

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 HABEAS CORPUS

RECEIVED
OCT 20 2017
SC Court of Appeals

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: Clarence Coker 284025
PRO SE
1576 CLARENCE COKER HWY
TURBEVILLE, S.C. 29162

THE SUPREME COURT OF SOUTH CAROLINA

APPELLATE CASE NO.2017-001994

CLIFTON LYLES, #294075, APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, RESPONDANT.

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

BY: Clifton Lyles #294075
PRO SE
1578 CLARENCE OKER HWY
TURBEVILLE, S.C. 29162

RECEIVED
OCT 20 2017
SC Court of Appeals

TO:HONORABLE DANIEL E. SHEAROUSE
CLERK OF COURT
FROM:CLIFTON LYLES,294075

Dear Mr. Shearouse,

Please find enclosed one "PETITION FOR WRIT OF CERTIORARI" to be filed in your office. I do certify by this letter that I did serve the same on the Respondent SCDC and on the Honorable Jenny Abbott Kitchings, Clerk of court for the Court of Appeals. If you have any further instructions for me please contact me. I thank you in advance for your kind assistance in this matter.

This 18 day of October, 2017

Sincerely

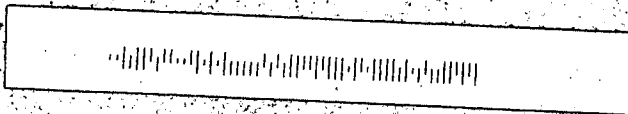
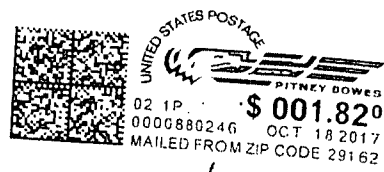
Clifton lyles,294075

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SC Court of Appeals

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Turbeville, SC 29162



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OCT 20 2017

SC Court of Appeals

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

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TURBEVILLE CI

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SC Court of Appeals

(EXHIBIT 1)

**INITIAL BRIEF FILED IN THE
SOUTH CAROLINA COURT OF APPEALS
DATED JULY 13, 2017**

TO: HONORABLE CLERK OF COURT
JENNY ABBOTT KITCHINGS

FROM: CLIFTON LYLES#294075

July 12, 2017

Dear Clerk,

Please find enclosed one "INITIAL BRIEF OF APPELLANT"
AND ONE "DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL"
TO FILED IN YOUR OFFICE. I hope that this complies with all rules
and form. If there is any corrections that I need to make, please
contact me as soon as possible. I thank you kindly for you patient
and instructive assistance in this matter.

Sincerely

Clifton Lyles, 294075

Dear Counsel,

Please find enclosed one "INITIAL BRIEF OF APPELLANT"
and one "DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL"
filed with the South Carolina Court of Appeals Clerk's Office. If
you have any questions, please contact me.

Sincerely

July 12, 2017

Clifton Lyles, 294075

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.

INITIAL BRIEF ON APPELLANT

CLIFTON LYLES#294075
4344 BROADRIVER ROAD
COLUMBIA, S.C. 29210
ATTORNEY FOR APPELLANT

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STATUTES

OMNIBUS CRIME AND REDUCTION AND SENTENCING REFORM ACT OF 2010,
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STATEMENT OF ISSUES ON APPEAL

ISSUE ONE: WHETHER APPELLANT'S SENTENCE SHOULD BE MODIFIED BASED ON THE STATUTORY CHANGES TO THE "OMNIBUS CRIME AND REDUCTION AND SENTENCING REFORM ACT OF 2010", ACT 154(H-3545); and

ISSUE TWO: WHETHER THE TRIAL JUDGE HAD SUBJECT MATTER JURISDICTION TO SENTENCE APPELLANT TO A TRAFFICKING CRACK COCAINE 3RD OFFENSE BASED ON PRIOR OFFENSES THAT EXCEEDED THE 10 YEAR TIME LIMITATION?

STATEMENT OF CASE

This case comes before the South Carolina Court of Appeals pursuant to the appeal of Clifton D. Lyles ("Appellant"), an inmate incarcerated with the Department of Corrections ("SCDC"). Appellant filed a step one Grievance on July 7, 2016, claiming that his sentence should be re-calculated in compliance with the new amendment of the "Omnibus Crime and Reduction and Sentencing Reform Act of 2010", Act 154(H-3545). That grievance was investigated and denied when SCDC determined that the Amendment did not apply to 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 dismissed by the Honorable Judge 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. Appellant subsequently filed a notice of appeal on June 8, 2017.

RELEVANT FACTS

The Honorable Administrative Law Judge, s. Phillip Lenski has wrongly interpreted Appellant's argument on appeal. He mistakenly states that "Appellant was challenging the offense level of his conviction...he argues that recent statutory law changes indicate that he should not have been convicted of a 3rd offense trafficking charge". see ORDER OF DISMISSAL DATED MAY 12, 2017, page 1, line 9-11.

