

RECEIVED

Apr 01 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

Appeal from the South Carolina Department of Corrections

---

Supreme Court Appellate Case No. 2024-000224

---

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 #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, Ignacio Rivera #300424, Henry Rivers #219118, Harold Roberson #117001, Donald Robinson #277520, Darrell Rochester #146731, Vandell 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, Stephane Simmons #300422, Edward Simpson #220017, Virgil Simpson #281888, 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, Petitioners,

v.

South Carolina Department of Corrections, Respondent.

---

**RETURN BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
TO THE PETITIONERS' PETITION FOR WRIT OF CERTIORARI**

---

In accordance with the provisions of South Carolina Appellate Court Rule [SCACR] 242(f), the Respondent in the above-styled matter, the South Carolina Department of Corrections [SCDC], by and through its undersigned counsel, respectfully provides its return to the petition for writ of certiorari submitted by the Petitioners to this Court and dated February 16, 2024.

**I. SCACR 242**

SCACR 242 is entitled “Certiorari to the Court of Appeals,” and SCACR 242(a), which is entitled “Authority of the Supreme Court,” provides that this Court, or any two (2) justices thereof, may in its discretion, on motion of any party to the case or on its own motion, issue a writ of certiorari to review a final decision of the Court of Appeals.”

In its entirety, SCACR 242(b), which is entitled “Considerations Concerning Review,” provides as follows:

A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

- (1) Where there are novel questions of law.
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.
- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

SCDC respectfully asserts the Petitioners have not identified any “special and important reasons” by which this Court should grant their petition for writ of certiorari from the orders issued November 14, 2023 and February 2, 2024 by the Court of Appeals.

## **II. THE PETITIONERS' JULY 25, 2023 NOTICE OF APPEAL TO THE COURT OF APPEALS AND THE PARTIES' SUBSEQUENT FILINGS**

Litigation in the above-captioned matter began when the Petitioners submitted a notice of appeal with the Court of Appeals dated July 25, 2023 (Apx. pp. 220 – 31).

In his single page cover letter to the Clerk of the Court of Appeals dated July 25, 2023 (Apx. p. 220), the Petitioners' counsel itemized three (3) additional items he enclosed with the Petitioners' notice of appeal:

- (1) Proof of Service of the notice of appeal on [SCDC], The Honorable Ralph K. Anderson, III,<sup>1</sup> and [SCDC's undersigned counsel].
- (2) A copy of the decisions which are to be challenged on appeal.
- (3) A filing fee of \$250.

The opening paragraph of the Petitioners' July 25, 2023 notice of appeal to the Court of Appeals read as follows (Apx. pp. 223 – 24):

Francis Ackerman, et al. appeal the back wage calculation decisions of [SCDC] dated October 31, 2019. Undersigned [Petitioners'] attorney also received the decisions in this matter on October 31, 2019.<sup>2</sup>

Critically, however, the Petitioners explicitly conceded in their July 25, 2023 notice of appeal to the Court of Appeals both that SCDC's October 31, 2019 back wage calculations are

---

<sup>1</sup> Judge Anderson serves as the Chief Administrative Law Judge [ALJ] for the South Carolina Administrative Law Court [ALC]. While they served a copy of their July 25, 2023 notice of appeal to the Court of Appeals upon him, the Petitioners did not include with their July 25, 2023 notice of appeal to the Court of Appeals copies of any decisions, final or otherwise, issued by Chief ALJ Judge Anderson or, for that matter, any other ALJ concerning the back pay SCDC owed them. The Petitioners could not have included copies of such decisions for a straightforward reason, namely they do not exist. Accordingly, the Petitioners included no materials with their July 25, 2023 notice of appeal to the Court of Appeals which constitute a "final decision" or any other kind of decision by Chief ALJ Anderson, any other ALJ, or, for that matter, SCDC to be challenged on appeal. For these same reasons, no such materials appear in the appendix filed by the Petitioners along with their February 16, 2024 petition for writ of certiorari to this Court. Chief ALJ Anderson's June 13, 2017 order of remand is discussed below in Section IV.

<sup>2</sup> The Petitioners did not submit all the "back wage calculation decisions of [SCDC] dated October 31, 2019" with their July 25, 2023 notice of appeal to the Court of Appeals. Instead, as discussed below in Section III, the Petitioners included only a three (3) page extract of SCDC's calculations in their November 21, 2023 petition for rehearing to the Court of Appeals by which they challenged the Court of Appeals' November 14, 2023 order dismissing their appeal. (Apx. pp. 266 – 89). The Petitioners, however, included all the calculations SCDC's undersigned counsel transmitted via electronic mail on October 31, 2019 to their counsel in their appendix. (Apx. pp. 2 – 197).

incomplete and that they do not constitute a final decision. (Apx. p. 225). (“First, SCDC calculations are incomplete.” ... “Second, the calculations are not a final decision.”).

In the footnote associated with the above-quoted paragraph, the Petitioners acknowledged the following (Apx. p. 224):

**This case is currently on remand in SCDC**, following [the Court of Appeals’] remand to the [South Carolina Administrative Law Court] (ALC) in 2016 [*Ackerman, et al., v. S.C. Dep’t. Corr.*, 782 S.E.2d 757 (S.C. Ct. App. 2016), *cert. denied* (May 30, 2017)], **and [the ALC’s] remand to SCDC in 2017**. [emphasis supplied].

