

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Bernard Jackson, #210745,
Appellant,

v.

South Carolina Department of Corrections,
Respondent.

Appellate Case No. 2024-002004

Unpublished Opinion No. 2026-UP-347

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR

Appellant Bernard Jackson, proceeding *pro se*, respectfully petitions this Court for rehearing of its Opinion No. 2026-UP-347, filed July 8, 2026, and received by appellant on July , 2026. The Court affirmed the Administrative Law Court's (ALC) dismissal of Appellant's wage claim, finding that a settlement agreement and stipulation of dismissal resolved the matter. Rehearing is warranted because the Opinion contains three distinct errors that were overlooked or misapprehended: (1) the Opinion analyzed the wrong subsection of the controlling statute; (2) the Opinion enforced the settlement without addressing its validity under the doctrine of duress and overreaching; and (3) the Opinion did not address whether the mandatory statutory right at issue may be waived by private agreement at all.

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I. THE COURT MISAPPREHENDED THE CONTROLLING STATUTORY PROVISION.

The most fundamental error in the Opinion is that it cited and analyzed the wrong subsection of S.C. Code Ann. § 24-3-40. The Opinion's footnote 1 quotes § 24-3-40(A)(4), which provides: "Ten percent must be available to the inmate during his incarceration for the purchase of incidentals."

Appellant's claim, however, was brought under § 24-3-40(A)(5), which is an entirely separate and distinct provision. Section 24-3-40(A)(5) provides: "Ten percent must be held in an interest-bearing escrow account for the benefit of the prisoner."

These two subsections are not interchangeable. Subsection (A)(4) governs funds that are made immediately accessible to the inmate during incarceration for spending on incidentals. Subsection (A)(5) governs a separate ten-percent allocation that must be held in an interest-bearing escrow account and returned to the prisoner upon release. They serve different purposes, protect different interests, and carry different legal consequences.

The settlement agreement at issue expressly stated that "no additional funds will be ... placed into long-term savings." This language directly targets the escrow account mandated by § 24-3-40(A)(5) – not the incidentals account under (A)(4). Appellant's grievance, his objection before the ALC, and his appeal all concerned the escrow account. The Court's analysis of § 24-3-40(A)(4) therefore addressed a provision that was not at issue in this case.

This misapprehension of the controlling statute is precisely the type of error that Rule 221 petitions are designed to correct. SCACR Rule 221(a) provides that a petition for rehearing shall "state with particularity the points supposed

to have been overlooked or misapprehended by the court." The Court's citation of the wrong subsection is a misapprehension of the controlling law that infected the entire analysis and warrants rehearing.

II. THE COURT ERRED BY ENFORCING THE SETTLEMENT WITHOUT ADDRESSING ITS VALIDITY.

The Opinion assumes, without analysis, that the settlement agreement was valid and enforceable. It applies Rule 43(k) of the South Carolina Rules of Civil Procedure and cites *Motley v. Williams*, 374 S.C. 107, 110, 647 S.E.2d 244, 246 (Ct. App. 2007), for the proposition that settlement agreements must be entered into the court's record or acknowledged in open court. Rule 43(k), however, governs only the *form* of an agreement – whether it was properly memorialized. It does not and cannot cure a substantive defect in the agreement's *formation*. Before asking whether a settlement was properly entered into the record, a court must first ask whether the settlement was validly formed.

The record before the ALC contained Appellant's formal objection to the stipulation of dismissal, which placed the validity of the settlement squarely before both the ALC and this Court. Neither tribunal addressed it. The Opinion resolves the case on Rule 43(k) formality grounds while leaving the antecedent validity question entirely unanswered. That is legal error.

A settlement agreement obtained by duress, overreaching, or inequitable conduct is voidable regardless of its formal compliance with Rule 43(k). See *Gilstrap v. Culpepper*, 283 S.C. 83, 86, 320 S.E.2d 737, 739 (1984) (settlement obtained under duress may be set aside). South Carolina courts retain equitable authority to examine the fairness of settlement

agreements involving unrepresented parties. See *Sloan v. Greenville County*, 380 S.C. 528, 545, 670 S.E.2d 663, 671 (Ct. App. 2009). The Opinion does not engage with this authority.

