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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
THE HONORABLE JOCELYN NEWMAN
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2025-001923

Marion Katrell Campbell, on behalf of himself and all other similar situated,

RESPONDENT,

versus

South Carolina Department of Corrections,

APPELLANT,

AND

Wardell Williams, Harry Simmons, Jr., and Isiah Rollins,

RESPONDENTS,

versus

South Carolina Department of Corrections,

APPELLANT,

AND

Larry Hampton, Christopher McDowell, David Payton, Jr., and Michael Smoak,

RESPONDENTS,

versus

South Carolina Department of Corrections,

APPELLANT,

AND

Henry Belton,

RESPONDENT,

versus

South Carolina Department of Corrections,

APPELLANT.

RESPONDENTS' INITIAL BRIEF

Richard A. Harpootlian (SC Bar No. 2725)
Andrew R. Hand (SC Bar No. 101633)
RICHARD A. HARPOOTLIAN P.A.
1410 Laurel Street
Post Office Box 1090
Columbia, SC 29202
Phone (803) 252-4848
Facsimile (803) 252-480
rah@harpootlianlaw.com
arh@harpootlianlaw.com

Charles W. Whetstone, Jr. (SC Bar No. 6059)
Cheryl F. Perkins (SC Bar No. 2078)
WHETSTONE PERKINS & FULDA, LLC
1620 Gervais Street
Post Office Box 8086
Columbia, SC 29202
Phone (803) 799-9400
Facsimile (803) 799-2017
cwhetstone@attorneyssc.com
cperkins@attorneyssc.com

Kyle J. White (SC Bar No. 101426)
WHITE, DAVIS & WHITE LAW FIRM
209 East Calhoun Street
Post Office Box 1346
Anderson, SC 29621
Phone (864) 231-8090
Facsimile: (864) 231-8006
kyle@wdwlawfirm.com

Philip A. Berlinsky (SC Bar No. 12831)
BERLINSKY & LING, L.L.P.
2971 West Montague Avenue
N. Charleston, South Carolina 29418
Phone (843) 884-1000
Facsimile (843) 804-0503
philipalanlaw@aol.com

ATTORNEYS FOR RESPONDENTS

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COUNTERSTATEMENT OF ISSUES ON APPEAL

I. SCDC is not entitled to immunity from liability for the false imprisonment claims of the Plaintiff class members pursuant to any of the exemptions to the waiver of immunity stated in the South Carolina Tort Claims Act.

   A. SCDC is not immune from liability for the false imprisonment claims pursuant to the exemption to waiver of immunity stated in S.C. Code Ann. § 15-78-60(4) for "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law," because SCDC's unlawful restraint of Plaintiffs arose solely from its failure to comply with the law, not a failure to adopt or enforce a law.

   B. SCDC is not immune from liability for the false imprisonment claims pursuant to the exemption to waiver of immunity stated in S.C. Code Ann. § 15-78-60(5) for discretionary decisions because SCDC's obligation to calculate and implement inmate release dates under the Omnibus Act was ministerial—mandatory, certain, and imperative—and was not a product of SCDC making a conscious choice between competing alternatives based on accepted professional standards.

   C. SCDC is not immune from liability for the false imprisonment claims pursuant to the exemption to waiver of immunity stated in S.C. Code Ann. § 15-78-60(21) because the claims are based on continued custody of inmates past their max-out release dates, not a decision by SCDC to terminate the custodial relationship.

D. Application of the gross negligence standard of the custodial immunity exception to the waiver of immunity stated in SC Code Ann. § 15-78-60(25) is not properly before this Court because it was addressed by the trial court solely with regard to the denial of SCDC's Motion for Summary Judgment and those findings and conclusions are not appealable.

II. SCDC unlawfully restrained all of the Plaintiff class members, thereby subjecting them to false imprisonment.

A. SCDC unlawfully restrained the Plaintiff class members sentenced after the effective date of the Omnibus Act when it failed to release them on their max-out release dates, properly calculated pursuant to the Act, because the failure to comply with a statute is not deemed lawful pending an appellate court hold it is not.

B. SCDC unlawfully restrained the Plaintiff class members sentenced before the effective date of the Omnibus Act because SCDC admitted the Act applied to those Plaintiffs, the Act applied retroactively as a remedial statute enlarging rights of the impacted inmates who were acting under disability, and the Act was not rendered prospective by its savings clause.

III. The unlawful detention of each Plaintiff class member constituted a separate occurrence of false imprisonment under the South Carolina Tort Claims Act because SCDC owed each of the Plaintiff class members a distinct, individual obligation of release on that class member's properly calculated max-out release date, each obligation was separately breached, and each breach caused independent injury to a separately identified individual.

IV. Application of South Carolina Tort Claims Act exceptions to waiver of immunity to the negligence/gross negligence claim is not properly before the Court because the false imprisonment claim is not duplicative of the negligence/gross negligence claim nor are the claims based upon an identical set of facts.

STATEMENT OF THE CASE

Plaintiffs supplement the Statement of the Case of Appellant South Carolina Department of Corrections ["SCDC"] as follows:

Plaintiffs moved for class certification of their consolidated actions on May 13, 2021. [R.pp. ____: Second Amended Motion for Class Certification]. The trial court granted Plaintiffs' Motion and ordered conditional certification. [R.pp.___: Class Certification Order]. The trial court's Order was in response to a filing by SCDC conceding: "SCDC does not completely oppose class certification, but would request that the Court make no findings at this stage of the case with regard to the measure of damages, and that the Court leave open the possibility of subclasses within the Plaintiff class." [R.pp. ____: SCDC Resp. Memo. to Class Certification, d. 8/19/2021; p. 4]. The Order granting class certification was submitted by consent. [R. pp. ___: Form 4 Order, d. 8/23/2021].

STATEMENT OF FACTS[1]

All Plaintiff class members, pursuant to the class definition, were incarcerated within the South Carolina Department of Corrections for violations of S. C. Code Ann. §§ 44-53-370 and 44-53-375, and released from custody between June 2, 2010 and June 1, 2016. [R.pp.___, Class

[1] In large part, SCDC's ten-page Statement of Facts chronicles events that simply are not pertinent to the false imprisonment claims of the Plaintiffs wherein the overarching issue is whether the prolonged incarceration of class members beyond their properly calculated max-out release dates was unlawful.

Cert. Order, p. 5]. All were released in mass releases on March 21, 2016 and June 1-2, 2016, following recalculation of their max-out sentence dates by SCDC in accordance with the Omnibus Crime Reduction and Sentencing Reform Act of 2010, Act No. 273, 2010 S.C. Acts 1937 ["the Omnibus Act" or "Act No. 273"]. The recalculations took place in the wake of this Court's decision in Bolin v. South Carolina Dep't of Corrections, 415 S.C. 276, 280, 284, 781 S.E.2d 914, 916, 918 (Ct. App. 2016), concluding that SCDC's interpretation of the Omnibus Act was "unreasonable" and "patently erroneous."

The length of incarceration of each Plaintiff class member from his or her properly calculated max-out release date through the date of actual release ranged from days to years. [R.p. ___: Order Granting Summary Judgment, p. 6]. SCDC admits the time periods of excess incarceration for each class member in its responses to Requests to Admit, while denying the excess incarceration was illegal. [R.pp.___, Ex. E to Plt. Mem. Supp. for Mot. S.J. ¶¶ 50, and 52, pp. 20-28; 33-40].

The Plaintiff class members' non-violent drug offenses, prior to passage of the Omnibus Act, were classified as "no parole" offenses. S.C. Code Ann. § 24-13-100. An integral component of the "no parole" classification is that inmates convicted of no parole offenses are required to serve at least eighty-five percent of their sentences prior to becoming eligible for parole. S.C. Code Ann. § 24-13-150.

Among other reforms, the Omnibus Act sought to dramatically shorten the sentences of hundreds of non-violent drug offenders by granting them work release, work credits, education credits, and good conduct credits as a means to shorten the time necessary to "max out" their sentences, unencumbered by the constraints of the eighty-five-percent rule. S.C. Code Ann. §§ 44-53-370, -375.

As stated in the preamble to the Omnibus Act, longer sentences were not decreasing recidivism. The South Carolina General Assembly wanted to make "smarter use of correctional funding" and, accordingly, declared that the purpose and intent of the Act was not only to serve public safety goals, but also to save the state money by removing obstacles to the early release of inmates convicted of certain non-violent crimes:[2]

> It is the intent of the General Assembly to preserve public safety, reduce crime, and use correctional resources most effectively. Currently, the South Carolina correctional system incarcerates people whose time in prison does not result in improved behavior and who often return to South Carolina communities and commit new crimes, or are returned to prison for violations of supervision requirements. It is, therefore, the purpose of this act to reduce recidivism, provide fair and effective sentencing options, employ evidence-based practices for smarter use of correctional funding, and improve public safety.

Act No. 273, South Carolina General Assembly 118th Session, 2009-2010, (June 2, 2010) Part 1, § 1.

When the Omnibus Act became law on its effective date of June 2, 2010, SCDC continued to treat offenses made eligible for parole by the Act as no parole offenses for the purpose of release calculations. [R.pp. ___; Ex. D to Plt. Memo. Opp. SCDC Mot. for S.J.: Tatarsky Depo Excerpts: 43:21-44:8**;** R.p. ___: Ex. E to Plt. Memo. Opp. SCDC Mot. for S.J.: Florian Depo. Excerpts 64:14-23]. SCDC continued to impose the eighty-five-percent service requirement for the newly parolable offenses and continued to calculate earned sentence reduction credits at the minimal no-parole rate. No inmate received the benefit of early release, defeating the stated legislative intent of the Omnibus Act.

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[2] See Bolin, 415 S.C. at 285, 781 S.E.2d at 918 ("Hence, one of the Act's objectives is to conserve taxpayer dollars by allowing earlier release dates for inmates convicted of less serious offenses.").

One inmate, Michael Bolin, believed SCDC was ignoring the mandates of the Omnibus Act and had failed to calculate his release date in accordance with the Act. On October 17, 2012, he filed a grievance. [R.p. ___; Ex. C to Plt. Memo. Supp. Mot. for S.J., p. 1]. A second inmate, Kevin Fowler, filed a grievance on September 13, 2013, also contending that SCDC was wrong for imposing the eighty-five-percent, no-parole statute to his sentence. [R.p. ___; Ex. A to Plt. Memo. Opp. SCDC Mot. for S.J., p. 1].

