

PRISONER,PROSE

**U.S. District Court
District of South Carolina (Beaufort)
CIVIL DOCKET FOR CASE #: 9:12-cv-03493-DCN**

Incumaa v. Byars
Assigned to: Honorable David C Norton
Case in other court: USCA, 14-06411
Cause: 42:1983 Prisoner Civil Rights, State Filers

Date Filed: 12/12/2012
Jury Demand: None
Nature of Suit: 555 Prison:Prison
Condition
Jurisdiction: Federal Question

Plaintiff

Lumumba K Incumaa
also known as
Theodore Harrison, Jr

represented by **Elizabeth Anne Franklin-Best**
Blume Norris and Franklin-Best
900 Elmwood Avenue
Suite 200
Columbia, SC 29201
803-765-1044
Email: elizabeth.a.franklin@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Erin Camille Johnston
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LEAD ATTORNEY
PRO HAC VICE
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V.

Defendant

Honorable William R Byars, Jr
as Director of the SCDC
TERMINATED: 03/11/2014

represented by **Andrew F Lindemann**
Davidson Morrison and Lindemann
PO Box 8568
Columbia, SC 29202-8568
803-806-8222
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Defendant

Bryan P Stirling
*Acting Director of the South Carolina
Department of Corrections*

represented by **Andrew F Lindemann**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/12/2012	<u>1</u>	COMPLAINT against William R Byars, Jr, filed by Lumumba K Incumaa. (Attachments: # <u>1</u> Inmate Grievance Forms, # <u>2</u> Envelope)(cw,) (Entered: 12/13/2012)
12/12/2012	<u>2</u>	MOTION for Leave to Proceed in forma pauperis (Restricted Access) by Lumumba K Incumaa. Motions referred to Bristow Marchant.(cw,) (Entered: 12/13/2012)