The Court of Appeals recognized the confusion resulting from the realities fully acknowledged by the Petitioners in their July 25, 2023 notice of appeal, namely that neither SCDC nor the ALC had – or have – issued final decisions addressing the back pay due to them in the aftermath of the Court of Appeals’ decision in *Ackerman*.

Such confusion manifested itself in a letter to the Petitioners’ counsel dated July 31, 2023 from a Deputy Clerk at the Court of Appeals, which, in its entirety, read as follows:<sup>3</sup>

Upon reviewing your notice of appeal, the following deficiency has been noted under the [SCACR], and any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- **You must provide a copy of the [ALC] order on appeal.**

[emphasis supplied].

In response to the Deputy Clerk’s above-quoted July 31, 2023 deficiency letter, the Petitioners’ counsel, in a letter also dated July 31, 2023, represented as follows:<sup>4</sup>

Pursuant to your July 31, 2023 deficiency letter, and our conversation today, **this will confirm that there is no ALC order for this phase of the case**, the matter is on direct appeal from SCDC to the Court of

---

<sup>3</sup> The Petitioners did not include a copy of the Deputy Clerk’s July 31, 2023 letter to their counsel in their appendix, and consequentially, SCDC respectfully includes it as Exhibit 1 in support of its return.

<sup>4</sup> The Petitioners did not include a copy of their counsel’s July 31, 2023 letter to the Deputy Clerk in their appendix and consequentially, SCDC respectfully includes it as Exhibit 2 in support of its return.

Appeals under [S.C. Code Ann. § 1-23-380] and several provisions of the South Carolina and United States Constitutions, and the deficiency letter requiring correction within 10 days may be disregarded. [emphasis supplied].

The confusion caused by the admission by the Petitioners' counsel in his July 31, 2023 letter further manifested itself in an August 15, 2023 letter from the Deputy Clerk at the Court of Appeals to both SCDC's undersigned counsel and the Petitioners' counsel, which, in its entirety, read as follows (Apx. p. 232):

[The Court of Appeals] has received [the Petitioners' July 25, 2023] notice of appeal. **A preliminary review of the order(s) challenged on appeal indicates it might not be appealable.**

Accordingly, it is requested that you serve and file memoranda addressing the issue of appealability within ten (10) days of the date of this letter. The time limits for perfecting the appeal are held in abeyance pending the [Court of Appeals'] consideration of the memoranda.

[emphasis supplied].

As clearly reflected by the materials in their appendix and as they have admitted throughout this purported controversy, the Petitioners challenged no orders in their July 25, 2023 appeal, because no orders existed to be challenged.

The Petitioners submitted their memorandum addressing the issue of appealability to the Court of Appeals by a filing dated August 23, 2023 (Apx. pp. 233 – 42), and SCDC filed its memorandum addressing the issue of appealability with the Court of Appeals on September 1, 2023. (Apx. pp. 243 – 55). The Petitioners replied to SCDC's September 1, 2023 memorandum by a filing dated September 6, 2023. (Apx. pp. 256 – 65).

### III. THE ORDERS ISSUED NOVEMBER 14, 2023 AND FEBRUARY 2, 2024 BY WHICH THE COURT OF APPEALS DISMISSED THE PETITIONERS' JULY 25, 2023 APPEAL

On November 14, 2023, the Clerk of the Court of Appeals issued a single paragraph order for the Court addressing the Petitioners' July 25, 2023 notice of appeal (Apx. pp. 266 – 69), which, in its entirety, provided as follows (Apx. pp. 268 – 69):

The notice of appeal filed in this case and [Petitioners'] memorandum on appealability indicate the appeal is taken from “the back wage calculation decisions of [SCDC] October 31, 2019.” **Acknowledging there is no order from the [ALC]**, [Petitioners] contend the matter is on direct appeal from the SCDC to this court under. Section 1-23-380 of the South Carolina Code (Supp. 2023) and several provisions of the South Carolina and United States Constitutions. **This court does not have jurisdiction to consider such an appeal.** Therefore, **this appeal is dismissed.** See S.C. Code Ann. § 14-3-330 (2017) (setting forth categories of judgments from which an appeal may be taken); S.C. Code Ann. § 14-8-200(a) (2017) (defining the appellate jurisdiction of the court of appeals to include final decisions of an administrative law judge with the same scope of review as the supreme court would appeal in a similar case); S.C. Code Ann. § 1-23-600(D) (Supp. 2023) (providing an administrative law judge shall preside over all appeals from final decisions of contested cases, with limited listed exceptions). The remittitur will be sent as provided by [SCACR] 221(b). [emphasis supplied].

The Petitioners, on November 21, 2023, filed a petition for rehearing with the Court of Appeals regarding its above-quoted November 14, 2023 order. (Apx. pp. 270 – 289).

As a document supporting the Petitioners' November 21, 2023 petition, the Petitioners' counsel submitted the electronic mail message transmitted October 31, 2019 to him by SCDC's undersigned counsel along with SCDC's back pay calculations. (Apx. p. 280). The Petitioners' counsel also submitted three (3) pages from SCDC's back pay calculations as documents supporting the Petitioners' November 21, 2023 petition. (Apx. pp. 281 – 83). Finally, the Petitioners' counsel submitted an affidavit he prepared and executed as a document supporting the Petitioners' November 21, 2023 petition. (Apx. pp. 284 – 86).

