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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
CIVIL ACTION NO. 2020-CP-40-05532

Marion Katrell Campbell, on behalf of himself and all others similarly 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.

**RECORD ON APPEAL
VOLUME I (pp. 1-486)**

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CAMPBELL V. SCDC

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972 F.3d 385

United States Court of Appeals, Fourth Circuit.

Marion Katrell CAMPBELL, on behalf of himself
and all others similarly situated, Plaintiff – Appellee,

v.

Chris FLORIAN; David Tatarsky, Defendants – Appellants,
and

South Carolina Department of Corrections; Brian P. Stirling,
Director of South Carolina Department of Corrections, Defendants.

No. 19-6417

|

Argued: January 28, 2020

|

Decided: August 20, 2020

|

Amended: August 28, 2020

Synopsis

Background: Former inmate brought putative class action under § 1983 against South Carolina Department of Corrections (SCDC) counsel, alleging that their failure to properly apply work and good-conduct credits violated the Eighth Amendment by prolonging his detention for drug distribution. The United States District Court for the District of South Carolina, [Mary Geiger Lewis, J.](#), [2019 WL 1297005](#), rejected the report and recommendation of [Kevin F. McDonald](#), United States Magistrate Judge, [2018 WL 7820956](#), and denied counsel's motion for summary judgment based on qualified immunity. Counsel appealed.

Holdings: The Court of Appeals, [Richardson](#), Circuit Judge, held that:

deputy general counsel did not act deliberately indifferent, and

inmate offered no evidence to show more than mere supervision, as required to hold general counsel liable.

Reversed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

*388 Appeal from the United States District Court for the District of South Carolina, at Greenville. [Mary G. Lewis](#), District Judge. (6:16-cv-03265-MGL-KFM)

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Before [NIEMEYER](#), [AGEE](#), and [RICHARDSON](#), Circuit Judges.

Opinion

Reversed by published opinion. Judge [Richardson](#) wrote the opinion, in which Judge [Niemeyer](#) and Judge [Agee](#) joined.

[RICHARDSON](#), Circuit Judge:

This suit raises interesting questions about the liability of government attorneys when an agency adopts their legal interpretation, but a court later disagrees. According to lawyers for the South Carolina Department of Corrections (“SCDC”), state law required Marion Campbell to serve at least eighty-five percent of his drug-distribution sentence before he could be released. The South Carolina Administrative Law Court agreed; the South Carolina Court of Appeals did not. Based on the appeals court's ruling, the SCDC should have freed Campbell earlier than he was actually released based on the application of work and good-conduct credits.

After his release, Campbell filed this § 1983 suit. He asserts that the SCDC lawyers' analysis of South Carolina law was erroneous and violated the Eighth Amendment's prohibition on “cruel and unusual punishments” by prolonging his detention. But we find that qualified immunity shields the government attorneys. Assuming Campbell's continued detention falls within the ambit of the Eighth Amendment, the SCDC lawyers were not deliberately indifferent to his plight. So Campbell has failed to make out a constitutional violation, and his suit must be dismissed.

I. Facts

On April 22, 2010, Marion Campbell was indicted in Colleton County, South Carolina for “manufacturing or distribution of *389 cocaine base” (third offense). J.A. 26. And in December 2011, Campbell pleaded guilty to distribution of crack cocaine (second offense) in violation of [S.C. Code § 44-53-375\(B\)\(2\)](#). A South Carolina circuit court judge sentenced him to seven years' imprisonment.¹

Yet, in South Carolina (as in the federal system), the imposition of a seven-year sentence does not necessarily mean the convicted will remain behind bars for seven years. As relevant here, South Carolina inmates may be entitled to apply work credits and good-time credits to the balance of their sentence. For every two days that an inmate works on a “productive duty assignment,” he may receive a day's credit. § 24-13-230(A). And prisoners who “faithfully observed all the rules of the institution where [they are confined],” are granted good-time credits “at the rate of twenty days for each month served.” § 24-13-210(A); *cf.* [18 U.S.C. § 3624\(b\)](#) (governing federal good-time credits).

Although these credits may cut the time a prisoner spends behind bars, they do not apply to all South Carolina inmates without restriction. The South Carolina legislature has classified certain offenses as “no parole offenses.” [S.C. Code § 24-13-100](#). Prisoners convicted of these offenses must serve at least eighty-five percent of their sentence as imposed. § 24-13-150(A) (“Notwithstanding any other provision of law ... an inmate convicted of a ‘no parole offense’ ... is not eligible for early release, discharge, or community supervision ... until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed.”); *see also* §§ 24-13-210(B), -230(B). As a result, an inmate's work and good-conduct credits do not kick in for “no parole offenders” until they have served eighty-five percent of their sentence. In South Carolina, this is known as the “eighty-five-percent rule.”

This case arises from the SCDC's application of the “no parole offense” label to Campbell's conviction. When Campbell was indicted, his offense, [§ 44-53-375\(B\)\(2\)](#), was classified as a “no parole offense.” *See* [§ 24-13-100](#). But while Campbell's case proceeded, the South Carolina legislature enacted significant revisions to its criminal sentencing laws. On June 2, 2010, the

Omnibus Crime Reduction and Sentencing Reform Act of 2010 (“Omnibus Act”) took effect, and Sections 37 and 38 of the Omnibus Act appended the following paragraph to § 44-53-375(B):

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.

While the Omnibus Act amended § 44-53-375(B), it *did not* amend § 24-13-100, which controlled “no parole offense” classifications. Nor did the Omnibus Act amend § 24-13-150(A), which enumerates the consequences of the no-parole-offense designation. This created an arguable contradiction in South Carolina law: The Omnibus Act suggests that Campbell “is eligible for parole ... work credits, education credits, and good conduct credits.” § 44-53-375(B). But § 44-53-375(B) still fell within § 24-13-100's classification of “no parole offenses,” and so the eighty-five percent rule still precluded him from gaining early release based on those credits. *390 Compounding the confusion, both § 24-13-150(A) and § 44-53-375(B) claimed to apply “notwithstanding any other provision of law.”²

To fulfill its responsibilities—including determining parole eligibility and calculating release dates based on earned credits—the SCDC needed to sort through the new law in all its contradictions. The task fell to Chris Florian, the SCDC's deputy general counsel. Florian pored over the South Carolina caselaw on statutory interpretation and legislative intent. And based on his review, he concluded that South Carolina law required the SCDC to adopt a legal interpretation that harmonized potentially contradictory provisions of a statute, if possible. *See, e.g., Justice v. Pantry*, 330 S.C. 37, 496 S.E.2d 871, 874 (Ct. App. 1998) (citing *State v. Hood*, 181 S.C. 488, 188 S.E. 134, 136 (1936)). Applying this principle, Florian drafted a memorandum describing how he believed the Omnibus Act should be interpreted.³

In his memo, Florian proceeded through the Omnibus Act section by section, and he summarized the changes that each section made. As for Sections 37 and 38 (amending S.C. Code § 44-53-375(B)), Florian concluded that an inmate convicted under § 44-53-375(B) was now *eligible* for parole. But if the inmate was not *granted* parole, the no-parole-offense restrictions—including the eighty-five-percent rule—would then apply:

Section 37 makes several changes to the structure of certain drug offenses. Affected offenses are now eligible for parole, supervised furlough, community supervision, and work release, despite the fact the some of the offenses affected are [classified as serious] felonies. As with many other sections of the Act, because nothing in the language of this section indicates the change applies retroactively, this change should only be applied to offenses occurring after June 2, 2010.

... [N]othing in the text of these sections directly addresses the issue of whether inmates convicted of these offenses are still required to serve 85% of their sentences before early release, discharge, or community supervision. Consequently, reading Sections 37 and 38 in conjunction with S.C. Code Ann. § 24-13-150(A), [the “no parole offenses” section,] inmates convicted of these offenses are apparently still required to serve 85% of their sentences before release, unless they are granted parole. ... J.A. 222.

This interpretation, Florian believed, resolved the Omnibus Act's contradictions: By statutorily designating § 44-53-375(B) a “no parole offense,” yet otherwise permitting “eligibility” for parole, the Omnibus Act gave the SCDC the discretion to parole certain inmates. But the Act did not remove the otherwise applicable general restrictions placed on a “no parole offense.”

David Tatarsky, the SCDC's general counsel and Florian's boss, read the Florian Memo, familiarized himself with its contents, and approved it. The Florian Memo was then passed around the department *391 and used to evaluate prisoners' eligibility for parole, credits, and release.

After the SCDC adopted the Florian Memo, an inmate named Michael Bolin challenged the department's interpretation of the Omnibus Act. Like Campbell, Bolin had been sentenced under § 44-53-375(B)(2). This offense, he claimed, was no longer subject to the eighty-five-percent rule and its consequences following the Omnibus Act amendments. Once he exhausted

his options within the SCDC, Bolin marshalled his arguments before the South Carolina Administrative Law Court. The Administrative Law Court endorsed Florian's interpretation of the Omnibus Act and dismissed Bolin's case. *Bolin v. South Carolina Dep't of Corrections*, No. 13-ALJ-04-0534-AP (S.C. Admin. Law Ct. Feb. 24, 2014).

Bolin then challenged the Administrative Law Court's decision in the South Carolina Court of Appeals. Siding with Bolin, the appeals court held that an offense under § 44-53-375(B) is no longer a “no-parole offense.” *Bolin v. South Carolina Dep't of Corrections*, 415 S.C. 276, 781 S.E.2d 914, 916–17 (Ct. App. 2016). The court acknowledged that the no-parole-offense designation in § 24-13-100 might be considered more specific than the amendment to § 44-53-375(B). See *id.* at 917; cf. *Varity Corp. v. Howe*, 516 U.S. 489, 511, 116 S.Ct. 1065, 134 L.Ed.2d 130 (1996) (“[T]he specific governs the general.”). But the appeals court reasoned that the words, “notwithstanding any other provision of law,” in § 44-53-375(B) expressed the “intent to repeal” any other provision, to the extent it conflicts. *Bolin*, 781 S.E.2d at 917. And the court believed that the Omnibus Act's amendments to § 44-53-375(B) would be “meaningless” if they did not “implicit[ly] repeal” the no-parole-offense designation in § 24-13-100. *Id.* at 917. Combined with the general intent to “conserve taxpayer dollars by allowing earlier release dates,” the appeals court's analysis demanded Bolin's interpretation. *Id.* at 918. The SCDC did not appeal to the South Carolina Supreme Court.

Applying the *Bolin* interpretation, the SCDC re-calculated Campbell's release date, and it released Campbell in March 2016. At that point, Campbell had served about five years of his imposed seven-year sentence.⁴

After his release, Campbell filed the instant class action under 42 U.S.C. § 1983. Because the SCDC's initial interpretation of the Omnibus Act precluded the application of Campbell's good-time and work credits based on the eighty-five-percent rule, he was held longer than provided by law. Had those credits been applied as *Bolin* later required, Campbell would have been entitled to release about sixteen months *before* his actual release. See Appellee Br. 16; J.A. 39–40. According to Campbell, “[t]he decision by Florian, under the supervision and direction of Tatarsky, to continue detention of Plaintiff and the Class” violated the Eighth and the Fourteenth Amendments. J.A. 49.

***392** At the summary judgment stage, Florian and Tatarsky asserted qualified immunity defenses. A magistrate judge thoughtfully rejected Campbell's Eighth Amendment claim, explaining that the evidence failed to show the subjective intent necessary for it to proceed. And in any event, the magistrate continued, any violation of law would not have been clearly established. So defendants were entitled to qualified immunity. The magistrate also reasoned that Campbell's claim did not fall within the Fourteenth Amendment's protection of a prisoner's liberty interest. J.A. 491–92.

Campbell objected to the magistrate's report and recommendations. J.A. 507–22. The district court agreed with the magistrate judge's analysis of the Fourteenth Amendment and thus granted defendants' motion for summary judgment on that claim. But the court allowed Campbell's Eighth Amendment claim to proceed. First, the district court declared that, “[g]iven the facts of this case, a jury might well find Florian's and Tatarsky's actions ... amounted to deliberate indifference to a substantial risk of serious harm to Campbell.” J.A. 565. Second, the court reasoned that “it is both axiomatic and elementary that the plain meaning of the [Omnibus] Act, coupled with the legislature's intent, leads to the unmistakable conclusion the [Omnibus] Act transformed the no parole offenses ... into parolable ones. ... Florian and Tatarsky's interpretation of the [Omnibus] Act to the contrary was ‘unreasonable’ and their application of it was ‘patently erroneous.’ ” J.A. 569 (quoting *Bolin*, 781 S.E.2d at 916, 918). Finding the meaning of the state law obvious, the district court explained that Campbell's Eighth Amendment right was, therefore, clearly established. So Florian and Tatarsky were not entitled to qualified immunity.

The defendants timely appealed the district court's Eighth Amendment conclusions. We have jurisdiction over the district court's denial of qualified immunity. See 28 U.S.C. § 1291; *Behrens v. Pelletier*, 516 U.S. 299, 307, 116 S.Ct. 834, 133 L.Ed.2d 773 (1996).

II. Discussion

In this appeal, we consider whether qualified immunity shields Florian and Tatarsky from the alleged Eighth Amendment violation.⁵ At the summary judgment stage, we take care to ensure all disputed facts and reasonable inferences are viewed in the light most favorable to the plaintiffs. See *Calloway v. Lokey*, 948 F.3d 194, 201 (4th Cir. 2020). We review the legal question of qualified immunity de novo. *Adams v. Ferguson*, 884 F.3d 219, 226 (4th Cir. 2018).

The qualified immunity inquiry has two steps. First, the plaintiff must “make out a violation of a constitutional right.” *Pearson v. Callahan*, 555 U.S. 223, 232, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009). Second, that right must be “clearly established” at the time of the alleged violation. *Id.* Although the Supreme Court has encouraged us to take these steps in sequential order, we retain the discretion to tread in the manner “that will best facilitate the fair and efficient disposition of each case.” *Id.* at 242, 129 S.Ct. 808. Campbell's claim stumbles at the start.⁶

***393** Campbell bases his claim in the Eighth Amendment: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. In *Robinson v. California*, the Supreme Court applied the Eighth Amendment's final prohibition to the states through the Fourteenth Amendment. 370 U.S. 660, 667, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962). Campbell invokes the Cruel and Unusual Punishments Clause when he argues that Florian and Tatarsky violated the Eighth Amendment by “prolong[ing] [his] detention.” Appellee Br. 21.

To qualify as a cruel and unusual punishment implicating the Eighth Amendment, Campbell's claimed deprivations must satisfy “objective” and “subjective” requirements. *Anderson v. Kingsley*, 877 F.3d 539, 543 (4th Cir. 2017); see also *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). We consider each in turn.

A. Objectively serious

To satisfy the “objective” component of an Eighth Amendment claim, the alleged deprivation must be “ ‘sufficiently serious.’ ” *Porter v. Clarke*, 923 F.3d 348, 355 (4th Cir. 2019), amended (May 6, 2019) (quoting *Scinto v. Stansberry*, 841 F.3d 219, 225 (4th Cir. 2016)); see also *Farmer*, 511 U.S. at 834, 114 S.Ct. 1970. The constitutional prohibition on cruel and unusual punishments was originally drafted “to proscribe ‘tortures’ and other ‘barbar(ous)’ methods of punishment.” *Estelle v. Gamble*, 429 U.S. 97, 102, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (quoting Anthony F. Granucci, *Nor Cruel and Unusual Punishment Inflicted: The Original Meaning*, 57 Cal. L. Rev. 839, 842 (1969)). But over the years, the Supreme Court has imbued the Eighth Amendment with a more expansive meaning, holding it to bar punishments “incompatible with ‘the evolving standards of decency that mark the progress of a maturing society,’ ” or which “ ‘involve the unnecessary and wanton infliction of pain.’ ” *Id.* at 102–03, 97 S.Ct. 285 (quoting *Trop v. Dulles*, 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) and *Gregg v. Georgia*, 428 U.S. 153, 173, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976)). So to be “ ‘sufficiently serious,’ ” we have held that a deprivation must prove “ ‘extreme’ ”—thus posing either “ ‘a serious or significant physical or emotional injury resulting from the challenged conditions,’ or ‘a substantial risk of such serious harm.’ ” *Scinto*, 841 F.3d at 225 (quoting *De'Lonta v. Angelone*, 330 F.3d 630, 634 (4th Cir. 2003)).

Within this framework, for instance, we have recognized that the Eighth Amendment bars inhumane “conditions of confinement”—such as depriving an inmate of ***394** “adequate food, clothing, shelter, and medical care.” *Farmer*, 511 U.S. at 832, 114 S.Ct. 1970. Just last year, our Court determined that solitary confinement of a death row prisoner for 23 to 24 hours every day in a 71-square-foot cell—without access to religious, educational, or social programming—created such a risk of severe psychological harm that those conditions amounted to an objective Eighth Amendment violation. *Porter*, 923 F.3d at 357. And in 2012, the Supreme Court held that mandatory life-without-parole sentences for juveniles are so disproportionate as to amount to cruel and unusual punishment. *Miller v. Alabama*, 567 U.S. 460, 479, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). These kinds of objectively extreme deprivations, the Eighth Amendment prohibits.

Although the parties focus their arguments on whether the defendants were deliberately indifferent, we first note that Campbell's claim does not fit neatly within the ambit of the Eighth Amendment. As one district court succinctly noted, although “the Fourth Circuit has never squarely addressed the issue of whether prolonged detention ... amounts to a constitutional violation[,] ...

other circuits have recognized the Fourteenth Amendment due process right to be free from continued detention.” *Johnson v. Hammett*, No. Civ. ELH-18-1059, 2019 WL 7185559, at *14 (D. Md. Dec. 23, 2019).⁷ Indeed, the heart of Campbell's suit here is that the SCDC failed to properly apply work and good-conduct credits. And claims of this nature have generally been assessed by the Supreme Court under the Fourteenth Amendment, not the Eighth. *See, e.g., Board of Pardons v. Allen*, 482 U.S. 369, 376, 107 S.Ct. 2415, 96 L.Ed.2d 303 (1987); *Wolff v. McDonnell*, 418 U.S. 539, 557, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974); *see also Howard v. South Carolina Dep't of Corrections*, 399 S.C. 618, 733 S.E.2d 211, 216–17 (2012); *Vann v. Angelone*, 73 F.3d 519, 522 (4th Cir. 1996).

In any event, we need not decide this question today. Assuming a sufficiently serious Eighth Amendment deprivation that satisfies the objective component, Campbell's evidence fails to satisfy the Eighth Amendment's subjective requirements.

B. Subjectively reckless

Under the subjective prong, a plaintiff must show that the defendant possessed a “sufficiently culpable state of mind.” *Wilson v. Seiter*, 501 U.S. 294, 298, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991). “[O]bduracy and wantonness, not inadvertence or error in good faith, [] characterize the conduct prohibited by the Cruel and Unusual Punishments clause.” *Id.* at 299, 111 S.Ct. 2321 (emphasis omitted). Thus, to make out an Eighth Amendment violation, the Supreme Court requires that a plaintiff show that state officials were “deliberate[ly] indifferent” to his plight. *Farmer*, 511 U.S. at 834, 114 S.Ct. 1970; *Anderson*, 877 F.3d at 543.

***395** “[D]eliberate indifference” is a form of *mens rea* (or “guilty mind”) equivalent to criminal-law recklessness. *Farmer*, 511 U.S. at 839–40, 114 S.Ct. 1970. In our Circuit, liability under this standard requires two showings: “[T]he prison official must have both ‘subjectively recognized a risk of substantial harm’ and ‘subjectively recognized that his actions were inappropriate in light of that risk.’ ” *Anderson*, 877 F.3d at 545 (emphasis omitted) (quoting *Parrish ex rel. Lee v. Cleveland*, 372 F.3d 294, 303 (4th Cir. 2004) (Opinion of Williams, J.)); *see also Cox v. Quinn*, 828 F.3d 227, 236 (4th Cir. 2016); *Rich v. Bruce*, 129 F.3d 336, 340 n.2 (4th Cir. 1997).⁸ Thus, “[d]eliberate indifference is a very high standard,” and “a showing of mere negligence will not meet it.” *Grayson v. Peed*, 195 F.3d 692, 695 (4th Cir. 1999) (citing *Estelle*, 429 U.S. at 105–06, 97 S.Ct. 285).

Here, Florian and Tatarsky recognized that the Omnibus Act could significantly impact prisoners' sentences and liberty. *See, e.g., J.A.* 172 (Florian noting the “issues of great significance” created by the Act affecting the “constitutional rights of liberty”); *J.A.* 203 (Tatarsky acknowledging that the Omnibus Act “was a significant bill for purposes of sentencing.”). But “[i]mportantly, a prison official ‘who actually knows of a substantial risk ... may be found free from liability if [he] responded reasonably to the risk, even if the harm ultimately was not averted.’ ” *Short v. Smoot*, 436 F.3d 422, 427 (4th Cir. 2006) (quoting *Farmer*, 511 U.S. at 844, 114 S.Ct. 1970); *see also Brown v. Harris*, 240 F.3d 383, 389 (4th Cir. 2001). In such a situation, it cannot be said that the official was deliberately indifferent. Accordingly, one predicate question is whether Florian and Tatarsky even acted inappropriately given that risk, let alone subjectively recognized the inappropriateness of their actions.

1. Florian acted reasonably

Simply put, the record shows that Florian acted reasonably to confront the interpretive problem before him. *See Farmer*, 511 U.S. at 845, 114 S.Ct. 1970 (“[P]rison officials who act reasonably cannot be found liable under the Cruel and Unusual Punishments Clause.”). Indeed, Florian approached the relevant statutory-interpretation questions as a careful attorney would. Florian started by “reading the act itself,” *J.A.* 83, commonly accepted as the first rule of statutory interpretation. *See Berkebile v. Outen*, 311 S.C. 50, 426 S.E.2d 760, 763 (1993) (“We can not construe a statute without regard to its plain and ordinary meaning.”); *accord Marx v. General Revenue Corp.*, 568 U.S. 371, 376, 133 S.Ct. 1166, 185 L.Ed.2d 242 (2013); *cf. Henry J. Friendly, Mr. Justice Frankfurter and the Reading of Statutes*, in *Benchmarks* 196, 202 (1967) (recalling Justice Frankfurter's three rules of statutory interpretation: “(1) [r]ead the statute; (2) read the statute; (3) read the statute!”). Florian then set to “outlining” the Omnibus Act's some sixty to ninety pages to determine which sections impacted the SCDC. *J.A.* 83. He “pull[ed] the existing statutes that the Omnibus Act would have impacted and review[ed] those.” *J.A.* 84. Florian next “reviewed some case law on statutory

construction”—“familiar territory” from his previous position as a staff attorney for the South Carolina Supreme Court. J.A. 84; *see also id.* at 176. And this review included “cases on legislative intent.” J.A. 85.

In the process, Florian recognized that the new Omnibus Act was inconsistent. “At times,” Florian noted, “the law seemed to be intending to reduce inmate sentences, but [in] other places you would see it actually increasing penalties.” J.A. 87. And when Florian saw inconsistencies, he focused “on interpreting ... each provision of the statute and understanding it in ... context.” J.A. 87. So, at first glance, the record suggests that Florian appropriately employed the normal tools of statutory construction to give his best interpretation to the new act. One court agreed with his conclusion. *Bolin*, No. 13-ALJ-04-0534-AP, at 4. Another did not. *Bolin*, 781 S.E.2d at 916-19.

Campbell advances two arguments for why Florian was deliberately indifferent. First, Campbell argues that the *Bolin* decision itself justifies an inference of criminal-law recklessness. Appellee Br. 27–28. Second, he argues that Florian should have done more to interpret the law correctly—namely, deferring to outside experts. Appellee Br. 28–29. Both arguments fail as a matter of law.

(a) The *Bolin* Decision

Campbell first argues that the *Bolin* decision itself supports an inference of deliberate indifference:

[T]he Florian Memo is not a reasonable reading of the Act. This is not a matter of conjecture or debate, but a settled matter of law as the South Carolina Court of Appeals found it to be “unreasonable” and to have “ignore[d] the purpose of the Act” it sought to construe.

Appellants Br. 27 (quoting *Bolin*, 781 S.E.2d at 918). In Campbell's view, the fact that the South Carolina Court of Appeals found Florian's conclusion to be unreasonable suggests that Florian must have acted with deliberate indifference. In effect, Campbell makes a *res ipsa loquitur* argument—that is, coming to an “unreasonable” legal determination is the kind of thing that does not happen without deliberate indifference.

There are several problems with Campbell's logical leap. *Res ipsa loquitur*—“the thing speaks for itself”—is a tort doctrine that *permits*, but ordinarily does not *compel*, a fact finder to infer negligence from the mere occurrence of a bad outcome. *See Stillman v. Norfolk & Western Railway Co.*, 811 F.2d 834, 837 (4th Cir. 1987) (citing *Jesionowski v. Boston & M.R.R.*, 329 U.S. 452, 457, 67 S.Ct. 401, 91 L.Ed. 416 (1947)). It serves as an exception to the “general rule” that “mere proof of an ‘accident’ ... does not raise any presumption of negligence.” *Sweeney v. Erving*, 228 U.S. 233, 238, 33 S.Ct. 416, 57 L.Ed. 815 (1913). *Res ipsa loquitur* has strict requirements, one of which is that the bad outcome does not ordinarily occur without some negligent act or omission. *See Stillman*, 811 F.2d at 836. As a matter of law, only in this narrow class of cases will the doctrine permit an inference of negligence. *See id.* at 836–37. And, of course, if an inference of negligence is impermissible, neither is one of criminal recklessness. *See Grayson*, 195 F.3d at 695.

Even if the *res ipsa loquitur* doctrine can be applied here, it fails. An incorrect legal opinion often occurs without some negligent (much less reckless) act or omission. In our adversarial legal system, roughly 50% of litigants lose—and thus have pressed an incorrect legal opinion. Competent administrative agencies and lower courts are often overturned despite careful and thoughtful legal interpretations. Indeed, the South Carolina Administrative Law Court (an independent body) *397 first upheld Florian's reading of the Omnibus Act. And even at the highest levels of the law, four colleagues at times share an “incorrect” or “unreasonable” opinion. *See* Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, n.4 (2016) (listing recent “divides in statutory interpretation cases”). An unreasonable outcome in that context cannot support an inference that the dissenters were negligent or criminally reckless in their analysis.

In sum, Campbell asks us to infer criminal recklessness from a legal conclusion later deemed unreasonable. We cannot. That the South Carolina Court of Appeals reached a different statutory interpretation than Florian does not make out a violation of the Eighth Amendment.

(b) Whether “more” should have been done

Campbell also argues that Florian should have done “more” to have assured that his interpretation was correct. Appellee Br. 29; see *Cox v. Quinn*, 828 F.3d 227, 236 (4th Cir. 2016) (“[A] factfinder may conclude that the official's response to a perceived risk was so patently inadequate as to justify an inference that the official actually recognized that his response to the risk was inappropriate under the circumstances.”) (quoting *Parrish ex rel. Lee*, 372 F.3d at 303). Campbell's argument, however, suffers from a fundamental flaw: It identifies no obvious additional acts that Florian should (or even could) have taken.

Campbell focuses his argument on the assertion that the SCDC should have turned to outside sources to interpret the law. His expert—an instructor of Criminal Justice at the University of South Carolina Upstate—suggested that Florian should have “looked for somebody else to say that's right, your decision is correct.” J.A. 442. According to the expert, Florian could have done so either (a) by getting a declaratory judgment from a court confirming his interpretation or (b) by asking someone outside the SCDC (either the Attorney General or an outside law firm). J.A. 439.

We are not persuaded. First, as Campbell's expert acknowledges, he could not identify anyone who could have acted as a proper opposing party for a declaratory judgment action under South Carolina law. See J.A. 118; accord J.A. 86 (Florian explaining that a declaratory judgment was not “a realistic option ... you would need such things as an opposing party to have a case in court; you'd need an active controversy with that party to have standing”).⁹ Second, as Campbell's expert also acknowledged, no one else—either at the Attorney General's office or a private firm—had a greater expertise in sentencing law. See J.A. 117–18. In fact, Florian was “the office's subject matter expert in sentencing law.” J.A. 81; see also J.A. 85 (“We were the attorneys for the Department of Corrections, and we construed sentencing law on a daily basis. There wasn't an outside authority we could turn to do our job for us.”). Thus, we do not believe it was reckless for the SCDC to rely on its own expertise. Quite the opposite—it may have been unreasonable for Florian to defer to someone less qualified. Campbell's bare assertion that Florian should have “done something more”—particularly without identifying plausible alternatives—cannot show that Florian's response was unreasonable, much less so *398 “patently inadequate” as to support an inference of deliberate indifference. *Parrish ex rel. Lee*, 372 F.3d at 303.

Moreover, the implications of Campbell's argument give us pause. All parties recognized that the SCDC was the foremost authority on South Carolina's sentencing law. As a result, the SCDC was in the best position to bring its expertise to bear, and the state has thus empowered it to implement reasonable interpretations of the law. See generally *Kiawah Development Partners, II v. South Carolina Dep't of Health & Environmental Control*, 411 S.C. 16, 766 S.E.2d 707 (2014). And, since legislatures rarely draft statutes as clearly as courts would like, statutory interpretation is often subject to some uncertainty (sometimes by design). See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 31–33 (2012). Campbell's argument would require administrative agencies to abnegate their designated role in favor of courts or consultants whenever the agencies' interpretations potentially bear on a federal right. We see this requirement as unreasonable, particularly where aggrieved parties—like Michael Bolin—have recourse to the agency and the courts to advance their preferred statutory interpretations.

In sum, we find that Florian acted reasonably when he interpreted the Omnibus Act—even though a court later disagreed. Campbell's arguments to the contrary fail as a matter of law. And so we hold that Campbell has failed to make out a violation of the Eighth Amendment.

2. Tatarsky did not act with deliberate indifference

Even if Florian's actions had violated Campbell's Eighth Amendment rights, Tatarsky cannot be held liable because of his "supervision and direction." J.A. 49. At times, "supervisory officials may be held liable ... for the constitutional injuries inflicted by their subordinates." *Shaw v. Stroud*, 13 F.3d 791, 798 (4th Cir. 1994). But that liability "is not premised upon *respondeat superior* but upon 'a recognition that supervisory indifference or tacit authorization of subordinates' misconduct may be a causative factor in the constitutional injuries they inflict." *Id.* (quoting *Slakan v. Porter*, 737 F.2d 368, 372–73 (4th Cir. 1984)). Supervisors are "obligated, when on notice of a subordinate's tendency to act outside the law, to take steps to prevent such activity. If a supervisory law officer is deliberately indifferent to that responsibility, he then bears some culpability for illegal conduct by his subordinates," and he may be held liable. *Randall v. Prince George's County, Maryland*, 302 F.3d 188, 203 (4th Cir. 2002).

Accordingly, a § 1983 plaintiff must show more than mere supervision. The supervisor's own response to the knowledge of a risk of constitutional injury must be "so inadequate as to show 'deliberate indifference to or tacit authorization of the alleged offensive practices.'" *Id.* (quoting *Shaw*, 13 F.3d at 799). And ordinarily, the plaintiff "cannot satisfy [this] burden of proof by pointing to a single incident or isolated incidents ... for a supervisor cannot be expected ... to guard against the deliberate criminal acts of his properly trained employees when he has no basis upon which to anticipate the misconduct." *Slakan*, 737 F.2d at 373.

Campbell offers no evidence to make the required showing. As Campbell acknowledges, "Tatarsky read the Florian Memo, familiarized himself with its contents, and signed off on it before it was disseminated throughout the department." Appellee Br. 28. Although Campbell argues that the "conclusory nature" of this review and "Tatarsky's inattention to it" supports a finding of deliberate indifference, Appellee *399 Br. 28, this assertion does not make out a constitutional violation. Tatarsky could rely on the good judgment of his subordinates until he had reason to believe otherwise. But Campbell offers no evidence suggesting that Tatarsky had a "basis upon which to anticipate [Florian's] misconduct." *Slakan*, 737 F.2d at 373.¹⁰ And without grounds to suspect Florian's work, Tatarsky cannot be said to have acted with deliberate indifference when he approved Florian's memorandum.

* * *

Since its proposal, the Eighth Amendment has been lauded as "express[ing] a great deal of humanity." 1 Annals of Cong. 754 (1789) (Joseph Gales, ed. 1834). And while the Amendment itself imposes a floor on permissible criminal punishments, it was hoped that the Legislature would, over time, invent "more lenient mode[s] of correcting vice and deterring others from the commission of it." *Id.* Through the Omnibus Act, the South Carolina legislature has sought to do that, and only time will tell the result.

