

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM AIKEN COUNTY  
Court Of Common Pleas  
George M. McFaddin, Jr., Circuit Court Judge

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Appellate Case No. 2018-000097

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John White, #80622,.....Appellant.

v.

State of South Carolina,.....Respondent.

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**INITIAL BRIEF OF RESPONDENT**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	iii
STATEMENT OF ISSUES .....	1
STATEMENT OF THE CASE .....	2
STANDARD OF REVIEW .....	3
ARGUMENT .....	4
CONCLUSION .....	6

## TABLE OF AUTHORITIES

### South Carolina Cases

<i>Clardy v. Bodolosky</i> , 383 S.C. 418, 679 S.E.2d 527 (Ct. App. 2009).....	3
<i>Ex parte Martin</i> , 321 S.C. 533, 471 S.E.2d 134 (1995).....	4, 5
<i>Fesmire v. Digh</i> , 385 S.C. 296, 683 S.E.2d 803 (Ct. App. 2009).....	3
<i>Fleming v. Rose</i> , 338 S.C. 524, 526 S.E.2d 732 (Ct. App. 2000).....	6
<i>Fleming v. Rose</i> , 350 S.C. 488, 567 S.E.2d 857 (2002).....	6
<i>Gibson v. State</i> , 329 S.C. 37, 495 S.E.2d 426 (1998).....	5
<i>Hendrix v. Taylor</i> , 353 S.C. 542, 579 S.E.2d 320 (2003).....	6
<i>In re Justin B.</i> , 405 S.C. 391, 394, 747 S.E.2d 774, (2013).....	5
<i>In re. Ronnie A.</i> , 355 S.C. 407, 585 S.E.2d 311 (2003).....	6
<i>In Interest of Justin B., a Juvenile under the Age of Seventeen</i> , 419 S.C. 575, 799 S.E.2d 675 (2017) <i>cert. denied sub nom.</i> <i>J.D.B. v. South Carolina</i> , 138 S. Ct. 483, 199 L. Ed. 2d 360 (2017).....	6
<i>Lakes v. State</i> , 333 S.C. 382, 510 S.E.2d 228, (Ct. App. 1998).....	4, 5
<i>Lollis v. Dutton</i> , 421 S.C. 467, 807 S.E.2d 723, (Ct. App. 2017).....	3
<i>S.C. Dep't of Transp. v. M &amp; T Enters. of Mt. Pleasant, LLC</i> , 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008).....	3
<i>State v. Nation</i> , 408 S.C. 474, 759 S.E.2d 428 (2014).....	5
<i>State v. Walls</i> , 348 S.C. 26, 558 S.E.2d 524 (2002).....	2, 6
<i>Thompson v. State</i> , 325 SC 58, 479 S.E.2d 808 (1997).....	4, 5
<i>Thompson v. State</i> , 415 S.C. 560, 785 S.E.2d 189 (2016).....	5
<b>South Carolina Statutes</b>	
S.C. Code Ann. §24-27-400.....	4
S.C. Code Ann. § 23-3-410 et seq.....	5

## STATEMENT OF ISSUES

1. Did the Court err by denying Mr. White's motion to proceed *in forma pauperis*?

## STATEMENT OF THE CASE

The Appellant submitted a Motion and Affidavit to Proceed *In Forma Pauperis* along with a “Petition to Sex Offender Register” to the Sumter Clerk of Court in November or December of 2017. In the Petition, he asks the court to rule that he (1) “do not be on the sexual registry” and (2) for an “[O]rder for SCDC to remove it from the Plaintiff Management System Release date screen.” (Petition p.2 in 2017-CP-43-2476). Mr. White’s primary argument in his Circuit Court petition is that the Sex Offender Registry Act should not apply to him because the law came into effect 20 years after he was convicted. This argument has already been decided in *State v. Walls* when the South Carolina Supreme Court ruled that the Sex Offender Registry Act does not violate the *ex post facto* clause. *State v. Walls*, 348 S.C. 26, 558 S.E.2d 524 (2002). On December 13, 2017, the Honorable George M. McFaddin, Jr. denied Mr. White’s motion to proceed *in forma pauperis*. The Order was recorded by the Clerk of Court on December 14, 2017. Mr. White appealed Judge McFaddin’s denial of his motion to proceed *in forma pauperis* on January 16, 2018.

## STANDARD OF REVIEW

“This [c]ourt reviews all questions of law de novo.” *Lollis v. Dutton*, 421 S.C. 467, 477, 807 S.E.2d 723, 728 (Ct. App. 2017) (quoting *Fesmire v. Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009); see also *Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct. App. 2009) (“Questions of law may be decided with no particular deference to the trial court.” (quoting *S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 654, 667 S.E.2d 7, 12 (Ct. App. 2008))). Whether the Court erred by denying *Mr. White's* motion to proceed *in forma pauperis* is a question of law; therefore, the proper standard of review is de novo.

## ARGUMENT

In his initial brief Mr. White argues:

1. §24-27-400; Indigent Persons  
This Chapter is inapplicable to any case in which the constitution of the united states or the constitution of South Carolina Requires an indigent person be allowed access to the courts.
2. Appellant do not have the Funds available to pay the costs of filing. SEE Exhibit (C) Inmate Trust Fund Account Report S.C. Code of Law §24-27-100.

(Appellant's Initial Brief p. 2). The Appellant is not entitled to proceed *in forma pauperis*. §24-27-400 only requires that an indigent person be allowed access to the courts where the Constitution of the United States or the Constitution of South Carolina requires it. S.C. Code Ann. §24-27-400. Additionally, *Ex parte Martin* held that absent a statutory 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, 535, 471 S.E.2d 134, 135 (1995). The Appellant does not state any statutes or constitutional provisions that require waiving the filing fee in an action to determine whether someone is required to register as a sex offender. He only argues that he does not have the funds to pay the costs of filing.