The Court of Appeals issued an order February 2, 2024 denying the Petitioners' petition for rehearing (Apx. pp. 290 – 93), which, in its entirety, read as follows (Apx. pp. 292 – 93):

[Petitioners] filed and served a notice of appeal to challenge “the back wage calculation decisions of the [SCDC] dated October 31, 2019.” **[Petitioners] acknowledged there was no order from the [ALC] or final agency decision. After reviewing appealability memoranda from the parties, this court dismissed the appeal due to a lack of jurisdiction.** [Petitioners] filed a motion to reinstate the appeal, which we construe as a petition for rehearing. After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, **there is no basis for granting a rehearing.** See S.C. Code Ann. § 14-3-330 (2017) (setting forth categories of judgments from which an appeal may be taken); S.C. Code Ann. § 14-8-200(a) (2017) (defining the appellate jurisdiction of the court of appeals to include final decisions of an [administrative law judge (ALJ)] with the same scope of review as the supreme court would have in a similar case); **S.C. Code Ann. § 1-23-380 (Supp. 2023) (providing for judicial review of agency decisions to “[a] party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision”); *id.* (allowing for immediate review of “[a] preliminary, procedural, or intermediate agency action or ruling ... if review of the final agency decision would not provide an adequate remedy”); S.C. Code Ann. § 1-23-600(D) (Supp. 2023) (providing an [ALJ] shall preside over all appeals from final decisions of contested cases, with limited listed exceptions).** Accordingly, the petition for rehearing is denied. [emphasis supplied].

#### IV. CHIEF ALJ ANDERSON’S JUNE 13, 2017 ORDER OF REMAND AND RESULTING LITIGATION

As first discussed above in Section II,<sup>5</sup> the Petitioners, in a footnote associated with the opening paragraph of their July 25, 2023 notice of appeal to the Court of Appeals, explicitly admitted all their respective cases are “currently on remand” to SCDC per not only the Court of Appeals’ decision in *Ackerman*, but also an order of remand issued in 2017 by Chief ALJ Anderson at the ALC. (Apx. p. 224).

SCDC respectfully asserts that an examination of the order of remand issued by Chief ALJ Anderson, as well as subsequent litigation initiated by the Petitioners, provides context

---

<sup>5</sup> See also note 1 above.

relevant to both the Petitioners' July 25, 2023 appeal to the Court of Appeals and their February 16, 2024 petition to this Court.

Chief ALJ Anderson issued his order of remand in the instant matter on June 13, 2017 in which he stated as follows:<sup>6</sup>

This matter is before the [ALC] on remand from the South Carolina Court of Appeals (Court of Appeals). The case originally came before the [ALC] on an appeal filed by multiple inmates [Petitioners] concerning the Prevailing Wage Statute. The Court denied the appeal, stating that [Petitioners] failed to timely file their grievances. The Court of Appeals subsequently reversed and remanded the cases for processing of the grievances. *See [Ackerman]*. Accordingly,

**IT IS THEREFORE ORDERED** that these cases are remanded to [SCDC] for consideration of [Petitioners'] grievances on the merits in keeping with the Court of Appeals decisions in *Ackerman* and [*Gatewood v. S.C. Dep't of Corr.*, 785 S.E. 2d 60 (S.C. Ct. App. 2016)].

Progress on remand was immediately derailed when the Petitioners challenged Chief ALJ Anderson's June 13, 2017 order of remand.

**A. THE PETITIONERS' PETITION FOR WRIT OF MANDAMUS TO THE COURT OF APPEALS IN RESPONSE TO CHIEF ALJ ANDERSON'S JUNE 13, 2017 ORDER OF REMAND**

By materials dated July 13, 2017, the Petitioners filed with the Court of Appeals a petition for writ of mandamus, a memorandum in support of their petition for writ of mandamus, and other supporting items in response to Chief ALJ Anderson's June 13, 2017 order of remand.

Regarding the Petitioners' July 13, 2017 petition for writ of mandamus, the Clerk of the Court of Appeals, by letter dated July 17, 2017, advised the Petitioners' counsel that since the remittitur had been filed June 2, 2017 in *Ackerman*, the Court of Appeals no longer had jurisdiction over the case. *See Ackerman*, Court of Appeals Appellate Case No. 2012-210588.

---

<sup>6</sup> SCDC respectfully submits a copy of Chief ALJ Anderson's June 13, 2017 order of remand as Exhibit 3 in support of its return.

**B. THE PETITIONERS' APPEAL TO THE COURT OF APPEALS OF CHIEF ALJ ANDERSON'S JUNE 13, 2017 ORDER OF REMAND AND THEIR PETITION FOR WRIT OF CERTIORARI TO THIS COURT UPON THE COURT OF APPEALS' DISMISSAL OF THEIR APPEAL**

By materials dated July 14, 2017, the Petitioners also filed with the Court of Appeals a notice of appeal in response to Chief ALJ Anderson's June 13, 2017 order of remand, and by an order dated July 20, 2017, the Court of Appeals ruled as follows:

This appeal arises out of an order from the [ALC] remanding the case to [SCDC]. **Because the order of the [ALC] is not a final order, we dismiss this appeal as interlocutory.** *See [Charlotte-Mecklenburg Hasp. Auth. v. S.C. Dep't of Health & Env'tl. Control, 692 S.E.2d 894, 895 (S.C. 2010)]* (“**If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory.**”). The remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rules. [emphasis supplied].