Bolin's grievance was denied and the denial was affirmed by an Administrative Law Court ["ALC"] proceeding. [R.p. ___: Ex. C to Plt. Memo. Supp. Mot. for S.J.: p. 1]. Bolin appealed. While Bolin's appeal was pending, Fowler's grievance was also denied. [R.p. ___; Ex. A to Plt. Memo. Opp. SCDC Mot. for S.J., p. 1]. The Administrative Law Judge reviewing the Fowler matter took a widely different view of SCDC's actions. On August 28, 2014, the ALC reversed SCDC's denial of Fowler's grievance and rejected its "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. Prior to the amendment, inmates convicted of no-parole offenses pursuant to § 44-53-370 were eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good time credits after they served the requisite 85% of their sentence. 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.

[R.pp. ___, fn. 1: Ex. A to Plt. Memo. Opp. SCDC Mot. for S.J., pp. 3-4, fn. 1 (emphasis added)].

The ALC in Fowler also concluded:

> The court agrees that it appears from the plain language of the statute [the Omnibus Act] that the General Assembly intended to allow inmates convicted of drug offenses to be eligible for parole, removing certain drug offenses from the "no parole" category. Based on the language of S.C. Code Ann § 44-53-370(b)(1) Distribution of Heroin is no longer intended to be a "no parole" offense and work

> credits and conduct credits should be applied for the entirety of an inmate's sentence when he is sentenced under § 44-53-370(b)(1).

[R.p. ___: Id. at p. 3 (emphasis added)].[3]

The Bolin ALC decision was already on appeal when the Fowler decision was entered. SCDC appealed the Fowler decision. The Bolin and Fowler matters were argued together before the South Carolina Court of Appeals. On November 12, 2015, in separate decisions, this Court affirmed the ruling in Fowler and reversed the ruling in Bolin. See Fowler v. S.C. Dep't of Corrs., No. 2014-002040, 2015 WL 7075488 (Ct. App. Nov. 12, 2015) (unpublished); Bolin v. S.C. Dep't of Corrs., No. 2014-000461, 2015 WL 7008581 (Ct. App. Nov. 12, 2025) (unpublished), superseded by 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016).

The November 12, 2015 decision in Bolin held in part:

> [W]hile the interpretation of a statute by the agency charged with its administration "will be accorded the most respectful consideration," an agency's interpretation "affords no basis for the perpetuation of a patently erroneous application of the statute."[4]

[R.p. ___: Ex. D to Plt. Memo. Supp. Mot. for S.J., p. 3 (emphasis added)].

This Court further concluded that "[i]t is unreasonable to characterize an offense for which the offender is eligible for parole as a no-parole offense." [R. pp.____: Ex. D to Plt. Memo. in Supp. Mot. for S.J., p. 8 (emphasis added)]. This Court also held that SCDC had "ignore[d] the purpose of the [Omnibus] Act." [R.p. ___: Ex. D to Plt. Memo. Supp. Mot. for S.J. p. 4 (emphasis added)].

[3] Many portions of the Fowler decision other than the legal conclusions, such as the description of the genesis of the Omnibus Act, appear cut and pasted from the Bolin decision. [E.g. R.pp. ___: Ex. C to Plt. Memo. Supp. Mot. for S.J., pp. 2-3; R.pp. ___: Ex. A to Plt. Memo. Opp. SCDC Mot. for S.J., pp. 2-3]. Clearly, Administrative Law Judge Phillip Lensky was aware of what the ALC held in Bolin and intended to depart from that ruling.

[4] Patently means "obvious, apparent." Black's Law Dictionary, 6th Pocket Ed. (2016).

In the wake of the Bolin and Fowler decisions by this Court, SCDC did not recalculate the sentences of the impacted inmates. It did not prepare for a mass release. Instead, SCDC moved for rehearing, filing a Suggestion for Rehearing En Banc. Rehearing was denied in Fowler on February 18, 2016. Rehearing was denied in Bolin on February 24, 2016, and a revised opinion issued with minor factual revisions. The final Bolin opinion retained the same findings and conclusions characterizing SCDC's interpretation of the Omnibus Act as "patently erroneous" and "unreasonable" and not in accordance with the purpose of the Act. Bolin, 415 S.C. at 280, 284, 781 S.E.2d at 916, 918.

SCDC made the decision to forego further appeals. [R.pp. ___: Ex. D to Plt. Memo. Opp. SCDC Mot. for S.J.: Tatarsky Depo Excerpts: 52:10-20; R. pp. ___, ¶ 73; Ex. E to Plt. Memo. Supp. Mot. for S.J.: ¶ 73, p. 44]. It selected a mass release date for late March 2016 and recalculated the sentences of inmates who, like Michael Bolin, were sentenced after June 2, 2010, the effective date of the Omnibus Act. On March 21, 2016, SCDC released approximately 231 inmates. [R.pp. ___, ¶¶ 9, 10: Ex. E to Plt. Memo. Supp. Mot. for S.J. ¶¶ 9, 10, p. 2].

The March mass release was not the end of the issue for SCDC. After this initial mass release, the legal department for the South Carolina Department of Probation, Parole & Pardon Services ["SCDPPP"] conducted an "exhaustive analysis" as to whether the Omnibus Act should be considered fully retroactive. [R.p. ___: Ex. F to Plt. Memo. Opp. SCDC Mot. for S.J., p.1]. SCDPPP, in a detailed research memorandum, noted: "I think our strongest case that the amendments apply retroactively is that the amendments are indeed remedial in nature and presumptively retroactive in effect." [R.p. ___: Ex G to Plt. Memo. Opp. SCDC Mot. for S.J., p. 1].

As noted in an email of SCDPPP General Counsel Matthew Buchanan forwarding the agency's opinion memorandum to SCDC, the agency concluded that "most likely the parole eligibility part of the Act was meant to be retroactive" and that "[t]he conclusion was based on several factors: The 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.'" [R.p. ___: Ex F to Plt. Memo. Opp. SCDC Mot. for S.J., p.1].

When General Counsel for SCDPPP communicated the agency's conclusion to SCDC that the Omnibus Act was meant to be retroactive, SCDC recalculated the sentences of inmates sentenced prior to the effective date of the Act. Based on that recalculation, SCDC released an additional 194 inmates over the two-day period, June 1-2, 2016. [R.p. ___, ¶¶ 11, 12: Ex. E to Plt. Memo. Supp. Mot. for S.J., ¶¶ 11, 12, p. 3].

SCDC, in response to Plaintiffs' second Requests to Admit, admitted the following:

> 6. The max-out sentence release dates for the inmates listed in Ex. B, [June Releasees] <u>properly calculated pursuant to the Omnibus Crime Reduction and Sentencing Reform Act of 2010</u>, is listed under the Column "NEW DATE."

[R.p. ___, ¶ 6: Ex. F to Plt. Memo. Supp. Mot. for S.J., ¶ 6, p. 2, (emphasis added)].

The "Ex. B" referenced in the Request to Admit listed the June Releasees SCDC now claims were outside the purview of the Omnibus Act. However, SCDC's binding response to the Request to Admit was: "Admitted." [R.p. ___, ¶ 6: Ex. F to Plt. Memo. Supp. Mot. for S.J. ¶6, p. 2]. SCDC did not qualify its response, did not deny the Act's applicability to those inmates, and did not invoke the Act's savings clause. Accordingly, SCDC admitted that the date listed for each Plaintiff class member in Exhibit B to the request (the June releasees) was that inmate's max-out date "properly calculated pursuant to the Omnibus Crime Reduction and Sentencing Reform Act of 2010." [R.p. ___: Id. (emphasis added)].

The trial court appropriately found that SCDC was bound by its admissions. [R.pp. ___: Summary Judgment Order, d. 4/15/25, p. 7-8]. Having admitted in the trial court that the June releasees (inmates sentenced prior to the effective date of the Omnibus Act) were released on release dates "properly calculated pursuant to the Omnibus Crime Reduction and Sentencing Reform Act of 2010," SCDC cannot now maintain on appeal that the Act did not apply to these inmates at all.

STANDARD OF REVIEW

The grant of summary judgment on issues of law is reviewed de novo. PCS Nitrogen, Inc. v. Cont'l Cas. Co., 436 S.C. 254, 260, 871 S.E.2d 590, 593 (2022).

INTRODUCTION

Inmates impacted by the Omnibus Act have, since shortly after its passage, pursued remedies in furtherance of the legislative intent of the Act, through the Administrative Law Court, state courts, the District Court, the Fourth Circuit Court of Appeals, and in this Court. The legal odyssey began with Michael Bolin and Kevin Fowler pursuing grievance proceedings against SCDC in 2013. Those proceeding resulted in 2014 in disparate findings—one rubberstamping an interpretation by SCDC that was not generating earlier release dates for impacted inmates and the other which deemed SCDC's interpretation specious and not in accord with legislative intent. In 2016, this Court reviewed the ALC decisions in both cases. It affirmed the decision in Fowler that concluded SCDC was applying a specious interpretation of the Act and reversed the Bolin decision, concluding that SCDC's interpretation was "unreasonable" and "patently erroneous."

In August 2016, Marion Campbell, newly freed from incarceration through the mass release that came on the heels of this Court's Bolin decision, sought to remedy the wrong that had denied hundreds of inmates their freedom for periods ranging from months to years. He pursued state and federal claims against SCDC and its staff attorneys who had formulated the "patently erroneous" interpretations that deprived inmates of the early release intended by the General Assembly. When his claims were removed from state court to federal court, his state tort claims took a backseat.

The District Court agreed with the merits of Campbell's civil rights claims pursued under 42 U.S.C. § 1983 against SCDC's staff attorneys, Chris Florian and David Tatarsky. Those attorneys' motions for summary judgment were denied but an interlocutory appeal was granted. While Florian and Tatarsky pursued an appeal of the civil rights claims to the Fourth Circuit Court of Appeals, the state law tort claims against SCDC were held in abeyance. The Fourth Circuit reversed, concluding that Florian and Tatarsky were entitled to qualified immunity because the evidence was not sufficient to meet the heavy burden required to show conscious indifference. That appeal, ended the federal civil rights claims against the individual defendants and resulted in remand of Campbell's state tort claims against SCDC to state court.[5] The state false imprisonment claims were resolved on summary judgment in favor of Plaintiff class members and this appeal ensued.

