STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Marion Katrell Campbell, on behalf of himself and all others similarly situated, **Plaintiff,** **vs.** **South Carolina Department of Corrections,** **Defendant.**	)	**C.A. NO. 2020-CP-40-05532**
Wardell Williams, Harry Simmons, Jr., and Isiah Rollins, **Plaintiffs,** **vs.** **South Carolina Department of Corrections,** **Defendant.**	)	**C.A. No. 2020-CP-40-04701**
Larry Hampton, Christopher McDowell, David Payton, Jr., and Michael Smoak, **Plaintiffs,** **vs.** **South Carolina Department of Corrections,** **Defendant.**	)	**C.A. No. 2020-CP-40-05660**

Henry Belton,	)	**C.A. No. 2017-CP-40-0556**
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
	)	
South Carolina Department of Corrections,	)	
	)	
	)	
Defendant.	)	
	)	

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This matter came before the Court for hearing on February 12, 2025 on cross-motions for summary judgment. Arguments by counsel were heard and the parties each submitted proposed orders for the Court's consideration.

PROCEDURAL HISTORY

By way of background, in August 2016 this matter was filed as a putative class action in the Charleston County Court of Common Pleas. It was then removed to South Carolina District Court. After a period of discovery, the South Carolina Department of Corrections [hereinafter "SCDC"] and individual Defendants David Stirling, Chris Florian and David Tatarsky, all moved for summary judgment. U.S. Magistrate Kevin McDonald issued his Report and Recommendation [R & R], recommending that the Defendants' Motions for Summary Judgment be granted. District Judge Mary Lewis issued a text order in which she ruled:

> Cambell has indicated he does not oppose dismissal of his constitutional claims against Stirling. Accordingly, SCDC and Stirling's motion for summary judgment is GRANTED as to Campbell's constitutional claims against Stirling and

> DISMISSED WITHOUT PREJUDICE with leave to refile as to his state claims against SCDC.

(emphasis added).

Judge Lewis issued a written order rejecting the Magistrate Judge's R & R as to the constitutional claims against Defendants Florian and Tatarsky and denying their Motion for Summary Judgment. Those Defendants appealed the ruling to the Fourth Circuit Court of Appeals. In the interim, the District Court stayed the state law claims against SCDC pending the appeal.

The Fourth Circuit reversed the District Court's denial of summary judgment on the constitutional claims against Defendants Florian and Tatarsky. Judge Lewis then declined to exercise supplemental jurisdiction over the state law claims and remanded those claims back to Charleston County. Venue was transferred by consent to the Richland County Court of Common Pleas.

Several additional actions stating similar claims were consolidated. The undersigned was appointed to preside over the consolidated cases. This Court conditionally certified the consolidated case as a class action on November 19, 2021. Plaintiffs notified the Court on August 15, 2022, that they had complied with all class notice requirements. Thereafter, the parties agreed to submit the consolidated case for decision on cross-motions for summary judgment.

The parties filed their Motions for Summary Judgment, together with supporting and opposing memoranda, in August and September 2024.

NATURE OF THE CLAIMS

During the 2010 legislative session, the South Carolina General Assembly passed the Omnibus Crime Reduction and Sentencing Reform Act ["the Omnibus Act" or "the Act"]. This historic legislation was passed, in part, for the express purpose of removing obstacles to early release for inmates convicted of certain non-violent crimes. The Act sought to employ "evidence-

based practices for smarter use of correctional funding and to improve public safety." Act No. 273, South Carolina General Assembly 118th Session, 2009-2010, June 2, 2010, Part 1, Section 1. "[O]ne of the Act's objectives is to conserve taxpayer dollars by allowing earlier release dates for inmates convicted of less serious offenses." Bolin v. S.C. Dep't of Corr., 415 S.C. 276, 285, 781 S.E.2d 914, 918 (Ct. App. 2016).

The Omnibus Act also provided, in pertinent part, "[n]otwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits." 2010 Act No. 273 § 38.

The Act made many offenses that were previously "no-parole" offenses parole eligible. This distinction between parolable and no-parole offenses was critical. No-parole offenders were not eligible for "early release, discharge, or community supervision" until they "served at least eighty-five percent of the actual term of imprisonment imposed." S.C. Code Ann. § 24-13-150 [the 85% rule]. No-parole offenders earned significantly fewer credits for good conduct, work, or education than other offenders.[1] No-parole offenders were required to participate in a community supervision program before their sentences were considered completed and were required to serve 80% of their sentences before they were eligible for work release. See Bolin, 415 S.C. at 281, 781 S.E.2d at 916. In furtherance of the express legislative intent, the Omnibus Act targeted these previously no-parole offenders for earlier release.

[1] "[T]here is stark contrast between the credits allowed for inmates convicted of parolable offenses and the credits allowed for no-parole offenders." Bolin, 415 S.C. at 285, 781 S.E.2d at 918.

SCDC was responsible for implementing the Omnibus Act. In the wake of the Act's passage, SCDC reviewed the new law and decided that inmates in the impacted categories of offenses would still be treated as no-parole offenders and subject to the 85% rule if denied parole.

Kevin Fowler was an inmate of SCDC who pled guilty in 2012 to the commission of a drug offense that when committed was a no-parole offense. SCDC treated Fowler as a no-parole offender. He filed a grievance on November 3, 2013, asserting that his sentence was not subject to the 85% service requirement pursuant to the Omnibus Act. After SCDC denied Fowler relief, the matter was heard by Administrative Law Judge Phillip Lenski. Judge Lenski issued an order on August 28, 2014, strongly disapproving of what he termed SCDC's "specious argument":

> The court finds specious the argument put forth in SCDC's brief that nothing in the 2010 amendment to §44-53-370(b)(1) is incompatible with the Department's interpretation that after 2010, an offender convicted of distribution of a controlled substance pursuant to the subsection must still serve 85% of his sentence before he is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good time credits. . . . To accept SCDC's interpretation of the §44-53-370(b)(1) amendment would be to hold that the General Assembly amended the statute for no purpose whatsoever. Such an interpretation is unreasonable.

(emphasis added).

Another inmate, Michael Bolin, also filed a grievance contending that the Act made his offense parole eligible. However, the Administrative Law Judge who heard his appeal affirmed SCDC's decision to impose the 85% rule on his sentence.

Bolin appealed the ALC decision and SCDC appealed the Fowler ALC decision. The Court of Appeals reversed the ALC in Bolin and affirmed the ALC in Fowler, agreeing with ALJ Lenski. It held that the Omnibus Act rendered the 85% rule inapplicable to these inmates' sentences. It further concluded that SCDC's application of the Act was "unreasonable" and "patently erroneous." Bolin, 415 S.C. at 280, 284, 781 S.E.2d at 916, 918. In the wake of the Bolin and

Fowler decisions, SCDC released over 400 inmates in two separate mass releases in March and June of 2016, some six years after the Omnibus Act went into effect.

Plaintiffs and the class members contend that because SCDC misapplied the Omnibus Act for years, it caused them to remain incarcerated past their max-out release dates for excess periods ranging from days to years. According to Plaintiffs, the total days of excess incarceration for the class members, derived from SCDC's data recalculating release dates, exceeds 185,000 days.

