

PETITION FOR REHEARING TO THE

FEBRUARY 10, 2017 ORDER

MARCH 02, 2017

RECEIVED

MAR 21 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-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

MATHEW C. BUCHANAN, ESQUIRE

CHRISTINA CADE BIGELOW, ESQUIRE

P.O. BOX 21787

COLUMBIA, S.C. 29221-1787

ATTORNEY FOR THE RESPONDENT

GEORGE CLEVELAND, III

TIGER RIVER CORRECTIONAL

200 PRISON ROAD

ENOREE, S.C. 29335

PRO SE PETITIONER

# The Supreme Court of South Carolina

George Cleveland, III, #35770, Petitioner,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2016-002324<sup>1</sup>

Lower Court or Tribunal Case No. 2016ALJ040102AP

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## ORDER

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Petitioner has failed to pay the filing fee required by Rule 242 of the South Carolina Appellate Court Rules, and this Court's order dated February 10, 2016. Accordingly, this matter is dismissed.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

March 2, 2017

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

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<sup>1</sup> Before the South Carolina Court of Appeals, the Appellate Case Number was 2016-000681.

1.  
REHEARING PETITION:

MAY ~~IT~~ PLEASE THE COURT; George Cleveland ~~III~~, proceeding pro se, respectfully submits this REHEARING PETITION UNDER RULE 221(a) S.C.A.C.R. on the following grounds:

EX PARTE MARTIN 321 S.C. 533, 471 S.E. 2d. 135 (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. (ARIZ) (1996), R.p. 1

2.

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

The 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.

IN MARTIN v. STATE (i.e. EX PARTE MARTIN)  
321 S.C. 533, 471 S.E. 2d 134 (1995) this  
court held:

"In 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.*, At 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 *Bowds v. Smith* 430 U.S. 819, 97 S.Ct. 1491, 48 U.S.W. 1 (1977), the Supreme Court of the United States held states must forego 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. (AR12)  
(1996) id, AT 2178-81 which I suffered  
prejudice under Lewis v. Casey, id,  
because court fees have block my  
Access to the courts. IBID. R.p.p. 2-4, pages  
1-3 of the motion to proceed in forma  
pauperis.

The specific conflict is MARTIN v. STATE  
Civ. 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 135. ON the other.

Bounds v. Smith 430 U.S. 819, 97 S.Ct. 1491  
U.S. N.C. (1997) 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  
& \$25.00 for the motion fee (R.p. 5)  
EX PARTE MARTIN, id., is in conflict  
with Bounds v. Smith, and Lewis v.  
Casey, id., case-law of the supreme  
court of the United States; Accordingly,  
the February 10, 2017 orders; R.P. 1, is  
without authority respectively. R.p. 5.

### CONCLUSION:

BASED ON the foregoing facts, supporting  
exhibits, AND legal authorities, I PRAY  
for the following relief:  
5,

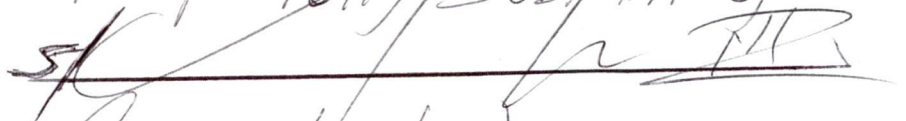
3-1. WHEREFORE; GRANT my MOTION FOR REHEARING;

3-2. ORDER THE CLERK OF THE SUPREME COURT; to place this case on the docket without the prepayment of the certiorari petition or the \$25.00 motion fee.

3-3. Consider my filed motion to correct clerical error in the petitions.

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

Respectfully Submitted,

  
George Cleveland, #357770  
TYGER CORRECTIONAL INST.

DATED: MARCH 15, 2017  
200 PRISON ROAD  
ENOKEE, S.C. 29335  
6.

PETITIONER'S APPENDIX IN SUPPORT  
OF REHEARING PETITION TO THE

~~FEBRUARY 19, 2017 ORDER~~  
~~MARCH 02, 2017~~

RECEIVED

MAR 21 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-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.

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*Repeal*

# The Supreme Court of South Carolina

George Cleveland, III, #35770, Petitioner,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2016-002324<sup>1</sup>

Lower Court or Tribunal Case No. 2016ALJ040102AP

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## ORDER

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Petitioner has failed to pay the filing fee required by Rule 242 of the South Carolina Appellate Court Rules, and this Court's order dated February 10, 2016. Accordingly, this matter is dismissed.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

March 2, 2017

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

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<sup>1</sup> Before the South Carolina Court of Appeals, the Appellate Case Number was 2016-000681.

Rep. 1-1

# 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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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

1. Rep. 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.

Ref. 3

This includes the waiver of 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 (2006); *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. const)

RECEIVED

FEB 07 2017

Appellate case  
NO. 202324

U8 115-B  
Tyge Kim  
Rep. 5

FINANCIAL CERTIFICATE  
FOR THE

TYRRI MAILROOM 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  
INMATE NAME (PRINTED)

357770  
INMATE (PRISONER) NUMBER

[Signature]  
INMATE SIGNATURE

TYGER RIVER CORRECTION  
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. ....\$ 0.09
- ◆ (3) Current Balance .....\$ 0.09
- ◆ (4) Initial Installment Payment - due upon granting of *in forma pauperis* status (Take 20 percent of the greater of lines 1 or 2).....\$ 0

SCDC-FINANCIAL ACCTG  
2017 FEB -2 PM 2:36

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

[Signature]  
Authorized Officer's Signature

2/2/17  
Date

J Smit for Acty  
Authorized Officer's Name and Title

PETITIONER'S PROOF OF SERVICE  
BY DECLARATION UNDER HOUSTON V. LACK

THE STATE OF SOUTH CAROLINA

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MAR 21 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-ALJ-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.

I, George Cleveland, III, swear, and declare  
under the penalty of perjury, on March 16,  
2017, I inserted into Tiger River Correctional's  
black-mail-box outside the Cafeteria my Rehearing  
page 1 of 2

Petition, AND supporting Appendix, AND under  
Houston v. Lack 487 U.S. 266 (1988) (whereas  
the Supreme Court of the United States  
held inmate's court filings are FILED ON  
the DATE inserted into the prison's  
INTERNAL MAIL-BOX), with proper service,  
AND properly addressed to the respondent's  
Counsel of Record:

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  
ATTORNEYS FOR THE RESPONDENT

  
DECLARANT'S SIGNATURE  
TIGER RIVER CORRECTIONAL  
LOCATION, ENOREE, SC 29335  
DATE, MARCH 16, 2017