

PETITIONER'S MOTION TO RECALL  
THE REMITTUR SENT ON 11/3/17

RECEIVED

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
IN THE SUPREME COURT

FEB 02 2017

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
S. PHILLIP LENSKI, ADMINISTRATIVE LAW JUDGE  
LOWER COURT CASE NO. 16-ALT-04-0030-AP  
APPELLATE COURT CASE NO. 2016-001033

GEORGE CLEVELAND, III #357770, PETITIONER,

vs.

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

RESPONDENT.

S.C.D.C.

OFFICE OF GENERAL COUNSEL

CHRISTINA CATOE BIGELOW, DEPUTY GENERAL COUNSEL

P.O. Box 21787

COLUMBIA, S.C. 29221

ATTORNEY FOR RESPONDENT

GEORGE CLEVELAND, III  
TYGER RIVER CORRECTIONAL  
200 PRISON ROAD  
ENOREE, S.C. 29335  
PROSE PETITIONER  
**LEGAL MAIL**

1.  
PETITIONER'S MOTION TO RECALL  
1/13/17 REMITTUR:

MAY IT PLEASE THE COURT: George Cleveland,  
~~IT~~ proceeding pro se, respectfully submits this  
Application to this court to RECALL THE REMITTUR  
sent to the Administrative Law Court of South  
CAROLINA ON JANUARY 13, 2017 (R.p. 1) on the  
following grounds:

the remittur was sent in error.

2.  
ARGUMENT  
REMITTUR SENT ON  
JANUARY 13, 2017 WAS  
IN ERROR:

ON JANUARY 13, 2017, this court sent the remittur  
to the ALC. FOR APPELLATE COURT CASE NO. 2016-001033,  
R.p. 1.

TWO (2) DAYS PRIOR (1/11/2017) THE SOUTH CAROLINA  
SUPREME COURT DENIED MY MOTION TO PROCEED IN  
FORMA PAUPERIS; EFFECTIVELY ENDING THAT APPEAL. R.p. 2

1.

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The Appellate Court case number assigned that order (1/11/17 R.p. 2) is as follows: 2016-002410; George Cleveland ~~###~~ #357770 vs. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, FBI,

The specific error is that the order denying my motion to proceed ~~IN~~ FORMA PAUPERIS filed on JANUARY 11, 2017 by the S.C. Supreme Court Appellate case no. is: 2016-002410; George Cleveland ~~###~~ #357770 vs. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, R.p. 2.

ON the other hand, the JANUARY 13, 2017 Remittitur sent to the A.L.C. Appellate case no. is: 2016-001033, R.p. 1. This Appellate case number, ID# WAS the Appeal filed in the S.C. COURT OF APPEALS, however, this case number, ID# is correlated with my petition for a WRIT OF HABEAS CORPUS filed in

2.

**LEGAL MAIL**

The S.C. Supreme Court which the Appellate Court case No. is: 2016-002324; George Cleveland, ~~III~~ #357720 v. South Carolina Department of Corrections, R.p. 3.

The S.C. Supreme Court held under: *Wise v. S.C.D.C.* 372 S.C. 173, 642 S.E.2d 551 S.C. (2007) the following:

"The Remittitur is [to be recalled if it is] sent down by mistake, error or inadvertence of the court," *id.* at 551. The Remittitur sent on JANUARY 13, 2013 *id.* (Appellate case No. 2016-001033)<sup>1</sup> filed in the S.C. Court of Appeals is correlated with certiorari petition filed in the S.C. Supreme Court (Appellate case No. 2016-002324)<sup>2</sup>. And nothing to do with Appellate case No. 2016-002410, filed in the S.C. Supreme Court. Accordingly, the

1. R.p. 1  
2. R.p. 3

Remittitur, R.P. 1, sent to the A.L.C. on  
JANUARY 13, 2017 sent by the S.C. COURT OF  
APPEALS WAS IN ERROR, AND MUST BE RECALLED.

### 3. CONCLUSION:

The S.C. SUPREME COURT GRANTED MY MOTION  
FOR AN EXTENSION TO FILE MY PETITION FOR  
A WRIT OF CERTIORARI UNTIL DECEMBER 05, 2016  
R.P. 3. The petition was timely filed, and the  
S.C.D.C. even filed its return to my  
CERTIORARI ON JANUARY 04, 2017. R.P. 4.

