

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**Jan 23 2026**

**SC Court of Appeals**

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Samuel L. Johnson, Administrative Law Court Judge

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Appellate Case No. 2025-002574  
Case No. 24-ALJ-04-0156-AP

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Luther B. Marcus, #218408, ..... Respondent,

v.

South Carolina Department of Corrections, ..... Appellant.

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**APPELLANT’S APPEALABILITY MEMORANDUM**

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This is an appeal from the November 25, 2025 Order issued by the South Carolina Administrative Law Court (“ALC”) whereby the ALC decided with finality the Appellant’s exhaustion of administrative remedies defense based on the provisions of Section 12.1 of SCDC Policy ADM-15.13 titled “Inmate Pay.” After the Appellant South Carolina Department of Corrections (“SCDC”) filed its Notice of Appeal from the Order dated November 25, 2025, the Court issued a letter dated December 31, 2025, directing that the Appellant file a letter addressing “the issue of appealability.”

By way of background, the Respondent Luther B. Marcus filed Step One and Two Grievances claiming he was not paid in accordance with the former prevailing wage statute, S.C. Code Ann. § 24-3-430. The grievances were denied by SCDC, and the Respondent filed an appeal to the ALC challenging SCDC's final decision denying his Step 2 grievance based on a failure to timely exhaust his administrative remedies under Policy ADM-15.13.

By Order dated November 25, 2025, the ALC rejected that exhaustion of administrative remedies defense *as a matter of law*. Specifically, the ALC ruled as follows:

[T]he Court is not convinced that ADM-15.13 plays any role with respect to prevailing wage grievances seeking backpay for historic work under PIP. While ADM-15.13 appears to apply to the correction of individualized pay errors for ongoing inmate employment (including payroll errors related to Prison Industries work), by its terms and in practice it is not an avenue for an inmate to pursue back payment up to the prevailing wage for PIP work. Consequently, ADM-15.13's deadline of fifteen days from the payroll error date does not apply here, nor does ADM-15.13 play any role in the "proper exhaustion" of this appeal. As stated on the form containing the Department's Step 2 Grievance response, "[t]he decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure." The Department therefore erred in denying Appellant's grievance based on ADM-15.13, and the Court rejects the Department's contention that Appellant failed to exhaust his administrative remedies.

*See*, Order dated November 25, 2025, p. 12. Ultimately, the ALC remanded to SCDC with directions that the agency "calculate and offer to remit to Appellant the additional pay owed to Appellant under the prevailing wage statute, S.C. Code § 24-2-430(D), for the pay periods of September 16, 2011 through February 14, 2012 and March 18, 2019 through July 21, 2021." *Id.* The ALC further directed that SCDC "shall issue and serve upon Appellant a corrected, substantive, and appealable Step 2 response that sets forth -- with sufficient detail and clarity to permit meaningful consideration by Appellant -- the Department's calculations of the total

underpayment amount owed to Appellant, allowing Appellant the opportunity to accept the Department's calculations or appeal them to the ALC if he disagrees with them.” *Id.*

As relevant to the appealability issued raised *sua sponte* by the Court of Appeals, the ALC Order dated November 25, 2025, both decides with finality SCDC’s exhaustion of administrative remedies defense and directs that SCDC make an offer of additional payments that the Respondent Marcus may either accept or further appeal. The ALC did not include any language in its November 25, 2025 Order actually retaining appellate jurisdiction. Indeed, the ALC created no mechanism for SCDC to decline making such a monetary offer on remand so as to preserve the appealability of its exhaustion defense or to make an offer but refuse to pay it, if accepted by Marcus, and henceforth to file a duplicative appeal to the ALC regarding the already-adjudicated exhaustion of administrative remedies defense. In short, it is important to recognize that the ALC did not specifically retain jurisdiction after remand. *See, South Carolina Technical College System v. Jackson*, 2024 WL 3846080 (S.C. Ct. App. 2024) (unpublished) (this Court found that an order of the ALC remanding to a state agency for further fact-finding did not specifically retain jurisdiction, and as a result, the agency waived its right to appeal issues raised in the earlier appeal).

Hence, this case and the ALC Order on appeal raise appealability issues similar, if not identical, to those addressed by the Supreme Court in *Torrence v. South Carolina Dept. of Corrections*, 433 S.C. 224, 857 S.E.2d 549 (2021). In that case, the Supreme Court acknowledged “the general proposition that where an ALC order includes a remand to an administrative agency, there is no final judgment in the vast majority of situations.” 857 S.E.2d at 550. However, the Supreme Court found that the scenario in *Torrence*, which like the case at bar also involved legal issues relating to a prevailing wage claim brought by an inmate engaged in prison industries work, “presents an exception to the typical situation.” *Id.* The Supreme Court explained that “despite

the presence of a remand – the ALC’s decision was, in fact, final. *This is so because the ALC ruled as a matter of law on the dispositive issues and granted the claimant the very relief he sought.* The remand left the agency with no further discretion or decision to make.” *Id.* (Emphasis added). The Supreme Court ultimately concluded that “[t]he remand merely ordered the agency to award the claimant a sum-certain based on a defined methodology determined by the ALC. Under these circumstances, the remand may be viewed as ministerial, for the ALC determined the rights of the parties with finality.” *Id.*

The remand order at issue in *Torrence* was effectively the same or substantially similar to the remand order made by the ALC in this prevailing wage case. As the Supreme Court ruled, such a remand order is essentially ministerial and that the rights of the parties have already been decided with finality. That is also true in the case at bar. Hence, SCDC’s current appeal should be permitted to proceed.

Nonetheless, even if this Court were to conclude that *Torrence* is not controlling and the ALC order on appeal should be treated as an interlocutory order rather than a final order, South Carolina statutory law allows for an immediate appeal under the circumstances created by the ALC’s rejection as a matter of law of SCDC’s exhaustion of administrative remedies defense. Under Section 14-3-330(1), an interlocutory order “involves the merits” when it “finally determines some substantial matter forming the whole or a part of some ... defense.” *Jefferson by Johnson v. Gene’s Used Cars, Inc.*, 295 S.C. 317, 368 S.E.2d 456, 456 (1988). “Interlocutory orders affecting a substantial right may be immediately appealed pursuant to § 14-3-330(2). Orders affecting a substantial right discontinue an action, prevent an appeal, grant or refuse a new trial, or *strike out an action or defense.*” *Edwards v. SunCom*, 369 S.C. 91, 631 S.E.2d 529, 530 (2006). (Emphasis added). Thus, the ALC’s rejection of the exhaustion of administrative remedies

defense as a matter of law constitutes the “striking” of a defense, thereby triggering appeal rights under Section 14-3-330(2). Under that alternative analysis, SCDC’s current appeal should also be permitted to proceed.

In sum, this Court has appellate jurisdiction over this appeal. The Appellant SCDC is fully entitled to proceed with its appeal of the ALC’s Order dated November 25, 2025. The Court is respectfully asked to so rule and allow the appeal to be heard.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned employee of Lindemann Law Firm, P.A., counsel for the Appellant South Carolina Department of Corrections, does hereby certify that service of the **Appellant's Appealability Memorandum** in the above-captioned matter was made upon the *pro se* Respondent by placing a copy in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 22nd day of January 2026, as follows:

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Mr. Luther Marcus  
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s/ Andrew F. Lindemann