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JUL 19 2019

S.C. SUPREME COURT

The South Carolina Supreme Court

HAYWARD L. ROGERS,

Appellate,

VS.

State of South Carolina,

Respondent.

Appellate Case No. 2019-000429

### Proof of Service

I, The undersigned hereby does Certify That on This herein date That a Copy of The Affidavit In Support of his petition and July 2, 2019 discovery was served on Kelly Oppenheimer, E.S.Q., by placing a Copy in The U.S. mail postage prepaid.

July 2, 2019

Hayward L. Rogers

CC: The Honorable Daniel E. Shearouse

Kelly Oppenheimer, E.S.Q.

The South Carolina Supreme Court

HAYWARD L. ROGERS,

Appellate,

VS.

State of South Carolina,

Respondent.

Case No. 2019-000429

Affidavit In Support of Petition

Personally appeared before me, and after being duly sworn upon my oath, HAYWARD L. ROGERS, does depose and state as follows: That I am the appellant in the above case, and do state that the discovery of material facts are true and does support my innocence, and does believe that this court has the authority and jurisdiction to adjudicate this matter and for good cause showing requests this court assistance.

*Hayward Rogers*

Sworn to before me this 16<sup>th</sup> Day  
of July 2019,

C. D. Jones

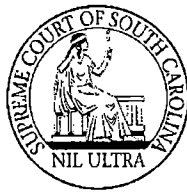
Notary Public For South Carolina

My Commission Expires 8/5/2024

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JUL 19 2019

S.C. SUPREME COURT



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA  
29211  
1231 GERVAIS STREET  
COLUMBIA, SOUTH CAROLINA 29201  
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July 08, 2019

Mr. Hayward Leon Rogers, 278510  
McCormick Correctional Institution  
386 Redemption Way  
McCormick SC 29899

Re: Hayward L. Rogers v. State  
Appellate Case No. 2019-000429

Dear Mr. Rogers:

This responds to your document dated July 2, 2019.

To the extent you may be trying to file this document in the above appellate case, no action will be taken on it since the sending of the remittitur has ended appellate jurisdiction over this case. *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007).

To the extent this document may be construed as seeking relief under Rule 245 of the South Carolina Appellate Court Rules, I cannot accept it for filing since you have not provided the affidavit and \$50 filing fee required by this Court's order dated March 10, 2014.<sup>1</sup>

Very truly yours,

CLERK

cc: Kelly Oppenheimer, Esquire

<sup>1</sup> While the 2014 order referenced the fact that the motion filing fee was then \$25, the motion filing fee was increased to \$50 effective October 15, 2018.

[www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2335](http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2335).

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Source: **Legal > / . . . / > SC State Cases, Combined**Terms: **name(martin) and date(geq (01/01/95) and leq (12/31/95))** (Suggest Terms for My Search) Select for FOCUS™ or Delivery*321 S.C. 533, \*; 471 S.E.2d 134, \*\*;  
1995 S.C. LEXIS 98, \*\*\**

Ex Parte: Henry W. **Martin**, Jr., Appellant, v. The State, Respondent. In Re: Henry W. **Martin**, Jr. # 190394, Plaintiff, v. AT&T Telephone Co., Inc.; Southern Bell Telephone, Co., Inc.; Zero Plus Dailing, Co., Inc.; Parker Evatt, Comm. SCDC; and Williams C. Wallance, LEECI, Defendants.

[NO NUMBER IN ORIGINAL]

SUPREME COURT OF SOUTH CAROLINA

321 S.C. 533; 471 S.E.2d 134; 1995 S.C. LEXIS 98

**May 5, 1995**, Decided**CASE SUMMARY**

**PROCEDURAL POSTURE:** Appellant inmate commenced the instant action seeking to have the court review the action taken by the clerk of court (South Carolina), in favor of respondent State, dismissing the inmate's motion to proceed without costs in the trial court.

