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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
RALPH KING ANDERSON, III, ADMINISTRATIVE LAW JUDGE

ALC Case No.23-ALJ-04-0526-AP
APPELLATE CASE No.2024-001076

BOBBY GIBSON, JR., #171440,

APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

RECORD ON APPEAL

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ORDER OF DISMISSAL, DATED JUNE 13, 2024.....1



SCDC POLICY

NUMBER: GA-01.12

TITLE: INMATE GRIEVANCE SYSTEM

ISSUE DATE: September 1, 2023

RESPONSIBLE AUTHORITY: OFFICE OF GENERAL COUNSEL

POLICY MANUAL: GENERAL ADMINISTRATION

SUPERSEDES: GA-01.12-MAY 12, 2014; GA-01.12 (Change 2, dated March 19, 2013); (Change 1, dated August 2, 2012); (October 1, 2010); (September 1, 2009); (July 1, 2008); (January 1, 2006)

RELEVANT SCDC FORMS/SUPPLIES: 10-5, 10-5(a), 19-11

ACA/CAC STANDARDS: (5-ACI-3D-19), (5-ACI-5B-07), (5-ACI-6A-01)

STATE/FEDERAL STATUTES: Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, Prison Rape Elimination Act of 2003, 45 U.S.C. § 15601, et seq., PREA Standard 115.52 (28 CFR 115.52); Americans with Disabilities Act (ADA) 42 U.S.C. § 12101, et seq.

PURPOSE: To establish guidelines for the development and implementation of an inmate grievance system whereby inmates may seek formal review of complaints relative to disciplinary hearing appeals, classification appeals, Department policies, directives, or conditions which directly affect an inmate.

POLICY STATEMENT: The South Carolina Department of Corrections advocates timely and efficient resolution of complaints and grievances brought to the attention of administrators by inmates. To this end, the Department will develop, administer, and implement an inmate grievance system accessible to all inmates regardless of their custody level, classification, disciplinary status, disabilities, or other administrative or legislative matter(s) affecting inmates.

At a minimum, the grievance system will be designed to provide inmates with a mechanism by which they may seek formal review of their complaints; provide a vehicle for internal solutions at the level having most direct contact with the inmate; and provide a means for management review of staff decisions and policies that may be the source of a complaint. Notification of this policy will be made in compliance with the Civil Rights of Institutionalized Persons Act.

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SPECIFIC PROCEDURES:

1. RESPONSIBILITIES/APPLICABILITY:

1.1 The Office of General Counsel will manage an Inmate Grievance Branch responsible for the development, management, and implementation of a system-wide inmate grievance system.

1.2 The Inmate Grievance Branch will be responsible for developing written procedures designed to address the management and use of the inmate grievance system. The procedures will, at a minimum, address staff and inmate responsibilities relative to the inmate grievance system; limitation requirements for inmates found abusing or misusing the grievance system; definitions of grievable and non-grievable actions; documentation requirements; evaluative mechanisms for ensuring the efficiency and effectiveness of the inmate grievance system; steps in the grievance process; emergency grievance procedures; and confidentiality requirements. Suggestions or problems may be submitted by staff and inmates to the, *Agency Inmate Grievance Coordinator*, Inmate Grievance Branch, at any time. Inmates will utilize a "Request to Staff Member," SCDC Form 19-11, for this purpose.

1.3 The inmate grievance system will be available for use by all inmates regardless of their custody level, classification, disciplinary status, disability, or any other administrative or legislative action that may affect any inmate incarcerated in a facility of the South Carolina Department of Corrections. Every inmate assigned to a South Carolina Department of Corrections (SCDC) institution is eligible to utilize the grievance system as set forth in this

policy. Staff assistance will be provided to non-English speaking inmates, inmates unable to read and write, and disabled inmates in order to ensure their access to the grievance system.

2. ORIENTATION:

2.1 Upon arrival at any SCDC Reception and Evaluation Center, inmates will be provided an explanation of the SCDC inmate grievance process during new admission orientation. Arrangements will be made through the Inmate Grievance Branch to provide non-English speaking, disabled, and or illiterate inmates with this information in a language or mode that they can comprehend. An inmate may also submit an SCDC Form 19-11, "Request to Staff Member," to the Institutional Grievance Coordinator (IGC) at his/her institution concerning any questions about the grievance process.

2.2 Each SCDC institution will also include in its inmate orientation an oral explanation of how the grievance procedure operates. Wardens may contact the Inmate Grievance Branch to obtain assistance in locating qualified individuals to explain the procedure to non-English speaking, disabled; or illiterate inmates.

2.3 As a part of the Department orientation program, all newly hired employees will receive written and/or oral explanations of the Department's grievance policy by a representative of the Inmate Grievance Branch.

3. REPRISALS: No inmate will be subjected to reprisal, retaliation, harassment, or disciplinary action for filing a grievance or participating in the resolution of a grievance. The grievance procedure will be used by any inmate who is alleging reprisals of this nature. Allegations of reprisal may also be investigated by the *Agency Inmate Grievance Coordinator*/designee, Inmate Grievance Branch, if deemed necessary.

4. CONFIDENTIALITY:

4.1 To the extent possible, all documentation pertaining to inmate grievances will be considered confidential and will not be included as part of an inmate's institutional or central record. Statements made by, or information received from, a grievant or other affected inmate relating to a grievance will not be used to initiate internal disciplinary action against an inmate(s), (unless the inmate has written a direct threat to an employee). Grievance forms and accompanying documents will be treated as confidential.

4.2 If an inmate files a grievance that pertains to a loss of property or loss of money as a result of legitimate transactions, a reference may be included in his/her institutional record and central record as to how the matter was resolved. However, this reference will not give any indication that a grievance was filed.