*See Ackerman*, Court of Appeals Appellate Case No. 2017-001560.

The Petitioners petitioned the Court of Appeals to rehear its above-quoted July 20, 2017 order dismissing their appeal of Chief ALJ Anderson's June 13, 2017 order of remand, and the Court of Appeals dismissed the Petitioners' petition for rehearing by an order filed September 14, 2017. *See Ackerman*, Court of Appeals Appellate Case No. 2017-001560.

By materials dated September 28, 2017, the Petitioners petitioned this Court to issue a writ of certiorari by which to review the Court of Appeals' dismissal of their appeal of Chief ALJ Anderson's June 13, 2017 order of remand, and by an order issued March 7, 2018, the Clerk of this Court advised the parties that the Petitioners' petition for a writ of certiorari had been denied. *See Ackerman*, Supreme Court Appellate Case No. 2017-002010.

**C. THE PETITIONERS' APPEAL OF CHIEF ALJ ANDERSON'S SEPTEMBER 7, 2017 STATUS CONFERENCE TO THE COURT OF APPEALS AND THEIR PETITION FOR WRIT OF CERTIORARI TO THIS COURT UPON THE DISMISSAL OF THEIR APPEAL BY THE COURT OF APPEALS**

On September 7, 2017, approximately 90 days after he issued his June 13, 2017 order of remand, Chief ALJ Anderson conducted a status conference concerning this matter, and remarkably, the Petitioners, by a notice of appeal to the Court of Appeals dated October 7, 2017, challenged “rulings” Chief ALJ Anderson purportedly rendered during the status conference.

The Petitioners included with their October 7, 2017 notice of appeal to the Court of Appeals a copy of the transcript from the September 7, 2017 status conference conducted by Chief ALJ Anderson.<sup>7</sup>

The Court of Appeals, by an order dated October 17, 2017, ruled as follows on the Petitioners' notice of appeal:

The notice of appeal filed in this case indicates the appeal is taken from statements made by [Chief ALJ Anderson] during a [September 7, 2017] status conference on this case. **Because the decision of the [ALJ] is not a final decision**, this appeal is dismissed as interlocutory. *See* S.C. Code Ann. § 14-3-330 (2016) (setting forth the categories of judgments from which an appeal may be taken); S.C. Code Ann. § 14-8-200(a) (2016) (defining the appellate jurisdiction of the Court of Appeals to include final decisions of an administrative law judge with the same scope of review as the Supreme Court would apply in a similar case). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules. [emphasis supplied].

*See Ackerman*, Court of Appeals Appellate Case No. 2017-002086.

The Petitioners petitioned the Court of Appeals to rehear its above-quoted October 17, 2017 order dismissing their appeal from Chief ALJ Anderson's September 7, 2017 status conference, and the Court of Appeals dismissed the Petitioners' petition for rehearing by an

---

<sup>7</sup> As neither SCDC nor, for that matter, Chief ALJ Anderson have conducted any hearings concerning this matter, the Petitioners did not – and could not – submit any transcripts in support of their July 25, 2023 notice of appeal and, by extension, their appendix.

order filed November 8, 2017. *See Ackerman*, Court of Appeals Appellate Case No. 2017-002086.

By materials dated December 6, 2017, the Petitioners petitioned this Court to issue a writ of certiorari by which to review the Court of Appeals' dismissal of their appeal from Chief ALJ Anderson's September 7, 2017 status conference, and by an order issued March 28, 2018, the Clerk of this Court advised the parties that the Petitioners' petition for a writ of certiorari had been denied. *See Ackerman*, Supreme Court Appellate Case No. 2017-002503.

**D. THE PETITIONERS' PETITION FOR WRIT OF MANDAMUS TO THIS COURT IN WHICH THEY NAMED BOTH CHIEF ALJ ANDERSON AND SCDC AS RESPONDENTS**

By materials dated February 27, 2018, the Petitioners filed with this Court a petition for writ of mandamus by which they named both Chief Judge Anderson and SCDC as respondents and in which they sought the following relief:

Pursuant to S.C. Constitution Art. V, §5, S.C. Code §14-3-310, and SCACR 240, 245, Francis Ackerman, et al. (inmates) request the Court to exercise its original jurisdiction and issue a Writ of Mandamus compelling [Chief ALJ Anderson] to consider [their] grievances on the merits, as required by the Court of Appeals' judgment of February 10, 2016, the Supreme Court's denial of certiorari of May 30, 2017, and the Court of Appeals' remittitur of June 2, 2017, as more particularly described in the attached memorandum, and related materials.

By an order issued April 19, 2018, the Clerk of this Court advised the parties that the Petitioners' petition for a writ of mandamus had been denied. *See Ackerman*, Supreme Court Appellate Case No. 2018-00353.

