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JUL 27 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Docket Nos. LCI-0589-04,	LCI-0599-04,	LCI-0616-04,
LCI-0621-04,	LCI-0615-04,	LCI-0637-04,
LCI-0725-04,	LCI-0608-04,	LCI-0711-04,
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Francis Prioleau 268813, Larkland Richards 281768, Gene Richardson 93614,  
Isaac Richardson 232574,\* Laron Richardson 258786, Dennis Richey 233472,  
Ignacio Rivera 300424, Henry Rivers 219118, Harold Roberson 117001,  
Donald Robinson 277520, Darrell Rochester 146731, Vondell Sanders 241308,  
James Sattler 235043, Joseph Schmitz 173987, Arthur Scott 251957,  
Isaiah Scott 228008, Jerome Scott 153381, Roosevelt Scott 275631,  
Ralph Sellers 164295, George Shine 292391, Archie Simmons 161419,  
Kenneth Simmons 278911, Ronald Simmons 267937, Samuel Simmons 302393,  
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David Sims 278067, Jonathan Singleton 287670, Kevin Smith 272440,  
Robert Smith 199324, Timothy Smith 296539, Jeffrey Spears 281697,  
Alvin Stewart 278595, Jeff Stinson 260047, Jeffrey Tevis 216442,  
William Thomas 272501, Curtis Thompson 266448, James Tino 145030,  
James Trumper 247429, James Wells 180458, Ray Wells 173651,  
Demetrius Wheeling 264976, Kenneth White 228409, Bobby Williams 261486,  
Darrell Williams 219730, Derrick Williams 272958, James Williams 282929,  
Leon Wilson 155867, Timothy Wilson 261971, Tony Witt 242918,  
John Wojcik 219463, Anthony Wright 199009, Robert Wydman 260331,  
Eric Youmous 281091, Rogelio Zavala 245106..... Appellants,

v.

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

NOTICE OF APPEAL

Francis Ackerman, et al. appeal the back wage calculation decisions of the S.C. Department of Corrections (SCDC) dated October 31, 2019. Under-  
signed appellants' attorney also received the decisions in this matter on

\* This deceased claimant is represented by a substituted party.

October 31, 2019.\*

This appeal is filed pursuant to S.C. Code §1-23-380 ("..judicial review available under other means of review..provided by law"), and the following: (1) S.C. Constitution, Article I, Sections 22, 23. These provisions prohibit deprivation of property by an administrative agency unless by a mode of procedure prescribed by the General Assembly. Section 22 states an aggrieved person **shall** have the right to judicial review. Section 23 states the provisions in the Constitution shall be construed to be **mandatory** and prohibitory, except where expressly made directory or permissive by its own terms.

For example, see League of Women Voters of Georgetown County v. Litchfield-by-the-Sea 305 S.C. 424, 426-7, 409 S.E. 2d 378, 380 (S.C., 1991) (Applying Article I, Section 22's "superseding constitutional due process provisions" for hearing and judicial review to a non-binding determination of the Coastal Council, which, as an administrative agency, must comport with the standards of due process in Article I, Section 22). Article I, Section 22 has no time limit to file appeal.

(2) S.C. Constitution, Article I, Sections 22, 23, and S.C. Constitution, Article I, Section 3, and U.S. Constitution, Amendment 14, Section 1. The latter two provisions prohibit deprivation of property without due process of law, and carry the same protection of mandatory judicial review as provided in S.C. Constitution, Article I, Sections 22, 23 (S.C. Ambulatory Surgery Center Ass'n v. S.C. Workers Comp. Comm'n 389 S.C. 380, 699 S.E. 2d 146, 152 (S.C., 2010) (Court states it has consistently indicated that the protections under Article I, Section 22 are equivalent to those afforded by the due process clauses of our state and federal Constitutions)).

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\* This case is currently on remand in SCDC, following Court of Appeals remand to the Administrative Law Court (ALC) in 2016 (Ackerman, et al. v. SCDC 415 S.C. 412, 421), and ALC remand to SCDC in 2017.