4.3 If it becomes necessary to document any other circumstances or actions which are related to a grievance, a reference may be included in the institutional record and central record; however, it must not give any indication that a grievance was filed.

5. INSTITUTIONAL INMATE GRIEVANCE COORDINATOR:

5.1 A non-uniformed employee at each SCDC institution will be designated as the Institutional Inmate Grievance Coordinator (IGC). IGCs will make certain that all inmates at that institution have access to the grievance procedure regardless of any disciplinary, classification, disability, or other administrative decision concerning them. The IGC will receive grievances from the employee designated by the Warden, and will investigate, resolve, and/or recommend disposition.

5.2 The *Regional Inmate Grievance Manager (RIGM)* will be primarily responsible for the preparation of the planning stage and evaluation forms of the IGCs but s/he will consult with the Warden/designee and ensure that the Warden/designee has the opportunity to review and provide additional information for the planning stage and evaluation forms. Both forms will be signed by the *RIGM*, the *Agency Inmate Grievance Coordinator* and the Warden/designee. The planning stage and the evaluation form will not be discussed with the affected employee until all required signatures are obtained. The *RIGM* will ensure that appraisals are completed and processed within proper time limits.

6. MISUSE/ABUSE OF THE GRIEVANCE SYSTEM/LIMITATION:

6.1 Inmates found to be misusing or abusing the inmate grievance system may be subjected to limitation. Exceptions will be made for disciplinary appeals (unless the inmate pled guilty), custody reduction reviews, and issues determined to be an emergency by the *Agency Inmate Grievance Coordinator/designee*.

6.2 Misuse or abuse of the inmate grievance system may be, but is not limited to, grievances intended to harass another person; the repeated submission of frivolous grievances; and/or the repeated submission of grievances or "Requests to Staff Member," about an issue(s) previously addressed by staff members in written responses.

6.3 **Procedures:** The following procedures will be used for recommending limitations:

6.3.1 The Warden *or Inmate Grievance Coordinator* will inform the inmate via a memorandum that a request for limitation has been forwarded to the Inmate Grievance Branch. This memorandum will include the reasons for the request (number of grievances filed, repeated submissions, frivolous grievances, or Request to Staff, etc.).

6.3.2 The *Agency Inmate Grievance Coordinator/Designee*, Inmate Grievance Branch, will review the institutional request and may consult with the General Counsel concerning appropriate action. If limiting action is approved, the *Agency Inmate Grievance Coordinator/Designee*, Inmate Grievance Branch, will notify the inmate in writing of the action, the reasons for the action, and the duration. Copies of this letter will be forwarded to the Warden. The inmate may appeal this decision in writing to the General Counsel within five (5) working days of his/her receipt of notification.

7. **GRIEVABLE ISSUES:** Only one issue, or one disciplinary conviction may be addressed on each grievance form. The following issues will be considered grievable:

7.1 Department policies, directives, or conditions which directly affect the inmate;

7.2 Actions of a staff member toward the inmate;

7.3 Actions of an inmate against the inmate;

7.4 Inmate property complaints;

7.5 Disciplinary Hearing actions to appeal a conviction following an innocent plea, or to appeal a sentence when the sanction imposed was allegedly not proportionate to the rule's violation;

7.6 Any classification decision that directly affects the inmate's custody level; and

7.7 Calculation of sentence-related credits.

8. NON-GRIEVABLE ISSUES: The following items are considered non-grievable issues (**NOTE:** If a grievance is on one of the following issues, but also implicates any part of section 15, the grievance will be forwarded to the *Agency Inmate Grievance Coordinator* for review.):

8.1 Classification issues, as follows:

8.1.1 Institutional and security assignments made at Reception and Evaluation Centers;

8.1.2 Institutional job assignments, except where there may be extenuating medical circumstances involved;

8.1.3 Cell, dormitory, or cubicle assignments made within an institution, unless there may be extenuating medical circumstances or criminal activity involved; and

8.1.4 Inmates who sign SCDC Form 18-39, "Classification Waiver" waiving their right to be present for classification hearings, waive any grievance rights regarding any decision made by the Institutional Classification Committee.

8.2 Administrative transfers which occur due to needed movement for bedspace availability or security-related matters and which do not result in a custody reduction;

8.3 The disposition of any Department disciplinary proceeding (Disciplinary Hearing, Administrative Hearing) which resulted from a guilty plea by the inmate, or if the inmate accepted Informal or Administrative Resolution, unless the sanction imposed was excessive in relationship to the rule violation; and

8.4 Any issue outside of the control of the Department:

8.4.1 State and federal court decisions;

8.4.2 State and federal laws and regulations;

8.4.3 Parole Board decisions;

8.4.4 Any other matters outside the control of the SCDC;

8.4.5 If the inmate is convicted of 601, Court Ordered Credit Loss.

8.5 Inmates *cannot* file a grievance on the following issues:

8.5.1 Unprocessed (*reviewed but returned*) grievance(s);

8.5.2 Against an Inmate Grievance Coordinator for un-processing (*reviewing but returning*) a grievance;

8.5.3 The disposition on another grievance;

8.5.4 Matters pending before a state or federal court, in which the inmate is a party;

8.5.5 The status of a pending grievance.

9. QUESTIONABLE ISSUES: In those cases where a question may arise as to whether an issue is grievable, the IGC will confer with the *Agency Inmate Grievance Coordinator*, Inmate Grievance Branch/Designee who will make that determination. The IGC will advise the inmate in writing as to the decision of the *Agency Inmate Grievance Coordinator*. This decision will be final.

10. REMEDIES: All SCDC personnel responsible for responding to an inmate grievance will afford each successful grievant a meaningful remedy to the extent that their respective positions, authority, and resources allow. Remedies may include, but are not limited to, the following:

10.1 Restitution: Restoration of property by substituting a state-like item. This will normally occur instead of any monetary reimbursement.