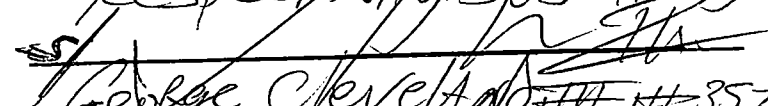
The remittitur sent in error is simply  
delaying this case from review by the court.  
because the clerk's duties are "to [only]  
accept for filing any paper presented to him."  
BURRIS V. STATE OF OHIO 360 U.S. 252, 79 S.Ct.  
1164 (1959), id. at 256, at 1168, see also DANIELS

V. Moses 12 S.C. 130, 1879, WL 4939 (1879),  
id. At 133-35. The Justices, and Appellate  
Judges of the S.C. Appellate courts are to  
make decision(s) in my certiorari petition;  
therefore, I PRAY FOR the following relief:

3-1. WHEREFORE; GRANT my motion to RECALL  
the Remittitur From the S.C. Administrative  
Law court in: Appellate case No. 2016-001033;  
ALC. case No. 2016-ALJ-040030AP in George  
Cleveland III v. S.C.D.C.

3-2. Notify the clerk's office of the S.C. Supreme  
Court to place Appellate case No. 2016-002324  
in: George Cleveland III v. S.C.D.C. back on  
the docket for the justices' consideration.  
Since the REMITTITUR has been RECALLED.

3-3. Any other relief this court deems just,  
proper, and/or impartial.

Respectfully submitted  
  
George Cleveland III #35770  
TIGER RIVER CORRECTIONAL INST.  
200 PRISON ROAD  
5. ENOREE, S.C. 29335  
**LEGAL MAIL**

DATED: FEBRUARY 05 2017

PETITIONER'S APPENDIX IN  
SUPPORT OF MOTION TO RECALL  
SENT ON 11/13/17

RECEIVED

FEB 02 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
IN THE SUPREME COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
S: PHILLIP LENSKI, ADMINISTRATIVE LAW JUDGE  
LOWER COURT CASE NO. 16-ALJ-04-0030 AP  
APPELLATE CASE NO. 2016-001033

GEORGE CLEVELAND III #35770, . . . PETITIONER,

VS.

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

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TO PROCEED IN FORMA PAUPERIS DATED: JANUARY  
11, 2017 . . . 2  
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LEGAL MAIL

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4, 2017 OF THE S.C.D.C. v . . . . . 4



*R.P.*

# 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

January 13, 2017

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,

*V. Claire Allen, Deputy*

CLERK

Enclosure

cc: George Cleveland #357770  
Christina Catoe Bigelow, Esquire

Rip 2

# The Supreme Court of South Carolina

George Cleveland #357770, Petitioner,

v.

South Carolina Department of Corrections, Respondent.

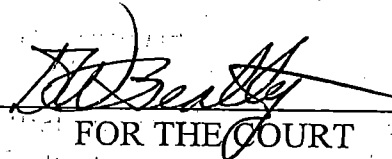
Appellate Case No. 2016-002410

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## ORDER

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Petitioner has filed a motion for an extension of time to serve and file a petition for a writ of certiorari to the Court of Appeals. Petitioner has not submitted the filing fee for the motion, but instead moves to proceed *in forma pauperis*. We deny the motion to proceed *in forma pauperis* and decline to entertain the motion for an extension of time in light of petitioner's failure to pay the filing fee.



C.J.

FOR THE COURT

Columbia, South Carolina

January 11, 2017

cc: Christina Catoe Bigelow, Esquire  
George Cleveland #357770  
The Honorable Jenny Abbott Kitchings

Ap. 3

# The Supreme Court of South Carolina

George Cleveland, III, #35770, Petitioner,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2016-002324

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## ORDER

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The time to serve and file the petition for a writ of certiorari and appendix is extended until December 5, 2016. Any further extension request must comply with the requirements of this Court's order dated July 16, 2014.<sup>1</sup>

FOR THE COURT

BY Drenda J. Shealy  
Chief Deputy CLERK

Columbia, South Carolina

November 22, 2016

cc: Matthew C. Buchanan, Esquire  
Mr George Cleveland, III, #357770  
The Honorable Jenny Kitchings

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<sup>1</sup> This order is available at <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-07-16-01>.