Plaintiffs' causes of action remaining after remand from the District Court are state law claims for false imprisonment and negligence/gross negligence/recklessness. Plaintiffs have moved for summary judgment in their favor as to the false imprisonment claim. Defendant has moved for summary judgment as to all of Plaintiffs' claims.

STANDARD GOVERNING MOTIONS FOR SUMMARY JUDGMENT

A motion for summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; Hawkins v. City of Greenville, 358 S.C. 280, 288, 594 S.E.2d 557, 561 (Ct. App. 2004); Trivelas v. S.C. Dep't of Transp., 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct. App. 2001); Wells v. City of Lynchburg, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998); see also, Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997).

Summary judgment is not solely a defensive mechanism. Rule 56 expressly contemplates the availability of summary judgment to a claimant. Rule 56(a), SCRCP. Regardless of who ultimately is responsible for proof and persuasion, the party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party has met

that burden, the nonmoving party must come forward and demonstrate that such an issue does exist. Id.

I. PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs and the class move for summary judgment on their claim for false imprisonment. After careful review of the extensive record and briefing, and hearing arguments of counsel on the issues, the Court finds that there is no genuine issue as to the material facts necessary to prove Plaintiffs' claims of false imprisonment and they are entitled to judgment as a matter of law.

SUMMARY OF UNDISPUTED FACTS PERTINENT TO FALSE IMPRISONMENT

SCDC's Responses to Plaintiffs' First and Second Requests to Admit are filed with this Court as Exhibits E and F to Plaintiffs' Motion for Summary Judgment. SCDC is bound by key admissions memorialized in their Responses:

- SCDC admits that inmates have fully served out their incarceration to completion as of the properly calculated max-out dates. (Ex. E to Plaintiffs' Motion for Summary Judgment. ¶ 1).

- SCDC admits that it detained in custody the inmates listed in Ex. A to Plaintiffs' First Requests to Admit until March 21, 2016 [the "March Releasees"] and the inmates listed in Ex. B to Plaintiffs' First Requests to Admit until June 1, 2016 [the "June Releasees"]. (Ex. E to Plaintiffs' Motion for Summary Judgment, ¶¶ 9, 12).

- SCDC has admitted the contents of a list of max-out sentence and supervised release dates for each March and June Releasee, as properly calculated pursuant to the Omnibus Act. (Ex. F to Plaintiffs' Motion for Summary Judgment, ¶¶ 5, 6).

- SCDC admits it continued to incarcerate the March Releasees after their recalculated max-out or SR dates. (Ex. E to Plaintiffs' Motion for Summary Judgment, ¶ 22).

- SCDC admits it continued to incarcerate the June Releasees after their recalculated "New Dates" or SR Dates. (Ex. E to Plaintiffs' Motion for Summary Judgment, ¶ 23).

- SCDC admits the contents of a list stating the specific number of days that it continued to incarcerate each March and June Releasee beyond his or her properly calculated max-out date. (Ex. E to Plaintiffs' Motion for Summary Judgment, ¶ ¶ 50, 52).

The admissions of SCDC, which are taken as undisputed facts, establish the properly calculated max-out date when each class member should have been released from custody by SCDC. The admissions also verify the date each class member was actually released. Accordingly, there is no genuine issue of fact with regard to the detention of class members for varying time periods beyond the dates their sentences maxed out or they were entitled to supervised release.

SCDC also admits it was "charged with calculating sentences and release dates in accordance with statutory law enacted by the South Carolina Legislature." (Ex. E to Plaintiffs' Motion for Summary Judgment, ¶ 67). It admits that it had no probable cause, other than the fully completed original sentencing, to detain the March Releasees and June Releasees beyond their properly calculated release dates through the dates of their actual release. (Ex. E to Plaintiffs' Motion for Summary Judgment, ¶¶ 30, 31). SCDC admits that "reasonable corrections officials would not believe it permissible to require inmates to remain in custody beyond their max-out sentence release dates." (Ex. F to Plaintiffs' Motion for Summary Judgment, ¶ 15).

In addition, SCDC admits it is bound by the holdings of the South Carolina Court of Appeals in Bolin. (Ex. E to Plaintiffs' Motion for Summary Judgment, ¶¶ 44–47). The Court of Appeals concluded that SCDC acted unreasonably in characterizing offenses for which the offender is parole eligible as no-parole offenses. Bolin, 415 S.C. at 284, 781 S.E.2d at 918. The Court of Appeals further concluded that SCDC's application of the Omnibus Act was "patently erroneous." Bolin, 415 S.C. at 280, 781 S.E.2d at 916. The Court of Appeals also held that SCDC's application of the Omnibus Act ignored the purpose of the Act. Bolin, 415 S.C. at 285, 781 S.E.2d at 918.

AUTHORITIES

The Fourth Circuit Court of Appeals' opinion disposed of federal claims and eliminated the individual Defendants from the case. Plaintiffs' state law claims against SCDC were not a part of the appellate proceedings. It is those state law claims that are now before this Court to be decided pursuant to the case law and authority of the South Carolina Supreme Court and the South Carolina Court of Appeals.[2]

A. Plaintiff's False Imprisonment Claims.

Under South Carolina law, false imprisonment is the unlawful restraint of an individual's liberty or freedom of locomotion. Thompson v. Smith, 289 S.C. 334, 337, 345 S.E.2d 500, 502 (Ct. App. 1986), overruled on other grounds by Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990). The tort exists to protect each citizen's personal interest in freedom, as a matter of right, from restraint of movement. Id.

South Carolina case law addressing false imprisonment arises most frequently in the context of false arrest, which is a species of false imprisonment. Carter v. Bryant, 429 S.C. 298, 306, 838 S.E.2d 523, 527 (Ct. App. 2020), cert. denied (S.C. Oct. 19, 2020) ("False arrest and false imprisonment overlap; the former is a species of the latter." (quoting Wallace v. Kato, 549 U.S. 384, 388 (2007)).

False imprisonment is a broader concept than false arrest. False imprisonment embodies any "unlawful restraint or detention of another against his will, without authority of law, by actual

[2] SCDC focused much of its written argument on quoting the R & R of Magistrate Judge McDonald. The R & R has no weight in this proceeding. Even if not outright rejected by the District Court on the state law claims, the R & R was certainly not adopted. It was clearly superseded by the District Court's dismissal of SCDC's Motion for Summary Judgement, with leave to refile.

force or reasonably apprehended force." State v. Bernstein, 295 S.C. 52, 54, 367 S.E.2d 152, 153 (1988), quoting C.J.S. False Imprisonment §71 (1960) (emphasis added).

To establish a claim for false imprisonment, a plaintiff must prove that (1) the defendant restrained the plaintiff; (2) that the restraint was intentional; and (3) that the restraint was unlawful. Jones by Robinson v. Winn-Dixie Greenville, Inc., 318 S.C. 171, 175, 456 S.E.2d 429, 432 (1995).

The first two elements of false imprisonment are clearly established in this case by SCDC's admissions. Plaintiff class members were intentionally restrained by SCDC until the dates of the mass releases described above. Those releases were beyond the properly calculated max-out release dates for each member of the class, which SCDC does not deny at least with regard to the March Releasees.[3] Given these admissions, only the concept of unlawful detention remains to be resolved.