10.2 Monetary: A fair value will be given for items lost or destroyed when negligence is proven. (See SCDC policies regarding inmate property.)

10.3 Changes in policies, rules, or practices.

10.4 Correction of records.

10.5 Other remedies, as appropriate (for example, employee discipline, inmate referral to outside sources, etc.) However, employee disciplinary action which may or may not occur will not be disclosed through the grievance process.

NOTE: The Warden's decision to grant restitution/monetary reimbursement will not require additional approval to have state provided like/issued items issued or deposits made to the grievant's E.H. Cooper Account so long as the amount of reimbursement is within the monetary limits of SCDC Policy OP-22.03, "Authorized Inmate Property and Disposition of Unauthorized Property." If an inmate does not accept the Warden's response and appeals to Step 2, the property/monetary reimbursement will be held by the IGC until a final decision has been made at the Step 2 level.

11. RESPONSES: Each grievance will be answered in writing at each level of decision using the applicable SCDC Form (either Form 10-5 or 10-5a) and will be served by the IGC to the inmate personally. *Additional provisions may be made by General Counsel and/or the Agency Inmate Grievance Coordinator to alternatively serve grievances to inmates when extenuating circumstances exists to enhance the safety of applicable staff.* Time limits at each step in the procedure are contained herein; but in most instances, grievances will be processed from initiation to final disposition within 171 days except when the *Agency Inmate Grievance Coordinator/Designee*, Inmate Grievance Branch, specifically agrees to a request for an extension. If an extension is granted, the IGC will notify the inmate in writing. (The extension is at the Step 1 level only. No extension is required at the Step 2 level.) (**NOTE:** The maximum extension that may be given is 90 days. Under certain circumstances the grievance process may exceed 261 days.) (See also Procedures #13 and #14.)

12. RECORDS: Records regarding the filing and disposition of grievances will be maintained at each institution in a manner determined by the IGC and the Warden; and approved by the *Agency Inmate Grievance Coordinator*, Inmate Grievance Branch or designee. Refer to the SCDC Intranet site for the Agency retention schedule for SCDC Forms 10-5 and 10-5A. Staff participating in the disposition of a grievance will have access to records essential to its resolution. Records pertaining to grievances will not be available to individuals who make recommendations or decisions about parole

or other decisions that are not related to the grievance process. Once a grievance has been closed, it should not be reviewed or referred to unless necessary to accomplish legitimate data gathering or other grievance related objectives or for accreditation documentation with only the inmate's name blackened out as appropriate. Should any questions arise as to who should be allowed access to any such record, they will be referred to the *Agency Inmate Grievance Coordinator*, Inmate Grievance Branch, for resolution.

13. STEPS IN THE GRIEVANCE PROCESS:

13.1 Inmates will be allowed to file five (5) grievances per month, which shall include all grievances that are returned unprocessed. After the five (5) grievances have been accepted, all others will be returned unprocessed, with the exception of a disciplinary conviction appeal or a classification reduction in custody level review. Grievances alleging criminal activity will be forwarded to the Division of Investigation (DOI), and if found to be without merit by DOI, will be returned unprocessed if the inmate has already had five (5) grievances accepted for the month. Emergency grievances will be considered on a case-by-case basis by the *Agency Inmate Grievance Coordinator* of the Inmate Grievance Branch, to include ADA grievances under Section 15.3.

13.2 Inmates must make an effort to informally resolve a grievance by submitting a Request to Staff Member Form to the appropriate supervisor/staff within eight (8) working days of the incident. However, in certain cases, informal resolution may not be appropriate or possible (e.g., when the matter involves allegations of criminal activity). An informal resolution is not necessary when appealing a disciplinary conviction or a custody reduction. If informal resolution is not possible, the grievant will complete Form 10-5, Step 1, which is located in common areas, i.e., living areas, libraries, etc. and will place the form in a designated grievance drop box within five (5) working days of the alleged incident. Requests to hear disciplinary recordings must be submitted to the Major, utilizing a Request to Staff Member form within three (3) days of the disciplinary conviction. The Institutional Inmate Grievance Coordinator will be notified of this request, as well as the date the hearing recording was played for the inmate, through CRT message/memorandum. Any information obtained from a review of the recording may be included in the Step 2 grievance appeal. No additional pages will be permitted. All information must be placed on SCDC Form 10-5, "Inmate Grievance Form." An inmate will submit a grievance within the time frames established in the policy. (NOTE: Allegations involving sexual conduct between inmates and staff constitute criminal activity. When an inmate alleges that sexual activity/conduct has occurred between an inmate(s) and a staff member(s), that grievance must be processed as criminal activity.) See Procedure 15., below, for more information on processing a grievance alleging criminal activity. (NOTE: Only one [1] disciplinary conviction can be appealed on a grievance form. Example: If an inmate has three [3] disciplinary convictions for one [1] incident, each conviction must be filed separately.)

(The only exceptions are listed at Procedure(s) #13.7 and 14.) The grievance form must contain information about how, with whom, and when attempts were made to resolve the problem informally within eight (8) working days of the appropriate supervisor's signature date on the SCDC Form 19-11, "Inmate Request To Staff Member" (RTSM). The grievance also must contain a brief statement of the circumstances of the grievance, to include date and time, why the grievant believes s/he is entitled to relief, and a brief statement of the action(s) requested for which relief may be available through the grievance procedure. (NOTE: A copy of the RTSM must be attached to the Step 1 grievance form.) No inmate or employee (other than those specified in this policy/procedure) will be given a copy of a grievance. Exceptions to policy must be requested, and approved through the *Agency Inmate Grievance Coordinator*, Inmate Grievance Branch. Inmates will only be allowed to submit one grievance per incident or circumstance.