(3) S.C. Constitution, Article I, Section 3 due process and U.S. Constitution, Amendment 14, Section 1 due process. These provisions provide for: constitutionally required judicial review despite statutory provisions to the contrary, in absence of clear legislative intent otherwise (C.J.S. (2014), Adm. Law & Procedure, §379); judicial review as a matter of constitutional necessity despite a statute attempting to preclude review (Am Jur 2d (2014), Adm. Law, §388); a presumption of judicial review for constitutional questions, unless Congress' intent to foreclose review is clearly manifested (Califano v. Sanders 430 U.S. 99, 109, 97 S. Ct. 980 (1977)); and a requirement of judicial review to determine if confinement violates the Constitution, or prison officials have acted arbitrarily and capriciously (Al Shabazz v. State 338 S.C. 354, 381, 527 S.E. 2d 742 (S.C., 2000)). These South Carolina and federal due process provisions have no time limit to file appeal.

Appellants contend the following facts and authorities further support the timeliness of this appeal. First, SCDC calculations are incomplete. They were done for an inmate work program which ran from about 1998 to 2013. However, the calculations computed back wages only up to July 2007. Many appellants worked during the period July 2007-2013. Also, no calculation was done for appellant Vondell Sanders. Appellants submit the calculations are facially incomplete, and they were not required to appeal until a more complete decision is issued, which has not occurred (SCACR 203(b)(6) (If a decision indicates that a more full and complete decision is to follow, a party **need not** appeal until receipt of the more complete decision)).

Second, the calculations are not a final decision. In addition to their incompleteness, the calculations do not determine liability and computations for statutory interest, S.C. Code §§11-9-360, 34-31-20(A), or for overtime pay and back wages and interest for Appendix 2 additional work periods. The cover

sheet for the calculations states they are for "settlement and mediation purposes only". SCDC has also indicated it would revise the calculations, which never occurred. Further, SCDC has indicated it would issue final decision and continue litigation if the parties could not settle. Thus, appellants contend the calculations are not a final decision (Torrence v. SCDC 433 S.C. 224, 230, 857 S.E. 2d 549, 552 (S.C., 2021) (If there is some further act which must be done by the court prior to determination of the parties' rights, the order is interlocutory)).

As a result, appellants submit they did not have to appeal within 30 days of October 31, 2019 (Office of Regulatory Staff v. S.C. Public Service Commission 374 S.C. 46, 647 S.E. 2d 223, 229 (S.C., 2007) (Appellants were not required to appeal within 30 days after issuance of an order under S.C. Code §1-23-380(A)(1) because the order was not final. The hearings in 1999 and 2000 left various issues to be resolved. It was not until 2001 that Commission issued final orders from which appellants now timely appeal)).

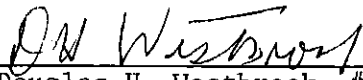
Third, appellants contend their January 3, 2020 Motion for SCDC to Amend Back Pay Analysis Spreadsheets was a petition for rehearing under §1-23-380 (1). This stayed the time to appeal until receipt of SCDC's decision on that motion, which did not occur as SCDC filed no response to the motion. See, Rhame v. Charleston County School District 412 S.C. 273, 279, 772 S.E. 2d 159, 162 (S.C., 2015) (Plaintiff's motion for rehearing under §1-23-380(1) stayed time to serve notice of appeal for 30 days from receipt of the decision denying the motion). Finally, §1-23-380(1) has no time limit to file petition for rehearing. Appellants submit their motion to amend was timely filed as it was still suitable and opportune for SCDC to amend its calculations.

Fourth, to the extent a stay resulted from the January 3, 2020 motion, or this appeal is precluded by any state statute or court rule, appellants con-

tend the stay or state provision is (a) superseded by the constitutional due process provisions in S.C. Constitution, Article I, Sections 3, 22, 23, and U.S. Constitution, Amendment 14, Section 1 (See (1)-(3) above); and (b) preempted by U.S. Constitution, Amendment 14 due process and federal constitutional right to appeal stemming therefrom (U.S. Constitution, Article VI, Clause 2, Supremacy Clause; Kansas v. Garcia 140 S. Ct. 791, 801 (2020) (Pursuant to the Supremacy Clause, if a federal law confers rights and state law imposes restrictions conflicting with federal law, state law is preempted)).

