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JUL 01 2015

The Supreme Court of South Carolina

Hayward L. ROGERS, 278510, Appellant,

S.C. SUPREME COURT

VS.

South Carolina Department of Corrections, Respondent.

Appeal From South Carolina Court of Appeals,

Case No. 2015-000374; Trial Case No. 2015-ALJ-04005310

PETITION FOR WRIT OF CERTIORARI

June 24, 2015

Hayward L. Rogers

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The Supreme Court of South Carolina  
Hayward L. Rogers, 278510, Appellant,

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S.C. SUPREME COURT

V.S.

South Carolina Department of Corrections, Respondent,

Appeal From South Carolina Court of Appeals,

Case No. 2015-000374 Trial Case No. 2015-ALT-042053JW

Certificate of Service

The undersigned hereby does certify that on this herein date a copy of the petition for writ of certiorari has been served upon opposing counsel by placing copy of same with certificate of service in the U.S. mail postage prepaid.

June 24, 2015

Hayward L. Rogers

## QUESTION PRESENTED

Did The COURT OF Appeals ERR in dismissing The Appellant's Appeal when Appellant Could NOT pay COST OF Filing Fee?

## STATEMENT OF FACTS

This matter ORIGINATED FROM a GRIEVANCE FILED WITH The SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, WHICH DENIED MATTER ON JUNE 17, 2015, AND A APPEAL WAS PERFECTED WITH The SOUTH CAROLINA ADMINISTRATIVE LAW COURT, WHICH DENIED AND DISMISSED The appeal FOR LACK OF SUBJECT MATTER JURISDICTION.

In The GRIEVANCE OF The appellant he ARGUES:

That his Conviction and Sentences is in violation of The CONSTITUTION OF The UNITED STATES AND The CONSTITUTION AND LAWS OF This STATE:

The PETITIONER PRESENTED UNDISPUTED FACTS AND EVIDENCE THAT ILLEGALLY CONVICTED AND SENTENCED FOR ASSAULT AND BATTERY, WITH INTENT TO KILL, WITHOUT PRESENTMENT BY The GRAND JURY "14-9-210" (2014), AND WITHOUT PROOF BEYOND A REASONABLE DOUBT.

MOREOVER, The LOWER COURT ERRED BY SENTENCING appellant To LIFE WITHOUT PAROLE UNDER 17-25-45, BY USE OF A PRIOR "MOST SERIOUS" CONVICTION FROM "1979".

2,

1993 ACTS and JOINT RESOLUTIONS, No. 184, p. 3239. SECTION 266 OF THE ACT STATE AS FOLLOWS CONCERNING THE PROSPECTIVE APPLICATION OF THE CRIME CLASSIFICATION ACT:

THE PROVISIONS OF THIS ACT OTHER THAN S.C. CODE ANN. 16-1-60(B), APPLY PROSPECTIVELY TO CRIMES AND OFFENSES COMMITTED ~~before~~ AFTER THE EFFECTIVE DATE OF THE ACT (1-1-1994). THE PROVISIONS OF SUB-SECTION 16-1-60(B) APPLY RETROACTIVELY TO ALL PERSONS CONVICTED UNDER THE LAWS OF THIS STATE. BECAUSE 16-1-60 WAS NOT PASSED UNTIL 1986, ANY CRIMES COMMITTED BEFORE THAT DATE WILL NO LONGER BE CLASSIFIED AS "VIOLENT OFFENSES." AS A RESULT 24-21-640 SHOULD NOT BE APPLICABLE TO APPELLANT'S CONVICTION FOR ASSAULT AND BATTERY WITH INTENT TO KILL, BECAUSE APPELLANT'S "1979" CONVICTION FOR ASSAULT AND BATTERY WITH INTENT TO KILL WAS NOT CLASSIFIED AS "MOST SERIOUS OR VIOLENT" AT THAT TIME. THEREFORE, APPELLANT SHOULD HAVE BEEN PAROLE ELIGIBLE AFTER JANUARY 1, 1994. See, ~~ATKINS~~.

STATE V. ATKINS, 360 S.E.2d 302 (S.C. 1987); STATE V. TORRENCE, 406 S.E.2d 315 (S.C. 1991). FURTHER, THE USE OF THE "1979" PRIOR VIOLATES THE EX POST FACTO LAWS, AND VIOLATES THE SEPARATION OF POWERS DOCTRINE. IT IS CLEARLY THAT APPELLANT'S LIFE WITHOUT PAROLE SENTENCE IS A VIOLATION OF THE EX POST FACTO LAWS BECAUSE THE PRIOR OCCURRED BEFORE THE PASSAGE OF THE RECIDIVIST STATUTE. STATE V. KISER, 343 S.E.2d 292 (S.C. 1986); STATE V. JONES, 543 S.E.2d 541 (S.C. 2001);

3.

Solem v. Helm, 103 S.Ct. 3001 (1983).