The correct interpretation of the Omnibus Act has now been settled as a matter of state law—Florian and Tatarsky were wrong. But legal error alone is not deliberate indifference. As a result, Campbell fails to make out a violation of the Eighth Amendment. Florian and Tatarsky are thus entitled to qualified immunity, and Campbell's claim against them should be dismissed with prejudice. The judgment of the district court is

REVERSED.

All Citations

972 F.3d 385

Footnotes

¹ The judge also imposed a twenty-five-year suspended sentence and five years' probation. *See* § 24-21-410.

- 2 In 2015, the state again amended § 44-53-375(B). But since that amendment could not have affected the SCDC's legal interpretation in 2010, we set it aside.
- 3 Florian also prepared other materials, such as a PowerPoint presentation, to teach the SCDC staff about the Omnibus Act. J.A. 89–104. But we see no need to review those documents. These other materials all stemmed from the legal interpretations in the Florian Memo, and the parties agree that this memorandum is the key document in this dispute. Appellants Br. 15–16; Appellee Br. 11.
- 4 There is some confusion over the calculation of Campbell's time served and his “max out” date. *Compare* J.A. 39, with J.A. 287. But precision is unnecessary here. The record shows that Campbell was in prison longer than he should have been under the South Carolina Court of Appeals's interpretation of the Omnibus Act.

We also note there is uncertainty about whether the Omnibus Act applies “retroactively” to prisoners like Campbell. Florian thought not. *See* J.A. 222. But the SCDC later exercised its discretion to apply the Omnibus Act retroactively after the *Bolin* decision. J.A. 302–03. Although the retroactivity question may create a causation question, defendants have not raised it.

- 5 Campbell brings his claim under 42 U.S.C. § 1983. And under § 1983, a plaintiff must establish three elements: (1) the deprivation of a right secured by the constitution or a federal statute; (2) by a person; (3) acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988).
- 6 Deciding this appeal on the first prong of the qualified immunity analysis follows the Supreme Court's guidance in *Johnson v. Jones*, 515 U.S. 304, 115 S.Ct. 2151, 132 L.Ed.2d 238 (1995). In *Johnson*, the Supreme Court held that, to the extent that the district court's order in a qualified immunity case rests on a sufficiency-of-the-evidence determination, that portion of an order lacks finality for an appeal. *Id.* at 313, 115 S.Ct. 2151. So *Johnson* prevents us from exercising jurisdiction “over a claim that a plaintiff has not presented enough evidence to prove that the plaintiff's version of the events actually occurred.” *Winfield v. Bass*, 106 F.3d 525, 530 (4th Cir. 1997) (en banc); *see also Iko v. Shreve*, 535 F.3d 225, 234–35 (4th Cir. 2008). “[B]ut we [do] have jurisdiction over a claim that there was no violation of clearly established law accepting the facts as the district court viewed them.” *Winfield*, 106 F.3d at 530.

Of course, where (as here), the district court “fails to supply the factual basis for its legal decision,” this task is more difficult for us. *Id.* at 534; *see Johnson*, 515 U.S. at 319, 115 S.Ct. 2151. And so we must determine “what the evidence, viewed in the light most favorable to the nonmoving party, demonstrated” to “render [our] decision on the purely legal issues.” *Winfield*, 106 F.3d at 535.

- 7 *Compare Sample v. Diecks*, 885 F.2d 1099, 1108 (3d Cir. 1989) (holding that imprisonment beyond a duly imposed sentence based on a clerk's deliberate indifference is cruel and unusual punishment) and *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985) (en banc) (same), with *Nelson v. Stalder*, 31 F. App'x 836, 2002 WL 243382, *1–2 (5th Cir. 2002) (unpublished) (disagreeing with *Sample* and analyzing extended detention under the Due Process clause).

In one of our unpublished decisions, we recognized that “[i]ncarceration beyond the termination of one's sentence may state a claim under the due process clause and the [E]ighth [A]mendment.” *Golson v. Dep't of Corrections*, 914 F.2d 1491, 1990 WL 141470, at *1 (4th Cir. 1990). But the word “may” was crucial: even if prolonged detention violated the constitution, the plaintiff's evidence failed to support his claim.

- 8 In *Sample*, the Third Circuit described deliberate indifference similarly, though in three parts rather than two. 885 F.2d at 1110. Seizing on language in *Sample*, Campbell's argument suggests only one subjective showing must be made. Even if this were the law of the Third Circuit, it is not ours. Our precedents make abundantly clear that deliberate indifference requires two subjective showings.
- 9 The expert later suggested that Florian could have gone to a South Carolina court and requested appointment of counsel to argue against his interpretation. J.A. 439. Even assuming this was possible, we do not consider it to be an obvious strategy that would support a reasonable inference that Florian acted with deliberate indifference.
- 10 Indeed, as discussed above, the record shows that Florian was the SCDC's “subject matter expert” on the issue. J.A. 81. And Campbell's expert agreed. *See* J.A. 117–18.

Other Orders/Judgments

6:16-cv-03265-MGL-KFM
Campbell v. South Carolina
Department of Corrections et al

JURY, KFM-Inmate, STAYED

A TRUE COPY
 ATTEST: LARRY W. PROPPS, CLERK

BY:

DEPUTY CLERK



2020 OCT - 1 AM 9:42
 JULIE J. ARMSTRONG
 CLERK OF COURT

FILED

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 9/30/2020 at 6:43 PM EDT and filed on 9/30/2020

Case Name: Campbell v. South Carolina Department of Corrections et al

Case Number: 6:16-cv-03265-MGL-KFM

Filer:

Document Number: 115(No document attached)

Docket Text:

TEXT ORDER: Inasmuch as there are no federal claims left pending in this case, the Court is of the firm opinion it should decline to exercise supplemental jurisdiction over the remaining state claims and remand the matter to state court for further proceedings. The parties have indicated they do not object. Accordingly, this matter is REMANDED to the Charleston County Court of Common Pleas. IT IS SO ORDERED. Signed by Honorable Mary Geiger Lewis on 9/30/20. (alew,)

6:16-cv-03265-MGL-KFM Notice has been electronically mailed to:

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ELECTRONICALLY FILED - 2020 Nov 23 11:00 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4005532

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6:16-cv-03265-MGL-KFM Notice will not be electronically mailed to:

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Marion Katrell Campbell, on behalf
 of himself and all others similarly
 situated,

Plaintiff,

vs.

South Carolina Department of
 Corrections,

Defendant.

C.A. NO. 2020-CP-40-05532

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

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

Plaintiffs,

vs.

South Carolina Department of
 Corrections,

Defendant.

C.A. No. 2020-CP-40-04701

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

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

Plaintiffs,

vs.

South Carolina Department of
 Corrections,

C.A. No. 2020-CP-40-05660

Defendant.	)	
	)	
STATE OF SOUTH CAROLINA	)	C.A. No. 2017-CP-40-00556
	)	
COUNTY OF RICHLAND	)	
	)	
Henry Belton,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
South Carolina Department of	)	
Corrections,	)	
	)	
Defendant.	)	
	)	

**ORDER FOR CONSOLIDATION AND
ORDER FOR DESIGNATION OF
COMPLEX CASE**

The above-named Plaintiffs each previously filed Summons and Complaints in various courts, including United States District Court for the State of South Carolina. Through remand and changes of venue all currently are pending in Richland County South Carolina.

The parties agree that these cases shall be consolidated under Case No. C.A. No. 2020-CP-40-04701 for the purposes of discovery and trial. The parties further agree and stipulate that this consolidation is for efficiency and convenience and shall have no effect on the issue of the number of occurrences under the South Carolina Tort Claims Act or the number of occurrences for the purposes of insurance coverage, if any. Further, the Plaintiffs, through their undersigned counsel, and with consent of all counsel, do hereby move for an order designating the above captioned cases as complex. Plaintiffs set forth the following information in support of this motion:

1. Nature of the case: The above cases are filed under the South Carolina Tort Claims Act asserting various causes of action relating to the alleged wrongful imprisonment of Plaintiffs following the full max-out dates on their terms of incarceration. The claims include false imprisonment and negligence

2. The number of witnesses for plaintiff: Plaintiffs are not yet certain how many witnesses will be used at trial but currently estimate well over a dozen.

3. The number of witnesses for defendants: Plaintiffs are uncertain how many witnesses Defendants may call.

4. Anticipated time needed to try case: Plaintiffs estimate that each case may take up to 7 days to try.

5. Motions pending: Plaintiff Campbell has filed a motion for Class certification which all named Plaintiffs will join in and seek to join as additional class representatives.

6. Additional motions anticipated before trial: Plaintiffs anticipate filing an amended Motion to certify a Class in order to join the consolidated Plaintiffs as additional proposed class representatives. Plaintiffs anticipate there will be a number of discovery motions as well as dispositive motions and motions relating to the admission of evidence and expert witnesses.

7. Discovery pending: Defendants has not yet answered and accordingly discovery has not commenced. A significant amount of discovery was completed in the federal cases prior to remand.

8. Additional discovery contemplated: Numerous depositions and additional written discovery.

For good cause shown, by and with the consent of all counsel,

IT IS HEREBY ORDERED that the Motion is granted, and the above-captioned cases are

designated as complex and consolidated for the purposes of discovery only. It is further ordered that the trial of the cases will be set as a date certain trial by further order of the Court.

IT IS FURTHER ORDERED that this case is assigned to the Honorable Jocelyn Newman, who is assigned to hear and handle all pretrial motions, other matters pertaining to the cases, and to conduct the trial of these cases.

IT IS SO ORDERED THIS _____ DAY OF _____, 2021.

THE HONORABLE L. CASEY MANNING
CHIEF ADMINISTRATIVE JUDGE
FIFTH JUDICIAL CIRCUIT

Columbia, SC

MARCH 16, 2021

WE SO MOVE AND CONSENT:

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Richland Common Pleas

Case Caption: Wardell Williams , plaintiff, et al vs South Carolina Department Of Corrections
Case Number: 2020CP4004701
Type: Order/Complex Case Designation

So Ordered

s/L. Casey Manning, 2061

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

FORM 4

ROA 0019
JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4005532

Marion Katrell Campbell
PLAINTIFF(S)

South Carolina Department of Corrections et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiffs' "Amended Motion to Certify a Class" (filed on October 12, 2020) was RESOLVED by the parties in advance of the scheduled hearing. The parties shall submit proposed Consent Orders regarding scheduling and class certification to the Court within ten days.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/23/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

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

Case Number: 2020CP4005532

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2020-CP-40-05532

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

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No.: 2020-CP-40-04701

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No. 2020-CP-40-05660

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

Henry Belton,

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

C.A. No. 2017-CP-40-00556

ORDER ON CONDITIONAL CLASS CERTIFICATION AND CLASS NOTICE

This consolidated, complex matter is before the Court on Plaintiffs’ second amended motion for class certification filed on May 13, 2021. On August 18, 2021, the above-captioned Plaintiffs filed a joint memorandum in support of the motion urging the Court to certify a class of inmates they allege were subjected to prolonged detention by Defendant South Carolina Department of Corrections (SCDC). On August 19, 2021, Defendant filed a memorandum indicating, in relevant part, that SCDC believes this case meets the requirement of Rule 23 of the South Carolina Rules of Civil Procedure, such that “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.” SCDC mem., 4. Thereafter, the parties conferred and submitted a proposed order for conditional class certification and class notice.

Having carefully considered the submissions of the parties and the relevant law, the motion is **GRANTED**, and the Court conditionally certifies a class (as described below), appoints Plaintiffs’ counsel as class counsel in this action, and orders the parties to proceed with providing notice to the class as explained below.

**RELEVANT PROCEDURAL
AND FACTUAL BACKGROUND**

This action arises from the Omnibus Crime Reduction and Sentencing Reform Act of 2010 (“Act 273” or “the Act”). Sections 37 and 38 of the Act appended the following paragraph to South Carolina Code §§ 44-53-370, -375(A) & (B):

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, §§ 37 & 38. The named Plaintiffs were all convicted of offenses under §§ 44-53-370, -375(A) & (B), but after the enactment of Act No. 273, SCDC did not reclassify their convictions as parolable until the decision in *Bolin v. South Carolina Department of Corrections*, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016), remittitur issued April 1, 2016.

In *Bolin*, the Court of Appeals held “a second offense under section 44-53-375(8) is no longer a no-parole offense.” 415 S.C. at 286, 781 S.E.2d at 919. After *Bolin* was decided, SCDC recalculated inmate sentences to apply good-time, education, and work credits at the parolable-offense rate, which accelerated the timeline for inmate release. This resulted in SCDC releasing 419 inmates from state prisons in two rounds of releases during March and June 2016.

Plaintiff Marian Campbell filed this action on August 17, 2016 in the Charleston County Court of Common Pleas joining individual and class claims against SCDC and its director. The action was removed to federal court and Campbell filed an amended complaint adding federal claims for deliberate indifference against SCDC lawyers Chris Florian and David Tatarsky. The claims against SCDC’s director were dismissed and Florian and Tatarsky were ultimately held to have qualified immunity. *Campbell v. Florian*, 972 F.3d 385 (4th Cir. 2020). The U.S. District

Court declined to exercise supplemental jurisdiction over the South Carolina Tort Claims Act claims against SCDC, and the case was remanded to the South Carolina circuit court.

On November 23, 2020, the Honorable Jennifer B. McCoy, Circuit Court Judge, transferred the *Campbell* action from Charleston County to the Richland County Court of Common Pleas by agreement of the parties. The other above-named either Plaintiffs filed actions in Richland County or had them transferred here. On March 16, 2021, the Honorable L. Casey Manning, Chief Administrative Judge for the Fifth Judicial Circuit consolidated those actions, designated the matter complex, and assigned it to this Court. Thereafter, Plaintiffs moved for class certification, appointment of class counsel, and for entry of a class notice plan.

STANDARD OF REVIEW

Rule 23 authorizes a class-action procedure when the court finds that (1) the class is so numerous that joinder is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of those of the class, (4) the representative parties will fairly and adequately protect the interests of the class, and (5) the amount in controversy exceeds \$100 per class member when the relief primarily sought is not injunctive or declaratory relief. Rule 23(a), SCRCPP. The proponent of the class certification has the burden of proving these prerequisites are met. *Waller v. Seabrook Island Prop. Owners Ass'n*, 300 S.C. 465, 467–68, 388 S.E.2d 799, 801 (1990); *Gardner v. S.C. Dep't of Revenue*, 353 S.C. 1, 21, 577 S.E.2d 190, 200 (2003). A trial judge's ruling on whether an action is properly maintainable as a class action is within her discretion and reviewed for an error of law. *Id.*

DISCUSSION

The parties agree preliminary certification of a class is appropriate. Plaintiffs also seek appointment of their counsel as Class Counsel and approval of a class notice plan. The motion is

GRANTED, and the Court (1) appoints Plaintiffs' counsel as Class Counsel, (2) orders that the Class receive notice as set forth below, and (3) adopts the following schedule for providing notice and an opportunity for class members to opt out prior to certification.

I. Conditional class certification is appropriate.

Plaintiffs moved for certification citing a class of approximately 419 individuals and arguing there are common questions of law and fact, the representative parties' claims are typical of the class, Plaintiffs and their counsel will fairly and adequately protect the interests of the class, and the amount in controversy exceeds \$100 per class member. Plaintiffs ask to certify a class of:

All persons in the custody of the South Carolina Department of Corrections who were incarcerated for violations of South Carolina Code §§ 44-53-370 and 44-53-375 and released between June 2, 2010 and June 1, 2016.

Pls.' 2nd Am. Mot. Cert. (filed May 13, 2021). SCDC does not dispute that Rule 23's requirements are met. *See* SCDC mem., 3–4 (filed Aug. 19, 2021).

The Court finds the requirements of Rule 23 are met. The class is sufficiently numerous because there appears to be a class of at approximately 419 individuals identifiable based on documents collected during discovery. The Court finds joinder of 400+ individuals to be impractical. The factual record and legal issues cited by the parties indicate there are some questions of law and fact which, if answered by the jury or the Court, would resolve at least some issues for both the named Plaintiffs and either the entire class or entire subclasses. Put differently, a class procedure is capable of generating common *answers* on questions capable of producing common answers such that the efficiencies of a class proceeding are realized here. Further, Plaintiffs and their counsel will fairly represent the interests of the Class because Plaintiffs' interests appear to be aligned with those of the class and Class Counsel has more than adequate experience in class action litigation to represent their clients and the absent Class. Finally, the relief

sought here is money damages and it appears a jury could return a verdict that would result in more than \$100 in compensation per class member.

Accordingly, the Court finds that the record supports conditional certification and hereby **CERTIFIES** the following class definition:

All persons in the custody of the South Carolina Department of Corrections who were incarcerated for violations of South Carolina Code §§ 44-53-370 and 44-53-375 and released between June 2, 2010 and June 1, 2016.

Excluded from the Class are any federal, state, or local governmental employees and any judges who have decided some or all issues in the case, any persons related to a judge in a manner that would disqualify the judge from hearing the case, and any chambers staff working for the assigned judge or other courthouse staff who perform tasks relating to this matter.

II. Appointment of Plaintiffs' counsel as Class Counsel

Plaintiffs also seek appointment of their counsel as Class Counsel charged with providing notice to the class and prosecuting the claims of the absent class members. SCDC does not contest the adequacy of Plaintiffs' counsel to serve as class counsel here.

Accordingly, whereas it appears to the Court that Plaintiffs' counsel have ample experience in class action litigation, Plaintiffs' counsel is hereby **APPOINTED** to serve as Class Counsel and represent the interests of the Class in this litigation.

III. Class notice plan.

The parties also seek approval of a class notice plan to notify the class and provide an opportunity to opt out prior to any class member being bound by the judgment.

Notice to absent class members is required by due process; due process requires the best notice practicable, reasonably calculated under the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to participate or opt out. *See Hosp. Mgmt. Assocs., Inc. v. Shell Oil Co.*, 356 S.C. 644, 662, 591 S.E.2d 611, 620–21 (2004) (quoting

Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812 (1985)). Typically, when names and addresses of most class members are known, notice by mail is usually preferred. David F. Herr, MANUEL FOR COMPLEX LITIGATION (FOURTH) § 21.311 (2018). The purpose of such notice is not only to apprise the class of the nature of the litigation, but also to afford an opportunity to opt out before the rights of Class members are bound by the judgment of the Court.

For reasons that follow, the Court finds that the parties' proposed class notice plan is the best practicable under the circumstances and that it is sufficient to meet the requirements of Rule 23 of the South Carolina Rules of Civil Procedure and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. Thus, the following class notice plan is **APPROVED**.

A. Subpoena to S.C. Department of Probation, Parole & Pardon Services

As an initial step, Plaintiffs propose to subpoena names, addresses, and contact information for the approximately 419 individuals included in SCDC's two mass releases from the S.C. Department of Probation, Parole & Pardon Services (PPP). A proposed attachment describing the documents sought by the subpoena duce tecum is attached here as **Exhibit A**.

The Court finds to proposed subpoena reasonable and necessary given the circumstances of this case. Accordingly, the subpoena is **APPROVED**, and a copy of this Order shall be served on PPP with the subpoena duces tecum.

B. Certified Mail with Notice to Last Known Address

Upon receipt of contact information from PPP, Plaintiffs propose to send first class U.S. Mail to each of the individual's last known address with the class notice attached to this Order as Exhibit B. The notice reasonably describes the nature of this action, the definition of the class, the claims and defenses at issue, the rights of class members including the right to opt out from the class, the right of class members to obtain their own counsel, how to contact class counsel, and the

binding effect of a judgment on persons who remain in the Class. *Cf.* MANUEL FOR COMPLEX LITIGATION (FOURTH) § 21.311. Accordingly, the Class Notice is **APPROVED** and, upon receipt of the Class information from PPP, Plaintiffs shall send the Class Notice via U.S. Mail with a return receipt requested within 30 days. Further, Plaintiffs shall keep or cause to be kept a list of all Class Notices returned as undeliverable.

C. Skip-Trace Address Update and Other Means to Ensure Actual Notice.

Upon receipt of a Class Notice returned as undeliverable, Class Counsel shall record the communication as undeliverable and, within seven (7) days of receipt of the returned mail, use any forwarding address provided by the U.S. Post Office or that may be found using a commercial skip-serve to re-mail the Class Notice.

Further, Class Counsel shall be permitted to use any contact information (i.e., telephone or email) obtained from PPP to ensure actual notice of this action to as many class members as practicable under the circumstances. Class Counsel is authorized to take such further action as may be required to provide actual notice to as many persons as practicable and otherwise protect the interests of the Class.

D. Notice to the Court of Opt-Out Class Members

Within 90 days of mailing the Class Notice, Class Counsel will file a first status report apprising the Court of the status of the notice plan and the current number of individuals choosing to opt out. This 90-day status report takes into account the 60-day window provided by the Class Notice to opt out of this lawsuit. Class Counsel will file a second status report notifying the Court when, in counsel's judgment, notice has been effectuated; however, this second status report shall be filed no later than 120 days from that date Class Notice is first mailed.

AND IT IS SO ORDERED.

The Honorable Jocelyn Newman
Circuit Court Judge

_____, 2021
Columbia, South Carolina.

Exhibit A – Attachment to Subpoena Duces Tecum

Exhibit A**INSTRUCTIONS**

In responding to this subpoena, produce all documents available to you or subject to your reasonable access or control. In producing documents, you are required to produce each document requested together with all non-identical copies and drafts of that document. If the original of any document cannot be located, a copy shall be provided in lieu thereof and shall be legible and bound or stapled in the same manner as the original. If any requested document is not or cannot be produced in full, you are required to produce it to the extent possible, indicating which document, or portion of that document, is being withheld and the reason that document is being withheld.

Documents shall be produced as they are kept in the usual course of business or organized and labeled to correspond to the categories in this Request. In making production of electronically stored information (ESI), including, without limitation, electronic data compilations, electronic email, or documents that are kept in electronic format (such as, without limitation, Microsoft Outlook, Microsoft Word, Microsoft Excel, Microsoft PowerPoint, or any similar program or platform), produce all data compilations (e.g., Microsoft Excel files, comma separated value files, text files, etc.) in native form. Email should be produced either in native form or as TIFF image files appended with corresponding metadata and OCR files. Documents attached to email should not be separated. Documents not otherwise responsive to this subpoena should be produced if such documents mention, discuss, refer to, or explain the documents called for by this subpoena or if such documents are attached to documents called for by this subpoena.

DEFINITIONS

Unless a specific definition is provided below, the words and phrases contained in this subpoena should be given their ordinary, dictionary, common sense definition. Unless specifically

Exhibit A – Attachment to Subpoena Duces Tecum

stated to the contrary, and unless another meaning is obvious from the context, the terms used herein shall have the same meaning as they have in the Complaint in this action. **Objections on account of vagueness should specifically explain why you believe the request is vague** and should state your understanding of the information being sought along with a response consistent with your understanding.

Additionally, the following definitions shall apply to this subpoena:

1. The term “and” shall include the term “or.”
2. The term “or” shall include the term “and.”
3. The terms “relating to,” “with respect to,” and “refer to” shall mean embodying, containing, comprising, indicating, concerning, referring, identifying, describing, discussing, involving, evidencing or otherwise pertaining to.
4. “Documents” or “document” shall have the broadest meaning permitted under Rules 26, 34, and 45 of the South Carolina Rules of Civil Procedure and include, without limitation, all writings of any nature whatsoever (including, specifically, all drafts), whether originals or copies, including all non-identical copies (whether different from the original because of notes made on or attached to them or otherwise), whether drafts, preliminary, proposed or final versions, whether printed, recorded, produced or reproduced by any other mechanical or electronic process, whether written or produced by hand, within your possession, custody or control, including without limitation, contracts, agreements, arrangements, understandings, communications, including intra-office communications, intra-department communications, correspondence, telegrams, records, reports, studies, memoranda (including memoranda of telephone, personal, intra-office or intra-department conversations and memoranda of conferences, notes, advertisements, notices, telex and facsimile communications), telephone bills and records,

Exhibit A – Attachment to Subpoena Duces Tecum

cables, books, diaries, appraisals, forecasts, statistical statements, accountants' work papers, graphs, summaries, lists, tabulations, calendars, charts, maps, diagrams, blueprints, tables, indices, pictures, recordings, tapes, microfilms, charges, accounts, minutes, brochures, pamphlets, circulars, trade letters, press releases, stenographic, handwritten or any other notes, projections, working papers, checks, check stubs, receipts, invoice vouchers, tape data sheets or data processing cards or disks, magnetic tapes, disks, drums, promotional devices, or any other document or writings of whatever description, including, without limitation, CD-ROMS, e-mails, instant messages, text messages and any information contained in any computer or memory system, although not yet printed out, or any material underlying, supporting or used in the preparation of any such documents. "Documents" or "document" includes ESI.

5. "ESI" means electronically stored information, electronically stored data or electronic data, and is to be interpreted broadly to include all types of information, regardless of the storage media (*e.g.*, hard drive, CD-ROM, DVD, disc, tape, thumb drive, etc.), that requires a computer or other machine to read or process it.

6. "SCDC" means the South Carolina Department of Corrections and all of its directors, officers, employees, and agents.

7. "PPP" means the South Carolina Department of Probation, Parole, and Pardon Services and all of its directors, officers, employees, and agents.

8. "*Bolin*" means the decision in the case styled *Bolin v. S.C. Dep't Corr.*, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016).

DOCUMENTS FOR PRODUCTION

You are required to produce the following documents in response to this subpoena:

Exhibit A – Attachment to Subpoena Duces Tecum

1. All names, addresses, and contact information—including last known addresses—for inmates released in March 2016 pursuant to the decision in *Bolin* that resulted in approximately 226 inmates being released from SCDC prisons.

2. All names, addresses, and contact information—including last known addresses—for inmates released in June 2016 pursuant to the decision in *Bolin* that resulted in approximately 193 inmates being released from SCDC prisons.

3. To the extent not already produced, produce all names, addresses, and contact information—including last known addresses—for any other inmate known to PPP to have been released from SCDC prisons pursuant to the decision in *Bolin*.

To the extent any of the foregoing documents are available in ESI and other formats, please produce it in ESI form only.

NOTICE OF CLASS ACTION
Campbell v. South Carolina Department of Corrections
Richland County Court of Common Pleas, Case No. 2020-CP-40-05532

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

You are receiving this notice because your rights may be affected by a class action lawsuit (the “Campbell Lawsuit”) against the South Carolina Department of Corrections (“SCDC”).

The Campbell Lawsuit alleges SCDC unlawfully prolonged the detention of inmates incarcerated by SCDC by failing to properly recalculate work, education, and good time credits earned by inmates convicted under South Carolina Code §§ 44-53-370 and 44-53-375(A) & (B).

READ THIS NOTICE COMPLETELY AND CAREFULLY TO LEARN ABOUT THE CASE AND YOUR OPTIONS.

1. WHY AM I RECEIVING THIS NOTICE?

You are receiving this Notice because the Richland County Court of Common Pleas has conditionally certified—i.e., conditionally approved—the Campbell Lawsuit to proceed as a class action lawsuit.

A class action lawsuit is a legal procedure that allows named plaintiffs to bring legal claims on behalf of themselves and other persons with similar legal rights. When a court approves a case to proceed as a class action, the claims of the named plaintiffs, also called class representatives, are litigated and tried together with the claims of the class in one court proceeding.

When a class is certified, potential class members must receive notice and an opportunity to opt out or withdraw from the lawsuit before they can be bound by the outcome. This is your opportunity to learn about the Campbell Lawsuit and decide whether you want to (a) do nothing and be part of the Class or (b) opt out and be excluded from the outcome.

2. WHAT IS THIS CASE ABOUT?

Plaintiffs are former inmates in the South Carolina Department of Correction (SCDC) serving time for violating South Carolina Code §§ 44-53-370 and -375 who allege they were subjected to prolonged detention—i.e., incarcerated beyond their lawful term of incarceration—because SCDC failed to properly re-calculate their release date to apply additional good-time, education, and work credits that would accelerate their release from prison.

South Carolina Code § 44-53-370 makes it unlawful for any person to (1) to manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute,

Exhibit B – Class Notice

dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue or (2) to create, distribute, dispense, deliver, or purchase, or aid, abet, attempt, or conspire to create, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, deliver, or purchase a counterfeit substance.

South Carolina Code § 44-53-375(A) and (B) make it unlawful to possess, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver methamphetamine or cocaine base.

The Omnibus Crime Reduction and Sentencing Reform Act of 2010 (“Act 273” or “the Act”) changed the parole status of persons convicted under §§ 44-53-370 & -375 by providing:

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, §§ 37 & 38. In *Bolin v. South Carolina Department of Corrections*, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016), the South Carolina Court of Appeals held that an inmate’s convictions for second-offense conspiracy to manufacture and possession with intent to distribute methamphetamine were no longer “no parole” offenses. Sometime after the *Bolin* case was decided, SCDC recalculated inmate sentences to apply good-time, education, and work credits at the parolable-offense rate, which accelerated the timeline for inmate release. This resulted in SCDC releasing 419 inmates from state prisons in two rounds of mass-release during March and June, 2016.

Plaintiffs allege that following the enactment of Act No. 273 of 2010, SCDC should have, but failed to, reclassify their convictions as parolable and allow them release credits at the greater, paroleable rate, but instead continued treating the offenses as “no parole” offenses that required inmates to serve 85 percent of their respective sentences until the *Bolin* decision referenced above.

Plaintiffs are seeking money damages from SCDC to compensate them and the Class for time spent in state prisons beyond what they allege was the lawful term of each inmate’s incarceration. If Plaintiffs are successful in this case, they can be awarded money. If they are

Exhibit B – Class Notice

unsuccessful, they receive nothing. The outcome of this case will not have any impact on the prison term of any person presently incarcerated in state or federal prison or any detainee in a local jail.

Defendant SCDC disputes that it did anything wrong and believes it has legal defenses that prevent Plaintiffs from recovering some or all of the money being sought in this case.

3. WHOSE RIGHTS ARE AFFECTED BY THIS CLASS ACTION?

Plaintiffs believe they were subjected to prolonged detention while they were inmates in the South Carolina Department of Corrections and that other inmates were also subjected to prolonged detention for the same reason. They have asked the Court to approve the following definition of persons to be included in the Class:

All persons in the custody of the South Carolina Department of Corrections who were incarcerated for violations of South Carolina Code §§ 44-53-370 and 44-53-375 and released between June 2, 2010 and June 1, 2016.

Excluded from the Class are any federal, state, or local governmental employees and any judges who have decided some or all issues in the case, any persons related to a judge in a manner that would disqualify the judge from hearing the case, and any chambers staff working for the assigned judge or other courthouse staff who perform tasks relating to this matter.

The Court has conditionally agreed to certify the class definition above, meaning this case will proceed as a class action and include the individuals who meet the definition above.

4. WHAT ARE MY OPTIONS?

You have two options:

- a. **Remain in the Class.** You may remain in the Campbell Lawsuit and remain eligible for money damages that could be awarded during this litigation. You do not need to do anything to remain in the Campbell Lawsuit. If you do nothing, you will automatically become part of the Class on [**DATE: Notice +60 days**]. Being a member of the Class means you will be bound by the judgment—i.e., the outcome of this case, meaning if Plaintiffs prevail, the Class will prevail; if SCDC prevails, the Class will not prevail. Being part of the Class means you give up your right to file your own lawsuit and agree to be bound by the Campbell Lawsuit.
- b. **Opt Out of the Class.** You may opt out of the Class and the Campbell Lawsuit. Opting out means you will not receive any money recovered on behalf of the

Exhibit B – Class Notice

Class and you will not be bound by the judgment or the outcome of this case. If you opt out, you can file your own lawsuit provide the legal deadline for doing so—i.e., the statute of limitations—does not expire before you file your claim at the courthouse. You must opt out on or before **[DATE: Notice +60 days]** or you will be included in the class.

5. HOW DO I OPT OUT OF THE CLASS?

In order to opt out of the Class, you must complete and return the “Request to Opt Out” Form attached to this Notice or a form that contains the same information. The signed form must include your full name, address, telephone, email, and SCDC inmate number during the term of your incarceration. You must sign the form and indicate your intent to be excluded from the Class by checking the box that states “I am opting out” or by making a statement to the same effect.

In order to be considered valid, opt-out requests must:

- a. Comply with all of these requirements,**
- b. Send your form to Richard A. Harpootlian, P.A., P.O. Box 1090, Columbia, South Carolina 29211, and**
- c. Have your return envelope postmarked on or before [DATE: Notice +60 days].**

If you validly opt out, you will be excluded from the Class in the Campbell Lawsuit and will not share in any proceeds or be bound by its outcome.

6. APPOINTMENT OF CLASS COUNSEL AND RIGHT TO COUNSEL

The Court has appointed the lawyers representing the plaintiffs in the Campbell Lawsuit to also represent the interests of the class based on the Court’s determination that these lawyers have sufficient experience with class actions and the subject matter of this litigation to represent the interests of the Class.

