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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SEP 17 2018

SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 18-ALJ-04-0224-AP
Appellate Case No. 2018-001307

Sanyika Askari, #236679.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

REPLY TO APPELLANT’S MOTION TO PROCEED IN FORMA PAUPERIS

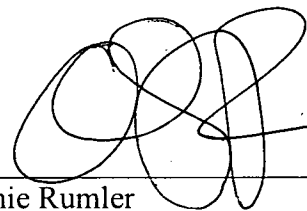
This matter is before the Court pursuant to Sankyika Askari’s appeal of Administrative Law Court Judge S. Phillip Lenski’s July 2, 2018 dismissal order.

On July 16, 2018 Appellant sent the Court a letter which the Court has construed as a Motion to Proceed In Forma Pauperis. Appellant has not demonstrated that he is indigent or that this case implicates a fundamental right such that the Constitution would require the waiver of fees. As such, Respondent requests that the Court deny Appellant’s Motion to Proceed In Forma Pauperis.

Court may allow a petitioner to proceed in forma pauperis in the absence of a statutory provision allowing the general waiver of fees only where specifically authorized by statute or required by constitutional provisions. *Martin v. State*, 321 S.C. 533, 535, 471 S.E.2d 134, 134–35 (1995). Additionally, where constitutional provisions are relied upon, the petitioner must be indigent. *Id.* There is no statute which allows for the waiver

of fees for an appeal from the Administrative Law Court under the Administrative Procedures Act. *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 445, 586 S.E.2d 124, 128 (2003). This case is an appeal from the Administrative Law Court under the Administrative Procedures Act. Thus, Appellant can proceed in forma pauperis only if he is indigent and this case implicates his constitutional rights in such a way that requires waiver of fees. *Martin* at 535, 471 S.E.2d at 135 (1995). The entirety of Appellant's Motion to Proceed In Forma Pauperis stated "no filing fee should be required in this case of an Administrative Law Court review determination of my custody status by the D.O.C." He made no assertion, and offered no evidence to demonstrate, that he is indigent or that this case involves a constitutional right. It is impossible to determine that Appellant qualifies to proceed in forma pauperis under the *Martin* standard with the information provided in Appellant's Motion to Proceed In Forma Pauperis. Thus, his motion should be denied.

WHEREFORE, Respondent prays that this Court will deny Appellant's Motion to Proceed In Forma Pauperis and for such other and further relief as this Court may deem just and proper.



Annie Rumler
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ATTORNEY FOR RESPONDENT

September 7, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 18-ALJ-04-0224-AP
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SC Court of Appeals

Sanyika Askari, #236679.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on today's date I served a copy of the foregoing **Reply to Appellant's Motion to Hold in Abeyance and Reply to Appellant's Motion to Proceed In Forma Pauperis** to Appellant by depositing a copy of same in the United States Mail, postage prepaid addressed as follows: Henry Fuller a.k.a. Sanyika Askari, #236679, Dorm-Room-Bunk: BWB-0043-A, Allendale Correctional Institution, P.O. Box 1151, Fairfax, SC 29827.



Annie Laurie Rumler
Staff Attorney
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
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September 7, 2018



HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

September 10, 2018

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Reference: App. Case No.: 2018-001307 (Sanyika Askari, #236679
v. South Carolina Department of Corrections)

Dear Madam Clerk:

Enclosed, please find my Entry of Appearance as well as Respondent's Reply to Appellant's Motion to Hold in Abeyance and Reply to Appellant's Motion to Proceed In Forma Pauperis. Please kindly delete Ms. Bigelow's name as associated counsel for this case and add me as the counsel of record. Thank you.

Sincerely,

Annie Laurie Rumler, Esquire

Enclosure

cc: Sanyika Askari, #236679