**OVERVIEW:** The inmate, proceeding pro se, filed a motion to be allowed to proceed without costs in the trial court. The motion was returned to the inmate by the clerk of court on the basis of an order issued by the circuit's chief judge for administrative purposes that only allowed the filing of a complaint in forma pauperis in certain types of cases. On appeal, the court found that the inmate asked it to review the action taken by the clerk of court without first making a motion to have a circuit judge rule on his request to proceed without costs. Therefore, the court was without appellate jurisdiction. However, because of the increasing number of persons seeking to proceed in forma pauperis, the court provided guidance as to when it was appropriate to waive filing fees. When an indigent litigant filed a motion to proceed in forma pauperis pursuant to S.C. R. Civ. P. 3(c), and the complaint did not appear to fit within one of the statutory or constitutional exceptions to the requirement of a filing fee, the clerk of court had to submit the motion to a judge for a ruling as to whether the litigant could proceed in forma pauperis.

**OUTCOME:** The court dismissed the inmate's appeal and remanded the matter for a ruling by a circuit judge.

**CORE TERMS:** filing fees, indigent, forma pauperis, clerk, fundamental rights, statutory provision, constitutional violation, post-conviction, statutory exceptions

## LEXISNEXIS® HEADNOTES


 Hide

Civil Procedure > Parties > Self-Representation > General Overview 

**HN1** ↓ In the absence of a statutory provision allowing the general waiver of filing fees, motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions. More Like This Headnote  
| *Shepardize*: Restrict By Headnote

Civil Procedure > Parties > Self-Representation > General Overview 

Civil Rights Law > Prisoner Rights > Access to Courts 

Healthcare Law > Treatment > End-of-Life Decisions > Abortion > Right-to Privacy 

**HN2** ↓ Where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts. More Like This Headnote

**JUDGES:** [\*\*\*1] Ernest A. Finney, Jr., C.J., Jean H. Toal ↘, A.J., James E. Moore ↘, A.J., John H. Waller, Jr. ↘, A.J., E. C. Burnett, III, A.J.

## OPINION

[\*534] [\*\*134] ORDER

Appellant, an inmate proceeding *pro se*, filed a motion to be allowed to proceed without costs in the circuit court. Appellant's motion, and the accompanying summons and complaint, were returned to him by the clerk of court on the basis of an order issued by the circuit's Chief Judge for Administrative Purposes. The order allowed the filing of a complaint in forma pauperis only in Employment Security Commission and Post-Conviction Relief Proceedings. Appellant has appealed the clerk's decision and asks to be allowed to proceed without costs on appeal. Appellant also asks the Court to issue a writ of mandamus ordering the lower court to comply with Rule 3(c), SCRPC, which provides for the filing of petitions to proceed in forma pauperis.

Appellant is asking this Court to review the action taken by the clerk of court without first making a motion to have a circuit judge rule on his request to proceed without costs. This Court sits to review rulings [\*\*\*2] of judges [\*535] and, without a judge first determining whether appellant should be allowed to proceed without costs, this appeal is premature. Accordingly, this appeal is dismissed and the matter remanded for the circuit court judge to rule on appellant's motion. *Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991).

Because of the increasing number of persons seeking to proceed in forma pauperis, we take this opportunity to give guidance as to when it is appropriate to waive filing fees. **HN1** ↓ In the absence of a statutory provision [\*\*135] 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. See *Tahtinen v. Superior Court, Pinal County*, 130 Ariz. 513, 637 P.2d 723 (1981); *Steinkamp v. Jacque*, 36 Conn. Supp. 37, 410 A.2d 489 (1979); 1986 Op. S.C. Att'y Gen. No. 86-44 at 131.

