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PETITIONER'S MOTION FOR LEAVE

COURT TO RECALL REMITTUR

OCT 14 2016

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

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IN THE SUPREME COURT

OCT 18 2016

SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

S. PHILLIP LENSKI; ADMINISTRATIVE LAW JUDGE

LOWER COURT CASE NO. 16-ALJ-04-0030-AP

APPELLATE CASE NO. 2016-1033

GEORGE CLEVELAND, III

S.C.D.C. No. 357770,

PETITIONER,

v.

SOUTH CAROLINA DEPARTMENT

OF CORRECTIONS, (S.C.D.C.),

RESPONDENT,

S.C.D.C.

OFFICE OF GENERAL COUNSEL

c/o CHRISTINA CATIE BIGELOW, ESQUIRE

P.O. Box 21787

COLUMBIA SC 29221-1787

ATTORNEY FOR THE RESPONDENT

GEORGE CLEVELAND, III

TYGER RIVER CORRECTIONAL INST

200 PRISON ROAD

ENOREE, S.C. 29335

PROSE PETITIONER.

LEGAL MAIL

1.

PETITIONER'S MOTION TO RECALL REMITTURE

COMES NOW, George Cleveland, III, proceeding
prose respectfully moves this court to recall the
REMITTATUR sent to the Administrative Law court
ON SEPTEMBER 19, 2016. R.p. 1, REMITTATUR SENT. This
request is on the following grounds;

foreclosed by Rule 204(A) S.C.A.C.R. AND Rule 82(b)
S.C.R.C.P. AND A VIOLATION OF MY FIRST ACCESS TO THE
COURTS; FOURTEENTH (DUE PROCESS LIBERTY ^{PROPERTY} INTEREST) AMENDMENTS
UNDER THE CONSTITUTION OF THE UNITED STATES.

2.

RELEVANT-BACK-GROUND:

ON September 11, 2016, I mailed to the south
CAROLINA COURT OF APPEALS MY MOTION FOR AN extension
to file Petition FOR A WRIT OF CERTIORARI in the
Above case. UNTIL Sept. 28, 2016. R.p. 2 AT PAR. 2. Supporting
AFFIDAVIT.

ON September 28, 2016, I signed for, and received

LEGAL MAIL

1.

A letter from Deputy clerk V. Claire Allen, R.p. 4. Letter dated Sept. 19, 2016. She stated my motion is returned as it was filed in the wrong court. IBID

The letter was mailed to the wrong address despite me informing that court (Court of Appeals) of my change of mailing address in late July of 2016. R.p. 2 APPAR. 3 Supporting Affidavit. "

The mailing date of this motion was the earliest I could mail out because S.C.D.A.'s computer systems were down at my assigned prison from Sept. 27-Oct 04, 2016 which prevented me from looking up the relevant court rules to conduct legal research, and the state of emergency signed by Governor Haley on Oct. 05, 2016 caused the entire prison to be lock-down with no movement outside of my assigned dorm. R.p. 3 APPAR. 4 Supporting Affidavit.

1. The letter reached my former assigned prison on Sept. 20, 2016; which took 8-days to reach me. R.p. 2 APPAR. 3 Supporting Affidavit, see also R.p. 5-6.
copy of envelope

LEGAL MAIL

ARGUMENT(S)

RULE 204(A) S.C.A.C.R. FORECLOSED
REMITTITUR ^{FROM} BEING SENT:

DEPUTY CLERK ALLEN SUPRA, AT PAR. 2 FAILED TO TRANSFER THIS CASE TO THIS COURT AS REQUIRED BY RULE 204(A) S.C.A.C.R.:

"IN THE EVENT THAT THE [MOTION] IS FILED IN THE WRONG APPELLATE COURT, THE APPELLATE COURT IN WHICH THE MATTER IS FILED SHALL ISSUE AN ORDER TRANSFERRING THE CASE TO THE APPROPRIATE COURT."

DEPUTY CLERK ALLEN WAS FORECLOSED UNDER RULE 204(A) S.C.A.C.R. FROM SENDING THE REMITTITUR TO THE ADMINISTRATIVE LAW COURT INSTEAD, SHE WAS REQUIRED TO "ISSUE AN ORDER TRANSFERRING THE CASE TO THE APPROPRIATE COURT," THEREFORE, THE REMITTITUR WAS SENT IN ERROR. AND MUST BE RECALLED, AND REQUIRED TRANSFER TO THIS COURT.