1. *The unlawfulness of the detention of the impacted inmates was decided by the Bolin court.*

SCDC detained Plaintiffs and the members of the class in prison for periods beyond their properly calculated max-out dates by misapplying the 85% no-parole service requirement and posting sentence reduction credits at the greatly reduced rate for no-parole offenses. The South Carolina Court of Appeals ruled that those actions were not in accordance with the law, reversing the underlying ALC decision in Bolin, supra.

The Court of Appeals acknowledged in Bolin that ALC decisions should generally be accorded "the most respectful consideration." Bolin, 415 S.C. at 280, 781 S.E. 2d at 916. Despite that "most respectful consideration," the Court of Appeals concluded that even this highly

[3] As noted, SCDC admitted the application of the Omnibus Act to the June Releasees in its responses to the Requests to Admit but denied its application to those inmates in its briefing. The Court will address SCDC's argument as to the June Releasees infra.

deferential standard "affords no basis for the perpetuation of a patently erroneous application of the statute." Id., citing State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575–76 (2010) (emphasis added). The Court of Appeals also concluded:

> [I]t is unreasonable to characterize an offense for which the offender is eligible for parole as a no-parole offense pursuant to section 24-13-100, even if the maximum sentence for the offense places it within a category encompassed by section 23-13-100.

Bolin, 415 S.C. at 284, 781 S.E.2d at 918 (emphasis added).

The Bolin Court thus concluded that SCDC's application of the Omnibus Act to perpetuate no-parole status for newly parolable offenses was unreasonable and patently erroneous. Plaintiffs and the class members were held in prison contrary to the applicable law. The lawfulness of a detention is governed by an objective standard. See, e.g., State v. Davis, 438 S.C. 444, 456, 884 S.E.2d 185, 191 (Ct. App. 2022). Acting contrary to law, by any definition, is unlawful. SCDC's application of the Act was patently erroneous as detailed in Bolin and, therefore, objectively unlawful. This Court concurs with the findings of Bolin.[4]

SCDC argues that the findings of the Court of Appeals are mere dicta. Dicta is language that is "not essential to the decision." Nash v. Tindall Corp., 375 S.C. 36, 40–41, 650 S.E.2d 81, 83 (Ct. App. 2007) citing Black's Law Dictionary 465 (7th ed. 1999). The Court of Appeals' characterizations of SCDC's actions as "patently erroneous" and "unreasonable" were clearly

[4] Plaintiffs have quoted SCDC's federal court briefing in which SCDC accused the Court of Appeals in Bolin of "characterize[ing] any opinion contrary to its own as being 'patently erroneous' and 'unreasonable.'" SCDC also apparently deemed the language used by the Court of Appeals as merely "intended to bolster its own decision on the issue of statutory construction." This Court rejects SCDC's characterization of the Court of Appeals' thoughtful and well-reasoned opinion.

necessary to overcome the deferential standard it otherwise would have accorded the ALC decision. The Court of Appeals' conclusions were not dicta.

Knowing that it is bound by Bolin, SCDC urges a finding that its prolonged incarceration of the impacted inmates was lawful until a court, in a final, binding decision, said it was not. SCDC argued that newly passed statutes must be implemented, in essence, through a two-step process, with passage of an act by the Legislature, followed by judicial ratification. SCDC's position is directly contrary to long-standing South Carolina decisions, as well as basic precepts of American law.[5]

2. Prospective application of the Bolin decision is not supported by the case law.

Judicial decisions, unlike non-remedial statutory enactments, are generally retroactive in application. That is because courts, unlike legislatures, do not make but merely find the law. Stated another way, courts, in issuing decisions, enunciate the law as it has always existed. This basic principle of jurisprudence has governed South Carolina judicial decision-making for close to 150 years. See Roof v. Railroad Co., 4 S.C. 61, 63 (1872). Modern courts describe the rule regarding retroactivity of judicial decisions this way:

> The general rule regarding retroactive application of judicial decisions is that decisions creating new substantive rights have prospective effect only, whereas decisions creating new remedies to vindicate existing rights are applied retrospectively. Toth v. Square D Co., 298 S.C. 6, 8, 377 S.E.2d 584, 585 (1989).

[5] See S.C. Const. art. 1, § 8 ("In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other."). See also 1 Blackstone, Commentaries 69 (15th ed. 1809) (stating that the duty of the court is not "to pronounce a new law, but to maintain and expound the old one"); Schoolhouse Rock!, "I'm Just a Bill," Season 3, Episode 5 (March 27, 1976) available at https://www.youtube.com/watch?v=SZ8psP4S6BQ (illustrating procedure of legislative enactments).

> Prospective application is required when liability is created where none formerly existed. Id.

Simmons v. S.C. Farm Bureau Mut. Ins. Co., 301 S.C. 267, 269–70, 391 S.E.2d 560, 562 (1990).

The retroactivity of judicial decisions has been applied in myriad contexts in South Carolina. See, e.g., Miranda C. v. Nissan Motor Co., 402 S.C. 577, 586, 741 S.E.2d 34, 39 (Ct. App. 2013); Carolina Chloride, Inc. v. S.C. Dep't of Transp., 391 S.C. 429, 433–34, 706 S.E.2d 501, 503 (2011); Osborne v. Adams, 346 S.C. 4, 12–13, 550 S.E.2d 319, 323–24 (2001); Toth v. Square D. Co., 298 S.C. 6, 10, 377 S.E.2d 584, 587 (1989); Osborne v. Adams, 346 S.C. 4, 13, 550 S.E.2d 319, 324 (2001); Carolina Chloride, Inc. v. S.C. Dep't of Transp., 391 S.C. 429, 434, 706 S.E.2d 501, 503 (2011).

Judicial decisions in civil cases are, in fact, presumptively retroactive. Miranda C. v. Nissan Motor Co., supra, citing Harper v. Va. Dep't of Taxation, 509 U.S. 86, 95–96, 113 S.Ct. 2510, 125 L.Ed.2d 74 (1993).[6]

The Bolin Court did not overrule long-standing precedent. It did not abrogate a law by declaring it unconstitutional, implicating rights and relationships that arose under the voided statute. The Bolin decision did not create new liability for SCDC where none previously existed as false imprisonment has been a viable claim against the state for decades. The South Carolina Court of Appeals simply affirmed the clear meaning of a six (6) year-old statute that had been misapplied since its inception in an unreasonable and patently erroneous fashion, ignoring express legislative intent.

[6] Parole proceedings are not criminal proceedings and are most akin to civil cases. See Madison v. Craven, 144 Idaho 696, 701, 169 P.3d 284, 289 (Ct. App. 2007); Reynolds v. Missouri Bd. of Prob. & Parole, 468 S.W.3d 413, 416 (Mo. Ct. App. 2015) ("Proceedings challenging conditional release extensions and parole determinations are civil proceedings, not criminal proceedings.").

All impacted inmates had a right commencing on June 2, 2010, the effective date of the Omnibus Act, to a proper calculation of their sentence max-out dates under that Act's terms. The Bolin decision did not create new rights for these impacted inmates but merely vindicated their existing rights to proper application of service reduction credits and determination of their max-out release dates unhindered by a non-applicable 85% service requirement.