Among the statutory provisions allowing or requiring waiver of filing fees are S. C. Code Ann. ~~§§ 8-21-310(11) (Supp. 1994)(no fee must be paid to appeal from a conviction in magistrate's or municipal court); 17-27-60 (1985)(no fee required of indigent filing a post-conviction relief [\*\*\*3] action); 20-4-40(e) (1985)(clerks of court must assist persons seeking an order of protection from domestic abuse by giving them forms to proceed in forma pauperis); 20-7-1440 (Supp. 1994)(no court fee may be charged in delinquency and neglect actions); 41-39-30 (1986)(fee waived in a proceeding involving a claim for benefits from the Employment Security Commission); and, 44-41-34(B) (Supp. 1994)(a minor may file an action seeking consent for an abortion without paying any filing fee). Further, <sup>HN2</sup> where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts. Compare *Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971)(an indigent must be given access to courts in divorce action) and *Smith v. Bennett*, 365 U.S. 708, 81 S. Ct. 895, 6 L. Ed. 2d 39 (1961)(an indigent prisoner may not be required to pay a filing fee for petitioning for a writ of habeas corpus) with *Ortwein v. Schwab*, 410 U.S. 656, 93 S. Ct. 1172, 35 L. Ed. 2d 572 (1973)(no [\*536] constitutional violation in requiring payment of appellate filing fee by indigents seeking review of an adverse welfare decision) and *United States v. Kras*, [\*\*\*4] 409 U.S. 434, 93 S. Ct. 631, 34 L. Ed. 2d 626 (1971)(no constitutional violation in requiring payment of filing fee by indigent in bankruptcy action).<sup>1</sup>~~

#### FOOTNOTES

<sup>1</sup> The examples given are not exhaustive but are illustrations of when a motion to proceed in forma pauperis must be granted by a judge. Other statutory exceptions and other fundamental rights may require the waiver of filing fees for indigents.

In the future, when an indigent litigant files a motion to proceed in forma pauperis pursuant to Rule 3(c), and the complaint does not appear to fit within one of the statutory or constitutional exceptions to the requirement of a filing fee, the clerk of court must submit the motion to a judge for a ruling as to whether the complaint does fit within one of the statutory exceptions or whether the cause of action concerns a fundamental right that requires waiver of the filing fee.

IT IS SO ORDERED.

Ernest A. Finney, Jr., C.J.

Jean H. Toal ↘, A.J.

James E. Moore ↘, A.J.

John H. Waller, Jr. ↘, A.J.

E. C. Burnett, III, [\*\*\*5] A.J.

Columbia, South Carolina

May 5, 1995

Source: **Legal > / ... / > SC State Cases, Combined** 






Terms: **name(martin) and date(geq (01/01/95) and leq (12/31/95))** (Suggest Terms for My Search)


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South Carolina Supreme Court  
Post office Box 11330  
Columbia, South Carolina 29211

July 12, 2019

Re: Rogers vs. State

Appellate Case No. 2019-000429

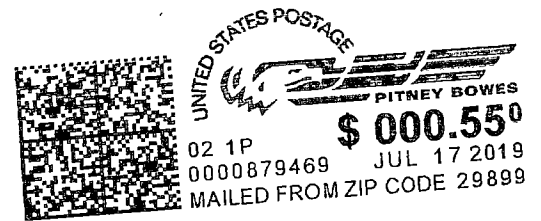
Dear Hon. Clerk;

Since The July 2, 2019 document Relates To a PCR matter  
That was denied in The Lower Court, Case No. 2016-CP-32-  
02815; The July 2, 2019 documents was after discovered  
evidence intended to be Submitted with The petition For  
Writ of Certiorari To prove innocence. and since This  
Clearly is a PCR matter The Filing Fee is waive pursuant  
To ~~Ex Parte: Henry G. Martin, Jr. Appellat. V. The State,~~  
~~Respondent,~~ 321 S.C. 533, 471 S.E. 2d 134 (S.C. 1995). IF you  
still choose To deny a State Created Right, I have no choice  
but To Litigate This issue with The Federal Court.

July 12, 2019

Myrland L. Rogers

WARD L. ROGERS, #278510  
Mick Correctional Institution  
Redemption Way, FI-127B  
MICK, S.C. 29899



South Carolina Supreme Court  
Post Office Box 11330  
Columbia, S.C. 29211

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