

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

---

**APPEAL FROM SPARTANBURG COUNTY**  
**Court of Common Pleas**  
**Hon. Grace Gilcrest-Knie, Circuit Court Judge**

---

**Lower Court Case No. 2025-CP-42-03614**  
**Appellate Court Case No. 2026-001039**

---

John Garvin. . . . . Appellant,

v.

The State of South Carolina and Asst. Solicitor, James E. Hunter. . . . . Appellee.

---

***SUBSEQUENT APPLICATION FOR RELIEF,***  
***PURSUANT TO RULE – 266, SCACR***

---

**NOW COMES**, the Appellant, John Garvin, proceeding as pro-se, and respectfully files this Subsequent Application for Relief pursuant to Rule – 266 of the South Carolina Appellate Court Rules. Appellant requests that this Court reconsider its Orders file dated August 27, 2026, denying his motion to proceed *in forma pauperis*, denying his motion for the South Carolina Commission on Indigent Defense to pay for the transcripts, and denying his motion to proceed without transcripts. In support thereof, Appellant states as follows:

**I. FACTUAL BACKGROUND**

1. Appellant is an indigent inmate incarcerated at the Ridgeland Correctional Institution. He has no income, no assets, and is unable to pay the costs associated with prosecuting this appeal.
2. On April 24, 2026, Appellant filed a Notice of Appeal from two circuit court orders: (1) the Order granting Respondent, James E. Hunter's Motion to Dismiss Appellant's declaratory judgment action, entered November 7, 2025; and (2) the Order denying Appellant's Rule – 59(e) Motion to Alter or Amend Judgment, entered April 8, 2026.

3. On May 14, 2026, Appellant filed a Motion to Proceed In Forma Pauperis. On June 2, 2026, Appellant filed a Motion for S.C. Indigent Defense to pay for Transcript at Public Expense.
4. On June 2, 2026, Appellant filed a Motion for Permission to Order Transcripts Outside the Filing Deadlines. The Court granted that motion.
5. On June 26, 2026, Appellant filed a Motion to Proceed on the Record Without Transcripts.
6. On August 27, 2026, this Court issued an Order denying Appellant's motion to proceed in forma pauperis, stating: "The right to proceed in forma pauperis must rest upon a statute or a fundamental constitutional right. See *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). Appellant has the burden of showing he is entitled to this relief, but he has not done so." (See Exhibit – A). Whereas, the Order also denied Appellant's Motion for S.C. Indigent Defense to pay for Transcript at Public Expense, and denying Appellant's Motion to Proceed Without Transcripts.
7. The Court's Order requires Appellant to pay the filing fee within fifteen days of the date of the Order and to order the transcripts. Appellant is unable to pay the filing fee due to his indigent status. The Court's Order effectively denies Appellant access to the appellate courts despite his claim that he is being held pursuant to a void judgment—a claim that implicates fundamental liberty interests.

## **II. LEGAL STANDARD**

8. Rule – 266, SCACR, provides in relevant part:

"The Supreme Court or the Court of Appeals may, on application of any party or on its own motion, modify, vacate, or set aside any order or judgment of the appellate court. The application shall be made by a motion filed within fifteen days after the filing of the order or judgment, and shall briefly state the grounds upon which relief is sought. No response to the application need be filed unless the court requests a response."

See Rule – 266, SCACR.

9. This Application is filed within fifteen days of the Court's Order and seeks modification or vacation of that Order based on the grounds set forth herein.
10. Reconsideration is warranted where the Court has overlooked a material fact or principle of law that, if considered, would change the outcome. In this case, the Court's Order failed to recognize that Appellant's appeal implicates fundamental constitutional rights that require access to the courts.
11. In *Ex parte Martin*, 321 S.C. 533, 535, 471 S.E.2d 134, 134-35 (1995), the South Carolina Supreme Court held that motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions. The Court further recognized that "where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts." *Id.* at 535, 471 S.E.2d at 135.

12. In *Sullivan v. South Carolina Department of Corrections*, 355 S.C. 437, 445-46, 586 S.E.2d 124, 128 (2003), the South Carolina Supreme Court reiterated the *Ex parte Martin* standard but noted that “where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts.”

