

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from the Administrative Law Court
S. Phillip Lenski, Administrative Law Judge
ALC Case No. 16-ALJ-04-0030-AP

Appellate Case No. 2016-002324
Former Court of Appeals Appellate Case No. 2016-001033

GEORGE CLEVELAND, # 357770,

PETITIONER,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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ISSUE PRESENTED

Appellant suffered no prejudice from the Court of Appeals' decision to construe his motion for reinstatement of appeal as a petition for rehearing where Petitioner's appeal was properly dismissed under either construction.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of George Cleveland (Petitioner), an inmate incarcerated with the South Carolina Department of Corrections (SCDC). After utilizing the Department of Corrections' internal grievance procedure to challenge the handling of mail by employees of the Department, Petitioner filed a Notice of Appeal with the Administrative Law Court (App. p. 1). By order dated April 5, 2016, Administrative Law Judge S. Phillip Lenski dismissed the appeal on the ground that the case did not involve a loss of good time and did not involve a state-created liberty or property interest. (App. p. 2-3). Petitioner filed a Notice of Appeal with the South Carolina Court of Appeals on May 11, 2016. Attached to the Notice of Appeal was a Proof of Service indicating service upon the Office of General Counsel at the Department of Corrections on May 6, 2016. On May 17, 2016, the Court of Appeals issued a deficiency letter citing two deficiencies: (1) the filing fee of \$100.00 had not been paid; and (2) Petitioner failed to provide a proof of timely service upon the Administrative Law Court as required by Rule 203, SCACR. (App. p. 4). On June 9, 2016, the Court of Appeals issued an order dismissing the appeal for Petitioner's failure to comply with the requirements detailed in the deficiency letter. (App. p. 9)

On June 14, 2016, the Court of Appeals filed Petitioner's "Motion for Leave of Court for Reinstatement," which was dated June 9, 2016. (App. p. 5-6). On July 8, 2016, Petitioner submitted a "Motion for Leave to Proceed In Forma Pauperis," which was dated June 30, 2016. On August 11, 2016, the Court of Appeals issued an Order denying Petitioner's motion to proceed *in forma pauperis* pursuant to Ex parte Martin, 321 S.C. 533, 471 S.E.2d 134

(1995), construing Petitioner's motion to reinstate as a petition to rehear the dismissal of the appeal, and declining to alter its decision to dismiss the appeal. (App. p. 8). On September 15, 2016, the Court of Appeals received a motion for an extension of time in which to file a Petition for Writ of Certiorari from the Court's June 9, 2016 order of dismissal. By letter dated September 19, 2016, this motion was returned to Petitioner as being filed in the wrong court pursuant to Rule 242, SCACR. The remittitur was issued the same day. In October 2016, Petitioner submitted a motion to recall the remittitur. On November 4, 2016, the Court of Appeals issued an order recalling the remittitur. Subsequently, Petitioner submitted a request for an extension of time in which to file his Petition for Writ of Certiorari, and, on December 5, 2016, he served such Petition. (See App. p. 15). He also served an Amended Petition for Writ of Certiorari on December 11, 2016, which made no substantive changes. This Return follows.

ARGUMENT

Appellant suffered no prejudice from the Court of Appeals' decision to construe his motion for reinstatement of appeal as a petition for rehearing where Petitioner's appeal was properly dismissed under either construction.

Petitioner argues that the Court of Appeals erred in interpreting his motion for reinstatement of the appeal as a petition for rehearing and asserts he suffered prejudice from this error. Even assuming, for argument's sake, that the Court of Appeals somehow committed error by construing the motion for reinstatement as a petition to rehear the dismissal of the appeal, Petitioner suffered no prejudice because dismissal of the appeal was proper under either construction. Despite the fact that Petitioner's motion to proceed *in forma pauperis* was filed late, the Court of Appeals accepted and ruled upon the motion. (See App. p. 8). The motion was denied pursuant to Ex parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995), meaning Petitioner failed to establish any statutory or constitutional basis for the waiver of the appellate filing fee. (App. p. 8). Petitioner has neither asserted nor shown that this ultimate conclusion was incorrect. (See Amended Petition for Writ of Certiorari, p. 1-11).


Accordingly, the Court of Appeals properly dismissed the appeal for failure to comply with the South Carolina Appellate Court Rules, and Petitioner suffered no prejudice from the Court's interpretation of his motion for reinstatement as a petition for rehearing.

CONCLUSION

Based upon the foregoing, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
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BY: 
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January 4, 2017

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date I mailed a copy of the **Return to Petition for Writ of Certiorari** to Petitioner, addressed as follows: **George Cleveland, III**, # 357770, Tyger River Correctional Institution, 200 Prison Road, Enoree, South Carolina, 29335.



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