Unless a separate SCDC policy requires filing a grievance within a shorter period of time, any and all grievances that involve a continuous matter (prison industries pay) must be filed within two (2) years of when the issue arose, or the grievant should have known about it. If the issue is older

than two (2) years but has continued to be an issue that is grievable, only the two (2) year portion immediately prior to filing of the grievance will be considered. This section does not apply to grievances pertaining to PREA (Prison Rape Elimination Act) or criminal matters.

13.3 All grievances will be picked up on a daily basis, during normal working hours, by an employee designated by the Warden (not the IGC). All grievances will be numbered and entered into the automated system (regardless of whether the issue is grievable or non-grievable) within three (3) working days by an employee designated by the Warden (not the IGC). The employee designated by the Warden will give the grievances to the IGC after the grievance has been entered into the automated system. Upon receipt of a grievance, the IGC will, within three (3) working days, complete the additional text for the grievance into the CRT screen and enter the grievance information in the grievance logbook. The time frame for responding to the grievance will begin once the text for the grievance has been entered into the OMS system. The IGC will conduct an investigation (i.e., talking with the appropriate staff and/or inmate(s), reviewing all documents and/or reports, etc.) into the situation and will make recommendations to the Warden concerning disposition of the matter. No employee involved or addressed in a grievance will be assigned to conduct any investigation regarding the same. If the IGC determines that the grievance will not be processed, the IGC will note this on the SCDC Form 10-5, Step 1, under "Action Taken by the IGC," maintain the original for the inmate grievance file, enter "non-grievable" into the automated system, and mail a copy of the SCDC Form 10-5, Step 1, to the inmate in a sealed envelope. Unprocessed (*reviewed but returned*) grievances may only be appealed by utilizing SCDC Form 19-11, "Inmate Request To Staff Member," (RTSM) to the *Agency Inmate Grievance Coordinator* within ten (10) days of the grievance being returned to the inmate. The inmate must provide a copy of the unprocessed (*reviewed but returned*) grievance with the RTSM. The inmate cannot file a grievance against the IGC for un-processing the grievance. If the inmate has failed to provide necessary information, or has not signed and dated the grievance, s/he will be given five (5) calendar days to re-file a properly filled out grievance; this will be noted on the Step 1 form with a due back date included. This information will also be entered into the CRT narrative when the grievance is closed as unprocessed (*reviewed but returned*). Unprocessed (*reviewed but returned*) grievances that have been given five (5) days to re-file cannot be appealed to the *Agency Inmate Grievance Coordinator*.

13.4 Any grievance which is sent directly to Central Office Headquarters by the grievant will be returned unprocessed (*reviewed but returned*) by the Inmate Grievance Branch Staff.

13.5 The Warden will respond to the grievant in writing (in the space provided on SCDC Form 10-5, Step 1), indicating in detail the rationale for the decision rendered and any recommended remedies. The grievant will also be informed of his/her rights to appeal to the next level. The Warden will respond to the grievant no later than 45 days from the date the grievance was formally entered into the OMS system by the IGC. The response will be served by the IGC to the grievant, within ten (10) calendar days, and the grievant will sign and date the response acknowledging receipt. The IGC will maintain the original grievance for the inmate's grievance file and a copy will be given to the inmate.

13.6 Appeals to the Responsible Official: If the grievant is not satisfied with the decision of the Warden, the grievant may next appeal to the Deputy Director of Operations for final resolution of the grievance. Matters under the administrative jurisdiction of the Department Director and which do not come within the scope of authority/responsibility of the Deputy Director of Operations may be appealed to the appropriate Office Director or Deputy Director for final review of the grievance. All reviews and/or appeals of any inmate grievance will be allowed automatically without interference from any Department personnel.

13.7 Appeal Process: The grievant may appeal by completing the SCDC Form 10-5a, Step 2 to the IGC within five (5) calendar days of the receipt of the response by the grievant, by placing the Step 2 form in the designated institutional grievance box. Additional pages will not be permitted. All information must be placed on the 10-5a Inmate Grievance Form. The grievant will not write on the back of any Step 1 or Step 2 form. The IGC will forward the original Step 2, a clear copy of the Step 1 grievance, and copies of necessary documentation to the Inmate Grievance Branch within five

(5) calendar days. The Inmate Grievance Branch will confirm receipt of the appeal, conduct any further investigation necessary, prepare a report, and present all available information to the responsible official. The responsible official will render the final decision on the grievance within 90 days from the date that the IGC received the appeal of the Warden's decision. The responsible official's decision will be returned to the IGC. The IGC will then serve the response to the grievant within ten (10) working days and have him/her sign and date it acknowledging receipt. The IGC will maintain the original grievance for the inmate's grievance file and a copy will be given to the inmate. The response of the responsible official will be the Department's final response in the matter. Any action required to implement the Department's final response will require no additional signatures/approval.

13.8 Time Limits: Refer to Section 11 for time limitations on grievance responses.

13.9 ADMINISTRATIVE LAW COURT: As part of the Department's final answer to a grievance, the inmate will be notified that any further appeal must be initiated within 30 days after receipt of the Department's final answer. This appeal must be contained on the South Carolina Administrative Law Court "Notice of Appeal" that will be attached to the Department's final answer and must be sent to the Administrative Law Court. Instructions regarding completion of the form, and information indicating where the form must be sent, will also be provided to the inmate.

13.10 Exceptions to the eight (8) working daytime limit requirement will be made for grievances concerning policies/procedures, and PREA allegations. Exceptions may also be made for incident grievances, provided that the inmate can show reasonable cause, i.e., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc. All exceptions will be determined by the *Agency Inmate Grievance Coordinator/Designee* of the Inmate Grievance Branch.