The government is not privileged to violate and continue violating a law until a court tells it to stop. The proper application of a duly passed legislative enactment is not suspended while litigants argue over the meaning of plain words. SCDC cannot substitute the appellate remittitur date in Bolin for the effective date set forth in the Omnibus Act, to fast-forward implementation to April 1, 2016. "An administrative agency has only the powers conferred on it by law and must act within the authority created for that purpose." Jack's Custom Cycles, Inc. v. S.C. Dep't of Revenue, 439 S.C. 35, 47–48, 885 S.E.2d 433, 440 (Ct. App. 2023), reh'g denied (Apr. 26, 2023) (quoting SGM-Moonglo, Inc. v. S.C. Dep't of Revenue, 378 S.C. 293, 295, 662 S.E.2d 487, 488 (Ct. App. 2008). SCDC did not act within that authority.

3. *A detention, though legal at inception, may become unlawful so as to support a false imprisonment claim.*

SCDC has also argued that because each impacted inmate's original incarceration was lawful, it could not become unlawful. However, it is self-evident that when these inmates' sentences were completed, any lawful justification for confinement ended. See, e.g., Bennett v. Ohio Dep't of Rehab. & Corr., 60 Ohio St. 3d 107, 109, 573 N.E.2d 633, 636 (1991):[7]

> It is clear that a person who intentionally confines another cannot escape liability by arguing that he or she was initially privileged to impose the confinement. Once

[7] SCDC also tries to characterize the detention of these inmates until the Bolin remittitur was issued as lawful merely because the Bolin appeal was pending until then. However, Plaintiffs and class members were not parties to the Bolin proceeding. Their rights were governed solely by the Omnibus Act commencing on its effective date.

> the initial privilege expires, the justification for continued confinement expires and possible liability for false imprisonment begins.

Put another way, it was the province of the Legislature to pass a law that modified the parameters of these inmates' confinement, which is exactly what it did. It was the province of SCDC to follow that law. It did not. All elements of false imprisonment are therefore met and proved based on admitted facts and binding appellate court conclusions.

4. The Omnibus Act's retroactive application.

Contrary to its admissions, SCDC argues that the June Releasees were not subject to the Omnibus Act because they were sentenced prior to its effective date. It asks the Court to consider its mass release of the June Releasees as voluntary and not required by the Omnibus Act. SCDC's admissions foreclose that argument.

SCDC admitted that "[t]he max-out sentence release dates for the inmates listed in Ex. B [the June Releasees], properly calculated pursuant to the Omnibus Crime Reduction and Sentencing Reform Act of 2010, is listed under the column 'NEW DATE.'" (Ex. F to Plaintiff's Motion for Summary Judgment, ¶ 6 (emphasis added)). On its face, this is an admission by SCDC that the June Releasees were entitled to have their sentences "properly recalculated" under the Omnibus Act. SCDC also admitted the specific number of days each June Releasee was incarcerated beyond his or her max-out or supervised reentry date. (Ex. E to Plaintiff's Motion for Summary Judgment, ¶ 52). SCDC admitted this without qualification. These admissions are patently inconsistent with SCDC's position that the June Releasees "were never entitled to the sentencing changes . . . but SCDC released them anyway." These admissions bind SCDC.

In addition, under South Carolina law, "[a] statute is remedial and applies retroactively when it creates new remedies for existing rights or enlarges rights of persons under disability. . . ." Wiesart v. Stewart, 379 S.C. 300, 303, 665 S.E.2d 187, 188 (Ct. App. 2008) (citing Hercules Inc.

v. South Carolina Tax Comm'n, 274 S.C. 137, 143, 262 S.E.2d 45, 48 (S.C. 1980)). A number of courts looking at the question have concluded that statutes relating to parole are remedial and should apply to antecedent events. See, e.g., State v. Vera, 235 Ariz. 571, 576, 334 P.3d 754, 759 (Ct. App. 2014), referencing its holding in Tyree v. Moran, 113 Ariz. 275, 277, 550 P.2d 1076, 1078 (1976):

> In Tyree, an inmate sought the "temporar[y] release[ ]" afforded by an amended parole statute that did not take effect until after he had been sentenced. Id. at 276–77, 550 P.2d at 1077–78. In rejecting the argument that the amendment applied only to inmates sentenced after its effective date, the court reasoned, "The amendment is remedial in nature, and such statutes do not normally come within the rule against retrospective operation." Id. In addition, the court observed the amendment "[did] not alter the penalty which was attached to any offense, nor create a new penalty, nor change the sentence imposed" and concluded it "was meant to be effective as to all prisoners irrespective of the date of imposition of sentence."

The court in Tyree also noted that "the construction sought by respondents is too restrictive and not in harmony with the legislative purpose." Tyree, 550 P.2d at 1078 (emphasis added). The same reasoning as espoused by the Arizona Court of Appeals in Tyree applies here. To preclude application of the Omnibus Act to inmates already sentenced and within the prison system in no way would have furthered the goals enumerated by the Legislature to decrease costs and promote rehabilitation, but rather would have delayed any beneficial impact of the Act for years into the future. Clearly, the Legislature intended that the Omnibus Act be fully retroactive to gain the benefits it envisioned in a reasonable time frame.

SCDC argues that the holding in State v. Varner, 310 S.C. 264, 423 S.E.2d 133 (1992) controls. Varner, put simply, held that the punishment in effect at the time of sentencing is controlling. Id. at 265. Varner is readily distinguishable as it dealt with sentencing, not parole. Also, the Court in Varner specifically stated: "[i]n the absence of a controlling statute, the common law requires that a convicted criminal receive the punishment in effect at the time he is sentenced,

unless it is greater than the punishment provided for when the offense was committed." Varner, 310 S.C. at 265, 423 S.E.2d at 133 (emphasis added). In this case, the controlling statute is the Omnibus Act.

Finally, following "an exhaustive analysis" of the Omnibus Act, the South Carolina Department of Probation, Parole and Pardon [DPPP] made the decision to treat the Act as fully retroactive, resulting in the June 2016 mass release. The consensus of the involved parties who examined the issue exhaustively was that the Omnibus Act was retroactive. DPPP made this compelling finding:

> In the short term, prospective application of the law would only ensure that the old law would continue to consistently apply to the majority of the prison population until such time that offenders convicted and sentenced under the new law began to populate the prison system. This would only ensure that the prisons failed to successfully rehabilitate prisoners for years into the future, exactly the opposite result intended by the General Assembly.

(emphasis added).

DPPP's decision was based on "[t]he stated intent of the Act to reduce prison populations; the use of the phrase 'notwithstanding any other provision of law' in the relevant section; and the Savings Clause exception for when 'the repealed or amended provision shall so expressly provide.'" SCDC apparently agreed with DPPP. The additional inmates were released on June 1, 2016.

The reasoning of the DPPP is persuasive. This reasoning, together with SCDC's admissions, lead this Court to conclude that the inmates who were released in June 2016 fell within the purview of the Omnibus Act. The June Releasees' claims for unlawful detention are valid.

B. SCDC's Affirmative Defenses.

1. SCDC is liable to the same extent as a private party, under like circumstances, subject only to the specific limitations of the S.C. Tort Claims Act.

Defendant SCDC has the burden to prove the applicability of one or more of the Tort Claims Act exemptions it pled as affirmative defenses. Niver v. S.C. Dep't of Highways & Public Transp., 302 S.C. 461, 463, 395 S.E.2d 728, 730 (Ct. App. 1990). To the extent that it fails to establish immunity pursuant to those exemptions, it is liable in tort to the same extent as any citizen of the state:

> The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.