There is no statute that would allow Mr. White to proceed *in forma pauperis*. In *Thompson v State*, the South Carolina Supreme Court allowed Mr. Thompson to proceed *in forma pauperis* in a post-conviction relief action. *Thompson v. State*, 325 S.C. 58, 479 S.E.2d 808 (1997). Mr. Thompson was allowed to proceed *in forma pauperis* in the post-conviction relief action case because "S.C. Code Ann. §17-27-20 (1985) specifically states that an action for post-conviction relief may be instituted without the payment of a filing fee, regardless of a person's financial status." *Id.* at 325 S.C. 59. Similarly in *Lakes v State*, the Court of Appeals allowed Mr. Lakes to proceed *in forma pauperis* in a habeas corpus case. *Lakes v. State*, 333 S.C.

382, 510 S.E.2d 228, (Ct. App. 1998). Mr. Lakes was allowed to proceed *in forma pauperis* because:

If a habeas corpus petition does not satisfy the procedural requirements or allege sufficient facts to justify a habeas corpus hearing, the petition may be treated as a PCR application. *Gibson v. State*, 329 S.C. 37, 495 S.E.2d 426 (1998). A PCR application “may be instituted without the payment of a filing fee, regardless of a person's financial status.” *Thompson v. State*, 325 S.C. 58, 59, 479 S.E.2d 808, 808 (1997).

*Id.* at 333 S.C. 385. Unlike in *Thompson* and *Lakes*, Mr. White has not filed a post-conviction relief action. He filed a petition for removal from the Sex Offender Registry, which is governed by S.C. Code Ann. § 23-3-410 et seq. There is no provision in the Sex Offender Registry Act that allows an action challenging someone’s registration requirement to be instituted without the payment of a filing fee. Additionally, in *Thompson v State*, the Supreme Court of South Carolina found that a challenge to someone's registration requirement should not be addressed in a post-conviction relief action. *Thompson v. State*, 415 S.C. 560, 785 S.E.2d 189 (2016).

As we have repeatedly stated, the sex offender registry is a civil requirement separate and apart from the criminal punishments associated with sexual offenses in this state. *State v. Nation*, 408 S.C. 474, 481, 759 S.E.2d 428, 432 (2014) (citing *In re Justin B.*, 405 S.C. 391, 394, 404–08, 747 S.E.2d 774, 775, 781–83 (2013)). As such, a declaratory judgment, and not post-conviction relief (PCR), is the appropriate vehicle in which to address this matter.

*Id.* at 415 S.C. 564. This distinguishes Mr. White’s case from *Lakes v State*, because an action challenging someone’s registration requirement should not be treated as a PCR, where a habeas corpus action can be treated as a PCR.

“Further, where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts.” *Ex parte Martin* at 321 S.C. 533. It is well established that the sex offender registry does not violate registrants’ constitutional rights. While not explicitly stated in his appeal, in the underlying circuit court case, Mr. White argues that he

should not have to register because he was convicted 20 years before the sex offender registry act was enacted. This very question was addressed in *State v Walls*. The South Carolina Supreme Court found that “the Act is not so punitive in purpose or effect as to constitute a criminal penalty. Accordingly, the Act does not violate the *ex post facto* clauses of the state or federal constitutions.” *State v. Walls* at 348 S.C. 31.

Additionally, having to register as a sex offender does not violate Mr. White’s constitutionally guaranteed right to due process.<sup>1</sup> In order to show the state violated a due process right and deprived an individual of a liberty interest without a hearing, an appellant must first “show that he has a constitutionally protected liberty or property interest, and that he has been deprived of that protected interest by some form of state action.” *Fleming v. Rose*, 338 S.C. 524, 539-40, 526 S.E.2d 732, 740 (Ct. App. 2000), *rev’d on diff. grounds*, 350 S.C. 488, 567 S.E.2d 857 (2002). As discussed in *State v. Walls*, the sex offender registry is a non-punitive imposition and is regulatory, as such that no liberty interest is implicated. *State v. Walls* at 348 S.C. 31; *In re. Ronnie A.*, 355 S.C. 407, 585 S.E.2d 311 (2003); *Hendrix v. Taylor*, 353 S.C. 542, 579 S.E.2d 320 (2003); *In Interest of Justin B., a Juvenile under the Age of Seventeen*, 419 S.C. 575, 799 S.E.2d 675 (2017) *cert. denied sub nom. J.D.B. v. South Carolina*, 138 S. Ct. 483, 199 L. Ed. 2d 360 (2017) (reaffirming the constitutionality of SORA and reaffirming unequivocally that SORA is not punishment).

## CONCLUSION

There is no statute that allows Mr. White to initiate this action without paying the filing fee. Additionally, the sex offender registry does not involve a fundamental right where the Constitution would require that an indigent be allowed access to the courts. Therefore, for all of

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<sup>1</sup> Mr. White does not allege a due process violation; however, since it may, if it existed, entitle him to proceed *in forma pauperis*, it is addressed in this brief.

the foregoing reasons, the State of South Carolina respectfully requests that this Court affirm Circuit Court denial of Mr. White's motion to proceed *in forma pauperis*.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that I served the Appellant, Mr. White, with a copy of the Respondent's Initial Brief and Designation of Matter by depositing a copy of in the United States Mail, postage prepaid. The document was sent to the following address:

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[The signature block is on the next page.]

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