appeal only)

NOTE TO CLERK: If the petitioner is NOT a recipient of SNAP/food stamps, TANF, SSI or is NOT represented by legal services or a private attorney on behalf of legal services, you may ask for additional financial information to determine whether the petitioner is unable to pay the costs.

ORDER - DIVISION OF PRISONS INMATES

The undersigned superior court judge of this district finds that the petitioner is an inmate in the custody of the Division of Prisons of the Department of Adult Correction and that the complaint

- ☐ is not frivolous.
☒ is frivolous.

It is ORDERED that


- ☐ the petitioner is authorized to sue in this action as an indigent.
☒ the petitioner is not authorized to sue as an indigent.
☐ the action is dismissed.

5/23/2024 4:28:22 PM

Date 5/23/2024	Name Of Superior Court Judge (type or print) Senior Resident Superior Court Judge	Signature Of Superior Court Judge 
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CERTIFICATION

I certify that this Petition has been served on the party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Date 5/30/2024	Signature 	<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
-------------------	--	--

NOTE: G.S. 1-110(b) provides: "The clerk of superior court shall serve a copy of the order of dismissal upon the prison inmate."

FILED
DATE: May 30, 2024
TIME: 4:36:20 PM
WAKE COUNTY
CLERK OF SUPERIOR COURT
BY: G. Holland

Supreme Court of North Carolina

IN RE:

DAVID LEE SMITH

From Office of Admin. Hearings
(13MIS12404 13MIS12404)

From N.C. Court of Appeals

(04-1033 P05-866 P05-922 P12-176 P14-529 P16-263 P20-230 P23-115)

From Wake

(03CRS49691 03CRS49692 03CRS49693 03CRS49694 03CRS56350 22CVS13960 23CVD13960 24CV016374-910)

ORDER

Upon consideration of the petition filed by Defendant on the 29th of July 2024 in this matter for a writ of mandamus, the following order was entered and is hereby certified to the Superior Court, Wake County:

"Denied by order of the Court in conference, this the 21st of August 2024."

Riggs, J. recused.

**s/ Allen, J.
For the Court**

The following order has been entered on the motion filed on the 12th of August 2024 by Defendant for Demand for Remand of Case with Instructions:

"Motion Dismissed by order of the Court in conference, this the 21st of August 2024."

Riggs, J. recused.

**s/ Allen, J.
For the Court**

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 26th day of August 2024.



Grant E. Buckner
Clerk, Supreme Court of North Carolina

M. C. Hackney
M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

APP.-C

Copy to:

North Carolina Court of Appeals

Ms. Kimberly N. Callahan, Special Deputy Attorney General, For State of NC - (By Email)

Ms. Kathleen N. Bolton, Assistant Attorney General, For State of NC - (By Email)

Mr. David Lee Smith, For Smith, David Lee

The Honorable District Attorney

The Honorable Clerk of Superior Court, Wake County

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