Class Counsel in the Campbell Lawsuit is Richard A. Harpootlian and Christopher P. Kenney of RICHARD A. HARPOOTLIAN P.A.; Charles W. Whetstone, Jr. and Cheryl F. Perkins of WHETSTONE, PERKINS & FULDA, LLC; Kyle J. White of WHITE, DAVIS & WHITE LAW FIRM; and Philip A. Berlinsky of RIESEN LAW FIRM, L.L.P.

However, nothing prevents you from hiring your own lawyer at your own cost to review this notice or the filings in this case and advise you about how best to proceed.

7. IS A SETTLEMENT POSSIBLE?

It is possible the Campbell Lawsuit could be settled—i.e., the parties reach a negotiated resolution that does not require them to go to court—however, the parties do not believe that is likely at this time and expect to have either a jury or the Court resolve this case. This means someone will win and someone will lose.

If a settlement is reached at a later date and you are part of the Class, you will receive notice of the settlement and an opportunity to be heard about whether the Court should approve that settlement. Any settlement must be approved by the Court.

8. WHEN WILL THE COURT DECIDE THIS CASE?

Once the opt-out period closes on [DATE: Notice +60 days], the Court will set a schedule to complete discovery, argument motions, and begin trial. Generally, the Court expects to try this case sometime in 2022. If the case is tried by a jury, either side may choose to appeal some or all of the judgment. Resolving can be very time consuming and could take several years for both sides to exhaust their procedural and legal arguments.

9. WHAT IF I HAVE QUESTIONS?

This description of the Campbell Lawsuit is general and does not cover all issues litigated in the case. More details, including a copy of the complaint, answer, motions, and orders of the court are free and available online at on the public database, the Richland County Public Index, <https://publicindex.sccourts.org/Richland/PublicIndex/disclaimer.aspx>, by searching for the Cambell Lawsuit and the other lawsuits that have been consolidated with the Campbell Lawsuit in the South Carolina Court of Common Pleas (i.e., the trial court) for the Fifth Judicial Circuit (Richland and Kershaw Counties). The caption and case number for those cases are:

- *Marion Katrell Campbell, on behalf of himself and all other similarly situated v. South Carolina Department of Corrections*, C/A No. 2020-CP-40-05532;
- *Wardell Williams, Harry Simmons, Jr., and Isiah Rollins v. South Carolina Department of Corrections*, C/A No.: 2020-CP-40-04701;
- *Larry Hampton, Christopher McDowell, David Payton, Jr., and Michael Smoak*, C/A No. 2020-CP-40-05660; and
- *Henry Belton v. South Carolina Department of Corrections*, C/A No. 2020-CP-40-05660.

Exhibit B – Class Notice

You can also visit the office of the Richland County Clerk of Court located at 1701 Main Street, Columbia, South Carolina 29201 to request copies of documents in the public file for inspection and copying at your own expense.

You also may contact Class Counsel at the following address and telephone number, who will direct you how to obtain any documents, and answer questions about the Campbell Lawsuit:

Richard A. Harpootlian
 Christopher P. Kenney
 RICHARD A. HARPOOTLIAN P.A.
 1410 Laurel Street
 Post Office Box 1090
 Columbia, South Carolina 29202
 Phone (803) 252-4848
 Facsimile (803) 252-4810
 rah@harpootlianlaw.com
 cpk@harpootlianlaw.com

Kyle J. White
 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

Charles W. Whetstone, Jr.
 Cheryl F. Perkins
 WHETSTONE, PERKINS & FULDA, LLC
 601 Devine Street
 PO Box 8086
 Columbia, SC 29202
 Phone (803) 828-6100
 cwhetstone@attorneyssc.com
 cperkins@attorneyssc.com

Philip A. Berlinsky
 RIESEN LAW FIRM, L.L.P.
 3660 West Montague Avenue
 N. Charleston, South Carolina 29418
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DO NOT CONTACT THE COURT, THE JUDGE, OR THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS REGARDING THIS NOTICE OR THE CAMPBELL LAWSUIT.

JOCELYN NEWMAN, CIRCUIT COURT JUDGE
 COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

_____, 2021
 Columbia, South Carolina.



Richland Common Pleas

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

Case Number: 2020CP4005532

Type: Order/Class Certification

So Ordered

Jocelyn Newman

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Marion Katrell Campbell, on behalf
of himself and all others similarly
situated,

Plaintiff,

vs.

South Carolina Department of
Corrections,

Defendant.

C.A. NO. 2020-CP-40-05532

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

Plaintiffs,

vs.

South Carolina Department of
Corrections,

Defendant.

C.A. No. 2020-CP-40-04701

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

Plaintiffs,

vs.

South Carolina Department of
Corrections,

Defendant.

C.A. No. 2020-CP-40-05660

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

**ORDER ON CROSS-MOTIONS
FOR SUMMARY JUDGMENT**

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

PROCEDURAL HISTORY

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

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

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

(emphasis added).

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

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

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

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

NATURE OF THE CLAIMS

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

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

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

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

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

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

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

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

(emphasis added).

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

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

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

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

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

STANDARD GOVERNING MOTIONS FOR SUMMARY JUDGMENT

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

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

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

I. PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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

**SUMMARY OF UNDISPUTED FACTS
PERTINENT TO FALSE IMPRISONMENT**

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

- SCDC admits that inmates have fully served out their incarceration to completion as of the properly calculated max-out dates. (Ex. E to Plaintiffs' Motion for Summary Judgment, ¶ 1).
- SCDC admits that it detained in custody the inmates listed in Ex. A to Plaintiffs' First Requests to Admit until March 21, 2016 [the "March Releasees"] and the inmates listed in Ex. B to Plaintiffs' First Requests to Admit until June 1, 2016 [the "June Releasees"]. (Ex. E to Plaintiffs' Motion for Summary Judgment, ¶¶ 9, 12).
- SCDC has admitted the contents of a list of max-out sentence and supervised release dates for each March and June Releasee, as properly calculated pursuant to the Omnibus Act. (Ex. F to Plaintiffs' Motion for Summary Judgment, ¶¶ 5, 6).
- SCDC admits it continued to incarcerate the March Releasees after their recalculated max-out or SR dates. (Ex. E to Plaintiffs' Motion for Summary Judgment, ¶ 22).
- SCDC admits it continued to incarcerate the June Releasees after their recalculated "New Dates" or SR Dates. (Ex. E to Plaintiffs' Motion for Summary Judgment, ¶ 23).

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

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

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

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

AUTHORITIES

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

A. Plaintiff’s False Imprisonment Claims.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. The Omnibus Act's retroactive application.

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

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

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

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

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

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

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

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

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

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

(emphasis added).

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

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

B. SCDC's Affirmative Defenses.

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

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

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

S.C. Code Ann. § 15-78-40.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(bold and underline emphasis added).

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

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

C. Each Wrongful Detention Was a Separate Occurrence.

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

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

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

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

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

II. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant SCDC moved for summary judgment in its favor on Plaintiffs' false imprisonment claims¹⁰ and their negligence/gross negligence/recklessness claims. The Court denies SCDC's Motion for the reasons supra and those that follow.

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

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

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

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

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

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

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

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

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

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

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

SCDC recognized that it had an obligation to timely release inmates.

SCDC knew the General Assembly was contemplating a significant bill to alter inmate release dates by making certain non-parolable offenses parolable.

SCDC knew that hundreds of inmates would be affected by the Omnibus Act and that its interpretation of the Act would determine whether the impacted inmates were granted early release or remained incarcerated.

SCDC admitted to uncertainty about the position it ultimately took that resulted in over 185,000 days of excess incarceration for the Plaintiffs and the class members.

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

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

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

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

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

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

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

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

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

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

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

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

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

SCDC continued to apply its unreasonable and patently erroneous interpretation of the Omnibus Act after the Court of Appeals ruled in Bolin in November 2015 and until the final opinion was issued in February 2016.

Between November 2015 and February 2016, SCDC took no action to recalculate release dates for inmates potentially impacted by the Bolin decision.

Between November 2015 and February 2016, SCDC took no action to prepare for the release of inmates potentially impacted by the Bolin decision.

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

C. SCDC’s Affirmative Defenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

AND IT IS SO ORDERED.



Richland Common Pleas

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

Case Number: 2020CP4005532

Type: Order/Summary Judgment

So Ordered

Jocelyn Newman

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

FORM 4

ROA 0078
JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4005532

Marion Katrell Campbell
PLAINTIFF(S)

South Carolina Department of Corrections et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant South Carolina Department of Corrections' Motion to Reconsider (filed on 4/24/25) and Amended Motion to Alter or Amend Order (filed on 4/25/25) are DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/23/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

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

Case Number: 2020CP4005532

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

COUNTY OF CHARLESTON)

Marion Katrell Campbell, on behalf of himself and
all others similarly situated,)

Plaintiff(s))

vs.)

South Carolina Department of Corrections, and
Brian P. Stirling, Director of the South Carolina
Department of Corrections,)

Defendant(s))

Submitted By: Richard A. Harpootlian
Address: Post Office Box 1090
Columbia, South Carolina 29202SC Bar #: 2725
Telephone #: 803-252-4848
Fax #: 803-252-4810
E-mail: rah@harpootlianlaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☒ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI- -
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☒ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature: _____

Date: August 15, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON****IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT**

Marion Katrell Campbell, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

South Carolina Department of Corrections,
and Brian P. Stirling, Director of the South
Carolina Department of Corrections,

Defendants.

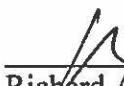
C/A NO. 2016-CP-10-4311

**SUMMONS
(JURY TRIAL DEMANDED)**

2016 AUG 17 PM 1:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the subscribers at their office located at 1410 Laurel Street, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will move for entry of Default Judgment and apply to the Court for the relief sought therein.


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Christopher P. Kenney (SC Bar No. 100147)
W. Baker Allen (SC Bar No. 80237)
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ATTORNEYS FOR PLAINTIFF MARION
KATRELL CAMPBELL AND THE CLASS

August 15, 2016
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Marion Katrell Campbell, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

South Carolina Department of Corrections,
and Brian P. Stirling, Director of the South
Carolina Department of Corrections,

Defendant.

C/A NO.: 2016-CP-10-4311

CLASS ACTION COMPLAINT

(Jury Trial Demanded)

FILED
2016 AUG 17 PM 1:55
JULIE J. ARHOLD
CLERK OF COURT
BY

Plaintiff Marion Katrell Campbell files this class action complaint on behalf of himself and thousands of other current and former inmates subjected to prolonged and illegal incarceration by Defendants South Carolina Department of Corrections (SCDC) and Brian P. Stirling in his capacity as Director of SCDC. As set forth more fully below, SCDC falsely imprisoned Mr. Campbell and the class who, as a result of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 (the "Act"), should have been released far sooner, but for SCDC's failure to faithfully abide by the law and accurately calculate inmate release dates. Mr. Campbell respectfully seeks compensation for himself and a class of similarly situated persons whose liberty was unlawfully restrained and their persons confined well after they paid their debt to society and should have been released from SCDC prisons. Plaintiffs would respectfully show unto the Court as follows:

PARTIES

1. Plaintiff Marion Campbell is a citizens of the State of South Carolina and a resident of Charleston County. Mr. Campbell was incarcerated in numerous facilities throughout South Carolina, including Coastal Pre-Release Center in Charleston County.

2. Defendant South Carolina Department of Corrections (SCDC) an agency of the State of South Carolina responsible for operating the State's prisons. SCDC's principal place of business in Richland County.

3. Defendant Brian P. Stirling is the director of the South Carolina Department of Corrections.

JURISDICTION AND VENUE

4. The Court has jurisdiction over the subject matter of this action pursuant to Article V, Section 11 of the South Carolina Constitution and South Carolina Code §§ 15-78-10, et seq.

5. Venue is proper in Charleston County pursuant to South Carolina Code § 15-78-100(b) because the acts and omissions at issue occurred in Charleston County.

FACTS

6. On March 6, 2010, Mr. Campbell was arrested for the distribution of crack cocaine and on April 22, 2010, Mr. Campbell was indicted in Colleton County (Case No. 2010-GS-15-266) for manufacturing or distribution of cocaine base, 3rd offense, a violation of South Carolina Code § 44-53-375, as amended.

7. Mr. Campbell bonded out of jail, but while free on bond he mistakenly failed to appear in court for a General Sessions proceeding. Mr. Campbell was arrested again on September 25, 2010 for failing to appear,¹ and he remained incarcerated through his plea and sentencing, until his release from the underlying distribution charge in March 2016.

¹ While Mr. Campbell was arrested on September 25, 2010, the bench warrant for his arrest is dated September 27, 2010.

8. On December 2, 2011, Mr. Campbell pled guilty to distribution of crack cocaine 2nd offense, a violation of South Carolina Code § 44-53-375(B)(2), as amended, a lesser included charge than the one for which he was indicted.

9. The guilty plea was accepted by the Honorable Perry M. Buckner, III, Circuit Court Judge, who sentenced Mr. Campbell to incarceration by SCDC for a determinate term of 25 years provided that upon the service of seven years the balance is suspended with probation for five years.

10. Further, as required by S.C. Code § 24-13-40, Judge Buckner gave Mr. Campbell credit for time served during the period of September 25, 2010 when he was arrested for failing to appear until his guilty plea. Accordingly, Mr. Campbell should have been given credit for 433 days of time served prior to sentencing.

11. Following his guilty plea, Mr. Campbell was committed to the custody of SCDC, and his sentence was to commence on the same day as his plea, December 2, 2011. Thereafter, Mr. Campbell spent time at various SCDC institutions throughout South Carolina including Kirkland Reception and Evaluation Center, Wateree Correctional Institution ("CI"), Lee County CI, Evans CI, MacDougall CI, and Coastal Pre-Release Center.

12. Mr. Campbell took advantage of the opportunity to improve himself and throughout his incarceration he was a model inmate, abiding by institutional rules and occupying his time with prison work programs. Due to his consistently good behavior, Mr. Campbell earned South Carolina's statutorily mandated "good time" credits for the majority the months during which he was incarcerated and was subject to a loss of his monthly good time credits on two separate occasions, resulting in a loss of only three month's credits, or 60 days. See S.C. Code § 24-13-210(A).

13. In addition to good time credit, Mr. Campbell accumulated Earned Work Credits (EWC) pursuant to S.C. Code § 24-13-230 by working throughout his incarceration. Mr. Campbell worked seven days per week during the entirety of his sentence with the exception of the two-year period which he served at Coastal Pre-Release Center during which he worked five days per week.

14. Mr. Campbell was sentenced by Judge Buckner to serve 7 years, or 2555 days, minus 433 days of pre-sentence credit. Application of good time credits, at the rate applicable to a parole eligible offense of 20 days for each month earned, would reduce Mr. Campbell's sentence to 1322 days, for a maximum release date of July 15, 2015.

15. Application of EWCs, at the rate applicable to a parole eligible offense of one day for every two worked, would further reduce Mr. Campbell's sentence to 1067 days for a maximum release date of November 2, 2014.

16. Thus, applying statutorily prescribed good time credits, EWCs, and pre-sentence incarceration credit, Mr. Campbell should have served a total of 2 years and 11 months following sentencing, and should have been released on or about November 2, 2014.

17. The Department of Corrections did not release Mr. Campbell until March 21, 2016, resulting in a post-plea sentence of approximately 4 years and 3 months—16 months longer than he should have been incarcerated.

CLASS ALLEGATIONS

18. Mr. Campbell brings this action, in part, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure on behalf of the following proposed class:

All persons sentenced to incarceration by the South Carolina Department of Corrections for violation of S.C. Code §§ 44-53-370 and 44-53-375 after June 2, 2010.

Excluded from the Class is the Defendant and its affiliates, successors, assigns, officers, directors, employees, and legal representatives.

19. This action may properly be maintained as a class action under state law and satisfies the numerosity, commonality, typicality, and adequacy requirements for maintaining a class action under Rule 23(a) of the South Carolina Rules of Civil Procedure.

20. SCDC is believed to have injured thousands of inmates throughout the State of South Carolina in the same or substantially the same manner as it injured Mr. Campbell. As such, the members of the Class are believed to be in excess of 40 individuals and are so numerous and dispersed that joinder of all members is impractical.

21. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members. Mr. Campbell and all class members were entitled to release by operation of state law, but nonetheless continued to be held by SCDC. Issues of law common to Mr. Campbell and the Class include, but are not limited to:

- a. Whether S.C. Code §§ 44-53-370 and 44-53-375 required application of good time credits, work credits, and education credits at the rate applicable to parole eligible offenses to reduce a prisoner's sentence;
- b. Whether SCDC's failure to release inmates after they had served their entire term of incarceration, taking sentence reduction credits into account, rendered their continued detention unlawful and injurious;
- c. Whether SCDC had a duty to the inmates in its care to properly calculate the length of their sentences, and to not detain them for longer than their max out release date;
- d. Whether SCDC's conduct was negligent;
- e. Whether SCDC's failure to release Mr. Campbell and the Class constitutes one occurrence per inmate or an ongoing accrual of occurrences, per inmate, for each day an individual is denied his liberty and illegally confined within the walls of an SCDC institution.

22. Mr. Campbell's claims in this action are typical of the claims of the Class in that Mr. Campbell and the Class all sustained damages arising from the same acts and omissions.

23. Mr. Campbell has the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the Class because his interests coincide with and are not antagonistic to the claims of the Class.

24. The relief sought here is monetary and the amount in controversy exceeds one hundred dollars for each member of the Class.

25. Adjudication of Mr. Campbell's claims will be dispositive of the Class' interests such that class treatment is a superior procedural vehicle for resolving this dispute to thousands of individual actions filed by inmates across the state, which would unnecessarily burden the courts and risk inconsistent results.

26. The relief sought here can be applied in a uniform or nearly uniform manner to the Class such that class treatment is more efficient than requiring class members to sue individually, and requiring the class members to file individual suits to redress a common wrong would be contrary to the spirit and intent of Rule 23.

27. Mr. Campbell has retained attorneys experienced in class action litigation with extensive trial and appellate experience in the courts of this State. Counsel has the resources, expertise, and experience to competently prosecute this action and knows of no conflicts among members of the class or between counsel and members of the Class.

FOR A FIRST CAUSE OF ACTION
(False Imprisonment of Plaintiff and the Class)

28. Every paragraph above is incorporated here as if set forth verbatim.

29. Upon sentencing, Plaintiff and the Class were committed to custody of the South Carolina Department of Corrections who restrained Plaintiff and the Class within a SCDC facility.

30. The term of incarceration for Plaintiff and the Class within a SCDC facility was determined by order of the sentencing judge, and was to be reduced by application of statutorily prescribed sentence reductions credits.

31. SCDC is responsible for properly applying statutorily prescribed sentence reduction credits earned by an inmate to the inmate's term of incarceration and for releasing the inmate at the appropriate time.

32. Application of these credits serves to reduce the inmate's term of incarceration, such that upon service of the total term less deductions, the inmate is to be release and is considered to have served the entire sentence. See S.C. Code § 24-21-690.

33. Failure to allow sentence reduction credits is unlawful and is punishable as a crime. S.C. Code § 24-13-260 ("An officer having charge of an inmate who refuses to allow a deduction in time of serving sentence is guilty of a misdemeanor and, upon conviction, must be imprisoned for not less than thirty days or pay a fine of not less than one hundred dollars.").

34. Plaintiff and the Class earned sentence reduction credits throughout their terms of incarceration and were entitled to have their sentences reduced. Once their terms of incarceration—less earned credits—were complete, SCDC was required to release Plaintiff and the Class as if they had served the entire term for which they were sentenced. Further, application of these sentence reduction credits are beyond the discretion of SCDC as they have been previously earned by Plaintiff and the Class.

35. SCDC did not release Plaintiff and the Class upon service of their terms less required credits, and continued to incarcerate and restrain Plaintiff and the Class against their will past the dates upon which they had earned their freedom.

36. SCDC had no probable cause or reasonable suspicion to continue to restraint Plaintiff and the Class past the date upon which they should have been released.

37. SCDC's continued incarceration of Plaintiff and the Class past the date upon which they were required to be released was intentional and unlawful.

38. SCDC's conduct caused injury to Plaintiff and the Class who were restrained against their will and deprived of the freedom and liberty which they had earned through their good conduct and diligent work.

39. Mr. Campbell and the Class are entitled to money damages in an amount determined by a jury of their peers sufficient to compensate them for their injury.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence/Recklessness)

40. Every paragraph above is incorporated here as if set forth verbatim.

41. SCDC owed a duty of reasonable care to Plaintiff and the Class, and was negligent, grossly negligent, reckless, willful, and/or wanton in the discharge of its duties.

42. SCDC is responsible for calculating the term of incarceration for prisoners in their custody, and owed a duty to Plaintiff and the Class to properly apply credit for pre-sentence time served and statutorily mandated sentence reduction credits to their terms of incarceration.

43. Failure to properly apply earned sentence reduction credits to reduce an inmate's sentence is unlawful.

44. SCDC breached its duty to Plaintiff and the Class by failing to properly calculate their sentences and restraining them within the facilities of SCDC past the date upon which they should have lawfully been released.

45. Further, SCDC's practice of miscalculating release dates despite clear statutory language exhibits negligent, grossly negligent, reckless, willful, and/or wanton conduct in

conscious disregard for the rights of the inmates in its care and the duty it owes to not unlawfully deprive them of their freedom.

46. As a direct and proximate result of SCDC's negligence, gross negligence, reckless, willful, and/or wanton acts and omissions the civil rights of Plaintiff and the Class were violated as they were deprived of their liberty and held against their will longer than the period of time prescribed by law.

47. By reason of the acts and omissions of SCDC described above, Plaintiff and the Class are entitled judgment against SCDC for compensatory damages in an amount to be determined by a jury.

FOR A THIRD CAUSE OF ACTION
(Violations of the Fourth and Fifth Amendments to the United States Constitution)

48. Every paragraph above is incorporated here as if set forth verbatim.

49. The above described actions subjected Plaintiff and the Class to a deprivation of rights and privileges secured by the Constitution and the laws of the United States, including the right to be free from unlawful detention under the 4th and 5th Amendments, which have been incorporated to reach the states through the 14th Amendment.

50. SCDC's continued detention of Plaintiff and the Class past their lawful release date was made under color of law as SCDC was acting pursuant to the rights and responsibilities bestowed upon it by the South Carolina Code of Laws.

51. As a direct and proximate result of the above mentioned unconstitutional acts of Defendant, Plaintiff and the Class's civil rights were violated and they have suffered damages including, but not limited to, mental anguish, emotional distress, humiliation, deprivation of freedom, and attorney's fees.

52. Plaintiff and the Class are entitled to compensatory damages, attorney's fees, and costs in an amount to be determined by the trier of fact. Plaintiff and the Class are also entitled to punitive damages in an amount sufficient to deter similar conduct by Defendant in the future.

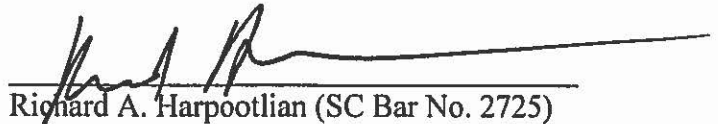
PRAYER FOR RELIEF

WHEREFORE, Plaintiff Marion Katrell Campbell prays that judgment be entered in his favor against Defendant South Carolina Department of Corrections, and that the Court award:

- i. Actual damages and consequential damages suffered by Mr. Campbell and the Class in an amount determined by the jury;
- ii. Punitive damages in an amount sufficient to deter similar conduct by Defendant in the future;
- iii. A reasonable class representative fee to Mr. Campbell to compensate him for his service to the class;
- iv. All legal interest, attorneys' fees, and costs permitted by law; and
- v. Any such further relief permitted at law and equity that this Court deems just and proper.

(signature page follows)

Respectfully submitted,



Richard A. Harpootlian (SC Bar No. 2725)
Christopher P. Kenney (SC Bar No. 100147)
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ATTORNEYS FOR PLAINTIFF MARION
KATRELL CAMPBELL AND THE CLASS

August 15, 2016
Columbia, South Carolina.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

DIVISION

Marion Katrell Campbell, on behalf of)
himself and all others similarly situated,)
)
Plaintiff,)

Civil Action No. _____
[Charleston County Court of Common Pleas
Civil Action No. 2016-CP-10-4311]

V.

South Carolina Department of Corrections)
and Brian P. Stirling, Director of South)
Carolina Department of Corrections,)
)
Defendants.)

NOTICE OF REMOVAL

The notice of the Defendants above-named respectfully shows unto this Honorable Court:

1. The above-entitled action was brought in the Court of Common Pleas, County of Charleston, by the Plaintiff to recover from the Defendants judgment as reflected in the Complaint for allegations of Fourth, Fifth, and Fourteenth Amendment violations brought pursuant to 42 U.S.C. § 1983 against the Defendants.
2. Upon information and belief, at the time of the commencement of the action and at all times since then, the Plaintiff is a citizen and a resident of the State of South Carolina.
3. The Defendant shall pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the said action was not removable or was improperly removed. Pursuant to United States Code Ann. 28 U.S.C. § 1331, the District Courts have original jurisdiction in all civil actions arising under the Constitution, laws, or treaties of the United States. This action alleges federal claims which come within the original jurisdiction of the United States District Court.

4. Upon information and belief, said action was commenced by the service of a Summons and Complaint, attached hereto, upon the Defendants on August 31, 2016 and that this Notice of Removal is filed pursuant to 28 U.S.C. § 1446 within thirty (30) days of the receipt by the Defendants of the initial pleading setting forth the demand upon which relief is claimed.

5. The attorney of record for the Defendants/Petitioners signs this Notice of Removal pursuant to Rule 11 of the Federal Rules of Civil Procedure.

WHEREFORE, the Defendants/Petitioners pray that this Court accept this Notice of Removal which is being filed and that this Honorable Court take jurisdiction of the above-entitled cause and all further proceedings in said cause in the Court of Common Pleas, County of Charleston State of South Carolina bearing Civil Action Number 2016-CP-10-4311 be stayed.

DAVIDSON & LINDEMANN, P.A.

s/William H. Davidson, II

WILLIAM H. DAVIDSON, II, #425

ANDREW F. LINDEMANN, #5070

1611 Devonshire Drive, 2nd Floor

Post Office Box 8568

Columbia, South Carolina 29202-8568

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alindemann@dml-law.com

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F: 803-806-8855

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina
September 29, 2016

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

_____ **DIVISION**

Marion Katrell Campbell, on behalf of)
himself and all others similarly situated,)
Plaintiff,)

v.)

South Carolina Department of Corrections)
and Brian P. Stirling, Director of South)
Carolina Department of Corrections,)
Defendants.)

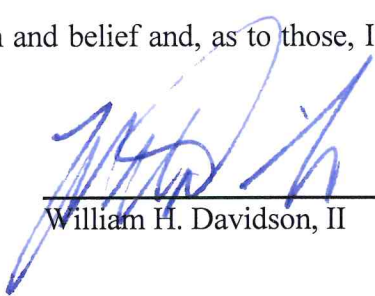
Civil Action No. _____
[Charleston County Court of Common Pleas
Civil Action No. 2016-CP-10-4311]

**AFFIDAVIT OF
WILLIAM H. DAVIDSON, II**

PERSONALLY APPEARED BEFORE ME, William H. Davidson, II, the attorney of record for the Defendants South Carolina Department of Corrections and Brian P. Stirling, Director of South Carolina Department of Corrections, who being duly sworn deposes and states as follows:

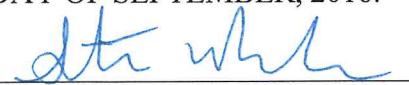
1. I am the attorney of record for the Defendants South Carolina Department of Corrections and Brian P. Stirling, Director of South Carolina Department of Corrections, and fully authorized and competent to make this Affidavit.

2. The allegations in the Notice of Removal are true and correct of my own knowledge except for those matters alleged upon information and belief and, as to those, I believe them to be true.



William H. Davidson, II

SWORN TO BEFORE ME THIS 29th
DAY OF SEPTEMBER, 2016.

 (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: Sept. 2, 2018

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

_____ **DIVISION**

Marion Katrell Campbell, on behalf of)
himself and all others similarly situated,)

Plaintiff,)

v.)

South Carolina Department of Corrections)
and Brian P. Stirling, Director of South)
Carolina Department of Corrections,)

Defendants.)

Civil Action No. _____
[Charleston County Court of Common Pleas
Civil Action No. 2016-CP-10-4311]

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendants, does hereby certify that service of the **Notice of Removal, Affidavit of William H. Davidson, II, State Court Pleadings, and Answers To Local Civil Rule 26.01 Interrogatories On Behalf Of Defendants** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 29th day of September, 2016, addressed as follows:

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s/William H. Davidson, II

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Marion Katrell Campbell, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

South Carolina Department of Corrections,
Brian P. Stirling, Chris Florian, and David
Tatarsky,

Defendants.

C/A NO.: 6:16-cv-03265-MGL

**AMENDED CLASS
ACTION COMPLAINT**

(Jury Trial Demanded)

Plaintiff Marion Katrell Campbell files this amended class action complaint on behalf of himself and 541 other former inmates subjected to prolonged incarceration by South Carolina Department of Corrections (SCDC), and Brian P. Stirling, Chris Florian, and David Tatarsky, all acting under color of state law. As set forth more fully below, SCDC continued to illegally imprison Mr. Campbell and members of the class who, because of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 (the “Act”), should have been released far sooner, but for Defendants’ failure to faithfully and timely abide by the law, accurately calculate inmate release dates, and timely release the inmates.

Mr. Campbell respectfully seeks compensation for himself and a class of similarly situated persons whose liberty was unlawfully restrained. Mr. Campbell and members of the Class were confined well after they paid their debt to society and should have been released from SCDC prisons. Plaintiff would respectfully show unto the Court as follows:

PARTIES

1. Plaintiff Marion Campbell is a citizen of the State of South Carolina and a resident of Charleston County. Mr. Campbell was incarcerated in numerous facilities throughout South Carolina, including Coastal Pre-Release Center in Charleston County.

2. Defendant South Carolina Department of Corrections (SCDC) is an agency of the State of South Carolina responsible for operating the State's prisons. SCDC's principal place of business in Richland County.

3. The Plaintiff is informed and believes that Defendant Brian P. Stirling, at all pertinent times, was Director of the South Carolina Department of Corrections.

4. The Plaintiff is informed and believes that Defendant Chis Florian, at all pertinent times, was Deputy General Counsel for the South Carolina Department of Corrections.

5. The Plaintiff is informed and believes that Defendant David Tatarsky, at all pertinent times, was head General Counsel for the South Carolina Department of Corrections.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983.

7. Venue is proper in this district because some or all of the wrongs, constitutional violations and breaches for which relief is sought occurred in this District.

FACTS

Mr. Campbell and the Class are subjected to prolonged detention

8. On March 6, 2010, Mr. Campbell was arrested for the distribution of crack cocaine and on April 22, 2010, was indicted in Colleton County (Case No. 2010-GS-15-266) for

manufacturing or distribution of cocaine base, 3rd offense, a violation of South Carolina Code § 44-53-375, as amended.

9. Mr. Campbell bonded out of jail, but while free on bond he mistakenly failed to appear in court for a General Sessions proceeding. Mr. Campbell was arrested again on September 25, 2010 for failing to appear, and he remained incarcerated through his plea and sentencing, until his release from the underlying distribution charge in March 2016.

10. On December 2, 2011, Mr. Campbell pled guilty to distribution of crack cocaine 2nd offense, a violation of South Carolina Code § 44-53-375(B)(2), as amended, a lesser included charge than the one for which he was indicted.

11. The guilty plea was accepted by the Honorable Perry M. Buckner, III, Circuit Court Judge, who sentenced Mr. Campbell to incarceration by SCDC for a determinate term of 25 years, provided that upon the service of seven years, the balance was suspended with probation for five years.

12. As required by South Carolina Code § 24-13-40, Judge Buckner gave Mr. Campbell credit for time served during the period of September 25, 2010 when he was arrested for failing to appear until his guilty plea. Accordingly, Mr. Campbell should have been given credit for 433 days of time served prior to sentencing.

13. Following his guilty plea, Mr. Campbell was committed to the custody of SCDC, and his sentence was to commence on the same day as his plea, December 2, 2011. Thereafter, Mr. Campbell was incarcerated at various SCDC institutions throughout South Carolina including Kirkland Reception and Evaluation Center, Wateree Correctional Institution (“CI”), Lee County CI, Evans CI, MacDougall CI, and Coastal Pre-Release Center.

