

**PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean H. Toal, Circuit Court Judge

Lower Court Case No. 2014-CP-40-08059

Court of Appels Appellate Case No. 2017-001788

S.C. Supreme Court Appellate Case No. 2018-000487

State of South Carolina,

Respondent,

v.

George Cleveland, III,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI

George Cleveland, III
400 Hunter Street
Seneca, S.C. 29678
(864)-784-7223
Pro se Petitioner

Other Counsel of Record:
Kevin Desmond Maroney, Asst. Atty. Gen.
Office of the Attorney General for South Carolina
Post Office Box 11549
Columbia, S.C. 29211-1548
Attorney for Respondent

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CERTIFICATE OF Pro se Petitioner

Pro se petitioner certifies that the Petition for Rehearing/ Reinstatement was made and finally ruled on by the Court of Appeals on February 20, 2018.

QUESTION PRESENTED

1. Did the Court of Appeals err in denying my Motion to proceed in *forma pauperis* to decide my Appeal under *Ex parte Martin*, 321 S.C. 533, 471 S.E. 2d 134 (1995) which conflicts with *Bounds v. Smith* 430 U.S. 819, 97 S. ct. 1491 N.C. (1977)?

STATEMENT OF THE CASE

On December 30, 2014 *Pro se* petitioner George Cleveland, III, brought this action in the Richland County Court of Common Pleas seeking an Injunction under *S.C. Code Ann. 30-4-100 (a)* on the grounds that Deputy Legal Counsel Rebecca Schimsa for the South Carolina Governor's Office, and then Governor Nikki K. Haley deliberately violated the *South Carolina Freedom of Information Act (F.O.I.A.)* by not providing me with the documents I requested in several prior F.O.I.A. requests. R. p. 1-10.

On July 13, 2016, Respondents responded by, and through Asst. Atty. Gen. Kevin

Desmond Maroney of the South Carolina Office of the Attorney General's Office with a *Motion to Dismiss* this case on the ground that service could not be made by Certified Mail under *Rule 12 (b) (5) S.C.R.C.P.* and the State of South Carolina cannot be asked to retrieve F.O.I.A. documents under *Rule 12 (b) (6) S.C.R.C.P.*. R.pp. 11-13.

On July 15, 2016, Mr. Maroney, *id.* filed another *Motion to Dismiss* this case this time on the ground that I failed to name a Public Body (Governor's Office) in my *F.O.I.A.* in this case under *Rule 12 (b) (6) S.C.R.C.P.*, failed to name Governor Haley, and Legal Counsel Schimsa in the title of my Complaint under *Rule 12 (b) (6) , S.C.R.C.P.*, the *F.O.I.A.* does not authorize punitive damages, under *S.C. Code. Ann. 30-4-100 (a)* and that the service of process was insufficient under *Rule 12 (b) (5) S.C.R.C.P.* R.pp. 14-18.

On March 22, 2017, my *Memorandum of Law in opposition to the Respondent's Motion (s) to dismiss* was filed on the grounds that the State waited over a year, and a half before responding to my December 30, 2014 *Complaint* which I argued was barred under the doctrine of *laches. Hallums v. Hallums 296 S.C. 195, 371 S.E. 2d. 525, 602 (1988), and barred under Art. 1 section 9 the "speedy remedy clause"*. R.pp.19-24.

On March 23, 2017, this case was heard in the *Richland County Court of Common Pleas Court*; Judge Jean H. Toal resided. R. p. 25.

On April 04, 2017, Judge Toal Granted the *Defendant's Motion to Dismiss*. The Order failed to even mention my *Laches*, and "*speedy Remedy*" *clause* violation arguments, but had no problem explaining that the Governor's Office fulfilled its' requirements under

F.O.I.A. by stating the requested documents of all the new laws that were signed by Governor Haley, and become law by the Governor Haley's refusal to sign the said bill (s). Judge Toal concluded that the Governor's Office did not have to produce the documents since the information was available on-line even though the Court knew I was in an South Carolina Prison with no access to the internet. R.pp. 25-27.

On April 19, 2017, I filed my Rule 59 (e) *S.C.R.C.P.* R.pp. On May 05, 2017, Judge Toal denied my Rule 59 (e) Motion. *IBID*. R.p. 28.

On August 28, 2017, my Notice Appeal, and my Motion for leave to Proceed *in forma pauperis* under *Bounds v. Smith* 430 U.S. 817, 97 S.ct. 1491 (1977) was filed in the South Carolina Court of Appeals. R.pp. 29-35.

On September 14, 2017, the South Carolina Court of Appeals denied my Motion to *proceed in forma pauperis* pursuant to *Ex parte Martin*, 321 S.C. 533, 471 S.E. 2d 134 (1995). R. p. 36.

On October 09, 2017, my Petition to Rehear the September 14, 2017 order, *id* was filed, and the same day, *id*, Deputy Clerk V. Claire Allen of the South Carolina Court of Appeals dismissed this case for failing to pay the filing fee. R. pp.37, 43.

On October 11, 2017, Clerk of Court Jenny Abbott Kitchings of the South Carolina Court of Appeals returned my Petition to Reheat the September 14, 2017 Order, *id.*, and stated that

since this case was not dismissed; hence, my Petition could not be filed. R. p. 44.

On October 25, 2017, Deputy Clerk V. Claire Allen of the South Carolina Court of Appeals send the *REMITTITUR* to the Richland County Clerk of Court for the Common Pleas Division. R. p. 45.

