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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

S.C. SUPREME COURT

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.

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PETITIONERS' REPLY

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Petitioners submit their reply to the Department of Corrections' (SCDC) return to the petition for a writ of certiorari.

SCDC states petitioners have not identified important reasons for granting the petition (return, 3). This matter is addressed in the petition, pages 4, 7-8, 10-11.

SCDC states petitioners included no SCDC decision with their notice of appeal (return, 4, n. 1). Petitioners respectfully disagree, as they sent to the Court of Appeals all back wage calculations SCDC had provided (Appendix, 1-197, 220, 232).

SCDC raises the "confusion" caused by petitioners' notice of appeal without a final decision from SCDC or the ALC, and subsequent communications between court and counsel (return, 5-6). Petitioners submit, the fact that SCDC calculations were not **final** decisions supports their position that appeal to another court is not "otherwise provided by law", and appeal lies with the Court of Appeals pursuant to section 1-23-380, second and fourth sentences.

SCDC discusses litigation of prior phases of this case from 2017-2018 (return, 8-12). Petitioners submit those matters are not relevant to SCDC's 2019 calculations and the current appeal.

SCDC states its back pay calculations are not SCDC "decisions", final or otherwise (return, 13). Petitioners contend the calculations are "decisions". A "decision" is a "...judicial determination after consideration of the facts and the law.." (Black's Law Dictionary, 7th ed., p. 414). "Judicial" may mean "legal", as in "the Attorney General took no judicial action" (Id, p. 850). Moreover, our Supreme Court in 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) held that an agency's non-binding certification "determination" was appealable under S.C. Constitution, Article I, section 22.

Here, for each petitioner SCDC's Inmate Accounting compiled a one page chart with 13 columns of data and information: Pay Periods, Total Hours Paid, Rate of Pay, Total Wages Previously Paid, Adjusted Per Hour Rate Gatewood, Adjusted Gross Wages SCDC Should Have Paid Gatewood, Victim Restitution, Room & Board, Child Support, Escrow Account, Total Wages Due After Deductions Gatewood, Less Wages Previously Paid, Net Wages Due Inmate Prior to Fed & State Taxes Gatewood, and at the bottom, Net Total Pay **Due** Inmate for All Periods (Appendix, 1-197). "Due" means "owing or payable; constituting a debt" (Black's Law Dictionary, 7th ed., p. 515).

Columns stating "Gatewood" presumably refer to Gatewood v. SCDC 416 S.C. 304, 785 S.E. 2d 600 (S.C. App., 2016), the companion case. In Gatewood, 416 S.C. at 314, 317-320, 323-326, the court issued rulings concerning deductions statutes for Gatewood's work. The Adjusted Per Hour Rate Gatewood column applied a \$5.15 per hour rate or \$4 per hour rate, depending on the time period and governing statute or proviso. The column for Total Wages Due After Deductions Gatewood presumably applied deductions approved in Gatewood v. SCDC. The first sheet in SCDC's calculations, "Back Pay Analysis", states a cumulative total of \$3,831,327.45 "Net Total Pay **Due** Inmates for All Periods (Prior to State & Federal Taxes)" (Appendix, 2).

In sum, petitioners submit SCDC's calculations were clearly judicial determinations by SCDC Inmate Accounting of amounts owed to petitioners, which were prepared after consideration of the facts and law. As a result, they are "decisions".

SCDC states petitioners offer no authority for their "interpretation" of section 1-23-380, second and fourth sentences, as not requiring a final decision (return, 18). First, the second sentence states, "(T)his section **does not limit..the scope** of judicial review available under **other** means of review

..provided by law". Where the statutory language is plain and unambiguous, it is the duty of the court to apply it literally. Any other construction would be amendatory, and it is not the province of the court to perform legislative functions (Henderson v. Evans 268 S.C. 127, 130, 232 S.E. 2d 331, 333 (S.C., 1977)). Moreover, where the statute is clear and explicit in language, there is no need for statutory interpretation or legislative intent to determine its meaning (Timmons v. S.C. Tricentennial Comm'n 254 S.C. 378, 401, 175 S.E. 2d 805, 817 (S.C., 1970)). Here, the second sentence is plain and unambiguous.

The fourth sentence in section 1-23-380 states, "(E)xcept as otherwise provided by law, an appeal is to the court of appeals". Again, the statutory language is plain and unambiguous.