ISSUE ONE: WHETHER APPELLANT'S SENTENCE SHOULD BE MODIFIED BASED ON THE STATUTORY CHANGES TO THE "Omnibus Crime and Reduction and Sentencing Reform Act of 2010", Act 154(H-3545)?

RELEVANT FACTS

On April 8, 2004, Appellant (Clifton Lyles) was found guilty of trafficking Crack Cocaine, third offense and sentenced to 30 years. On April 21, 2016, the General Assembly amended the 2010 Omnibus Crime Reduction and Sentencing Reform Act, by adding Act 154. In act 154, Section 44-53-470, the following language was added:

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.

DISCUSSION

Plaintiff contends that the additions that was made to the drug enhancement statute was done as a means to effectuate the main purpose of the Omnibus Crime Bill. That purpose is to save taxpayer funds by shortening sentences for less serious offenses. See 2009-2010 Bill 1154: Omnibus Crime Reduction and Resentencing Reform Act, General Assembly's intent, Section 44:

IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE PROVISIONS IN PART II OF THIS ACT SHALL PROVIDE COST-EFFECTIVE PRISON RELEASE AND COMMUNITY SUPERVISION MECHANISMS AND COST-EFFECTIVE AND INCENTIVE-BASED STRATEGIES FOR ALTERNATIVES TO INCARCERATION IN ORDER TO REDUCE RECIDIVISION AND IMPROVE PUBLIC SAFETY.

In order to effectuate that purpose, the General Assembly amended the drug statutes to shorten non-violent drug offenders sentences. Bolin v. South Carolina Dept. of Corrections, 781 S.E.2D 914(CT.App.2015) (Hence, one of the act's objectives is to conserve taxpayer dollars by allowing earlier release dates for inmates

convicted of less serious offenses). Because the Crime Bill accomplished the General Assembly's intended purpose, it further amended the law by adding Act 154(H-3545), effective April 21, 2016.

This added language specifically talks about trafficking offenses and methods to use when sentencing an offender under this statute. It clearly mandates that in order to sentence a person with a second or subsequent offense, that person must have had a prior trafficking offense on his record. In other words, a court can no longer use a possession or distribution offense as a means to enhance a trafficking offense to a second or third offense.

What's more, is that this additional language that was added to Sections 8,9 and 10 of Act 154 is remedial and procedural in-that they: (1) create new remedies for existing rights; and (2) provide the courts with a method for enforcing those rights. State v. Hilton, 753 S.E.2D 549(S.C.2013)(A statute is remedial where it creates new remedies for existing rights or enlarges the rights of persons under disability).

Because these new additions to the statute are remedial and procedural, they must be given retroactive effect. Howard v. Allen, 368 F.Supp. 310(1973)(While it may be said that statutes relating to remedies or procedures may be given a retroactive operation, a statement of the rule perhaps more accurate is that statutes merely affecting the remedy or law of procedure apply to actions begun after their passage, whether the right of accrued before or after the change in the law, at least in the absence of a constitutional or statutory provision to the contrary).

But also, because this additional language that was added to Sections 8,9 and 10 did not change or take away any of the existing language or rights that was there prior to Act 154's passing, then they were neither amended nor repealed. And because the statutes were neither repealed or amended, then the "Savings Clause" that was put in the Act in Section 12 does not apply. State v. Bryant, 675 S.E.2D 816(ct.app.2009)(Statutory amendment providing for admission of video taped interviews of child sexual abuse victims was an addition to the existing statutory scheme, and therefore savings clause accompanying the enactment of amendment did not prohibit the application of amendment to defendant's pending sex offense prosecution; amendment did not repeal or amend existing law). ~~Because those additions were Penal in nature, then they must be construed strictly against the state.~~ Hair v. State, 406 S.E.2D 332(S.C.1991)(~~When statute is penal in nature, it is construed strictly against state and in favor of defendant~~). Therefore, the provision in Act 154 must be applied to all trafficking offenses.

APPLICATION TO APPELLANT

On April 8,2004, Appellant was found guilty of trafficking Crack Cocaine 3rd offense, Ten or more, but less than twenty-eight grams. At the time of the conviction, Appellant did not have a prior trafficking Crack cocaine first or second on his record. His record only consisted of three possession of cocaine offenses that occurred in 1992, and one intent to distribute cocaine in 1991. All four of those offense were consolidated to one offense as part of a plea deal taken in 1992.

Also, Appellant had a 2002 marijuana conviction on his record. Under Act 154, §44-53-470's added language, none of Appellant's prior offenses qualify as a means to enhance a "trafficking offense" as they are not "trafficking offenses" themselves. This then, means that under Act 154's retroacted effect, Appellant's sentence must be modified to reflect a first offense trafficking ten or more, but less than twenty-eight grams. Under a first offense, Appellant could only be sentenced to 3 to 10 years, non-violent. See §44-53-375(C)(1)(A).