### III. ARGUMENT

#### **A. Appellant Is Entitled to Proceed *In Forma Pauperis* Because His Appeal Involves a Fundamental Constitutional Right That Require Access to the Courts to Challenge the Validity of His Conviction.**

13. Appellant Garvin is not pursuing an ordinary civil appeal. He is challenging the legality of his continued confinement under a judgment that he alleges is *void ab initio* for lack of subject matter jurisdiction. This is not a dispute over property, contract, or other civil rights; it is a challenge to the State’s power to deprive him of his liberty.
14. This Court denied Appellant’s Motion to Proceed *In Forma Pauperis* pursuant to *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). In *Ex parte Martin*, the South Carolina Supreme Court held that “where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts.” *Id.* at 535, 471 S.E.2d at 134-35.
15. Appellant Garvin’s appeal involves fundamental constitutional rights challenging the legality of his continued confinement. His claims are that he was convicted without a lawful indictment because the grand jury was never lawfully impaneled and without subject matter jurisdiction. A conviction entered without subject matter jurisdiction is void. *Coon v. Coon*, 364 S.C. 563, 571, 614 S.E.2d 616, 620 (2005). This is not a technical defect; it is a fundamental constitutional violation that goes to the very heart of the State’s power to prosecute him. Appellant Garvin’s appeal seeks to vindicate his fundamental constitutional liberty interest in being free from unlawful imprisonment.
16. In *Coon v. Coon*, 364 S.C. 563, 571, 614 S.E.2d 616, 620 (2005), the South Carolina Supreme Court held that “a judgment of a court without subject matter jurisdiction is void” and that “void judgments can be attacked at any time and are not subject to normal procedural bars.”
17. Unlike the appellant in *Ex parte Martin*, who sought to appeal a civil commitment proceeding, Appellant Garvin challenges the validity of a criminal conviction that resulted in a twenty-five year sentence of imprisonment. His liberty interest is at stake. See *Sullivan v. S.C. Dep’t of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003) (distinguishing *Ex parte Martin* where a fundamental right is involved).
18. The United States Supreme Court has long recognized that “where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts.” *Ex parte Martin*, 321 S.C. at 535, 471 S.E.2d at 135 (citing *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780 (1971)).

19. The South Carolina Supreme Court has recognized that an indigent appellant is entitled to proceed on appeal without payment of filing fees when a fundamental right is at stake. *Ex parte Cauthen*, 291 S.C. 465, 354 S.E.2d 381 (1987) (indigent parent appealing termination of parental rights entitled to proceed without costs). Appellant’s case, involves a challenge to the validity of his criminal conviction and incarceration, similarly implicates fundamental rights that require access to the courts.
20. Appellant’s right to challenge his unlawful confinement is protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Griffin v. Illinois*, 351 U.S. 12, 19, 76 S.Ct. 585, 590 – 591d (1956) (prohibiting states from denying indigent criminal defendants a meaningful appeal due to inability to afford transcript). Although *Griffin* addressed a criminal appeal, its reasoning extends to collateral challenges to the legality of confinement where the underlying judgment is alleged to be void. See *Ham v. Leeke*, 448 F. Supp. 180, 181 (D.S.C. 1978) (addressing indigent’s right to transcript in habeas context).
21. This appeal presents a question of fundamental importance: whether a person can be held in custody under a judgment that is alleged to be void for lack of subject matter jurisdiction. The Constitution requires that an indigent be allowed access to the courts to litigate such a claim. *Ex parte Martin*, 321 S.C. at 535, 471 S.E.2d at 135.
22. Accordingly, Appellant respectfully submits that his appeal falls within the “fundamental rights” exception recognized in *Ex parte Martin*, and he is entitled to proceed *in forma pauperis*.

**B. Appellant’s Appeal Falls Within the Exception to *Ex parte Martin* Recognized by the South Carolina Supreme Court.**

23. In *Ex parte Martin*, the South Carolina Supreme Court acknowledged that IFP status may be granted “where certain fundamental rights are involved.” *Id.* at 535, 471 S.E.2d at 135. The Court recognized that due process requires access to the courts when a fundamental interest, such as liberty, is at stake.
24. The Court in *Ex parte Martin* further noted that “the United States Supreme Court has held that where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts.” *Id.* (citing *Boddie v. Connecticut*, 401 U.S. 371 (1971)).
25. In *Boddie*, the United States Supreme Court held that due process requires that indigent persons be allowed access to the courts for divorce proceedings because marriage is a fundamental interest. 401 U.S. at 380-82. Similarly, this Court should hold that due process requires that an indigent person be allowed access to the appellate courts to challenge a judgment that is alleged to be void—a judgment that deprives him of his fundamental liberty interest.

