

The state of South Carolina  
In the Court of Appeals

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Appeal from Greenville County  
Court of Common Pleas  
D. Garrison Hill, Circuit Court Judge

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FEB 05 2015

SC Court of Appeals

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Case NO 2014-002697

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Benjamin Heyward \_\_\_\_\_ Appellant

✓

South Carolina Dept of Corrections \_\_\_\_\_ Respondent

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Reply Brief

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Benjamin Heyward #165514

Lieber Corr Inst

P.O. Box 205

Ridgeville, SC 29472

Appellant, pro se

J. Victor McDade, Esquire

P.O. Box 2125

Anderson, SC 29622

Attorney for SCDC

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## I Background

Appellant is an inmate with the South Carolina Department of Corrections.

Appellant filed an South Carolina Tort Claim Act, pursuant to 15-78-10 et seq, upon the basis of gross negligence.

## II Standard of Appeals

This court must on appeal consider the evidence and all reasonable inferences which can be drawn therefrom in the light most favorable to the non-moving party.

## III Statement of Facts

While at Perry Correctional Institution Appellant was assigned to an top bunk when he was to bunk restricted.

On March 30, 2013, the Appellant was getting down from the top bunk when he slipped and fell to the floor and injured his right knee. Appellant is still seeking for the proper medical treatment for his injured right knee.

## Facts

Hearing Judge abused his discretion in Appellant case (Factual Error),

## Conclusion

Based on the genuine issue of material facts in the Record, the Appellant respectfully requests this Court to reverse the hearing Judge decision and appoint Appellant with An Attorney.

Date: 1-23-15

Benjamin Heyward  
Benjamin Heyward #165514  
Lieber Corr ZPT  
P.O. Box 205  
Ridgeville, SC 29472

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Benjamin Heyward . . . . Appellant

v

South Carolina Dept of Corrections . . Respondent

proof of service

The undersigned, Benjamin Heyward, Appellant, pro se, hereby declares that on the 23 January 2015, A true and accurate copy of the Attached Reply Brief was placed in an envelope with First class postage thereon prepaid through the United States Postal Service, and mailed to the defendant Attorney as follows:

J. Victor Madadey, Esquire  
S.C. Court of Appeals

Date: 1-23-15

Benjamin Heyward  
Benjamin Heyward #165514  
Lieber Corr Inst  
P.O. Box 205  
Ridgeville, SC 29472

SC Court of Appeals  
Jenny A Kitchings, Clerk  
P.O. Box 11629  
Columbia, SC 29211

February 2, 2015

In RE: Heyward V. SCDL  
SA NO 2014-002697 (Civil Action)  
Lawsuit

Complaint RECEIVED

FEB 05 2015

SC Court of Appeals

Dear Clerk Kitchings:

I am writing in the above referenced case that you dismissed do to my not having the \$100.00 Filing Fee. I need you to file my notice of Appeal pursuant to 24-27-100, 24-27-150 and pursuant to Martin V. South Carolina Department of Corrections 565 S.E. 2d 756 (2001). Section 24-27-100 states that: "unless another provision of law permits the filing of civil actions without the payment of filing fees by 'indigent persons,' if a prisoner bring a civil action or proceeding, the court, upon the filing of the action, shall order the prisoner to pay as a partial payment of any filing fee required by law a first-time payment of twenty percent of the preceding six months' income from the prisoner's trust account administered by the Department of Corrections and thereafter monthly payments of ten percent of the preceding month's income for this account. (Emphasis Added). Section 24-27-150 describes how to implement the payment plan if the balance of the

prisoner's trust account is insufficient to cover the Filing Fee. Upon examination of section 24-27-100 and 24-27-150, it is clear that the institution of A payment plan in order of Finance Filing Fees is intended only for use at the trial court level. The plain language of section 24-27-100 states that the payment plan was enacted for the purpose of assisting indigent prisoners when they "bring A civil action or proceeding." By definition, civil actions or proceedings are brought at the trial court level. In contrast, filing an appeal or petition for A writ of certiorari does not constitute "bringing A civil action" but simply seeks review of A civil action that has been concluded in the trial court. Accordingly, the payment plan laid out in section 24-27-100 and 24-27-150 is not applicable to Filing Fees incurred at either the supreme court or the "Court of Appeals."

ORDERED BY,

Jean H. Toal, C.J.,

James E. Moore, J.,

John H. Waller, Jr., J.,

E. C. Burnett, III, J.,

Costa M. Pleicones, J.,

cc: Jean H. Toal, C.J.,

J. Victor McDade, Esquire

P.O. Box 21225

Anderson, SC 29622

Attorney for SCDC

Benjamin Heyward  
Benjamin Heyward #65514  
Lieber Corp Inst  
P.O. Box 205  
Ridgerville, SC 29472

The Honorable Jean H. Toal

S.C. Supreme Court

P.O. Box 11330

Columbia, SC 29211

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**SC Court of Appeals**

RE: Heyward v. S.C.D.C.

CASE NO. 2014-002697 (Civil Action)

Dear Honorable Toal:

I am writing with great concern in the above referenced case. I need your assistance in filing my notice of appeal in the Court of Appeals because clerk Jenny Kitchings dismissed my case because I did not have the \$100.00 filing fee. pursuant to 24-27-100 and 24-27-150, the Court of Appeals should file my case. "Appellate court Rule 226(c)".

Please assist me in this matter. your assistance is greatly appreciate.

By: Benjamin Heyward  
Benjamin Heyward #165514  
Lieber Corr Inst  
P.O. Box 205  
Ridgeville, SC 29472

Date 2-2-15

Benjamin Heyward #165514  
Lieber Corr Inst - MB-235  
P.O. Box 205  
Ridgeville, SC 29472

Inter-agency

THE DEPARTMENT OF CORRECTIONS HAS NOT  
INSPECTED OR CENSORED THIS ITEM. THEREFORE,  
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY  
FOR ITS CONTENTS.

LIEBER CORRECTIONAL INSTITUTION  
S.C. DEPARTMENT OF CORRECTIONS

S.C. Court of Appeals  
Ms. Jenny A Kitchings, Clerk  
P.O. Box 11629  
Columbia, SC 29211

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SC Court of Appeals

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