

The Supreme Court of South Carolina

Clifton Lyles #294075, Petitioner,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2017-001994

ORDER

By order dated October 23, 2017, the petition for a writ of certiorari filed in this matter was dismissed due to petitioner's failure to file an appendix and provide proof of service of the appendix on opposing counsel. Petitioner moves for the matter to be reinstated. The motion is granted.

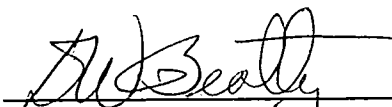
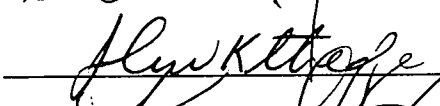
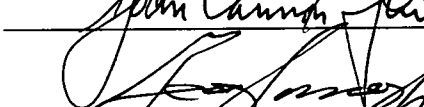
Petitioner also moves to proceed in forma pauperis. That motion is denied for the same reason set forth by the court of appeals in denying petitioner's motion to proceed in forma pauperis before that court. Contrary to petitioner's assertion, this is not a criminal appeal entitling him to a waiver of the filing fee. In addition, petitioner is not being denied the right to due process.

In the absence of a statutory provision allowing the general waiver of filing fees, motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions. *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995). There is no statutory provision that permits the waiver of filing fees for an appeal brought under the Administrative Procedures Act, and S.C. Code Ann. § 8-21-310(11)(a) provides that a clerk of court must collect a filing fee for any complaint or petition. *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003).

Where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts. *Martin, supra* (comparing *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971) (an indigent must be given access to courts in divorce action) and *Smith v. Bennett*, 365 U.S. 708, 81

S.Ct. 895, 6 L.Ed.2d 39 (1961) (an indigent prisoner may not be required to pay a filing fee for petitioning for a writ of habeas corpus) *with Ortwein v. Schwab*, 410 U.S. 656, 93 S.Ct. 1172, 35 L.Ed.2d 572 (1973) (no constitutional violation in requiring payment of appellate filing fee by indigents seeking review of an adverse welfare decision) and *United States v. Kras*, 409 U.S. 434, 93 S.Ct. 631, 34 L.Ed.2d 626 (1973) (no constitutional violation in requiring payment of filing fee by indigent in bankruptcy action)). However, generally, the litigant must also have no alternative course of action not conditioned on the payment of a fee. 20 C.J.S. *Costs* § 90 (2007). *See Boddie, supra* ("For both groups this process is not only the paramount dispute-settlement technique, but, in fact, the only available one. In this posture we think that this appeal is properly to be resolved in light of the principles enunciated in our due process decisions that delimit rights of defendants compelled to litigate their differences in the judicial forum."); *Ortwein, supra* (noting availability of procedures not conditioned on payment of any fee through which appellants were able to seek redress); *Kras, supra* (same). Moreover, in *Ortwein, supra*, the United States Supreme Court noted it had "long recognized that, even in criminal cases, due process does not require a State to provide an appellate system."

In the case at hand, as the Administrative Law Court noted, petitioner has an alternative for seeking relief in the form of post-conviction relief, which requires no filing fee. The same applies to a petition for a writ of habeas corpus. Accordingly, we find he does not meet the requirements for proceeding in forma pauperis in this matter. Petitioner shall pay the filing fee within twenty days of the date of this order or the petition for a writ of certiorari will be dismissed.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina

March 7, 2018

cc:

Kensey Collins, Esquire

Melissa Jill Arnold, Esquire

Clifton Lyles #294075

The Honorable Jana E. Shealy