3-1.
MOTION FOR AN EXTENSION
WAS TIMELY FILED FORECLOSING
REMITTITUR ^{FROM} BEING SENT
UNDER RULE 233(A)(2) S.C.A.C.R.!

The Appellate court denied my petition for Rehearing which was filed on August 14, 2016, R-p-1, order denying Rehearing, Rule 242, S.C.A.C.R. Required my petition for a writ of certiorari to be filed on or before September 11, 2016. My motion for extra time to file my certiorari petition on September 11, 2016, by mail:

“By depositing the documents in the U.S. mail, properly addressed to the clerk, the date of filing shall be the date of mailing.” Rule 233(A) S.C.A.C.R.

My motion was timely filed on September 11, 2016, R-p-2 at PAR-2 supporting affidavit, as this was the date that I put the properly addressed envelope in the prison's mail-box. This effectively foreclosed Deputy Clerk Allen from sending of the remittitur was error. Under Rule 233(A) S.C.A.C.R.; consequently, my motion for an extension of time to file petition for a writ of certiorari was timely filed and the remittitur was sent.

LEGAL ERROR.

4.

3-2.
RULE 82(b) SCRCR FORECLOSED
REMITTITUR FROM BEING SENT!

Deputy clerk Allen did not have the authority to send the remittitur to the Administrative Law court by her own Admission in her September 19, 2016 letter:

"We are returning your 'motion for an extension to file certiorari petition'. [X] our documents must be filed with the South CAROLINA Supreme court."
R.p. 4.

Rule 82(b) SCRCR required Deputy clerk Allen to not type-up a letter stating that: my... documents must be filed with the South CAROLINA Supreme court. "IBID.

Instead Rule 82(b) SCRCR required her to transfer my case to the South CAROLINA Supreme court:
"when an action is brought in the wrong... court, the court shall not dismiss the action but shall transfer it to any proper... court"

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Rule 82(b) SCRP M.S. Allen failed to transfer this case to this court; accordingly Deputy clerk Allen was foreclosed under Rule 82(b) SCRP from sending the remittitur to the Administrative Law court, but instead she was required to transfer my case to this court.

3-3.

FIRST AND FOURTEENTH AMENDMENT
UNDER THE U.S. CONST. REQUIRES
ADEQUATE ACCESS TO
THE COURT!

The first and fourteenth Amendments under the United States Constitution required Deputy clerk to provide me adequate access to the courts which under *Bounds v. Smith* 430 U.S. 819, 97 S.Ct. 1491 U.S., N.E. (1977); whereas, the Supreme Court of the United States reasoned "our decisions have consistently required states to shoulder affirmative obligations to assure all prisoners meaningful access to the courts," *id.* at 824-825. I submit, the "required states" to assure all prisoners meaningful access to the courts. The doctrine is to be applied

LEGAL MAIL

broadly to include the Appellate courts clerks office transfer cases filed by inmates in the wrong court to the correct court to preserve the status quo, i.e., preserve the time filed in the wrong court because access to the courts does not stop at the feet of prison officials, but at the feet of the clerk's office, which in this case is with the South Carolina Court of Appeals; only then will the inmate's filing be properly before the court for judicial review.

Since Deputy Clerk Allen of the South Carolina Court of Appeals did not transfer my case to the Supreme Court of South Carolina which caused the remittitur to be erroneously sent to the Administrative Law Court which started the enforcement of the judgment, i.e., in violation of my First (Access to the courts) and Fourteenth (Due process/liberty/property interest) Amendments under the constitution of the United States. Actual injury is required under Lewis

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V. Casey 518 U.S. 343, 116 S.Ct. 2174 U.S. ARIZ.
1996, id., At 2178-81 which I have argued, id.,
therefore, Deputy Clerk Allen denied me adequate
access to this court.