14. EMERGENCY PROCEDURES:

14.1 An emergency will encompass, but is not limited to, situations, actions, or conditions in which any person's health, safety, or welfare is threatened or in serious danger. It is the responsibility of the grievant to demonstrate the factors creating the substantial risk of personal injury or other serious and irreparable harm. The IGC will fax, or scan and email a copy of the grievance to the *Inmate Grievance Coordinator/Designee*, Inmate Grievance Branch, to determine if a substantial risk or serious harm is present and warrants the grievance being processed as an "emergency."

14.2 Once it is determined that the grievance is an emergency, it will be forwarded immediately to the Warden if resolution of the issue(s) is within the Warden's capability to provide. The Warden will conduct whatever investigation is deemed necessary and will respond to the inmate within no more than seven (7) working days after receipt of the emergency grievance by the IGC. If an emergency grievance involves the safety of an inmate, the Warden will take immediate steps to implement the appropriate precautions or temporary actions without waiting for an investigation to be conducted.

14.3 If a grievance is determined to be an emergency grievance which is not within the Warden's capability to resolve, it will be faxed, or scanned and emailed without substantive review immediately to the *Agency Inmate Grievance Coordinator/Designee*, Inmate Grievance Branch, for review and forwarded to the responsible official. The responsible official will conduct an investigation and will respond to the inmate within seven (7) working days of receipt of the grievance by the IGC. The response will be faxed, or scanned and emailed by the *Agency Inmate Grievance Coordinator*, Inmate Grievance Branch/Designee, to the IGC, who will deliver the response to the inmate and have him/her sign it acknowledging receipt.

14.4 If the grievance is not determined to be an emergency, the IGC will be notified, who will note in his/her response that the grievance was not deemed to be an emergency, and the grievance will then be routinely processed through the system as if it were a normal grievance.

15. GRIEVANCES ALLEGING CRIMINAL ACTIVITY: Any grievance which alleges criminal activity will be referred immediately to the *Agency Inmate Grievance Coordinator/designee*, Inmate Grievance Branch. The IGC will note on the grievance tracking CRT screen that the grievance has been forwarded to the Inmate Grievance Branch for possible investigation by the *Office of Inspector General* and the date on which the grievance was forwarded. The *Agency Inmate Grievance Coordinator/designee*, Inmate Grievance Branch, will consult with the *Office of Inspector General* to determine if a criminal investigation would be appropriate. If deemed appropriate, the grievance will be forwarded to the *Office of Inspector General*, to be handled in accordance with applicable SCDC policies. The grievance will be held in abeyance until the *Office of Inspector General* completes their review/investigation. If it is determined that a criminal investigation is not required, the grievance will be processed in accordance with the procedures contained herein.

15.1 If it is determined by the *Office of Inspector General* that the grievance will be referred to SLED for review/investigation, the grievant will be notified in a Step 1 Warden's response that the grievance has been forwarded to SLED. As the time frame for SLED to conduct an investigation is out of the control of SCDC, the IGC will forward the original grievance to the Inmate Grievance Branch and the grievance will be administratively closed until SCDC receives the final report. The grievant will then receive a Step 2 response to the investigation and will be given an opportunity to appeal to the next level if dissatisfied with the response.

15.2 PRISON RAPE ELIMINATION ACT (PREA):

15.2.1 There will be no time frame for filing a grievance alleging sexual abuse. The inmate will not be required to attempt any informal resolution.

15.2.2 The Agency will provide an Agency final response to any grievances alleging sexual abuse with 90 days of the initial filing of the grievance. The 90 days will not include time consumed by the inmate preparing any administrative appeal. If the grievance cannot be addressed within 90 days, a one-time extension, up to 70 days, may be granted. However, the inmate must be notified in writing of the extension and the date by which the decision will be made. If the inmate does not receive a response in the time allotted for a reply the inmate may consider the absence of a response to be a denial at that level.

15.2.3 Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing grievances for administrative remedies relating to allegations of sexual abuse and shall be permitted to file on behalf of the inmate. However, the inmate must agree in writing, that he/she wishes to have the grievance processed on his/her behalf. If the inmate declines, this decision will be documented on the grievance form. NOTE: Even if the inmate declines, a copy will still be forwarded to the *Office of Inspector General (OIG)* for review.

15.2.4 If the inmate files an emergency grievance showing substantial risk of imminent sexual abuse, the Agency shall immediately forward the grievance to the Warden for response within 48 hours of receipt of the grievance and an Agency final decision shall be provided within five (5) calendar days.

15.2.5 The Agency may discipline an inmate for filing a grievance related to the alleged sexual abuse if there is evidence that the inmate filed the grievance in bad faith.

15.2.6 The IGC will not investigate allegations of a violation of PREA. A copy of any grievance alleging PREA violations will be provided to the PREA Compliance Manager within 24 hours of receipt for investigation and providing recommended responses to grievances. The PREA Compliance Manager will maintain a copy of the grievance and maintain a log of PREA allegation grievances.

15.3 AMERICANS WITH DISABILITIES ACT (ADA) (USA vs. SCDC):

15.3.1 The IGC will be designated as the institutional ADA coordinator for each institution. Duties will include coordinating the integration of inmates with HIV; carrying out ADA responsibilities; ensuring that services, programs, and activities are readily accessible to and usable by inmates with disabilities; and investigating and assisting in resolution of ADA complaints or grievances.

15.3.2 All Request to Staff Member (RTSM) forms concerning ADA violations will be immediately forwarded to the Warden with a copy going to the ADA Coordinator at Central Office for investigation and response.

15.3.3 All ADA grievances will be processed through the Institutional Grievance System within the time frames outlined in section 14, Emergency Procedures.