S.C. Code Ann. § 15-78-40.

In briefing and in argument, SCDC repeatedly quotes McCall v. Batson, 285 S.C. 243, 246, 329 S.E.2d 741, 742 (1985) for the proposition that the state "has the right to be wrong." Undeniably, McCall is an important case in the historical context of its abolition of sovereign immunity in this state. McCall was, however, superseded by statute when the General Assembly passed the South Carolina Tort Claims Act. Pursuant to the Tort Claims Act, the state does not have the right to be wrong when committing tortious acts that fall within the Tort Claims Act's waiver of immunity unless its conduct also falls within the parameters of one of that act's exemptions. Accordingly, this Court must analyze SCDC's conduct within the framework of the exemptions that it claims render it immune from liability.

In opposition to Plaintiffs' claims and in support of its Motion for Summary Judgment, SCDC asserts immunity pursuant to S.C. Tort Claims Act § 15-78-60(3) (enforcement of court

orders); (4) (adoption, compliance, enforcement or failure to adopt or enforce a law); (5) (exercise of discretion); and (21) (decision to release inmates).[8]

An analysis of these exemptions, in the unique context of this case, leads the Court to conclude that the exemptions do not cover SCDC's conduct.

2. S.C. Code Ann. § 15-78-60(3) is not applicable as the Plaintiffs' claims do not arise from any court order.

The exemption stated in S.C. Code Ann. § 15-78-60(3) relating to "execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process" is not applicable. The Plaintiffs' maximum sentences expired by operation of law pursuant to the terms of the Omnibus Act. There was no order or process remaining to enforce or implement as SCDC continued to unlawfully detain Plaintiffs and the class members.

SCDC cites two District Court cases that it claims hold that over-detention cases are barred by S.C. Code § 15-78-60(3). Jackson v. S.C. Dep't. of Corr. was a prolonged incarceration case arising from a mistake in an inmate's sentencing sheet. No. 3:14-CV-2262-SVH, 2016 WL 403588 (D.S.C. Jan. 12, 2016). The other case, Kifayatuthelezi v. S.C. Dep't of Corr., also directly related to SCDC's implementation of specific terms of a sentencing order. No. 8:17-CV-03139-TLW-JDA, 2019 WL 4675355 (D.S.C. March 4, 2019). The District Courts in both cases found that SCDC was exempt from liability pursuant to § 15-78-60(3).

Jackson and Kifayatuthelezi are non-binding District Court decisions, and both are readily distinguishable. In Jackson, the District Court concluded that the sentencing sheet memorialized the order of the court and that SCDC was allowed to assume it was accurate. On that basis, the

[8] While Defendant's Answers also raise as affirmative defenses numerous other Tort Claims Act provisions, SCDC states that those issues are "not now argued by SCDC."

court found that the Tort Claims Act exemption contained in § 15-78-60(3) applied. The gravamen of the claim in Kifayatuthelezi was similar.

Parole eligibility in the context of this case is governed by statute, not court order. Plaintiffs' claims arise from SCDC's misapplication of the Omnibus Act. Plaintiffs' sentencing orders or sentencing forms have no bearing on this matter. This case presents a unique situation in which a state agency's conduct in ignoring clear legislative intent impacted the liberty interests of hundreds of South Carolina residents who had otherwise paid their debts to society. Those inmates' claims are not based on the type of one-off mistakes addressed by the District Court cases. The plain language of § 15-78-60(3) demonstrates that it is not applicable to this unprecedented set of circumstances.

3. S.C. Code Ann. § 15-78-60(4) is not applicable to SCDC's failure to comply with the Omnibus Act.

The exemption stated in § 15-78-60(4) grants immunity for "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid . . . ." (emphasis added). The General Assembly did not provide immunity for a failure to comply with the law. The overt omission of "compliance" from the second clause in this statutory provision is telling and must be presumed to be intentional. See Consumer Advoc. for State v. S.C. Dep't of Ins., 397 S.C. 599, 602, 725 S.E.2d 708, 710 (Ct. App. 2012) ("The court has no right to add the words the legislature omitted, nor to interpolate them on conceits of symmetry and policy." (quoting Kinard v. Moore, 220 S.C. 376, 388, 68 S.E.2d 321, 325 (1951))). Indeed, the exemption plainly intends for there to be no immunity for state actors who fail to comply with the laws of this state. Plaintiffs' false imprisonment claims are based on unlawful detention caused by SCDC's failure to comply with the Omnibus Act. SCDC is not immune from liability for disregarding the

provisions of the Omnibus Act and incarcerating impacted inmates beyond their max-out sentence dates.

SCDC focuses its argument on "enforcement" versus "compliance." Compliance is a concept distinct from enforcement. Compliance in this context very simply means "conformity in fulfilling official requirements." See Merriam-Webster, "Compliance," available at https://www.merriam-webster.com/dictionary/compliance. Enforcement, with regard to a law or official requirement, means "to compel." See Merriam-Webster, "Enforcement," available at https://www.merriam-webster.com/dictionary/enforcement. Viewed at the most basic level, compliance involves conduct of the party toward whom the law is directed, while enforcement involves a party's actions vis-à-vis others.

The Omnibus Act governs the actions of SCDC, not others. The Act did not ask SCDC to engage in any "enforcement" action against these inmates or anyone else. Rather, SCDC was itself charged with complying with a law that told it exactly what to do. It did not comply with the mandates of the Act.

SCDC claims that it did comply with the Omnibus Act "as it understood it." SCDC, just as any other citizen of the state, is conclusively presumed to have knowledge of the existing law. City of Newberry v. Newberry Elec. Co-op., Inc., 387 S.C. 254, 264, 692 S.E.2d 510, 515 (2010). Further, its "understanding" of the Act has been ruled "specious," "patently erroneous," and "unreasonable" by the courts of this state. SCDC's failure to comply with the Omnibus Act, thereby defeating legislative intent, is not subject to immunity pursuant to § 15-78-60(4). Any other conclusion would send a message to every agency of this state that duly passed legislation governing state actors is merely advisory.

The South Carolina Supreme Court has recognized in the context of separation of powers that "the ability to obtain parole is a matter of legislative grace." State v. De La Cruz, 302 S.C. 13, 16, 393 S.E. 184, 186 (1990). A ruling that state actors are immune from liability for failing to comply with legislative enactments dealing with parole would render the Legislature toothless. Just as the Legislature is empowered to legislate, SCDC was mandated to comply.

4. S.C. Code Ann. § 15-78-60(5) is not applicable.

S.C. Code Ann. § 15-78-60(5) exempts the state from liability for actions that are a matter of discretion. In Faile v. S.C. Dep't of Juv. Just., 350 S.C. 315, 330, 566 S.E.2d 536, 544 (2002), the South Carolina Supreme Court observed that "[t]he duties of public officials are generally classified as ministerial and discretionary." Long v. Seabrook, 260 S.C. 562, 568, 197 S.E.2d 659, 662 (1973). "The duty is ministerial when it is absolute, certain, and imperative, involving merely execution of a specific duty arising from fixed and designated facts." Jensen v. Anderson County Dep't of Soc. Servs., 304 S.C. 195, 203, 403 S.E.2d 615, 619 (quoting Long v. Seabrook, Id.). The duty is discretionary if the governmental entity proves there were competing considerations to be weighed and, faced with alternatives, it made a conscious decision based upon those considerations. Id.

