

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. PHILLIP LENSKI, ADMINISTRATIVE LAW JUDGE

APPELLATE CASE NO. 2017-001255

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

v.

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

MOTION FOR REHEARING

I, Clifton Lyles (Appellant), do hereby seek a **rehearing** of the order dismissing the appeal for "failure to pay the filing fee as required by Rule 203 of the South Carolina Appellate Court Rules", and the "Order of this Court dated July 13, 2017".

This 7 day of August, 2017

BY: Clifton Lyles #294075
PRO SE
4344 BROADRIVER RD
COLUMBIA, S.C. 29210

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AUG 14 2017
SC Court of Appeals

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

v.

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

CERTIFICATE OF SERVICE

I, Clifton Lyles (Appellant), do hereby certify that I did serve the "MOTION FOR REHEARING" on the Respondent, by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed as follows:

OFFICE OF GENERAL COUNSEL
4444 BROADRIVER ROAD
COLUMBIA, S.C. 29221

This 7 day of August, 2017

BY: Clifton Lyles 294075
PRO SE
4344 BROADRIVER RD
COLUMBIA, S.C. 29210

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MEMORANDUM IN SUPPORT
OF MOTION FOR REHEARING

Appellant contends that he should be granted a rehearing on the dismissal of his motion to proceed inform a pauperis do to the court's failure to note the following:

CRIMINAL APPEAL

Appellant contends that the court failed to note that the issue he is attempting to appeal is part of a criminal appeal in-that it deals with an amendment of a penal statue.see 2016 amendment of the 2010 Omnibus Crime Bill, Act 154(H-3545), Effective April 21, 2016, amending S.C.Code Ann. §44-53-470. Because that Penal statue actually affects the length of criminal sentence that Appellant is required to serve, then it is a criminal appeal.

The Appellant's request to avoid the filing fee requirement and to proceed without payment of costs is 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 "in 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.

In the present case, there is a 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 two exceptions: (1) for a criminal appeal, and (2) for an appeal by the State of South Carolina or its departments or agencies. Because Appellant is appealing a criminal statute, then Rule 203(d)(1)(B)(iii) and Rule 240(d) allows for the filing fee to be waived.

LIBERTY INTEREST AND FUNDAMENTAL RIGHT

Appellant contends that he has a liberty interest in the amendment of the statute in that the effect of it would remove twenty (20) years off of his sentence. To restrict Appellant from pursuing this appeal because he can't afford to pay the filing fee denies him access to the courts, which is a denial of his fundamental right to due process. *Boddie v. Connecticut*, 401 U.S. 371 (1971) (In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that a prisoner has no assets and no means by which to pay the initial filing fee); 28 U.S.C. § 1915(b)(4).

SIGNIFICANT PUBLIC INTEREST

Appellant contends that this appeal involves significant public interest because it: (1) Prevents the fall out that occurred after the passing of the 2010 Omnibus Crime Bill that has the Department of Corrections saddled with several law suits after this courts ruling in Bolin v. S.C.Dept.of Corr., 415 S.C. 276,781 S.E.2d 914(Ct.App.2016); and (2) It will save all involved (i.e. Circuit courts, SCDC, Administrative Law Court, etc.) time and money by, by addressing the matter now opposed to hearing the appeals of the thousands affected, and will be affected in the near future.

CONCLUSION

This court should allow Appellant to proceed with out payment of the filing fee, and in forma pauperis.

This 7 day of August, 2017

BY:  294075.
PRO SE
4344 BROADRIVER RD
COLUMBIA, S.C. 29210

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APPELLATE CASE NO. 2017-001255

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

v.

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

CERTIFICATE OF SERVICE

I, Clifton Lyles (Appellant), do hereby certify, that I did
serve the "MEMORANDUM IN SUPPORT OF MOTION FOR REHEARING" on
the Respondent, by depositing a copy of the same in the U.S.

Mail, postage prepaid, and addressed as follows:

OFFICE OF GENERAL COUNSEL
4444 BROADRIVER RD
COLUMBIA, SOUTH CAROLINA 29221

This 7 day of August, 2017

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BY: Clifton Lyles 294075
PRO SE
4344 BROADRIVER RD
COLUMBIA, S.C. 29210

THE HONORABLE JENNY A. KITCHINGS,
CLERK, SOUTH CAROLINA COURT OF APPEALS
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

RE: Clifton Lyles, #294075 v. SCDC
Appellate Case No. 2017-001255

Dear Ms. Kitchings,

Please find enclosed one "MOTION FOR REHEARING"
and one "MEMORANDUM IN SUPPORT OF MOTION FOR REHEARING" to be
filed with your office. If there are any corrections to be made
please contact as soon as possible. I thank you in advance for
your kind assistance in this matter.

August 7th, 2017

Sincerely

Clifton lyles, #294075

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Dear Mrs. Bigelow,

August 7th, 2017

Please find enclosed one "MOTION FOR REHEARING"
and one "MEMORANDUM IN SUPPORT OF THE MOTION FOR REHEARING"
filed with the Clerk of the South Carolina Court of Appeals.
If you have any questions please contact me.

Truly

Clifton Lyles, #294075

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