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STATE OF SOUTH CAROLINA

IN THE 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.

**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.



Christina Catoe Bigelow  
Deputy General Counsel  
Office of General Counsel  
S. C. Department of Corrections  
Post Office Box 21787  
Columbia, S. C. 29221  
(803) 896-8508

January 4, 2017

PETITIONER'S PROOF OF SERVICE

**RECEIVED**

THE STATE OF SOUTH CAROLINA

FEB 02 2017

IN THE COURT OF APPEALS;

SC Court of Appeals

IN THE SUPREME COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. PHILLIP LENSKI, ADMINISTRATIVE LAW JUDGE

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

APPELLATE CASE No. 2016-001033

GEORGE CLEVELAND III #357770, PETITIONER,

vs.

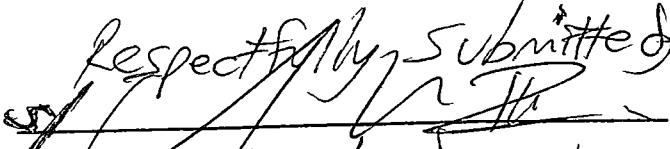
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS (S.C.D.C.), RESPONDENT.

PETITIONER'S PROOF OF SERVICE

I, George Cleveland III, certify that on the date below, with proper United States postage, and properly addressed, motion to recall remittitur, and supporting appendix to the following:

S.C.D.C.  
OFFICE OF GENERAL COUNSEL  
CHRISTINA CATOE BIGELOW, ESQUIRE  
P.O. Box 21787  
Columbia, S.C. 29221

Dated: February 01, 2017

Respectfully submitted,  
  
George Cleveland III #357770  
IVER RIVER CORRECTIONS  
100 PRISON ROAD  
ENOKE, SC 29335

**LEGAL MAIL**

February 01, 2017.

The South CAROLINA COURT OF APPEALS  
JENNY ABBOTT KITCHINGS; CLERK OF COURT  
Post OFFICE BOX 11629,  
COLUMBIA, S.C. 29211

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FEB 02 2017

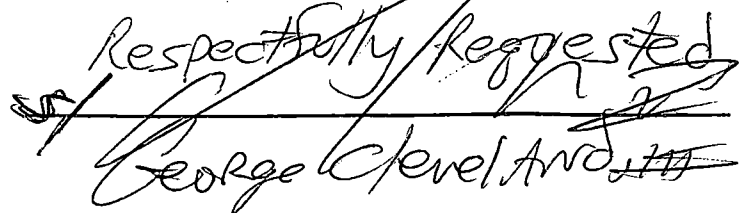
SC Court of Appeals

Re: George Cleveland ~~III~~ v. South CAROLINA Department  
OF CORRECTIONS; Appellate case No. 2016-001033; motion  
TO RECALL REMITTITUR.

1. DEAR Ms. Kitchings,

CAN you please file the ~~attached~~ motion to  
Recall Remittitur (5-pages), supporting Appendix  
(6-pages), AND PROOF OF SERVICE, AND FORWARD  
to the court for its' consideration?

2. CAN you also please kindly stamp the extra  
copies in the S.A.S.E. AND MAIL BACK to me?

Respectfully Requested  
  
George Cleveland ~~III~~

CC: FILE  
CHRISTINA CATOE BIGELOW; ESQUIRE  
DANIEL E. SHEAROUSE; CLERK OF S.C. SUPREME COURT

**LEGAL MAIL**

George Cleveland III # 357778, U8115-B  
TYGER RIVER CORRECTIONAL INST.  
200 PRISON ROAD  
ENOKEE, SC 29335



Appellate Case No.  
2016-001033

THE SOUTH CAROLINA COURT OF APPEALS  
JENNY ABBOTT KITCHINGS, CLERK OF COURT  
Post Office Box 11629  
COLUMBIA, SC 29211

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SC Court of Appeals

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FEB 01 2017

TYRONE MAILROOM

LEGAL MAIL