**V. SCDC PREPARED THE OCTOBER 1, 2019 BACK WAGE CALCULATIONS TO FACILITATE MEDIATION BETWEEN THE PARTIES**

Upon the conclusion of the above-chronicled litigation initiated by the Petitioners after Chief ALJ Anderson issued his June 13, 2017 order of remand, the parties turned their attention towards efforts to resolve the Petitioners' claims through mediation.

As the Petitioners' admitted in their July 25, 2023 notice of appeal to the Court of Appeals, SCDC provided them with "back wage calculation decisions" on October 31, 2019 for "settlement and mediation purposes" only. (Apx. pp. 225 – 26 and 280).

In their February 16, 2024 petition for writ of certiorari to this Court, the Petitioners made the identical admission (Petition, p. 6):

Here, **the cover sheet for SCDC's calculations states they are for "settlement and mediation purposes only"** (SCDC calculations cover sheet).<sup>8</sup> Moreover, the parties have had mediation discussions on and off since December 2021 without reaching settlement. [emphasis supplied].

**VI. THE COURT OF APPEALS DID NOT ERR BY HOLDING IT DID NOT HAVE JURISDICTION TO CONSIDER THE PETITIONERS' JULY 25, 2023 APPEAL, NOR DID IT DEPRIVE THEM OF PROCEDURAL OR SUBSTANTIVE DUE PROCESS BY DISMISSING THEIR APPEAL**

Given such realities, the October 31, 2019 "back pay calculations" simply do not constitute "decisions," final or otherwise, by SCDC.

As the Petitioners' counsel admitted in his July 31, 2023 response to the deficiency letter from the Deputy Clerk of the Court of Appeals, there is likewise no ALC order upon which the

---

<sup>8</sup> The "SCDC calculations cover sheet" to which the Petitioners refers consists of the October 31, 2019 electronic mail message from SCDC's undersigned counsel to the Petitioners' counsel to which SCDC's undersigned counsel attached a Microsoft Excel spreadsheet file reflecting SCDC's back pay calculations for "each of the current and former inmates who are litigations in [Ackerman]." (Apx. p. 1). In the same email, SCDC's undersigned counsel advised the Petitioners' counsel as follows: "As I told you during one of our most recent telephone conversations, the back pay calculations and associated totals appearing in the attached Excel file **are for settlement and mediation purposes only.**" [emphasis supplied]. (Id.).

Petitioners anchored their July 25, 2023 appeal to the Court of Appeals or their February 16, 2024 petition to this Court.<sup>9</sup>

The Petitioners nevertheless attempt to reanimate this fatal defect into a viable ground upon which this Court should grant certiorari, as they present the following question to this Court (Petition, p. 1):

Did the Court of Appeals err in holding that it did not have jurisdiction to consider [their July 25, 2023] appeal?

In their “Statement of the Case,” the Petitioners represented as follows (Id.):

On October 31, 2019, SCDC forwarded its “back pay calculations” for each petitioner, except Vandell Sanders. On October 28, 2022, petitioners filed with SCDC their [“Motion for SCDC to Find Liability, Constitutional Violations, and to Pay Full Damages.”]<sup>10</sup> Petitioners contended SCDC’s calculations violate the mode of procedure clause in S.C. Constitution, Article I, Sections 22, 23; and also substantive due process under S.C. Constitution, Article I, Section 3, and U.S. Constitution, Amendment 14, Section 1. See calculations in Appendix. [emphasis supplied].

The Petitioners begin their argument to this Court as follows (Id., p. 2):

[The Petitioners’ July 25, 2023 appeal] was filed in the Court of Appeals pursuant to [§ 1-23-380], second and fourth sentences, and the following provisions of the South Carolina and United States Constitutions: (1) S.C. Constitution, Article I, Section 22 mode of procedure clause, and Section 23; (2) S.C. Constitution, Article I, Sections 22, 23, and S.C. Constitution, Article I, Section 3 due process clause, and U.S. Constitution, Amendment 14, Section 1 due process clause; and (3) S.C. Constitution, Article I, Section 3 due process clause, and U.S. Constitution, Amendment 14, Section 1 due process clause.

Petitioners contend these constitutional grounds for appeal are “other means of review” expressly authorized in [§ 1-23-380], second sentence. Petitioners further contend that **appellate jurisdiction is expressly given**

---

<sup>9</sup> See note 4 above and Exhibit 2.

<sup>10</sup> The Petitioners included their October 28, 2022 motion in the appendix. (Apx. pp. 198 – 219). For clarity’s sake, the Petitioners did not discuss or reference their October 28, 2022 motion in their August 23, 2003 appealability memorandum to the Court of Appeals (Apx. pp. 233 – 42) or their September 6, 2023 reply memorandum to the Court of Appeals (Apx. pp. 256 – 65).

to the Court of Appeals in [§ 1-23-380], fourth sentence, **since appeal to another court is not “otherwise provided by law.”**

[emphasis supplied].

