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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA  
COURT OF APPEALS

CLIFTON D. LYLES, 294075.....APPELLANT,

v.

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

APPELLATE CASE NO. 2017-001994

PETITION FOR WRIT OF  
CERTIORARI

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S.C. SUPREME COURT

TABLE OF CONTENT

TABLE OF AUTHORITIES.....2  
STATEMENT OF ISSUES ON APPEAL.....3  
STATEMENT OF THE CASE.....4  
RELEVANT FACTS.....5  
DISCUSSION.....7  
CONCLUSION.....9

TABLE OF AUTHORITIES

<u>BODDIE V. CONNECTICUT</u> , 401 U.S. 371 (1971).....	7
<u>BOLIN V. S.C.DEPT.OF CORR.</u> , 415 S.C. 276, 781 S.E 2d 914 (Ct.App.2016).....	7
<u>EX PARTE: MARTIN V. STATE</u> , 321 S.C. 533, 471 S.E.2d 134 (1995)....	6

STATUTES

OMNIBUS CRIME REDUCTION AND SENTENCING REFORM ACT OF 2010.....	3,5,6
ACT 154(H-3545).....	3,4,6
SOUTH CAROLINA APPELLATE COURT RULES, RULE 203(c).....	2,6
SOUTH CAROLINA APPELLATE COURT RULES, RULE 203(d).....	7
SOUTH CAROLINA APPELLATE COURT RULES, RULE 203(d)(1)(iii).....	7
SOUTH CAROLINA CODE ANNOTATIONS §44-53-370.....	4,6
SOUTH CAROLINA CODE ANNOTATIONS §44-53-375.....	4,6
SOUTH CAROLINA CODE ANNOTATIONS §44-53-470.....	4,5,6
SOUTH CAROLINA CODE ANNOTATIONS §44-53-470(b).....	4
SOUTH CAROLINA CODE ANNOTATIONS §44-53-470(c).....	4
28 U.S.C. §1915(b)(4).....	7

STATEMENT OF 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?

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 dismissed 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. Appellant 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, for failure to pay the filing fee. The petition for rehearing was denied on September 14, 2017. Appellant filed this instant appeal with the Supreme Court on September 25, 2017.

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 originally 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 prosecution", shows its intent that unfair sentencing schemes concerning but not limited to, drug "trafficking" offenses be corrected. That individual's 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 third which carries a minimum maximum sentence of 25 to 30 years. Appellant 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).

Appendix

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 issued 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 REDUCTION AND SENTENCING REFORM ACT, ACT 154(H-3545), EFFECTIVE APRIL 21, 2016, AMENDING S.C.CODE ANN. §44-53-370, 44-53-375 and 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), 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 statute or required by constitutional provisions." 471 S.E.2d at 134-135.

In the present case, there is a statutory provision allowing the courts to waive the payment of the \$100 filing fee as required by Rule 203(c), SCACR, under circumstances presented by the

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) 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 which 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 facing several 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. general public, Circuit Courts, SCDC, Administrative Law Court, 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 be reinstated. The appeal should be heard in this court's original jurisdiction due to the significant public interest and lower courts needed instructions on the matter which will ultimately be appealed to this court.

Submitted This 31 day of October, 2017

BY:

  
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