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[5] SCDC, throughout its arguments on multiple issues, relies on language from the Fourth Circuit opinion in Campbell v. Florian, 972 F.3d 385 (4th Cir. 2020), that was nothing more than dicta. SCDC was not a party to the matter before the Fourth Circuit, and the claims against it were not considered by that Court. The Fourth Circuit's consideration of qualified immunity in the context of civil rights claims under federal law has no bearing on the state tort claims against SCDC currently before this Court—different parties, different claims, different standard.

ARGUMENT

I. SCDC is not entitled to immunity from liability for the false imprisonment claims of the Plaintiff class members pursuant to any of the exemptions to waiver of immunity stated in the South Carolina Tort Claims Act.

SCDC, pursuant to the South Carolina Tort Claims Act [TCA], is "liable for [its] own 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. SCDC urges that a "liberal construction," pursuant to S.C. Code Ann. § 15-78-20(f), of the TCA exemptions it claims, defeats Plaintiffs' false imprisonment claims. Where conduct does not fall within the purview of a TCA exemption under either the language of the exemption or the case law thereunder, liberal construction cannot inoculate otherwise actionable conduct.

The trial court properly concluded that the exemptions from liability claimed by SCDC, contained in subsections (4), (5), and (21) to the TCA, did not apply.

A. SCDC is not immune from liability for the false imprisonment claims pursuant to the exemption to waiver of immunity stated in S.C. Code Ann. § 15-78-60(4) for "adoption, enforcement, or compliance with law or failure to adopt or enforce any law," because SCDC's unlawful restraint of Plaintiffs arose solely from its failure to comply with the law, not a failure to adopt or enforce a law.

Plaintiff class members contend they were unlawfully restrained when SCDC failed to release each of them on their different max-out release dates properly calculated pursuant to the Omnibus Act. Plaintiffs' prolonged detention was unlawful because SCDC failed to follow the mandates of the Act and calculate their different max-out dates as parolable offenses.

The trial court correctly concluded that SCDC's claim of immunity from false imprisonment under S.C. Code Ann. § 15-78-60(4), stating an exemption to waiver of immunity for "adoption, compliance, enforcement or failure to adopt or enforce a law," failed as a matter of law. Plaintiffs' false imprisonment claims arise from SCDC's failure to comply with the mandates of the Omnibus Act, which is conduct not included in the exemption to waiver of governmental immunity stated in subsection (4) of S.C. Code Ann. § 15-78-60.

Given the South Carolina General Assembly's overt and undeniable omission of "failure to comply" from the language of S.C. Code Ann. § 15-78-60(4), SCDC attempts to shoehorn its conduct into the "enforcement" and "failure to enforce" categories of the exemption. SCDC's conduct was not enforcement. "Enforce" is a transitive verb. https://www.merriam-webster.com/dictionary/enforce (last visited June 10, 2026). A transitive verb requires an object. Chicago Manual of Style § 5.102 (18th ed. 2024). Enforcement, in all aspects of common usage, involves enforcement action by one party against another party. The Omnibus Act did not dictate that SCDC take action against the inmates. The Act directed SCDC to calculate inmate release dates in accordance with its provisions. SCDC was the regulated party, not the regulator. No third party's compliance needed to be compelled. SCDC failed to act in accordance with the Act's mandate. That is non-compliance which cannot be repackaged as enforcement action.

SCDC strings together a series of definitions from Merriam Webster Dictionary and Black's Law Dictionary, using synonyms of "enforce" to implicate definitions of "implement," then synonyms of "implement" to arrive at definitions of "carry out" and "apply."[6] App. Br., p. 27. SCDC then uses language from various of the definitions of all of these words to create its own made up "plain language" definition of enforce. App. Br., p. 19. Neither "implement," nor

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[6] Synonyms are merely similar words, not the same words. The South Carolina General Assembly methodically and intentionally chose the words it used in the South Carolina Tort Claims Act and it is not for SCDC to substitute its judgment by replacing those words with ones it prefers.

"carry out," nor "apply" are appropriate substitutions for the concepts of enforcement and failure to enforce contained in S.C. Code Ann. § 15-78-60(4).

The first-tier definition of "enforce" listed by SCDC is "to give force to: strengthen." App. Br., p. 18. SCDC also cites the Black's Law Dictionary definition of enforce as "to give force and effect to (as law); to compel obedience to." App. Br., p. 19. These primary definitions do not advance SCDC's argument that its failure to recalculate Plaintiff class members' sentences and apply sentence reduction credits in compliance with the Act fell under the "enforcement" or "failure to enforce" language of S.C. Code Ann. § 15-78-60(4).

SCDC did not "give force to: strengthen" the Omnibus Act; nor did it "give force and effect" to the Act. The South Carolina General Assembly gave force and effect to the Omnibus Act by it lawful passage, with an effective date of June 2, 2010. Per Article III Section 18 of the South Carolina Constitution:

> No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it, and has been signed by the President of the Senate and the Speaker of the House of Representatives: Provided, That either branch of the General Assembly may provide by rule for a first and third reading of any Bill or Joint Resolution by its title only.

The Omnibus Act cleared the requisite constitutional hurdles and became law as of June 2, 2010. It had the force and effect of law on that date and needed no action from SCDC to give it force. The Omnibus Act was self-executing and SCDC's role was to comply.[7]

The Indiana Court of Appeals, in interpreting a strikingly similar provision of its own Tort Claims Act exempting from its waiver of immunity the "[t]he adoption and enforcement of or failure to adopt or enforce a law . . . " concluded:

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[7] No enforcement was necessary other than through the courts, such as the Court of Appeals decision in Bolin compelling SCDC to comply with the plain meaning of the Act.

> We therefore conclude that the "enforcement" spoken of in what is now Section 3(8) of the ITCA means compelling or attempting to compel the obedience of another to laws, rules, or regulations, and the sanctioning or attempt to sanction a violation thereof. It would also, by the plain meaning of the statute, include the failure to do such. However, it does not include compliance with or following of laws, rules, or regulations by a governmental unit or its employees. Neither does it include failure to comply with such laws, rules, or regulations.

St. Joseph Cnty. Police Dep't v. Shumaker, 812 N.E.2d 1143, 1150 (Ind. Ct. App. 2004) (emphasis in original).

SCDC also failed to address the clear message sent by the General Assembly when it composed the language of S.C. Code Ann. § 15-78-60(4) creating an exemption to waiver of immunity for "adoption, enforcement, or compliance with any law or the failure to adopt or enforce any law. . . ." The General Assembly's drafting reveals the exemption's precise scope: the first phrase immunizes adoption, enforcement, or compliance with law; the second phrase immunizes a failure to adopt a law or a failure to enforce a law but conspicuously omits a failure to comply a law. That omission is not an oversight. The legislators overtly recognized the concept of compliance but chose not to replicate the concept on the failure side of the statutory language.[8] Under settled principles of statutory construction, a deliberate omission carries the same legal force as an express exclusion. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000).

South Carolina appellate courts have recognized that "the legislature intends to accomplish something by its choice of words and would not do a futile thing." Gordon v. Phillips Utilities, Inc., 362 S.C. 403, 406, 608 S.E.2d 425, 426 (2005). "The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to

[8] This is a case of first impression in this respect. Although the TCA has been a fixture of South Carolina jurisprudence since 1986, the appellate courts of this state have never been called upon the address the omission of "failure to comply" in the second phrase of exemption (4) to S.C. Code Ann. § 15-78-60.

express or include one thing implies the exclusion of another, or of the alternative.'" Hodges, 341 S.C. at 86, 533 S.E.2d at 582. "The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded. Exceptions strengthen the force of the general law and enumeration weakens it as to things not expressed." Hodges, 341 S.C. at 87, 533 S.E.2d at 582 (quoting Norman J. Singer, Sutherland Statutory Construction § 47.23 at 227 (5th ed. 1992) (citations omitted)). See also, Vernon v. Harleysville Mut. Cas. Co., 244 S.C. 152, 157, 135 S.E.2d 841, 844 (1964) ("Where there is an express exception in a statute, all other exceptions which are not expressly set forth are excluded. The inclusion of one exception amounts to an affirmation of the applicability of the statute's provision to all other cases which are not excepted.").

"The court has no right to add the words [the legislature] omitted, nor to interpolate them on conceits of symmetry and policy." 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 Legislature declined to include the word "comply" in the phrase "failure to adopt or enforce," and SCDC cannot negate legislative intent by casting its own failure to comply as enforcement.

SCDC criticizes the trial court for adopting the definition of "enforce" as meaning "to compel," despite this being the sole definition in harmony with the context and remaining language of S.C. Code Ann. § 15-78-60(4). Yet SCDC states no persuasive basis to support its criticism. It relies on Repko v. Cty. Of Georgetown, 424 S.C. 494, 818 S.E.2d 743 (2018) and Adkins v. Varn, 312 S.C. 188, 439 S.E.2d 822 (1993). App. Br., pp. 20-21. However the cases describe governmental conduct that cannot fairly be judged as anything other than classic enforcement acts.

Repko involved county regulations providing that a developer of a major residential subdivision was to post and maintain a letter of credit during the construction process covering 125% of the cost of the completion of the project. In that case, the plaintiff conceded that S.C. Code Ann. § 15-78-60(4) applied but argued that a gross negligence standard should be read into the exemption because Georgetown County had pled § 15-78-60(12). While some language in Repko references a failure to comply with regulations by the county, it is clear that the essence of the claim was that the county failed to compel (enforce) compliance with the letter of credit requirement vis-à-vis the developer when it allowed the developer to reduce the letter of credit significantly below the 125% required amount.

In Adkins, the claim was that the county failed to enforce its animal control ordinances. The nature of that failure to enforce was not detailed. SCDC states the county "did not enforce the ordinance on these particular animals." However, animal control ordinances are generally enforced against owners of animals, not the actual animals. There is no basis for SCDC's argument that the actionable conduct in Adkins was in any way comparable to SCDC's failure to comply with the Omnibus Act.

The Omnibus Act governed the actions of SCDC, not others. SCDC was charged with complying with the law. It did not comply. Enforcement is not at issue.

