

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
ADMINISTRATIVE LAW COURT
Hon. Ralph King Anderson, III, Presiding

Appellate Case No. 2024-002046
Below Docket No. 24-ALJ-04-0131-AP

RECEIVED

JAN 06 2025
SC Court of Appeals

Charles Nemon Vandross, #316095, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Notice of Motion and Motion To Waive
Filing Fees and Application To
Proceed Without Prepayment of Costs, Fees and Expenses
and Financial Statement

Charles Nemon Vandross
Appellant, Pro Se
Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

Other Counsel of Record:

Lake E. Summers
Malone, Thompson, and Summers, LLC
339 Heyward St., Suite 200
Columbia, SC 29201

COMES NOW, Charles Nemon Vandross, by and through Pro Se, who hereby gives ten (10) days notice of motion, and hereby moves this Court for an Order waiving the filing fees associated with this appeal, the Notice of Appeal and all subsequent filing fees beyond. The Appellant, in support hereof, has attached the Financial Statement of the Appellant's E.H. Cooper Trust Fund Account, if available, signed by financial accounting branch official of the South Carolina Department of Corrections showing Appellant is indigent, and has no wage paying employment within the prison system. The Grounds for this motion shall be:

1. The Appellant, is an indigent award of the State of South Carolina, currently housed in the South Carolina Department of Corrections, at Allendale Correction Institution; and
2. That, as demonstrated by the herewith, if available, attached Financial Statement of Appellant's E.H. Cooper Trust Fund Account, which has had only small balances within the preceding six (6) months, and due to the fact that he has no gainful wage paying employment within the prison system, Appellant is indigent and unable to pay the filing fees associated with the proceedings in this appeal; and
3. That, Appellant has raised meritorious issues on appeal, and it would be an injustice to deny Appellant judicial review, based solely upon his inability to pay the filing fees; and that in the interest of justice, the filing fees should be waived; and
4. That, as contended here, recently, this Court held:

Because, Appellant alleges he has been denied a prevailing wage, we grant his motion to proceed in former pauperis. Ex Parte Martin, 321 S.C. 553, 535, 471 S.E.2d 134, 134-35 (1995)(Motions to proceed in former pauperis may be granted only when authorized by statute or required by constitutional provisions."; Wicker v. S.C. Dep't of Corrs., 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004)(recognizing a state-created property interest in the payment of prevailing wage)

Roy White, #263221 v. South Carolina Department of Corrections, Appellate Case No. 2024-001745, Filed November 26, 2024; and

5. That, because this appeal involves a fundamental right, to judicial review of the final decision of an administrative agency, pursuant to art. I, § 22, South Carolina Constitution, and procedural due process, the Court in its broad discretion, should waive the filing fees associated with this appeal :

(a) The issues on appeal involve the deprivation of Appellant' property in the form of prevailing wages, as statutorily mandated. S.C. Code Ann., §§ 24-3-315, 24-3-430(D) As such, it involves a fundamental right. The United States Supreme Court has so often characterized individual rights in property as "fundamental" that it is difficult reference every unique instance. Our Supreme Court in Al-Shabazz v. South Carolina Department of Corrections, stated "Procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty or property." 338 S.C. at 369, 527 S.E.2d at 750.

(b) The state-created right to prevailing wages, is a fundamental right secured to Appellant in the Fourteenth Amendment's Due Process Clause, as held in Wicker v. South Carolina Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) There, the Supreme Court of this State, held:

"We find, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot deny that right without affording due process of law."

Id. 360 S.C. at 425, 602 S.E. at 58. (Emphasis provided)

(c) While the United States Supreme Court has struck down filing fee requirements in cases involving fundamental rights, see Boddie v. Connecticut, 401 U.S. at 379-83, the appellate courts of this State have similarly held that in the absence of a claim involving fundamental

rights, courts may require filing fees. *Martin v. State*, 321 S.C. 533, 535 (1995) Here, it is clear, Appellant's appeal involves matters of fundamental property rights under the Due Process Clause.

6. Because, this appeal is Appellant's only appeal as of right, it would be a miscarriage of justice to deny him access to appellate review, based solely on account of his inability to pay the filing fee, especially, where a fundamental right created by statutory mandate to a prevailing wage is involved.

No person shall be bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and opportunity to be heard.... and he shall have in all such instances the [r]ight to judicial review."

art. I, § 22, S.C. Constitution

In *Ex Parte Rice*, 307 S.C. 469, 41 S.E.2d 819 (1992) our Supreme Court held:

... petitioner is clearly being denied due process by the ... court's refusal to allow him to proceed without prepayment of costs. See *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780 (1971); see also *Adkins v. E.I. DuPont DeNemours and Co.*, 335 U.S. 331, 69 S.Ct. 85 (1948)

7. The Appellant was permitted to proceed in the Administrative Law Court, without prepayment of filing fees, due to his indigency. Appellant, requests similar notions of justice, and equity arise to this Court; and

WHEREFORE, having presented the foregoing matters, Appellant moves for an Order, allowing him to proceed in this appeal without the prepayment of costs, filing fees, and expenses, and to proceed in former pauperis.

Respectfully Submitted,

Fairfax, South Carolina.