**C. The Court’s Order Relies on an Overbroad Interpretation of *Ex parte Martin*.**

26. The Court’s Order cites *Ex parte Martin* for the proposition that IFP status must be based on a statute or a fundamental constitutional right. While this is an accurate statement of the law, the

Court's Order does not explain why Appellant's appeal does not implicate fundamental constitutional rights.

27. Appellant's appeal is not a civil dispute over money or property. It is a challenge to the legality of his confinement under a judgment that is alleged to be void. The deprivation of liberty is the most fundamental interest recognized by the Constitution.
28. The Court's Order also does not address the fact that Appellant's claim—that the grand jury was never lawfully impaneled—was never adjudicated on the merits in his PCR proceeding. The PCR court merely presumed regularity. Appellant is not seeking to relitigate a claim that was already decided; he is seeking to litigate a claim that was never decided.

**D. The State's Interest in Collecting Filing Fees Is Outweighed by Appellant's Interest in Access to the Courts.**

29. The State has a legitimate interest in collecting filing fees to support the operation of the courts. However, that interest is outweighed by an indigent person's interest in accessing the courts to challenge an allegedly void judgment.
30. Appellant does not seek to avoid the filing fee for convenience; he is genuinely unable to pay. A dismissal on procedural grounds would effectively deny Appellant any opportunity to challenge the legality of his confinement, leaving him without a remedy for a potential constitutional violation.

**E. The Burden of Proving Indigence Should Be Reconsidered.**

31. The Court's Order states that "Appellant has the burden of showing he is entitled to this relief, but he has not done so." Appellant respectfully submits that he has met his burden. He is an incarcerated person with no income, no assets, and no ability to pay the filing fee. He has submitted a detailed affidavit of his financial circumstances.
32. In *State v. Bishop*, 128 S.E.2d 914 (S.C. 1962), the South Carolina Supreme Court held that an indigent defendant has the burden of establishing his indigency to qualify for relief, but that the court before whom the motion is heard is the sole judge of the factual issue. *Id.* at 916. Appellant respectfully submits that the record establishes his indigency, and that this Court should reconsider its factual determination.

**F. The South Carolina Commission on Indigent Defense Is the Appropriate Agency to Bear the Cost of the Transcripts in This Case.**

33. This Court denied Appellant's motion for the Commission on Indigent Defense to pay for the transcripts, citing *Ex parte S.C. Comm'n on Indigent Def.*, 2025-MO-043 (S.C. Nov. 19, 2025), and noting that the Commission's statutory duty is to "provide legal defense for individuals who are unable to provide for themselves." *Ex parte S.C. Comm'n on Indigent Def.*, 2025-MO-043, at 2.

34. However, the Court's Order appears to limit the Commission's duty to providing counsel, not transcripts. Appellant submits that the Commission's statutory duty extends to providing the necessary costs of appeal, including transcripts, when the appellant is indigent and a fundamental right is at stake.
35. The South Carolina Defense of Indigents Act, S.C. Code Ann. § 17-3-10 et seq., establishes the Commission on Indigent Defense to "provide legal representation to indigent persons in proceedings in which the Constitution or laws of the United States or the Constitution or laws of this State require appointment of counsel." S.C. Code Ann. § 17-3-10. The Act further authorizes the Commission to "pay the costs of the proceedings, including the costs of transcripts." S.C. Code Ann. § 17-3-20.
36. While the Court correctly noted that S.C. Code Ann. § 17-27-60 specifically requires the Commission to pay stenographic costs for indigent defendants pursuing post-conviction relief, the Act's broader provisions authorize the Commission to pay transcript costs in other proceedings where a fundamental right is at stake. The absence of a specific statutory provision does not foreclose the Commission's authority to pay for transcripts in this case, where Appellant's liberty interest is at stake and the Commission is the designated agency for indigent defense costs.
37. Moreover, the Court's reliance on *Ex parte S.C. Comm'n on Indigent Def.* is misplaced. That case addressed reimbursement for expert witness expenses in a criminal trial, a discretionary expense that required prior judicial approval. *Ex parte S.C. Comm'n on Indigent Def.*, 2025-MO-043, at 2. Transcript costs are fundamentally different—they are a necessary expense for prosecuting an appeal, not a discretionary expense. The Court's holding in that case does not control the issue of transcript costs on appeal.
38. The South Carolina Court of Appeals has recognized that when an indigent person appeals, the costs of the transcript shall be borne by the appropriate agency. *Ex parte Cauthen*, 291 S.C. 465, 467, 354 S.E.2d 381, 382 (1987). The South Carolina Commission on Indigent Defense is the appropriate agency for this purpose.
39. Appellant respectfully submits that the South Carolina Commission on Indigent Defense should be required to pay for the transcripts of the October 27, 2025, and March 23, 2026, hearings, which are necessary for the prosecution of this appeal.