14. Mr. Campbell took advantage of the opportunity to improve himself and throughout his incarceration he was a model inmate, abiding by institutional rules and occupying his time with prison work programs. Due to his consistently good behavior, Mr. Campbell earned South Carolina's statutorily mandated "good time" credits for the majority the months during which he was incarcerated.¹

15. In addition to good time credit, Mr. Campbell accumulated Earned Work Credits (EWC) pursuant to South Carolina Code § 24-13-230 by working throughout his incarceration. Mr. Campbell worked seven days per week during the entirety of his sentence, with the exception of the two-year period which he served at Coastal Pre-Release Center during which he worked five days per week.

16. Mr. Campbell was sentenced by Judge Buckner to serve 7 years, or 2,555 days, minus 433 days of pre-sentence credit. Application of good time credits, at the rate applicable to a parole eligible offense of 20 days for each month earned, would reduce Mr. Campbell's sentence to 1,322 days, for a maximum release date of July 15, 2015.

17. Application of EWCs, at the rate applicable to a parole eligible offense of one day for every two worked, would further reduce Mr. Campbell's sentence to 1,067 days for a maximum release date of November 2, 2014.

18. Thus, applying statutorily prescribed good time credits, EWCs, and pre-sentence incarceration credit, Mr. Campbell should have served a total of 2 years and 11 months following sentencing, and should have been released on or about November 2, 2014.

19. SCDC did not release Mr. Campbell on November 2, 2014.

¹ Mr. Campbell was subject to a loss of his monthly good time credits on just two occasions, resulting in a loss of only three month's credits, or 60 days. See S.C. Code Ann. § 24-13-210(A).

20. Instead, SCDC illegally detained Mr. Campbell and hundreds of other maxed out inmates through an appellate case that questioned SCDC's release practices.

21. After losing the case on the merits before the South Carolina Court of Appeals on November 12, 2015, SCDC continued to illegally detain these inmates while is petitioner for rehearing.

22. After rehearing was denied on February 24, 2016, SCDC held Mr. Campbell and the plaintiff class for weeks before finally acknowledging they were "overdue" for release.

23. Mr. Campbell was finally released from wrongful incarceration on March 21, 2016, along with approximately 230 other inmates.

24. Mr. Campbell served more than 16 months (474 days) after repaying his debt to the State and earning his freedom under South Carolina law.

25. Approximately 310 inmates were released in June 2016.

26. An unknown number of inmates served beyond their actual term, but were released prior to the two mass releases in 2016.

Act 273 of 2010 shortened sentences for the subject offenses

27. In 2010, the South Carolina Legislature passed the Omnibus Crime Reduction and Sentencing Reform Act of 2010, Act No. 273, 2010 S.C. Acts 1937 (the "Act" or "Act 273"), with an effective date of June 10, 2010.

28. A major purpose of Act 273 was to convert previously no-parole offences to parolable offences.

29. South Carolina Code § 24-13-150 requires an inmate who has been convicted of a no-parole offence to serve 85 percent of his sentence before he is eligible for "early release, discharge or community supervision." In addition, to the 85 percent requirement, at least three

additional consequences attach to a conviction for a no-parole offence: (1) no parole offenders are given significantly less credit for good conduct, work, or education than other offenders, (2) no-parole offenders are required to participate in a community supervision program before their sentences are deemed complete and (3) no-parole offenders are required to complete 80 percent of their sentence before they are eligible for work release.

30. Act 273 contained the following language with regard to certain specified, previously no-parole offences: “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.

31. The Court of Appeals held the Legislative intent of this language was to conserve taxpayer dollars by allowing earlier release dates for inmates convicted of less serious offenses.

**Defendants Florian and Tatarsky disregard
the Act causing mass, prolonged detention**

32. After passage of the Act, Chris Florian and David Tatarsky, through the Office of General Counsel, directed SCDC in implementing the Act.

33. In determining changes to inmate release calculations under the Act, Florian, overseen by his superior Tatarsky, ignored the plain language of the Act.

34. Florian directed, and Tatarsky approved, a policy that rendered the subject offenses parolable, but failed to repeal the 85 percent mandate or alter the formula that allowed inmates to accrue work credits, good time credits, and education credits like an inmate serving time for a parolable offense.

35. SCDC, under the direction of Florian and Tatarsky, implemented the Act by simply changing Mr. Campbell's status, and that of the plaintiff class, as eligible for parole.

36. Florian and Tatarsky's interpretation of the Act was unreasonable and erroneous. Specifically, it fails to appreciate or give effect to the express language of § 38, the stated legislative purpose of the Act, or any legal precedent or principle of statutory construction that might have otherwise guided SCDC to the correct result.

37. Florian and Tatarsky failed to seek guidance from independent counsel or seek a declaratory judgment to resolve whatever reasonable questions of interpretation or implementation may have existed with respect to the Act.

38. As a result of Florian and Tatarsky's conduct, hundreds of inmates who fully paid their debts to society were illegally detained beyond the term of their incarceration.

39. On November 12, 2015, the South Carolina Court of Appeals held SCDC misconstrued the Act, inmates with newly parolable offenses were not required to serve 85 percent of their sentences and were entitled to the full benefit of work credits, good time credits, and education credits accorded inmates with other parolable offenses.

**Defendant Stirling elects to continue
incarcerating Mr. Campbell and the class**

40. Rather than recalculate sentences of the impacted inmates being wrongfully and unlawfully held beyond their maximum terms of confinement, SCDC Director Brian P. Stirling made the conscious and deliberate decision to continue unlawfully confining these inmates while SCDC petitioned for a rehearing.

41. On February 24, 2016, the Court of Appeals denied reheard and issued a revised opinion, correcting factual errors in the November 2015 opinion, but rendering the same conclusions of law.

42. The Court explained the South Carolina General Assembly's enactment of Act 273 was intended to repeal South Carolina Code § 24-13-100 regarding no parole offences to the extent the statute conflicted with the amendments, stating "without this implicit repeal, the amendments themselves would be meaningless." The Court described SCDC's position attempting to justify its failure to grant inmates the full benefits based on the classification of the newly parolable offenses as "unreasonable[.]"

43. Despite the strong and pointed opinion issued by the South Carolina Court of Appeals, SCDC did not immediately release the unlawfully incarcerated inmates, despite the fact it had the entire pendency of the appeal and, particularly, the months after the adverse November 2015 decision, to prepare for a likely mass release.

44. Sometime in 2016, Stirling acknowledged the hundreds of inmates "overdue" for release and set an arbitrary "release date" of March 21, 2016, for 231 inmates.

45. However, Stirling declined to release a second group of inmates whose convictions were entered before Act 273 took effect, claiming the Act should not be given retroactive effect.

46. After another State agency disagreed, SCDC and Stirling relented.

47. In June 2016, Stirling instituted a second, arbitrary mass release of a second group of 310 inmates illegally held beyond their term of incarceration.

CLASS ALLEGATIONS

48. Mr. Campbell brings this action individually and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of the following proposed class:

All persons in the custody of the South Carolina Department of Corrections on or after June 2, 2010, who were incarcerated for violations of South Carolina Code §§ 44-53-370 and 44-53-375.

Excluded from the Class are the Defendants and their affiliates, successors, assigns, officers, directors, employees, and legal representatives.

49. In addition, Mr. Campbell brings this action on behalf of the following proposed Subclass² regarding the intentional actions and deliberate decisions of Brian P. Stirling on and after February 24, 2016:

All persons in the custody of the South Carolina Department of Corrections on or after June 2, 2010, who were incarcerated for violations of South Carolina Code §§ 44-53-370 and 44-53-375, and who remained incarcerated as of February 24, 2016.

Excluded from the Subclass are the Defendants and their affiliates, successors, assigns, officers, directors, employees, and legal representatives.

50. This action may properly be maintained as a class action under Rule 23 and satisfies the numerosity, commonality, typicality, and adequacy requirements for maintaining a class action under Rule 23(a) of the Federal Rules of Civil Procedure.

51. SCDC is believed to have injured more than 541 inmates throughout the State of South Carolina in the same or substantially the same manner as it injured Mr. Campbell. As such, the members of the Class are so numerous and dispersed that joinder of all members is impractical.

52. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members. Mr. Campbell and all class members were entitled to release by operation of state law, but nonetheless were continued to be held by SCDC, pursuant to the negligence, gross negligence, and deliberate indifference of the Defendants to the rights of the Class. Issues of law common to Mr. Campbell and the Class include, but are not limited to:

- a. Whether SCDC's failure apply to good time credits, work credits, and education credits at the rate applicable to parole eligible offenses to reduce an inmate's sentence for S.C. Code §§ 44-53-370 and 44-53-375 offenses was attributable to gross negligence;

² All references hereinafter to "the Class," include the Subclass.

- b. Whether Florian and Tatarsky acted with deliberate indifference to inmate's rights to due process and to freedom from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United State Constitution in their decision to treat newly parolable offences created by Act 273 as no-parol offences mandating service of 85 percent of the sentences, irrespective of good time credits, work credits, and education credits;
- c. Whether Stirling's decision to continue confining Mr. Campbell and the class after February 24, 2016 was a decision made with deliberate indifference to these inmates' rights to due process and to freedom from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United State Constitution;
- d. Whether SCDC's continued confinement of inmates after they had served their entire term of incarceration, taking sentence reduction credits into account, was false imprisonment;
- e. Whether SCDC had a duty to the inmates to immediately and properly re-calculate sentences pursuant to prevailing law and not detain them for longer than their max out release dates;
- f. Whether SCDC's conduct was negligent and grossly negligent;
- g. Whether SCDC's failure to release Mr. Campbell and members of the Class pursuant to prevailing law was an ongoing accrual of occurrences, per inmate, for each day an individual was denied his liberty and illegally confined within the walls of an SCDC institution; and
- h. Whether Florian, Tatarsky, and Stirling acted with conscious indifference to the constitutional rights of the inmates.

53. Mr. Campbell's claims in this action are typical of the claims of the Class in that Mr. Campbell and the Class all sustained damages arising from the same acts and omissions.

54. Mr. Campbell has the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the Class because his interests coincide with and are not antagonistic to the claims of the Class.

55. Adjudication of Mr. Campbell's claims will be dispositive of the Class's interests such that class treatment is a superior procedural vehicle for resolving this dispute to thousands of individual actions filed by inmates across the state, which would unnecessarily burden the courts and risk inconsistent results.

56. The relief sought here can be applied in a uniform or nearly uniform manner to the Class such that class treatment is more efficient than requiring class members to sue individually, and requiring the class members to file individual suits to redress a common wrong would be contrary to the spirit and intent of Rule 23.

57. Mr. Campbell has retained attorneys experienced in class action litigation with extensive trial and appellate experience in the courts of this State. Counsel has the resources, expertise, and experience to competently prosecute this action and knows of no conflicts among members of the class or between counsel and members of the Class.

FOR A FIRST CAUSE OF ACTION
(False Imprisonment of Plaintiff and the Class -- SCDC)

58. Every paragraph above is incorporated here as if set forth verbatim.

59. Upon sentencing, Plaintiff and the Class were committed to custody of the South Carolina Department of Corrections who restrained Plaintiff and the Class within a SCDC facility.

60. The term of incarceration for Plaintiff and the Class within a SCDC facility was determined by order of the sentencing judge, and was to be reduced by application of statutorily prescribed sentence reductions credits.

61. Pursuant to South Carolina Code § 24-13-140, the computation of the time served by prisoners is calculated from the date of imposition of the sentence.

62. SCDC is responsible for properly applying statutorily prescribed sentence reduction credits earned by an inmate to the inmate's term of incarceration and for releasing the inmate at the appropriate time.

63. Application of these credits serves to reduce the inmate's term of incarceration, such that upon service of the total term less deductions, the inmate is to be release and is considered to have served the entire sentence. See S.C. Code Ann. § 24-21-690.

64. Failure to allow sentence reduction credits is unlawful and is punishable as a crime. South Carolina Code § 24-13-260 ("An officer having charge of an inmate who refuses to allow a deduction in time of serving sentence is guilty of a misdemeanor and, upon conviction, must be imprisoned for not less than thirty days or pay a fine of not less than one hundred dollars.").

65. Plaintiff and the Class earned sentence reduction credits throughout their terms of incarceration and were entitled to have their sentences reduced. Once their terms of incarceration—less earned credits—were complete, SCDC was required to release Plaintiff and the Class as if they had served the entire term for which they were sentenced. Further, application of these sentence reduction credits are ministerial in nature and not a matter of discretion of SCDC, as they had been previously earned by Plaintiff and the Class.

66. SCDC did not release Plaintiff and the Class upon service of their terms less required credits, and continued to incarcerate and restrain Plaintiff and the Class against their will past the dates upon which they had earned their freedom.

67. SCDC had no probable cause or reasonable suspicion to continue to restraint Plaintiff and the Class past the date upon which they should have been released. SCDC's continued incarceration of Plaintiff and the Class past the date upon which they were required to be released was intentional and unlawful.

68. SCDC's conduct caused injury to Plaintiff and the Class who were restrained against their will and deprived of the freedom and liberty which they had earned through their good conduct and diligent work.

69. Mr. Campbell and the Class are entitled to money damages in an amount determined by a jury of their peers sufficient to compensate them for their injury.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence/Recklessness -- SCDC)

70. Every paragraph above is incorporated here as if set forth verbatim.

71. SCDC owed a duty of reasonable care to Plaintiff and the Class, and was negligent, grossly negligent, reckless, willful, and/or wanton in the discharge of its duties.

72. SCDC is responsible for calculating the term of incarceration for prisoners in their custody, and owed a duty to Plaintiff and the Class to properly apply credit for pre-sentence time served and statutorily mandated sentence reduction credits to their terms of incarceration.

73. Failure to properly apply earned sentence reduction credits to reduce an inmate's sentence is unlawful.

74. SCDC breached its duty to Plaintiff and the Class by failing to properly calculate their sentences and restraining them within the facilities of SCDC past the date upon which they should have lawfully been released.

75. Further, SCDC's practice of miscalculating release dates despite clear statutory language exhibits negligent, grossly negligent, reckless, willful, and/or wanton conduct in conscious disregard for the rights of the inmates in its care and the duty it owes to not unlawfully deprive them of their freedom.

76. As a direct and proximate result of SCDC's negligence, gross negligence, reckless, willful, and/or wanton acts and omissions the civil rights of Plaintiff and the Class were violated

as they were deprived of their liberty and held against their will longer than the period of time prescribed by law.

77. By reason of the acts and omissions of SCDC described above, Plaintiff and the Class are entitled judgment against SCDC for compensatory damages in an amount to be determined by a jury.

FOR A THIRD CAUSE OF ACTION
(Violations of the Eighth and Fourteenth Amendments to the
United States Constitution -- Defendants Florian and Tatarsky)

78. Every paragraph above is incorporated here as if set forth verbatim.

79. The above described actions subjected Plaintiff and the Class to a deprivation of rights and privileges secured by the Constitution and the laws of the United States, including the right to be free from cruel and unusual punishment, including unlawful detention under the 8th Amendment and to be free from loss of liberty without due process of law, pursuant to the 14th Amendment. These claims are actionable pursuant to 42 U.S.C. § 1983.

80. The decision by Florian, under the supervision and direction of Tatarsky, to continue detention of Plaintiff and the Class past their lawful release date was made under color of law as these Defendants were acting pursuant to the rights and responsibilities bestowed upon them by the South Carolina Code of Laws.

81. As a direct and proximate result of the above mentioned unconstitutional acts of Defendants, Plaintiff and the Class's civil rights were violated and they have suffered damages including, but not limited to, mental anguish, emotional distress, humiliation, deprivation of freedom, and attorney's fees.

82. Plaintiff and the Class are entitled to compensatory damages, attorney's fees, and costs in an amount to be determined by the trier of fact. Plaintiff and the Class are also entitled to punitive damages in an amount sufficient to deter similar conduct by Defendant in the future.

FOR A FOURTH CAUSE OF ACTION
(As to Subclass -- Violations of the Eighth and Fourteenth Amendments
to the United States Constitution -- Defendant Stirling)

83. Each paragraph above is incorporated here as if set forth verbatim.

84. The above described actions subjected Plaintiff and the Subclass to a deprivation of rights and privileges secured by the Constitution and the laws of the United States, including the right to be free from cruel and unusual punishment, including unlawful detention under the 8th Amendment and to be free from loss of liberty without due process of law, pursuant to the 14th Amendment. These claims are actionable pursuant to 42 U.S.C. § 1983.

85. The decision by Stirling to continue unlawful detention of Plaintiff and the Class by creating an arbitrary "release date" weeks and months in the future was made under color of state law as Defendant Stirling was acting pursuant to the rights and responsibilities bestowed upon him by the South Carolina Code of Laws.

86. As a direct and proximate result of the above mentioned unconstitutional acts of Defendants, Plaintiff and the Class's civil rights were violated and they have suffered damages including, but not limited to, mental anguish, emotional distress, humiliation, deprivation of freedom, and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Marion Katrell Campbell prays that judgment be entered in his favor against Defendant South Carolina Department of Corrections, and that the Court award:

- i. Actual damages and consequential damages suffered by Mr. Campbell and the Class and the Subclass in amounts to be determined by the jury;
- ii. Punitive damages in an amount sufficient to deter similar conduct by Defendants Stirling, Florian and Tatarsky in the future;
- iii. A reasonable class representative fee to Mr. Campbell to compensate him for his service to the class;
- iv. All legal interest, attorneys' fees, and costs permitted by law; and
- v. Any such further relief permitted at law and equity that this Court deems just and proper.

Respectfully submitted,

s/Richard A. Harpootlian

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KATRELL CAMPBELL AND THE CLASS

May 16, 2017
Columbia, South Carolina.

5. That as to paragraphs 6-7, these Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

6. That as to paragraphs 8-12, these Defendants would admit that on or about March 6, 2010, Plaintiff was arrested for various criminal charges and was indicted in Colleton County. That as a result of such criminal charges, the Plaintiff was bonded out but again was arrested for failing to appear for court in September 2010. Further, these Defendants would admit that in December 2011, Plaintiff pled guilty to manufacturing/distribution of crack cocaine and that such guilty plea was accepted by the Honorable Perry M. Buckner, III, who then sentenced the Plaintiff to incarceration at the Department of Corrections. That as to the terms and conditions of such sentence, these Defendants would crave reference to the records of the sentencing by the Court as the best evidence of such sentence and credits given to the Plaintiff for time served. That as to the remaining allegations, these Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

7. That as to paragraph 13, these Defendants would admit that following his guilty plea the Plaintiff was committed to the custody of the South Carolina Department of Corrections to begin his sentence and that he was admitted to the Department on or about December 6, 2011. Further, these Defendants would admit that the Plaintiff was housed at various institutions within the system of the Department of Corrections.

8. That as to paragraphs 14-17, concerning the credits earned by the Plaintiff while at the Department of Corrections, including credits for good behavior and work credits, these Defendants would crave reference to the records of the Department as to the amount and calculations in regard to such credits and how they were applied to the sentence of the Plaintiff and various other inmates.

9. That as to paragraphs 18-26, these Defendants would deny same, as stated, and demand strict proof thereof. Further, these Defendants would crave reference to the records of the Department as to the calculations and determinations of when the sentences should be fulfilled and the determination of appropriate release dates for the Plaintiff and various other inmates.

10. That as to paragraphs 27-31, these Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

11. That as to paragraph 32, these Defendants would admit that Defendants Florian and Tatarsky in their capacities as attorneys for the South Carolina Department of Corrections reviewed the 2010 Act No. 273, §38 and other provisions of the S.C. Code and gave opinions as to the interpretation, effect and implementation of the Act in conjunction with the other statutes. In so far as such allegations attempt to establish liability on part of these Defendants, these Defendants would deny same and demand strict proof thereof.

12. That as to paragraphs 33-38, these Defendants would deny same as stated and demand strict proof thereof. In further response to these allegations the Defendants admit that Defendants Florian and Tatarsky in interpreting the Act and its effect exercised their professional

judgment as to the Act's effect and advised the South Carolina Department of Correction as to its implementation.

13. That as to paragraph 39, these Defendants would crave reference to the November 12, 2015 opinion of the South Carolina Court of Appeals as to what, exactly, it held. The Defendants further allege that in so far as these allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof.

14. That as to paragraph 40, these Defendants would deny same and demand strict proof thereof.

15. That as to paragraphs 41-42 these Defendants would deny same, as stated, and demand strict proof thereof. Further, these Defendants would crave reference to the February 24, 2016 opinion of the South Carolina Court of Appeals as to what, exactly, it held.

16. That as to paragraphs 43-47, these Defendants would deny same, as stated, and demand strict proof thereof.

17. That as to paragraphs 48-50, these Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on part of these Defendants, these Defendants would deny same and demand strict proof thereof.

18. That as to paragraphs 51-56, these Defendants would deny same and demand strict proof thereof.

19. That as to paragraph 57, these Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on part of these Defendants, these Defendants would deny same and demand strict proof thereof.

20. That as to paragraphs 58, 70, 78, and 83 these Defendants would reiterate and reallege each and every paragraph and affirmative defenses as if set forth herein verbatim.

21. That as to paragraph 59, these Defendants would admit that the Plaintiff and various other inmates are, pursuant to the laws of the State of South Carolina, admitted into the custody of the Department of Corrections as a result of being sentenced to the Department by various courts for violation of the criminal code of the State of South Carolina.

22. That as to paragraph 60, these Defendants would admit that the terms of incarceration for the Plaintiff or for other inmates with the Department of Corrections are originally set by judges rendering sentences against the Plaintiff or other inmates for criminal convictions and that based on the statutory interpretations of various statutes, a determination of the release date is applied to such sentences.

23. That as to paragraph 61, these Defendants would deny same and demand strict proof thereof.

24. That as to paragraphs 62-64, these Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on part of these Defendants, these Defendants would deny same and demand strict proof thereof.

25. That as to paragraph 65, these Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on the part of these Defendants, these Defendants would deny same and demand strict proof thereof. Further, these Defendants would crave reference to the records of the Department of Corrections as to calculation and determination of the appropriate release date for the Plaintiff or other inmates.

26. That as to paragraphs 66-69, these Defendants would deny same as stated and demand strict proof thereof.

27. That as to paragraphs 71-73, these Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on part of these Defendants, these Defendants would deny same and demand strict proof thereof.

28. That as to paragraphs 74-82, these Defendants would deny same and demand strict proof thereof.

29. That as to paragraphs 84-85, these Defendants would allege that such allegations set forth legal conclusions which can neither be admitted nor denied. In so far as such allegations attempt to establish liability on part of these Defendants, these Defendants would deny same and demand strict proof thereof.

30. That as to paragraph 86, these Defendants would deny same and demand strict proof thereof.

31. That as to the paragraph labeled "PRAYER FOR RELIEF," these Defendants would deny that neither Plaintiff nor those various other inmates are entitled to the relief requested therein or any other relief from these Defendants.

FOR A THIRD DEFENSE

32. These Defendants would allege that at all times herein they are immune from any and all claims for punitive damages based on the common law of the State of South Carolina, the terms conditions and limitations of the South Carolina Tort Claims Act and federal common law. Further, Defendants would allege that the recovery of attorney's fees under §42 USC 1988 is barred against these Defendants.

FOR A FOURTH DEFENSE

33. In so far as the Plaintiff has alleged that Defendant Stirling was acting in his official capacity as Director, these Defendants would allege that this Defendant is not subject to suit under §42 USC 1983 as he is not “person” for a determination of liability.

FOR A FIFTH DEFENSE

34. In so far as the Plaintiff has alleged that Defendant Stirling was acting in his individual capacity the Defendant would allege at no time he violated any clearly established constitutional rights which were known or should have been known to him and, therefore, Defendant Stirling is entitled to immunity.

FOR A SIXTH DEFENSE

35. In so far as the Plaintiff has alleged causes of action based on state law, these Defendants would allege that such actions are barred by the terms, conditions and limitations of the South Carolina Tort Claims Act.

FOR A SEVENTH DEFENSE

36. In so far as the Plaintiff has alleged state claims, these Defendants would allege that Defendants Stirling is immune from suit as an employee of the South Carolina Department of Corrections pursuant to the terms, conditions and limitations of the South Carolina Tort Claims Act, §15-78-10 et seq. of the Code of Laws of the State of South Carolina, 1976 as amended.

FOR AN EIGHTH DEFENSE

37. These Defendants, in their official capacities, are immune from suit pursuant to the terms, conditions and limitations of the South Carolina Tort Claims Act, §15-78-10 et seq. of the Code of Laws of the State of South Carolina, 1976 as amended, including §15-78-60 (1)(2)(3)(4)(5)(21) and (23).

FOR A NINTH DEFENSE

38. These Defendants would allege that they are immune from suit pursuant to §15-78-20, §15-78-30(f), §15-78-40, and §15-78-50(b) of the Code of Laws of the State of South Carolina, 1976 as amended.

FOR A TENTH DEFENSE

39. These Defendants would allege that this action is barred by the applicable statute of limitations which might be applicable to these Defendants.

FOR AN ELEVENTH DEFENSE

40. These Defendants would allege that the Plaintiff has failed to state a claim for interest, attorney's fees, or costs, and that such claims are not properly recoverable against these Defendants.

FOR A TWELTH DEFENSE

41. These Defendants would allege immunity from suit with regard to any discretionary decisions made in good faith.

FOR A THIRTEENTH DEFENSE

42. These Defendants would allege that to the extent that exhaustion of administrative remedies is required the Plaintiff has not exhausted such remedies.

FOR A FOURTEENTH DEFENSE

43. These Defendants would assert the Prison Litigation Reform Act (PLRA) as a bar, in whole or in part to this action.

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WHEREFORE, having fully answered the Amended Complaint of the Plaintiff, these Defendants pray that the Amended Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

s/William H. Davidson, II

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and BRYAN STIRLING*

COLUMBIA, SOUTH CAROLINA

MAY 24, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

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

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No.: 2020-CP-40-04701

**SECOND AMENDED MOTION
FOR CLASS CERTIFICATION**

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

Henry Belton,

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

Plaintiffs, on behalf of themselves and all others similarly situated, respectfully move the Court pursuant to Rule 23 of the South Carolina Rules of Civil Procedure for certification of a class of similarly situated persons with claims against Defendant South Carolina Department of Corrections. Plaintiffs ask that the Court certify a class action to recover money damages pursuant to Rule 23 and appoint Plaintiffs in this consolidated action as Class Representatives. Further, the Court should certify a class comprised of:

All persons in the custody of the South Carolina Department of Corrections who were incarcerated for violations of South Carolina Code §§ 44-53-370 and 44-53-375 and released between June 2, 2010 and June 1, 2016.

As will be shown in their forthcoming memorandum of law in support of this motion, this case meets all the requirements of Rule 23 such that class treatment is appropriate.

Therefore, Plaintiffs respectfully request that the Court grant this motion and (1) certify the plaintiff class, (2) appoint Plaintiffs as class representatives, (3) enter an appropriate schedule for preparing notice and contacting the class, and (4) order such further relief as the Court deems just and proper.

[signature page follows]

Respectfully submitted,

s/ Christopher P. Kenney

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ATTORNEYS FOR PLAINTIFF MARION
KATRELL CAMPBELL AND THE CLASS

May 13, 2021
Columbia, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2020-CP-40-05532

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

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No.: 2020-CP-40-04701

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No. 2020-CP-40-05660

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

Henry Belton,

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

C.A. No. 2017-CP-40-00556

Memorandum in support of Second Amended Motion for Class Certification

Former South Carolina Department of Corrections (SCDC) attorney Chris Florian testified there was *no amount* of money that would convince him to voluntarily be confined within the walls of a department prison: “I wouldn’t spend a year in the general population. ... I wouldn’t want to spend my time that way.” See Florian Dep. 125.¹ Former SCDC General Counsel David Tatarsky echoed this sentiment, agreeing that “[r]egardless of what the number is, it would be a pretty high number for [him] to [be willing to] spend one day in prison[.]” See Tatarsky Dep. 59–60.² And rightly so. Chronic understaffing, harsh living conditions, cell doors that do not lock, corruption, riots, and the occasional mass killing have long been a reality in South Carolina prisons.³ One

¹ Excerpts attached as **Exhibit A**.

² Excerpts attached as **Exhibit B**.

³ See, e.g., John Monk, “More inmates killed. More assaults on guards. What’s happening in SC prisons?” THE STATE, Jan. 5, 2018, <http://www.thestate.com/news/local/crime/article193171214.html>; Sarah Ellis, “He shot a deputy in the face. Then he was killed in SC prison fight,” THE STATE, Feb. 23, 2018, <http://www.thestate.com/news/local/crime/article201724849.html>; Sarah Ellis, “SC inmates hold guard hostage, take control of dorm Friday night,” THE STATE, March 24, 2018, <http://www.thestate.com/news/local/crime/article206679274.html>; Steve Reilly, “Bloodied bodies stacked in a prison yard: What happens when states slash prison spending,” USA TODAY, April 30, 2018, <https://www.usatoday.com/story/news/2018/04/30/prison-riots-and-killings-rising-states-slash-budgets-guards/545299002/>; Alesha Ray, “7 inmates suing the S.C. department of Corrections after failing to protect them, they say,” WJBF.com, May 1, 2018,

national expert disputed prison officials' emphasis on cell phones as the root of prison evils and pointed instead to long sentences under dehumanizing conditions as the cause of violent outbreaks:

Punitive sentencing laws have taken away prisoners' hope for the future. One in 10 prisoners in South Carolina are serving a life sentence, and inmates serving long sentences *are required to serve 85 percent of their time*, no matter how well they have done on the inside.

See Heather Ann Thompson, "How a South Carolina Prison Riot Really Went Down," N.Y. TIMES, April 28, 2018 (emphasis added).⁴ This commitment to prolonged punishment—specifically the 85-percent rule for drug offenders—is generally understood by experts, political leaders, and the public to have failed to produce better criminal justice outcomes.

The General Assembly was not unmindful of these costs when it passed the Omnibus Crime Reduction and Sentencing Reform Act of 2010, Act No. 273, 2010 S.C. Acts 1937 ("the Act" or "Act 273"). Among other reforms, §§ 37 and 38 of the Act (now codified at South Carolina Code § 44-53-370 & -375) sought to eliminate the 85-percent rule and 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. Instead of implementing this law, SCDC's decided to give it *no effect*, which resulted in the prolonged detention of 419 inmates serving more than 670 years beyond the term of their lawful incarceration. Compounding the injury, after the Court of Appeals held Act 273 converted the Class's offenses to "parolable" offenses, SCDC declined to immediately release the Class and chose arbitrary release dates resulting in further unlawful detention.

<http://www.wjbf.com/news/south-carolina-news/7-inmates-suing-the-sc-department-of-corrections-after-failing-to-protect-they-say/1152832991>.

⁴ Available at: <https://www.nytimes.com/2018/04/28/opinion/how-a-south-carolina-prison-riot-really-went-down.html>.

The above-captioned nine individual Plaintiffs, having been unlawfully incarcerated for a combined 9,692 days, brought actions in various courts throughout the state for money damages to vindicate their rights and those of the Class. For the reasons that follow, this action meets all of the prerequisites for class treatment under Rule 23 of the South Carolina Rules of Civil Procedure, the motion for class certification should be granted, the Court should appoint Plaintiffs as class representatives and their counsel as class counsel, adopt a schedule for providing notice to the Class, and order any further relief that is just and proper.

PROCEDURAL BACKGROUND

Prior to consolidation, each of the above-named Plaintiffs filed actions against SCDC seeking money damages for prolonged detention. Campbell filed in August 2016 (No. 2020-CP-40-05532 (Richland Cty. Comm. Pleas); Hampton, McDowell, Payton, and Smoak each filed in October 2016 (Nos. 2:16-cv-03378-TLW-MGB (D.S.C.), 2:16-cv-03379-TLW-MGB (D.S.C.), 2:16-cv-03380-TLW-MGB (D.S.C.), and 2:16-cv-03381-TLW-MGB (D.S.C.)); Belton filed in February 2017 (No. 2017-CP-40-00556 Richland Cty. Comm. Pleas); and Williams, Simmons, and Rollins filed together in October 2020 (No. 2020-CP-40-04701). The Campbell action was removed and, after the federal claims were dismissed,⁵ was remanded by the U.S. District Court to the Court of Common Pleas. Likewise, through voluntary dismissals, remand orders, and venue changes, Plaintiffs' cases were moved here. On March 16, 2021, the Honorable L. Casey Manning, Chief Administrative Judge for the Fifth Judicial Circuit, consolidated these cases for the purpose of discovery and trial and designated the matter complex. Plaintiffs now seek class certification.

⁵ See Campbell v. Florian, 972 F.3d 385 (4th Cir. 2020) (holding SCDC lawyers were entitled to qualified immunity), as amended (Aug. 28, 2020).