12/13/2012	<u>4</u>	TRUE DIVISION FOR TRIAL: Charleston. (cwhi,) (Entered: 12/13/2012)
01/09/2013	<u>8</u>	ORDER authorizing service of process and collection of filing fee. Plaintiff has incurred a debt to the U.S.A. in the amount of \$350. Plaintiff is also directed to notify the clerk in writing of any change of address. Signed by Magistrate Judge Bristow Marchant on 1/8/2013. (cwhi,) (Entered: 01/09/2013)
01/09/2013	<u>9</u>	REFERENCE <u>8</u> ORDER granting <u>2</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Bristow Marchant on 1/8/2013. (cwhi,) (Entered: 01/09/2013)
01/09/2013	<u>10</u>	Summons Issued as to William R Byars, Jr. (cwhi,) (Entered: 01/09/2013)
01/09/2013	<u>11</u>	***DOCUMENT MAILED <u>8</u> Order 1983, placed in U.S. Mail to Lumumba K Incumaa. (cwhi,) (Entered: 01/09/2013)
02/13/2013	<u>12</u>	SUMMONS Returned Executed by Lumumba K Incumaa. William R Byars, Jr served on 2/1/2013, answer due 2/22/2013. (cwhi,) (Entered: 02/13/2013)
02/21/2013	<u>13</u>	MOTION for Extension of Time to File Answer re <u>1</u> Complaint by William R Byars, Jr. Response to Motion due by 3/11/2013. (Attachments: # <u>1</u> Affidavit of Andrew F. Lindemann, # <u>2</u> Certificate of Service)Proposed order is being emailed to chambers with copy to opposing counsel.Motions referred to Bristow Marchant.(Lindemann, Andrew) (Entered: 02/21/2013)
02/22/2013	<u>14</u>	ORDER granting <u>13</u> Motion for Extension of Time to Answer. William R Byars, Jr answer due 3/15/2013. Signed by Magistrate Judge Bristow Marchant on 2/22/2013. (cwhi,) (Entered: 02/22/2013)
02/22/2013	<u>15</u>	***DOCUMENT MAILED <u>14</u> Order on Motion for Extension of Time to Answer placed in U.S. Mail to Lumumba K Incumaa. (cwhi,) (Entered: 02/22/2013)
03/15/2013	<u>16</u>	ANSWER to <u>1</u> Complaint by William R Byars, Jr. (Attachments: # <u>1</u> Certificate of Service)(Lindemann, Andrew) (Entered: 03/15/2013)
04/23/2013	<u>18</u>	MOTION for Extension of Time to <i>Serve Responses to Plaintiff's Interrogatories and Requests for Production</i> by William R Byars, Jr. Response to Motion due by 5/13/2013. (Attachments: # <u>1</u> Certificate of Service)No proposed order.Motions referred to Bristow Marchant.(Lindemann, Andrew) (Entered: 04/23/2013)
04/24/2013	<u>19</u>	TEXT ORDER granting <u>18</u> Motion for Extension of Time to Serve Responses to Plaintiff's Interrogatories and Requests for Production. Responses due by May 23, 2013. Signed by Magistrate Judge Bristow Marchant on 04/24/2013. (elac,) (Entered: 04/24/2013)
04/24/2013	<u>20</u>	***DOCUMENT MAILED <u>19</u> Order on Motion for Extension of Time, placed in U.S. Mail to Lumumba Incumaa. (elac,) (Entered: 04/24/2013)
05/20/2013	<u>21</u>	DECLARATION by Lumumba K Incumaa. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Exhibit A-D, # <u>3</u> Envelope and Cover Letter)(cwhi,) (Entered: 05/21/2013)
05/20/2013	<u>22</u>	Letter from Lumumba K. Incumaa. Document referenced in this letter was received on the same date. Docketed copy of the document has been mailed to the plaintiff. (Attachments: # <u>1</u> Envelope)(cwhi,) (Entered: 05/21/2013)
06/26/2013	<u>23</u>	ORDER that the parties shall have twenty (20) days from the entry date of this Order to file dispositive motions. In the event neither party files a dispositive motion, the file will be forwarded to a United States District Judge for trial. Signed by Magistrate Judge Bristow Marchant on 6/26/2013. (cwhi,) (Entered: 06/26/2013)
06/26/2013	<u>24</u>	***DOCUMENT MAILED <u>23</u> Order, placed in U.S. Mail to Lumumba K Incumaa. (cwhi,) (Entered: 06/26/2013)
07/16/2013	<u>25</u>	MOTION for Summary Judgment by William R Byars, Jr. Response to Motion due by 8/2/2013. (Attachments: # <u>1</u> Memo in Support, # <u>2</u> Affidavit of Elbert Pearson, # <u>3</u> Affidavit of Sandra Bowie, # <u>4</u> Affidavit of Michael Stobbe, # <u>5</u> Certificate of Service)No proposed order.Motions referred to Bristow Marchant.(Lindemann, Andrew) (Entered: 07/16/2013)

