

PETITION FOR REHEARING TO THE
FEBRUARY 10, 2017 ORDER

RECEIVED

THE STATE OF SOUTH CAROLINA FEB 27 2017

IN THE SUPREME COURT

S.C. SUPREME COURT

APPEAL FROM ADMINISTRATIVE LAW COURT

S. PHILLIP LENSKE, ADMINISTRATIVE LAW JUDGE

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

APPELLATE CASE No. 2016-002324

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
MATTHEW C. BUCHANAN, ESQUIRE
CHRISTINA CATSE BIGELOW, ESQUIRE
P.O. BOX 21787
COLUMBIA, S.C. 29221-1787
ATTORNEY FOR THE RESPONDENT

GEORGE CLEVELAND III #357770
TIGER RIVER CORRECTIONAL INST.
200 PRISON ROAD
ENOKE, S.C. 29335
PROSE PETITIONER

REHEARING PETITION:

MAY ~~IT~~ PLEASE THE COURT; George
CLEVELAND, III, proceeding pro se,
Respectfully submits this REHEARING PETITION
Under. RULE 22(a) S.C.A.C.R. on the
following grounds:

EX PARTE MARTIN 321 S.C. 533, 471 S.E.
2d. 134 (1995) cited by this court as its
Legal Authority for DENYING MY MOTION
FOR LEAVE TO PROCEED IN FORMA PAUPERIS
is in conflict with case-law of the
Supreme court of the United States
under BOUNDS V. SMITH 430 U.S. 819, 97 S.Ct.
1491 U.S. N.C. (1977) AND Lewis v. Casey
518 U.S. 343, 116 S.Ct. 2174 U.S. (R12)
(1996). pp. 1.

2.
LEGAL STANDARD ARGUMENT
EX PARTE MARTIN IS IN
CONFLICT WITH CASE-LAW
OF THE U.S. SUPREME COURT.

This court held in *Kennedy v. South Carolina Retirement System* 349 S.C. 531, 564 S.E. 2d 322 (2001), the following relevant part:

"In order to prevail on a petition for rehearing, Appellant [] must demonstrate the court overlooked or misapprehended their argument," *id.*, at 322.

FN Martin v. State (i.e. *Ex parte Martin*) 321 S.C. 533, 471 S.E. 2d 134 (1995) this court held:

"FN the absence of a statutory provision
2.

Allowing the general waiver of filing fees, we conclude motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions; id., 535, At 134-35, and further: "whether the cause of action concerns a fundamental right that requires waiver of the filing fee, id., At 536, At 135.

I explicitly argued that under *Bounds v. Smith* 430 U.S. 819, 97 Sct. 1491, U.S. N. (1977) the supreme court of the United States held states must forgo the court filing fees so that state inmates like myself have meaningful access to the courts

in this state, *id.*, At 824-26, see also
Lewis v. Casey 518 U.S. 343, 116 S.Ct. 2174
U.S. (ARIZ) (1996), *id.*, At 2178-81, which I
suffered prejudice under Lewis v. Casey,
id., because court fees have blocked my
access to the courts. = B1D. pp. 2-4. pages
1-3 of the motion to proceed in forma pauperis.

The specific conflict is MARTIN v. STATE
(*ie. Ex parte MARTIN*) 321 S.C. 533, 471 S.E.
2d 134 (1995) reasoned the only way for
courts of our state to GRANT my motion
to proceed in forma pauperis is with
an "statutory provision", "constitutional
provisions", *id.* At 535, At 134-35, or "A
Fundamental Right", *id.*, At 536, At 135. On the
other hand, BOUNDS v. SMITH 430 U.S. 819, 97
S.Ct. 1491, U.S. N.C. (1977) rejects these barriers
imposed by this court, and requires that I
only provide proof I'm indigent, and

CANNOT pay the filing fee of \$100.00
for the filing of the certiorari petition
OR \$25.00 for ~~the~~ motion fee (p.5);
EX PARTE MARTIN *jud.*, is in conflict with
BOUNDS V. SMITH, AND LEWIS V. CASEY *jud.*
CASE-LAW of the supreme court of
the united states; Accordingly, the
FEBRUARY 10, 2017 order, *r.p.L.*, is
without Authority respectively, p.5.

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CONCLUSION:

BASED ON the foregoing facts, supporting
exhibits, AND Legal Authorities, I pray for
the following relief:

3-1. WHEREFORE; GRANT my MOTION FOR
REHEARING;

3-2. ORDER THE CLERK OF THE SUPREME

court, idly to place this case on the docket without the prepayment of the \$100.00 sitting fee for the certiorari petition or the \$25.00 motion fee.