RELEVANT FACTUAL BACKGROUND

Section 24-13-150 requires an inmate convicted of a “no-parole” offense to serve at least 85 percent of his sentence before he is eligible for release, discharge, or community supervision. S.C. Code Ann. § 24-13-150. Unlike “parolable” offenses, no-parole offenses require 85 percent served “calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended.” Id. A “no-parole offense,” is defined as “a class A, B, or C felony.” See S.C. Code Ann. § 24-13-100 (Rev. 2007). A Class A felony is a felony punishable by not more than 30 years, a Class B felony is a felony punishable by not more than 25 years, and a Class C felony is a felony punishable by not more than 20 years. S.C. Code Ann. § 16-1-20 (Rev. 2015).

Prior to June 2, 2010, violations of South Carolina Code §§ 44-53-370, -375(A) & (B) were classified as no-parole, class A felonies. See Act No. 127, 2005 S.C. Acts 1497 (increasing mandatory minimums). These no-parole offenses caused convicted persons to earn credits more slowly, the effect of which was to require an inmate to serve 85 percent of the total sentence before becoming eligible for parole or maxing out their sentence. See Tatarsky Dep. 42–43 (“Q. So someone who is serving time has to do 85 percent, they still get some credits that are calculated, but those credits cannot reduce that 85 percent, can they? A. That’s correct.”); see also Florian Dep. 62–64 (same). Act 273 changed this no-parole classification by adding the following language to § 44-53-375(B):

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 (emphasis added). “Similar language was added to subsection (A) of section 44-53-375 and various provisions in section 44-53-370 covering controlled substances.” Bolin v. S.C. Dep’t Corrections, 415 S.C. 276, 282, 781 S.E.2d 914, 917 (Ct. App. Feb. 24, 2016); see also 2010 S.C. Acts 1937 §§ 37 & 38.

But after the General Assembly passed this criminal justice reform, no inmate received the benefit of early release. The record here is clear: 419 inmates were erroneously detained 670 years beyond the lawful terms of their incarceration because of SCDC’s gross negligence in failing to implement Act 273. As demonstrated below, there are common methods of proof that make class treatment far preferable to hundreds of individual prolonged detention claims.

**Misapplication of Act 273 is held
to have resulted in prolonged detentions**

In Bolin, the Court of Appeals held an inmate’s convictions for second-offense conspiracy to manufacture and possession with intent to distribute methamphetamine were no longer “no-parole” offenses when Act 273 went into effect on June 2, 2010. In that case, the inmate received five years’ imprisonment for violating South Carolina Code § 44-53-375(B), began serving his sentence, and was informed by SCDC he was eligible for parole but “if he was not granted parole, these offenses would thereafter be treated as no-parole offenses under section 24-13-100 of the South Carolina Code (2007) and section 24-13-150 of the South Carolina Code (Supp. 2015).” Bolin, 415 S.C. at 278–79, 781 S.E.2d at 915 (footnote omitted). The inmate argued SCDC’s application failed to give § 38 of Act 273 (block quoted above) its intended effect because SCDC was treating §§ 44-53-370 and 44-53-375 inmates as parole eligible for the purpose of release, but as no-parole—i.e., 85-percent offenders—when calculating good time, education, and work credits. See Bolin, 415 S.C. at 280–83, 781 S.E.2d at 916–17.

The Court of Appeals agreed, holding “a second offense under section 44-53-375(B) is no longer a no-parole offense.” Id. at 286, 781 S.E.2d at 919. The court reasoned §§ 37 and 38 of the Act evidenced the legislature’s intent to convert §§ 44-53-370 & -375 offenses into parolable offenses, with all the benefits of increased good time, education, and work credits that followed. See Bolin, 415 S.C. at 283–85, 781 S.E.2d at 917–18 (quoting § 1 of the Act as evidence of the legislature’s desire to “conserve taxpayer dollars by allowing earlier release dates for inmates convicted of less serious offenses.”). After resolving the legislative intent, the Bolin Court admonished SCDC, calling its construction “unreasonable” and explaining that SCDC “ignore[d] the purpose of the Act” in arguing that it was possible to give the Act effect by rendering inmates eligible for parole without altering the 85-percent service requirement and in denying inmates the benefit of credits earned by parolable offenders that resulted in accelerated release. See id. 284–85, 781 S.E.2d at 918; see also Davis v. State, No. 2014-001631, 2017 WL 878703, at *1 (S.C. Mar. 1, 2017) (vacating grant of PCR order and dismissing as moot based on understanding that SCDC “is now complying with Bolin[,]” therefore applicant “is no longer subject to the eighty-five percent requirement...”); cf. Florian Dep. 64–65 (agreeing Bolin stands for proposition that the Act’s re-categorization of offenses as parolable rendered them “not subject to 85 percent.”).

**The “unreasonable” construction given to Act 273
is the product SCDC’s deficient review**

The totality of SCDC inquiry concerning Act 273’s impact on inmate release was left to a junior lawyer’s conclusory statements memorialized by a single paragraph in an agency memo.

Prior to its passage, Tatarsky, SCDC’s then-General Counsel, knew the legislature was considering a bill that would significantly alter South Carolina’s sentencing regime. Tatarsky Dep. 18–19. Tatarsky specifically knew one of the changes the General Assembly was considering was a change to inmate release dates (id. at 21) that would make non-parolable offenses parolable. See

id. at 39 (“I certainly knew it was going to address some offenses and some offenses that were not parolable, were going to be paroled.”). Tatarsky also knew the consequences for treating an offense as parolable, instead of non-parolable, had a significant impact on the time an inmate served (id. at 42) and that SCDC’s implementation of the Act would “impact hundreds of prisoners” and their “fundamental” right to be timely freed from their incarceration. See id. at 22–23. Notwithstanding Tatarsky’s knowledge of critical issues raised by the Act, he left interpretation of the Act to Florian, a junior SCDC attorney.

Inmate release dates are automatically calculated by a computer program that considers work, education, and good time credits, among other things. Tatarsky Dep. at 21–22. Since adjustments to individual inmate sentences are affected by reprogramming codes in the system, Tatarsky assigned Florian to “explain” Act 273 and “how it should be interpreted” to department personnel like the information technology staff responsible for programing the release date calculator. See Florian Dep. 25 & 27; see also id. at 25–26 (explaining cooperation between general counsel, technical staff, and other experts). Florian agrees it was his “duty” under state and federal law to ensure inmates received timely release. See id. 23. Accordingly, Florian generated writings about the Act “to inform other employees of the Department of Corrections of our interpretation of the law.” Florian Dep. at 37. The most probative of these writings is a June 22, 2010 memorandum (the “Florian Memo”) discussing §§ 37 and 38 of the Act:

Section 37 makes several changes to the structure of certain drug offenses. Affected offenses are now eligible for parole, supervised furlough, community supervision, and work release, despite the fact the [sic] some of the offenses affected are Class A, B, and C felonies. As with many other sections of the Act, *because nothing in the language of this section indicates the change applies retroactively*, this change should only be applied to offenses occurring after June 2, 2010.

As to the affected Class A, B, and C felonies, *nothing in the text of these sections directly addresses the issue of whether inmates convicted of these offenses are still required to sever 85% of their sentences before early release, discharge, or*

community supervision. Consequently, reading Sections 37 and 38 in conjunction with S.C. Code Ann. § 24-13-150(A), inmates convicted of these offenses are *apparently* still required to serve 85% of their sentences before release, unless they are granted parole. Similarly, nothing in the text of the changes appears to affect the requirement for these offenses that inmates must have served 80% of their actual term of imprisonment before becoming eligible for work release.

Florian Mem. (emphasis added) (**Exhibit C**). This conclusion was repeated in other department materials, including a PowerPoint presentation Florian prepared to “dispel” certain myths about the Act, including the supposed “myth” that the Act changed 85 percent sentences to normal parolable sentences. See Florian Dep. 51–55. Florian wrote:

The fact is that some -- under the act, some 85 percent sentences are now parolable, but if the inmate is not paroled, the inmate still has to serve 85 percent. And again, this provision is only applicable to offenses occurring on or after June 2nd, 2010.

Id. at 55. Florian subsequently explained that, in his view—a view the Court of Appeals deemed “unreasonable”—the beneficiaries of the Act “were eligible for parole” (and other benefits), but not accelerated release credits that followed parole status because the South Carolina Code “does not simply use terms in their ordinary meaning that way” and “didn’t actually say one way or another whether they were now considered to be no-parole offenses for purposes of 85 percent.” See Florian Dep. 64–65 & 66–67; but see Bolin, 415 S.C. at 284–85, 781 S.E.2d at 918 (“In addition to the plain language of the amendment itself, legislative intent is expressly stated in Section I of the Act....”). SCDC never second-guessed Florian’s determination, never retained outside counsel, and never considered seeking declaratory relief. See Tatarsky Dep. 35.

**SCDC’s release division used the Florian Memo
to update the department’s inmate release date calculator**

Inmate release is the responsibility of SCDC’s Records Management and Release Division, a seven-person team within the department’s inmate records office led by Michael J. Stobbe. See

Stobbe Dep. 4–5.⁶ Stobbe explained that when the General Assembly passes a law that may affect the department, General Counsel’s office determines what impact the law has and coordinates with division directors to implement it. See id. at 8–9. Stobbe identified the Florian Memo as establishing the department’s position in implementing Act 273. See id. at 9–11. Thus, in response to the Florian Memo, certain drug offenses became parole eligible (see id. at 13 (“All these people ... instantaneously became eligible for parole.”)), but no changes were made to the formula that calculates the accumulation of release credits. Id. at 14. Accordingly, Stobbe’s team programed SCDC’s inmate release calculator to continue applying the 85-percent rule to the newly parolable offenses. See id. at 14–16 (“That is correct. They continue to earn three days a month good time. They’re on work credits, and EECs, earned educational credits, are capped at six a month or 72 a year per statute.”); see also Moss Dep. 32–33 (“We changed our existing release program to treat these offenses as 85 percent, but now they’re parolable[,]” but did not change the calculation of any good time, work or education credit).⁷

With respect to whether Act 273 would apply retroactively—i.e., apply to those convicted before June 2, 2010—the department also (initially) relied on the Florian Memo’s determination it was *not* retroactive. See Stobbe Dep. 14; cf. Florian Memo (“...because nothing in the language of [§ 37 of the Act] indicates the change applies retroactively, this change should only be applied

⁶ Excerpts attached as **Exhibit D**. Stobbe was produced to testify pursuant to Rule 30(b)(6) concerning the individuals involved in SCDC’s policy decision making and steps taken by SCDC to implement the department’s policy decisions. See SCDC Dep. Notice, Topic Nos. 1 & 2 (attached as **Exhibit E**).

⁷ Joey Moss, Director of SCDC’s Resource and Information Management (RIM) department, was produced by SCDC as a Rule 30(b)(6) witness to testify concerning the systems used by SCDC to track or calculate inmate release dates and the procedure used by SCDC to track or record sentence reduction credits. See Ex. E, SCDC Dep. Notice, Topic Nos. 4 & 5. Excerpts of his deposition are attached as **Exhibit F**.

to offenses occurring after June 2, 2010.”). The decision not to give the Act retroactive effect “[c]ertainly” resulted in fewer inmates receiving its benefits. See Stobbe Dep. 14.

The Class is comprised of 419 individuals subjected to prolonged detention after they repaid their debt to the State

SCDC wrongfully detained Plaintiffs and hundreds of other maxed-out inmates (1) after the effective date of the Act, (2) during the pendency of Bolin while it defended its unreasonable interpretation of Act 273, (3) while seeking rehearing in Bolin, and then (4) for a period beyond that while it made arrangements to release inmates at a time convenient to the department.

The Class has already been ascertained by SCDC as the individuals released during two rounds of mass release after the Bolin litigation ended: one group in March 2016 and a second in June 2016. See Stobbe Dep. 28–29. These two, discrete universes of individuals entitled to release is the product of an automated calculation performed by SCDC’s inmate tracking software, a software platform called the Offender Management System (OMS). See Moss Dep. 7–8. OMS’s calculation is an automated process that applies data to a formula written by SCDC programmers to re-calculate each inmate’s release date. See id. at 9–12. Specifically, OMS tracts incarceration time and work, education, and good time credits, and uses these data points to calculate a release date consistent with the rate at which an inmate earns credits depending on the inmate’s parole status. See id. at 8–9 & 12–15.⁸

After Bolin, SCDC conducted two rounds of inmate releases, one in March 2016 and another in June 2016. Moss Dep. 27. RIMs Director Moss explained his department received a memorandum identifying offenses affected by Bolin and “[w]e made the changes to the program,

⁸ Changes to OMS’s release calculations are made by the Resource and Information Management (RIM) department. See id. at 16. Each time the calculation is modified, OMS makes a record of the recalculation in the inmate’s record with a notation explaining the reason for the change. See id. at 18–21, 23–25 & Ex. 3 (using Campbell’s OMS records to explain).

stored audit trails for the inmates and recalculated them, and provided lists to the records office and classification caseworkers.” Id. at 27–28. In February 2016, Moss’s office wrote a program that changed release dates by applying credits consistent with the subject offenses no longer classified as 85-percent offenses. See id. at 33–34. This recalculation resulted in 226 inmates being released in March 2016. Id. at 34 (testifying approximately 265); but see Email C. Bradberry to S. Givens, Apr. 1, 2016 (attaching list of “231 inmates, all of whom were released on March 21, 2016.”).⁹ Sometime around June 2016, SCDC recalculated release dates for a second universe of inmates eventually released. Id. at 35. Moss explained, “the way our legal team interpreted [Bolin], it was not retroactive,” but that “parole and our agency got together and decided that it was retroactive, that any inmate sentenced to those offenses were subject to the Bolin ruling.” Id. at 35–36. This second round of releases resulted in 193 inmate discharges past their max-out dates after SCDC adopted the Department of Probation Pardons, and Parole’s (PPP’s) view that Act 273 must be given retroactive effect. See Email J. Scarborough to Classification et al., May 2, 2016 (attaching list of 200 inmates with new release dates).¹⁰ The final combined lists, excluding inmates with final new release dates after June 2016, totals 419.

**The nine individual Plaintiffs collectively served
323 months longer than their actual terms of incarceration**

On March 6, 2010, Campbell was arrested for the distribution of crack cocaine. On April 22, 2010, he was indicted by the Colleton County grand jury for manufacturing or distribution of cocaine base, third offense, a violation of South Carolina Code § 44-53-375. Campbell bonded out of jail, but mistakenly failed to appear in court and was arrested again on September 25, 2010 and remained incarcerated through his plea and sentencing, until his release from the underlying

⁹ Attached as **Exhibit H**.

¹⁰ Attached as **Exhibit I**.

distribution charge in March 2016. Campbell pled guilty to distribution of crack cocaine 2nd offense, a violation of South Carolina Code § 44-53-375(B)(2), as amended, a lesser included charge than the one for which he was indicted. He was sentenced to incarceration for a determinate term of 25 years, and upon the service of seven (7) years (or 2,555 days) the balance would be suspended with probation for five years. As required by South Carolina Code § 24-13-40, the sentencing judge gave Campbell credit for 433 days of time served from September 25, 2010 (when he was arrested for failing to appear) until his guilty plea.

On December 2, 2011, Campbell was committed to the custody of SCDC, where he spent time at various SCDC institutions and earned good time and work credits. See S.C. Code Ann. § 24-13-210(A). He also accumulated work credits, working seven days per week during all but the two years he spent at the Coastal Pre-Release Center where he worked five days per week. See S.C. Code Ann. § 24-13-230. Applying Campbell's statutory credits and pre-sentence service credit at the rate applicable to a *parole-eligible* offense, Campbell should have been released on or about September 16, 2014. SCDC failed to release him until March 21, 2016, resulting in post-plea service of approximately 4 years and 3 months and 18.4 months longer than he should have been incarcerated.¹¹

Each of the named Plaintiffs was convicted under either South Carolina Code §§ 44-53-370 & -375, accumulated work, education, and good time credits during their respective incarcerations, and received no adjustment to accelerate their release when Act 273 became effective on June 2, 2010. As set forth more fully in their respective complaints, SCDC unlawfully detained Williams for an additional 8.8 months, Simmons for 3.27 months, Rollins for 62.07

¹¹ While it has no bearing on his adequacy, Campbell was re-arrested on federal drug and gun charges. See United States v. Campbell, C/A No. 2:17-cr-01180-PMD (D.S.C.). His re-arrest does not foreclose his participation or lessen the harm he has suffered.

months, Hampton for 43.57 months, McDowell for 59.77 months, Payton for 62.43 months, Smoak for 31.87 months, and Belton for 32.9 months.

SCDC blames Florian and Tatarsky

SCDC's official, sworn position is that Florian and Tatarsky are to blame for this debacle. Recall that the Florian Memo opines that inmates were "*apparently* still required to serve 85%" (Florian Memo (emphasis added))—a qualification suggesting uncertainty by the department's former lawyer. When asked to explain, the department's representative demurred stating, "I'm not Chris Florian, so I don't know what he was thinking." Stobbe Dep. 16. When pressed, Stobbe stated the department's position more directly still: "Chris Florian didn't tell me that their rates of earning were going to change, so they didn't change." Id. at 16.

Q. Let me simplify the question even more. Did the people responsible for making a decision about inmate calculations receive this memorandum?

A. *It would be my belief that they had, yes, sir.*

[...]

Q. Okay. As a representative of the Department of Corrections, are you aware of the Department having any uncertainty as to the consequence of sections 37 and 38?

A. No, sir.

Q. Okay. So with that in mind, what, if anything, did the Department of Corrections do in order to verify that the manner in which sections 37 and 38 were applied with respect to work credit, good time credit, education credit, that those provisions were accurately implemented? Was any action taken by the Department to verify that your interpretation was correct?

A. I have no knowledge. I was told what to do. *We filed what Chris Florian told us to do and what was going to happen.*

Id. at 17–18 (emphasis added). This testimony is consistent with email correspondence also placing blame for SCDC’s continued application of the 85-percent rule on Florian.

On August 3, 2010, Florian emailed then-Assistant Attorney General Ben Aplin a copy of his memorandum with a courtesy copy sent to Tatarsky and SCDC Assistant Deputy Director Dennis Patterson stating the memorandum “decrib[es] SCDC’s current position on several issues raised by the Act.” See Email thread from D. Patterson to J. Scarborough et al.¹² Six years later (after Bolin), Patterson forwarded the email and memorandum attachment to department personnel as evidence Florian was to blame: “Read sections 37 and 38. Chris Florian gave no instructions about removing the 85% from the drug offenses.” Id. The department’s Rule 30(b)(6) representative had no knowledge of any attempt by SCDC to obtain a declaratory judgment (see Stobbe Dep. 36) or solicit advice from independent counsel, instead referring Plaintiffs’ counsel to Florian and Tatarsky for answers. Id. at 38–39. Indeed, when presented with emails evidencing SCDC’s post-Bolin response, the department’s representative conceded the only impediment to timely inmate release in 2010 was the Florian Memo. See Stobbe Dep. 43. As the representative tasked with identifying individuals involved in SCDC’s policy vis-à-vis Act 273, Stobbe agreed his testimony implicated Florian and Tatarsky. See id. at 25, see also id. at 6–7 (referring to “the problem with Chris Florian and the legal staff and their involvement.”); cf. Tatarsky Dep. 23–24 (noting Stobbe’s team was responsible for coding release dates, but General Counsel was responsible for telling Stobbe’s team what Act 273 meant).

STANDARD OF REVIEW

Rule 23 authorizes a class-action procedure when the court finds that (1) the class is so numerous that joinder is impracticable, (2) there are questions of law or fact common to the class,

¹² Attached as **Exhibit G**.

(3) the claims or defenses of the representative parties are typical of those of the class, (4) the representative parties will fairly and adequately protect the interests of the class, and (5) the amount in controversy exceeds \$100 per class member when the relief primarily sought is not injunctive or declaratory relief. Rule 23(a), SCRCF. The proponent of the class certification has the burden of proving these prerequisites are met. Waller v. Seabrook Island Prop. Owners Ass'n, 300 S.C. 465, 467–68, 388 S.E.2d 799, 801 (1990); Gardner v. S.C. Dep't of Revenue, 353 S.C. 1, 21, 577 S.E.2d 190, 200 (2003). A trial judge's ruling on whether an action is properly maintainable as a class action is within her discretion and reviewed for an error of law. Id.

ARGUMENT

Class treatment is appropriate here because the Class is readily ascertainable, its claims can be proven through common methods such that they will rise and fall together, Plaintiffs claims are identical to those of the Class, and class treatment is far superior method for adjudicating 419 prolong detention claims than a multiplicity of individual action. The class-action device saves resources for courts and litigants by resolving issues that potentially affect a large number of claimants in an economical fashion. Grazia v. S.C. State Plastering, LLC, 390 S.C. 562, 576, 703 S.E.2d 197, 204 (2010). Granting this motion will accomplish that here. The Court should certify a class comprised of:

All persons in the custody of the South Carolina Department of Corrections who were incarcerated for violations of South Carolina Code §§ 44-53-370 and 44-53-375 and released between June 2, 2010 and June 1, 2016.

Excluded from the class are the Defendant's officers, directors, employees, and legal representatives and any judge who have decided some or all issues in the case and courthouse staff.

Doing so comports with all the prerequisites enumerated in Rule 23(a), SCRCF, which are considered in turn below.

I. The proposed Class includes 419 inmates subjected to prolonged detention, which meets the numerosity requirement.

The Court should conclude that Rule 23(a)(1)'s numerosity requirement is met by evidence indicating that 419 inmates were subjected to prolonged detention.

The rule requires a class "so numerous that joinder of all members is impracticable[.]" Rule 23(a)(1), SCRCF. Impracticable does not mean impossible, but depends on size of the class, ease of identifying its size and location, ability to affect service, and geographic dispersion. Lott v. Westinghouse Savannah River Co., Inc., 200 F.R.D. 539, 549 (D.S.C. 2000). "When a class is extremely large, the numbers alone may allow the court to presume impracticability of joinder." Hewlett v. Premier Salons Int'l, Inc., 185 F.R.D. 211, 215–16 (D. Md. 1997) (collecting cases). South Carolina courts have found joinder impracticable where the proposed class consisted of only 125 members. E.g., Carolina Walk, LLC, v. Pella Window and Door, LLC, No. 2009-CP-40-6242 (Richland County, S.C. Ct. Com. Pleas, April 17, 2013); see also Pope v. Heritage Communities, Inc., 395 S.C. 404, 421, 717 S.E.2d 765, 773 (Ct. App. 2011) (affirming certification of a class consisting of 228 members). Likewise, district courts in the Fourth Circuit have found classes as small as 40 members to be too large for joinder. See, e.g., Holsey v. Armour & Co., 743 F.2d 199, 217 (4th Cir. 1984) (class of 46–60 employees); Brunson v. Louisiana-Pac. Corp., 266 F.R.D. 112, 116–17 (D.S.C. 2010) (numerosity met by 74 class members); Thomas v. Louisiana-Pac. Corp., 246 F.R.D. 505, 509 (D.S.C. 2007) (class of approximately 130).

Here, 419 individuals easily satisfy the numerosity requirement.

II. Common legal and factual issues make class treatment preferable.

The 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.

The rule requires “questions of law or fact common to the class,” Rule 23(a)(2), SCRCF, which means showing the existence of “significant common, legal, or factual issues” that bind the proposed class together, Gardner, 353 S.C. at 21, 577 S.E.2d at 200, making the class action “a better procedural mechanism for resolving litigation than named joinder or separate litigation[.]” Hensley v. S.C. Dep’t Soc. Servs., 429 S.C. 144, 152, 838 S.E.2d 510, 514 (2020). Commonality is typically met when the class shares a determinative issue. Pope, 395 S.C. at 422, 717 S.E.2d at 774 (citing Gardner, 353 S.C. at 21, 577 S.E.2d at 200–01). As the U.S. Supreme Court has explained, commonality turns on “the capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation.” Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011) (emphasis original, quoting is Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 132 (2009)). Thus, “the focus of the commonality inquiry is not on the strength of each plaintiff’s claim, but instead is on whether the defendant’s conduct was common as to all of the class members.” Rodriguez v. Nat’l City Bank, 726 F.3d 372, 382 (3d Cir. 2013) (quotations omitted). Further, while the South Carolina rules do not include the predominance requirement codified at Rule 23(b)(3) of the Federal Rules of Civil Procedure—which requires common questions to predominate over individual ones—the Supreme Court has recently explained Rule 23’s commonality requirement under the South Carolina rules requires “a proper balance between common and individualized issues in order to achieve the efficiencies the class procedure was designed to promote.” Hensley, 429 S.C. at 152, 838 S.E.2d at 514.

Here, common questions of law and fact overwhelm any possible individual questions.

The first and most important issue common to Plaintiffs and the Class is whether they were subjected to prolonged detention, an issue largely resolved by Bolin, but that is nevertheless Plaintiffs’ burden to provide. This record illustrates precisely how Plaintiffs will prove that

common contention: the Florian Memo provided erroneous guidance the department never clarified or second guessed, and the agency staff applied that guidance to SCDC's inmate records system. These facts support Plaintiffs' claims for false imprisonment and negligence theories. A jury verdict addressing the prolonged detention question as to Plaintiffs will likewise answer that question for the entire class, which is precisely what the commonality inquiry contemplates.

Second, this is equally true with respect to most (perhaps all) of SCDC's defenses, which include statute of limitations, South Carolina Tort Claims Act (TCA) immunities, and other legal defenses that are likely to apply uniformly or nearly uniformly across the Class.

Third, class treatment also provides a vehicle to award damages in a uniform manner across the Class. Often, the need to make disparate damage awards to individual class members, while not prohibitive, can complicate class proceedings. Cf. Hensley, 429 S.C. at 154, 838 S.E.2d at 515 (possible need for individual damages trials would have bearing on whether circuit court will ultimately maintain class action). But here that is not a concern; the jury in this case should make a *per diem* award that can multiplied by the number of days each Class member spent unlawfully detained. According to Tatarsky, Stobbe, and Moss, SCDC has already done this calculation for each individual inmate when it reprogrammed the OMS system to accurately reflect release credits awarded by Act 273. This procedure avoids the need for mini damage trials, *and* it comports with our notion of punishment under the criminal law. In a typical injury case, there is an inquiry into the circumstances of the plaintiff in order to reach a proper value of damages. For example, one plaintiff's compensation for lost wages necessarily differs from another. But these differences are intentionally not present in the criminal law. The criminal justice system strives to ensure that like crimes receive like punishment. One day of one person's time behind the wall is worth the same as another regardless of whether the inmate is a ditch digger or a neurosurgeon. *That* is the proper

frame through which to view the damage suffered by the Class here: the particulars of any one Class members circumstances may differ, but they suffered the exact same injury—the loss of their liberty—that should be valued in the exact same way. Doing so makes class treatment a highly efficient way to resolve these claims, particularly on the issue of damages.

The Court should conclude that all critical liability and damages issues are common to the Class and overwhelm any individual considerations such that they also predominate. Consider again Wal-Mart where commonality was found lacking because the allegation of systematic employment discrimination ran afoul of the disparate number the reasons for any one employment decision that left employees without sufficient glue to hold together millions of class members with “a common answer to the crucial question [of] why was I disfavored.” See 564 U.S. at 352. That is not a problem here where Plaintiffs and the Class were all harmed in the exact same way.

III. Plaintiffs’ claims are typical of the Class.

The Court should conclude that Rule 23(a)(3)’s typicality requirement is also met.

The typicality requirement is met when the claims or defenses of the representative parties are typical of those of the class. Rule 23(a)(3), SCRCp. While the commonality and typicality requirements often merge because both are “guideposts” for discerning whether class treatment is economical and whether the named plaintiff’s claim is “so interrelated” to the claims of the class that he can protect class interests (Wal-Mart, 564 U.S. at 350 n.5), the purpose of the typicality requirement stands apart by “focusing on the general similarity of the named representative’s legal and remedial theories to those of the proposed class.” Soutter v. Equifax Info. Servs., LLC, 307 F.R.D. 183, 208 (E.D. Va. 2015). As the Fourth Circuit has explained, “[t]he representative party’s interest in prosecuting his own case must simultaneously tend to advance the interests of the absent class members[.]” meaning class claims cannot be so different that they go unaided by the

plaintiff's preparation of evidence for his case. Deiter v. Microsoft Corp., 436 F.3d 461, 466–67 (4th Cir. 2006). For example, in a class action alleging a finance company violated the attorney preference statute by failing to timely ascertain the borrower's preference, the typicality requirement was met by "the common feature of the lender failing to timely provide the attorney preference disclosure." King, 386 S.C. at 91, 687 S.E.2d at 325. Similarly, typicality was satisfied in a construction defect case because even though the named plaintiffs' property were second homes, their exclusion from the home was typical of the damage to the class. Pope, 395 S.C. at 422, 717 S.E.2d at 775.

The requirement is easily met here. Plaintiffs' claims and those of the Class are exactly the same. As illustrate by the record detailed above, Plaintiffs' prosecution of their individual claims has necessarily also developed the evidence needed to prove the Class's claims. That is precisely what the typicality requirement seeks to test.

IV. Plaintiffs will fairly and adequately represent the Class.

The Court should conclude that Rule 23(a)(4)'s adequacy requirement is met.

The rule requires that "the representative parties will fairly and adequately protect the interests of the class[.]" Rule 23(a)(4), SCRCp. Adequacy tests whether a representative plaintiff has any interest antagonistic or adverse to the rest of the class. See Waller, 300 S.C. at 468, 388 S.E.2d at 801; see also Harris v. Rainey, 299 F.R.D. 486, 491 (W.D. Va. 2014) ("The adequacy inquiry ... serves to uncover conflicts of interest between named parties and the class they seek to represent."). For example, if the named plaintiff's claim conflicts with the economic interest of the class, he is not an adequate class representative. Waller, supra. "A conflict must be fundamental to defeat adequacy of representation; a conflict is not fundamental when all class members share common objectives and the same factual and legal positions and have the same interest in

establishing the liability of defendants.” Harris, 299 F.R.D. at 491 (quoting Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164, 180 (4th Cir. 2010)). No such conflict exists here.

Further, Plaintiffs have retained counsel with experience in class action litigation and adequate skill and resources to pursue the Class’s claims. See, e.g., Savani v. URS Prof’l Sols. LLC, 121 F. Supp. 3d 564 (D.S.C. 2015) (Perkins); Kirven v. Cent. States Health & Life Co. of Omaha, No. C/A 3:11-cv-2149-MBS, 2015 WL 1314086 (D.S.C. Mar. 23, 2015) (Harpootlian & Kenney); Wray v. CitiMortgage, Inc., No. C/A No. 3:12-cv-3628-CMC, Dkt. No. 208 (D.S.C. July 8, 2015) (Harpootlian & Kenney); In re LandAmerica 1031 Exch. Servs., Inc. I.R.S. 1031 Tax Deferred Exch. Litig., No. 3:09-CV-00054, 2012 WL 5430841 (D.S.C. Nov. 7, 2012) (Whetstone & Perkins); Rowles v. Chase Home Fin., LLC, C/A No. 9:10-cv-01756-MBS, 2012 WL 80570 (D.S.C. Jan. 10, 2012) (Harpootlian); George v. Duke Energy Ret. Cash Balance Plan, No. 8:06-CV-00373-JMC, 2011 WL 13217957 (D.S.C. May 16, 2011) (Whetstone & Perkins); Ward, 595 F.3d 164 (Harpootlian). Accordingly, Plaintiffs are adequate class representatives.

V. Each class member’s damages will exceed \$100.

Finally, the Court should conclude that Rule 23(a)(5)’s amount in controversy is also met.

The requires that “the amount in controversy exceeds one hundred dollars for each member of the class.” Rule 23(a)(5), SCRCF. In determining whether the amount in controversy is met, “the sum claimed by the plaintiff controls,” exclusive of any punitive damages or attorneys’ fees. Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 331, 404 S.E.2d 200, 201–02 (1991).

As noted above, the proper measure of damages in this case is a *per diem* award that can be applied uniformly across the class. While that amount is a question for the jury, almost any jury award is likely to ensure that all 419 members of the proposed Class recover more than \$100.

CONCLUSION

For the reasons explained here, this motion should be granted, and the Court should issue an order that (1) certifies the proposed class, (2) appoint Plaintiffs as class representatives and their lawyers as class counsel, (3) enter an appropriate schedule for preparing notice and contacting the class, and (4) order such further relief as the Court deems just and proper.

Respectfully submitted,

s/Christopher P. Kenney

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ATTORNEYS FOR PLAINTIFFS

Campbell v. S.C. Department of Corrections
C/A No.: 2020-CP-40-04701

EXHIBIT A

(Deposition excerpts of C. Florian)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

MARION KATRELL CAMPBELL, on behalf)
of himself and all others)
similarly situated,)
Plaintiff,)
V.) CIVIL ACTION NO.
6:16-cv-03265-MGL
SOUTH CAROLINA DEPARTMENT OF)
CORRECTIONS, BRIAN P. STIRLING,)
CHRIS FLORIAN, and DAVID TATARSKY,)
Defendants.)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CHRISTOPHER McDOWELL,)
Plaintiff,)
V.) CIVIL ACTION NO.
2:16-cv-03379-TLW-MGL
BRYAN P. STIRLING, SOUTH)
CAROLINA DEPARTMENT OF)
CORRECTIONS, CHRIS FLORIAN,)
and DAVID TATARSKY,)
Defendants.) (Caption continues)

VIDEO-RECORDED DEPOSITION
- of -
CHRISTOPHER D. FLORIAN

taken on behalf of the Plaintiffs on Thursday,
October 19, 2017, at the offices of Paul Frank
Collins P.C., One Church Street, Burlington,
Vermont, commencing at 9:04 AM.