15.3.4 Discrimination, harassment, intimidation, interference or retaliation against an inmate with a disability, to include (with) HIV, due to filing a grievance or making any other ADA related complaint will result in the responsible employee/inmate receiving disciplinary action. Corrective action information will be provided to the IGC/ADA Coordinator for maintaining records in accordance with USA vs. SCDC.

15.3.5 A separate file will be maintained with a copy of all RTSM and/or grievances filed by inmates alleging HIV discrimination, harassment or any other issue covered by the Consent Decree (USA vs. SCDC) that arises because of their HIV status.

16. ABANDONMENT OF A GRIEVANCE: A grievance will be considered to be abandoned in the following cases:

16.1 The inmate refuses to sign the grievance form at any level of the process; or

16.2 The inmate refuses to actively participate in the resolution process if the inmate's participation is deemed vital to the process; or

16.3 During the serving of any grievance if the inmate's behavior meets any of the criteria of a disciplinary charge under Agency Policy OP-22.14, "Inmate Disciplinary System," the grievance will be closed and disciplinary action may be imposed.

16.4 The inmate refuses to follow through with the IGC's recommendations within five (5) days after the return of the inmate's unprocessed grievance.

16.5 If an inmate escapes any open grievance will be considered abandoned and will be administratively closed.

17. MONITORING, EVALUATION, COMPLAINTS: The Inmate Grievance Branch will serve as monitor to ensure compliance with this policy/procedure. An audit checklist will be conducted by the assigned *RIGM* for each of their respective institutions on an annual basis. The *Agency Inmate Grievance Coordinator/designee*, Inmate Grievance Branch, will arrange for technical assistance in training and coordinating activities related to the inmate grievance procedure at each institution, at the Central Office, and the Training Academy.

17.1 In order to provide continuing evaluation of this policy, the Division of Resource and Information Management will provide monthly reports to the *Agency Inmate Grievance Coordinator*, Inmate Grievance Branch. The format of the reports will be determined by the *Agency Inmate Grievance Coordinator*, Inmate Grievance Branch.

17.2 With the exception of the non-grievable, grievance issues noted in Section 8.5, and any grievance concerning the performance of any IGC *RIGM* must be advanced to the Step 2 level and referred to the *Agency Inmate Grievance Coordinator/designee*, Inmate Grievance Branch, for investigation and response. Time frames for responses are the same as for any Step 2 grievance. A copy of the grievance will be forwarded to the inmate, informing him/her that the grievance has been advanced to the Step 2 level, and forwarded to the Inmate Grievance Branch.

18. PROCEDURES FOR INMATES RELEASED/TRANSFERRED:

18.1 If an inmate is released from the custody of the SCDC and has an open grievance, the grievance will be terminated. Please refer to Section 12 for disposition of the grievance file.

18.2 If a grievant is transferred from one SCDC institution to another while a grievance is in progress, the IGC at the losing institution will forward the inmate's grievance file via confidential, inter-departmental mail to the IGC at the gaining institution within ten (10) working days of the inmate's transfer.

18.3 All grievances that are transferred from one institution to another to be served to the grievant will retain their original grievance numbers. Once the grievance reaches the gaining institution, the IGC has ten (10) working days to serve the Warden's response. The IGC must update the text in the CRT, and notify the IGC at the losing institution of the status of their pending grievance(s) via e-mail or CRT. However, it will still be the responsibility of the IGC at the losing institution to monitor the status of all transferred grievance(s), to ensure the grievance(s) have either been served and closed out in the automated system, or appealed to the Step 2 level.

18.4 When an inmate is transferred and wishes to file an incident grievance involving the losing institution, the IGC at the gaining institution will forward the completed original grievance form along with pertinent documentation within five (5) working days to the institutional designee at the losing institution to have a number assigned, who will then forward the grievance to the IGC to process.

18.5 If it is determined by the IGC at the gaining institution that the grievance is non-grievable or has violated time frames for filing a grievance, the grievance will be closed, filed as unprocessed and a copy of the grievance returned to the inmate.

18.6 If a grievant is transferred as a result of a disciplinary hearing and then files a grievance after being convicted, the grievance will be processed by the IGC where the disciplinary hearing took place.

18.7 The serving of any grievance that is filed by a grievant who has been transferred to Gilliam Psychiatric Hospital, an outside hospital, crisis intervention, or any area outside the control of SCDC, (i.e. court appearance or other jurisdiction) will be held in abeyance until the inmate has been returned to their assigned institution. The IGC will then serve the grievance within five (5) working days and all appeal rights will commence.

18.8 Any condition not referenced above will be referred to the *Agency Inmate Grievance Coordinator*, Inmate Grievance Branch, for resolution.

19. DEFINITIONS:

ADA, as used, refers to the Americans with Disabilities Act, as well as matters under Section 504 of the Rehabilitation Act. Refer to SCDC Policy OP-22.15, "Inmate Governance," for the definition of what is considered a disability.

CRIPA refers to the Civil Rights of Institutionalized Persons Act.

Criminal Activity refers to any illegal activity to include sexual misconduct, staff assaults, transfer of drugs/contraband, etc.

Days refers to calendar days, unless otherwise stated.

Emergency Grievance refers to any complaint which, if handled according to the regular time limits required by the inmate grievance system, would subject an inmate to substantial risk of personal injury or to other serious and irreparable harm.

Grievance refers to a formal complaint limited to matters affecting the complaining inmate and to matters that the Department has the authority to remedy.

Limitation refers to a sanction imposed on a grievant found to be abusing or misusing the inmate grievance system. Inmates subjected to a limitation may still utilize the grievance system for processing other legitimate grievances that do not relate to the matter(s) for which the limitation was imposed. Exceptions may be made to a limitation pursuant to Department policy/procedure.