3-3 consider my filed motion to correct clerical error in the petition.

3-4 ANY other relief this court deems just proper AND/OR IMPARTIAL.

Respectfully Submitted



George Cleveland III #35770
TYGER RIVER CORRECTIONAL
200 PRISON ROAD
ENOKE, NC 29335

DATED: FEBRUARY 20, 2017

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PETITIONER'S PROOF OF SERVICE

RECEIVED

THE STATE OF SOUTH CAROLINA

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IN THE SUPREME COURT

S.C. SUPREME COURT

APPEAL FROM ADMINISTRATIVE LAW COURT

S. PHILLIP LENSKI, ADMINISTRATIVE LAW JUDGE

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

APPELLATE CASE No 2016-002324

GEORGE CLEVELAND III,

S.C.C. No. 35770, PETITIONER

v.

SOUTH CAROLINA DEPARTMENT

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

F, George Cleveland III, certifies that on the
date below, F inserted into the black-mail-
box outside the TYGER RIVER CORRECTIONAL'S
CAFETERIA, the following legal documents
PAGE 1 OF 2

to the Respondent's Attorneys of
RECORD:

PETITION FOR REHEARING TO THE
FEBRUARY 19, 2017 ORDER, Supporting Appendix
AND THIS PROOF OF SERVICE to the
Following entity, AND ADDRESS:

S.C.D.C.

OFFICE OF GENERAL COUNSEL

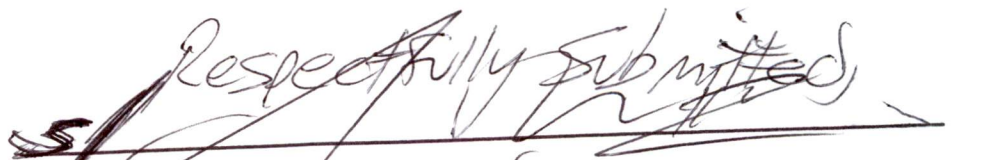
MATTHEW C. BUCHANAN, ESQUIRE

CHRISTINA CATOE BIGELOW, ESQUIRE

P.O. Box 21787

COLUMBIA, S.C. 29221-1787

ATTORNEY FOR THE RESPONDENT

Respectfully Submitted,

George Cleveland III #357770
TUGER RIVER CORRECTIONAL INST.
200 PRISON ROAD
ENOREE, S.C. 29335

DATED: FEBRUARY 20, 2017

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PETITIONER'S APPENDIX ~~IN~~ SUPPORT
OF REHEARING PETITION TO THE
FEBRUARY 10, 2017 ORDER

RECEIVED

FEB 27 2017

THE STATE OF SOUTH CAROLINA S.C. SUPREME COURT
IN THE SUPREME COURT

APPEAL FROM ADMINISTRATIVE LAW COURT
S. PHILLIP LENSKI, ADMINISTRATIVE LAW JUDGE
LOWER COURT CASE NO. 16-ALJ-04-0030-AB
APPELLATE CASE NO. 2016-002324

GEORGE CLEVELAND, III,

S.C.D.C. No. 35770, PETITIONER,

v.

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

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~~INMATE TRUST-FUND ACCOUNT STATEMENT~~ 5

Rip-1

The Supreme Court of South Carolina

George Cleveland, III, #35770, Petitioner,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2016-002324

ORDER

Petitioner has filed a motion to proceed in forma pauperis in this matter. The motion is denied. *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). Petitioner shall pay the filing fee for the petition for a writ of certiorari within fifteen days of the date of this order. If petitioner pays that fee and wishes for the Court to entertain his motion to correct clerical errors in the petition, he must also pay the filing fee for that motion within the same time period.



FOR THE COURT C.J.

Columbia, South Carolina

February 10, 2017

cc:

Matthew C. Buchanan, Esquire
Christina Catoe Bigelow, Esquire
George Cleveland, III, #357770

Appellate case No.

2016-002324

1.

R.P. 2

MOTION TO PROCEED IN
FORMA PAUPERIS AND MOTION
TO CORRECT CLERICAL ERRORS

MAY IT PLEASE THE COURT; George Cleveland, III,
proceeding pro se, respectfully submit to this court
to GRANT my motion to proceed in this court
Action(s) without the prepayment of the \$100.00.

Petition for a writ of CERTIORARI, . . . filing fee, and
without the prepayment of the \$25.00 motion fee for
the correction of CLERICAL ERRORS in my Dec. 05,
2016 filing of the filed petition, id., on the following
grounds:

I LACK the funds to pay the \$100.00 filing fee, and
the \$25.00 filing fee, R.P. 1.