4 LEGAL STANDARD:

The legal principle enumerated under *Wise v.*
S.C.D.C. 372 S.C. 173, 642 S.E. 2d 551 S.C. (2007)
which requires "the Remittitur... [to be recalled
if it is] sent down by mistake, error or inadvertence
of the court," id., At 551.

I submit to this court, Deputy Clerk V. CLAIR
Allen of the South Carolina Court of Appeals sent
the Remittitur on Sept. 19, 2016 to the Administrative
Court of South Carolina by mistake, error and
inadvertence because Rule 204(A) SCA and Rule 82(b)
SCRA required Deputy Clerk Allen to transfer my
case to this court, and precluded Ms. Allen from
sending the Remittitur to the lower court, id.,
therefore, this court must order the

[LEGAL MAIL]

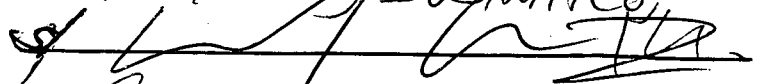
Court of Appeals to Recall the Remittitur from the Administrative Law Court

5.
CONCLUSION:

Based on the foregoing facts, I respectfully request the following relief:

- 5-1. GRANT MY MOTION TO RECALL REMITTITUR;
- 5-2. order the South CAROLINA Court of Appeals; P.O. Box 11629 Columbia, S.C. 29211 to order the Administrative Law Court of South CAROLINA; 1205 Pendleton Street; Columbia, S.C. 29201 to send the REMITTITUR IN Case No. 2016ALJ040030 AP to the Court of Appeals in Appellate case No. 2016-001033;
- 5-3. set the Deadline to file A WRIT OF CERTIORARI Petition in this Court for this instant case fifteen (15) days after the filing of this Court's order in this case;
- 5-4. Any other relief this Court deems just, proper, and/or impartial.

Respectfully submitted,



George Cleveland #357770
Tyger River Correctional Inst
200 Prison Road
9, Enores, S.C. 29335

DATED: OCTOBER 10, 2016

LEGAL MAIL

PETITIONER'S APPENDIX IN SUPPORT
OF MOTION RECALL REMITTUR.

THE STATE OF SOUTH CAROLINA.

IN THE SUPREME COURT

APPEAL FROM ADMINISTRATIVE LAW COURT

S. PHILLIP LENSKE; ADMINISTRATIVE LAW JUDGE

LOWER COURT CASE NO. 16-ALJ-04-0030-AP

APPELLATE CASE NO. 2016-1033

GEORGE CLEVELAND III

S.C.D.C. No. 357770

PETITIONER

v.

SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS (S.C.D.C.)

RESPONDENT

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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 19, 2016

The Honorable Jana E. Shealy
1205 Pendleton Street
Columbia SC 29201

REMITTITUR

Re: George Cleveland #357770 v. SCDC (5)
Lower Court Case No. 2016ALJ040030AP
Appellate Case No. 2016-001033

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,


CLERK

Enclosure

cc: George Cleveland #357770
Christina Catoe Bigelow, Esquire

AFFIDAVIT IN SUPPORT OF RECALLING REMITTITUR

APPELLATE CASE No.

2016-1033

1. I, George Cleveland, ~~III~~, swears under the penalty of perjury, the following is true and correct to the best of my knowledge;
2. on September 14, 2016, I inserted into the prison's black-mail-box outside the cafeteria here at Tyger River Correctional Institution; 200 Prison Road, Enoree, S.C. 29335 the properly addressed envelope to the South Carolina Court of Appeals. Enclosed were documents in support of my motion for leave of court for an extension of time to file my petition of a writ of certiorari in the above Appellate case No. 2016-1033.
3. on or around July 20, 2016, I mailed to the S.C. Court of Appeals clerk's office, my new mailing address of: George Cleveland, ~~III~~, #35770, U8-115-B, Tyger River Correctional Institution; 200 Prison Road, Enoree, S.C. 29335 from my old mailing address of: George Cleveland, ~~III~~, #35770, TA-118, Turbeville Correctional Institution; 1578 Clarence Coker Hwy, Turbeville, S.C. 29162. The September 19, 2016 post-dated envelope was received on September 20, 2016 at Turbeville Correctional Institution. I received and signed for the letter, and remittitur on September 28, 2016.