The circumstances of this settlement demand that inquiry. Appellant was in a prison holding cell a condition inherently constraining free choice. He was unrepresented by counsel. The attorney who presented the agreement for his signature was A. Todd Darwin, outside legal counsel for SCDC – the adverse party. That same adverse attorney served as the sole witness to Appellant's signature, even verbally assuring appellant that he would get all the monies owed to him in spite of the wording within the settlement agreement. Moreover, ignoring appellant's attempts to alert the ALC that a condition precedent is at issue and the parties were in renegotiations, to stay the proceedings until both parties settled this discrepancy. These facts describe a structural conflict of interest and a power imbalance that implicate the most basic requirements of fair dealing. By affirming on Rule 43(k) grounds alone, this Court effectively ratified the settlement without scrutinizing the conditions under which it was obtained.

Due process requires at minimum that a court examine whether a waiver of legal rights by a prisoner proceeding without counsel was knowing, intelligent, and voluntary. See *D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 185-86 (1972) (waiver of rights must be voluntary, knowing, and intelligently made); *Brady v. United States*, 397 U.S. 742, 748 (1970) (waiver of rights must be made with sufficient awareness of relevant circumstances). Neither the ALC nor this Court applied that standard.

III. THE COURT DID NOT ADDRESS WHETHER § 24-3-40(A)(5) CREATES A MANDATORY RIGHT THAT CANNOT BE WAIVED BY PRIVATE SETTLEMENT.

Appellant's claim rested on § 24-3-40(A)(5), which mandates that ten percent of an incarcerated person's wages "must be held in an interest-bearing escrow account for the benefit of the prisoner." The statute uses mandatory language: the funds *must* be held. The settlement agreement extinguished this right by providing that no funds would be placed into long-term savings.

The Opinion does not address whether a prisoner can contractually waive a right conferred by § 24-3-40(A)(5). This is a question of statutory interpretation that goes to the heart of the case. The General Assembly enacted § 24-3-40 to regulate the disposition of inmate wages and ensure that a specific percentage is preserved for the prisoner's benefit upon release. If the Department of Corrections is permitted to procure waivers of this mandatory provision through private settlement agreements obtained from unrepresented inmates, the legislature's explicit directive is rendered meaningless.

Courts have consistently held that statutory rights enacted for the protection of a class of persons, or affecting the public interest, may not be privately waived. See *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 704 (1945) ("[A] statutory right conferred on a private party, but affecting the public interest, may not be waived or released if such waiver or release contravenes the statutory policy."). The Court did not address this authority or this question. The result is that Appellant's statutory right under § 24-3-40(A)(5) has been extinguished by private agreement, without any court ever determining whether that right was capable of being waived in the first place.

IV. THE COMBINED EFFECT OF THESE ERRORS IS THAT APPELLANT RECEIVED NO JUDICIAL CONSIDERATION OF HIS SUBSTANTIVE CLAIMS.

Bernard Jackson filed his wage claim asserting a statutory right under § 24-3-40(A)(5). The ALC dismissed on settlement grounds without examining the settlement's validity. This Court affirmed while citing the wrong statute and without addressing either the settlement's validity or the statutory waiver question. The result is that Appellant's substantive rights under state law have been extinguished without any court ever considering the merits of his claim or even correctly identifying the statute he was claiming was violated.

That outcome is particularly troubling given the circumstances: a prisoner, held in a holding cell, signed away a mandatory statutory right in the presence of the opposing attorney who served as the sole witness. Whether or not the result would be different on the merits, Appellant was entitled to have a court examine whether that settlement was the product of free and informed consent, and whether the right being waived was even capable of being waived. He has not received that examination from any tribunal.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, Appellant Bernard Jackson respectfully requests that this Court grant rehearing, vacate Opinion No. 2026-UP-347, and either:

(1) Reverse the ALC's dismissal and remand with instructions to: (a) correctly apply S.C. Code Ann. § 24-3-40(A)(5) as the controlling provision; (b) conduct an evidentiary hearing on whether the settlement agreement was knowingly, intelligently, and voluntarily entered into by Appellant under the

circumstances described; and (c) address whether the mandatory statutory right conferred by § 24-3-40(A)(5) may be waived by private settlement agreement;

OR

(2) Address in a revised opinion the statutory misidentification, the unresolved questions of settlement validity and duress, and the statutory waiver issue identified herein.