**G. In the Alternative, Appellant Requests That This Court Allow the Appeal to Proceed Without Transcripts.**

40. This Court denied Appellant's Motion to Proceed on the Record Without Transcripts, citing Rule – 207(a)(1), SCACR, which requires the appellant to order a transcript of the entire proceedings below unless the parties agree otherwise in writing.
41. Appellant submits that Rule – 207(a)(1), SCACR, should not be applied inflexibly where the appellant is indigent and unable to pay for the transcripts. The purpose of the rule is to ensure that the appellate court has a complete record for review. Where the issues on appeal are purely

legal and do not require review of factual testimony or evidentiary rulings, the appellate court can review the trial court's legal conclusions de novo based on the written record.

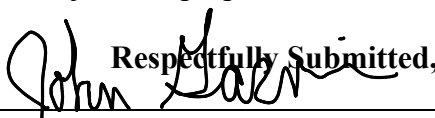
42. The trial court's November 7, 2025, Order granting Respondent's Motion to Dismiss was based on the pleadings and legal arguments, not on factual testimony or evidentiary rulings. The Order addressed legal issues including the PCR Act's exclusivity bar, the statute of limitations, prosecutorial immunity, and *res judicata*. These are legal questions that this Court can review de novo based on the Complaint, the Motion to Dismiss, the memoranda of law, and the Order itself.
43. The trial court's March 23, 2026, Order denying Appellant's Rule – 59(e) Motion was likewise based on legal arguments. The hearing did not involve the presentation of witness testimony or the introduction of evidence. The Rule – 59(e) Motion sought reconsideration of the trial court's legal conclusions, not a re-examination of factual evidence.
44. In *Ex parte Cauthen*, the South Carolina Supreme Court adopted a procedure for indigent appeals where the Court reviews the transcript to determine if any meritorious issues exist. *Ex parte Cauthen*, 291 S.C. at 467, 354 S.E.2d at 382. That procedure demonstrates that the Court recognizes the importance of ensuring indigent appellants have meaningful access to appellate review, even when transcripts are unavailable.
45. Appellant respectfully submits that this Court should allow the appeal to proceed on the existing written record without the transcripts, or, in the alternative, order the Commission to pay for the transcripts.

#### IV. CONCLUSION

**WHEREFORE**, Appellant respectfully requests that this Court enter an Order:

1. Granting Appellant's Motion to Proceed *In Forma Pauperis*, waiving the filing fee and costs of this appeal;
2. Directing the South Carolina Commission on Indigent Defense to pay for the transcripts of the proceedings held in the Court of Common Pleas on October 27, 2025, and March 23, 2026;
3. In the alternative, allowing this appeal to proceed on the existing written record without the transcripts; and
4. Granting such other and further relief as the Court deems just and proper.

Dated: September 3, 2026

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

# EXHIBIT

A

# The South Carolina Court of Appeals

John Garvin, Appellant,

v.

State of South Carolina and Asst. Solicitor, James E.  
Hunter, Respondents.

Appellate Case No. 2026-001039

---

## ORDER

---

On April 24, 2026, Appellant filed a notice of appeal from two circuit court orders. The first order dismissed Respondent Hunter from the action, and the second denied Appellant's motion to alter or amend the judgment. In his notice of appeal, Appellant explained he filed a declaratory judgment action against Respondents seeking a judicial declaration that the grand jury proceedings leading to his indictment and subsequent conviction were void *ab initio* because the grand jury was not lawfully impaneled.

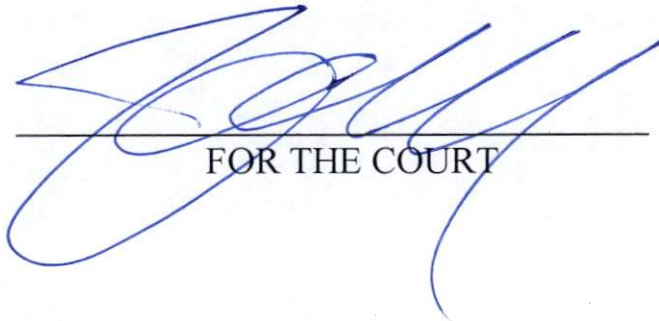
On May 14, 2026, Appellant moved to proceed *in forma pauperis*. The right to proceed *in forma pauperis* must rest upon a statute or a fundamental constitutional right. *See Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). Appellant has the burden of showing he is entitled to this relief, but he has not done so. Therefore, Appellant's motion is denied. The filing fee must be paid within fifteen days of the date of this order. Failure to provide the filing fee will result in dismissal of the appeal.