1 that speaks to various purposes, and it certainly goes
2 beyond incarceration.

3 Q. And isn't -- isn't it the duty and
4 responsibility of the Department of Corrections under
5 both state and federal law to grant release and freedom
6 to inmates who have done their time?

7 A. Yes, sir.

8 Q. The right to liberty is a fundamental right
9 granted under the U.S. Constitution, isn't it?

10 A. Yes, sir.

11 Q. And it's a clearly recognized right, isn't it?

12 A. Yes, sir.

13 Q. And that's the Fifth Amendment, isn't it?

14 A. Yes, sir.

15 Q. And life, liberty, and property are absolute
16 rights even to criminal defendants once they've done
17 their time, aren't they?

18 A. Yes, sir.

19 Q. Given those fundamental rights at issue for
20 inmates and the fact that inmates should be freed from
21 incarceration on the appropriate and lawful release
22 date, it's important that the Omnibus Act was
23 implemented properly; isn't that correct?

24 A. Yes, sir.

25 Q. And SCDC was certainly charged with

1 carry out the law and the sentences as imposed by the
2 judicial system regardless of the number of inmates
3 impacted.

4 Q. Can you describe for me what you know about
5 what South Carolina Department of Corrections did to
6 prepare to make the coding changes necessary to its
7 computer system to carry out the letter and intent of
8 the Omnibus Act?

9 A. As far as changing the computer system, the
10 technical staff would have been involved with that. My
11 role was strictly with the -- the legal interpretation.
12 When it came to reprogramming the computer system, that
13 would have fallen to the Resource and Information
14 Management Division.

15 Q. Well, as part of the General Counsel's Office,
16 it was -- wasn't it your job to inform the coding
17 people on what went into the system?

18 A. My job was to explain what the law was and how
19 it should be interpreted, and when -- if they had
20 questions as to the legal interpretation and how -- how
21 that played out, I would provide that information,
22 so --

23 Q. Are you aware of any meetings that were had to
24 discuss how those changes would be implemented?

25 A. Yes, sir. There were numerous meetings with

1 various technical staff and other experts within the
2 Department.

3 Q. Were you involved in any of those meetings?

4 A. Yes, sir. Yes, sir.

5 Q. Were there instructions that were circulated?

6 A. There were. I provided I think two memoranda
7 explaining the legal interpretation of various parts of
8 the act; that is, the 2010 Omnibus Act, and I believe
9 other memoranda were circulated by other individuals as
10 well.

11 Q. Can you tell me who circulated memorandums
12 besides you?

13 A. I think I've seen a memoranda from Jannita
14 Gaston, who was with the classification area of the
15 Department. That's the only one I can think of
16 offhand, but I'm -- there may be others.

17 Q. Who were the technical experts that you would
18 have communicated with to make the necessary changes to
19 the computer system?

20 A. Within the Resource and Information Management
21 Division - we just know them as RIM - that would have
22 been Trevis Shealy, Joey Moss. Other experts within
23 the Department who handled sentencing issues would have
24 been Michael Stobbe, Stephanie Willis. Other parts of
25 the act impacted things other than strictly sentences,

1 such as classification issues and work release, reentry
2 supervision. All of those different areas had
3 different experts, so if you take into account the
4 whole act, there would have been quite a large number
5 of people involved.

6 Q. Did all of these people have meetings
7 together, or did you all meet separately? How was all
8 that done? How was this accomplished?

9 A. We met -- early on in the act, I think in
10 implementing the act, we had a couple of larger
11 meetings with many of the people who would be involved,
12 but maybe not all of them. And following up on that,
13 there were meetings on more of an individual or
14 small-group basis with -- focusing on the narrow issues
15 each group was working through.

16 Q. What role were you assigned when that law --
17 the Omnibus Act was passed?

18 A. My role was to interpret the law and provide
19 legal guidance to the various department -- the various
20 divisions within the Department of Corrections.

21 Q. And who assigned that role to you?

22 A. It was assigned to me by Mr. Tatarsky.

23 Q. Was it your understanding that any
24 interpretation or explanation of the Omnibus Act that
25 you drafted would be reviewed or checked or corrected

1 be inconsistent in its use of some terms and -- and
2 more fundamentally in its intent. At times the law
3 seemed to be intending to reduce inmate sentences, but
4 other places you would see it actually increasing
5 penalties. I would say the law was inconsistent in
6 many respects.

7 Q. So what did you do to resolve what you saw as
8 inconsistencies in the law?

9 A. I would focus on interpreting the -- each
10 provision of the statute and understanding it in the
11 context with which it was being -- in the context in
12 which the act was written. So I would look at how
13 those terms were used elsewhere in the South Carolina
14 code and I would look to try and synthesize the act
15 with existing law and to basically apply the law as --
16 as a court looking at the law would interpret it.

17 Q. Did you generate several memoranda about the
18 Omnibus Act?

19 A. Yes, sir.

20 Q. And what was the purpose of having those
21 memorandum?

22 A. The purpose of those memoranda was to inform
23 other employees of the Department of Corrections of our
24 interpretation of the law.

25 Q. Okay. I want to mark a couple exhibits. I've

1 and 15 minutes. Are you comfortable? We can go on and
2 take a short break.

3 A. I'm comfortable. I think some people are kind
4 of warm.

5 MR. ROLLINS: Madam Reporter looks a little
6 warm there.

7 MR. WHETSTONE: All right. Why don't we stop
8 here and take a five-minute break. We'll get the air
9 adjusted and cool things off a little bit, maybe open
10 the door. All right?

11 THE WITNESS: That sounds good.

12 THE VIDEOGRAPHER: Okay. We're going off the
13 record. The time is 10:11.

14 (A recess was taken.)

15 THE VIDEOGRAPHER: We're back on the record.
16 The time is 10:19.

17 MR. WHETSTONE: Will, are you and David there?

18 MR. TATARSKY: Yup.

19 MR. DAVIDSON: Yes, sir.

20 MR. WHETSTONE: Okay. We're back on the
21 record.

22 BY MR. WHETSTONE:

23 Q. Mr. Florian, if you will pick up where you
24 left off reading your PowerPoint presentation there,
25 please, sir.

1 A. Certainly. Okay. So we -- we left off
2 partway talking through sections 37 and 38. Along with
3 the changes to parole eligibility, one of the other
4 changes implemented by the act under sections 37 and 38
5 for these specific drug offenses was a new work release
6 eligibility for violent drug offenses, specifically
7 manufacturing/distribution of methamphetamine. For an
8 inmate to be eligible for work release under the act
9 for that -- for that offense, they still have to meet
10 all the requirements listed in the classification
11 policy: The offense date must be on or after June 2nd,
12 2010; the crime cannot involve any sexual conduct; the
13 inmate must be within three years of max-out; and they
14 would have to be within 80 percent of -- they would
15 have to have served 80 percent of their sentence.

16 The next area under the act that I wanted to
17 cover was reentry supervision. This is a new program
18 under the act. It creates a time of supervision in the
19 community, something akin to probation following an
20 inmate's sentence, for inmates who are serving
21 sentences that perhaps didn't have a probationary term.
22 It basically applies to offenders who are not serving
23 an 85 percent sentence, which is a fairly broad sweep
24 of inmates. They have to be -- have been incarcerated
25 at least two years, so that's going to diminish the

1 number of inmates impacted by this. And the term of
2 reentry supervision is diminished by any probationary
3 term that has been ordered, so in other words, since
4 this is a 180-day program, if the offender has pending
5 probation of 180 days or more, they're not going to
6 have reentry supervision because they already have that
7 probationary term. It's going to wipe out that reentry
8 supervision term. This is going to apply to offenses
9 that occurred on or after January 1st, 2011, so it's
10 important to be aware of the different effective date
11 for this provision.

12 This program is mandatory for inmates who meet
13 the requirements, so an inmate is not able to opt out
14 of this program. Release dates, basically the inmate's
15 released 180 days from their projected max-out date -
16 that includes credits, in other words - 180 days minus
17 any term of probation. It's pretty rare that you have
18 a probationary term of less than a year, but it's
19 possible if you had a probationary term of -- of 90
20 days or something, you would basically have 90 days of
21 reentry supervision followed by 90 days of probation.

22 The terms of -- terms and conditions of
23 supervision are based on the assessment by SCDPPPS. We
24 would just call them Triple P at SCDC because that was
25 the shorthand for them. That's the South Carolina

1 Department of Probation, Pardon and Parole Services.
2 Anyway, they would set the assessment -- they would
3 assess the inmate's needs and risks and set the terms
4 of that supervision program.

5 Finally, I would like to dispel some myths
6 connected with the act. There's some misinformation
7 that it's important to be able to distinguish the
8 true -- the true interpretation of the act from the
9 misinformation that's -- that you may have heard. The
10 2010 Act will result in the early release of existing
11 inmates. The fact is the way the act has been written,
12 including its savings clause and its effective dates,
13 all of the new sentencing provisions, those are going
14 to apply to new offenses, offenses occurring on or
15 after the date the act was enacted, on or after June
16 2nd, 2010, and as we saw with reentry supervision, some
17 provisions have later effective dates than that.

18 New offense classifications. One myth you may
19 have heard is that the 2010 Act retroactively changed
20 statutorily violent classification of some violent
21 offenses. So the fact on this is a little bit more
22 subtle. For offenses that became statutorily violent,
23 basically changes to the statutory nature of an offense
24 came about on the effective date of the act, June 2nd,
25 2010. That's statutorily violent. Within South

1 Carolina Department of Corrections, of course, we also
2 have the concept of violent for classification
3 purposes. This is a different concept. Offenses that
4 are now listed as violent are violent for
5 classification purposes regardless of whether the
6 offense occurred before the effective date of the act.

7 One other myth, and this is the final myth,
8 I'd like to dispel with this presentation, that the
9 2010 Act changed some truth in sentencing offenses -
10 these are the 85 percentences -- 85 percent sentences -
11 to normal parolable sentences. The fact is that
12 some -- under the act, some 85 percent sentences are
13 now parolable, but if the inmate is not paroled, the
14 inmate still has to serve 85 percent. And again, this
15 provision is only applicable to offenses occurring on
16 or after June 2nd, 2010.

17 Q. And that turned out to be misinformation,
18 didn't it?

19 MR. ROLLINS: Object to form.

20 A. It turned out that the court disagreed with
21 that interpretation.

22 Q. In other words, that was misinformation?

23 MR. ROLLINS: Object to the form.

24 Q. Correct?

25 A. At the time it was the best information we

1 subject to 85 percent or not, both of those have
2 consequences for the offender. Absolutely.

3 Q. So the 85 percent rule on -- there's an 85
4 percent rule on no-parole offenses; is that correct?

5 A. Correct. Under the South Carolina code.

6 Q. And explain the 85 percent rule for me,
7 please.

8 A. Certainly. The 85 percent rule is called the
9 85 percent rule because it requires an offender subject
10 to that rule to serve 85 percent of their sentence
11 before they are eligible for release from
12 incarceration. Once -- they get to that 85 percent
13 through the accrual of good-time credits, earned work
14 credits, earned education credits potentially, so if
15 they don't earn those credits, if they lose their
16 good-time credits or fail to earn them in the first
17 place, they may serve more than 85 percent.

18 Once an offender has completed their term of
19 85 percent, they're then released; they're subject to a
20 program called the community supervision program, which
21 is supervision by Triple P for a period of years. I
22 believe it's two years depending on the length of the
23 sentence; and if they violate the terms of that
24 program, they can be then reincarcerated.

25 Q. No-parole offenses can receive certain

1 credits, but they don't get the same credits that
2 parolable offenses do, do they?

3 A. Correct. They earn -- they earn the same
4 kinds of credits, but they earn them at a lower rate.
5 For example, an offender serving -- let's just call it
6 a regular sentence, an offense not subject to 85
7 percent. They earn credits at the rate of 20 days a
8 month for good-time credits, whereas an offender
9 serving an 85 percent sentence earns three days per
10 month, so there's the difference there. Similar
11 differences apply to earned work credits and education
12 credits.

13 Q. And there are some other significant
14 consequences to no-parole offenses, too, aren't there?

15 A. There -- there are. The community supervision
16 program, as I mentioned before, that's -- that's very
17 different from what happens when an offender is serving
18 an offense that's not subject to 85 percent. When they
19 max out, if they don't have probation afterwards, then
20 they are -- or reentry supervision, they've served
21 their time. In contrast, 85 percent offenders have
22 that period of supervision built in. As well, an
23 offender subject to 85 percent may impact their
24 classification within SCDC. It may have other impacts
25 going forward in the minds of a sentencing judge as

1 well, I suppose, but that's a bit speculative.

2 Q. And the Omnibus Act created categories of
3 nonviolent offenses that it converted from no-parole
4 offenses to parole offenses, didn't it?

5 A. It made certain offenses eligible for parole
6 that were formerly not eligible for parole. And under
7 the Court of Appeals' interpretation of the law in
8 Bolin we now know that those offenses are not subject
9 to 85 percent.

10 Q. But in -- in -- and according to Bolin, they
11 are not no-parole offenses; isn't that correct?

12 A. Right. Right. In other words, they're not
13 subject to 85 percent.

14 Q. And in your legal opinion that you issued on
15 behalf of SCDC in 2010, you kind of created a hybrid of
16 parolable/no-parolable offenses, didn't you?

17 MR. ROLLINS: Object to the form.

18 A. I don't think I created it. That was my
19 interpretation of what the act had done.

20 Q. That's what made sense to you at the time?

21 A. Well, that is my -- that was my legal
22 interpretation of what had been -- what was ordered as
23 part of the act, what the legislature had intended.

24 Q. So in your view those offenders were eligible
25 for parole but received no benefit of having -- that

1 would normally have been received under parolable
2 offenses?

3 A. Well, they were -- that's not exactly right.
4 They were eligible for parole. They were eligible for
5 certain other -- certain other benefits, let's say,
6 that other 85 percent offenders might not be eligible
7 for, such as work release. I believe in my memo I get
8 into the laundry list of -- of what basically the act
9 put in place for these offenders.

10 Q. Your conclusion was based on just your reading
11 of the statute, correct?

12 A. No, sir. It was based on reading the statute
13 as well as case law as well as contextually other areas
14 of -- of the South Carolina code.

15 Q. What attention did you pay to the language in
16 the Omnibus Act that begins with "Notwithstanding any
17 other provision of law"?

18 A. Well, to me that -- that phrase means that if
19 there is an area of the law -- if there is a
20 conflicting provision of law, then the intention was
21 that this provision -- the phrase that follows
22 "notwithstanding" would be controlling.

23 Q. And did you research that phrase on how it had
24 been interpreted?

25 A. I'm certain I did. I was familiar with that

1 phrase from my prior work as well, so it wouldn't have
2 been a new thing to me.

3 Q. So did you pull any cases that analyzed that
4 language?

5 A. I can't say for sure whether I did, but I
6 suspect that I did.

7 Q. And you learned probably back in law school
8 that statutes should be read by their plain and
9 ordinary meaning and not given a forced construction;
10 you understand that concept, don't you?

11 A. Yes, sir.

12 Q. And making an offense parolable is pretty
13 clear language that the offense is no longer a
14 no-parole offense, don't you think?

15 A. I wish it was that simple. The South Carolina
16 code is not built that way. It does not simply use
17 terms in their ordinary meaning that way. They're
18 instead defined within a series of areas of the law.
19 So while the provisions of section 36 -- 36 and 37 made
20 the offenses eligible for parole, it didn't actually
21 say one way or another whether they were now considered
22 to be no-parole offenses for purposes of 85 percent.
23 It didn't answer that question. If it had come out --
24 if the legislature had come out and said that these
25 offenses are -- will no longer be subject to 85

1 percent, will no longer be subject to that specific
2 section of the code, if they had said that they are not
3 considered no-parole offenses, all of those would have
4 been more clear. That's not what the legislature did.

5 Q. You had left South Carolina Department of
6 Corrections when the Bolin case came out, hadn't you?
7 You'd already gone?

8 A. Yes, sir.

9 Q. Did you read the Bolin opinion?

10 A. Yes, sir, I did.

11 Q. Did you read it before preparing for this
12 deposition?

13 A. Yes, sir.

14 Q. So was it your view and your interpretation of
15 the Omnibus Act that the only thing the Omnibus Act did
16 was give the inmates the right to ask for parole rather
17 than those -- those offenses becoming parolable
18 offenses?

19 A. It made the offenses eligible for parole. It
20 also gave the inmates other benefits: Again, work
21 release, other enumerated benefits under the act.

22 Q. But under your interpretation of the act, the
23 85 percent rule stayed in effect?

24 A. Correct. Correct.

25 Q. Can you explain to me how you planned to

1 whatever remedies they're entitled to under the law. I
2 don't think it's a judgment call.

3 Q. All right. And, Mr. Florian, how much money
4 would it take to get you to spend a year in general
5 population in one of SCDC's prison facilities?

6 MR. ROLLINS: Object to the form.

7 MR. DAVIDSON: Same objection.

8 A. I wouldn't spend a year in the general
9 population.

10 Q. There's no amount of money that would get you
11 to spend a year in general population in SCDC, fair?

12 MR. ROLLINS: Object to the form.

13 A. That's correct.

14 Q. I mean, a million dollars wouldn't do it,
15 right?

16 MR. ROLLINS: Object to the form.

17 A. I -- I'm not -- I wouldn't -- I'm not
18 interested in money. I'm interested in -- in my time,
19 and I wouldn't want to spend my time that way.

20 MR. WHITE: All right. I do not think I have
21 any further questions at this time. Mr. Florian,
22 please answer any questions that any other lawyers in
23 the room have.

24 MR. ROLLINS: And this is Cliff Rollins.

25 MR. DAVIDSON: You all want to take a break --

Campbell v. S.C. Department of Corrections
C/A No.: 2020-CP-40-04701

EXHIBIT B

(Deposition excerpts of D. Tatarsky)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

MARION KATRELL CAMPBELL,)
on behalf of himself and)
all others similarly)
situated,)

Plaintiffs,)

vs.)

SOUTH CAROLINA DEPARTMENT)
OF CORRECTIONS, BRIAN P.)
STIRLING, CHRIS FLORIAN,)
and DAVID TATARSKY,)

Defendants.)

C.A. No. 6:16-cv-03265-MGL

VIDEOTAPED DEPOSITION OF DAVID TATARSKY
TAKEN ON BEHALF OF THE PLAINTIFF MARION KATRELL CAMPBELL
AND THE CLASS

NOVEMBER 16, 2017

1 Q. Would you agree with me that a prison inmate has
2 the absolute right to be released when they have
3 completed their time served?

4 A. Yes, sir.

5 Q. For each prisoner, is there a calculation that is
6 made that takes the sentence and applies the various
7 credits and other items that an inmate might be entitled
8 to to establish a max out date?

9 A. Yes, sir.

10 Q. At some point during your role as general counsel
11 for the Department of Corrections, did you become aware
12 or were you made aware that South Carolina legislature
13 was considering a bill that would significantly alter
14 South Carolina's sentencing regulations?

15 A. Yes, sir.

16 Q. Was that law which ultimately passed known as the
17 Omnibus Crime Reduction and Sentencing Reform Act of
18 2010?

19 A. I believe so, yes.

20 Q. Was the Omnibus Act that I -- I won't use the
21 whole name. I'll call it Omnibus Act. That's okay with
22 you? You'll understand what I'm talking about?

23 A. Yes, sir.

24 Q. Was the Omnibus Act a comprehensive restructuring
25 of how sentencing worked on many criminal laws in the

1 state of South Carolina?

2 A. I don't know whether I would debate
3 comprehensive. I mean it was a significant bill for
4 purposes of sentencing. I mean I don't think there have
5 really been anything that significant for several years.
6 So comprehensive, I suppose you could say comprehensive.
7 Well, my question is, and I don't know, I don't have the
8 statute in front of me. I would consider comprehensive
9 to basically means could overhaul the entire system. It
10 touched on a lot of things. I mean it was a big bill,
11 so...

12 Q. Do you recall anything about the legislative
13 history of the Omnibus Act?

14 A. No, sir, I do not.

15 Q. Do you recall when you were first made aware of
16 the Omnibus Act?

17 A. No, not specifically. Sometime before it became
18 law, but beyond that, no, I couldn't be any more
19 specific than that.

20 Q. So were you aware of the Omnibus Act as it worked
21 its way through the legislature?

22 A. Yes, sir. I was aware that it was there and it
23 was being debated, yes.

24 Q. Did your department or did you as general counsel
25 follow the progress of the Act in the legislature?

1 certainly whenever we know that legislation is out there
2 that's going to touch on sentencing in any way, we're
3 going to keep our eyes on it, but I don't recall
4 specific discussion with Director Ozmint about it.

5 Q. But did you know that there were significant
6 changes coming in the way release dates would be
7 calculated for a large portion of the population at
8 SCDC?

9 A. Yes. Yes, I think that's fair to say.

10 Q. In general, once a criminal defendant is
11 convicted and sentenced, assuming they get jail time,
12 they are turned over to the Department of Corrections.
13 That would be you, right?

14 A. Depending on the amount of jail time. If they
15 got 91 days or more, they would be in the custody of the
16 Department of Corrections; otherwise, they would remain
17 in the detention center.

18 Q. Once a defendant is convicted and becomes
19 incarcerated with you at SCDC, do they go into the SCDC
20 computer system?

21 A. Yes, sir.

22 Q. It's my understanding that that computer system
23 is programmed to automatically calculate and recalculate
24 release dates or max out dates for inmates based on a
25 number of parameters, is that correct?

1 A. Yes, sir.

2 Q. So should the computer system have been
3 programmed to appropriately calculate release dates
4 giving the appropriate reductions for work credits,
5 educational credits, good times, etc.?

6 A. Yes, sir.

7 Q. And would you agree with me that South Carolina
8 Department of Corrections was responsible for insuring
9 that inmates were not wrongfully incarcerated when they
10 were entitled to be released?

11 A. Yes, sir.

12 Q. That's an important functions -- function of the
13 Department of Corrections, isn't it?

14 A. Yes, sir.

15 Q. Is it the duty and responsibility of the
16 Department of Corrections under state and federal law to
17 grant release and freedom to inmates when they have done
18 their time?

19 A. Yes, sir.

20 Q. And we talked earlier about the right to liberty
21 as a fundamental right, isn't it?

22 A. Yes, sir.

23 Q. And it's a clearly recognized right?

24 A. Yes, sir.

25 Q. Given these fundamental rights and issues for the

1 inmates to be free from incarceration when they were
2 supposed to be free from -- free from incarceration in
3 implementing the Omnibus Act, the Department of
4 Corrections certainly was charged with getting it right,
5 weren't they?

6 A. Yes, sir.

7 Q. Did South Carolina Department of Corrections have
8 to insure the decisions impacting release calculations
9 were made strictly in conformity with the letter of the
10 law?

11 A. Yes, sir.

12 MR. DAVIDSON: Object to the form.

13 Q. (By Mr. Whetstone) Did SCDC have a fundamental
14 duty and responsibility to implement the intent of the
15 legislature in carrying out the mandates of the Omnibus
16 Act once it was signed?

17 A. To the best of its ability --

18 MR. DAVIDSON: Object to form.

19 A. -- yes, sir.

20 Q. (By Mr. Whetstone) That would be important,
21 wouldn't it, because the decisions made by SCDC in
22 regard to the Omnibus Act were going to impact hundreds
23 of prisoners, isn't that correct?

24 A. Yes, sir.

25 Q. Would you describe for me, please, sir, what you

1 know about South Carolina Department of Corrections'
2 preparations to make the coding changes necessary to its
3 computer system to carry out the letter and intent of
4 the Omnibus Act?

5 A. To the extent you're asking about IT and how they
6 did it, almost none. I don't have any real knowledge of
7 that. They're completely separate part of the
8 Department of Corrections. I'm not a programmer of any
9 kind and I don't know -- I don't know anything about how
10 programming works. They would get -- we would interpret
11 laws and then they were tasked with doing the coding and
12 running the program, but that's all I know about that.

13 Q. By they, who do you mean?

14 A. It -- the acronym for it was RIM. I believe it
15 stands for Resource and Information Management. They
16 were a sub branch of, I believe, the deputy director of
17 administration I think.

18 Q. So would that department make their coding
19 changes based on what you told them the new law meant?

20 A. Yes, sir. They would -- I mean they would rely
21 on us to tell them what the code meant. We couldn't
22 give them any input -- I mean they would rely on us to
23 tell them what we thought the law meant. We obviously
24 wouldn't give them any input in terms of how to code
25 because we don't know that.

1 A. I'm trying to remember specifically. I'm trying
2 to remember if I had any specific recollections of
3 inconsistencies. I don't have any specific
4 recollection, no, sir. I'm sorry.

5 Q. Did you ever consider getting an independent or
6 outside counsel to do an opinion letter on the meaning
7 of the Act or how to implement it?

8 A. No, sir. I don't recall ever considering that.

9 Q. Did you ever consider recommending that a
10 declaratory judgment action be filed to make sure that
11 the Department of Corrections got it right in terms of
12 calculating release dates for inmates?

13 A. I don't specifically recall us discussing that.
14 I mean any time we're dealing with statutory
15 interpretation, a DJ action is something that could be
16 done, but I don't recall that. I think my recollection
17 is that -- no, that's not right. No. I don't have a
18 specific recollection of talking about a DJ action, no.

19 Q. Was the Omnibus Act project to get it implemented
20 and interpreted the largest project you had ever given
21 to Chris Florian to do?

22 A. Before or after or just up to that point?

23 Q. Up to that point.

24 A. Up to that point. I'm trying to recall if he had
25 argued. I allowed him to argue a case in state supreme

1 Q. Would you agree that a central purpose of the
2 Omnibus Act was to make a whole range of previously no
3 parole offenses parolable?

4 MR. DAVIDSON: Objection to form.

5 A. I knew -- I believe it was to make some. The
6 whole range part, I don't remember specifically how many
7 offenses were addressed. I certainly knew it was going
8 to address some offenses and some offenses that were not
9 parolable, were going to be paroled.

10 Q. (By Mr. Whetstone) Wasn't the driving force
11 behind the Act to save the state tax dollars?

12 MR. ROLLINS: Object to the form.

13 A. With -- I've read the intent section of the Act
14 and I believe there's part of it in there that says that
15 it was in some way to save money. I don't know what was
16 going through the mind of the people as far as debating
17 the Act, but I know I've read something about cost
18 savings in the intent section of the Act.

19 Q. (By Mr. Whetstone) The legislature was pretty
20 explicit and up front in passing this Act in that it --
21 the purpose of the Act was to cause the release of
22 prisoners who otherwise would have been incarcerated for
23 longer periods of time, isn't that correct?

24 MR. ROLLINS: Object to form.

25 MR. DAVIDSON: Objection to form.

1 A. I'm not trying to be -- I mean I don't
2 understand. I mean obviously the decision about whether
3 our interpretation of whether an offense is parolable or
4 not is an important factor, but I'm not sure what you
5 mean by beyond that exactly.

6 Q. Parole offenses and no parole offenses treated
7 differently in regard to how they give credit for
8 educational credits and time served and different things
9 like that?

10 A. Yes, sir. I understand. Yes.

11 Q. So wouldn't that be significant?

12 A. Yes, sir.

13 Q. That was the case even before the Omnibus Act,
14 wasn't it?

15 A. Yes, sir.

16 Q. Is there an 85 percent rule on no parole offenses
17 under the law in the state of South Carolina?

18 A. An 85 percent rule? I mean there are statutes
19 that talk about, I mean, the service -- again I'm not
20 sure I understand. There are statutes that address no
21 parole offenses and 85 percent, yes.

22 Q. Well, explain to me what the 85 percent means,
23 what 85 percent rule means.

24 A. That my recollection is that there was a certain
25 category of offenses that for those purposes, the inmate

1 had to serve at least 85 percent of the sentence before
2 they could be released, and as you mentioned, it also
3 had implications for rates of credits they could earn,
4 things like that as compared to a regular sentence in
5 which the inmates typically would not have to serve 85
6 percent before they would become eligible for parole and
7 they would earn higher credits potentially.

8 Q. So someone who is serving time has to do 85
9 percent, they still get some credits that are
10 calculated, but those credits cannot reduce that 85
11 percent, can they?

12 A. That's correct.

13 Q. Does the Omnibus Act create specific categories
14 of non violent offenses that it converted from no parole
15 offenses to parolable offenses?

16 A. I'm not -- I'm not sure. I mean I can remember
17 specific offenses that were converted I think from
18 non-parolable to parolable, but I don't recall if they
19 were statutorily violent or non violent, so that part I
20 don't know.

21 Q. Well, the legal opinion issued by the office of
22 general counsel for the Department of Corrections in
23 2010, based on Mr. Florian's research, was to create a
24 new category of offense, wasn't it? Sort of a hybrid
25 creation called parolable/no parolable offenses?

1 on extra staff, no, sir.

2 Q. (By Mr. Whetstone) So you and your staff were
3 able to go home and have dinner with your families while
4 these inmates continued to be wrongfully incarcerated,
5 isn't that right?

6 MR. ROLLINS: Object to the form.

7 MR. DAVIDSON: Object to the form.

8 A. We went home at the end of the day.

9 Q. (By Mr. Whetstone) How important is it to you to
10 not have to spend one day in jail?

11 MR. ROLLINS: Object to the form.

12 MR. DAVIDSON: Object to the form.

13 A. I don't know. I heard that in Mr. Florian's
14 deposition. I'm not sure. There might be a dollar
15 value. You said to me a million dollars maybe or
16 something, I don't know. I mean I wouldn't want to go
17 back -- go back. I've never been in prison. I wouldn't
18 want to go to prison, but there might be a dollar figure
19 that would make it --

20 Q. Like a million dollars would do it?

21 A. I don't know. Just as I say, I think that -- I
22 just don't think that I can say there's no amount of
23 money that would cause me to go -- to not be willing to
24 go to prison.

25 Q. Regardless of what the number is, it would be a

1 pretty high number for you to spend one day in prison,
2 wouldn't it?

3 A. Sure.

4 MR. DAVIDSON: Objection to the form.

5 A. Absolutely.

6 MR. WHETSTONE: I don't have any other
7 questions. Ask any questions Mr. White has, please.

8 EXAMINATION

9 QUESTIONS BY MR. WHITE:

10 Q. Mr. Tatarsky, my name is Kyle White and I
11 represent several individuals that we'll discuss in a
12 minute. Are you okay to continue?

13 A. Yes, sir. Sure.

14 Q. All right. I represent a gentleman named
15 Christopher McDowell. Do you know anything about
16 Mr. McDowell?

17 A. No, sir.

18 Q. Also represent an individual named Henry Belton.
19 Do you know anything about Mr. Belton?

20 A. No, sir.

21 Q. Same question as to Mr. Larry Hampton. Do you
22 know anything about Mr. Hampton?

23 A. No, sir.

24 Q. I also represent a gentleman named David Payton,
25 Jr. Do you know anything about Mr. Payton, Jr.?

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C/A No.: 2020-CP-40-04701

EXHIBIT C

(Florian Memorandum, dated June 22, 2010)

Memorandum

To: State Classification and Inmate Records
From: Chris Florian, SCDC Staff Attorney
Re: The Omnibus Crime Reduction and Sentencing Reform Act of 2010
Date: June 22, 2010

On June 2, 2010, the Governor signed into law the Omnibus Crime Reduction and Sentencing Reform Act of 2010. The Act makes several significant changes which affect the South Carolina Department of Corrections. This memorandum will address issues related to the calculation of sentences, work release eligibility, and other significant changes. Please note this memo is not an exhaustive list of the contents of the Act; the Act makes numerous changes in the law which are not discussed in this memo because those changes represent relatively straight-forward amendments, such as altering the mandatory minimum sentence for a particular crime.

This memo will be divided into sections mirroring the structure of the Act.

Sections 1 -5

These sections do not appear to require interpretation beyond the language of the statute.

Section 6

Section 6 of the Act creates a new Class C felony offense called assault and battery of a high and aggravated nature (ABHAN) to be codified at S.C. Code Ann. § 16-3-600(B). This is a new offense with a new penalty, and it should not be confused with the common law offense previously known as ABHAN. Section 6 also creates new offenses known as assault and battery in first, second, and third degree. This change is effective for offenses occurring after June 2, 2010.