Petitioners submit the second and fourth sentences in section 1-23-380 must be applied literally (Henderson v. Evans; Timmons v. S.C. Tricentennial Comm'n). Applied literally, the second sentence has no final decision requirement, and the fourth sentence expressly grants appellate jurisdiction to the Court of Appeals.

Second, a statutory construction which deprives a party of constitutional rights is unconstitutional and in such matters a constitutional construction is mandated and must prevail over an unconstitutional construction (Henderson v. Evans, 232 S.E. 2d at 333-334). Here, petitioners have invoked S.C. Constitution, Article I, Sections 22, 23 mode of procedure clause as "other means of review" in the second sentence of section 1-23-380. If that sentence is construed to require a final decision, it would bar an appeal and thus the mandatory constitutional right to appeal under Article I, Sections 22 and 23. In this connection, petitioners note the language in Section 23:

The provisions of the Constitution shall be taken, deemed, and **construed to be mandatory** and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms.

Petitioners submit, in these circumstances, any construction that section 1-23-380, second and fourth sentences, require a final decision must give way to a construction that they do not (Henderson v. Evans). Finally, petitioners refer to their petition contentions that mandatory appeal rights apply to S.C. and U.S. due process clauses as well; constitutional violations carry an inherent right to appeal; and supersession and preemption rules would apply; all of which would control over any final decision requirement found to exist in section 1-23-380, second and fourth sentences (petition, pp. 7-11).

Third, imposing a final decision requirement for section 1-23-380, second and fourth sentences, would violate the separation of powers provision in S.C. Constitution, Article I, Section 8.

SCDC states petitioners' reading of section 1-23-380's first sentence is contrary to the title, "Judicial review upon exhaustion of administrative remedies" (return, 19). "Exhaustion of remedies" means "(T)he doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available" (Black's Law Dictionary, 7th ed., p. 594).

First, petitioners contend they did exhaust administrative remedies by seeking relief in their October 28, 2022 Motion for SCDC to Find Liability, Constitutional Violations, and to Pay Full Damages (Appendix, 198). SCDC did not respond to that motion. Petitioners then filed a petition for rehearing, requesting SCDC to rehear the motion and issue a ruling. Petitioners stated in their petition, if SCDC did not rule, by filing the petition they will have preserved the issues in the motion for judicial review, citing Home Medical Systems, Inc. v. South Carolina Department of Revenue 382 S.C. 556, 677 S.E. 2d 582, 586 (S.C., 2009) and Elam v. South Carolina Department of Transp. 361 S.C. 9, 24, 602 S.E. 2d 772 (S.C., 2004). SCDC also failed to respond to the

petition for rehearing.

Second, petitioners contend, because of the constitutional violations in SCDC's calculations, SCDC acted outside its authority. As a result, petitioners were excused from exhausting administrative remedies (Brown v. James 389 S.C. 41, 697 S.E. 2d 604, 611-612 (S.C. App., 2010) (Exception to exhaustion requirement where agency acts outside its authority)).

SCDC states petitioners' "interpretation" of section 1-23-380, third sentence, is without merit because SCDC's calculations are not decisions, as petitioners have admitted (return, 19). On the contrary, petitioners have clearly stated the calculations are decisions, but not **final** decisions (petition, pp. 3, 10, 12; Appendix, pp. 220, 223, 225, 238, 260, 261, 276, 277, 286).

SCDC states the ruling in Bone, 744 S.E. 2d at 561-562, defeats petitioners' argument that the calculations are appealable (return, 19-20). However, the APA statute at issue in Bone was section 1-23-390, which requires a "final judgment" for appeal. Section 1-23-380, second and fourth sentences has no final decision, or even "decision" requirement. Bone clearly holds that general appealability statutes are controlled by the applicable APA statute, in this case section 1-23-380, second and fourth sentences. These sentences plainly and unambiguously grant appellate jurisdiction for this appeal to the Court of Appeals.

Here, the Court of Appeals cited general appealability statutes in support of its decision that it had no jurisdiction (Appendix, 268-269). Petitioners submit, Bone requires that those statutes be disregarded in favor of the applicable APA statute in section 1-23-380, second and fourth sentences, which grant appellate jurisdiction to the Court of Appeals.

SCDC again cited an order of the Court of Appeals from 2017 concerning a

previous phase of this litigation (return, 20). Petitioners submit it is not relevant to Court of Appeals' jurisdiction here.

