

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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February 9, 2015

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FEB 11 2015

SC Court of Appeals

Mr. Benjamin Heyward, #165514
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

Re: Benjamin Heyward v. SCDC
Appellate Case No. 2014-002697

Dear Mr. Heyward:


This responds to your letter to Chief Justice Toal about the above case. Please be advised that the Chief Justice cannot consider this *ex parte* communication about the above case.

Instead, if you desire to seek reinstatement of this appeal, you will need to timely serve and file a motion to reinstate with the Court of Appeals. This motion will need to comply with the requirements of Rules 240 and 260(a) of the South Carolina Appellate Court Rules.

I do call your attention to the case of *Martin v. S.C. Dept. of Corrections*, 350 S.C. 196, 565 S.E.2d 756 (2001) ("Upon examination of sections 24-27-100 and 24-27-150, it is clear that the institution of a payment plan in order to 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 sections 24-27-100 and 24-27-150 is not applicable to filing fees incurred at either the Supreme Court or the Court of Appeals.").

Very truly yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

CLERK

cc: James Victor McDade, Esquire (with copy of letter)
The Honorable Jenny Abbott Kitchings (with copy of letter)

The Honorable Jean H. Toal
S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

RE: Heyward v. SCDC
Case No. 2014-002697 (Civil Action)
Lawsuit

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SC Court of Appeals

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S.C. SUPREME COURT

Dear Honorable Toal:

please find a copy of my complaint that I sent to clerk Kitchings. 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.

cc: Jenny A. Kitchings, Clerk
S.C. Court of Appeals.

Date: 2-2-15

By: Benjamin Heyward
Benjamin Heyward #165514
Lieber Corr 2nd
P.O. Box 205
Ridgeville, SC 29472

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

February 2, 2015

In RE: Heyward v. SCDL
C/A NO 2014-002697 (Civil Action)

Complaint **RECEIVED**
FEB 11 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 person," 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 payment 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. Toaly, C.J.

James E. Moore, J.

John H. Waller, JR., J.

E.C. Burnett, III, J.

Lesta M. Pleicones, J.

cc: Jean H. Toaly, C.J.

J. Victor McDade, Esquire

P.O. Box 2125

Anderson SC 29622

Attorney for SCD

Benjamin Hayward
Benjamin Hayward #16551
Lieber Corr Inst
P.O. Box 205
Bridgewater SC 29472

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

Inter-agency

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S.C. Supreme Court
The Honorable Jean H. Toal
P.O. Box 11330
Columbia, SC 29211

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SC Court of Appeals