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**Aug 21 2023**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

**APPEAL FROM THE ADMINISTRATIVE LAW COURT**

**Hon. Sebastian P. Lenski, Admin. Law Judge**

**Case No. 2023-001291**

John Garvin ..... Appellant,

v.


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

**MOTION TO PROCEED  
IN FORMA PAUPERIS ON APPEAL**

**YOU WILL PLEASE TAKE NOTICE**, that upon the affidavit of John Garvin, sworn to on the 21<sup>st</sup> day of August, 2023, a Motion will be made at a term of this court, for an Order permitting Appellant to proceed *in forma pauperis* with the appeal of an Order that was entered in this action on the 17<sup>th</sup> day of July, 2023, as a poor person in this action to waive the \$250 filing fee, thus, granting permission to appeal the Administrative Law Court’s, upon the ground that said Appellant has insufficient income and property to enable him to pay the costs, fees, and expenses to prosecute said appeal, and for such other and further relief as this Court may deem just and proper.

Appellant’s Motion is made pursuant to *Harrison v. Harrison*, 373 S.C. 524, 646 S.E.2d 180 (2007) and the attached affidavit of John Garvin, and memorandum of law, copies of which are served with this motion, and on the pleadings filed in this action.

**DATED: August 21, 2023**

  
**John Garvin, # 355509, Pro-se.  
Ridgeland Correctional Institution  
P.O. Box # 2039  
Ridgeland, S.C. 29936**

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**AFFIDAVIT IN SUPPORT OF MOTION TO  
PROCEED IN FORMA PAUPERIS ON APPEAL**

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I, John Garvin, being first duly sworn, deposes and says:

1. I am the Appellant in the above – captioned case, and I make this affidavit in support of the attached Motion to Proceed In Forma Pauperis on Appeal.
2. I am presently in the custody of Warden, Levern Cohen at Ridgeland Correctional Institution, pursuant to a judgment of the Spartanburg County Court of General Sessions of the State of South Carolina rendered on May 23, 2013, convicting me of drug trafficking, pursuant to S.C. Code Ann. § 44-53-370(e)(3), and sentencing me to 25 years imprisonment.
3. On August 11, 2023, I filed with this Court a Notice of Appeal. On August 15, 2023, this Court issued to me a deficiency letter in regards to paying a \$250.00 Court filing fee to be paid within ten (10) days.
4. I would like to state that I am currently incarcerated and that I have no real means of earning an income while being incarcerated, in addition, I have no assets or property of any worth with which I can pay the \$250.00 court filing fee.
5. Because of my indigence, I am financially unable to pay the \$250.00 court filing fee that’s necessary to proceed with appealing the South Carolina Administrative Law Court’s granting of the Respondent’s Motion to Dismiss.



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**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO PROCEED IN FORMA PAUPERIS ON APPEAL**

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**STATEMENT OF THE CASE**

This matter is before the South Carolina Court of Appeals pursuant to the appeal of John Garvin (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”).

On July 17, 2023, the Hon. Sebastian P. Lenski, Admin. Law Judge with the South Carolina Administrative Law Court (“ALC”) granted SCDC’s Motion to Dismiss Appellant’s appeal of his inmate grievances with that Court about SCDC’s denial of Appellant grandchildren’s visitation forms for failing to provide their social security numbers. On August 11, 2023, Appellant filed a Notice of Appeal with the South Carolina Court of Appeals. On August 15, 2023, this Court issued to Appellant a deficiency letter in regards to paying a \$250.00 court filing fee to be paid within ten (10) days. This Motion to Proceed In Forma Pauperis is now presented before this court.

## STANDARD OF REVIEW

“[I]t is appropriate to waive filing fees. [When] [i]n the absence of a statutory provision allowing the general waiver of filing fees, [the South Carolina Supreme Court] conclude[d] [that] motion to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions.... Further[more], where certain fundamental rights are involved, the constitution requires that an indigent be allowed access to the courts.” See *Martin v. State*, 321 S.C. 533, 535, 47 S.E.2d 134, 135 (1995) (citation omitted with alteration). [W]hen an indigent litigant files a motion to proceed in forma pauperis pursuant to Rule – 3(c), [SCRCP,] and the complaint does not appear to fit within one of the statutory or constitutional exceptions to the requirement of a filing fee, the clerk of court must submit the motion to a judge for a ruling as to whether the complaint does fit within one of the statutory exceptions or whether the cause of action concerns a fundamental right that requires waiver of the filing fee. *Id.* at 535, 471 S.E.2d at 135.