SCDC cites the Court of Appeals' reliance in 2017 on Charlotte-Mecklenburg Hosp. Auth. v. DHEC 387 S.C. 265 (2010) (return, 20). First, petitioners contend the court's reliance on that case in a previous phase of this litigation is not relevant here. Second, Charlotte-Mecklenburg Hosp. Auth. is not apposite as it involved section 1-23-610(A)(1), which limited review to final ALC decisions. The applicable APA statute here, section 1-23-380, second and fourth sentences, has no such requirement. In addition, our case involves constitutionally mandated appellate review under S.C. Constitution, Article I, sections 3, 22, 23, and U.S. Constitution, Amendment 14, section 1.

SCDC states that petitioners argue, by dismissing this appeal, the Court of Appeals deprived them of procedural and substantive due process (return, 21). However, petitioners contend **SCDC calculations** deprive them of the process required by S.C. Constitution, Article I, section 22 mode of procedure clause; and also substantive due process required by S.C. Constitution, Article I, section 3, and U.S. Constitution, Amendment 14, section 1 (petition, 1, 5, 7, 9, 12). Petitioners do contend the Court of Appeals order erred in denying jurisdiction to hear the appeal (petition, i, 1-12).

Finally, petitioners note the issue currently before the court is not denial of due process on the merits, but whether the Court of Appeals had jurisdiction to hear the appeal.

SCDC cites Seabrook v. Knox 369 S.C. 191, 631 S.E. 2d 907 (S.C., 2006) for support that its calculations do not deprive petitioners of procedural or substantive due process (return, 21-22). In Seabrook, 631 S.E. 2d at 911, the court stated substantive due process protects a person from being deprived of life, liberty or property for arbitrary reasons. To establish a claim, plain-

tiff must show that he possessed a constitutionally protected property interest that was deprived by state action so far beyond the limits of legitimate governmental action that no process could cure the deficiency, citing Sylvia Dev. Corp. v. Calvert County 48 F 3d 810, 827 (4 Cir., 1995).

In Sylvia Dev. Corp., 48 F 3d at 827-828, the court stated substantive due process is an absolute check on certain government actions notwithstanding the fairness of the procedures used. In short, it is a constitutionally imposed limitation intended only to prevent government from abusing its power or employing it as an instrument of oppression.

An interest in property protected by due process arises only where there is a legitimate claim of entitlement as created and defined by independent sources (S.C. Ambulatory Surgery Center Ass'n v. S.C. Workers Comp. Conn'n 389 S.C. 380, 699 S.E. 2d 146, 153 (S.C., 2010)). Here, petitioners had a constitutionally protected interest in statutory wages under S.C. Code section 24-3-430(D) and provisos, and the decisions in Adkins, et al. v. SCDC 360 S.C. 413, 419, 602 S.E. 2d 51 (S.C., 2004) and Ackerman, et al. v. SCDC 415 S.C. 412, 421, 782 S.E. 2d 757, 762 (S.C. App., 2016).

Moreover, SCDC calculations deprive petitioners of these wages. "Deprivation" means an act of taking away or withholding something (petition, 5). An "act" means something done or performed, especially voluntarily (Black's Law Dictionary, 7th ed., p. 24). Here, SCDC calculations deprive petitioners of their wages by omitting and not calculating six years of work in the program from 2007 to 2013, and by not calculating prevailing wages and overtime when due, and other errors, thus taking away and withholding wages due.

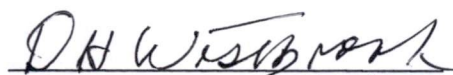
Finally, petitioners contend, especially by omitting six years of work, SCDC calculations arbitrarily and capriciously abused SCDC's power and were employed as an instrument of oppression (Sylvia Dev. Corp.). By motion dated

January 3, 2020, petitioners requested SCDC to amend its calculations to correct the omission of work and other errors. SCDC has not made the corrections despite follow up requests to do so.

SCDC contends its calculations do not violate due process because they were generated for "settlement and mediation purposes only" (SCDC return, 22). This matter is addressed in the petition, page 6.

SCDC states its calculations do not constitute final or interim decisions, and there is no ALC order involved (SCDC return, 22). These matters are also addressed in the petition, pages 3, 8, 10, 12.

Respectfully submitted,



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