Not all matters involving decisions by governmental entities support a claim of discretionary immunity. "[T]he fact that [state] employees had to make decisions or exercise some judgment in their activities is not determinative" of immunity under S.C. Code Ann. § 15-78-60(5). Proctor v. Dep't of Health & Env't Control, 368 S.C. 279, 307, 628 S.E.2d 496, 511 (Ct. App. 2006) (quoting Clark v. S.C. Dep't of Pub. Safety, 353 S.C. 291, 304, 578 S.E.2d 16 (Ct. App. 2002), aff'd, 362 S.C. 377, 608 S.E.2d 573 (2005) (law enforcement officer's decision on whether

to begin or continue pursuit of a suspect was not subject to discretionary immunity pursuant to S.C. Code Ann. § 15-78-60(5))).

"[M]ere room for discretion on the part of the governmental entity [is] not sufficient to invoke the discretionary immunity provision. Proof that the governmental employees faced with alternatives, actually weighed competing considerations and made a conscious choice is necessary." Foster v. S.C. Dep't of Highways & Pub. Transp., 306 S.C. 519, 525, 413 S.E.2d 31, 35 (1992). In Foster, the Supreme Court declined to find there was discretionary immunity because "there was no testimony reflecting [that] a conscious decision, weighing the appropriate factors, was ever made." 306 S.C. at 525, 413 S.E.2d at 35 (emphasis added).

In making discretionary choices, the state must "utilize[] accepted professional standards appropriate to resolve the issue before them." Wright v. S.C. Dep't of Transp., 437 S.C. 184, 202, 877 S.E.2d 788, 797 (Ct. App. 2022), reh'g denied (Sept. 23, 2022), cert. denied (May 24, 2023); see also Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 430, 445 S.E.2d 439, 440 (1994) (Highway Department did not consciously weigh competing considerations or utilize accepted professional standards so as to give rise to discretionary immunity); Faile, 350 S.C. at 326, 566 S.E.2d at 544 (discretionary immunity did not apply because the decision related to an administrative function, rather than a weighing of competing considerations).

Accordingly, discretionary immunity requires proof that "accepted professional standards" were actually used to weigh the appropriate factors. The paramount factor in the interpretation of a statute by an agency is that legislative intent must prevail:

> "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); see also McClanahan v. Richland Cnty. Council, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002) ("All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language

> used, and that language must be construed in light of the intended purpose of the statute.").

Amazon Servs., LLC v. S.C. Dep't of Revenue, 442 S.C. 313, 328, 898 S.E.2d 194, 201 (Ct. App. 2024), reh'g denied (Mar. 18, 2024), cert. granted (Oct. 3, 2024).

The Court of Appeals rightly concluded that SCDC "ignore[d] the purpose of the [Omnibus] Act." Bolin, 415 S.C. at 285, 781 S.E.2d at 918 (emphasis added).[9] No state agency has the discretion to ignore legislative intent in interpreting a statute. SCDC was under an absolute and imperative duty to recalculate the sentences of impacted inmates in accordance with the Omnibus Act so as to effectuate the early releases and cost savings intended by the Legislature. It cannot simply pay lip service to the appropriate rules of statutory construction while overtly evading legislative intent.

The Court of Appeals has also already concluded that SCDC acted unreasonably in its application of the Omnibus Act. "Accepted professional standards" clearly must incorporate objective standards of reasonableness. An action simply cannot be both unreasonable and in accordance with accepted professional standards.

The facts here show that SCDC decided to ignore the express legislative intent of the Omnibus Act and adopted an unreasonable and patently erroneous application of the Omnibus Act rather than an application reflecting utilization of accepted professional standards appropriate to the issue before it. SCDC is not entitled to discretionary immunity.

5. S.C. Code Ann. § 15-78-60(21) is not applicable.

The Tort Claims Act exemption stated in § 15-78-60(21) does not apply to SCDC's conduct in this case. This exemption provides the state with immunity for "the decision to or

[9] Just like the other holdings in Bolin, the conclusion that SCDC ignored the purpose of the Omnibus Act binds SCDC.

implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity, including but not limited to a prisoner, inmate, juvenile, patient, or client or the escape of these persons."

Plaintiffs' claims for false imprisonment arise from their unlawful detention—that is, the failure to release them. As the South Carolina Supreme Court noted in Faile, 350 S.C. at 333, 566 S.E.2d at 545 regarding § 15-78-60(21):

> [O]n its face, the exemption appears to apply to a narrower set of circumstances than those presented in this case. The language of the exemption indicates the custodial entity must make a conscious, if not formal, decision to **terminate** the relationship before this immunity is triggered.

(bold and underline emphasis added).

The clear meaning and intent of § 15-78-60(21) is to exempt the state from liability for torts arising post-release based on claims that a release, parole, discharge, or furlough was improper. In this case, SCDC unlawfully maintained its custodial relationship with the class members rather than terminating that relationship as required by the Omnibus Act. Accordingly, the Tort Claims Act exemption stated in § 15-78-60(21) does not apply.

For the reasons stated above, this Court finds that there is no genuine issue of material fact as to the false imprisonment claim or SCDC's affirmative defenses thereto. Plaintiffs and the class are entitled to judgment as a matter of law on their false imprisonment claims.

C. Each Wrongful Detention Was a Separate Occurrence.

Under the South Carolina Tort Claims Act, a plaintiff is limited to a recovery of $300,000.00 per occurrence pursuant to § 15-78-120(a)(1). The Tort Claims Act further provides an aggregate per occurrence cap of $600,000. S.C. Code Ann. § 15-78-120(a)(2). An occurrence is defined as "an unfolding sequence of events which proximately flow from a single act of

negligence." S.C. Code Ann. § 15-78-30(g). Here, SCDC argues that Plaintiffs' claims result from only one occurrence. The Court rejects this argument.

First, SCDC focuses on the "why" of the wrongful detentions in asserting that all claims of the Plaintiffs and the class present just one occurrence under the Tort Claims Act. However, for purposes of false imprisonment, the "why" is not relevant. The focus is the unlawful application of the Act to each inmate, not why SCDC determined to apply the Act in an unlawful manner.

The deprivation of a person's liberty without lawful justification is the essence of a false imprisonment claim. Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990); Thomas v. Colonial Stores, Inc., 236 S.C. 95, 113 S.E.2d 337 (1960). SCDC had a separate and distinct duty to release each inmate on that inmate's appropriately calculated max-out date. Each of the several hundred class members separately endured a loss of liberty and freedom. Each endured a separate tort, with the loss of freedom for each commencing on different dates and sustained for different lengths of time. The Omnibus Act gave each one of these inmates the statutory privilege of an earlier release, and SCDC held each one, without lawful justification, past their max-out dates as properly calculated pursuant to the Omnibus Act.

Each period of over-detention was a separate occurrence by which SCDC failed to comply with the patent meaning of the Omnibus Act. Each of the separate occurrences of false imprisonment deprived a different inmate of his or her unique, individual right to freedom. Each separate and distinct breach of each inmate's right to release, separated by space and time from every other impacted inmate, caused new and independent damage to each inmate. The Court finds that each of the 413 individual class members' claims for false imprisonment is compensable as a separate occurrence.

II. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant SCDC moved for summary judgment in its favor on Plaintiffs' false imprisonment clams[10] and their negligence/gross negligence/recklessness claims. The Court denies SCDC's Motion for the reasons supra and those that follow.

A. Gross Negligence Is Not the Same as Deliberate Indifference.

It is the law of the case that Plaintiff Marion Campbell was unable to meet the heavy burden of establishing deliberate indifference as to various SCDC officials in their individual capacities. It was on that basis that the Fourth Circuit Court of Appeals reversed District Court Judge Mary Lewis's denial of summary judgment as to Plaintiff Campbell's constitutional claims. SCDC conflates gross negligence with deliberate indifference to support its claim of entitlement to summary judgment. SCDC stating in its briefing:

> The McDonald R & R therefore correctly concluded that because "these officials' conduct was not deliberately indifferent to [the plaintiff's] rights, it logically follows that their conduct did not exhibit gross negligence . . ."

Magistrate Judge McDonald "concluded" no such thing. The full passage from the R & R reads as follows:

> Under the substantive due process clause or the Eighth Amendment, the plaintiff has failed to show deliberate indifference or conscience-shocking conduct on the part of these defendants as discussed above. Harris v. Magnusson, C.A. No. 1:1-cv-472-GZS, 2012 WL 3960172, at *5 (D. Maine Aug. 3, 2012) ("Because I have concluded that on these facts, these officials' conduct was not deliberately indifferent to [the plaintiff's] right, it logically follows that their conduct did not exhibit gross negligence or arbitrariness that would shock the conscience.")

[10] These claims are disposed of by this Court's grant of summary judgment in favor of the Plaintiffs and the class as explained supra.

Gross negligence and deliberate indifference are not the same concept. Est. of Doe 202 by Doe MM v. City of N. Charleston, 433 S.C. 444, 452, 858 S.E.2d 814, 818 (Ct. App. 2021). "Deliberate indifference requires a much higher standard of fault than mere negligence or even gross negligence . . . ." Battle v. S.C. Dep't of Corr., No. 9:19-CV-01729, 2021 WL 4699-97, at *17 (D.S.C. Apr. 16, 2021) (quoting A.P. ex rel. Bazerman v. Feaver, No. 04-15645, 2008 WL 3870697, at *12 (11th Cir. Aug. 21, 2008). The court in Jensen v. Conrad, 570 F. Supp. 114, 122 (D.S.C. 1983), which SCDC cited in its briefing, noted:

> A governmental official may act with gross negligence toward an individual placed in his care by inadvertently exposing him to obvious and extreme dangers. However, unless that official was actually aware of the dangers involved and failed to act to provide reasonable protection due to conscious lack of concern for the individual's safety, the official did not act with deliberate indifference.

Accordingly, while proof of deliberate indifference might also prove gross negligence, the converse is not true. Gross negligence, without question, requires a lesser showing.

B. The Factual Record Supports Plaintiffs' Gross Negligence Claims.

Plaintiffs cite facts in the record that a jury could reasonably conclude amount to gross negligence by SCDC:

> SCDC recognized that it had an obligation to timely release inmates.
>
> SCDC knew the General Assembly was contemplating a significant bill to alter inmate release dates by making certain non-parolable offenses parolable.
>
> SCDC knew that hundreds of inmates would be affected by the Omnibus Act and that its interpretation of the Act would determine whether the impacted inmates were granted early release or remained incarcerated.
>
> SCDC admitted to uncertainty about the position it ultimately took that resulted in over 185,000 days of excess incarceration for the Plaintiffs and the class members.

SCDC erroneously believed that the Omnibus Act did not specify whether newly parolable offenses remained subject to the 85% rule, a conclusion the Court of Appeals found contrary to legislative intent.

SCDC disseminated its "patently erroneous" interpretation of the Omnibus Act despite its admitted uncertainty as to how the Act should be implemented.

SCDC's interpretation of the Omnibus Act did not reflect the cardinal rule of statutory interpretation which is to ascertain and effectuate legislative intent.

SCDC did not implement the Act in accordance with the stated legislative intent.

The express legislative intent of the Omnibus Act was to save taxpayers money by allowing for earlier release dates for SCDC inmates.

The express legislative intent of the Omnibus Act was to more effectively and efficiently promote rehabilitation of inmates.

The Court of Appeals concluded that the provisions of the Omnibus Act would be meaningless if they did not implicitly repeal the no-parole designation for the enumerated offenses

SCDC entrusted the interpretation the Act entirely to a junior staff attorney with no review by more senior attorneys.

SCDC entrusted the interpretation the Act entirely to a junior staff attorney with no external review.

SCDC entrusted the interpretation the Act entirely to a junior staff attorney with no review by SCDC policymakers.

SCDC did not seek external guidance or take any action to resolve what it perceived to be inconsistencies in the Act.

SCDC continued to ignore legislative intent and apply an unreasonable and patently erroneous interpretation of the Omnibus Act even after Administrative Law Judge Phillip Lenski found its position specious and unreasonable.

SCDC was aware in November 2015 that the Bolin decision potentially impacted hundreds of its inmates.

> SCDC continued to apply its unreasonable and patently erroneous interpretation of the Omnibus Act after the Court of Appeals ruled in Bolin in November 2015 and until the final opinion was issued in February 2016.
>
> Between November 2015 and February 2016, SCDC took no action to recalculate release dates for inmates potentially impacted by the Bolin decision.
>
> Between November 2015 and February 2016, SCDC took no action to prepare for the release of inmates potentially impacted by the Bolin decision.

South Carolina Courts recognize that "[i]n most cases, gross negligence for which a government entity can be liable under the Tort Claims Act, is a factually controlled concept whose determination best rests with the jury." Proctor, 368 S.C. at 294, 628 S.E.2d 504 (Ct. App. 2006). Gross negligence must be presented to the jury unless the evidence supports only one reasonable inference. Clyburn v. Sumter County Sch. Dist., No. 17, 317 S.C. 50, 451 S.E.2d 885 (1994). In this case, SCDC has made no showing of entitlement to summary judgment on the factual record.

C. SCDC's Affirmative Defenses.

As noted above, SCDC has the burden of proof to establish as affirmative defenses the applicability of one or more of the Tort Claims Act exemptions. Niver v. S.C. Dep't of Highways & Public Transp., 302 S.C. 461, 395 S.E.2d 728 (Ct. App. 1990). For the same reasons detailed above at pp. 18–25 supra, the Tort Claims Act exemptions claimed by SCDC do not apply.

In addition, even if the enumerated Tort Claims Act exemptions applied to SCDC's conduct, their application would be governed by a gross negligence standard. South Carolina courts hold that when a Tort Claims Act exemption containing a gross negligence standard is implicated, that gross negligence standard must be read into any other Tort Claims Act exemptions found to be applicable. Steinke v. S.C. Dep't of Labor, Licensing and Regul., 336 S.C. 373, 520 S.E.2d 142, 153 (1999).

