

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM DORCHESTER COUNTY  
Maité Murphy, Circuit Court Judge

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Case No. 2013-CP-18-01268

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**RECEIVED**  
OCT 06 2014  
**SC Court of Appeals**

Mack Neil Myers, ..... Appellant,

v.

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

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**RESPONDENT SOUTH CAROLINA DEPARTMENT OF  
CORRECTIONS' RETURN TO  
APPELLANTS' MOTION TO PROCEED  
IN FORMA PAUPERIS**

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The Appellant Mack Neil Myers has filed a motion and affidavit requesting that the Court allow this appeal to be filed and proceed without the payment of costs. The Respondent South Carolina Department of Corrections (hereinafter SCDC) opposes that motion and any request seeking to proceed in forma pauperis on appeal.

The Appellant's request to avoid the filing fee requirement and the payments of any costs on appeal is not permitted under South Carolina law. In the case of *Ex Parte: Martin v. State*, 321 S.C. 533, 471 S.E.2d 134 (1995), the South Carolina Supreme Court addressed the issue of granting motions to proceed in forma pauperis. The Court held that “[i]n the absence of a statutory provision allowing the general waiver of filing fees, we conclude motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions.” 471 S.E.2d at 134-135.

Later, in *Martin v. S.C. Dep’t of Corrections*, 350 S.C. 196, 565 S.E.2d 756 (2001), the Supreme Court required full payment of appellate filing fees by an indigent prisoner. The Court concluded that the statutes allowing a partial payment of the filing fees when an indigent prisoner brings a civil action do not apply to appellate filing fees incurred at either the Supreme Court or the Court of Appeals.

In the present case, there is no statutory provision allowing this Court to waive the payment of a \$100 filing fee as required pursuant to Rule 203(d), SCACR, under the circumstances presented by the Appellant. Rule 203(d), SCACR, provides only two exceptions: (1) for a criminal appeal, and (2) for an appeal by the State of South Carolina or its departments or agencies. Neither exception is applicable here.

Moreover, the Appellant does not enjoy a constitutional right to an appeal nor does his appeal involve the type of “fundamental rights” for which a waiver of the filing fee might be appropriate. The Appellant has appealed from an Order Granting a Directed Verdict to the Respondent, whereby Judge Murphy granted the Respondent’s motion for directed verdict at the close of the Appellant’s case in chief during the trial of the Appellant’s claims. The action on appeal does not involve any constitutional claims brought by any of the parties and certainly does not involve any “fundamental rights” as identified by this Court or the Supreme Court.

In his supporting affidavit, the Appellant offers the following sworn testimony: “Inmate: Mack Neil Myers, SCDC #241427 is a [sic] indigent inmate being duly sworn, state that I am the Appellate [sic] and that I do not have the funds available to pay the costs of filing and service in the present matter. I hereby request that my appeal be filed and service made without costs.” However, the Appellant provides no documentation to support his assertion. Regardless, the South Carolina Supreme Court has made it clear that only under very limited circumstances, none of which apply in this case, may an indigent, *pro se* inmate proceed on appeal without the pre-payment of filing fees. *See, Sullivan v. S.C. Dep’t of Corrections*, 355 S.C. 437, 445, 586 S.E.2d 124, 128 (2003); *see also, Ex Parte: Martin v. State*, 321 S.C. 533, 471 S.E.2d 134 (1995).

Specifically, as is stated above, our Supreme Court has found that, “[i]n the absence of a statutory provision allowing the general waiver of filing fees, we conclude motion to proceed *in forma pauperis* may only be granted where specifically authorized by statute or required by constitutional provisions.” *Id.*

For all of the foregoing reasons, the Respondent SCDC opposes the Appellant's request to proceed in forma pauperis, and/or his request to have this Court waive the requirement that the \$100 filing fee be paid, in full, to proceed with this appeal.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

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1611 Devonshire Drive  
Post Office Box 8568  
Columbia, South Carolina 29202  
(803) 806-8222

*Counsel for Respondent SCDC*

Columbia, South Carolina

October 2, 2014

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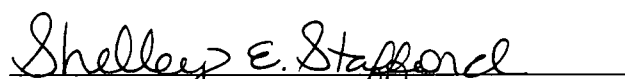
**PROOF OF SERVICE**

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The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent, does hereby certify that service of the **Respondent South Carolina Department of Corrections' Return to Appellants Motion to Proceed In Forma Pauperis** in the above-captioned action was made upon all parties of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 2<sup>nd</sup> day of October, 2014,

addressed as follows:

Mack N. Myers, #241427  
Lee Correctional Institution  
Room #140, South Wing S.M.U.  
990 Wisacky Highway  
Bishopville, South Carolina 29010

  
Shelley E. Stafford

# DAVIDSON & LINDEMANN, P.A.

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\*Also Admitted In North Carolina  
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Of Counsel  
Kenneth P. Woodington

October 2, 2014

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

RE: Mack Myers, #241427 v. South Carolina Department of Corrections  
Appellate Case No. 2014-001943  
Claim Number: T82740  
Date of Incident: October 21, 2010  
Our File Number: 103.8935

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OCT 06 2014

**SC Court of Appeals**

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the **Respondent South Carolina Department of Corrections' Return to Appellants Motion to Proceed in forma pauperis** and a **Proof of Service** relative to the above matter. Please file the originals and 6 copies of each document, returning a clocked-in copy of each document in the enclosed return envelope.

By copy of this letter, I hereby serve copies of the above documents upon the Appellant.

Thank you for your assistance in this matter. Please contact me with any questions or concerns.

Very truly yours,

DAVIDSON & LINDEMANN, P.A.



Daniel C. Plyler

DCP:ses  
Enclosures

The Honorable Jenny Abbott Kitchings  
October 2, 2014  
Page Two

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cc: (w/Enclosures)

Mack N. Myers, #241427  
Lee Correctional Institution  
Room #140, South Wing S.M.U.  
990 Wisacky Highway  
Bishopville, South Carolina 29010