

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

MAY 16 2018

Jean H. Toal, Circuit Court Judge

S.C. SUPREME COURT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT

Court of Common Pleas Case Number: 2014-CP-40-08059

Court of Appeals Case Number: 2017-001788

SUPREME COURT CASE NUMBER 2018-000487

George Cleveland, III.....Petitioner,

v.

State of South Carolina.....Respondent.

RESPONDENT'S RETURN TO PETITION FOR CERTIORARI

The Court of Appeals denied Mr. Cleveland's request to proceed in forma pauperis, under the authority of *Ex parte Martin*, 321 S.C. 533, 535, 471 S.E.2d 134, 134-35 (1995) ("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."). After the denial, he did not pay the Court of Appeals' one hundred dollar filing fee. Rule 203(d)(B)(iii) n. 1, SCACR. When he submitted a premature petition for rehearing, however, Mr. Cleveland also submitted a total of two hundred sixty-eight dollars to the Court of Appeals. (Petitioner's Appendix, p. 44). The Court of Appeals

returned that money. *Id.* (Mr. Cleveland did pay this Court's one hundred dollar filing fee. Rule 242, (c) n. 1, SCACR). If Mr. Cleveland had paid the one hundred dollar filing fee that he apparently could afford, his appeal could have at least continued.

In his petition to this Court, Mr. Cleveland contends the Court of Appeals erred by relying on *Martin*, which he believes conflicts with *Bounds v. Smith*, 430 U.S. 817, 97 S. Ct. 1491 (1977). *Bounds*, Mr. Cleveland argues, requires courts to waive filing fees for indigents. The alleged conflict between the South Carolina Supreme Court and the U.S. Supreme Court is the reason Mr. Cleveland urges this Court to grant certiorari. But Mr. Cleveland is mistaken; there is no conflict between *Martin* and *Bounds*. (In fact, the U.S. Supreme Court largely overturned *Bounds* in 1996. *See Lewis v. Casey*, 518 U.S. 343, 354-55, 116 S. Ct. 2174, 2181-182 (1996)).

First, the actual holding of *Bounds* has nothing to do with a waiver of filing fees. "In *Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977), we held that 'the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners adequate law libraries or adequate assistance from persons trained in the law.'" *Lewis v. Casey*, 518 U.S. 343, 346, 116 S.Ct. 2174, 2177 (citing *Bounds v. Smith*, 430 U.S. 817, 828, 97 S.Ct. 1491, 1498). Second, although the Court in *Bounds*, to reach the above holding, did reference cases that involved a constitutionally required waiver of filing fees, *Lewis v. Casey*, 518 U.S. 343, 350, 116 S.Ct. 2174, 2179, the referenced cases involved either an appeal from a criminal conviction, or collateral actions attacking criminal convictions. *Id.*; *see also Bounds v. Smith*, 430 U.S. 817, 822, 97 S.Ct. 1491, 1495 (referencing *Burns v. Ohio*, 360 U.S. 252, 257, 79 S.Ct.1164, 1168 (1959) (appeal from criminal conviction) and *Smith v. Bennet*, 365 U.S 708, 81 S.Ct. 895 (1961)

(habeas corpus proceedings)). Not every type of case raises constitutional concerns and protections; indeed, only a few types do:

Bounds does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their [criminal] sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any *other* litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration.

Lewis v. Casey, 518 U.S. 343, 355, 116 S. Ct. 2174, 2182 (emphasis in original).

The “challenge[s] [to] the conditions of their confinement” language refers to §1983 actions, seeking to demonstrate violations of “basic constitutional rights.” *Id.*, 518 U.S. 343, 354, 116 S. Ct. 2174, 2181-182.

Mr. Cleveland did not appeal his criminal conviction and sentence. He did not appeal a collateral attack on his criminal conviction and sentence. And he did not appeal a §1983 action, challenging the conditions of his confinement. Instead, Mr. Cleveland appealed former Chief Justice Toal’s dismissal of his South Carolina Freedom of Information Act lawsuit. (Petition for Certiorari, pp. 3-5). The Freedom of Information Act is a South Carolina statute not based on a “basic constitutional right.” Mr. Cleveland’s FOIA request, moreover, had nothing to do with his conviction or sentence, or any alleged violation of a “basic constitutional right.” (Petitioner’s Appendix, p. 26). Consequently, under *Bounds* and *Lewis*, the Court of Appeals did not have to waive the filing fee for Mr. Cleveland. There is no conflict between these cases and *Martin*.¹

¹ The Court should know that Mr. Cleveland was not even incarcerated at the time the Court of Appeals denied his motion to proceed in forma pauperis. Mr. Cleveland was out of prison by April 3, 2017. (Available at <https://www.dppps.sc.gov/Offender-Supervision/Offender-Search/Offenders/GEORGE-CLEVELAND-III> Last visited May 16, 2018). The Court of Appeals denied his motion on September 14, 2017. (Petition for Certiorari, p. 5).

Mr. Cleveland did not provide any authority that requires the Court of Appels to waive its filing fee for him. What is more, Mr. Cleveland, as demonstrated above, had the ability to pay the fee. The choice to forgo doing so was his alone. This Court should deny the petition for certiorari.

Respectfully submitted,

ALAN WILSON
Attorney General

J. Emory Smith, Jr.
Deputy Solicitor General
S.C. Bar No. 5262

Kevin Desmond Maroney
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
803.734.3177
kmaroney@scag.gov
S.C. Bar No. 102545

Attorneys for Respondents

May 16, 2018

By: Kevin Desmond Maroney

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PROOF OF SERVICE

I certify that I served the Petitioner with a copy of the Respondent's Return to the Petition for Writ of Certiorari via U.S. mail. The copy was sent to the following address:

George Cleveland, III
400 Hunter Street
Seneca, SC 29678

Mailed May 16, 2018

By: Kevin Desmond Maroney
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

Kevin Desmond Maroney