After quoting only the second and fourth sentences of § 1-23-380 (Petition, p. 2), the Petitioners continue their argument as follows (Id., p. 3):

Unlike the first sentence in [§ 1-23-380], the second and fourth sentences do not require a final decision, or any decision, for judicial review. Here, *the parties apparently agree that SCDC’s calculations are incomplete and not final decisions* (Apx. pp. 238, 244, 246 and 252). As a result, *the calculations were not appealable to the ALC* ([*Al Shabazz v. State*, 527 S.E. 2d 742, 754 (S.C. 2000)] (Inmate may seek review of SCDC’s final decision by an ALJ in non-collateral or administrative matter); [ALC Rule of Procedure 51] (Rules in this section shall apply exclusively in matters heard on appeal from **final** decisions pursuant to [*Al Shabazz*])). [bold emphasis in original; bold and italicized emphasis supplied].

After reviewing the statutory authorities upon which the Court of Appeals relied in dismissing their July 25, 2023 appeal (i.e., § 14-3-330, § 14-8-200(a), and § 1-23-600(D)), the Petitioners assert these three (3) statutes “require a **final** decision or order before an appeal may be taken.” [emphasis in original]. (Id.) Consequentially argue the Petitioners, “SCDC’s [October 31, 2019] calculations, as non-final decisions, cannot be appealed to [this Court], [the] Court of Appeals, or [the] ALC under [§ 14-3-330, § 14-8-200(a), and § 1-23-600(D)].” (Id.).

The Petitioners next argue as follows (Id.):

By citing [§ 14-3-330, § 14-8-200(a), and § 1-23-600(D)], the Court of Appeals apparently believed no statute allowed appeal in these circumstances. If so, **petitioners contend the [Court of Appeals] failed to adequately consider [§ 1-23-380], second and fourth sentences, as these provisions expressly provide for “other means of review [...] provided by law” and appeal to the Court of Appeals “(E)xcept as otherwise provided by law.”** [emphasis supplied].

As an important distinction, the Court of Appeals did not deny the Petitioners' July 25, 2023 appeal. Instead, the Court of Appeals dismissed the Petitioners' July 25, 2023 appeal, and it did so after reviewing the parties' appealability memoranda and then correctly ruling in its November 14, 2023 order that it did not possess the requisite jurisdiction to consider their appeal. (Apx. pp. 268 – 69 and 292 – 93).

The Petitioners, however, apparently argue to this Court that since the statutes upon which the Court of Appeals relied when it dismissed, rather than denied, their July 25, 2023 appeal (i.e., § 14-3-330, § 14-8-200(a), and § 1-23-600(D)) did not afford the Court of Appeals jurisdiction to consider their appeal, the Court of Appeals nevertheless possessed jurisdiction to hear their appeal under the second and fourth sentences of § 1-23-380. More precisely, the Petitioners argue that the fourth sentence of § 1-23-380 expressly conveys jurisdiction to only the Court of Appeals.

After cobbling together the Editor's Note to § 1-23-380, this Court's decision in *Bone v. U.S. Food Service*, 744 S.E.2d 552, 557 (S.C. 2013), the second and fourth sentences of § 1-23-380, and § 1-23-380(4) (Petition, pp. 3 – 4),<sup>11</sup> the Petitioners cap off their argument by declaring "the Court of Appeals [had] no discretion to" deny and or dismiss their July 25, 2023 appeal. (Id., p. 4).

The Petitioners then attempt to pass off their argument as a novel question of law under SCACR 242(b)(1), and they also argue that the Court of Appeals' dismissal of their July 25, 2023 appeal conflicts with this Court's decision in *Bone* under SCACR 242(b)(3). (Petition, p.

---

<sup>11</sup> Section 1-23-380(4) provides as follows:

The review must be conducted by the court and must be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for action as the court considers appropriate.

4). Suffice it to say, the Petitioners argument lacks any merit whatsoever, and nothing they offer in their petition animates either SCACR 242(b)(1) or (b)(3).

Section 1-23-380 is entitled “Judicial review upon exhaustion of administrative remedies,” and the entirety of § 1-23-380’s first and only unnumbered paragraph, which the Petitioners do not provide in their petition, provides as follows:

A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. Except as otherwise provided by law, an appeal is to the court of appeals.

As reflected above, the Petitioners exclusively rely upon the second and fourth sentences of § 1-23-380’s first and only unnumbered paragraph read as follows:

This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law.

...

Except as otherwise provided by law, an appeal is to the court of appeals.

The first sentence from § 1-23-380’s first and only unnumbered paragraph reads as follows:

A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1.

As to the above-quoted first sentence from § 1-23-380’s first and only unnumbered paragraph, the Petitioners attempt to distinguish it by asserting that it requires a final decision for judicial review while the second and fourth sentences from § 1-23-380’s first and only

unnumbered paragraph “do not require a final decision, or any decision, for judicial review.” (Petition, p. 2).

Having earlier asserted in their petition that the Court of Appeals had, in its November 14, 2023 order dismissing their July 25, 2023 appeal, only relied upon three (3) statutes (i.e., § 14-3-330, § 14-8-200(a), and § 1-23-600(D)) (Id., p. 2), the Petitioners, somewhat confusingly, acknowledge later in their petition that in its February 2, 2024 order denying their petition for rehearing, the Court of Appeals had also invoked the first and third sentences from § 1-23-380’s first and only unnumbered paragraph. (Id., pp. 11 – 12).