B. SCDC is not immune from liability for the false imprisonment claims pursuant to the exemption to waiver of immunity stated in S.C. Code Ann. § 15-78-60(5) for discretionary decisions because SCDC's obligation to calculate and implement inmate release dates under the Omnibus Act was ministerial—mandatory, certain, and imperative—and was not a product of SCDC making a conscious choice between competing alternatives based on accepted professional standards.

The trial court properly concluded that the exemption to waiver of immunity stated in S.C. Code Ann. § 15-78-60(5) for discretionary decisions did not apply to bar Plaintiffs' false imprisonment claims.

1. McCall v. Batson does not apply.

First, SCDC's reliance on McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985) is misplaced. McCall was decided prior to the implementation of the TCA and explicitly left it to the Legislature to set forth exceptions to the abrogation of sovereign immunity. The Legislature did so in passing the TCA in 1986. McCall is specifically annotated by Westlaw as "superseded by statute."

SCDC states:

> When the Legislature enacted the Tort Claims Act, it codified the McCall exceptions. Williams v. Condon, 347 S.C. 227, 249, 553 S.E.2d 496, 508 (Ct. App. 2001). Among the McCall exceptions codified was 15-78-60(5) . . . ."

App. Br., p. 22.

What the Williams court actually stated is this:

> When the General Assembly enacted the Tort Claims Act, it codified the McCall exceptions. See S.C. Code Ann. § 15–78–60(1)(2) (Supp.2000) (stating "The governmental entity is not liable for a loss resulting from (1) legislative, judicial, or quasi-judicial action or inaction; and (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature").

Williams, 347 S.C. at 249, 553 S.E.2d at 508. The discretionary immunity exemption stated in § 15-78-60(5) is nowhere mentioned in Williams.

Yet, SCDC persists in citing the language of McCall that "[t]he exercise of discretion includes the right to be wrong."[9] That right to be wrong in present-day South Carolina extends solely to acts that fall within the purview of S.C. Code Ann. § 15-78-60(5). It is the case law arising under the TCA that articulates the meaning and extent of discretionary immunity under S.C. Code Ann. § 15-78-60(5).

2. SCDC was not faced with alternatives and did not weigh competing considerations and make a conscious choice using accepted professional standards.

Pursuant to S.C. Code Ann. §15-78-60(5), "[t]he governmental entity must show that when faced with alternatives, it weighed competing considerations and made a conscious choice, and that it used accepted professional standards to make that choice." Creech v. S.C. Wildlife & Marine Resources Dep't, 328 S.C. 24, 28, 491 S.E.2d 571, 573 (1997). Discretionary immunity requires proof that "accepted professional standards" were actually used to weigh the appropriate factors. "The governmental entity must show that in weighing the competing considerations and alternatives, it utilized 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) (emphasis added) (quoting Foster v. S.C. Dep't of Highways & Pub. Transp., 306 S.C. 519, 525, 413 S.E.2d 31, 35 (1992)).

As early as 2014, SCDC was told by the ALC that maintaining the eighty-five percent rule for parolable offenses under the Omnibus Act "would be to hold that the General Assembly amended the statute for no purpose whatsoever." [R.pp. ___, fn 1: Ex. A to Plt. Memo. Opp.

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[9] SCDC shows remarkable hubris in characterizing its interpretation of the Omnibus Act as merely "wrong." The Administrative Law Judge in Fowler concluded that SCDC's position was "specious." [R.pp. ___: Ex. A to Plt. Memo. Opp. SCDC Mot. for S.J., p. 3, fn. 1]. This Court found that SCDC's interpretation of the Omnibus Act was "patently erroneous." Bolin, 781 S.E.2d at 916.

SCDC Mot. for S.J., p. 4, fn. 1]. That tribunal called SCDC's interpretation of the Act "unreasonable" and its argument "specious." [R.pp. ___, fn. 1: Ex. A to Plt. Memo. Opp. SCDC Mot. for S.J., at 3-4, fn. 1].

This Court was then called upon to review SCDC's interpretation of the Omnibus Act in the Bolin and Fowler cases. As an initial matter, this Court defined its scope of review in Bolin by noting:

> While the interpretation of a statute by the agency charged with its administration "will be accorded the most respectful consideration," an agency's interpretation "affords no basis for the perpetuation of a patently erroneous application of the statute."

Bolin, 415 S.C. at 280, 781 S.E.2d at 916 (citations omitted) (emphasis added).

This Court noted the following language in the Omnibus Act:

> Notwithstanding 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 (emphases added).

Bolin, 415 S.C. at 282, 781 S.E.2d at 917 (emphasis in original).

From this language this Court concluded that the Legislature intended to repeal the no-parole provisions of S.C. Code Ann. § 24-13-100 because otherwise "the amendments themselves would be meaningless." Bolin, 415 S.C. at 283, 781 S.E.2d at 917. This Court further concluded that "it is unreasonable to characterize an offense for which the offender is eligible for parole as a no-parole offense." Bolin, 415 S.C. at 284, 781 S.E.2d at 918 (emphasis added).

This Court also concluded that SCDC, in interpreting the Omnibus Act, "ignores the purpose of the [Omnibus] Act." Bolin, 415 S.C. at 285, 781 S.E.2d at 918 (emphasis added). As the trial court concluded "[n]o state agency has the discretion to ignore legislative intent in interpreting a statute. SCDC was required 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." [R.pp. ___: Sum. Judg. Order, p. 24].

This Court's conclusions in Bolin that SCDC's interpretation of the Omnibus Act was "patently erroneous," "unreasonable," and not in accordance with Legislative intent are binding on SCDC and are fatal to its claim of discretionary immunity under S.C. Code Ann. § 15-78-60(5).[10] SCDC bears the burden of proof to establish its entitlement to discretionary immunity under this TCA exemption. Proctor v. Dep't of Health & Env't Control, 368 S.C. 279, 292, 628 S.E.2d 496, 503 (Ct. App. 2006). This Court's conclusions in Bolin negate the elements of discretionary immunity and the trial court properly so found.

When SCDC was mandated by the Legislature to recalculate parole eligibility and release dates in accordance with the Omnibus Act, it was not "faced with alternatives." Creating a parolable, no parole category of sentence, which this Court concluded was unreasonable and patently erroneous is not a "competing consideration." Interpreting the Omnibus Act in such a way that "the amendments themselves would be meaningless"[11] is not a "competing consideration." Ignoring legislative intent is not a "competing consideration." 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

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[10] Because SCDC is bound by the holdings of this Court in Bolin, it has consistently denigrated the opinion, preferring to elevate dicta in the opinion of the Fourth Circuit that dealt solely with the issue of conscious indifference vis-à-vis individual SCDC employees involved in interpreting the Omnibus Act. SCDC has characterized the Bolin ruling as nothing more than this Court's "characterization of any opinion contrary to its own as being 'patently erroneous' and 'unreasonable.'" [R.pp. ___; Ex. G to Plt. Memo. Supp. Mot. for S.J., pp. 2, 3]. It has also called this Court's careful and pointed language "that court's own descriptions intended to bolster its own decision on the issue of statutory construction." [R.p.___: Id., p. 3].

[11] Bolin, 415 S.C. at 283, 781 S.E.2d at 917.

> 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), affirmed (March 18, 2026).

"Accepted professional standards" clearly must incorporate objective standards of reasonableness. An outcome deemed "patently erroneous" (i.e. obviously wrong) is anathema to behavior actually governed by "accepted professional standards." It is manifest that accepted professional standards mandate that governmental staff give attention to what is patent, obvious and apparent. Accepted professional standards mandate deference to legislative intent that the Court of Appeals concluded was ignored by SCDC. Discretion does not override the requirement that legislative intent must be effectuated, not ignored. As the trial court noted, "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 the accepted professional standards appropriate to the issue before it. SCDC is not entitled to discretionary immunity." [R.pp.___: Sum. Judg. Order, p. 24 (emphasis in original)].

An agency interpretation simply cannot be patently erroneous, specious, and unreasonable, but then be in accordance with accepted professional standards at the same time.

SCDC's reliance on the Fourth Circuit Court of Appeals opinion in this case is misplaced. The issue before that Court was whether there was sufficient evidence in the record to meet the heavy burden to find "conscious indifference" in the context of qualified immunity. The holdings in Campbell v. Florian, 972 F.3d 385 (4th Cir. 2020), concerned (i) two individual attorneys, not the SCDC as a state entity; (ii) qualified immunity; and (iii) the federal deliberate-indifference standard — a subjective recklessness inquiry. Once that Court concluded the elements of conscious indifference were not met, any further comments or commentary unnecessary to its analysis of qualified immunity and conscious indifference were mere dicta. The fact that SCDC chose to ignore legislative intent and applied the Omnibus Act in a manner that this Court deemed "patently erroneous" and the ALC deemed "specious" negates any argument that SCDC applied accepted professional standards.

3. SCDC's recalculations under the Omnibus Act were ministerial, not discretionary.

Irrespective of how laboriously SCDC staffers supposedly toiled to arrive at a meaning in the Omnibus Act supporting continued incarceration over earlier release of impacted inmates, there were no competing considerations to weigh and no choices to be made. SCDC, through its staff, was bound to know the law and comply with it as written. As stated in Groce v. Horry Cnty., No. 2011-UP-125, 2011 WL 11733611, at *11 (S.C. Ct. App. Mar. 24, 2011):

> "Ignorantia juris quod quisque tenetur scire, neminem excusat" denotes "[i]gnorance of the [or a] law, which everyone is bound to know, excuses no man." Black's Law Dictionary 747 (6th ed.1990).

As the trial court properly found, 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." [R.pp. ___, Sum. Judg. Order, p. 24]. SCDC was not entitled to discretionary immunity because its recalculations under the Omnibus Act were ministerial, not discretionary.

"[A] duty is ministerial when it is absolute, certain, and imperative, involving merely execution of a specific duty arising from fixed and designated facts. . . ." Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 330, 566 S.E.2d 536, 544 (2002) (quoting Jenson v. Anderson Cty. Dep't of Soc. Servs., 304 S.C. 195, 203, 403 S.E.2d 615, 619 (1991)). Likewise, as stated by the Second Circuit Court of Appeals: "[t]he governmental 'function involved' here—prison officials' implementation of an inmate's sentence—was essentially ministerial." Francis v. Fiacco, 942 F.3d 126, 144 (2d Cir. 2019). See also Kurtz v. State, 369 S.C. 15, 19, 630 S.E.2d 472, 474 (2006) (holding that the Code Commissioner's classification of offenses is considered a ministerial duty). "[M]ere room for discretion on the part of the governmental entity [is] not sufficient to invoke the discretionary immunity provision." Foster v. S.C. Dep't of Highways & Pub. Transp., 306 S.C. 519, 525, 413 S.E.2d 31, 35 (1992).