Misuse/Abuse of the Grievance System refers to the repetitive filing of grievances on the same matter; filing of grievances that contain vulgar, indecent, or offensively insulting language; filing of grievances that agitate, harass, disrupt, or irritate by petty provocation or are not designed to lead to any practical result; and filing of grievances by grievants who knowingly make false statements to SCDC personnel for the purpose of harming another person.

Other refers to actions taken/responses provided by Inmate Grievance staff deemed appropriate to address the present concern of appeals submitted by grievants.

PREA refers to the Prison Rape Elimination Act.

Processed Grievance refers to a grievance that has been reviewed and investigated by Inmate Grievance Department staff and received a Wardens Decision (decision). Processed grievances permit grievant to appeal to the Step 2 Grievance (grievance) level for review by the responsible official that will render the final decision on the grievance.

State-like item refers to an item which can be purchased in the institution canteen, or is issued by the commissary.

Unprocessed Grievance refers to a grievance that has been reviewed by Inmate Grievance Department staff but did not qualify pursuant to SCDC Policy GA-01.12 Inmate Grievance System to receive a Wardens Decision (decision), and consequently returned to the grievant.

SIGNATURE ON FILE

s/Bryan P. Stirling, Director

Date

ORIGINAL SIGNED COPY MAINTAINED IN THE OFFICE OF POLICY DEVELOPMENT.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Bobby Gibson, Jr., #171440,)
)
Appellant.)
)
v.)
)
South Carolina Department of Corrections.)
)
Respondent.)
_____)

Docket No. 23-ALJ-04-0526-AP

ORDER OF REMAND **RECEIVED**

JUN 26 2024

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Bobby Gibson Jr. (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant appeals the Department’s final decision finding Appellant was correctly paid the statutory prevailing wage while working as part of the Prison Industry Enhancement Certification Program (PIECP or Program) at Tyger River Correctional Institution from July 2016 to March 2017 and at Evans Correctional Institution from approximately September 2019 to June 2023.

On June 28, 2023, Appellant filed an Automated Request to Staff Member (ARTSM) asking why did not receive prevailing wage pay for his work in the Program. On June 29, 2023, Appellant filed a Step 1 Grievance on June 29, 2023, asserting more specifically that the Department was paying him less than the prevailing wage as required under *Torrence v. South Carolina Department of Corrections*¹ and section 24-3-430 of the South Carolina Code.² Appellant’s Step 1 Grievance was elevated to the Step 2 level. On October 25, 2023, the Warden

¹ *Torrence v. South Carolina Department of Corrections*, 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021), *reh’g denied* (Aug. 4, 2021), *cert. denied* (Aug. 3, 2022). In this case, the South Carolina Court of Appeals determined the definition of the statutory term “prevailing wage” in the context of inmate pay to conclude an inmate was entitled to the difference between what the Department actually paid him and the “prevailing wage” that the Department should have paid him. *Id.*

² “In 1995, the South Carolina legislature enacted section 24-3-430 of the South Carolina Code (2007) to authorize the expansion of the Prison Industries program into the private sector. This expansion allowed qualified private entities to use inmate labor but required the wages for participating inmates to be no less than ‘the prevailing wage for work of [a] similar nature in the private sector.’ Act No. 7, 1995 S.C. Acts 78. Section 24-3-430 became effective on July 1, 1995. *Id.* at 102.” *Gatewood v. S.C. Dep’t of Corr.*, 416 S.C. 304, 309, 785 S.E.2d 600, 603 (Ct. App. 2016).

denied Appellant's Step 2 Grievance, finding it was untimely pursuant to SCDC Policy ADM-15.13 Section 12.1 because it was filed more than fifteen days after *Torrence* was issued.

On November 7, 2023, Appellant filed a Notice of Appeal with this Court, and the case was assigned on December 1, 2023. Appellant filed his brief on January 9, 2024. On February 9, 2024, the day the Record on Appeal was due, the Department filed a Motion for Extension of Time to file the Record. On February 13, 2024, the Court issued an order, providing the Department with a forty-five (45) day extension to file the Record. The Court also gave Appellant the opportunity to file a supplemental brief and then ordered the Department to file its brief thirty days from the date Appellant filed his brief. On April 3, 2024, the Department filed the Record. On April 25, 2024, Appellant filed a supplemental brief. As of the date of this Order, which is more than thirty days after Appellant filed his brief, the Department has not filed its brief.³

JURISDICTION

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. South Carolina Department of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003). Furthermore, in *Wicker v. South Carolina Department of Corrections*, the Supreme Court held that this Court has jurisdiction to hear inmate wage claim grievances in the limited circumstance where the state has created a statutory right to that wage. 360 S.C. 421, 423–24, 602 S.E.2d 56, 57 (2004) (“We find that where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law.”).

DISCUSSION

In his original brief, Appellant raised three issues: (1) whether the Department violated his statutory right to the prevailing wage pursuant to section 24-3-430(D) of the South Carolina Code; (2) whether the Department violated his statutory rights pursuant to section 24-3-315 of the South

³ This is not the only case in which the Department has failed to timely file a brief. Pursuant to SCALC Rule 62, “Upon motion of any party, or on its own motion, an Administrative Law Judge may dismiss an appeal or **resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits** provided by this section (V), or for the failure to provide a factual basis for each expressly and specifically asserted constitutional violation as prescribed by Rule 59(B).” (emphasis added).

Carolina Code; and (3) whether the Department violated his statutory rights pursuant to section 24-3-40 of the South Carolina Code. Thereafter, in his supplemental brief, Appellant raised a sub-issue of his prevailing wage claim, arguing the Department erred in finding his grievance untimely under SCDC Policy ADM-15.13. Only Appellant's prevailing wage issue and related sub-issue are preserved for this Court's review because Appellant failed to raise a concern under section 24-3-315 or section 24-3-430(D) to the Department. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

Regarding the issue that is before the Court, Appellant requests to be paid the prevailing wage under section 24-3-430(D) for his work in the Program from approximately July 2016 to March 2017 and September 2019 to June 2023. There is no dispute that Appellant is entitled to the statutory prevailing wage under section 24-3-430(D) of the South Carolina Code, as it was defined in *Torrence*, for any work in the Program going forward. Rather, the question is whether Appellant can claim reimbursement for any difference between what he was paid and the prevailing wage for the entire time he worked in the Program or whether some of his claim is barred under SCDC policies.