2.

ARGUMENT

I HAVE AN FEDERAL-RIGHT
FOR JUDICIAL REVIEW BY THIS
COURT DESPITE BEING A PAUPER.

The supreme court of the United States Reasoned
Under-Bounds v. Smith 430 U.S. 819, 97 S.Ct. 1491, U.S.
Nic. (1977): "OUR decisions have consistently required
States to shoulder Affirmative obligations to Assure
All prisoners meaningful Access to the courts. . . .", 11 S.,
At 824-26.

1.

Appellate case No. 2016- RA 3
This includes the waiver of ⁰⁰²³²⁴ court filing

fees for meaningful access to the courts to be meaningful. Without this element of this court actually reviewing my documents after researching, writing and timely mailing to this court non-trivial legal documents would make my hard-work meaningless, and vexatious. Under a series of cases, the S.C. Appellate courts have broadly applied *Bounds v. Smith*, *id.*, and *Lewis v. Casey* 518 U.S. 343, 116 S.Ct. 2174 U.S. (ARIZ) (1996); *id.* at 2178-81, *Inmates' Federal Rights to Meaningful Access to the Court*:

transporting an inmate by the S.C.D.C.'s transportation officers to court whether criminal or civil, *Kocaya v. Kocaya* 347 S.C. 26, 552 S.E. 2d 765 (Ct. of Appeals 2001) at 767; see also *Department of Social Services v. Lavra* 386 S.C. 382, 688 S.E. 2d 130 (Ct. of Appeals 2009) (per curiam), *id.* at 132-33.

"The word wrongs embrace every injury to or impairment of rights of person or property." *State v. Lagerquist* 254 S.C. 501, 176 S.E. 2d 141 (1970) *id.*

143; accordingly, I have a Federal Right to meaningful Access to the courts without the prerequisite of the \$100.00 filing fee, and the \$25.00 filing fee to this court prior to the reviewing of my petition and motion; id., under Bounds v. Smith 430 U.S. 819, 97 S.Ct. 1491 U.S. N.C. (1977) id., at 824-26.

3.

ATTACHED CERTIORARI
PETITION CORRECTS
CLERICAL ERRORS;

The attached petition for a writ of certiorari to the S.C. court of Appeals (filed on 12/05/16) in this court is missing the specific page numbers to the record that has been filed respectively, the page numbers were added to the attached petition, id., and were the only corrections, since

“clerical errors in a [petition for a writ of certiorari to the S.C. court of Appeals] do[es] not destroy [petition id.]”

“this includes an First Amendment (Access to the courts, and an Fourteenth Amendment (due process liberty/property interest under the U.S. consti

Appellate Case No. 2016-002324
Rp. 5

FINANCIAL CERTIFICATE
FOR THE
DISTRICT OF SOUTH CAROLINA

(for use in § 1983, *Bivens*, and non-habeas civil actions filed by prisoners)

I request that an authorized officer of the institution in which I am confined, or other person designated to review financial information in relation to inmate trust funds, complete this Certificate. If I am granted *in forma pauperis* status, I authorize and consent to collection of the \$ 350 filing fee in accordance with 28 U.S.C. § 1915(b) until the filing fee is paid in full as well as any amount of costs, sanctions, and/or fees that might be imposed by the court during this litigation. I understand that if I do not qualify for *in forma pauperis* status, I will have to pay \$400 to proceed with my case, which includes the full \$350 filing fee as well as an additional \$50 administrative fee established by the Judicial Conference of the United States. The \$50 administrative fee is not applicable to *in forma pauperis* cases.

GEORGE CLEVELAND III 357770
INMATE NAME (PRINTED) INMATE (PRISONER) NUMBER

[Signature] TYGER RIVER CORRECTIONAL
INMATE SIGNATURE PLACE OF CONFINEMENT

- ◆ (1) Average monthly deposits to the inmate's account.....\$ 0
- ◆ (2) Average monthly balance in the inmate's account calculated for the prior six months period.\$ 0
- ◆ (3) Current Balance\$ 0
- ◆ (4) Initial Installment Payment - due upon granting of *in forma pauperis* status (Take 20 percent of the greater of lines 1 or 2).....\$ 0

I hereby certify that as of this date, the above financial information is accurate for the above named inmate.

M. Boykin 8/25/14
Authorized Officer's Signature Date
M. Boykin Financial Auct.
Authorized Officer's Name and Title

SCDC-FINANCIAL ACCTG
2016 AUG 23 PM 2:16