Fifth, to the extent there is a conflict between §1-23-380(1) and any general state provision, the former prevails (Bone v. U.S. Food Service 404 S.C. 67, 84, 744 S.E. 2d 552, 561 (S.C., 2013) (In agency appeals, the APA is controlling over general provisions that conflict with its terms)).

July 25, 2023

  
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Attorney for Respondent

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Joe Pannell 89592, Frank Patterson 283098, Tony Pitts 280579,  
Kevin Poston 266083, Rodney Pressley 177947, Germaine Pringle 250390,  
Francis Prioleau 268813, Larkland Richards 281768, Gene Richardson 93614,  
Isaac Richardson 232574,\* Laron Richardson 258786, Dennis Richey 233472,  
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Isaiah Scott 228008, Jerome Scott 153381, Roosevelt Scott 275631,  
Ralph Sellers 164295, George Shine 292391, Archie Simmons 161419,  
Kenneth Simmons 278911, Ronald Simmons 267937, Samuel Simmons 302393,  
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David Sims 278067, Jonathan Singleton 287670, Kevin Smith 272440,  
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Darrell Williams 219730, Derrick Williams 272958, James Williams 282929,  
Leon Wilson 155867, Timothy Wilson 261971, Tony Witt 242918,  
John Wojcik 219463, Anthony Wright 199009, Robert Wydman 260331,  
Eric Youmous 281091, Rogelio Zavala 245106..... Appellants,

v.

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

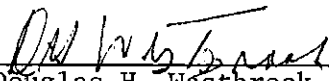
PROOF OF SERVICE

I certify that I have served appellants' Notice of Appeal on the S.C.  
Department of Corrections, The Honorable Ralph K. Anderson, III, and Lake  
E. Summers, Esquire, by depositing copies of this document in the U.S. mail,

\* This deceased claimant is represented by a substituted party.

postage prepaid, on July 25, 2023, addressed to: S.C. Department of Corrections, Inmate Grievance Branch, 4444 Broad River Road, Columbia, SC 29210; The Honorable Ralph K. Anderson, III, Chief Judge, S.C. Administrative Law Court, Edgar A. Brown Building, 1205 Pendleton St., Ste. 224, Columbia, SC 29201; and Lake E. Summers, Esquire, Malone, Thompson, Summers & Ott, LLC, 339 Heyward St., Ste. 200, Columbia, SC 29201, attorney of record for Respondent S.C. Department of Corrections.

July 25, 2023

  
\_\_\_\_\_  
Douglas H. Westbrook, #6039  
3 Gamecock Ave., Ste. 304-B  
Charleston, SC 29407  
(843) 853-9600  
Attorney for Appellants

DOUGLAS H. WESTBROOK

*Attorney At Law*

3 Gamecock Ave., Suite 304-B  
Charleston, SC 29407  
843.853.9600  
douglas.h.westbrook@gmail.com

July 25, 2023

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Francis Ackerman, et al., Appellants v. S.C. Department of  
Corrections, Respondent; Dock. Nos. LCI-0589-04, etc.

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of Service of the notice of appeal on the Respondent, The Honorable Ralph K. Anderson, III, and Lake E. Summers, Esquire.
- (2) A copy of the decisions which are to be challenged on appeal.
- (3) A filing fee of \$250.

Sincerely,



Douglas H. Westbrook, #6039  
3 Gamecock Ave., Ste. 304-B  
Charleston, SC 29407  
(843) 853-9600  
Attorney for Appellants

- cc: (1) S.C. Department of Corrections  
Inmate Grievance Branch  
4444 Broad River Road  
Columbia, SC 29210
- (2) The Honorable Ralph K. Anderson, III  
Chief Judge  
S.C. Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton St.  
Ste. 224  
Columbia, SC 29201
- (3) Lake E. Summers, Esquire  
Malone, Thompson, Summers & Ott, LLC  
339 Heyward St., Ste. 200  
Columbia, SC 29201  
Attorney for Respondent

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The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
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