

PETITIONER'S REPLY BRIEF

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHALAND COUNTY
COURT OF COMMON PLEAS
Jean H. Toal, Circuit Court Judge

Lower Court Case No. 2014-CP-40-08059
Supreme Court Case No. 2018-000487

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JUN 01 2018

S.C. SUPREME COURT

South Carolina,Respondent

v.

George Cleveland, III,Petitioner

PETITIONER'S REPLY BRIEF

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

Other Counsel of Record:
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Post Office Box 11549
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Attorney for Respondent

PETITIONER'S REPLY BRIEF:

MAY IF PLEASE THE COURT: George Cleveland, III, the *Pro se*
Petitioner respectfully submits this Reply Brief pursuant to *Rule 242 (g) SCACP*.

RESPONDENT CONSENTED TO MY INFORMA PAUPERIS

MOTION:

Rule 240 (e) SCACR required the Respondent to “consent” to my Motion to proceed *in forma pauperis* because the Respondent never even filed a Return to my *in forma pauperis* motion: (“ Any party opposing a motion or petition shall have ten (10) days from the date of service thereof to file an original and six (6) copies of his return with the clerk and serve on all parties a copy of the return... [f] ailure of a party to timely file a return may be deemed a consent by that party to relief sought in the motion or petition.” Since the Respondent failed to respond to my *in forma pauperis* motion in the Court of Appeals (S.R. p.1), their Return to my Certiorari Petition filed in this Court is barred¹ under *Rule 240 (e), id*, and cannot be considered by this Court. However, my Reply to the Respondent’s Return

¹ Further the Respondent’s Return to my Certiorari Petition in this case is barred by the doctrine of *Laches* because the Respondent “fail [ed] to plead an affirmative defense...” in my *in forma pauperis* motion in the Court of Appeals, see *Adams v. B & D, Inc.* 297 SC 416, 419, 377 S.E. 2d. 315, 317 (1989), quoted from *Collins Entertainment, Inc. v. White* 611 S.E. 2d. 262 (S.C. ct. of Appeals 2005); accordingly, the Respondent’s Return to my Certiorari Petition is barred from review by this Court.

to my Certiorari Petition is below in the event my arguments barring their Return, *supra*, are not persuasive to this Court respectively.

\$268.00 Payment to the Court of Appeals:

The Respondent argues that I submitted to the Court of Appeals \$268.00. Respondent's Return at pp. 1-2. The October 11, 2017 (R. p. 44) letter from the Court of Appeals do not provide any specific information on the \$243.00 payment as I have no knowledge of ever submitting a \$243.00 payment to that Court. I do have knowledge about the \$25.00 filing fee to the Court of Appeals as its's the required fee in order to file my Petition for Rehearing pursuant to *Rule 240 footnote 1 SCAR*; accordingly, the \$268.00 argument is without merit.

Bounds v. Smith waiver of filing fee:

The Respondent argues that *Bounds v. Smith 430 U.S. 430 U.S. 817, 97 S.ct. 1491, 52 L.Ed.2d (1977)* "has nothing to do with a waiver of filing fees." Respondent's Return p. 2. This argument is simply wrong. The *Bounds Court* held: "indigent [Appellants] must be allowed to file Appeals ... without payment of docket fees..." *id at 822 at 1495*; therefore, the Respondent's argument that the *Bounds Court* "has nothing to do with a waiver of filing fees." *Id*, is a misreading of that case. *IBID*.

Bounds v. Smith Applies only to Constitutional Criminal Convictions or Collaterally Attacking Criminal Convictions

The Respondent next argues that the *Bounds Court's* holding of the waiver of filing fees applied only in criminal convictions or collaterally attacking criminal convictions. Respondent's Return p.2. The *Bounds Court* to did not limit the waiver of docket fees to only criminal convictions or collaterally attacking criminal convictions. Instead the *Bounds Court* did not limit² the right to the waiver of the filing fee to criminal case, but the *Bounds Court* applied a broad brush to include, and not limit my federal right under the *first (access to the Courts)*, and *fourteenth amendment (due process liberty/ property interest)* of the *U.S. Const.* for the Court of Appeals to waive the \$100.00 docket fee in my case which is a civil case that has nothing to do with a criminal convictions collateral or not; consequently, the *Bounds Court* required the Court of Appeals to **Grant** my Motion *to proceed in forma pauperis* in this case.