SCDC was obligated by statute to do a specific, calculable thing, and it failed to do it. There was no policy choice to make and no professional judgment implicated. SCDC was required to perform calculations, arrive at max-out release dates, and honor those dates by releasing inmates in a timely manner. It failed to do so.

C. SCDC is not immune from liability for the false imprisonment claims pursuant to the exemption to waiver of immunity stated in S.C. Code Ann. § 15-78-60(21) because the claims are based on continued custody of inmates past their max-out release dates, not a decision by SCDC to terminate the custodial relationship.

The TCA exemption stated in S.C. Code Ann. § 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 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." S.C. Code Ann. § 15-78-60(21). The clear meaning and intent of S.C. Code Ann. § 15-78-60(21) is to exempt the state from liability for torts arising post-release based upon claims that a release, parole, discharge, or furlough was improper.

In this case, SCDC unlawfully maintained its custodial relationship with the Plaintiff class members rather than terminating that relationship as required by the Omnibus Act. The foundation of each Plaintiff class member's false imprisonment claim derives from each day of detention before the tardy release date.

As the South Carolina Supreme Court noted in Faile v. S.C. Dep't of Juvenile Justice regarding S.C. Code Ann. § 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.

350 S.C. at 333, 566 S.E.2d at 545 (emphasis added).

The plain language of subsection (21) contemplates the governmental entity having some decision-making power over the release of the inmates which SCDC did not—the dates on which inmates were required to be released were mandated by the Omnibus Act, which SCDC simply failed to follow.

SCDC cites no authority in support of its argument. Instead, it asks this Court for a "liberal construction" of subsection (21), that, in essence, re-writes it. Its argument concerning subsection (21) has no merit, liberal construction or not. Each Plaintiff class member's claim for false imprisonment arose on the first day of unlawful detention past his or her lawful max-out release date, long before the Bolin decision, long before the March 21, 2016 mass release date, and long before the June 2016 mass release date. Unlawful detention is not "release."

The Supreme Court's construction of § 15-78-60(21) in Faile is a coherent and logical application of this TCA exemption which preserves both the immunity the Legislature granted and the liability the state retained. SCDC's conduct falls entirely outside the exemption's reach. Accordingly, the TCA exemption stated in S.C. Code Ann. § 15-78-60(21) does not apply.

D. Application of the gross negligence standard of the custodial immunity exception to the waiver of immunity stated in SC Code Ann. § 15-78-60(25) is not properly before this Court because it was addressed by the trial court solely with regard to the denial of SCDC's Motion for Summary Judgment and those findings and conclusions are not appealable.

SCDC argues the lack of applicability of S.C. Code Ann. § 15-78-60(25) even though it was only raised in the portion of the trial court's Order denying SCDC's motion for summary judgment on negligence/gross negligence. The trial court did not address § 15-78-60(25) at all in granting the Plaintiffs' motion for summary judgment as to false imprisonment. It did not need to. As the trial court noted, SCDC only asserted immunity pursuant to S.C. Tort Claims Act § 15-78-60(3), (4), (5) and (21) in opposing Plaintiffs' motion for summary judgment. [R.p. ___, Sum. Judg. Order, p. 19, fn. 3; see R.p. ___, SCDC Memo. Opp. Mot. for S.J., p. 10, fn. 2 (SCDC stating "SCDC has not raised those defenses in its Motion for Summary Judgment" and noting that other affirmative defenses based on TCA provisions were "not now argued by SCDC.")].[12]

SCDC's convoluted argument seems to be that because the trial court considered § 15-78-60(25) in denying SCDC's motion for summary judgment as to negligence/gross negligence, the court was required to consider and apply § 15-78-60(25) to its analysis of the Plaintiff class members' motion for summary judgment on false imprisonment. SCDC makes this argument even though neither party raised subsection (25) in briefing or arguments on the false imprisonment claims and the court concluded that the TCA exemptions SCDC did rely on in opposing the motion were not applicable.

[12] See also App. Br., p. 28: "As an initial matter, SCDC did not plead or rely upon the immunity set forth in §15-78-60(25)."

The denial of summary judgment is not appealable. See App. Br., p. 45 (citing Ballenger v. Bowen, 313 S.C. 476, 477-78, 443 S.E.2d 379, 380 (1994)). The South Carolina Supreme Court stated unequivocally in Ballenger:

> [T]he denial of summary judgment does not finally determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings. Therefore, an order denying a motion for summary judgment is not appealable.

Ballenger, 313 S.C. at 477–78, 443 S.E.2d at 380 (emphasis in original).

The trial court's reasoning in denying SCDC's motion for summary judgment is not properly before the Court and has no impact on the merits of its order granting summary judgment in favor of Plaintiffs as to false imprisonment. SCDC did not oppose Plaintiffs' motion for summary judgment based on § 15-78-60(25) and the trial court did not consider § 15-78-60(25) in granting the motion. There is no appropriate ground on appeal to be stated by SCDC with respect to § 15-78-60(25). Since the trial court made no findings or conclusions with regard to § 15-78-60(25) in the final, appealable portion of its order regarding false imprisonment, SCDC's arguments in this regard should be wholly disregarded and left to the trial court on remand.

II. SCDC unlawfully restrained all of the Plaintiff class members, thereby subjecting them false imprisonment.

SCDC contends that, irrespective of the provisions of the Omnibus Act pursuant to which it eventually released hundreds of Plaintiff class members months and years beyond their respective max-out release dates, no one was restrained unlawfully. As properly found by the trial court, the Plaintiff class members, whether sentenced before or after the effective date of the Omnibus Act, were subjected to prolonged restraint by SCDC that was unlawful.

A. SCDC unlawfully restrained the Plaintiff class members sentenced after the effective date of the Omnibus Act when it failed to release them on their max-out release dates, properly calculated pursuant to the Act, because the failure to comply with a statute is not deemed lawful pending an appellate court holding that it is not.

SCDC argues that no member of the Plaintiff class sentenced after the effective date of the Omnibus Act was unlawfully retrained for any period of time. SCDC posits that Plaintiff class members' detention was lawful for the months and years beyond the max-out dates when their lawful sentences ended in accordance with the Omnibus Act through the date remittitur issued in Bolin making final this Court's opinion that SCDC's interpretation of the Act was "unreasonable" and "patently erroneous."

1. The Plaintiff class members' sentencing orders did not render their detention beyond their properly calculated max-out release dates lawful.

SCDC claims that each Plaintiff class member's original term of incarceration was lawful pursuant to their respective sentencing orders, seemingly arguing that their continued incarceration beyond their properly calculated max-out release dates could not become unlawful absent a final appellate court decision. App. Br., p. 38. SCDC fails to cite any case law that actually supports such a contention.

The sole case SCDC cites is Argoe v. Three Rivers Behav. Health, LLC, 392 S.C. 462, 710 S.E.2d 67 (2011). In Argoe, a mental patient asserted that his commitment orders were invalid and that his detention, accordingly, was invalid and gave rise to a false imprisonment claim. Once the Court in Argoe upheld the validity of the contested commitment orders, the issue of false imprisonment was determined on that basis. The case in no respect involved prolonged detention past ascertainable detention dates as is the case here.

The Restatement (Second) of Torts, as quoted by a District of Columbia district court, describes the failure to release a prisoner as false imprisonment:

> One way to commit false imprisonment is through a "refusal to release." Restatement (Second) of Torts § 45 (capitalization omitted). "If the actor is under a duty to release the other from confinement ... his refusal to do so with the intention of confining the other is a sufficient act of confinement to make him subject to liability" for false imprisonment. Id. The Second Restatement provides the following illustration: "A is confined in jail under a sentence for a term. At the end of the term B, the jailor, is under a legal duty to release A, but refuses to do so. B is subject to liability to A." Id. cmt. a, illus. 1.

Jones v. D.C., No. 16-CV-2405 (DLF), 2019 WL 5690341, at *5 (D.D.C. June 13, 2019).

SCDC's continued confinement of these Plaintiffs who had fully served their sentences under South Carolina law was, in fact, unlawful.

2. The Bolin ALC decision did not render the detention of the Plaintiff class members beyond their properly calculated max-out release dates lawful.

SCDC also asserts that its interpretation of the Omnibus Act, deemed by this Court to be "unreasonable" and "patently erroneous," rendered the detention of the class members lawful until the remittitur issued in Bolin because its interpretation was "confirmed by the Administrative Law Court as a correct interpretation." App. Br., p. 39.

The Bolin ALC decision was not the Administrative Law Court's last say on the issue of agency interpretation of the Omnibus Act. As Michael Bolin was pressing his case for release under the Act, so too was fellow inmate Kevin Fowler. Fowler filed his Step One Grievance with SCDC on 9/11/2013, two months after Bolin appealed SCDC's denial of his grievance to the Administrative Law Court. [R.p. ___: Ex. A to Plt. Memo. Opp. SCDC Mot. for S.J., p. 1]. The ALC decision in Bolin was issued on February 24, 2014 and appealed by Bolin to this Court on March 10, 2014. Shortly after that, on April 10, 2014, Kevin Fowler noticed an appeal from SCDC's denial of his grievance to the Administrative Law Court. [R.p. ___: Ex. A to Plt. Memo. Opp. SCDC Mot. for S.J., p. 1].

The decision by the ALC in Fowler not only did not "confirm" SCDC's interpretation of the Omnibus Act as a "correct interpretation,"[13] the ALC in the latter decision concluded that SCDC's interpretation of the Act was "specious." [R.p.___, fn. 1: Ex. A to Plt. Memo. Opp. SCDC Mot. for S.J., fn.1, p. 3]. The ALC further found that "it appears from the plain language of the statute that the General Assembly intended inmates convicted of drug offenses to be eligible for parole, thereby removing certain offenses from the 'no parole' category." Id.

The Fowler decision was of precisely the same administrative authority as the earlier ALC ruling which rubberstamped SCDC's interpretation of the Omnibus Act and on which SCDC relies to justify its wrongful detention of the Plaintiff class members as "lawful." Accordingly, SCDC was put on notice very early on that its interpretation of the Omnibus Act was highly problematic. The ALC decisions certainly do not provide a cloak of lawfulness to SCDC's continued detention of the Plaintiff class members.