## STATEMENT OF FACTS

On November 11, 2022, Appellant made a kiosk informal resolution attempt to the visitation department about it’s denial of Appellant grandchildren’s visitation forms. (see Kiosk Request No. 22-02887365, stating that “[t]he directives for visitation are approved by Director Sterling. The institution has no authority to change policy directives.”). On November 17, 2022, Appellant filed a Step-One grievance as to the November 11, 2022, informal resolution attempt that was made in regards to SCDC’s visitation department’s denial of Appellant grandchildren’s visitation forms for failing to provide their social security numbers. On November 30, 2022, the Warden would rule that there was “no evidence [that] can be found in this instance where staff failed to perform their job duties properly,” and would fail to address the merits of his Step-One

grievance form. On December 2, 2022, Appellant would file a Step-Two grievance with SCDC's grievance department appealing the Warden's decision, because he would fail to properly rule on the merits or even address Appellant's concerns about the denial of his grandchildren's visitation forms.

SCDC has used an arbitrary and capricious unwritten policy and procedure to disapprove and deny Appellant grandchildren's visitation forms, for failing to provide their social security numbers for identification purposes. SCDC has disregarded and overlooked its written policy regarding identification purposes for all visitors nine (9) years of age and under. SCDC's visitation department's approval and denial process of Appellant grandchildren's visitation forms, deprives him of proper due process by arbitrarily denying his grandchildren's visitation forms with the use of an unwritten policy, that has deprived him of a State-created liberty interest to visit with family members, pursuant to SCDC policy OP – 22.09.

On March 9, 2023, Appellant's Step-Two grievance was denied. On April 4, 2023, Appellant served a Notice of Appeal on the South Carolina Administrative Law Court. On June 28, 2023, the Respondent's filed a Motion to Dismiss. On July 7, 2023, Appellant would object to the Respondent's Motion to Dismiss.

On July 17, 2023, the Hon. Sebastian P. Lenski, Admin. Law Judge with the South Carolina Administrative Law Court ("ALC") granted SCDC's Motion to Dismiss Appellant's appeal of his inmate grievances with that Court about SCDC's denial of Appellant grandchildren's visitation forms for failing to provide their social security numbers. On August 11, 2023, Appellant filed a Notice of Appeal with the South Carolina Court of Appeals. On August 15, 2023, this Court issued to Appellant a deficiency letter in regards to paying a \$250.00 court filing fee to be paid within ten (10) days.

## ARGUMENT

The South Carolina Supreme Court has cited in *Harrison v. Harrison, supra.*, a United States Supreme Court case in *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780 (1971): “due process requires, at a minimum, that absent a countervailing state interest of overriding significance, person forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.” See 373 S.C. 524, 525, 646 S.E.2d 180, 181 (2007). The court summarized its position by stating:

“[D]ue process does prohibit a state from denying, solely because of inability to pay, access to its courts to individuals who seek judicial [review] of their [complaints].”

*Id.* at 525 – 526, 646 S.E.2d 180.

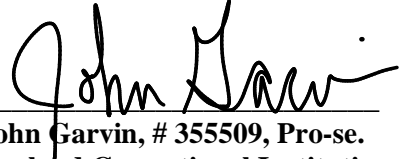
Here in this case Appellant seeks to proceed as a *pauper*, whereas, he has no means of earning an income while incarcerated and has no assets with which he can pay the \$250.00 court filing fee. Therefore, this Court must examine the appeal to see whether it presents a countervailing state interest of overriding significance. The facts of this case indicate that Appellant is indigent due to his incarceration and seeks access to this Court to appeal the granting of the Respondent’s Motion to Dismiss in the Administrative Law Court. *Harrison, supra.*, clearly requires Appellant to be allowed to proceed *in forma pauperis* in this court. Due process prohibit the denial of an inmate’s request to proceed *in forma pauperis* in this action for the appeal of an arbitrary ruling. *Id.*

Now, being that this appeal does trigger a due process guarantee and a deprivation of a State-created liberty interest that has been implicated in this case. This Court should grant Appellant’s Motion to Proceed *In Forma Pauperis*.

**CONCLUSION**

Because this case does implicate a State-created liberty that Appellant was deprived of in violation of proper due process this motion to proceed *in forma pauperis*, should be granted. .

**RESPECTFULLY SUBMITTED** this 21<sup>st</sup> day of August, 2023.



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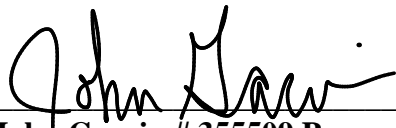
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**CERTIFICATE OF SERVICE**

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I, John Garvin, certify that I have served **A MOTION TO PROCEED IN FORMA PAUPERIS with supporting Affidavit and Memorandum of Law** on the Court to be delivered by via e-mail on August 21, 2023, addressed to the Hon. Jenny A. Kitchings, Clerk of Court of Appeals, at e-mail ctappfilings@sccourts.org; and to Mr. Joseph R. Shakibanasab, of SCDC Office of General Counsel, at e-mail: shakibanasab.joseph@doc.sc.gov.

**DATED: August 21, 2023**

  
**John Garvin # 355509 Pro-se.  
Ridgeland Correctional Institution  
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