S.C. Code Ann. § 15-78-60(25) provides that the State is exempt from liability for acts or inaction relating to a "responsibility or duty including but not limited to . . . confinement, or custody of any . . . prisoner, inmate, . . . **except** when the responsibility or duty is exercised in a grossly negligent manner." (emphasis added). The exemption may also be stated as the converse—that the State is liable for acts or inaction relating to "a responsibility or duty including but not limited to . . . confinement or custody of any . . . prisoner, inmate" when the plaintiff proves the responsibility or duty was exercised in a grossly negligent manner.

"If a defendant is grossly negligent under Section 15-78-60(25), it cannot claim immunity under any of § 15-78-60's other subsections because 'the exception to the normal rule of immunity applies.'" Etheredge v. Richland Sch. Dist. I, 330 S.C. 447, 466–67, 499 S.E.2d 238, 248 (Ct. App. 1998), rev'd sub nom. Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 534 S.E.2d 275 (2000). According to the holding in Etheredge, all other Tort Claims Act exemptions are subsumed if § 15-78-60(25) applies. Id. In that event, the other immunities within the Tort Claims Act "must be read in conjunction with subsection twenty-five." Duncan v Hampton School Dist. #2, 335 S.C. 535, 543 517 S.E.2d 449, 453 (Ct. App. 1999).

SCDC argues that it did not plead the Tort Claims Act exemption found in § 15-78-60(25) containing the gross negligence standard. However, it actually pled the entirety of the Tort Claims Act as a defense in at least some of the consolidated cases. In addition, a state entity may not bypass imposition of a gross negligence standard by intentionally pleading around it. In Plyler v. Burns, 373 S.C. 637, 647 S.E.2d 188 (2007), the plaintiff argued the applicability of two Tort Claims Act exemptions containing a gross negligence standard, neither of which were pled by the defendant. The South Carolina Supreme Court engaged in a detailed analysis regarding the applicability of those exemptions, ultimately concluding that the exemptions did not apply. The

court's analysis would have been entirely unnecessary if the legal standard required that consideration only be given to exemptions containing a gross negligence standard that were specifically pled.

More recently, the Court of Appeals and Supreme Court have made crystal clear that if an exemption containing a gross negligence standard applies, it is read into all other exemptions. See Chakrabarti v. City of Orangeburg, 403 S.C. 308, 320, 723 S.E.2d 109, 115 (Ct. App. 2013) ("We hold that when an exception containing the gross negligence standard applies, that same standard will be read into any other applicable exception."); Repko v. Cnty. of Georgetown, 424 S.C. 494, 507, 818 S.E.2d 743, 750 (2018) (holding that "in order for the gross negligence standard from one immunity provision to be read into an immunity provision that does not contain a gross negligence standard, the immunity provision containing the gross negligence standard must first apply to the case."). Accordingly, whether a defendant has raised an exemption in its answer or not has no legal significance. The only meaningful analysis is whether an exemption is applicable.

SCDC claims that S.C. Code Ann. § 15-78-60(25) is not applicable to the facts of this case. This exemption sets forth governmental immunity as follows:

> Responsibility or duty, including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner.

SCDC argues that § 15-78-60(21) relating to the release of prisoners applies to the inmates' claims, not § 15-78-60(25). However, Plaintiffs' claims arise not from the release of inmates by SCDC but from their continued restraint. The damages each Plaintiff seeks arise directly from confinement beyond his or her lawful max-out date. It is the confinement that Plaintiffs take issue with and the confinement that forms the basis for the claims herein. As stated by the South Carolina Supreme Court in Plyler regarding § 15-78-60(25):

> The section is usually applied in situations where a governmental entity is responsible for the actual physical accountability for the person.

Plyler v. Burns, 373 S.C. at 652, 647 S.E.2d at 196. Incarceration behind the walls of a prison, clearly, involves the "physical accountability for the person."

Accordingly, SCDC is not entitled to blanket immunity under any of the Tort Claims Act exemptions. At best, any exemptions as they may relate to the gross negligence claims must be viewed by the jury through the prism of a gross negligence standard pursuant to S.C. Code Ann. § 15-78-60(25).

D. Each Wrongful Failure to Timely Release Each Impacted Inmate Was a Separate Occurrence.

As noted above, an occurrence is defined as "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g). SCDC focuses blame on SCDC lawyers Florian and Tatarsky to claim one occurrence of gross negligence.In this case, however, a separate duty arose at an institutional level vis-à-vis each inmate impacted by the Omnibus Act to properly calculate their max-out release dates. The fact that SCDC decided to fulfill its duties to each of these inmates by relying on one patently erroneous legal opinion for each unlawful application of the Act does not equate to a single occurrence as defined in the Tort Claim Act.[11] SCDC had a statutory duty to calculate a new release date for each of these inmates properly and in accordance with the Omnibus Act.

[11] To accept SCDC's analysis would lead to absurd results. For example, a state agency could be grossly negligent in hiring an unqualified physician but would have its liability capped at one occurrence no matter how many patients were ultimately harmed by different instances of malpractice over different periods of time. A grossly negligent school district, purchasing a shipment of patently inappropriate playground equipment, could limit its liability to a single occurrence cap no matter how many children were injured at different schools over different time periods. This Court does not believe such outcomes were intended by the Legislature.

Also, in looking at these claims against SCDC by multiple individual inmates with unique damages, the Court must apply the language used in the operative statute. An "unfolding sequence of events" is language evocative of a linear analysis or a progression. The claims in this case are not compatible with such a linear analysis. There is no unfolding, there is no sequence—there was rather an erroneous interpretation of a law that SCDC then separately and deliberately applied to each one of the affected inmates. Even considering SCDC's theory that the Florian/Tatarsky legal opinion was the genesis of each impacted inmate's claim, the single occurrence analysis does not readily fit, particularly as a matter of law.

To illustrate this concept, if a line is drawn from the initial SCDC interpretation of the Omnibus Act to the miscalculation of an inmate's release date, then to the unlawful over-detention of that inmate, the line stops there. There are 413 individual lines leading from each SCDC miscalculation to the damage to each Plaintiff that do not intersect in time or space.

This Court is unable to characterize this unique set of claims as one unfolding sequence of events as a matter of law. The jury has ample basis to find that each application by SCDC of a "patently erroneous" interpretation of the Omnibus Act to each individual class member, resulting in excess confinement, was a separate occurrence. Accordingly, it is appropriately left to the jury to apply the statutory definition of occurrences contained in the Tort Claims Act to the facts of the gross negligence claims herein. Wood v. Horry Cnty. Sch. Dist., No. 2021-000535, 2023 WL 4105395, at *1 (S.C. Ct. App. June 21, 2023), cert. dismissed as improvidently granted, No. 2023-001470, 2024 WL 4448787 (S.C. Oct. 9, 2024).

CONCLUSION

For the reasons detailed herein, this Court grants Plaintiffs' Motion for Summary Judgment as to false imprisonment and finds that the unlawful imprisonment of each class member was a

separate occurrence under the South Carolina Tort Claims Act. This Court further denies Defendant's Motion for Summary Judgment and finds that the determination of occurrences on the Plaintiffs' gross negligence claims is a question of fact for the jury.

AND IT IS SO ORDERED.

Richland Common Pleas

Case Caption: Marion Katrell Campbell vs South Carolina Department of Corrections , defendant, et al

Case Number: 2020CP4005532

Type: Order/Summary Judgment

So Ordered

Jocelyn Newman