SUBJECT MATTER JURISDICTION TO EFFECT SENTENCE

Appellant contends that because the General Assembly did not specifically mention any mandate that to benefit from Act 154, that an inmate had to petition the court or a judge, then it must be inferred that the authority was given to the Department of Corrections to screen out the individuals whom are eligible to reap the benefits of the Act and modify there sentences.

CONCLUSION

Appellant's sentence should be modified to reflect 3 to 10 year non-violent sentence and he should be given his immediate release.

ISSUE TWO: WHETHER THE TRIAL JUDGE HAD SUBJECT MATTER JURISDICTION TO SENTENCE APPELLANT TO A TRAFFICKING CRACK COCAINE 3RD OFFENSE BASED ON PRIOR OFFENSES THAT EXCEEDED THE 10 YEAR TIME LIMITATION?

RELEVANT FACTS

On April 8, 2004, Appellant was tried and found guilty of trafficking crack cocaine 3rd offense, 10 or more, but less than 28 grams. He was sentenced to 30 years. The Solicitor presented the judge with Appellant's prior criminal record which

consisted of one 1991, felony possession of cocaine; one 1992, possession with intent to sell or distribute cocaine; one 1992, felony possession of cocaine; and one 1992, possession with intent to sell or distribute cocaine, all of which occurred in North Carolina. All of those offenses were consolidated into one offense as part of a plea deal, in-which Appellant received an 8 year sentence. He was paroled in 1993 on those charges. His parole was revoked in 1994. he was paroled again later in 1994. As far as South Carolina, Appellant had two conviction for possession of marijuana, which was used for a third offense. See EXHIBIT B, TRIAL TRANSCRIPT, PAGE 412, LINE 21-PAGE 413 LINE 12.

DISCUSSION

Petitioner contends that the trial judge was without "Subject Matter Jurisdiction" to sentence to a trafficking crack cocaine 3rd offense, 10 or more, but less than 28 grams, with prior offenses that were all over 10 years old.

Under S.C. Code §44-53-470, any prior convictions used to enhance a first to a second or subsequent offense, must not exceed a ten year time limit. §44-53-470(A)(3), states in pertinent part "...for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has been convicted within previous ten years of a first violation of a controlled substance offense provision...".

Appellant's prior convictions took place in 1992 and he was released from confinement in 1993, thereby disqualifying them from being used to enhance the 2004 trafficking convictions. §44-53-470(B): If a person is sentenced to confinement as the result

of a conviction pursuant to this article, the time period specified in this section begins on the date of the conviction or on the date the person is released from confinement imposed for the conviction, whichever is later.

In 2004, §44-53-470 did not specify what it meant by release from confinement, which is why in Act 154, the General Assembly at that time identified it to mean when a person has completed "...parole...". So, because the 2004 version of the statute did not contain that language, then it must be construed that Appellant's 1993 release was the tolling date for the enhancement statute. Hair v. State, 406 S.E.2D 332(S.C.1991)(When statute is penal in nature, it is construed strictly against state and in favor of defendant).

What's more, is that the marijuana offense could not be used either because at the time Appellant caught the trafficking charge, 2002, §44-53-375 and 44-53-470 were in conflict over whether or not marijuana was a narcotic drug that could be used to enhance a cocaine charge. Rainey v. State, 414 S.E.2D at 132(S.C.1992). So, because §44-53-470 was not amended until 2003, State v. Dupree, 583 S.E.2D 437(CT.App.2003), then it was barred by the 14th amendment's ex post facto clause from being applied to Appellant's case because it was not proper law at the time Appellant caught the trafficking charge.

So, for the above mentioned reasons, the trial court was with-out subject matter jurisdiction to convict or sentence Appellant as a 3rd offender. The court only had proper evidence and jurisdiction to sentence Appellant as a first offender, which only allow for a 3 to 10 non-violent sentence to be levied.

So, because Appellant has already served almost 13 years, which is twice the amount of time that he should have properly served, then his sentence is complete.

conclusion

Appellant should be given his immediate release and whatever other remedy that this Honorable court deems appropriate

THIS 13 DAYE OF JULY, 2017

BY: Phillip Lyles 294075
PRO SE
4344 BROADRIVER ROAD
COLUMBIA, S.C. 29210

CERTIFICATE OF SERVICE

I, Clifton D. Lyles (Appellant), do hereby certify that I did serve the "INITIAL BRIEF OF APPELLANT" on the Respondent, by depositing a copy of the same in the U.S. Mail, addressed as follows:

OFFICE OF GENERAL COUNSEL
P.O. BOX 21787
4444 BROADRIVER ROAD
COLUMBIA, SOUTH CAROLINA 29221-1787

THIS 13 DAY OF JULY, 2017

BY: Clifton D. Lyles 2941075
PRO SE
4444 BROADRIVER ROAD
COLUMBIA, S.C. 29210