SCDC also argues that its own interpretation of the Omnibus Act was sufficient to render its conduct lawful until the remittitur in Bolin and that Bolin did not operate retroactively to render SCDC's interpretation unlawful.[14] App. Br., p. 39. If a subjective belief in a legal interpretation were a defense to false imprisonment, the tort would be unenforceable against nearly any governmental actors. Any detention, however plainly unlawful, could be justified by paying lip-service to unfounded beliefs which later may be found specious and patently erroneous.

SCDC argues that the retroactivity of Bolin was in application only—that it only meant inmates sentenced prior to Bolin had to be released in accordance with the opinion, instead of

[13] App. Br., p. 39.

[14] SCDC's counsel stated to the trial court that Plaintiffs and the other class members could still be incarcerated as of the hearing date if Michael Bolin (and Kevin Fowler) had not appealed, and that, in its view would be lawful. [R.pp. ___: Hearing Trans. (2/12/2025), p. 37].

only those sentenced after the opinion. SCDC does not address the case law the trial court relied upon in finding this Court's interpretation of the Omnibus Act in Bolin was fully retroactive.

South Carolina has long recognized that courts do not make law—they find and expound it. Roof v. Charlotte, C. & A.R. Co., 4 S.C. 61, 63 (1872) (holding the court's role is "not to pronounce a new law, but to maintain and expound the old one"). An appellate decision therefore does not become law on the date it is rendered; it declares what the law has always been. Corley v. Atlantic Life Ins. Co., 179 S.C. 95, 183 S.E. 596, 598 (1936) (holding an appellate court's declaration "merely calls into application and gives expression to what has always been the law").

South Carolina's retroactivity doctrine, as restated in Toth v. Square D Co., 298 S.C. 6, 8, 377 S.E.2d 584, 585 (1989), and Simmons v. S.C. Farm Bureau Mut. Ins. Co., 301 S.C. 267, 269, 391 S.E.2d 560, 562 (1990), draws a single dispositive line: decisions creating new substantive rights are given prospective effect only; decisions creating new remedies to vindicate existing rights are applied retrospectively. The Plaintiff class members sentenced after June 2, 2010 had an existing right—created by the Legislature on that date—to have their sentences calculated in accordance with the Omnibus Act and to be timely released by their max-out sentence dates. This Court did not create that right by its ruling in Bolin; rather it declared what that right had always been. Bolin falls squarely within the presumptively retroactive category. Accordingly, Bolin applies retroactively, and the class members' right to release on their properly calculated max-out dates existed from the effective date of the Omnibus Act forward, not from April 1, 2016.[15]

[15] SCDC's remittitur argument is a red herring. A remittitur is the mechanism by which a trial court's jurisdiction is restored. It has no pertinence to the issue of when statutory rights vest or when a detention becomes unlawful. Accordingly, the relevant question is not when Bolin became final. The issue is when SCDC's lawful authority to detain each Plaintiff class member expired. That occurred on the day each inmate's properly calculated max-out release date passed.

SCDC's obligation to comply with the Omnibus Act as properly interpreted did not arise from the Bolin decision. It arose from the Act itself, on June 2, 2010. The question of unlawfulness of Plaintiffs' detention, for the purpose of their false imprisonment claims, is measured against what the law actually required. What the law required, declared by Bolin retroactively to June 2, 2010, was the release of each inmate to which the Act applied on his or her properly calculated release date.

None of SCDC's three bases for claiming lawful detention of inmates sentenced after the Omnibus Act's effective date has merit. Lawful sentencing orders which initiate periods of incarceration do not sanitize prolonged incarceration beyond the lawful, properly calculated, max-out release dates; SCDC's unreasonable, patently erroneous, and specious interpretation of the Act was not clothed with legitimacy by the Administrative Law Court; and this Court's declaration of what the Omnibus Act means in Bolin was a declaration of what it meant as of June 2, 2010 and how it should have been applied from the effective date forward. All Plaintiff class members sentenced after the effective date of the Omnibus Act were, therefore, unlawfully detained by SCDC from their lawful max-out release dates through SCDC's mass release on March 21, 2016.

B. SCDC unlawfully restrained the Plaintiff class members sentenced before the effective date of the Omnibus Act because SCDC admitted the Act applied to those Plaintiffs, the Act applied retroactively as a remedial statute enlarging rights of the impacted inmates who were acting under disability, and the Act was not rendered prospective by its savings clause.

SCDC argues that the Plaintiff class members sentenced prior to the effective date of the Omnibus Act fell outside its purview and were not entitled to have the onerous effects of their no-parole status remedied. It claims that it ultimately released this group of inmates in June 2016 even though the Omnibus Act did not apply to them.

1. <u>**SCDC's admissions are binding and preclude it from asserting that the Omnibus Act did not apply to the Plaintiff class members sentenced prior to its effective date.**</u>

SCDC, during the course of this litigation, made the following admission:

> 6. The max-out sentence release dates for the inmates listed in Ex. B, [June Releasees] <u>properly calculated pursuant to the Omnibus Crime Reduction and Sentencing Reform Act of 2010</u>, is listed under the Column "NEW DATE."

[R.pp.___, ¶ 6: Ex F to Plt. Memo. Supp. Mot. for S.J. ¶ 6, p. 2 (emphasis added)].

The "Ex. B" referenced in this request to admit lists the June Releasees SCDC now claims were outside the purview of the Omnibus Act. SCDC's response to the request to admit was: "Admitted." [R.pp. ___, ¶ 6: Ex. F to Plt. Memo. Supp. Mot. for S.J., ¶ 6, p. 2]. The trial court appropriately concluded that SCDC was bound by this admission and other admissions containing similar language. [R.pp. ___: Sum. Judg. Order, d. 4/15/25, p. 7-8].

SCDC accused the trial court of "misconstruing and improperly broadening" SCDC's responses. It did no such thing. The Plaintiffs did not contend and the trial court did not find that SCDC's admission was an admission of unlawfulness of the prolonged detention of the June releasees, but rather it was an admission that the Act applied to them.

SCDC states that it admitted "only to the calculations of release dates under the Omnibus Act." App. Br., p. 37. But that is the point. It admitted the enumerated release dates listed in Exhibit B for each June releasee, properly calculated under the Act, was the correct date. SCDC did not qualify its response, did not deny the Act's applicability to those inmates, and did not invoke the savings clause. The critical, substantive element of the request is that <u>the dates</u> referenced in the exhibit are dates "properly calculated pursuant to the Omnibus Crime Reduction and Sentencing Reform Act of 2010." Accordingly, SCDC admitted that each max-out date for each Plaintiff class member listed in Exhibit B to the Request (the June releasees) was as stated.

SCDC's current argument is that the Plaintiff class members listed in Exhibit B to the request to admit—those sentenced prior to the effective date of the Omnibus Act—had no early release dates under the Omnibus Act because the Act did not apply to them at all. It contends that their June 2016 release was voluntary and not in accordance with the Act. SCDC's admission simply cannot be reconciled with this position. State agencies do not conduct emergency mass releases of hundreds of inmates as a matter of courtesy. It released those inmates because it was required to and it was required to because the Omnibus Act applied to them.

SCDC is bound by its admissions. It cannot now maintain on appeal that the Act did not apply to these inmates at all.

2. **<u>The Omnibus Act's implicit repeal of the no parole designation as to the enumerated non-violent drug offenses was fully retroactive in accordance with the intent of the General Assembly and as a remedial statute.</u>**

Irrespective of SCDC's admissions, as a general matter, statutes apply retroactively when they are remedial or procedural in nature. <u>Edwards v. State Law Enforcement Div</u>., 395 S.C. 571, 579, 720 S.E.2d 462, 466 (2011).

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. . . ." <u>Wiesart v. Stewart</u>, 379 S.C. 300, 303, 665 S.E.2d 187, 188 (Ct. App. 2008) (citing <u>Hercules Inc. v. South Carolina Tax Commission</u>, 274 S.C. 137, 262 S.E.2d 45 (S.C. 1980)). The retroactive treatment of remedial statutes is an exception to the presumption of prospective application of statutes touted by SCDC.

SCDC argues that the remedial nature of the Omnibus Act never became relevant because the General Assembly, in the savings clause to the Act, expressed clear legislative intent that the amendments to Section 38 of the Act were to apply prospectively. It asserts that the savings clause applied to the Omnibus Act amendments at issue because a "[p]rohibition against parole is a penalty, forfeiture, or liability," citing Warden, Lewisburg Penitentiary v. Marrero, 417 U.S. 653, 94 S. Ct. 2532, 41 L. Ed. 2d 383 (1974).

However, in South Carolina the remedy of parole eligibility simply expands the manner in which the sentence may be served. If parole or supervised release is granted, the sentence remains unaltered. South Carolina considers the term of the sentence, which it equates to the "punishment," the same whether parole is available or granted or a sentence suspended:

> Probation, a suspension of the period of incarceration, is clearly part of a criminal defendant's "term of imprisonment", as is actual incarceration, parole, and the suspended portion of a sentence, or "supervised furlough."

Thompson v. S.C. Dep't of Pub. Safety, 335 S.C. 52, 55–56, 515 S.E.2d 761, 763 (1999) (citations omitted).[16]

As the Fourth Circuit has aptly observed, parole "is not a release of the prisoner from all disciplinary restraint but is rather merely 'an extension of the prison walls'; and the prisoner while on parole remains 'in the legal custody and under the control of' the Parole Board." United States ex rel. Rowe v. Nicholson, 78 F.2d 468, 469–70 (4th Cir. 1935), cert. denied, 296 U.S. 573; United States v. Stewart, 49 F.3d 121, 126 (4th Cir. 1995) ("parole effects 'an extension of

[16] SCDC argues that under State v. Varner, 310, S.C. 264, 423 S.E.2d 133 (1992) a person convicted of a crime "must receive the punishment in effect at the time he is sentenced. App. Br., p. 13. Because parole does not change an inmate's "penalty," the retroactive application of the Omnibus Act did not change the impacted inmates' punishment.

the prison walls'"). Based on this analysis, the savings clause was not applicable to the Omnibus amendments governing parole.