Charles N Vandross

Charles Nemon Vandross

Appellant, Pro Se

Missouri Correction Institution

1057 Revolutionary Trail

Fairfax, SC 29827

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
ADMINISTRATIVE LAW COURT
Hon. Ralph King Anderson, III, Presiding

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SC Court of Appeals

Appellate Case No. 2024-002046
Below Docket No. 24-ALJ-04-0131-AP

Charles Nemon Vandross, #316095, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Application To Proceed Without Prepayment
of Costs, Fees and Expenses
and Financial Statement

Comes Now, Charles Nemon Vandross, (Appellant/Affiant) who hereby requests permission to proceed in the above-captioned appeal in former pauperis, without prepayment of costs, fees, expenses, or security therefor on account of Appellant's indigency. In support hereof is an attached Financial Statement, and Appellant/Affiant states:

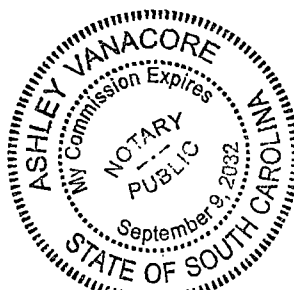
1. That I am an indigent ward of the State, and due to my indigency cannot pay for the costs, fees, or expenses associated with this appeal; and
2. That this statement is true, and accurate, and made under penalty of perjury.

Charles N Vandross
Charles Nemon Vandross

Appellant/Affiant, Pro Se

SWORN TO BEFORE ME AND SUBSCRIBED
THIS 19 DAY OF December, 2024.

Ashley Vanacore
Notary Public for South Carolina
My Commission Expires: 9/9/32



CERTIFICATE OF SERVICE

I, Charles Nemon Vandross, hereby certify that I have this 19th Day of December, 2024, served a true copy of the:

1. Proof of Service re: NOTICE OF APPEAL, upon the Clerk of the Administrative Law Court, and counsel for the Respondent,

2. Notice of Motion, and Motion To Waive Filing Fees; and Application To Proceed Without Prepayment of Costs, Fees, and Expenses and Financial Statement;

by depositing a copy of same in the United States Mail receptacle located on Allendale yard, first-class postage affixed thereto and addressed as follows:

Lake E. Summers
Malone, Thompson, and Summers, LLC
339 Heyward St., Suite 200
Columbia, SC 29201

Date: 19 December 2024

Charles N Vandross

Charles Nemon Vandross

Appellant, Pro Se

Allendale Correction Institution

1057 Revolutionary Trail

Fairfax, SC 29827

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JAN 06 2025

SC Court of Appeals

Charles Nemon Vandross, #316095
Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

Attention:

Clerk of South Carolina
Court of Appeals
1015 Sumter St., P.O. Box 11629
Columbia, SC 29211

Date: 19 December 2024

Re: Enclosures for Filing Purposes
Charles N. Vandross v. SCDC
Appellate Case No. : 2024-002046
Proof of Service re: Notice of Appeal (to Clerk of ALC)
Notice/Motion To Waive Filing Fees and Application to
Proceed Without Prepayment of Costs, Fees, and Expenses
Below Docket No. : 24-ALJ-04-0131-AP
Ralph King Anderson, III, Presiding

To Catherine Harrison, Dep. Clerk:

Dear Ms. Harrison,

Thank you for your communication, dated December 5, 2024, wherein you noted deficiencies in the filings of the notice of appeal, and proof of service. You threaten to dismiss the appeal if deficiencies are not corrected "within ten (10) days" of the date of your letter. Please be advised, I only received your mailing on December 9, 2024, meaning by the time I received your mailing, four (4) days had already elapsed. Therefore, I request you take note of this unreasonably short deadline.

Please find enclosed for filing purposes, on behalf of the Appellant in the above-referenced matter:

1. Notice and Motion To Waive Filing Fees; and Application to Proceed Without Costs, Fees, and Expenses; and Financial Statement
2. Proof of Service of the Notice of Appeal Upon Administrative Law Court below as requested by Catherine Harrison, Dep. Clerk (Ct.App.); and
3. Certificate of Service

Please file with the Court Record. Return extra-copy stamped filed.

kindest Regards,

Charles N. Vandross
Charles Nemon Vandross
Appellant, Pro Se

CNV/
Enclosures
cc: File
Lake Summers, Esquire

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SC Court of Appeals

Charles N. Vandross, #316095
Allendale Correction Institution
1057 Revolutionary Trail
Fairfax, SC 29827

ATTN:

Clerk of South Carolina
Court of Appeals
1015 Sumter Street, P.O. Box 11629
Columbia, SC 29211

Date: 19 December 2024

Re: Enclosures for Filing Purposes
Charles Nemon Vandross v. SCDC
Initial Brief of Appellant
Below: 24-ALJ-04-0131-AP

To Whom It Concerns:

Please find enclosed for filing purposes, on behalf of the
Appellant in the above-referenced matter:

1. Initial Brief of Appellant;
2. Certification;
3. Certificate of Service

Please file with the Court Record, and I respectfully request the
enclosed extra-copy hereof be returned to me Clocked-In/Stamped
Filed.

Kindest Regards,

Charles N Vandross

Charles Nemon Vandross

Appellant, Pro Se

CNV/

Enclosures

cc: File

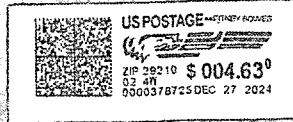
Lake E. Summers, Esquire

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SC Court of Appeals

Charles Vandross
316095, ACI, HARB-42
1057 Revolutionary Trail
Fairfax, SC 29827



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SC Court of Appeals

INTER-AGENCY MAIL

Clerk's Office
South Carolina Court of Appeals
1015 Sumter Street, PO Box 11629
Columbia, SC 29201

