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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SEP 08 2023

SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Francis Ackerman #266928, Tyrone Aiken #244428, Tyrone Aiken #248367, Malik Aljalil #219551, Linso Allen #269378, Frank Anderson #282800, Sherman Austin #300028, Henry Baker #263398, Quentin Baker #297868, Michael Baylor #265682, Jacob Beach #301270, Darryel Beasley #222388, Michael Benninger #264212, James Bogan #288111, Taurus Bowman #252745, Lazarus Brannon #227847, Ronald Brewer #285756, Frederick Brown #289602, Keith Brown #295762, Timothy Brown #238461, Edward Bryant #255998, Gary Bryant #258972, Pete Bryant #242370, Terrell Buchanon #277262, Douglas Bude #263537, Larry Burke #281911, Christopher Busch #300690, Michael Busques #191961, Richard Butler #162467, Thomas Butler #257552, Derek Carter #275938, Kenneth Carter #243538, Thomas Carter #249362, Rudy Cassady #238732, Leroy Choice #113990, Sheldon Clark #264772, Zawaski Cobb #187136, Baron Cobbs #280479, Kamathene Cooper #145333, Frank Corley #292975, Gladstone Cummings #267450, Patrick Curtis #175139, Quintin Daniels #196284, Curtis Davis #238776, Garry Davis #106144, Heyward Dempsey #134171, Phillip Denney #240678, Perry Deveaux #109601, Daniel Dewey #276678, Calvin Drummond #236322, Jerome Durham #270393, Paul Durham #219573, Harlan Edger #261866, Keith Eigner #299153, Willie Elder #246208, Rodney Elliott #251337, Anthony English #238474, James Enriquez #215539, Kirlan Etheredge #236635, Keith Eugene, unknown, James Evans #267837, David Feggins #287157, Bernard Felder #122099, Terry Ferguson #299080, Jose Flores #240563, James Foye #211523, Ray Gadsden #187527, Maxie Gamble #254413, Robert Garrett #291096, Jermaine Garriett #191274, Fred Gatewood #289775, Jammie Gaymon #208922, Reginald Geddis #183851, Marvin Gilbert #273934, Dennis Goff #177506, Charles Graham #294453, Richard Graham #228235, Gregory Grant #109656, Howard Grant #255473, Nehemiah Greene #243339, Gary Grooms #283860, Nelson Hampton #286427, Willie Hare #256641, Wayne Harlen #245705, David Harrell #260004, James Hartman #219770, Gary Hayes #263985, Johnny Hayes #267910, Steven Hickenbottom #196263, Johnny Holden #245199, Michael Hood #279897, Willie House #257820, Don Hughes #256862, Timothy Inman #151123, Chuck Jackson #266425, James Jackson #267718, Peter Jenkins #257321, Wilbur Jordan #272264, Alfred Joyner #260442, Keith Kelly #257556, Joseph Kelsey #217218, Michael Key #266890, Dennis Knight #286981, Nick Lambros #215080, Alain Lareau #128014, Nikia Law #260855, Stephen Lease #137016, Archie Lee #226354, Harry Leonard #249996, Rick Libby #274681, Quintin Linen #238553, Raymond Livingston #277133, Donald Lyles #296135, Earl Mack #216237, Lavanza Mack #189340, Percy Martin #270035, Cedric Martino #291396, Donald McAteer #292961, Larry McClam #282972, Herbert McFadden #184297, James McFadden #235419, Michael McFarland #266870, Tony McNeil #235846, Thomas Miles #246763, Darrin Miller #259593, Ernest Miller #235474, Wilbert Mills #244004, Roy Morris #288777, John Moultrie #276527, Matin Muntaqim #142282, Anthony Murphy #295893, Anthony Murray #237867, James Murray #165487, Robert Norris #266101, Chauncy Orr #177069, Joe Pannell #89592, Frank Patterson #283098, Tony Pitts

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v.

South Carolina Department of Corrections, Respondent.

APPELLANTS' REPLY

Appellants file their reply to SCDC's memorandum, as follows. In its memorandum, SCDC refers to the notice of appeal statement that 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 three constitutional grounds for appeal summarized below (SCDC memorandum, p. 3). Appellants' notice of appeal made a very similar statement. The "other means of review" are:

(1) S.C. Constitution, Article I, Sections 22, 23. 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) (mandatory judicial review from Article I, Section 22's "superseding constitutional due process provisions" for hearing and judicial review).

(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. See 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) (Protection of mandatory judicial review under S.C. Constitution, Article I, Section 22 is equivalent to that afforded by the federal and state due process clauses).

(3) S.C. Constitution, Article I, Section 3 due process and U.S. Constitution, Amendment 14, Section 1 due process. See C.J.S. (2014), Adm. Law & Procedure, §379; Am Jur 2d (2014), Adm. Law, §388; Califano v. Sanders 430 U.S. 99, 109, 97 S. Ct. 980 (1977); and Al Shabazz v. State 338 S.C. 354, 381, 527 S.E. 2d 742 (S.C., 2000) (Constitutionally required judicial review despite a statute attempting to preclude review).