In addition, the Warden, Lewisburg Penitentiary v. Marrero decision was driven at least in part by a review of the statutory history of the specific federal narcotics statute at issue, noting:

> . . . [T]he legislative history of s 7237(d) reveals that Congress meant ineligibility for parole to be treated as part of the punishment for the narcotics offenses for which respondent was convicted. Section 7237(d) was enacted as part of the Narcotic Control Act of 1956. The statute embodied congressional acceptance of the approach that effective combat against the contagion of drug addiction required the imposition of severe penalties for certain narcotics offenses. Congress therefore enacted lengthy mandatory minimum sentences as a means of decreasing both drug addiction and trafficking. See, e.g., S.Rep.No.1997, 84th Cong., 2d Sess., 5 (1956); H.R.Rep.No.2388, 84th Cong., 2d Sess., 10 (1956). But Congress believed that longer sentences would not achieve the desired results unless the offender remained imprisoned for his full term. 'In evaluating the effectiveness of the presently prescribed penalties, it must be recognized that special incentives in our penal system serve to decrease the actual time spent in a penal institution under a sentence imposed by a court. The violator is eligible for parole after serving one-third of his sentence. . . . Available data from the Bureau of Prisons, indicates that a narcotics violator actually serves an average of less than two thirds of the sentence imposed by the court. This mitigation of sentence tends to defeat the purposes of (existing legislation) . . .' Id., at 10–11, 1956 U.S. Code Cong. & Admin. News, p. 3284.

Marrero, 417 U.S. at 662 (emphasis added). Clearly, the court in Marrero was faced with legislative intent that was diametrically opposed to that expressed by the South Carolina General Assembly in enacting the Omnibus Act.

In focusing wholly on the savings clause, SCDC ignores other compelling indicia of legislative intent at least with regard to the Omnibus Act's amendments to parole and early release provisions. The preamble to the Act described a penal system in South Carolina that was broken. The General Assembly aimed to fix that broken system to "provide consistency in sentencing classifications, provide proportional punishments for the offenses committed and reduce the risk of recidivism." Act No. 273, South Carolina General Assembly 118th Session, 2009-2010, June 2, 2010) Part 1, § 2. The General Assembly, pursuant to the Act, also sought "to provide fair and effective sentencing options, employ evidence-based practices for smarter use of correctional funding, and improve public safety." Id., § 1.

As noted by the General Counsel to SCDPPP in evaluating retroactivity under the Omnibus Act after Bolin: "it does not seem likely that the General Assembly could have meant to bind both the probation and correctional systems to laws, policies, and procedures it had already identified as causing harm." [R.p.___: Ex. G to Plt. Memo. Opp. SCDC Mot. for S.J., p. 7 (emphasis added)]. SCDPPP's point is compelling. The General Assembly described a system in which criminals were not rehabilitated, crime was not reduced, and state dollars were flowing with no positive impact.

The South Carolina General Assembly was seeking to ameliorate the harsh impact of draconian drug sentencing statutes that had proven ineffective in stemming the flow of narcotics and that were not cost effective. As noted by SCDPPP:

> 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.

[R.pp. ___: Ex. G to Plt. Memo. Opp. SCDC Mot. for S.J., pp. 6-7]. SCDPPP General Counsel Buchanan stated in support of a finding that the Omnibus Act was retroactive:

> Note that the Act refers to a current state of affairs that it has determined is currently unacceptable. Here, as in the remaining direct declarations of the General Assembly's intent contained in the Act, "it is the intent of the General Assembly" obviously means its present intent to better preserve public safety, reduce crime, etc.

[R.pp. ___: Ex. G to Plt. Memo. Opp. SCDC Mot. for S.J., p. 2 (emphases added)].

SCDC ignores the stated intention of the General Assembly "to reduce recidivism, provide fair and effective sentencing options, employ evidence-based practices for smarter use of correctional funding, and improve public safety" because "the South Carolina correctional system incarcerates people whose time in prison does not result in improved behavior and who often return to South Carolina communities and commit new crimes." It argues that the boilerplate savings clause language of the Omnibus Act evinces "clear intent" to delay the intended impact of the Act until years in the future. As SCDPPP concluded, this result was "exactly the opposite of the result intended by the General Assembly." [R.pp. ___: Ex. G. to Plt. Memo. Opp. SCDC Mot. for S.J., pp. 6-7].

SCDC also relies on United States v. Bullard, 645 F.3d 237 (4th Cir. 2011), another federal case decided under federal law. In Bullard, the Court was analyzing the retroactivity of changes to the Federal Sentencing Act. Looking to legislative intent, the Court found there was "no express statement of retroactivity, nor can any such intent be inferred from its language." Id. at 248. The language that the Court in Bullard found insufficient to support an implied legislative intent that the statute apply retroactively was a direction to the Sentencing Commission to "promulgate the guidelines, policy statements, or amendments provided for in this Act as soon as practicable . . . ." Bullard, 645 F.3d at 248. This language in no way compares to the South Carolina General Assembly's express intent to fix a system that was actively causing harm to the general public.

Besides the disconnect between the argument posited by SCDC and the express intent of the Omnibus Act to fix a broken system that was costing state dollars while failing to accomplish correctional goals, the savings clause itself, when read with the amending provisions of the Act, directly negates the "clear legislative intent" relied on by SCDC.

First, the savings clause contains language ignored by SCDC:

> The repeal or amendment by the provisions of the act . . . does not affect pending actions . . . or alter, discharge, release or extinguish any penalty . . . incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide.

Act No. 273, South Carolina General Assembly 118th Session, 2009-2010, June 2, 2010) Part 1I, § 65. The Omnibus Act made sweeping changes to the South Carolina criminal code and various related statutes and, per the above-quoted savings clause provision, each amending provision must be read separately and legislative intent as to retroactivity separately ascertained. The Omnibus Act amendments to §§ 44-53-370 and -375 begin with the words "[n]otwithstanding any other provision of law." As the SCDPPP correctly concluded, "any other provisions of law" includes the savings clause of the Act. The "notwithstanding" clause thereby "expressly negates any effect the savings clause might have to limit the amendment to prospective application." [R.p.___: Ex. G to Plt. Memo. Opp. SCDC Mot. for S.J., p. 8]. The phrase "notwithstanding any other provision of law" is not simply boilerplate. As this Court notes in Bolin, it must be interpreted in conformity with legislative intent. Bolin, 415 S.C. at 282, 781 S.E.2d at 917.

SCDC cites State v. Brown, 402 S.C. 119, 740 S.E.2d 493 (2013) in support of its argument regarding the application of the savings clause. In Brown, the South Carolina Supreme Court found that an Omnibus Act amendment changing the substantive elements of the grand larceny statute "does not affect liability incurred under the prior version of the statute." Brown, 402 S.C. at 127-128, 740 S.E.2d at 497. However, the amendment in Brown did not contain the "notwithstanding any other provision of law" clause and substantively impacted penalties for the crime.

Brown is a 2013 case that was considered and cited by SCDPPP in its 2016 analysis concluding that the Omnibus Act vis-à-vis parole provisions was retroactive. It was clearly deemed not decisive on the question of retroactivity of the provisions of the Omnibus Act altering certain no parole offenses. In fact, the Supreme Court in Brown found that the savings clause contained in the Omnibus Act was "ambiguous" when it referenced "pending" actions. Brown, 402 S.C. at 128, 740 S.E.2d at 497 n.3.

Accordingly, the trial court correctly concluded that the savings clause did not mandate prospective application of the Omnibus Act and that Act was remedial. "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 (Ct. App. 2008) (citing Hercules Inc. v. South Carolina Tax Commission, 262 S.E.2d 45, 274 S.C. 137 (1980)); see also, Edwards v. State Law Enforcement Division, 395 S.C. 571, 580, 720 S.E.2d 462, 466 (2011). A number of courts looking at the question have concluded that statutes relating to parole are remedial and should apply to antecedent events. In State v. Vera, 235 Ariz. 571, 576, 334 P.3d 754, 759 (Ct. App. 2014), the Arizona Court of Appeals noted as follows:

> 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."

In the Tyree case, referenced in Vera, the court noted, "the construction sought by respondents is too restrictive and not in harmony with the legislative purpose." Tyree v. Moran, 113 Ariz. 275, 277, 550 P.2d 1076, 1078 (1976). The exact same reasoning applies here. Application of the Omnibus Act solely to inmates sentenced after its effective date in no way would have furthered the goals enumerated by the General Assembly but would have delayed any beneficial impact far into the future.

III. The unlawful detention of each Plaintiff class member constituted a separate occurrence of false imprisonment under the South Carolina Tort Claims Act because SCDC owed each of the Plaintiff class members a distinct, individual obligation of release on that class member's properly calculated max-out release date, each obligation was separately breached, and each breach caused independent injury to a separately identified individual.

The trial court correctly applied S.C. Code. Ann. § 15-78-120(a) to the claims in this case, and correctly rejected SCDC's argument that "under the explicit language of the TCA, the allegations of the Amended Complaint only state one 'occurrence' as that term is defined in the Act." App. Br., p. 40. The TCA sets a $300,000 liability cap for an individual from a "loss arising from a single occurrence." S.C. Code Ann. § 15-78-120(a)(1). Section 15-78-120(a)(2) of the TCA provides that "the total sum recovered hereunder arising out of a single occurrence shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions involved." 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). Multiple separate and distinct occurrences can be found under the TCA and are separately compensable. Boiter v. South Carolina Dept. of Transp., 393 S.C. 123, 131, 712 S.E.2d 401, 405 (2011). Analyzing the false imprisonment claims in conjunction with the pertinent TCA statutes, the trial court held "that each of the 413 individual class members' claims for false imprisonment is compensable as a separate occurrence." [R.pp. ___: Sum. Judg. Order, p. 26].

SCDC argues that there was a "singular act of alleged negligence in this case" which was the "legal interpretation of the Omnibus Act." App. Br., p. 43. It asserts "[t]he claim only arose because of one singular act – the incorrect legal advice. From that singular act unfolded the miscalculation of inmate max-out dates." App. Br., p. 45.

First, for purposes of the false imprisonment claims, focusing upon a "singular act of alleged negligence" or even multiple acts of negligence is beside the point. As the trial court found, for purposes of the false imprisonment claims, "[t]he focus is the unlawful application of the Act to each inmate, not why SCDC determined to apply the Act in an unlawful manner." [R.pp. ___: Sum. Judg. Order, p. 26]. Indeed, "[t]he essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification," and the elements are "(1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful." Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 440, 629 S.E.2d 642, 651 (2006). In other words, the acts examined must be the unlawful restraint or deprivation of liberty for each inmate.