SCDC Policy

The Department denied Appellant's grievance as untimely pursuant to SCDC Policy ADM-15.13. Specifically, the Department found Appellant failed to file his prevailing wage claim within fifteen days of the date *Torrence* was decided. I conclude the Department has improperly determined timeliness from the date *Torrence* was issued instead of using the date of the payroll error as directed in SCDC Policy ADM-15.13 Section 12.1.

SCDC Policy ADM-15.13 Section 12.1 addresses problems with pay and is not part of the general policies governing inmate grievance procedures. The current version of this policy, which has been in effect since June 2014, provides the following:

12. PROBLEMS WITH PAY:

12.1 Inmates must report any problems in their pay to their institution's inmate pay designee utilizing the Automated Request to Staff Member (ARTSM) **within 15 days of the payroll date error**. The inmate should maintain a record of the ARTSM reference number. The inmate pay designee will review the case and

determine whether any additional pay is owed. Payroll corrections will be limited to the following:

- If the inmate fails to notify the Agency in writing and within 15 days, no back pay will be given.
- The pay rate will be adjusted to the proper rate amount for future payrolls in accordance with these procedures.
- The inmate may receive additional pay owed for the previous two (2) pay periods only.

SCDC Policy ADM-15.13, Section 12.1 (June 3, 2014) (emphasis added). Appellant began participating in the Program in July of 2016; therefore, the current version of SCDC Policy ADM-15.13 is applicable to his claim.⁴

Here, in its Step 2 decision, the Department determined Appellant was not entitled to back pay because he failed to notify the Department of any problems with his prison industries pay within fifteen days of the date *Torrence* was issued. This interpretation is counter to the plain language of the SCDC Policy ADM-15.13, which states the inmate must report a problem with pay “within 15 days of **the payroll date error.**” (emphasis added); see *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute.”). Moreover, the Department’s interpretation would render all inmate issues with pay, no matter their genesis, untimely unless they were filed within fifteen days of the *Torrence* decision. See *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342–43, 713 S.E.2d 278, 283 (2011) (“Courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.”). Therefore, the Department’s determination that Appellant’s claim was untimely was based upon an erroneous application of its policy.

⁴ This policy has applied to all forms of inmate pay, including wages earned through the Program, and has been in place since January 20, 1998. See SCDC Policy ADM-15.13 Policy Statement. Although this policy has been amended multiple times, the pertinent language in the fifteen-day provision has remained the same. See SCDC Policy ADM-15.13, Section 12.1 (2014).

Although the Department erred in finding Appellant's entire claim was untimely, Appellant is nevertheless not entitled to backpay for the entire time he worked in the Program under SCDC Policy ADM-15.13. This policy only allows an inmate to claim "additional pay owed for the previous two (2) pay periods." SCDC Policy ADM-15.13, Section 12.1. Appellant filed his ARTSM on June 28, 2023. Therefore, he is entitled to receive back pay to bring his pay rate up to the prevailing wage under section 24-3-430(D) for the previous two pay periods before June 28, 2023. *Id.*

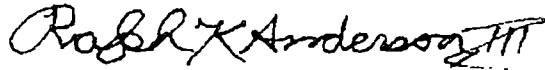
Finally, in his supplemental brief, Appellant argues the fifteen-day filing rule in SCDC Policy ADM-15.13, Section 12.1, does not apply under *Torrence* because prevailing wage claims involve "department policies [sic] and procedure rather than an isolated incident." Appellant refers to the South Carolina Court of Appeals' holding in *Torrence* that the inmate did not have to file a grievance within fifteen days because his issue involved a "policy or procedure" and not an "incident." *Torrence*, 433 S.C. at 645, 861 S.E.2d at 43 ("Because *Torrence's* claims involve continuous conditions potentially affecting numerous inmates, we find *Torrence's* grievance involves Department policies and procedures, rather than an isolated incident."). Although Policy ADM-15.13 was in effect at the time the inmate in *Torrence* filed his Step 1 grievance, this policy was not raised to the court of appeals and, thus, the court of appeals did not analyze the implications of this policy. Because Section 12.1 of Policy ADM-15.13 specifically directly addresses when and how an inmate may question their inmate pay, including wages earned through PIECP, I find no need to resort to the exception to the general grievance timeframe utilized by the court of appeals. Thus, if an inmate has a question about their pay or believes there is an error in their pay, they must timely file an initial claim through the ARTSM under SCDC Policy ADM-15.13, Section 12.1, before pursuing a grievance if the pay error is not resolved.

In conclusion, pursuant to SCDC Policy ADM-15.13, Section 12.1, Appellant is entitled to "additional pay owed for the previous two (2) pay periods" prior to notifying the Department of the problem with his pay through the ARTSM on June 28, 2023. SCDC Policy ADM-15.13, § 12.1.

IT IS THEREFORE ORDERED that the matter is **REMANDED** to the South Carolina Department of Corrections.

IT IS FURTHER ORDERED that the Department has a period of ninety (90) days to calculate and remit to Appellant the additional pay owed to Appellant under the prevailing wage statute (S.C. Code Ann. § 24-3-430(D)) for the two pay periods prior to June 28, 2023.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

June 13, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Perez
Judicial Law Clerk

June 13, 2024
Columbia, South Carolina

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 5, 2025,

BY: Bobby Thibodeau
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