

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

James R. Barber, III, Circuit Court Judge

Case No. 2015-CP-23-05661

Appellate Case No. 2015-000697

Greenville County Sheriff's
Office,

Respondent,

v.

George Cleveland, III,

Appellant.

**RETURN TO APPELLANT'S MOTION TO
COMPEL COURT TRANSCRIPT**

The Respondent respectfully submits the following Return to the Appellant's "Rule 240 Motion to Compel Circuit Reporter Susan W. Hudgins to Provide Trial Transcript."

In his Motion, the Appellant asks this Court to compel the court reporter to provide him with a copy of the transcript of the hearing before the lower court. The Appellant argues that he is entitled to a copy of the transcript without paying for the same based on two grounds: 1) that he is entitled to make monthly payments from his inmate trust account pursuant to S.C. Code Ann. § 24-27-100, *et seq.*; and 2) that requiring him to pay for a copy of the transcript violates his rights under the due process and equal protection clause of the United States Constitution. As discussed herein, both

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arguments are without merit.

First, the Appellant cites to S.C. Code Ann. § 24-27-100, which generally provides that “if a prisoner brings a civil action or proceeding, the court, upon the filing of the action, shall order the prisoner to pay as partial payment of any filing fees required by law a first-time payment of twenty percent [. . .] from the prisoner’s trust account [. . .] and thereafter monthly payments of ten percent [. . .] of the preceding month’s income for this account.” (emphasis added). S.C. Code Ann. § 24-27-110 provides for the same procedure for the payment of court costs. Finally, S.C. Code Ann. § 24-27-150 generally provides that if the prisoner’s trust account does not contain sufficient funds for the payment of the filing fee, the action may still be filed, but the prisoner will be responsible for payment of monthly payments of the filing fee. These sections, however, are not applicable to filing fees and costs incurred at the South Carolina Court of Appeals or the South Carolina Supreme Court.

Faced with this exact issue in *Martin v. S.C. Dep't of Corr.*, 350 S.C. 196, 565 S.E.2d 756, (2001), the South Carolina Supreme Court held:

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.

Martin, supra. (emphasis added). Because the Court has held that the statutory scheme cited by the Appellant specifically does not apply to the payment of fees and costs on appeal, the Appellant’s argument is without merit. Therefore, the Appellant’s Motion to Compel should be denied.

Likewise, the Appellant’s argument that requiring him to pay for the transcript violates his

rights under the due process and equal protection clauses of the U.S. Constitution is equally without merit. To begin with, the Appellant does not appear to have filed a Motion to Appear *in forma pauperis*. Therefore, since he has not requested (or been granted) this relief, he has no standing to move to compel the court reporter to produce the transcript based on his alleged inability to pay. Further, the court reporter's request for payment before delivering the transcript does not infringe upon the Appellant's constitutional rights because this appeal does not involve a fundamental right.

Even if the Plaintiff had moved to file this action *in forma pauperis*, such a Motion would also be without merit. Motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions.¹ *Martin v. State*, 321 S.C. 533, 471 S.E.2d 1 (1995). In circumstances where certain fundamental rights are involved in the underlying litigation, the Constitution requires that an indigent be allowed access to the courts. (Compare *Boddie v. Connecticut*, 401 U.S. 371 (1971)(an indigent must be given access to courts in divorce action) and *Smith v. Bennett*, 365 U.S. 708 (1961)(an indigent prisoner may not be required to pay a filing fee for petitioning for a writ of habeas corpus) with *Ortwein v. Schwab*, 410 U.S. 656 (1973)(no constitutional violation in requiring payment of appellate filing fee by indigents seeking review of an adverse welfare decision) and *United States v. Kras*, 409 U.S. 434 (1971)(no constitutional violation in requiring payment of filing fee by indigent in bankruptcy action)). *Martin, supra*. (citations in original) (emphasis added). This appeal arises out of a state law tort action and does not involve a fundamental right. Because waiver of fees and costs is not required by statute, and because this case does not involve a fundamental right, the Appellant is not entitled to waiver of fees and costs. Therefore, his Motion to Compel should be denied.

WHEREFORE, the Respondent respectfully requests that this Court deny the Appellant's

¹ Notwithstanding the Appellant's arguments regarding the application of S.C. Code Ann. § 24-27-100, *et seq.*, as

Motion to Compel and issue such other relief as it deems just and proper.

April 30, 2015

 for Anne Culbreath

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Attorneys for Respondent

Other Party of Record:

George Cleveland, III

discussed above, Respondent is not aware of any statute that would allow for the waiver of fees and costs in this appeal.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Return to Appellant's Motion to Compel Court Transcript was served upon the plaintiff by depositing in the United States Mail, proper postage affixed thereto, a true and accurate copy thereof on May 1, 2015, as follows:

George Cleveland, III, 357770
Evans Correctional Institution
610 Highway 9 West
Bennettsville, SC 29512



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May 1, 2015

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

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Re: George Cleveland, III v. Greenville County Sheriff's Office
C.A. No. 2014-CP-23-05661
Appellate Case No. 2015-000697

Dear Ms. Kitchings:

Please find enclosed for filing the original and six copies of the Return to Appellant's Motion to Compel Court Transcript in the above-captioned matter. Also enclosed is our Certificate of Service for same. If you have any questions, please feel free to contact us. Thank you for your attention to this matter.

With kind regards,

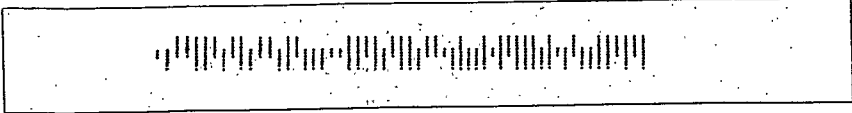
Yours very truly,

WILLSON JONES CARTER & BAXLEY, P.A.



Anne R. Culbreath

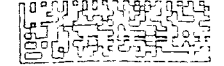
ARC/smb
Enclosures
cc: Mr. George Cleveland, III (w/enc.)



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