Al-Shabb Al-Shaba 22 v. State, 527 S.E.2d 742 (S.C. 2000), and  
Tutt v. State, 290 S.E.2d 414 (S.C. 1982), after Al-Shaba 22,  
only two non-collateral matters are cognizable in P.C.R.:  
1) a claim that the applicant's sentence expired or (2), a  
claim that the applicant's probation, parole, or conditional  
constitutional release has been unlawfully revoked.

Cost Key 132(1), when indigent litigant files motion to  
proceed in forma pauperis and complaint does not appear  
to fit within statutory or constitutional exception to  
requirement of filing fee, clerk of court must submit  
motion to judge for ruling as to whether complaint fits  
within statutory exception or concerns fundamental  
right that requires waiver of filing fee. S.C.R.C.P. Rule  
3(c).

The Appellant's complaint does fit ~~with~~ within the  
statutory exceptions of concerns and fundamental  
rights that requires waiver of filing fee. Appellant ask  
that the court take judicial notice of the constitutional  
violations regarding the herein omissions and motions  
for review of the matter and grant waiver of fees in the  
interest of justice.

Where certain fundamental rights are involved, the

4.

CONSTITUTION REQUIRES THAT AN INDIGENT LITIGANT BE ALLOWED ACCESS TO THE COURTS. COMPARE, *RODDIE V. CONNECTICUT*, 91 S.C.T. 780 (1971).

I DO DECLARE AND CERTIFY UPON MY OATH AND UNDER THE PENALTY OF PERJURY THAT ALL OF THE FOREGOING IS TRUE, AND CORRECT TO THE BEST OF MY KNOWLEDGE.

### CONCLUSION

BASED ON THE FOREGOING ARGUMENTS AND SUPPORTING OPINIONS THE APPELLANT'S MOTION TO PROCEED IN FORMA PAUPERIS SHOULD BE GRANTED TO ALLOW ACCESS TO THE COURT TO BE HEARD ON HIS CONSTITUTIONAL VIOLATIONS.

June 24, 2015

Stephen L. Rogers

Appendix



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
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February 26, 2015

Heyward Rogers, 278510  
Perry Correctional Institution  
430 Oaklawn Road, Q3-B120  
Pelzer SC 29669

Re: Heyward Rogers v. SCDC  
Appellate Case No. 2015-000374

Dear Mr. Rogers:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- A proof of service showing that a copy has been served on the Administrative Law Court has not been provided as required by Rule 203(b)(6), SCACR.

Very truly yours,

*Jenny Abbott Kitchings*

CLERK

cc: Daniel John Crooks, III, Esquire

# The Supreme Court of South Carolina

Heyward Rogers, 278510, Appellant,

v.

South Carolina Department of Corrections, Respondent.

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Appellate Case No. 2015-001223

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## ORDER

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By order dated May 27, 2015, the South Carolina Court of Appeals denied petitioner's request to proceed *in forma pauperis* and denied his motion to appoint counsel. Petitioner has now filed a notice of appeal seeking review of this order of the Court of Appeals.<sup>1</sup> Since review of a decision of the Court of Appeals is commenced by serving and filing a petition for a writ of certiorari and appendix, the notice of appeal has been construed as a petition for a writ of certiorari.

Under Rule 242 of the South Carolina Appellate Court Rules, this Court will only review a final decision of the Court of Appeals. Since the Court of Appeals has not issued a final decision in this matter, the petition for a writ of certiorari is dismissed without prejudice. *Aiken Speir Inc. v. Henry*, 326 S.C. 268, 486 S.E.2d 492 (1997).



FOR THE COURT

C.J.

Columbia, South Carolina  
June 9, 2015

cc: Daniel John Crooks, III, Esquire  
Mr. Heyward Rogers, 278510  
The Honorable Jenny Abbott Kitchings

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<sup>1</sup> Before the Court of Appeals, the Appellate Case Number is 2015-000374.

# The South Carolina Court of Appeals

Heyward Rogers, 278510, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2015-000374

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## ORDER

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Appellant's motion to proceed *in forma pauperis* is denied pursuant to *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). The filing fee must be paid within fifteen days of the date of this order.

Appellant's motion to appoint counsel is also denied.

  
FOR THE COURT


Columbia, South Carolina

cc:

Heyward Rogers, 278510

Daniel John Crooks, III, Esquire

**FILED**

5/27/15 

# The South Carolina Court of Appeals

Heyward Rogers, 278510, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2015-000374

The Honorable Shirley C. Robinson  
Trial Court Case No. 2015ALJ040053IJ

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## ORDER

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Appellant has failed to timely submit the notice of appeal filing fee, as required by Rule 203 of the South Carolina Appellate Court Rules, and the Court's order dated May 27, 2015. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

cc:  
Heyward Rogers, 278510  
Daniel John Crooks, III, Esquire

**FILED**  
SF 6/17/15

MR. HOWARD L. ROGERS # 278510  
430 Oaklawn Road / Q2-B115  
Peltzer, S.C. 29669

South Carolina Supreme Court  
Post Office Box 11330  
Columbia, S.C. 29201

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JUN 24 2015

1 P.C. MAIL ROOM

LEGAL MAIL