Section 7

This section abolishes the common law offense formerly known as ABHAN. It also abolishes several other offenses. This change is effective for offenses occurring after June 2, 2010.

Sections 8-12

These sections do not appear to require interpretation beyond the language of the statute.

Section 13

Section 13 adds a new provision permitting an inmate's sentence to be reduced by the court if the inmate provided aid to an SCDC employee or volunteer who was in danger of

being seriously injured or killed. SCDC's role in such a proceeding is limited – the motion must be made by the circuit solicitor in the county where the defendant's case arose. The language of the statute does not prevent the State's motion from being based on conduct occurring before June 2, 2010. This provision is to be codified at S.C. Code Ann. § 17-25-65.

Sections 14-19

These sections do not appear to require interpretation beyond the language of the statute.

Section 20

Section 20 amends the language of S.C. Code Ann. § 17-25-45(D) to allow a person serving a life sentence without the possibility of parole to be eligible for work release if (1) the person is sentenced for voluntary manslaughter, kidnapping, carjacking, second-degree burglary, armed robbery, or attempted armed robbery; (2) the crime did not involve criminal sexual conduct or an additional violent crime; and (3) the inmate is within three years of release from imprisonment.

In my opinion, this provision will have no practical affect since an inmate serving a life sentence would never be within three years of release from imprisonment.

Sections 21-26

These sections do not appear to require interpretation beyond the language of the statute.

Sections 27-30

These sections amend the language of several statutes – including the offense statute for possession of a weapon during the commission of a violent crime (S.C. Code Ann. § 16-23-490) – to allow a person serving a sentence for a violent offense to be eligible for work release if (1) the person is sentenced for voluntary manslaughter, kidnapping, carjacking, second-degree burglary, armed robbery, or attempted armed robbery; (2) the crime did not involve criminal sexual conduct or an additional violent crime; and (3) the inmate is within three years of release from imprisonment. The inmate may be eligible even though the offense is a “no parole” offense.

Pursuant to these changes, inmates convicted of the listed offenses are no longer ineligible for work release simply because of their conviction for that offense. However, the inmate may still be deemed ineligible for work release for any other valid reason. S.C. Code Ann. § 24-3-20(B) (“When the director determines that the character and attitude of a prisoner reasonably indicates that he may be trusted, he may extend the limits of the place of confinement of the prisoner by authorizing him to work at paid employment. . . .”) (emphasis added).

Nothing in the language of the Act indicates this change should apply retroactively. Wiesart v. Stewart, 379 S.C. 300, 665 S.E.2d 187 (Ct. App. 2008) (“Generally, statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision in the enactment or clear legislative intent to the contrary.”). Therefore, it is my opinion this change should only be applied to offenses occurring after June 2, 2010.

Section 31

Section 31 creates a new provision in the Youthful Offender Act, S.C. Code Ann. § 24-19-10 requiring a three-year minimum sentence for youthful offenders serving a sentence for burglary, second degree.

Sections 32-36

These sections do not appear to require interpretation beyond the language of the statute.

Sections 37 and 38

Section 37 makes several changes to the structure of certain drug offenses. Affected offenses are now eligible for parole, supervised furlough, community supervision, and work release, despite the fact the some of the offenses affected are Class A, B, and C felonies. As with many other sections of the Act, because nothing in the language of this section indicates the change applies retroactively, this change should only be applied to offenses occurring after June 2, 2010.

As to the affected Class A, B, and C felonies, nothing in the text of these sections directly addresses the issue of whether inmates convicted of these offenses are still required to serve 85% of their sentences before early release, discharge, or community supervision. Consequently, reading Sections 37 and 38 in conjunction with S.C. Code Ann. § 24-13-150(A), inmates convicted of these offenses are apparently still required to serve 85% of their sentences before release, unless they are granted parole. Similarly, nothing in the text of the changes appears to affect the requirement for these offenses that inmates must have served 80% of their actual term of imprisonment before becoming eligible for work release.

Pursuant to these changes, inmates convicted of all listed offenses are no longer ineligible for work release simply because of their conviction for that offense. However, the inmate may still be deemed ineligible for work release for any other valid reason.

The following offenses are affected by this change:

<u>Offense</u>	<u>Statute</u>	<u>Current CDR Code</u>
Manufacturing/distribution narcotic, 1 st offense	§ 44-53-370(b)(1)	183
Manufacturing/distribution narcotic, 2 nd offense	§ 44-53-370(b)(1)	184

Manufacturing/distribution narcotic, 3 rd offense For 3rd offense, it applies only if prior offenses were for possession as defined in §§ 44-53-370(c) & (d) (CDR codes 176, 177, 178, 179, 180, 182, 659, 2921 3011, 3012, 3013).	§ 44-53-370(b)(1)	185
Manufacturing/distribution controlled sub., 1 st offense	§ 44-53-370(b)(2)	186
Manufacturing/distribution controlled sub., 2 nd offense	§ 44-53-370(b)(2)	187
Manufacturing/distribution controlled sub., 3 rd offense § 44-53-370(b)(2) For 3rd offense, it applies only if prior offenses were for possession as defined in §§ 44-53-370(c) & (d) (CDR codes 176, 177, 178, 179, 180, 182, 659, 2921 3011, 3012, 3013).	§ 44-53-370(b)(2)	188
Manufacturing/distribution schedule IV, 1 st offense	§ 44-53-370(b)(3)	189
Manufacturing/distribution schedule IV, 2 nd offense § 44-53-370(b)(3)	§ 44-53-370(b)(3)	190
Manufacturing/distribution schedule V, 1 st offense	§ 44-53-370(b)(4)	191
Manufacturing/distribution schedule V, 2 nd offense	§ 44-53-370(b)(4)	192
Possession narcotic, 1 st offense	§ 44-53-370(d)(1)	176
Possession narcotic, 2 nd offense	§ 44-53-370(d)(1)	177
Possession narcotic, 3 rd offense	§ 44-53-370(d)(1)	178
Possession controlled sub., 1 st offense	§ 44-53-370(d)(2)	179
Possession controlled sub., 2 nd offense	§ 44-53-370(d)(2)	180
Possession cocaine, 1 st offense	§ 44-53-370(d)(3)	3011
Possession cocaine, 2 nd offense	§ 44-53-370(d)(3)	3012
Possession cocaine, 3 rd offense	§ 44-53-370(d)(3)	3013
Possession controlled sub. 1 st offense	§ 44-53-370(d)(4)	
Possession controlled sub. 2 nd offense	§ 44-53-370(d)(4)	182
Possession < 1 gram cocaine 1 st offense	§ 44-53-375(A)	
Possession < 1 gram cocaine 2 nd offense	§ 44-53-375(A)	3017
Possession < 1 gram cocaine 3 rd offense	§ 44-53-375(A)	3016
PWID cocaine, 1 st offense	§ 44-53-370(B)	3198 3014
PWID cocaine, 2 nd offense	§ 44-53-370(B)	3199 3015
PWID cocaine, 3 rd offense For 3rd offense, it applies only if prior offenses were for possession as defined in § 44-53-	§ 44-53-370(B)	3200 3039

375(A) (CDR Codes 3016 and 3017.

In addition to the offenses listed above, the statute contains provisions applicable to third offenses for certain crimes which only have statutory penalties for “second or subsequent offenses.” For these offenses, the Act nonetheless specifies that inmates convicted of a third or subsequent offense are eligible parole, supervised furlough, community supervision, and work release only if their prior offenses are among those specifically listed. The following chart shows these offenses and their special requirements:

<u>Offense</u>	<u>Statute</u>	<u>CDR Code</u>	<u>Only Eligible if All Priors Are</u>
Manufacturing/distribution schedule IV, 3 rd offense	§ 44-53-370(b)(3)	None	§§ 44-53-370(c) & (d) (CDR codes 176, 177, 178, 179, 180, 182, 659, 2921 3011, 3012, 3013)
Manufacturing/distribution schedule V, 3 rd offense	§ 44-53-370(b)(4)	None	§§ 44-53-370(c) & (d) (CDR codes 176, 177, 178, 179, 180, 182, 659, 2921 3011, 3012, 3013)

On these two offenses, further technical guidance is needed to determine whether it is possible to discern whether the offense is actually a third offense for inmates convicted of “second or subsequent offenses.”

Sections 39-47

These sections do not appear to require interpretation beyond the language of the statute.

Section 48

Section 48 creates a new “reentry supervision” program for inmates who: (1) are not subject to the community supervision program; (2) and have been incarcerated a minimum of two years. Re-entry supervision commences 180 days from SCDC’s projected release date. However, the period of reentry supervision is reduced by any term of probation following the inmate’s sentence. We are currently awaiting guidance from SCDPPPS on whether this section applies retroactively.

In light of references to the supervised furlough program elsewhere in the Sentencing Reform Act, this program apparently does not entirely displace the supervised furlough program already in place.

Sections 49-66

These sections do not appear to require interpretation beyond the language of the statute.

Questions

Any questions about the implementation of this memorandum or its application to a particular inmate may be directed to the Office of General Counsel at 896-8508.

Campbell v. S.C. Department of Corrections
C/A No.: 2020-CP-40-04701

EXHIBIT D

(Deposition Excerpts of Stobbe)

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
3 GREENVILLE DIVISION

4 MARION KATRELL CAMPBELL, ON
5 BEHALF OF HIMSELF AND ALL OTHERS
6 SIMILARLY SITUATED,

7 Plaintiff,

8 vs.

Case No.: 6:16-cv-3265-MGL-KFM

9 SOUTH CAROLINA DEPARTMENT OF
10 CORRECTIONS, AND BRIAN P. STIRLING,
11 DIRECTOR OF THE SOUTH CAROLINA
12 DEPARTMENT OF CORRECTIONS,

13 Defendants.

14 30(B)(6) DEPOSITION OF MICHAEL J. STOBBE

15
16
17 DATE TAKEN: Friday, February 3, 2017

18 TIME BEGAN: 10:55 a.m.

19 TIME END: 12:03 p.m.

20 LOCATION: Richard A. Harpootlian, P.A.
21 1410 Laurel Street
Columbia, South Carolina

22 REPORTED BY: SHERI L. BYERS
23 Registered Professional Reporter

24 EveryWord, Inc.
P.O. Box 1459
25 Columbia, South Carolina 29202
803.212.0012

1 The deponent waives the right to read and
2 sign the deposition transcript.

3 - - - - -

4 MICHAEL J. STOBBE, being first duly
5 sworn, testified as follows:

6 EXAMINATION

7 BY MR. KENNEY:

8 Q. Would you state your full name for the
9 record, please.

10 A. Michael J. Stobbe.

11 Q. Mr. Stobbe, again, my name is Chris Kenney.
12 We met a couple of moments ago. You've been here this
13 morning and heard some of the testimony already?

14 A. Yes, sir.

15 Q. I'm not going to go over the part about the
16 objections or questions or anything. If you didn't
17 understand what I was saying, just ask me, and I'll
18 rephrase the question. Okay?

19 So you're employed by the Department of
20 Corrections?

21 A. Correct.

22 Q. What is your title with the Department?

23 A. Branch chief of records management and
24 release for the inmate records office.

25 Q. Okay. How long have you held that role?

1 A. Let's see. March of 1996.

2 Q. Okay. So awhile?

3 A. Yeah.

4 Q. All right. And tell me what you do in that
5 capacity.

6 A. Whatever I get told to do.

7 Q. Can you be a little specific?

8 A. Generally, the meat and bones of the thing is
9 to make sure that approximately 700 inmates get
10 released each month correctly and no one gets out
11 early, no one gets out late.

12 If we have inmates with issues that they
13 think things are not as they're supposed to be, I
14 generally get asked to look into those and make sure
15 that I think everything is what it should be.

16 Q. Okay. How many people work for you?

17 A. Seven.

18 Q. Okay. And who do you report to?

19 A. Well, presently, Wanda Blanding and Joette
20 Scarborough.

21 Q. And they hold what position?

22 A. Wanda Blanding is the acting assistant
23 division director, I think, for the inmate records
24 office. Stephanie Willis is my boss, but she's been
25 out on medical leave since April of 2016.

1 Q. Okay.

2 A. And Joette Scarborough, of course, is
3 Stephanie's boss. She is the division director of
4 classification and the inmate records office.

5 Q. Who does she report to?

6 A. I think Mike McCall at the division
7 operations.

8 Q. Okay.

9 A. I think.

10 Q. Fair enough. Okay. And I want to direct
11 your attention to what's been marked as Plaintiff's
12 Exhibit Number 1. This is a 30(b)(6) deposition.
13 You're here this morning to give testimony on behalf of
14 the Department, correct?

15 A. Yes.

16 Q. Okay. And you're prepared to give testimony
17 concerning which topics?

18 A. Number 2, I believe.

19 MR. KENNEY: Okay.

20 MR. DAVIDSON: 1 and 2.

21 MR. KENNEY: 1 and 2.

22 THE WITNESS: Okay.

23 MR. DAVIDSON: To the point he can. I've
24 talked to Dick about the problem with Chris Florian and
25 the legal staff and their involvement.

1 MR. KENNEY: Okay. The other folks who are
2 here, are they also going to address --

3 MR. DAVIDSON: No.

4 MR. KENNEY: No?

5 MR. DAVIDSON: That's why we may end up in
6 Vermont.

7 MR. KENNEY: I understand. Okay. So there's
8 no other witness on 1 and 2?

9 MR. DAVIDSON: No.

10 MR. KENNEY: Got it.

11 MR. DAVIDSON: He's limited on those, but
12 that's fine.

13 MR. KENNEY: I understand.

14 MR. DAVIDSON: I figured I would give you
15 somebody.

16 MR. KENNEY: I appreciate that.

17 BY MR. KENNEY:

18 Q. Okay. So let's look at topic number 1, the
19 identity of any individuals involved in SCDC policy
20 decisions regarding the act, and I believe we've
21 defined that act. Let me just stop right there and
22 make sure we're talking about the same thing.

23 You are generally familiar with a law passed
24 in 2010 called the Omnibus Crime Reduction and
25 Sentencing Reform Act, right?

1 A. Right.

2 Q. It does a bunch of things. We're going to
3 talk about a very narrow subset of the things that that
4 law did.

5 A. Good.

6 Q. But to the extent I talk about the act --

7 A. I know what you're talking about.

8 Q. Or the Omnibus law, that's what I'm talking
9 about.

10 A. Okay.

11 Q. Okay. So topic number 1, we're looking for
12 the identity of individuals involved in SCDC policy
13 decisions regarding the act.

14 Now, I want to ask you specifically about
15 that, but before I do, generally speaking, when the
16 General Assembly passes a law that might affect the
17 Department of Corrections, what, if anything, happens
18 inside the Department to figure out what to do in
19 response to that law?

20 A. Okay. The law itself gets funneled -- my
21 understanding is it's funneled to the general counsel's
22 office. They figure out what's what, and then if they
23 have questions as far as implementation or whatever,
24 sometimes they get some of the, you know, division
25 directors and folks together to have -- you know,

1 discuss it and come to some sort of, I hate to put --
2 you know, like a game plan, so to speak.

3 Q. So when the Department formulates a position
4 as to what should happen, how is that communicated to
5 you or your Department?

6 A. Usually through emails.

7 Q. Okay. Is it ever communicated in any other
8 fashion?

9 A. Well, I mean, now, not trying to put too fine
10 of a point on it, but sometimes it's in a memo form.
11 Sometimes it's in an email form.

12 Q. Okay.

13 A. But generally, that's how it comes down.

14 Q. It's written down?

15 A. Yes.

16 Q. Okay. I mean, that just seems to make sense.

17 A. Yeah.

18 Q. Okay. Okay. So specifically with respect to
19 the Omnibus Crime Reduction Act, who are the
20 individuals involved in SCDC's policy decisions? And I
21 want to narrow it even further, all I want to talk
22 about are, if I refer to sections 37 and 38 of the act,
23 does that mean anything to you?

24 A. I seriously do understand that there is a
25 section 38, 37.

1 Q. Let me see if I can help you here. That's
2 all right. Look at this. This is Plaintiff's Exhibit
3 Number 4. Okay. This has been discussed somewhat.
4 Take a minute and familiarize yourself with that.

5 Have you seen that document before?

6 A. Yes.

7 Q. Okay. And this is a memorandum from Chris
8 Florian. Who is Chris Florian?

9 A. He was like the deputy general counsel up at
10 headquarters for four or five years.

11 Q. Okay. And he was the deputy general counsel
12 in -- well, what was his role on June 22nd, 2010?

13 A. Basically, he was telling the people what he
14 found to be in the act that we're talking about.

15 Q. Let me step back. I just want to sort of
16 understand. It says here in this memo he was an SCDC
17 staff attorney. Is that the same as a deputy?

18 A. It works for me. Yeah, staff attorney,
19 deputy.

20 Q. Is that the same thing or a different thing?

21 A. I couldn't tell you. I just --

22 Q. Okay.

23 A. I mean, I'm not trying to --

24 Q. I understand.

25 A. -- dance around. If this thing says his

1 title was a staff attorney, I'm sure he was.

2 Q. All right. So generally, this would be the
3 type of memorandum that you would receive when the
4 general assembly passes a law requiring the Department
5 to possibly do something?

6 MR. DAVIDSON: Object to the form.

7 MR. KENNEY: Go ahead.

8 THE WITNESS: I can testify in this case, we
9 did get one of these.

10 BY MR. KENNEY:

11 Q. Perfect.

12 A. That's what I can testify to.

13 Q. That's what I'm after. I want to direct your
14 attention to -- before we look at a section here, who
15 received this memorandum?

16 A. State Classification and Inmate Records, so
17 that would have gone to Stephanie Willis, and I would
18 have -- at the time state classification would have
19 been, to the best of my knowledge, Jannita Gaston.

20 Q. And just remind me as to -- I think you spoke
21 about Ms. Willis, her role at the time was what?

22 A. Hang on a second. There's a memo that she
23 did. She is the assistant division director for the
24 Inmate Records Office.

25 Q. Okay. And you mentioned a woman named, was

1 A. Right.

2 Q. You generally agree with that terminology and
3 how we discussed it this morning?

4 A. Sure.

5 Q. Okay. This memorandum makes some conclusions
6 with respect to sections 37 and 38, and we can turn to
7 that. That's page 10033-R-3. Do you see that?

8 A. Yes, sir.

9 Q. Okay. And this is what you would have
10 received at the time in 2010?

11 A. Or shortly thereafter, yes, sir.

12 Q. Very good. So I'm going to ask you a couple
13 of questions about this. It says, "Section 37 makes
14 several changes to the structure of certain drug
15 offenses. Affected offenses are now eligible for
16 parole, supervised furlough, community supervision, and
17 work release despite the fact that some of the offenses
18 affected are class A, B, and C felonies."

19 Now, just with respect to that statement
20 right there, did something happen as a result of that
21 conclusion?

22 A. Yes. All these people that were serving time
23 with us for A, B, and C felonies, who prior to the
24 thing being passed were not eligible for parole,
25 instantaneously became eligible for parole.

1 Q. And you heard the testimony this morning
2 about a recalculation that occurred in about June of
3 2010?

4 A. Correct.

5 Q. Okay. And that's consistent with your
6 understanding of what happened?

7 A. Yes.

8 Q. Okay. So you come down here and it says, "As
9 with many other sections of the act, because nothing in
10 the language of this section indicates the changes
11 applied retroactively, this change should only be
12 applied to offenses occurring after June 2, 2010."

13 Okay. So did that conclusion impact the
14 recalculation that was done in 2010?

15 A. Certainly.

16 Q. Okay.

17 A. Because we would still have -- would have had
18 lots of inmates that were -- that offenses occurred
19 prior to June 2nd of 2010 that would have still been
20 with us, that they wouldn't have been affected by
21 section 37 and would remain no parole, at least 85
22 percent.

23 Q. Okay. Next sentence says, "As to the
24 affected A, B, and C felonies, nothing in the text of
25 these sections directly addresses the issue of whether

1 inmates convicted of these offenses are still required
2 to serve 85 percent of their sentences before early
3 release, discharge, or community supervision.

4 "Consequently, reading sections 37 and 38 in
5 conjunction with SC Code Annotated Section
6 24-13-150(A), inmates convicted of these offenses are
7 apparently still required to serve 85 percent of their
8 sentences before release unless they are granted
9 parole."

10 Now, I want to tell you what -- how I
11 understand that, and then I want you to tell me if this
12 is how the Department understood this statement right
13 here. Okay?

14 As I understand this statement, what it's
15 saying is, these offenses identified in sections 37 and
16 38 are now eligible for parole, but there is no change
17 in terms of the way that education credits, work
18 credits, good time credits are applied to reduce the
19 time that people are serving for those offenses?

20 MR. DAVIDSON: Object as to the form. Also
21 beyond the scope of the topics of 1 and 2.

22 MR. KENNEY: Go ahead. You can answer the
23 question.

24 THE WITNESS: Can I?

25 MR. KENNEY: Yes.

1 MR. DAVIDSON: You can, if you understand it.

2 THE WITNESS: Okay. Yes, sir.

3 BY MR. KENNEY:

4 Q. That is correct?

5 A. That is correct. They continue to earn three

6 days a month good time. They're on work credits, and

7 EECs, earned educational credits, are capped at six a

8 month or 72 a year per statute.

9 Q. Okay. Now, when your Department received a

10 memorandum indicating that -- I mean, it says here

11 "apparently still required." You would agree with me

12 that that is indicative of some uncertainty as to what

13 the results should be?

14 MR. DAVIDSON: Object to the form.

15 THE WITNESS: I'm not a lawyer, sir, and I

16 don't want to get into the particulars of his

17 statement. I'm not Chris Florian, so I don't know what

18 he was thinking.

19 BY MR. KENNEY:

20 Q. Did you have any uncertainty as to what the

21 results should be?

22 A. Chris Florian didn't tell me that their rates

23 of earning were going to change, so they didn't change.

24 Q. Okay. Did your Department receive this

25 memorandum?

1 A. I believe so. I have seen it, so I'm --

2 Q. Let me simplify the question even more. Did
3 the people responsible for making a decision about
4 inmate calculations receive this memorandum?

5 A. It would be my belief that they had, yes,
6 sir.

7 Q. Was there concern that it was uncertain as to
8 what the effect of sections 37 and 38 should be?

9 MR. DAVIDSON: Object to the form.

10 BY MR. KENNEY:

11 Q. Go ahead.

12 A. In my presence, I've never heard anybody
13 questioning it. It was always, A, they're going to
14 continue getting the credits that 85 percent/no parole
15 people get and that ain't changing, but parole can
16 review them and place them on parole if they so choose.

17 Q. Okay. As a representative of the Department
18 of Corrections, are you aware of the Department having
19 any uncertainty as to the consequence of sections 37
20 and 38?

21 A. No, sir.

22 Q. Okay. So with that in mind, what, if
23 anything, did the Department of Corrections do in order
24 to verify that the manner in which sections 37 and 38
25 were applied with respect to work credit, good time

1 credit, education credit, that those provisions were
2 accurately implemented? Was any action taken by the
3 Department to verify that your interpretation was
4 correct?

5 A. I have no knowledge. I was told what to do.
6 We filed what Chris Florian told us to do and what was
7 going to happen.

8 Q. You were told directly by Chris Florian or by
9 somebody else?

10 A. I don't ever recall a specific conversation
11 with Chris, so I would assume that I -- my information
12 would have come from Stephanie Willis.

13 Q. Okay. Where did her information come from?

14 A. That, I couldn't say, sir.

15 Q. Okay.

16 A. I mean, I know she got the memo from Chris,
17 but ...

18 Q. All right. In 2010, when this memo was
19 prepared, who was Chris Florian's supervisor?

20 A. David Tatarsky.

21 Q. And what was David Tatarksy at that time?

22 A. He was the head general counsel, Department
23 of Corrections.

24 Q. Okay. And who did he report to?

25 A. I would assume Mike McCall in the Division of

1 information is sent to PP&P on a nightly basis.

2 BY MR. KENNEY:

3 Q. Okay.

4 A. Electronic.

5 Q. That's the OMS data is sent to PPP?

6 A. Correct.

7 Q. I understand. Okay. Well, I guess I'm just
8 having a little trouble understanding. You're here to
9 help me identify the individuals involved in SCDC
10 policy decisions concerning the act, and as I
11 understand it, you've identified Chris Florian and
12 possibly his boss. Is that accurate based on the
13 memorandum we've been discussing?

14 A. Based on the questions you've asked me, yes,
15 sir.

16 Q. Okay. And that guidance in the memorandum
17 would have gone to Ms. Gaston and Ms. Willis. We've
18 talked about that.

19 A. Yes, sir.

20 Q. Okay. And you're involved in that department
21 as well?

22 A. I'm under Ms. Willis.

23 Q. Okay.

24 A. I run the release area.

25 Q. But are there any other individuals or

1 date is correct and the inmate's name's correct, the
2 inmate gets paroled.

3 Q. So the Department's position then is the
4 possibility that it was going to have to release
5 paroled inmates, pursuant to the act, nobody outside of
6 Florian and your Department made an inquiry into
7 whether or not that was correct?

8 A. I couldn't say, sir. All I'm responsible for
9 is releasing inmates.

10 Q. Okay.

11 A. This ain't a release issue.

12 Q. Parole is not a release issue?

13 A. It's certainly not for the inmate records
14 office. That's the parole agency's business.

15 Q. Right. And I'm not trying to --

16 A. I mean, inmates are reviewed for parole every
17 week.

18 Q. Right.

19 A. There's hundreds of them. So a subset that's
20 added to it.

21 Q. Let me go at this a different way with you.

22 A. Okay. I, again, am not trying to be
23 difficult.

24 Q. I understand. In 2016, the Court of Appeals
25 handed a down a decision called Bolin that required the

1 Department to recalculate release dates for inmates,
2 correct?

3 A. Right.

4 Q. It did so on two separate occasions. There
5 were two groups of inmates that were released --

6 A. Correct.

7 Q. -- initially in March of '16 and then again
8 in June of '16.

9 A. Correct.

10 Q. First of all, for the March universe of
11 inmates, how many people were released?

12 A. I'm sure somebody there has those facts and
13 figures, but I don't honestly know.

14 Q. All right. I mean, it was almost 300 people?

15 A. Sounds about right.

16 Q. All right. In June, there were another
17 approximately 200, 300 people?

18 A. I don't think 300, but --

19 MR. KENNEY: Okay.

20 MR. DAVIDSON: Beyond the scope also.

21 BY MR. KENNEY:

22 Q. Okay. You're in charge of release. We
23 talked about that a minute ago.

24 A. Yes, sir.

25 Q. That's a lot of people to release.

1 Q. Let me -- going back to 2010 and the time in
2 which the Florian memo was issued, did the Department
3 ever file a declaratory judgment action seeking
4 clarification as to what sections 37 and 38 meant?

5 A. I didn't have knowledge one way or the other.

6 Q. Okay. Did the Department ever -- you
7 referenced earlier when we were talking about your
8 process generally having a huddle to discuss what --
9 you know, come up with a game plan, I think was the
10 term that you used. In 2010, did the Department ever
11 come up with a game plan concerning what sections 37
12 and 38 meant and what the consequence would be for
13 inmates?

14 MR. DAVIDSON: Note an objection to the form.
15 Beyond the scope.

16 THE WITNESS: Basically, if I'm correct,
17 section 37, 38 just basically talks about that the
18 inmates have become parole eligible. It didn't really
19 change their max-out dates in any way.

20 BY MR. KENNEY:

21 Q. Well, that's sort of the crux of the problem
22 because the Court of Appeals disagreed. Okay. And so
23 there were changes made that could have been made in
24 2010. You agree with me that a change in the way work
25 credits, education credits, good time credits, those

1 Q. Okay. Is it possible that that happened and
2 you were not present?

3 MR. DAVIDSON: Object as to the form. Beyond
4 the scope.

5 THE WITNESS: Again, I'm under oath, so I
6 have no knowledge whatsoever.

7 BY MR. KENNEY:

8 Q. Okay. Did the Department of Corrections ever
9 in 2010, 2010, after it received the Florian memo, ever
10 seek independent counsel about what it should do with
11 respect to inmate release dates?

12 A. Again, sir, I that's way out of the scope of
13 my world, and I have no knowledge one way or the other.

14 Q. You don't know?

15 A. No, sir.

16 Q. Okay. Who would know the answer to that
17 question?

18 A. In my opinion?

19 Q. Sure.

20 A. Chris Florian or David Tatarksy.

21 Q. Does David Tatarksy work for the Department
22 right now?

23 A. No, sir.

24 Q. Do you know where he works?

25 A. No, sir.

1 Q. Chris Florian, I understand does not work for
2 the Department.

3 A. That's correct, sir.

4 Q. Okay. Do you have -- not as Department
5 representative but as an individual, do you have
6 personal knowledge as to why either of those
7 individuals left the Department?

8 MR. DAVIDSON: Note an objection beyond the
9 scope, and we will now consider this to be his personal
10 deposition also.

11 MR. KENNEY: We don't necessarily -- we don't
12 agree with that.

13 MR. DAVIDSON: That's fine. I don't care if
14 you agree or not. I'm putting it on the record.

15 MR. KENNEY: It's noted. Go ahead. Do you
16 have personal knowledge?

17 THE WITNESS: Can I answer that?

18 MR. DAVIDSON: Yeah.

19 THE WITNESS: At the time he left, Chris
20 Florian told me that he was going to go work for ICE in
21 Vermont.

22 BY MR. KENNEY:

23 Q. Okay. Did he leave voluntarily?

24 A. I have no knowledge one way or the other.

25 Q. He didn't tell you he was fired or anything

1 A. Yes.

2 Q. Okay. And generally, this email is an
3 instruction to you and some other folks concerning what
4 we now understand to be the June 2016 release of
5 inmates, correct?

6 A. Correct.

7 Q. Okay. So these two -- these two emails
8 reflect recalculations done by the Department of
9 Corrections. You would agree with me that nothing
10 prohibited the Department of Corrections from doing
11 these same calculations for release back in 2010 at the
12 time the Florian memo was issued?

13 MR. DAVIDSON: Object as to the form.

14 THE WITNESS: All things being squared,
15 that's true, except that Chris' analysis in 2010 did
16 not allow for -- for it to be retroactive. Their
17 offense that had to occur on June 2nd, 2010, as I
18 understand it.

19 BY MR. KENNEY:

20 Q. Did the Department do anything to challenge
21 or review or second guess that analysis in 2010?

22 A. Again, as I've already testified, to my
23 knowledge, I have no knowledge whether they did or they
24 didn't.

25 MR. KENNEY: I don't have any further

Campbell v. S.C. Department of Corrections
C/A No.: 2020-CP-40-04701

EXHIBIT E (30(b)(6) Deposition Notice)



HARPOOTLIAN
ATTORNEYS AT LAW

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JAMIE L. HARPOOTLIAN*
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TOLL FREE (866) 706-3997

ONLINE
HARPOOTLIANLAW.COM

December 21, 2016
VIA ELECTRONIC MAIL & U.S. MAIL

William H. Davidson, II, Esquire
Davidson & Lindemann, P.A.
1611 Devonshire, 2nd Floor
Columbia, South Carolina 29204

In re: Marion K. Campbell v. SC Department of Corrections
Civil Action No.: 6:16-CV-03265-MGL-KFM

Dear Will:

With regards to the above-referenced case, enclosed please find a 30(b)(6) deposition notice, which I hereby serve upon you.

This deposition is noticed for February 3, 2017. If this date does not work with your schedule or the designee(s), please let me know immediately. I purposely noticed the deposition far in advance to give you ample time to prepare and to schedule accordingly.

If you should have any questions, please do not hesitate to contact me.

Sincerely,

Richard A. Harpoottlian

RAH/hmh

cc: Charles W. Whetstone, Jr., Esq.
Philip A. Berlinsky, Esq.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Marion Katrell Campbell, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

South Carolina Department of Corrections,
and Brian P. Stirling, Director of the South
Carolina Department of Corrections,

Defendants.

C/A NO.: 6:16-cv-3265-MGL-KFM

**30(b)(6) DEPOSITION NOTICE OF THE
SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS**

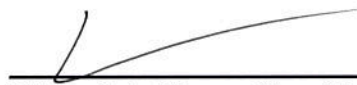
PLEASE TAKE NOTICE that Plaintiff Marion Katrell Campbell, on behalf of himself and all others similarly situated, by and through their undersigned attorneys, will take the oral deposition of the deponent(s) designated by Defendant South Carolina Department of Corrections, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure as to the topics set forth in **Exhibit A** of this deposition notice.

This oral deposition will be taken before a Notary Public or an officer duly sworn to transcribe, on **February 3, 2017, beginning at 10:00 a.m.** This deposition will be held at the offices of Richard A. Harpootlian, P.A., 1410 Laurel Street, Columbia, South Carolina 29201.