The Petitioners then offer the following argument as to how the Court of Appeals erred in invoking the first sentence from § 1-23-380’s first and only unnumbered paragraph in its February 2, 2024 order denying their petition for rehearing:

As previously stated herein, the first sentence [from § 1-23-380’s first and only unnumbered paragraph] does not apply because SCDC’s calculations are not a final decision. More to the point, for the second and fourth sentences in [§ 1-23-380], the scope of judicial review is **not limited** to final agency decisions, and appellate jurisdiction is **expressly granted** to the Court of Appeals “(E)xcept as otherwise provided by law.” As discussed herein, appeal of this matter is not provided to a court other than the Court of Appeals. As a result, petitioners submit [§ 1-23-380’s second and fourth sentences are] an express APA statutory grant of jurisdiction to the Court of Appeals to hear this appeal. [emphasis in original].

Such interpretations, for which the Petitioners offer no supporting precedent or authority, are wholly without merit, and respectfully stated, they are the product of their defective “circular” logic (i.e., the Petitioners posit a wholly unsupported and defective interpretation of § 1-23-380’s first sentence which they later use as the basis for an equally unsupported and defective assertion that § 1-23-380’s second and third sentences, taken together, constitute an express statutory grant of jurisdiction under our state’s Administrative Procedures Act [APA] for the Court of Appeals, and only the Court of Appeals, to hear the purportedly legitimate issues

they raised in their July 25, 2023 notice of appeal). Moreover, the Petitioners' wholly unsupported interpretations of the first sentence from § 1-23-380's first and only unnumbered paragraph is contrary to the statute's title (i.e., "Judicial review **upon exhaustion of administrative remedies**" [emphasis supplied]).

The third sentence from § 1-23-380's first and only unnumbered paragraph reads as follows:

A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

The Petitioners argue that like the first sentence, the above-quoted third sentence from § 1-23-380's first and only unnumbered paragraph, does not apply, and they also offer the following argument as to how the Court of Appeals erred in invoking the third sentence from § 1-23-380's first and only unnumbered paragraph in its February 2, 2024 order (Petition, p. 12):

First, SCDC's calculations are not a preliminary, procedural, or intermediate agency action as [§ 1-23-380's third sentence] requires. They are incomplete SCDC decisions which arbitrarily and capriciously **omitted** six years of work from July 2007 until program termination in 2013 (SCDC calculations; SCDC November 29, 2017 letter). Second, SCACR 203(b)(6) states, for an incomplete agency decision, a party "need not" appeal until receipt of the more complete decision. [emphasis in original].

As clearly established above and as the Petitioners have admitted at various points during this litigation, SCDC's back pay calculations do not represent decisions of any kind by the agency. Thus, the Petitioners' interpretation of § 1-23-380's third sentence, for which they again offer no supporting precedent or authority, are equally without merit, and again respectfully stated, they are the product of their defective "circular" logic.

The Petitioners' argument that the Court of Appeals' dismissal of their July 25, 2023 appeal conflicts with this Court's decision in *Bone* is likewise without merit. Specifically, the

majority's ruling in *Bone* defeats the Petitioners' argument that SCDC's back pay calculations are appealable, 744 S.E.2d at 561 – 562:

In agency appeals, the APA is controlling over general provisions that conflict with its terms. In this case, there is a specific statute in the APA that governs appeals in administrative cases, section 1–23–390, and it limits appeals to those from final judgments. Therefore, [§] 14–3–330, a general appealability statute allowing interlocutory appeals in certain instances, and its concepts are not applicable here. The definition of a “final judgment” used in [*Charlotte–Mecklenburg Hosp. Auth.*], as further detailed in the reference to Black's Law Dictionary incorporated in this opinion, should be the point of reference in any analysis of that term when applying [§] 1–23–390. Consequently, **we affirm the decision of the Court of Appeals, which found the current order** remanding the matter to the Commission for further proceedings does not constitute a final judgment as required by [§] 1–23–390 and, therefore, **is not immediately appealable.** [emphasis supplied].

As discussed above in Section IV(B), the Court of Appeals relied upon *Charlotte–Mecklenburg Hosp. Auth.* when, by an order dated July 20, 2017, it dismissed the Petitioners' appeal of Chief ALJ Anderson's June 13, 2017 order of remand:<sup>12</sup>

This appeal arises out of an order from the [ALC] remanding the case to [SCDC]. **Because the order of the [ALC] is not a final order, we dismiss this appeal as interlocutory.** See [*Charlotte–Mecklenburg Hosp. Auth.*, 692 S.E.2d at 895] (“**If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory.**”).<sup>13</sup> The remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rules. [emphasis supplied].

See *Ackerman*, Court of Appeals Appellate Case No. 2017-001560.

---

<sup>12</sup> The Petitioners also cited *Charlotte–Mecklenburg Hosp. Auth.* in their October 28, 2022 “Motion for SCDC to Find Liability, Constitutional Violations, and to Pay Full Damages.” (Apx. p. 210).

