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OCT 23 2017

S.C. SUPREME COURT

THE SUPREME COURT OF SOUTH CAROLINA

CLIFTON LYLES, #294075, APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, RESPONDENT.

APPELLATE CASE NO. 2017-001994

PETITION FOR WRIT OF CERTIORARI

I, Clifton Lyles (Appellant) do hereby, approach this Honorable court to request that my appeal be re-instated based on the following:

STATEMENT OF CASE

This case comes before the South Carolina Supreme Court pursuant to the appeal of Clifton D. Lyles (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC). Appellant filed a step one grievance on July 7, 2016, claiming that his sentence should be modified in compliance with the new 2016 amendment of the "2010 Omnibus Crime Reduction and Sentencing Reform Act, Act 154(H-3545), effective April 21, 2016". That grievance was investigated and denied when SCDC determined that the amendment did not apply to drug "Trafficking" offenses. Appellant filed a step two grievance on July 21, 2016. That grievance was also investigated and denied on August 19, 2016 stating that the step one grievance response was correct. Appellant then filed a notice of appeal in the Administrative Law Court on September 6, 2016. On May 12, 2017, the appeal was dismi-

ssed by the Honorable S. Phillip Lenski, stating that the court lacked subject matter jurisdiction to hear appellant's argument that his sentence should be modified based on recent statutory changes. On June 8, 2017, Appellant filed an appeal with the South Carolina Court of Appeals Appllant also filed a Motion to proceed in forma pauperis to waive the one hundred dollar notice of appeal filing fee as required under Rule 203(c), SCACR. The motion was denied on July 13, 2017, and appellant was ordered to pay the filing fee. The appeal was dismissed on August 2, 2017, and the petition for rehearing was denied on September 14, 2017. Appellant filed this instant appeal with the Supreme Court on September 25, 2017.

ISSUE ON APPEAL

DID THE COURT OF APPEALS ERR BY DENYING APPELLANT'S MOTION TO PROCEED IN FORMA PAUPERIS AND THEREBY DISMISSING HIS CRIMINAL APPEAL FOR FAILURE TO PAY THE NOTICE OF APPEAL FILING FEE AS REQUIRED UNDER RULE 203(C), SCACR?

RELEVANT FACTS

On April 21, 2016, the General Assembly passed a bill known as Act 154(H-3545), amending the "2010 Omnibus Crime Reduction and Sentencing Reform Act". In that bill, the General Assembly amended the following three drug statues: S.C.Code Ann. §44-53-370, 44-53-375 and 44-53-470.

In amending those statues, the bill specifically states its purpose as: "To amend sections 44-53-370 and 44-53-375, both as amended, relating to controlled substance offenses, both so as to remove certain provisions pertaining to prior and subsequent controlled substance convictions"; To amend section 44-53-470, as amended, relating to when a controlled substance

offense is considered a second or subsequent offense, so as to provide that a conviction for Trafficking in controlled substances must be considered a prior offense for purposes of any controlled substance prosecution".

In Section 10 of that bill, the General Assembly took the Language that appeared in §44-53-470(b), and re-assigned it as 44-53-470(c). It then added the following language to 44-53-470(c) "For purposes of this section, confinement includes incarceration and supervised release, including, but not limited to, probation, parole, house arrest, community supervision, work release, and supervised furlough". It then added as 44-53-470(b), the following language: "In addition to the above provisions, a conviction of trafficking in marijuana or trafficking in any other controlled substance in violation of this article or of another state or federal statute relating to trafficking in controlled substances must be considered a prior offense for purposes of any prosecution pursuant to this article".

Based on the General Assembly's stated purpose at section 44 of the June 2, 2010 version of the bill, in pertinent part, "...It is the intent of the General Assembly that the provisions in Part II of this Act shall provide cost effective prison release...", and it's stated purpose in the April 21, 2016 amended version of that same bill, "To amend section 44-53-470, as amended, relating to when a controlled substance offense is considered a second or subsequent offense, so as to provide that a conviction for trafficking in controlled substances must be considered a prior offense for purposes of any controlled substance prosecu-

tion", shows its intent that unfair sentencing schemes concerning, but not limited to, drug "trafficking" offenses be corrected. And that individual sentences be modified accordingly, and that they receive earlier release dates.

Appellant is currently serving a 30 year sentence for Trafficking Crack Cocaine 10 to 28 grams, 3rd offense. The state used a 1991 possession of cocaine conviction, and a 2002 marijuana conviction to enhance Appellant from a first offender, which carries a minimum maximum sentence of 3 to 10 years, to a third which carries a minimum maximum sentence of 25 to 30 years. Appellant is contending that he should receive the benefits of the amendment. see INITIAL BRIEF FILED IN THE SOUTH CAROLINA COURT OF APPEALS, DATED JULY 13, 2017, ISSUE ONE, PAGE 5-8 (EXHIBIT 1).

DISCUSSION

Appellant contends that his appeal should not have been dismissed and that his Motion to proceed in forma pauperis should have been granted based on the following:

CRIMINAL APPEAL

Appellant contends that the court of appeals 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 statute. 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 statute actually affects the length of the 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), this 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 \$100 filing fee as required pursuant to Rule 203(d), SCACR, under 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 matter, then Rule 203(d)(1)(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 not 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

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 tort claims after the South Carolina Court of Appeals 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,Court Of Appeals,etc.) time and money by, addressing the matter now opposed to hearing the appeals of the thousands affected, and will be affected in the near future.

CONCLUSION

This Honorable Supreme Court should allow Appellant's appeal to not only be reinstated but to hear the appeal in its original jurisdiction as it affects significant public and state interest.

This 18 day of October, 2017

BY: Clifton Lyle 284025
PRO SE
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APPELLATE CASE NO. 2017-001994

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PROOF OF SERVICE

I, Clifton Lyles (Appellant), do hereby, promise that I did serve the "PETITION FOR WRIT OF CERTIORARI" on the following by depositing the same in the U.S. Mail, postage prepaid, as addressed below:

MELISSA J. ARNOLD
STAFF ATTORNEY
SOUTH CAROLINA DEPT. OF CORR.
P.O. BOX 21787/4444 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29221-1787

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

This 18 day of October, 2017

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