07/18/2013	<u>26</u>	ROSEBORO ORDER directing clerk to forward summary judgment explanation to the opposing party and directing that party to respond in 34 days. Response due to <u>25</u> MOTION for Summary Judgment by 8/22/2013. Signed by Magistrate Judge Bristow Marchant on 7/18/2013. (cwhi,) (Entered: 07/18/2013)
07/18/2013	27	***DOCUMENT MAILED <u>26</u> Roseboro Order, placed in U.S. Mail to Lumumba K Incumaa. (cwhi,) (Entered: 07/18/2013)
08/05/2013	<u>28</u>	RESPONSE in Opposition re <u>25</u> MOTION for Summary Judgment Response filed by Lumumba K Incumaa. Reply to Response to Motion due by 8/15/2013. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Exhibit 1 – 3, # <u>3</u> Certificate of Service, # <u>4</u> Envelope)(cwhi,) (Entered: 08/05/2013)
08/15/2013	<u>30</u>	MOTION for Extension of Time to File Response/Reply as to <u>28</u> Response in Opposition to Motion, by William R Byars, Jr. Response to Motion due by 9/3/2013. (Attachments: # <u>1</u> Affidavit of Andrew F. Lindemann, # <u>2</u> Certificate of Service) Proposed order is being emailed to chambers with copy to opposing counsel. Motions referred to Bristow Marchant. (Lindemann, Andrew) (Entered: 08/15/2013)
08/19/2013	<u>31</u>	ORDER granting <u>30</u> Motion for Extension of Time to File Response/Reply. The Defendant's deadline to file a Reply to the Plaintiffs Response to the Defendant's Motion for Summary Judgment is extended to August 30, 2013. Signed by Magistrate Judge Bristow Marchant on 8/19/2013. (cwhi,) (Entered: 08/19/2013)
08/19/2013	32	***DOCUMENT MAILED <u>31</u> Order on Motion for Extension of Time to File Response/Reply, placed in U.S. Mail to Lumumba K Incumaa. (cwhi,) (Entered: 08/19/2013)
08/22/2013	<u>33</u>	Letter from Lumumba K Incumaa. (Attachments: # <u>1</u> Envelope)(cwhi,) (Entered: 08/22/2013)
08/31/2013	<u>34</u>	REPLY to Response to Motion re <u>25</u> MOTION for Summary Judgment Response filed by William R Byars, Jr. (Attachments: # <u>1</u> Supplemental Affidavit of Elbert Pearson, # <u>2</u> Certificate of Service)(Lindemann, Andrew) (Entered: 08/31/2013)
09/11/2013	<u>36</u>	DECLARATION by Lumumba K Incumaa. (Attachments: # <u>1</u> Cover Letter and Envelope)(cwhi,) (Entered: 09/11/2013)
09/24/2013	<u>37</u>	REPORT AND RECOMMENDATION of Magistrate Judge Bristow Marchant. It is recommended that the Defendants motion for summary judgment be granted, and that this case be dismissed. Objections to RR due by 10/11/2013. Signed by Magistrate Judge Bristow Marchant on 9/24/2013. (cwhi,) (Entered: 09/24/2013)
09/24/2013	38	***DOCUMENT MAILED <u>37</u> REPORT AND RECOMMENDATION re <u>25</u> MOTION for Summary Judgment filed by William R Byars, Jr placed in U.S. Mail to Lumumba K Incumaa. (cwhi,) (Entered: 09/24/2013)
10/02/2013	<u>39</u>	OBJECTION to <u>37</u> Report and Recommendation by Lumumba K Incumaa. Reply to Objections due by 10/21/2013. (Attachments: # <u>1</u> Envelope)(cwhi,) (Entered: 10/02/2013)
10/09/2013	41	Case Reassigned to Judge Honorable David C Norton. Judge Honorable Cameron McGowan Currie no longer assigned to the case. (suro,) (Entered: 10/09/2013)
10/09/2013	42	***DOCUMENT MAILED 41 Case Reassigned placed in U.S. Mail to Lumumba K Incumaa (suro,) (Entered: 10/09/2013)
01/28/2014	<u>44</u>	ORDER requesting additional briefing re <u>25</u> MOTION for Summary Judgment filed by William R Byars, Jr Signed by Honorable David C Norton on 1/28/2014. (cahe,) (Entered: 01/28/2014)
01/31/2014	45	***DOCUMENT MAILED <u>44</u> Order placed in U.S. Mail to Lumumba K Incumaa. (cwhi,) (Entered: 01/31/2014)