My Ability to Pay:

² The Respondent's argument that the *FOIA statute* is not "bases on a 'basic constitutional right.'" Respondent's Return at pp, 3-4. The *FOIA statute* allowing me a right to waive the docket fees has nothing to do with *FOIA statute*. The *Bounds Court's* holding affords me a federal right to access the courts even on Appeal without prepayment of the docket fee to put a check on the power, and decisions of the Richland County Common Pleas Court. *IBID*. Further the Respondent's argument that I was not incarcerated at the time the Court of Appeals denied my *in forma pauperis Motion*. Respondent's Return at footnote 1 at p. 3. The *Bounds court* did not render an inmate's case moot if he/ she is released from prison during the Appeals process, *id*, therefore, the *Bounds Court* requires this Court to decide whether I have a federal right to Appellate review despite my Prison sentence being over.

The Respondent argue I have the ability to pay the filing fee. Respondent's Return at p. 4. The *Bounds Court* does not require me to pay the \$100.00 filing fee on appeal when at the time of the filing of this case, I was in prison with no money to payment the filing fee. *IBID*. And the Respondent did not provide any case law or other legal authority to support their argument that just because I'm released from prison, I cannot invoke my federal right under the *Bounds Court* to waive the \$100.00. *IBID*. Furthermore, I had to borrow the \$100.00 to pay the filing fee for this Court just to file my *Certiorari* Petition because without the filing fee this Court would not even see this Case on its' docket. There are 21,135 Inmates as of 2017 that are in the custody of the SCDC. S.R. p. 2. Only 2,233 of the Inmates have jobs in Prison Industries that pay a sum of money. S.R. p. 3. SCDC Inmates face horrible prison conditions as WSPA-News 7 (Spartanburg, S.C.) reported on April 26, 2018 where "Dozens" of SCDC Inmates are suing the SCDC over harassment claims, civil rights violations, deprivation of medical care, and mental health, and constantly being locked³ behind their cell door without showers. S.R. p. 4. The Court of Appeals have a pattern of denying SCDC Inmate Appellant's motion to proceed *in forma pauperis*. *Marcus Watts, 316590 v. SCDC; Appellate Case No. 2017-002418; Paul Shuler, 369640 v. SCDC; Appellate Case No. 2018-000404; Torrey Deaund Manning, # 364781 v. SCDC; Appellate Case No. 2018-000548; Marcus Watts v.*

³ SCDC Director admitted that Inmates are not able to take showers when they are on lock down along with staffing shortages. S.R. pp. 5-7. Just last month (April 16, 2018) Seven SCDC Inmates died from stabbings, and 17 SCDC injured. S.R. p. 8. SCDC Officers simply "watched" Inmates kill each other. *IBID*.

SCDC; Appellate Case No. 2018-000730; Their Taylor v. SCDC; Appellate Case No. 2018-000921. S.R. pp. 9-13. The Bounds Court protects me, and these inmates who are seeking South Carolina Courts enforce, and interpret State and Federal Laws. The Respondent simply argues to this Court to disregard following the law of the case in Bounds. If this Court does so, the alleged poor prisons conditions will remain out of the South Carolina Appellate Courts for Indigent Inmates, and poor Appellants like myself; therefore, Bounds Court rejects the Respondent's arguments.

CONCLUSION:

I respectfully request that this Court reject of the Respondent's arguments, and refuse to hear their arguments because they failed to respond to my motion to *proceed in forma pauperis* in the Court of Appeals.

Respectfully Submitted,


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Dated: May 29, 2018