On November 20, 2017, my Motion to Recall the *REMITTITUR* was filed on the grounds that it was sent to the lower court prematurely. R.p. 46.

On December 28, 2017, the South Carolina Court of Appeals **GRANTED** my Motion to Recall the Remittitur. R. p. 56.

On January 12, 2018, my Petition to Rehear the September 14, 2017, *id*, ORDER denying my in forma pauperis Motion was file in the Court of Appeals. R. p. 57.

On February 20, 2018, the South Carolina Court of Appeals denied my Petition to rehear the September 14, 2017 ORDER, *id.*, R.p. 63.

On March 21, 2018, this Court **GRANTED** my Motion for an extension to file this Petition for a Writ of Certiorari to the Court of Appeals until April 25, 2018. R.p. 64.

This Petition for a Writ of Certiorari to the Court of Appeals follows.

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ARGUMENT

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The Court of Appeals should have granted my Motion to proceed *in forma pauperis* on this

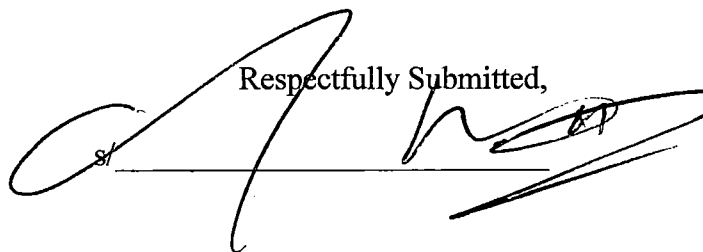
Appeal under *Bounds v. Smith* 430 U.S. 819, 97 S. ct. 1491 N.C. (1977)

The Court of Appeals should have granted my Motion to proceed *in forma pauperis* on this Appeal under *Bounds v. Smith* 430 U.S. 819, 97 S. ct. 1491 N.C. (1977) (hereinafter *Bounds*) because the Supreme Court of the United States held: “... **in order to prevent ‘effective foreclosed access’ indigent [Appellant] must be allowed to file Appeals... without payment of docket fees**”,,, *id*, at 822, at 1495. In my August 28, 2017 Motion for leave to proceed *in forma pauperis*, I argued to the Court of Appeals I have a Federal Right “to file [my] Appeal [] without payment of the docket fees”... *id* because I could not afford the \$100.00 filing fee. R.pp. 33 The Court of Appeals rejected my argument by denying my *in forma pauperis* Motion under *Ex parte Martin*, 321 S.C. 533, 471 S.E. 2d 134 (1995) in which this Court held “[a] motion to proceed *in forma pauperis* may only be granted... by constitutional provisions...” *id*, at 535 at 134-35. R. pp 36. The *Bounds* Court did rule the first, and fourteenth amendments of the U.S. Const. provides me a federal right to Appeal my case from the lower Court in this case without payment of the docket fees; accordingly, the Court of Appeals should have granted my Motion to proceed *in forma pauperis* on this Appeal under *Bounds v. Smith* 430 U.S. 819, 97 S.ct.1491 N.C. (1977).R.p. 33.

CONCLUSION

For the reasons stated above, *pro se* petitioner asks the Court to grant the petition for a writ of certiorari.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'S/ [Name]', written over a horizontal line.

George Cleveland, III, pro se
400 Hunter Street
Seneca, S.C. 29678
Cell no. 864-784-7223
Email: glcleveland7475@gmail.com

Dated: April 25, 2018



PETITIONER'S PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean H. Toal; Circuit Court Judge

Appellate Case No. 2018-000487

RECEIVED

APR 30 2018

S.C. SUPREME COURT

State of South Carolina,

Respondent,

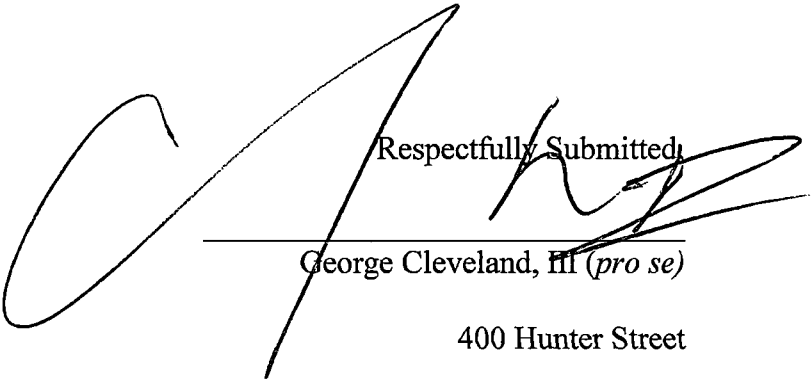
v.

George Cleveland, III,

Petitioner.

PROOF OF SERVICE

I certify that I have served the Petition for a Writ of Certiorari to the Court of Appeals, and Record on Appeal on S.C. Asst. Atty. Gen. Kevin Desmond Maroney by depositing a copy of it in the United States Mail, postage prepaid, on April 25, 2018. I further certify that on the same date, by the same vehicle as above, I have informed the South Carolina Court of Appeals of the filing of the Petition for a Writ of Certiorari to the Court of Appeal at the following mailing address: Post Office Box 11629, Columbia, S.C. 29211. Attention: Jenny Abbott Kitchings, Clerk of Court

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned over the typed name and address.

Respectfully Submitted,

George Cleveland, III (*pro se*)

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleland7475@gmail.com

Dated: April 25, 2018