In its memorandum, p. 4, SCDC's only comment to these provisions was, "under the above listed authorities", Appellants seek to invoke the court's jurisdiction to provide them some unstated and unknown relief regarding the 2019 "back wage calculation decisions". Significantly, SCDC **does not refute or**

dispute these grounds for appeal. Given the constitutionally mandatory nature of these grounds, Appellants submit SCDC cannot reasonably refute or dispute them.

SCDC later contends Appellants present no viable grounds for review (SCDC memorandum, p. 9). Appellants respectfully disagree, and submit the grounds could not be stronger given the 2019 calculations' mode of procedure and due process violations under the United States and South Carolina Constitutions, the constitutional and statutory grounds for appeal discussed above, and South Carolina and United States Supreme Court decisions supporting appeal.

In its memorandum, pp. 4-5, SCDC discusses five "grounds for appeal" Appellants assert. First, these are not Appellants' grounds for appeal. They are "facts and authorities further (supporting) the timeliness of this appeal" (Appellants' notice of appeal, p. 3; Appellants' memorandum. p. 2). Again, the "grounds for appeal" are the "other means of review" authorized by §1-23-380, second sentence, and the three constitutional and mandatory grounds for appeal summarized above.

First, SCDC states Appellants concede SCDC's calculations are incomplete (SCDC memorandum, p. 4). Apparently, the parties agree on this point. However, SCDC does not address or contest Appellants' contention that, under SCACR 203(b)(6), Appellants need not appeal the calculations until receipt of more complete calculations, which never occurred in this case.

Second, SCDC states Appellants concede the calculations are not final decisions (SCDC memorandum, p. 4). Again, the parties apparently agree. However, SCDC does not address Office of Regulatory Staff v. S.C. Public Service Commission 374 S.C. 46, 647 S.E. 2d 223, 229 (S.C., 2007), which held Appellants there were not required to appeal within 30 days after issuance of an order under §1-23-380(A)(1) because it was not final, and they could wait un-

til issuance of the final order a couple of years later.

Third, SCDC notes Appellants' contention that their January 3, 2020 Motion to Amend Back Pay Analysis Spreadsheets was a petition for rehearing under §1-23-380(1) which stayed time to appeal until receipt of SCDC's decision, which never occurred (SCDC memorandum, p. 5). SCDC did not address this contention, stating only that Appellants did not submit a copy of the motion with their notice of appeal.

Fourth, SCDC notes Appellants' assertion that, if a stay resulted from the January 3, 2020 motion, it was superseded by South Carolina Constitution, Article I, Sections 3, 22, 23 due process, and U.S. Constitution, Amendment 14, Section 1. Also, SCDC notes this supersession is asserted by Appellants to occur if this appeal is precluded by state statute or court rule. Finally, SCDC notes Appellants' assertion that, if a stay resulted or the appeal is precluded by state statute or court rule, the same would be preempted by U.S. Constitution, Amendment 14 due process and federal constitutional right to appeal (U.S. Constitution, Article VI, Clause 2, Supremacy Clause; Kansas v. Garcia 140 S. Ct. 791, 801 (2020) (SCDC memorandum, p. 5). SCDC does not address this contention.

Fifth, SCDC notes Appellants' assertion that, to the extent there is a conflict between §1-23-380(1) and any general state provision, the former prevails (SCDC memorandum, p. 5). SCDC does not address this contention.

Finally, SCDC contends Appellants are not appealing from any decision or order, final or otherwise, issued by SCDC or the ALC (SCDC memorandum, p. 10). Appellants respectfully disagree. SCDC's calculations were done by SCDC's Inmate Accounting (SCDC 2019 calculations, cover sheet). Thus, we do have SCDC decisions in its calculations.

As to SCDC's remaining points, Appellants contend they are either irrele-

vant to the issue of appealability, not supported by appellate court rules, or both.

In conclusion, Appellants submit that their statutory and constitution based appeal is mandatory and, under South Carolina Constitution, Article I, Section 23, "..shall be..construed.." as such. Appellants respectfully request that the appeal be upheld.

Respectfully submitted,



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(843) 853-9600
Attorney for Appellants

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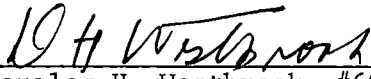
v.

South Carolina Department of Corrections, Respondent.

PROOF OF SERVICE

I certify that I have served the Appellants' Reply on the South Carolina Department of Corrections by depositing a copy of it in the United States Mail, postage prepaid, on September 6, 2023, addressed to its attorney of record, Lake E. Summers, Esquire, Malone, Thompson, Summers & Ott, LLC, 339 Heyward St., Ste. 200, Columbia, SC 29201.

September 6, 2023


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Ms. Catherine S. Harrison
Chief Deputy Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Francis Ackerman, #266928 v. SCDC
App. Case No. 2023-001204

Dear Ms. Harrison:

Please find enclosed for filing with the Court Appellants' Reply,
with Proof of Service.

By copy of this letter, I have this date served a copy of same on
counsel for the Department of Corrections, Lake E. Summers.

Sincerely,



Douglas H. Westbrook

DHW/

cc: Lake E. Summers, Esq.

DOUGLAS H. WESTBROOK

Attorney At Law

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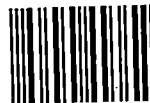
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