

THE SOUTH CAROLINA COURT OF APPEALS

CLIFTON LYLES, #294075..... Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,..... RESPONDENT.

APPELLATE CASE NO.2017-001396

THE HONORABLE GEORGE M. McFADDIN, JR.

RICHLAND COUNTY

TRIAL COURT CASE NO.2016CP4005671

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SEP 28 2017

SC Court of Appeals

MOTION FOR REHEARING

I, Clifton Lyles(Appellant), do hereby request a rehearing on the order dismissing the appeal for "failure to pay the filing fee as required by Rule 203 of the South Carolina Appellate Court Rules", dated September 18,2017.

This 22 day of September, 2017

BY Clifton Lyles 294075
PRO SE
1578 CLARENCE COKER HWY
TURBEVILLE, SOUTH CAROLINA 29162

THE SOUTH CAROLINA COURT OF APPEALS

CLIFTON LYLES, #294075..... Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS..... RESPONDENT.

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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 in forma pauperis due to the courts failure to note the following:

CIVIL APPEAL

Appellant contends that the court failed to note that the issues that he is seeking to appeal arrived out of a tort civil action. The Appellants request to proceed in forma pauperis and to wave the filing fee requirement is permitted under South Carolina law. In the case of Ex Parte: Martain 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 statued or required by constitutional provisions.". The court went on to further state, "where certain fundamental rights are involved, the constitution requires that an indigent be allowed access to the courts".ID.471 S.E.2d 134-135.

In the present case, Appellant is alleging that he suffered a permanent bodily injury due to the negligence of the South Carolina Department of Corrections. He is seeking damages. The Honorable George M. McFaddin, Jr., granted a directed verdict dismissing the action. Appellant now seeks to appeal that order, but because he is indigent and can't afford to pay the hundred dollar filing fee as required by Rule 203, his appeal has been dismissed.see Order of dismissal dated September 18, 2017.

Appellant contends that the dismissal of his appeal for failure to pay filing fees, effectively ends his case and thereby denys him access to the courts. In Ex Parte: Martain, the state Supreme Court, citing Boddie v. Connecticut, 401 U.S. 371, 91 S.CT 780(1971), stated "Due Process" requires, at minimum, that absent countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given meaningful opportunity to be heard".471 S.E.2d at 135. Appellant cannot be said to have received a meaningful opportunity if he is being denied appellate review because he can't afford to pay the filing fees.Boddie supra, "In view of basic position of marriage relationship in society and the state monopolization of means for dissolving that relationship, due process of law prohibits a state from

denying, solely because of inability to pay court fees and costs, access to its courts to indigents who, in good faith, seek judicial dissolution of their marriages". ID. 401 U.S. 371, 91 S.Ct. 780(1971); Smith v. Bennett, 365 U.S. 708, 81 S.Ct. 895(1961), an indigent prisoner may not be required to pay a filing fee for petitioning for a writ of habeas corpus.

Clearly, Appellant is an aggrieved party who has suffered bodily injury due to SCDC's negligence, and have a fundamental right under Article 1§3 of the South Carolina Constitution, right to due process, to seek appellate review of the dismissal of his tort action. State v. Rearick, 417 S.C. 391, 790 S.E.2d 192(S.C.2016), An aggrieved party permitted to appeal is one who is injured in a legal sense or has suffered an injury to person or property.

CONCLUSION

This Honorable court should allow Appellant to proceed in forma pauperis and thereby waive the notice of appeal filing fees and all other fees associated with this appeal.

THIS 22 DAY OF SEPTEMBER, 2017

BY: Clinton Coker 294075
PRO SE
1578 CLARENCE COKER HWY
TURBEVILLE, S.C. 29162

THE SOUTH CAROLINA COURT OF APPEALS

CLIFTON LYLES, APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTONS, RESPONDENT.

APPELLATE CASE NO. 2017-001396

HONORABLE GEORGE M. McFADDIN, JR.

RICHLAND COUNTY

TRIAL COURT CASE NO. 2016CP4005671

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CERTIFICATE OF SERVICE

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

DAVIDSON & LINDEMANN, P.A.
POST OFFICE BOX 8568
COLUMBIA, S.C. 29202-8568

JAMES E. PARHAM, JR., P.A.
POST OFFICE BOX 1576
IRMO, SOUTH CAROLINA 29063

THIS 22 DAY OF SEPTEMBER, 2017

BY:  2941075

PRO SE

CLARENCE COCKER HWY

TURBEVILLE, S.C. 29162

TO:HONORABLE JENNY ABBOTT KITCHINGS
CLERK OF COURT
FROM:CLIFTON DONELL LYLES#294075

Dear Clerk,

September 22, 2017

Please find enclosed one "MOTION FOR REHEARING"
and one "MEMORANDUM IN SUPPORT OF MOTION FOR REHEARING", to
filed with your office. If you have any questions or instructions
then please contact me as soon as possible. I thank you in advan-
ce for your kind assistance in this matter.

Truly

Clifton Lyles
#294075

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SC Court of Appeals

TO:ANDREW F. LINDEMANN
JAMES E. PARHAM
ATTORNEYS AT LAW
FROM: CLIFTON D. LYLES#294075

September 22, 2017

Dear Sirs,

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 Supreme Courts office.
If you have any questions please contact me.

Sincerely

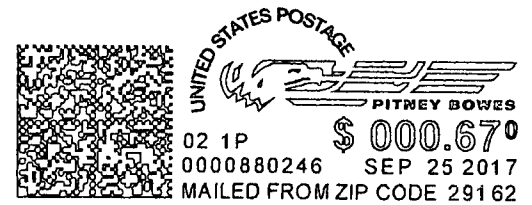
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Clifton Lyles, #294075

SEP 28 2017

SC Court of Appeals

Clifton Lyles #294025
TCI-Elliot B-255A
1578 Clarence Coker Hwy
Turbeville, SC. 29162



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SC Court of Appeals

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