<sup>13</sup> See also *Torrence v. S.C. Dep't of Corr.*, 857 S.E.2d 549, 550 (S.C. 2021). (“Importantly, the question of appealability often presents a critical timing quandary for litigants and the practicing bar. If a party believes that an order from the ALC that includes a remand may be a final judgment, is the aggrieved party required to test the appellate waters by filing an appeal lest it risk losing the right to challenge the decision of the ALC? The answer is no. Where a remand to the agency is ordered, yet it is believed the order of the ALC finally determines the rights of the parties and constitutes a final judgment, the aggrieved party may allow the remand to conclude without forfeiting its right to appeal. Take this case as an example: if the ALC-mandated award was entered on remand for Respondent, SCDC would have retained its right to challenge that award on appeal.”).

Aside from their reliance upon the Editor’s Note to § 1-23-380, *Bone*, the second and fourth sentences from § 1-23-380’s first unnumbered paragraph, and § 1-23-380(4), the Petitioners offer several constitutional grounds upon which they urge this Court to grant their February 16, 2024 petition:

<b>Section</b>	<b>Petition</b>
S.C. Constitution, Article I, Sections 22, 23	pp. 4 – 7
S.C. Constitution, Article I, Sections 22, 23 S.C. Constitution, Article I, Section 3 Due Process U.S. Constitution, Amendment 14, Section 1 Due Process	pp. 7 – 8
S.C. Constitution, Article I, Section 3 Due Process U.S. Constitution, Amendment 14, Section 1 Due Process	pp. 8 – 10
Suppression and Preemption	pp. 10 – 11

In their analysis of the constitutional grounds purportedly supporting their petition, the Petitioners frequently invoke this Court’s decisions in *League of Woman Voters of Georgetown County v. Litchfield-by-the-Sea*, 409 S.E.2d 378 (S.C. 1991) and *S.C. Ambulatory Surgery Center Ass’n v. S.C. Workers Comp. Comm’n*, 699 S.E.2d 146 (S.C. 2010).

Succinctly stated, the Petitioners generally argue that SCDC’s back wage calculations somehow violate their rights to both procedural and substantive due process under both the South Carolina Constitution and the United States Constitution as they constitute a taking of their property or a deprivation of their property without the right to judicial review. The Petitioners also generally argue that by dismissing their July 25, 2023 appeal, the Court of Appeals likewise deprived them of procedural and substantive due process. The Petitioners further generally argue that the Court of Appeals’ dismissal, therefore, conflicts with this Court’s decisions in *League of Woman Voters of Georgetown County* and/or *S.C. Ambulatory Surgery Center Ass’n*.

In *Seabrook v. Knox*, 631 S.E.2d 907, 910 (S.C. 2006), this Court quoted *Mathews v. Eldridge*, 424 U.S. 319 (1976), when it stated the following: “Procedural due process imposes

constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.”

Regarding substantive due process, this Court in *Seabrook* stated the following, 631 S.E.2d at 911:

Substantive due process protects a person from being deprived of life, liberty, or property for arbitrary reasons. [*Worsley Companies, Inc. v. Town of Mount Pleasant*, 528 S.E.2d 657, 660 (2000)]. To establish a substantive due process claim, a plaintiff must show he possessed a constitutionally protected property interest that was deprived by state action so far beyond the limits of legitimate governmental action, no process could cure the deficiency. *Sylvia Dev. Corp. v. Calvert County*, 48 F.3d 810, 827 (4th Cir.1995).

Notwithstanding the various arguments they offer in their February 16, 2024 petition, SCDC’s October 31, 2019 back wage calculations, which were generated explicitly for “settlement and mediation purposes only,” do not deprive the Petitioners of either procedural or substantive due process. Likewise, neither the Court of Appeals’ November 14, 2023 order dismissing the Petitioners’ July 25, 2023 appeal nor its February 2, 2024 order denying their petition for rehearing deprive them of either procedural or substantive due process.

As clearly recognized by the Court of Appeals and as admitted by the Petitioners, SCDC’s back pay calculations do not constitute final or even interim decisions and no order from Chief ALJ Anderson or, for that matter, any other ALJ exists regarding the amount of back pay due to the Petitioners individually or collectively.

## **VII. CONCLUSION**

For the above-stated reasons, SCDC respectfully asserts the Court of Appeals correctly ruled in its November 14, 2023 and February 2, 2024 orders dismissing the Petitioners’ July 25, 2023 appeal that it did not have jurisdiction to hear their appeal.

SCDC, therefore, respectfully asserts the Petitioners have not identified any “special and important reasons” under SCACR 242(b)(1) and (b)(3) or, for that matter, any other provision SCACR 242(b) by which this Court should grant their petition for writ of certiorari from the orders dismissing their July 25, 2023 appeal issued November 14, 2023 and February 2, 2024 by the Court of Appeals.

**RESPECTFULLY SUBMITTED:**

*s/Lake E. Summers*  
Lake E. Summers

S.C. Bar #0064146  
**Malone, Thompson, Summers & Ott LLC**  
339 Heyward Street  
Columbia, South Carolina 29201  
(803) 254-3300 – Office  
(803) 254-0309 – Fax  
summers@mtsolvfirm.com

Counsel for the South Carolina  
Department of Corrections

Columbia, South Carolina  
April 1, 2024

Counsel for the Petitioners:  
Douglas H. Westbrook, Esquire  
Attorney at Law  
3 Gamecock Avenue, Suite 304-B  
Charleston, South Carolina 29407  
douglas.h.westbrook@gmail.com