02/27/2014	<u>46</u>	SUPPLEMENT by William R Byars, Jr to <u>25</u> MOTION for Summary Judgment (<i>Supplemental Memorandum requested by Court Order</i>). (Attachments: # <u>1</u> Affidavit of Robert E. Ward, # <u>2</u> Certificate of Service)(Lindemann, Andrew) (Entered: 02/27/2014)
03/10/2014	<u>47</u>	REPLY by Lumumba K Incumaa to <u>46</u> Supplement. (Attachments: # <u>1</u> Envelope and Cover Letter)(cwhi,) (Entered: 03/10/2014)
03/11/2014	<u>48</u>	ORDER granting <u>25</u> Motion for Summary Judgment; adopting Report and Recommendations re <u>37</u> Report and Recommendation. Signed by Honorable David C Norton on 3/11/2014. (cahe,) (Main Document 48 replaced on 3/11/2014) (jbry,). Modified on 3/11/2014 to replace with corrected document per chambers (jbry,). (Entered: 03/11/2014)
03/11/2014	<u>49</u>	JUDGMENT The Report and Recommendation of Magistrate Judge Marchant is accepted. The Defendant's Motion for Summary Judgment is granted. (jbry,) (Entered: 03/11/2014)
03/11/2014	50	***DOCUMENT MAILED <u>48</u> Order on Motion for Summary Judgment, Order on Report and Recommendation,, <u>49</u> Judgment placed in U.S. Mail to Lumumba K Incumaa (jbry,) (Entered: 03/11/2014)
03/18/2014	<u>51</u>	NOTICE OF APPEAL as to <u>48</u> Order on Motion for Summary Judgment, Order on Report and Recommendation,, by Lumumba K Incumaa. – The Docketing Statement form, Transcript Order form and CJA 24 form may be obtained from the Fourth Circuit website at www.ca4.uscourts.gov (Attachments: # <u>1</u> Cover Letter and Envelope)(cwhi,) (Entered: 03/18/2014)
03/18/2014	<u>52</u>	Transmittal Sheet for Notice of Appeal to USCA re <u>51</u> Notice of Appeal, The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (cwhi,) (Entered: 03/18/2014)
03/18/2014	53	***DOCUMENT MAILED <u>52</u> Transmittal Sheet for Notice of Appeal to USCA, placed in U.S. Mail to Lumumba K Incumaa. (cwhi,) (Entered: 03/18/2014)
03/18/2014	54	ASSEMBLED INITIAL ELECTRONIC RECORD TRANSMITTED TO FOURTH CIRCUIT COURT OF APPEALS re <u>51</u> Notice of Appeal, Electronic record successfully transmitted. (cwhi,) (Entered: 03/18/2014)
04/03/2014	<u>57</u>	ORDER of USCA as to <u>51</u> Notice of Appeal, filed by Lumumba K Incumaa (jbry,) (Entered: 04/03/2014)
10/20/2014	<u>58</u>	ORDER of USCA re appoint of counsel as to <u>51</u> Notice of Appeal, filed by Lumumba K Incumaa. (cwhi,) (Entered: 10/20/2014)
07/01/2015	<u>59</u>	USCA OPINION for <u>51</u> Notice of Appeal, filed by Lumumba K Incumaa. Decision of Appeals Court Affirming in part, reversing in part, and remanding for further proceedings Decision of District Court. (jbry,) (Entered: 07/01/2015)
07/07/2015	<u>60</u>	ORDER of USCA as to <u>51</u> Notice of Appeal, filed by Lumumba K Incumaa. The Court amends its opinion filed July 1, 2015. The amended opinion, issued July 7, 2015, supersedes the opinion filed July 1, 2015. (jbry,) (Entered: 07/07/2015)
07/07/2015	<u>61</u>	AMENDED USCA OPINION for <u>51</u> Notice of Appeal, filed by Lumumba K Incumaa. Decision of Appeals Court affirming in part, reversing in part, and remanding for further proceedings the Decision of District Court. (jbry,) (Entered: 07/07/2015)
07/23/2015	<u>62</u>	USCA MANDATE and Judgment as to <u>51</u> Notice of Appeal, filed by Lumumba K Incumaa (Attachments: # <u>1</u> Judgment)(jbry,) (Entered: 07/23/2015)
11/24/2015	<u>63</u>	NOTICE of Appearance by Elizabeth Anne Franklin–Best on behalf of Lumumba K Incumaa (Franklin–Best, Elizabeth) (Entered: 11/24/2015)
11/24/2015	<u>64</u>	MOTION to Appear Pro Hac Vice by Erin Camille Johnston (Filing fee \$ 250 receipt number 0420–6277875) by Lumumba K Incumaa. Response to Motion due by 12/11/2015. (Attachments: # <u>1</u> Supporting Documents Motion in Support of Pro Hac, Erin Johnston)Proposed order is being emailed to chambers with copy to

		opposing counsel.(Franklin–Best, Elizabeth) (Entered: 11/24/2015)
12/02/2015	<u>65</u>	ORDER granting <u>64</u> Motion by Erin Camille Johnston to Appear Pro Hac Vice. Signed by Honorable David C Norton on 12/2/2015.(jbry,) (Entered: 12/02/2015)
12/03/2015	<u>66</u>	NOTICE of Change of Address by Lumumba K Incumaa. Address updated in ECF this date. (Attachments: # <u>1</u> Envelope)(cwhi,) (Entered: 12/03/2015)