LEGATE

AFFIDAVIT IN SUPPORT. . . CONTINUED

4. The DATE OF the PROOF OF SERVICE because the PRISON'S (Tyger River) computers were down from Sept. 27-Oct 4, 2016 which prevented me from looking up on the PRISON'S LAW LIBRARY computer(s) the RELEVANT Rules of the COURT OF: S.C. Appellate Court Rules, AND FURTHERMORE, S.C. GOV. HALEY signed AN STATE OF EMERGENCY DECLARATION ON Oct 05-10, 2016 which forced the total lockdown of my assigned PRISON OF: Tyger River Correctional Inst., Sworee S.C. I could not leave my assigned dorm for nothing. My prescription medicine, AND meals were all delivered to my living AREAS in my dorm OF: Unit: 8-B side.

sworn to AND subscribed by me
this 10th day of Oct 2016
Paul Brown

NOTARY PUBLIC FOR SOUTH CAROLINA

my commission expires Dec. 10, 2024

SIGNATURE OF PETITIONER
[Signature]
George Cleveland, III



page-4

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
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www.sccourts.org

September 19, 2016

George Cleveland #357770
TCI
1578 Clarence Coker Hwy.
Turbeville SC 29162

Re: George Cleveland #357770 v. SCDC (5)
Appellate Case No. 2016-001033

Dear Mr. Cleveland:

We are returning your "motion for an extension to file certiorari petition." Pursuant to Rule 242 of the South Carolina Appellate Court Rules, SCACR, your documents must be filed with the South Carolina Supreme Court.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Christina Catoe Bigelow, Esquire
Enclosure



South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS, CLERK
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

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Tyger River

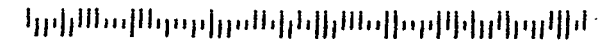
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GEORGE CLEVELAND #357770
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South Carolina Court of Appeals

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Tyger River

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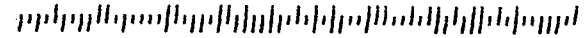
GEORGE CLEVELAND #357770
TCI
1578 CLARENCE COKER HWY.
TURBEVILLE SC 29162

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29162-941978



The South Carolina Court of Appeals

George Cleveland #357770, Appellant,

v.

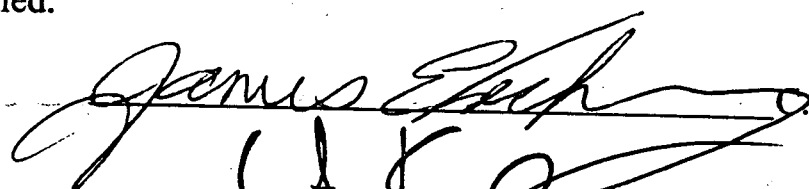
South Carolina Department of Corrections, Respondent.

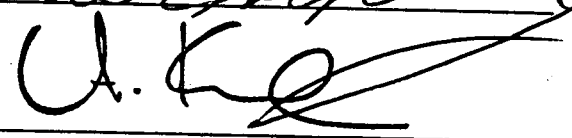
Appellate Case No. 2016-001033

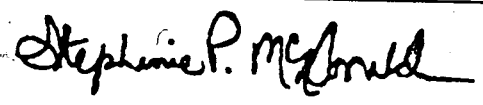
ORDER

The motion to proceed *in forma pauperis* is denied pursuant to *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). Appellant has also filed a motion to reinstate this appeal, which we construe as a petition to rehear the dismissal of this appeal.

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ J.


_____ J.


_____ J.

Columbia, South Carolina

cc:
Christina Catoe Bigelow, Esquire
George Cleveland #357770

FILED
August 11, 2016

PETITIONER'S PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA

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OCT 14 2016

IN THE SUPREME COURT

S.C. SUPREME COURT APPEAL FROM ADMINISTRATIVE LAW COURT

S. PHILLIP LENSKI, ADMINISTRATIVE LAW JUDGE

LOWER COURT CASE NO. 16-ALT-0038-AP

APPELLATE CASE NO. 2016-1033

GEORGE CLEVELAND, JR.,

S.C.D.C. NO. 357770,

PETITIONER,

RECEIVED

OCT 18 2016

SC Court of Appeals

v.
SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS (S.C.D.C.),

RESPONDENT,

George Cleveland, Jr., certifies that on the date below by and through the Tyger River Correctional Institution's mail-room staff, properly addressed with proper United States postage, the following documents: Petitioner's motion to recall remittitur; supporting Appendix, and this proof of service to the following:

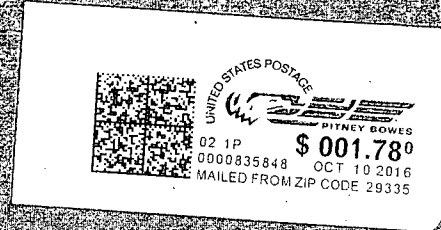
S.C.D.C.
OFFICE OF GENERAL COUNSEL
CHRISTINA CATOE BIGELOW, ESQUIRE
P.O. BOX 21787
COLUMBIA, S.C. 29221-1787
LEGAL MAIL
ATTORNEY FOR THE RESPONDENT
DATED 18 OCTOBER 18, 2016

Respectfully Submitted
George Cleveland, Jr.
Tyger River Correctional Inst.
200 PRISON ROAD
ENOKEE, S.C. 29335

LEGAL MAIL

Geok [barcode] 115-B

Tyge
200 PRISON ROAD
ENOKEE S.C. 29335



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The South CAROLINA Supreme Court
40 DANIEL E. SHEARHOUSE, CLERK OF COURT
P.O. Box 11330
COLUMBIA S.C. 29221

OCTOBER 10, 2016.

The SOUTH CAROLINA SUPREME COURT
DANIEL E. SHEAROUSE; clerk of court.
P.O. BOX 11330
COLUMBIA S.C. 29211

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OCT 14 2016
S.C. SUPREME COURT

Re: MOTION TO RECALL REMITTUR; George Cleveland vs SCDC;
Appellate Case No. 2016-1033,

1. DEAR MR. SHEAROUSE,

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OCT 18 2016

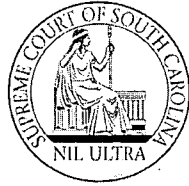
SC Court of Appeals

CAN you please file the attached motion to RECALL
REMITTUR issued by the S.C. COURT OF APPEALS instead
of transferring my motion for an extension of
time to file my petition for writ of certiorari.
Also attached is my supporting Appendix; Along with
proof of service.

2. CAN you FORWARD to the court for its' consideration?
CAN you also kindly stamp the extra copies, and mail-
back to me in the self-addressed-stamped-envelope?

Respectfully Requested
S/C
George Cleveland, #352770
Tyger River Correctional Inst
200 PRISON ROAD
ENOKEE, S.C. 29335

CC: FILE
CHRISTINA CATOE BIGELOW, ESQUIRE
LEGAL MAIL



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

October 17, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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OCT 18 2016

SC Court of Appeals

Re: George Cleveland #357770 v. SCDC (5)
Appellate Case No. 2016-001033

Dear Ms. Kitchings:

Enclosed is a motion to recall the remittitur that Mr. Cleveland has sent to this Court. Because this motion is more appropriately made to the South Carolina Court of Appeals since it issued the remittitur, I am forwarding this motion to the Court of Appeals for its consideration.

Very truly yours,

CLERK

Enclosure

cc: Mr. George Cleveland #357770
Christina Catoe Bigelow, Esquire

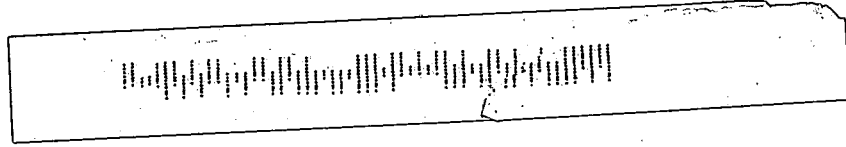
George Cleveland ~~III~~ #357770 ~~115-B~~
Tyger River Correctional Inst.
200 Prison Road
ENOKEE, SC. 29335



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OCT 10 2016

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The South CAROLINA Supreme Court
c/o DANIEL E. SHEAROUSE; clerk of court
P.O. Box 11330
COLUMBIA, SC. 29271