Without question, "[e]ach [inmate] endured a separate tort, with the loss of freedom for each commencing on different dates and sustained for different lengths of time." [R.pp. ___: Sum. Judg. Order, p. 26]. Each day SCDC retained custody of an inmate in violation of the Omnibus Act could be viewed broadly as a new deprivation of that inmate's freedom of movement and, thus, a separate and distinct occurrence of false imprisonment. Plaintiffs have not made that claim, but instead view each period of unlawful detention of one individual inmate as a separately compensable occurrence.

SCDC's reliance on Giannini v. South Carolina Dept. of Transp., 78 S.C. 573, 664 S.E.2d 450 (2008) is misplaced. Giannini is not "comparable" as argued by SCDC. App. Br., p. 43. That opinion addressed equal protection concerns regarding the TCA's aggregate cap. Multiple occurrences were not asserted by the plaintiffs, and the opinion did not address the trial court's determination that the facts of the case, involving a single wreck, on a single day (January 4, 2020), at a single location, injuring three individuals, all of whom alleged SCDOT was negligent for not installing median barriers at the location to prevent a vehicle involved in a wreck from crossing to the opposing lanes, subjected those individuals to a $600,000 aggregate cap.

In addition, Giannini helps demonstrate the absurdity of SCDC's position regarding multiple occurrences in this case. Courts "must reject a statutory interpretation if it leads to an absurd result that could not possibly have been intended by the legislature or that defeats plain legislative intent." State v. Taylor, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022); see Singletary v. South Carolina Dep. of Educ., 316 S.C. 153, 161, 447 S.E.2d 231 (Ct. App. 1994) ("However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the legislature."). Under SCDC's argument, the aggregate amount of $600,000 would have applied not just to those injured in the Giannini wreck on January 4, 2020, but to all wrecks and injuries prior to January 4, 2020, as well as all future wrecks and injuries in perpetuity caused by SCDOT's failure to install median barriers on Interstate 77.

The trial court explicitly noted the absurdity of SCDC's construction of the TCA and its attempt to claim there is only a single occurrence in this case:

> 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.

[R.pp. ___: Sum. Judg. Order, p. 33, fn.11].

Bizarrely, SCDC argues that Plaintiffs' allegations regarding commonality in their Amended Complaint and Memorandum in Support of Class Certification concede the issue of occurrences. App. Br., p. 42. SCDC notes that Plaintiffs variously alleged that the claims all arise "from the same acts and occurrences," that the claims turn "on the same operative conduct," and arise from "SCDC's negligence in failing to implement [the Omnibus Act.]." Id. SCDC's quotations are of isolated phrases without full context. For example, Plaintiffs stated in support of class certification that "[t]he Court should conclude that Rule 23(a)(2)'s commonality requirement is met as well because the claims and defenses turn on the same operative conduct such that the resolution of Plaintiffs' claims will generate common answers for the claims of the Class." [R.pp. ____: Memo. in Supp. of Second Mot. for Class Cert.]. Clearly, there are issues in this case that will generate common answers as to each class member. Those common questions, which the trial court has now answered, do not compel a conclusion that there was one occurrence of false imprisonment for the hundreds of Plaintiff class members unlawfully detailed by SCDC.

Each Plaintiff class member alleges that SCDC miscalculated his or her sentence by failing to apply the Omnibus Act to arrive at the correct max-out date. Each Plaintiff class member had a separately calculable date on which his or her detention because unlawful. As Plaintiffs have noted throughout, the essence of false imprisonment is the unlawful detention. It is the detention which is the tort. In the case of each Plaintiff class member, the detention was a separate occurrence.

Accordingly, as the TCA cannot be interpreted to lead to the absurd result SCDC envisions, the trial court correctly held that the false imprisonment of each Plaintiff class member is an occurrence.

IV. Application of South Carolina Tort Claims Act exceptions to waiver of immunity to the negligence/gross negligence claim is not properly before the Court because the false imprisonment claims are not duplicative of the negligence/gross negligence claims nor are the claims based upon an identical set of facts.

SCDC, in essence, seeks to have this Court preemptively rule on an issue that remains pending in the court below — an unappealable order. Its grounds for this request have no merit.

SCDC argues that the Plaintiff class members somehow conceded that Defendant's motion for summary judgment as to negligence/gross negligence should be decided as a matter of law because they moved for summary judgment on their false imprisonment claims. App. Br., p. 45-46. There is no law to support this contention.

The Plaintiffs' motion for summary judgment as to false imprisonment had nothing to do with the merits of SCDC's motion with regard to the negligence/gross negligence claims and was not a concession that there were no issues of fact relating to those claims. Plaintiffs filed a lengthy memorandum opposing SCDC's motion for summary judgment as to negligence/gross negligence enumerating extensive issues of fact and the trial court agreed. [R.pp.___: Plt. Memo. Opp. SCDC Mot for S.J.]. There is no basis for this Court to consider issues raised by SCDC relating solely to the trial court's denial of SCDC's motion for summary judgment.

SCDC states "[w]hen the parties moved for cross-summary judgment on claims arising from identical facts underlying each claim, the parties conceded the issue before the court should be decided as a matter of law." App. Br., p. 46. It cites to Wiegand v. U.S. Auto Ass'n, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011) in support of this proposition. Wiegand held no such thing. The Wiegand Court stated this: "Where cross motions for summary judgment are filed, the parties concede the issue before us should be decided as a matter of law. Whether a form complies with the requirements of section 38–77–350(A) is a question of law for this Court." Id. The decision made no mention of "identical facts." As noted, the cross motions for summary judgment in Wiegand both raised a single issue of law and there was no dispute by any party that the matter was not a proper one for decision on summary judgment.

Relying on the non-authority of Wiegand, SCDC states as its issue IV.: "Because Plaintiff's false imprisonment and negligence/gross negligence claims are premised upon the same factual allegations, the immunities and monetary limitations of liability under the Tort Claims Act also apply to Plaintiffs' negligence/gross negligence claims to limit liability." App. Br., p. 45. However, even if that was the ruling in Wiegand, the facts that established the false imprisonment claims of the Plaintiffs are by no means identical to the facts needed to establish negligence or gross negligence.

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. 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).

False imprisonment is not grounded in negligence or gross negligence. Application of this principle is demonstrated in Gist v. Berkeley Cnty. Sheriff's Dep't, 336 S.C. 611, 619, 521 S.E.2d 163, 167 (Ct. App. 1999). In Gist, a false imprisonment clam was dismissed on summary judgment based in part on a finding, as a matter of law, that the defendant was not grossly negligent. On appeal, the summary judgment was overturned, and the case remanded for further proceedings:

> None of the exceptions from liability impose a standard of gross negligence on the torts of false arrest and imprisonment. See S.C. Code Ann. § 15–78–60 (Supp.1998). Wortman, the case decided under the Tort Claims Act, did not include gross negligence as an element of the tort. See Wortman v. Spartanburg, 310 S.C. 1, 425 S.E.2d 18 (1992). We find the gross negligence standard is not applicable to the present case.

Id., 336 S.C. at 619, 521 S.E.2d at 167.

Proof of negligence and/or gross negligence, on the other hand, is inherently tied to standards of care and reasonableness of conduct and is a fact-intensive inquiry. 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. 279, 294, 628 S.E.2d 496, 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).

The trial court's grant of summary judgment on false imprisonment focused, as was appropriate, on the unlawfulness of the Plaintiff Class members' periods of prolonged detention. It did not and was not required to evaluate standards of care or breach thereof vis-à-vis SCDC's staff attorneys.

The claims stated by the Plaintiffs are neither based on identical sets of facts nor duplicative and SCDC cannot use this groundless contention to shoehorn unappealable issues to the forefront of its appeal.

CONCLUSION

The Omnibus Act took effect on June 2, 2010. From that day forward, each member of the Plaintiff class had the right to have his sentence calculated as the General Assembly directed and to be released on his properly calculated max-out date. SCDC—told by the Administrative Law Court in 2014 that its contrary interpretation was specious, and by this Court in 2015 that it was unreasonable and patently erroneous—held these men and women for months to years past those dates. No exemption in the Tort Claims Act immunizes that conduct: SCDC was not enforcing a law, it was failing to comply with one; it was not exercising discretion, it was disregarding a ministerial duty; and it was not implementing a release, it was refusing one. Each class member's wrongful detention was a separate invasion of a separate liberty.

Respondents respectfully request that this Court affirm the trial court's grant of summary judgment on the false imprisonment claim, affirm its ruling that the false imprisonment of each class member constitutes a separate occurrence under S.C. Code Ann. § 15-78-120(a), and decline to address SCDC's arguments directed to the non-appealable denial of its own motion for summary judgment.

[*Signature on following page*]

Respectfully submitted,

s/Andrew R. Hand
Richard A. Harpootlian (SC Bar No. 2725)
Andrew R. Hand (SC Bar No. 101633)
RICHARD A. HARPOOTLIAN P.A.
1410 Laurel Street
Post Office Box 1090
Columbia, SC 29202
Phone (803) 252-4848
Facsimile (803) 252-480
rah@harpootlianlaw.com
arh@harpootlianlaw.com

Charles W. Whetstone, Jr. (SC Bar No. 6059)
Cheryl F. Perkins (SC Bar No. 2078)
WHETSTONE PERKINS & FULDA, LLC
1620 Gervais Street
Post Office Box 8086
Columbia, SC 29202
Phone (803) 799-9400
Facsimile (803) 799-2017
cwhetstone@attorneyssc.com
cperkins@attorneyssc.com

Kyle J. White (SC Bar No. 101426)
WHITE, DAVIS & WHITE LAW FIRM
209 East Calhoun Street
Post Office Box 1346
Anderson, SC 29621
Phone (864) 231-8090
Facsimile: (864) 231-8006
kyle@wdwlawfirm.com

Philip A. Berlinsky (SC Bar No. 12831)
BERLINSKY & LING, L.L.P.
2971 West Montague Avenue
N. Charleston, South Carolina 29418
Phone (843) 884-1000
Facsimile (843) 804-0503
philipalanlaw@aol.com

ATTORNEYS FOR RESPONDENTS

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Columbia, South Carolina.