On June 2, 2026, Appellant filed a motion for permission to order the transcripts outside the filing deadlines. Appellant stated he ordered the transcripts on June 1, 2026. No return was filed. After careful consideration, we grant Appellant's motion for permission to order the transcripts outside the filing deadlines. *See* Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 [of the

South Carolina Appellate Court Rules] may be extended or shortened by the appellate court, or any judge or justice thereof.").

On June 26, 2026, Appellant filed a "motion to proceed on the record without transcripts." No return was filed. After careful consideration, we deny Appellant's motion to proceed without ordering the transcripts. *See* Rule 207(a)(1), SCACR ("Unless the parties otherwise agree in writing, [the] appellant must order a transcript of the entire proceedings below.").

On June 26, 2026, Appellant filed a "motion for authorization to have the expense of obtaining transcripts to be paid for by the South Carolina Commission on Indigent Defense." No return was filed. After careful consideration, we deny Appellant's motion to require the South Carolina Commission on Indigent Defense to pay for the transcripts. *See Ex parte S.C. Comm'n on Indigent Def.*, Op. No. 2025-MO-043 (S.C. Nov. 19, 2025) ("In order to fulfill this State's constitutional duty to provide legal *defense* for individuals who are unable to provide for themselves, our legislature enacted the South Carolina Defense of Indigents Act." (emphasis added)); *Griffin v. Illinois*, 351 U.S. 12, 19 (1956) (prohibiting states from denying a *criminal defendant* a meaningful appeal due to the defendant's inability to afford a transcript); S.C. Code Ann. § 17-27-60 (2014) (requiring the South Carolina Commission on Indigent Defense to pay stenographic costs for indigent defendants pursuing post-conviction relief).

  
\_\_\_\_ J.  
FOR THE COURT

Columbia, South Carolina

cc:

John Garvin, #355509

Charles Franklin Turner, Jr., Esquire

James Nathan Ozmint, Esquire

**FILED**  
**Aug 27 2026**

**RECEIVED**

**Sep 03 2026**

**SC Court of Appeals**

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

---

**APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas  
Hon. Grace Gilcrest-Knie, Circuit Court Judge**

---

**Lower Court Case No. 2025-CP-42-03614  
Appellate Court Case No. 2026-001039**

---

John Garvin. . . . . Appellant,

v.

The State of South Carolina and Asst. Solicitor, James E. Hunter. . . . . Appellee.

---

***CERTIFICATE OF SERVICE***

---

I, John Garvin, certify that I have serve a **SUBSEQUENT APPLICATION FOR RELIEF**, on the Court to be delivered, by via e-mail on September 3, 2026, addressed to the Hon. Jenny A. Kitching, Clerk of S.C. Court of Appeals, at e-mail: ctappfilings@sccourts.org and also delivering to Defendant's a copy by depositing in the United States Mailbox to be delivered via United States First Class Postage Priority Mail on or about September 8, 2026, addressed to Mr. J. Nathan Ozmint, Esq., at 325 Rocky Slope Road, Suite # 201, Greenville, S.C. 29607.

**Dated: September 3, 2026**

**Respectfully Submitted,**



---

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

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

**RECEIVED**

**Sep 03 2026**

**SC Court of Appeals**

Attn: Hon. Jenny A. Kitching, Clerk  
South Carolina Court of Appeals Clerk's Office  
P.O. Box # 11629  
Columbia, S.C. 29211

**RE: *Garvin v. State of South Carolina and Asst. Solicitor, James E. Hunter,*  
Appellate Case No.: 2026-001039, Filing A Subsequent Application for Relief**

Dear Hon. Clerk Kitching:

Attached to this letter is Appellant's Subsequent Application for Relief. Please file this application and return a filed clocked-stamped copy to Appellant.

By copy of this letter, I am serving Mr. J. Nathan Ozmint, Esquire, with a copy of the above-mentioned documents by United States Postal Service Mail.

**Dated: September 3, 2026**

**Respectfully,**  
  
**John Garvin, # 355509, Pro-se**

JG/lg  
cc: J. Nathan Ozmint, Esquire (via Mail & E-mail)