

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

RECEIVED
OCT 04 2017
SC Court of Appeals

Clifton Lyles, #294075, Appellant,

v.

South Carolina Department of Corrections, Respondent.

**RESPONDENT'S RETURN TO
APPELLANT'S PETITION FOR REHEARING**

The Appellant has filed a Petition for Rehearing from this Court's Order filed September 18, 2017, dismissing his appeal based upon the his failure to pay the \$100 filing fee despite being given several warnings and opportunities to pay the filing fee and perfect the appeal. The Respondent South Carolina Department of Corrections ("SCDC") opposes the petition.

As the Respondent has explained in prior filings, the Appellant's request to avoid the filing fee requirement is not permitted under clearly established 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 Supreme 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.

The State Supreme Court also explained in *Martin* that "where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts." 471 S.E.2d at 135. An appeal of a directed verdict in a civil action alleging gross negligence brought pursuant to the Tort Claims Act, however, does not involve fundamental rights. By way of analogy, in *Ortwein v. Schwab*, 410 U.S. 656 (1973), the United States Supreme Court held that an indigent could be required to pay a filing fee for an appeal from an administrative decision on the denial of welfare benefits.. Recognizing that there is no constitutional right to an appeal in general and certainly not under that scenario, the Supreme Court concluded that the payment of a filing fee did not violate due process.¹

¹ The Supreme Court "has long recognized that ... due process does not require a State to provide an appellate system." *Ortwein v. Schwab*, 410 U.S. 656, 660 (1973). South

The United States Supreme Court has struck down filing fees typically in cases involving fundamental rights affecting family relationships. In *Boddie v. Connecticut*, 401 U.S. 371 (1971), the Court held that access to a divorce could not be denied by an indigent's inability to pay court fees. Similarly, in *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996), the Supreme Court held that an appeal from the termination of parental rights could not be conditioned on payment of a record preparation fee. The Appellant's gross negligence claim against SCDC for dental care issues is clearly distinguishable from those cases.

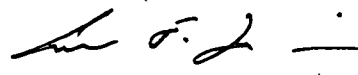
As this Court correctly determined in dismissing the appeal, there is no statutory provision allowing this Court to waive the payment of a \$100 filing fee as required pursuant to Rule 203(d), SCACR, under the circumstances presented by the Appellant. Quite simply, the Appellant does not enjoy a constitutional right to an appeal nor does his appeal involve the type of "fundamental rights" for which a waiver of the filing fee is appropriate.

For the foregoing reasons, the Respondent South Carolina Department of Corrections respectfully requests that the Court deny the Appellant's Petition for Rehearing and allow the administrative dismissal of this appeal to stand.

Carolina has also recognized that there is no constitutional right to an appeal under the Due Process Clause. *See, State v. Rearick*, 417 S.C. 391, 790 S.E.2d 192 (2016).

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

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*Counsel for Respondent
South Carolina Department of Corrections*

Columbia, South Carolina

October 2, 2017

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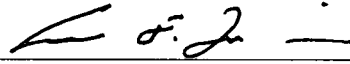
South Carolina Department of Corrections, Respondent.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondent, South Carolina Department of Corrections, does hereby certify that service of **Respondent's Return to Appellant's Petition for Rehearing** 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 2nd day of October 2017:

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The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
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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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Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of **Respondent's Return to Appellant's Petition for Rehearing** in the above referenced matter. Please file the original and return a clocked-in copy to me in the enclosed envelope.

By copy of this letter, I am serving a copy 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

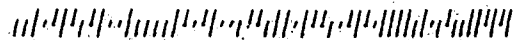
AFL/jmb
Enclosures

The Honorable Jenny Abbott Kitchings
October 2, 2017
Page Two

cc: (w/ Enclosures)

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