Respectfully submitted this 14th day of July,
2026.

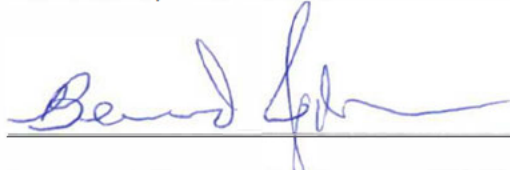
A handwritten signature in blue ink, appearing to read "Bernard Stacy Jackson", with a long horizontal flourish extending to the right.

Bernard Stacy Jackson, #210745
Appellant, Pro Se
Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 2026, I caused a true and correct copy of the foregoing Petition for Rehearing to be served upon counsel for Respondent by depositing the same in the United States Mail, first-class postage prepaid, addressed to:

Christina Catoe Bigelow, Esquire
South Carolina Department of Corrections
Office of General Counsel
4420 Broad River Road
Columbia, SC 29210



Bernard Stacy Jackson, #210745

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TYGER RIVER MAILROOM

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SC Court of Appeals

Clerk of Court

Court of Appeals of South Carolina

1220 Senate Street

Columbia, SC 29201

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TYGER RIVER MAILROOM

RE: Bernard Jackson, #210745 v. South Carolina Department of
Corrections; Appellate Case No. 2024-002004, Opinion No. 2026-
UP-347; Petition for Rehearing Pursuant to Rule 221, SCACR;
DEADLINE: July 23, 2026

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Dear Clerk of Court:

SC Court of Appeals

Enclosed please find the original of Appellant Bernard Stacy Jackson's Petition for Rehearing in the above-referenced matter, filed pursuant to Rule 221 of the South Carolina Appellate Court Rules.

This Court issued Opinion No. 2026-UP-347 on July 8, 2026, affirming the Administrative Law Court's dismissal of Appellant's wage claim. Pursuant to Rule 221(a), SCACR, Appellant has fifteen (15) days from the date of the Opinion to file a Petition for Rehearing. Accordingly, this petition is due on or before July 23, 2026.

The Petition for Rehearing respectfully identifies the following grounds warranting the Court's reconsideration:

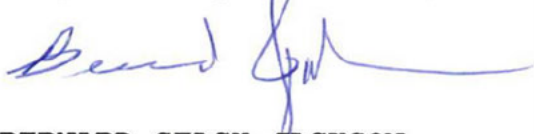
- (1) The Opinion resolved the case on Rule 43(k) formality grounds without addressing the antecedent question of whether the underlying settlement agreement was validly formed;
- (2) The circumstances surrounding the settlement – including that it was signed by an unrepresented prisoner in a holding cell, procured by adverse counsel who also served as sole witness – were never examined for voluntariness or duress;
- (3) The Opinion does not address whether the statutory right at issue may be privately waived by settlement at all; and

(4) The Opinion analyzed S.C. Code Ann. § 24-3-40(A)(4) – the incidentals provision – when Appellant's claim arose under § 24-3-40(A)(5) – the long-term savings provision – a distinction confirmed by the settlement language quoted in the Opinion itself.

A certificate of service reflecting service upon counsel for Respondent is included with the enclosed Petition.

Thank you for your attention to this time-sensitive filing.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Bernard Stacy Jackson", written over a horizontal line.

BERNARD STACY JACKSON

SCDC #210745

Tyger River Correctional Institution

200 Prison Road

Enoree, SC 29335

July 14, 2026

Enclosures:

Original Petition for Rehearing
Certificate of Service

cc: Christina Catoe Bigelow, Esquire (via U.S. Mail)
SC Department of Corrections, Office of General Counsel
4420 Broad River Road, Columbia, SC 29210

Bernard Jackson, #210745
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