

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
George M. McFaddin, Jr., Circuit Court Judge

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Appellate Case No. 2017-001396  
Case No. 2016-CP-40-5671

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**RECEIVED**  
JUN 28 2017  
SC Court of Appeals

Clifton Lyles, #294075, ..... Appellant,

v.

South Carolina Department of Corrections, ..... Respondent.

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**RESPONDENT'S RETURN TO  
APPELLANT'S APPLICATION TO PROCEED  
WITHOUT PAYMENT OF COSTS**

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The Appellant has filed an Application to Proceed without Payment of Costs requesting that the Court waive the requirement that he pay the \$100 filing fee for his appeal as well as other costs as may be incurred during the prosecution of his appeal. The Respondent South Carolina Department of Corrections opposes that request

seeking leave to proceed without payment of costs (including the initial filing fee) or any request seeking to proceed in forma pauperis.<sup>1</sup>

The Appellant's request to avoid the filing fee requirement and to proceed without payment of costs is not permitted under South Carolina law. In the case of *Ex Parte: Martin v. State*, 321 S.C. 533, 471 S.E.2d 134 (1995), the South Carolina Supreme Court addressed the issue of granting motions to proceed in forma pauperis. The Court held that "[i]n the absence of a statutory provision 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." 471 S.E.2d at 134-135.

Later, in *Martin v. South Carolina Department of Corrections*, 350 S.C. 196, 565 S.E.2d 756 (2001), the South Carolina Supreme Court required full payment of appellate filing fees by an indigent prisoner. The Court concluded that the statutes allowing a partial payment of the filing fees when an indigent prisoner brings a

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<sup>1</sup> The Respondent's filing of this return is timely. The Appellant's Application to Proceed without Payment of Costs was served on Respondent's counsel in the same envelope as the Notice of Appeal. The certificate of service that accompanied the Notice of Appeal states that it was served by mail on June 9, 2017, which is incorrect. The Application to Proceed without Payment of Costs itself was not signed by the notary until June 12, 2017. In addition, the envelope received by the Respondent's counsel shows a receipt stamp in the Kershaw Correctional Institution mail room on June 16, 2017, and a United States Mail postdate of June 16, 2017. A copy of the envelope is attached hereto as an exhibit. Using June 16, 2017 as the proper service date, the Respondent has filed a return within ten days of service as required by Rule 240(e), SCACR.

civil action do not apply to appellate filing fees incurred at either the Supreme Court or the Court of Appeals.

Thereafter, in *Sullivan v. South Carolina Department of Corrections*, 355 S.C. 437, 586 S.E.2d 124 (2003), the Supreme Court held that a prisoner is not entitled to proceed in forma pauperis in *Al-Shabazz* appeals from the Administrative Law Court. The Court further explained:

The General Assembly is the body charged with the power to waive filing fees, and they have not created a waiver for this set of cases. Further, this is not a case involving "fundamental rights," so access to the courts is not constitutionally required in this case. Therefore, Sullivan is not entitled to proceed in forma pauperis on his appeal from the ALJ's dismissal.

586 S.E.2d at 128.

In the present case, there is no statutory provision allowing this Court to waive the payment of a \$100 filing fee as required pursuant to Rule 203(d), SCACR, under the circumstances presented by the Appellant. Rule 203(d), SCACR, provides only two exceptions: (1) for a criminal appeal, and (2) for an appeal by the State of South Carolina or its departments or agencies. Neither exception is applicable here. Moreover, the Appellant does not enjoy a constitutional right to an appeal nor does his appeal involve the type of "fundamental rights" for which a waiver of the filing fee is appropriate. Moreover, there is no statutory basis allowing the Court to

waive other costs as will necessarily be incurred by the Appellant as he prosecutes this appeal.

For the foregoing reasons, the Respondent South Carolina Department of Corrections opposes the Appellant's request to proceed in forma pauperis or without the payment of costs, including the \$100 filing fee be paid. The Court is respectfully requested to require the Appellant to pay the filing fee before this appeal proceeds any further and to require the payment of all costs on appeal as may be incurred.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN  
1611 Devonshire Drive  
Post Office Box 8568  
Columbia, South Carolina 29202  
(803) 806-8222

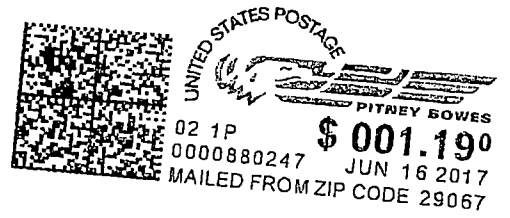
JAMES E. PARHAM, JR.  
Post Office Box 1576  
Irmo, South Carolina 29063  
(803) 749-8555

*Counsel for Respondent  
South Carolina Department of Corrections*

Columbia, South Carolina

June 24, 2017

FRANK  
LINDSEY  
MAY 16 2017  
10:00 AM '17



James E. Parham, Jr. P.A.  
220 Ministry Drive  
P.O. Box 1576  
Lrmo, SC 29063

MAIL ROOM

JUN 16 2017

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MAIL ROOM

SECTION  
DIRECTOR  
OFFICE



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9 x 12

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**CERTIFICATE OF SERVICE**

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The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondent, does hereby certify that service of the **Respondent's Return to Appellant's Application to Proceed Without Payment of Costs** in the above-captioned matter was made upon the *pro se* Appellant and all other counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 24th day of June 2017:

Clifton Lyles, #294075  
Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, South Carolina 29067

James E. Parham, Jr., Esquire  
James E. Parham, Jr., P.A.  
Post Office Box 1576  
Irmo, South Carolina 29063

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JUN 28 2017

**SC Court of Appeals**



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DAVIDSON & LINDEMANN, P.A.

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June 24, 2017

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David A. DeMasters  
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\*Also Admitted In North Carolina  
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Of Counsel  
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Writer's Email: [alindemann@dml-law.com](mailto:alindemann@dml-law.com)

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

RE: Clifton Lyles v. South Carolina Department of Corrections  
Appellate Case Number: 2017-001396  
Civil Action Number: 2016-CP-40-5671  
Claim Number: A3797  
Our File Number: 104.10192

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SC Court of Appeals

Dear Ms. Kitchings:

Please find enclosed for filing the original and one copy of the **Notice of Appearance** as well as the original and seven copies of the **Respondent's Return to Appellant's Application to Proceed Without Payment of Costs** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope.

By copy of this letter, I am serving copies on the *pro se* Appellant and all other counsel of record. Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb  
Enclosures

The Honorable Jenny Abbott Kitchings  
June 24, 2017  
Page Two

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cc: (w/ Enclosures)

Clifton Lyles, #294075  
Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, South Carolina 29067

James E. Parham, Jr., Esquire  
James E. Parham, Jr., P.A.  
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Irmo, South Carolina 29063

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U.S. POSTAGE PATNEY BOWES

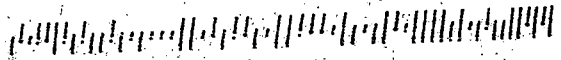


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Columbia, South Carolina 29202-8568

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
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