This deposition is being taken for the purpose of discovery or for use as evidence in this action or both, pursuant to Rule 30.03 of the Local Rules of the United States District Court for the District of South Carolina.

You are invited to attend and participate.

Submitted by,



Richard A. Harpootlian (Fed. ID No. 1730)
Christopher P. Kenney (Fed. ID No. 11314)
W. Baker Allen (Fed. ID No. 11361)
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ATTORNEYS FOR PLAINTIFF MARION
KATRELL CAMPBELL AND THE CLASS

December 21, 2016
Columbia, South Carolina.

EXHIBIT A**Definitions**

As used in this deposition notice “documents” and “tangible things” shall denote all documents and tangible things producible pursuant to Rule 34 of the Federal Rules of Civil Procedure, including, but not limited to, writings of any kind; graphic, photographic or aural records or representations of any kind; electronic, mechanical, electrical or computer records or representations of any kind; and other data compilations from which information can be obtained, translated, if necessary, by you through detection devices into a reasonably usable form; including originals, reproductions, drafts, identical copies and non-identical copies, whether different from the original by reason of a notation made on the copy or otherwise.

“Person” shall include natural persons, proprietorships, corporations, public corporations, municipal corporations, state governments, local governments, governmental agencies, political subdivisions, partnerships, groups, associations or other business or public organizations.

To “identify” a document means to state the date of the document, its author, each person to whom the document or any copy thereof was sent, and every person having custody of the document or a copy thereof.

“Legal hold” shall mean notification to employees of this litigation or anticipated litigation involving the parties here and of their obligation to preserve any and all documents, including electronically stored information (ESI) relating to the facts and claims at issue here.

As used in these requests, “SCDC” or “You” shall mean Defendant South Carolina Department of Corrections, and any affiliated government or corporate entities.

As used in these requests, “the Act” shall mean the 2010 Omnibus Crime Reduction and Sentencing Reform Act.

Topics for Testimony

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, the deponent shall produce a witness or witnesses to give sworn testimony as to the following topics:

1. The identity of any individuals involved in SCDC policy decisions regarding the Act. Specifically, the identity of any individuals involved in the decision to interpret sections 37 and 38 of the Act to require inmates convicted of violations of S.C. Code §§ 44-53-370 and 44-53-375 to serve 85% of their sentences.

2. The steps taken by SCDC and the individuals identified in Topic 1 in establishing SCDC policy with respect to the Act and SCDC's decision to require inmates convicted of S.C. Code §§ 44-53-370 and 44-53-375 to serve 85% of their sentences.

3. The procedure used by SCDC to identify inmates who eligible for release following recalculation of their sentences pursuant to the South Carolina Court of Appeals decision in Bolin v. South Carolina Dept. of Corrections, 415 S.C. 276 (2016).

4. The system(s) used by SCDC to track and/or calculate inmate release dates.

5. The procedure used by SCDC to track and/or record sentence reduction credits.

6. The procedure used by SCDC to generate lists of inmates affected by Bolin v. South Carolina Department of Corrections, which are identified as beginning with bates numbers 10033-U-303 and 10033-R-23.

7. Your document retention policy, including Your policy concerning ESI.

8. Any legal hold issued by You concerning this action, the individuals notified of the legal hold, and all affirmative steps taken by You to ensure compliance, collect potentially relevant documents, and ensure relevant documents would not be destroyed.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Marion Katrell Campbell, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

South Carolina Department of Corrections,
and Brian P. Stirling, Director of the South
Carolina Department of Corrections,

Defendants.

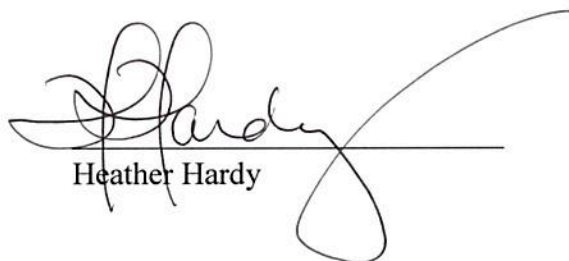
C.A. No. 6:16-cv-03265-MGL-KFM

CERTIFICATE OF SERVICE

I, Heather Hardy, Paralegal to Richard A. Harpootlian, PA, hereby certify that on December 21, 2016, I served a copy of the following, via U.S. MAIL (with a courtesy copy forwarded via Electronic Mail), to the counsel listed below:

Document(s): 1) 30(b)(6) Deposition Notice.

Counsel Served: William H. Davidson, II, Esquire
Davidson & Lindemann, P.A.
1611 Devonshire, 2nd Floor
Columbia, South Carolina 29204



Heather Hardy

Campbell v. S.C. Department of Corrections
C/A No.: 2020-CP-40-04701

EXHIBIT F

(Deposition Excerpts of J. Moss)

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
3 GREENVILLE DIVISION

4 MARION KATRELL CAMPBELL, ON
5 BEHALF OF HIMSELF AND ALL OTHERS
6 SIMILARLY SITUATED,

7 Plaintiff,

8 vs.

Case No.: 6:16-cv-3265-MGL-KFM

9 SOUTH CAROLINA DEPARTMENT OF
10 CORRECTIONS, AND BRIAN P. STIRLING,
11 DIRECTOR OF THE SOUTH CAROLINA
12 DEPARTMENT OF CORRECTIONS,

13 Defendants.

14 30(B)(6) DEPOSITION OF JOEY MOSS

15
16
17 DATE TAKEN: Friday, February 3, 2017

18 TIME BEGAN: 10:01 a.m.

19 TIME END: 10:52 a.m.

20 LOCATION: Richard A. Harpootlian, P.A.
21 1410 Laurel Street
Columbia, South Carolina

22 REPORTED BY: SHERI L. BYERS
23 Registered Professional Reporter

24 EveryWord, Inc.
P.O. Box 1459
25 Columbia, South Carolina 29202
803.212.0012

1 MR. DAVIDSON: -- of the 30(b)(6).

2 MR. KENNEY: Sure.

3 MR. DAVIDSON: So if you get into areas that
4 you consider beyond the scope of the 30(b)(6), I'll
5 note an objection. If you continue, then I will take
6 the position that his one deposition has been taken
7 personally.

8 MR. KENNEY: Okay. That's fair. We'll cross
9 that bridge if we get there.

10 BY MR. KENNEY:

11 Q. So just let me find out about who you are.
12 You are employed by the Department of Corrections?

13 A. Yes.

14 Q. What do you do?

15 A. I'm an information technology manager.

16 Q. What does that mean?

17 A. I am over all the applications and
18 development for the Department.

19 Q. Okay. And tell me what applications you're
20 referring to.

21 A. We have release date calculations,
22 convictions, personnel systems, inmate financial
23 systems.

24 Q. Okay. What is the Offender Management
25 System?

1 A. That's the system that we use to track our
2 inmates from the time they come in the door to the time
3 they're released.

4 Q. Before I go any further, we had previously
5 marked as Plaintiff's Exhibit Number 1 a copy of the
6 30(b)(6) Deposition Notice in this case.

7 If you would take a look at topics number 4
8 and 5 on this notice.

9 A. Okay.

10 Q. And topics 4 and 5 are the systems used by
11 SCDC to track or calculate inmate release dates, and
12 topic 5 is the procedure used by SCDC to track or
13 record sentence reduction credits.

14 Are you here today prepared to testify about
15 those topics?

16 A. Yes.

17 Q. Okay. You were telling me about the Offender
18 Management System and it tracks a number of data
19 points; is that fair?

20 A. Yes.

21 Q. One of those is release dates?

22 A. Yes.

23 Q. And generally, tell me how the Offender
24 Management System calculates or tracks a release date.

25 A. We have their convictions. Of course, what

1 they're sentenced to. We track their incarceration
2 time, their EWC credits, their EEC credits, their good
3 time credits, and we calculate the release date based
4 on that.

5 Q. Is that calculation an automated process?

6 A. Yes.

7 Q. In other words, the components, the various
8 bits of information, we'll talk about them in a minute,
9 but those go into the system, correct?

10 A. Yes.

11 Q. And then the system spits out the release
12 date?

13 A. Yes.

14 Q. Okay. You used some terms. First of all,
15 what is -- you say EEC?

16 A. EEC, EWC. EEC is earned education credits.

17 Q. Okay. And EWC is what?

18 A. Earned work credits.

19 Q. Okay. What is a good time credit?

20 A. They get 20 days of good time a month for
21 every 30 days that they're disciplinary free.

22 Q. Okay. And is there a similar calculation for
23 education and work credits?

24 A. Yes.

25 Q. Okay. And my understanding, we don't have to

1 get into the details right now, but my understanding is
2 the amount of credit that an inmate gets for work or
3 education depends on the status of the offender; is
4 that --

5 A. Yes.

6 Q. -- generally correct?

7 A. Generally.

8 Q. Okay. And again, there's a formula set by
9 Department policies and procedures that lays out what
10 that formula is; is that correct?

11 A. I'm not sure if there's a formal policy, but
12 it's based on legislation that's passed by the
13 legislator.

14 Q. Okay. It's written down somewhere?

15 A. Yes.

16 MR. KENNEY: Okay. Okay.

17 (MOSS EXH. 2, SCDC Policy/Procedure, was
18 marked for identification.)

19 BY MR. KENNEY:

20 Q. I'm handing you a copy of what's been marked
21 as Plaintiff's Exhibit Number 2. And this is a policy
22 and procedure that the Department has furnished to us
23 as part of this lawsuit. If I could just direct your
24 attention to page -- let's start on the page that is
25 Bates numbered at the bottom -- it's the little number

1 in the bottom right-hand corner. It's Bates numbered
2 10033-P-42.

3 Have you either seen this document or
4 something similar to it before?

5 A. I've seen something similar.

6 Q. Okay. And tell me what an SCDC offense code
7 is.

8 A. That's our agency offense code to identify
9 the offense.

10 Q. Okay. So for example, that would come --
11 that code would be put onto a sentencing sheet,
12 correct?

13 A. No.

14 Q. No. Okay. How does the Department of
15 Corrections know what offense code to use?

16 A. They look at the -- the CDR code is put on
17 the sentencing sheet.

18 Q. Okay. Tell me what a CDR code is.

19 A. It's the law administration code or whatever.

20 Q. Okay. Explain to me what the use of this
21 offense -- SCDC offense code, what is that used for?

22 A. That identifies the offense the inmate is
23 serving time for.

24 Q. Okay. Turn to page -- turn to Bates page
25 P-52.

1 A. Okay.

2 Q. So a couple minutes ago we were talking about
3 education credit and work credit, and generally there's
4 a formula. Does this represent the credit per month
5 that inmates would earn for work credits or education
6 credits under the Department's policies?

7 A. Yes.

8 Q. Okay. So in other words --

9 A. The first one is EWC, and then the bottom one
10 is the EEC.

11 Q. Show me that.

12 Oh, I see. I see. You're talking about --

13 A. Yes.

14 Q. -- below where it says 14.31?

15 A. Yes.

16 Q. Okay. And these tables also reflect the
17 numbers that are used by your system, the Offender
18 Management System, to calculate the time that inmates
19 get credit for?

20 A. Yes.

21 Q. Okay. I understand. You can set that aside.

22 A. Okay.

23 Q. So we're talking about the Offender
24 Management System and some of these data points that
25 are used to calculate the release date. Tell me, walk

1 me through the process when an inmate comes into the
2 system how or what data is entered into the Offender
3 Management System when they first come in to the
4 Department of Corrections.

5 A. Okay. When they come in to R&E, they enter
6 their convictions, which is their offense that they're
7 sentenced to. I mean, they enter family information,
8 medical information, but as far as release dates, at
9 the R&E, they only enter convictions.

10 Q. Okay. And depending on the type of offense,
11 that will determine as they earn work credits or
12 education credits the amount of time that is taken off
13 their overall sentence, correct?

14 A. By type of offense, I'm not sure --

15 Q. Do you know what a non-parole offense is?

16 A. Absolutely.

17 Q. What does that mean to you?

18 A. The inmate is not eligible for parole.

19 Q. Okay. As I understand it, you correct me if
20 I'm wrong, inmate is not eligible for parole and has to
21 serve 85 percent of their sentence; is that correct?

22 A. Yes.

23 Q. Okay. Does a non-parole inmate earn work
24 credit?

25 A. Yes.

1 Q. Okay. Do they earn work credit at the same
2 rate as an inmate who is serving time for a parolable
3 offense?

4 A. No.

5 Q. The parolable offense earns more work credit,
6 for example?

7 A. Yes.

8 Q. More education credit?

9 A. Yes.

10 Q. More good time credit?

11 A. Yes.

12 Q. Okay. So the type of offense that has been
13 committed and the code that goes into your Offender
14 Management System determines the rate at which credits
15 accrue?

16 A. Yes.

17 Q. Okay. I got it. So after an inmate is in
18 the Offender Management System and as -- let's take
19 good time credits as an example. Tell me what good
20 time credit is.

21 A. It's the credit -- they earn 20 days for
22 every 30 days that they serve disciplinary free.

23 Q. Okay. So how does an inmate's good time
24 credit get into the Offender Management System?

25 A. It's not entered into the Offender Management

1 System. The program automatically calculates it. It
2 reads his disciplinaries to see how long he's been
3 disciplinary free.

4 Q. I see. So, for example, if an infraction
5 occurs, that will count as a debit against the good
6 time credit that's automatically being accrued?

7 A. Yes.

8 Q. Tell me how work credits get entered into the
9 Offender Management System.

10 A. When they're assigned a job in the
11 institution, the classification staff enters his job
12 level.

13 Q. Tell me what classification staff is. Who
14 are those people?

15 A. Classification caseworkers.

16 Q. Where are they located?

17 A. In the institutions.

18 Q. Okay. So in the individual prison?

19 A. Yes.

20 Q. Okay. So they enter that on a monthly basis?

21 A. No. They enter it when he gets the job, and
22 it only changes if he changes jobs, gets fired.

23 Q. Okay. So once the initial entry is made,
24 they, like the good time credits, continue to accrue
25 credit unless something happens?

1 A. Unless something happens.

2 Q. I understand. Same for education credit?

3 A. Yes.

4 Q. What is RIMs, does that mean anything to you?

5 A. RIM?

6 Q. Yeah, RIM. R-I-M.

7 A. That's Resource and Information Management.

8 Q. What is that?

9 A. That's our IT department.

10 Q. And where is that IT department?

11 A. Headquarters.

12 Q. Do they work for you, or what is their
13 relationship to your role in the institution?

14 A. Well, RIM is our whole division.
15 Applications development is my branch in that division.

16 MR. KENNEY: I see. Okay. Okay. I
17 understand.

18 Let me just -- mark this for me, please.

19 (MOSS EXH. 3, Offender Management System
20 Records for Marion Katrell Campbell, was marked for
21 identification.)

22 BY MR. KENNEY:

23 Q. I want to show you what's been marked as
24 Plaintiff's Exhibit 3. And these are documents that
25 were furnished to us by the Department pertaining to

1 record.

2 Q. Okay. And just to be clear, this record
3 comes out of the Offender Management System?

4 A. Yes.

5 Q. Okay. And that's the system you're here to
6 discuss?

7 A. Yes.

8 Q. Okay. What is -- you see it says CDR code
9 about -- let me show you on mine.

10 A. I see it.

11 Q. Okay. We discussed that that CDR code ties
12 back to a specific offense as Mr. Campbell has been
13 convicted of; is that accurate?

14 A. Yes.

15 MR. KENNEY: Okay.

16 MR. DAVIDSON: I, again, note that he's here
17 to discuss 3 through 6, and those are the specific
18 areas, not going into Campbell's specific records.
19 Just for the record. If you want to go ahead, that's
20 fine.

21 MR. KENNEY: Sure.

22 MR. DAVIDSON: We will just consider this his
23 deposition.

24 MR. KENNEY: Well, I'm not agreeing that it's
25 beyond the scope.

1 MR. DAVIDSON: That's fine.

2 MR. KENNEY: We can take that up at a later
3 time, if we have to.

4 MR. DAVIDSON: That's fine.

5 BY MR. KENNEY:

6 Q. Do you see the field down in the bottom
7 left-hand corner where it says "no parole." That's a
8 data field in the system, correct?

9 A. Yes.

10 Q. Okay. What does that data field reflect?

11 A. It's determined by the CDR code for whether
12 this offense is parolable or not.

13 Q. Okay. Go to the next page, would you? So
14 this is H-1. There's several data fields, and I'm
15 looking where it says, "Total GT days earned" and then
16 the next one, two, three, four lines. What are
17 those -- those are data fields in the system, correct?

18 A. Yes.

19 Q. And those are the data fields used to count
20 good time credits, earned work, education, extra earned
21 credits, and service time earned, correct?

22 A. Yes.

23 Q. Okay. Why would the system show zero days
24 earned in this instance, for example?

25 A. Without manually calculating his date, I

1 couldn't answer that question.

2 Q. Hypothetically, if this inmate had already
3 been released, is that possibly an explanation for
4 that?

5 A. Yes, it's possible.

6 Q. Okay. So if we had an inmate who is in the
7 system right now, I would expect to see some numbers
8 there; is that correct?

9 A. Yes.

10 Q. Okay. Go to the next page for me. This is
11 I-1.

12 A. Uh-huh.

13 Q. At the third line down in the center, it
14 says, "Projected release/eligible audit trail." What
15 does this data screen reflect in the system?

16 A. This is a screen that lists every time the
17 inmate's release date was recalculated.

18 Q. Okay. And tell me -- using this as an
19 example, tell me how I would read these data fields to
20 understand when recalculations occurred.

21 A. If you see the recalc date.

22 Q. Yeah.

23 A. That's the date it was recalc'd, the date it
24 was recalculated. And if you look at the change
25 reason, that tells you why.

1 Q. Okay. What are the reasons -- when you say
2 recalculation, is that an automated process that the
3 system does?

4 A. Yes. Automatically.

5 Q. So a human being doesn't tell the system to
6 do that?

7 A. No.

8 Q. Okay. What are the reasons the system would
9 recalculate?

10 A. He could get a new conviction. He could be
11 fired from a job, assigned a new job, received a
12 disciplinary.

13 Q. So this goes back to those data inputs we
14 were talking about earlier. Something happens, a human
15 being types it into a computer, the system does a
16 recalculation?

17 A. Yes.

18 Q. And that is recorded on this screen?

19 A. Yes.

20 Q. Okay. And so for example, the last one
21 happened on March 9 of '16?

22 A. Yes.

23 Q. Okay. Now, what do these dates, max-out date
24 and parole date mean in the system?

25 A. Max-out date is his release date.

1 information is correct.

2 Q. But as this data field shows you, one, two,
3 three, four -- I see nine audit dates on this sheet,
4 right?

5 A. Yes.

6 Q. So those would be individual audits conducted
7 by a human being on these dates?

8 A. Yes.

9 Q. Go to page L-1, if you would.

10 A. Okay.

11 Q. What is this?

12 A. That's the history of his earned -- of his
13 earned work credits.

14 Q. Okay. Okay. I want to ask you a
15 hypothetical question about the system and how it
16 works. If, for example, the Department had to do a
17 recalculation of a number of inmate release dates, this
18 is a -- could the system be programmed or coded to do
19 an update for multiple inmates across the system?

20 MR. DAVIDSON: Object to the form. Go ahead.
21 You can answer it.

22 THE WITNESS: Yes.

23 BY MR. KENNEY:

24 Q. How does that happen?

25 A. We identify the inmates that we want to

1 recalculate and we store an audit trail in the system,
2 and overnight it recalculates their dates.

3 Q. Okay. And an audit trail, is that like a
4 computer program that somebody prepares?

5 A. Yes.

6 Q. Okay. So it's -- is it a programming
7 language of a certain type?

8 A. Yes.

9 Q. First of all, what's a programming language?

10 A. It's the language that the computers use.

11 Q. What is the specific language that the
12 computer uses for the Department of Corrections?

13 A. Our main frame system is IDMS-based using
14 Cobalt programs.

15 Q. And what IDMS is?

16 A. Integrated Database Management System.

17 Q. Let me ask you this, that computer audit
18 language, can that be exported in an electronic format?

19 A. I don't understand how --

20 Q. Let me rephrase it. The program to do an
21 update, okay, that's an instruction to the computer
22 that is programmed by human beings, correct?

23 A. Yes.

24 Q. Okay. Your office does that?

25 A. Yes.

1 Q. Okay. You type it into a computer and then
2 it does whatever it does to the system?

3 A. Yes.

4 Q. Okay. Is that a record that could
5 electronically be produced in the form that you've
6 created, either in Microsoft Word or a text file or CSV
7 file or some other electronic record?

8 A. Yes.

9 Q. And do you have -- do you retain all of these
10 records in terms of the updates to the system?

11 A. No.

12 Q. Okay. How long do you retain a system
13 update?

14 A. We usually don't retain them long at all.

15 Q. Is there a -- go ahead.

16 A. We could have used that program and modified
17 it a little bit to do another update.

18 Q. So it could be saved over, for example?

19 A. Yes.

20 Q. All right. Was an update done with respect
21 to inmate releases pursuant to the Bolin case?

22 A. Yes.

23 Q. Okay. Has that programming language been
24 retained?

25 A. I do not know.

1 correct?

2 A. Yes.

3 Q. That resulted in, as I understand it, two
4 rounds of inmate releases?

5 A. Yes.

6 Q. Okay. And roughly speaking, those releases
7 occurred in, I believe, March and June of '16; is
8 that --

9 A. Yes.

10 Q. Okay. Tell me, and I'm looking specifically
11 at topic number 3, which reads, "The procedure used by
12 SCDC to identify inmates who" -- it should say "who are
13 eligible" -- "who are eligible for release following
14 recalculation of their sentences pursuant to the Court
15 of Appeals decision in Bolin versus South Carolina
16 Department of Corrections."

17 What I would like for you to do is explain to
18 me the procedure that your Department used to identify
19 the inmates.

20 A. Okay. We received a memo from our records
21 office that identified the offenses that were affected.
22 We identified those inmates that had offenses that were
23 affected by the Bolin ruling. We made the changes to
24 the program, stored audit trails for the inmates and
25 recalculated them, and provided lists to the records

1 office and classification caseworkers.

2 Q. Okay. I want to unpack just a little bit and
3 understand each step of that.

4 A. Okay.

5 Q. First, you received a memo from the records
6 office.

7 A. Uh-huh.

8 Q. What is the records office?

9 A. That's our -- inmate records keeps all of the
10 inmates' manual records.

11 Q. Okay. And I see you have a document in front
12 of you. Is that the memo?

13 A. Yes.

14 Q. May I look at that?

15 A. Okay.

16 Q. So the Bates number -- and this is a document
17 that was previously furnished to us. The Bates number
18 on this is 10033-R-7, correct?

19 A. Correct.

20 Q. Okay. And tell me, I don't want you to read
21 it, but just tell me what that memo tells you. What
22 does that --

23 A. It tells me that these offenses on this memo,
24 they were originally 85 percent non-parolable, now
25 they've become -- any committed after June 2nd, 2010,

1 Okay. Then what? Did you do anything else
2 pursuant to this memo?

3 A. After they gave us the okay, we applied it to
4 our production environment.

5 Q. All right. Now, maybe I'm confused, but this
6 memorandum says July 29, 2010, and the Bolin case
7 happened in 2016; is that correct?

8 A. Yes.

9 Q. Okay. So maybe my question was poorly worded
10 or maybe the date on this document is not correct, but
11 wouldn't you have done this after the Bolin case?

12 A. No. If you read the subject line --

13 Q. Yes.

14 A. -- there was a new law passed that says to
15 make these offenses parolable and 85 percent.

16 Q. Okay. I see. I understand. So in 2010,
17 what you're doing is you're changing -- based on the
18 Omnibus Crime Reduction Sentence Reform Act of 2010 --

19 A. Yes.

20 Q. -- you wrote a program. Tell me specifically
21 what the program did.

22 A. We changed our existing release program to
23 treat these offenses as 85 percent, but now they're
24 parolable.

25 Q. I understand. Okay. So for example, if

1 we're looking at that data field in the Offender
2 Management System for a particular inmate, if it
3 previously said for one of these offenses not
4 parolable, your program would change that to say
5 parolable?

6 A. Yes.

7 Q. Okay. Now, did this program in 2010 that you
8 created, did that change the calculation of any good
9 time credit, work credit, education credit, as it would
10 impact the release date for this population of inmates?

11 A. No.

12 Q. Okay. So going back to topic number 3, after
13 this program that we're currently discussing in 2010,
14 did you take any other action identify and recalculate
15 the release dates of inmates consistent with the Bolin
16 decision?

17 A. Yes.

18 Q. Okay. When did you do that next?

19 A. Approximately February 2016.

20 Q. Okay. And what did you -- what were you
21 asked to do?

22 A. Now these offenses that were -- became 85
23 percent and parolable, now they're no longer 85 percent
24 even.

25 Q. Okay. In other words, you wrote -- did you

1 write a program that would apply work credits,
2 education credits, and good time credits differently?

3 A. We changed our existing release program.

4 Q. I understand. And you did that because they
5 would be getting more credit for those work credits,
6 good time credits, education credits?

7 A. Yes.

8 Q. Okay. What was the universe of inmates for
9 the February 2016 reprogramming?

10 A. I don't understand the question.

11 Q. How many inmates in February of '16?

12 A. Approximately 265, if I remember correctly.

13 Q. Okay. Did you retain that program language?

14 A. The program that calculated the release
15 dates?

16 Q. Yes, sir.

17 A. Yes. That's our existing calculation
18 program.

19 Q. Okay. But I mean, you could produce that
20 electronically if you had to do that?

21 A. Yes.

22 Q. Okay. Did you retain the list of people who
23 were impacted by that recalculation?

24 A. I'm not aware. I don't know.

25 Q. Maybe, maybe not?

1 A. Maybe, maybe not.

2 Q. Got it. Is there somebody else in the
3 Department who would know the answer to that question?
4 Would it be someone who works for you or maybe one of
5 these folks sitting at this table?

6 A. Somebody that works for me could.

7 MR. KENNEY: All right. Very good.

8 MR. DAVIDSON: Are you talking about the list
9 that came out of that computer?

10 MR. KENNEY: The list in February.

11 MR. DAVIDSON: We got the list.

12 MR. KENNEY: We'll get to it.

13 MR. DAVIDSON: Okay.

14 MR. KENNEY: I understand.

15 BY MR. KENNEY:

16 Q. After February of 2016, did you ever
17 recalculate again based on the Bolin decision?

18 A. Yes.

19 Q. When was that?

20 A. Sometime before June because the release was
21 in June.

22 Q. That would be June of 2016?

23 A. Yes.

24 Q. Okay. And what were you asked to do pursuant
25 to the recalculation that happened around June of 2016?

1 A. In the Bolin act, the way our legal team
2 interpreted it, it was not retroactive, that any inmate
3 sentenced after June 2nd, 2010, was affected. And then
4 parole and our agency got together and decided that it
5 was retroactive, that any inmate sentenced to those
6 offenses were subject to the Bolin ruling.

7 Q. Okay. So the June recalculation expanded the
8 universe of possible inmates who would receive credits
9 on a -- on a more expansive basis --

10 A. Yes.

11 Q. -- is that fair?

12 A. Yes.

13 Q. How many inmates -- how many new inmates were
14 included in the June 2016 recalculation?

15 A. I don't recall that.

16 Q. Do you know approximately?

17 A. No.

18 Q. But there's a record of that, correct?

19 A. Yes, there's a record.

20 Q. Okay. After June of 2016, were you asked to
21 do any additional recalculation in the Offender
22 Management System pursuant to the Bolin decision?

23 A. No.

24 Q. So there's been no additional activity?

25 A. No.

Campbell v. S.C. Department of Corrections
C/A No.: 2020-CP-40-04701

EXHIBIT G

(Email Thread from D. Patterson to J. Scarborough)

To: Joette Scarborough (Scarbor)[Scarborough.Joette@doc.sc.gov]; Stephanie Willis (Willis.Stephanie@doc.sc.gov]
From: Dennis Patterson (PatterD)
Sent: Wed 3/9/2016 9:24:16 PM
Importance: Normal
Subject: FW: Sentence Reform Act Meeting
Received: Wed 3/9/2016 9:24:16 PM
Sentence Reform Memo.doc

Read sections 37 and 38. Chris Florian gave no instructions about removing the 85% from the drug offenses.

Dennis R. Patterson, Sr,
Assistant Deputy Director
Office of the Deputy Director for Operations
South Carolina Department of Corrections
4444 Broad River Road
Columbia, SC 29210
Phone (803) 896-8540
Fax (803) 896-2811

From: Chris Florian
Sent: Tuesday, August 03, 2010 4:19 PM
To: 'Ben Aplin'
Cc: Dennis Patterson; David Tatarsky
Subject: Sentence Reform Act Meeting

Ben,

As a prelude to the meeting Dennis Patterson is setting up, I have listed below the sections of the 2010 Sentence Reform Act we would like to discuss. Since these sections have effects that overlap between PPP and SCDC, we are hoping to reach a consensus on their interpretation:

- Sections 37 and 38, which change the parole eligibility for certain drug offenses previously known as "no parole offenses"
- Section 48, which creates the reentry supervision program

Please feel free to add to this list any other sections which deserve some attention.

Also, as an FYI, I have attached a copy of an internal memo describing SCDC's current position on several issues raised by the Act.

Thanks,
Chris

ELECTRONICALLY FILED - 2021 Aug 18 12:05 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4005532

Memorandum

To: State Classification and Inmate Records
From: Chris Florian, SCDC Staff Attorney
Re: The Omnibus Crime Reduction and Sentencing Reform Act of 2010
Date: June 22, 2010

On June 2, 2010, the Governor signed into law the Omnibus Crime Reduction and Sentencing Reform Act of 2010. The Act makes several significant changes which affect the South Carolina Department of Corrections. This memorandum will address issues related to the calculation of sentences, work release eligibility, and other significant changes. Please note this memo is not an exhaustive list of the contents of the Act; the Act makes numerous changes in the law which are not discussed in this memo because those changes represent relatively straight-forward amendments, such as altering the mandatory minimum sentence for a particular crime.

This memo will be divided into sections mirroring the structure of the Act.

Sections 1 -5

These sections do not appear to require interpretation beyond the language of the statute.

Section 6

Section 6 of the Act creates a new Class C felony offense called assault and battery of a high and aggravated nature (ABHAN) to be codified at S.C. Code Ann. § 16-3-600(B). This is a new offense with a new penalty, and it should not be confused with the common law offense previously known as ABHAN. Section 6 also creates new offenses known as assault and battery in first, second, and third degree. This change is effective for offenses occurring after June 2, 2010.

Section 7

This section abolishes the common law offense formerly known as ABHAN. It also abolishes several other offenses. This change is effective for offenses occurring after June 2, 2010.

Sections 8-12

These sections do not appear to require interpretation beyond the language of the statute.

Section 13

Section 13 adds a new provision permitting an inmate's sentence to be reduced by the court if the inmate provided aid to an SCDC employee or volunteer who was in danger of

being seriously injured or killed. SCDC's role in such a proceeding is limited – the motion must be made by the circuit solicitor in the county where the defendant's case arose. The language of the statute does not prevent the State's motion from being based on conduct occurring before June 2, 2010. This provision is to be codified at S.C. Code Ann. § 17-25-65.

Sections 14-19

These sections do not appear to require interpretation beyond the language of the statute.

Section 20

Section 20 amends the language of S.C. Code Ann. § 17-25-45(D) to allow a person serving a life sentence without the possibility of parole to be eligible for work release if (1) the person is sentenced for voluntary manslaughter, kidnapping, carjacking, second-degree burglary, armed robbery, or attempted armed robbery; (2) the crime did not involve criminal sexual conduct or an additional violent crime; and (3) the inmate is within three years of release from imprisonment.

In my opinion, this provision will have no practical affect since an inmate serving a life sentence would never be within three years of release from imprisonment.

Sections 21-26

These sections do not appear to require interpretation beyond the language of the statute.

Sections 27-30

These sections amend the language of several statutes – including the offense statute for possession of a weapon during the commission of a violent crime (S.C. Code Ann. § 16-23-490) – to allow a person serving a sentence for a violent offense to be eligible for work release if (1) the person is sentenced for voluntary manslaughter, kidnapping, carjacking, second-degree burglary, armed robbery, or attempted armed robbery; (2) the crime did not involve criminal sexual conduct or an additional violent crime; and (3) the inmate is within three years of release from imprisonment. The inmate may be eligible even though the offense is a “no parole” offense.

Pursuant to these changes, inmates convicted of the listed offenses are no longer ineligible for work release simply because of their conviction for that offense. However, the inmate may still be deemed ineligible for work release for any other valid reason. S.C. Code Ann. § 24-3-20(B) (“When the director determines that the character and attitude of a prisoner reasonably indicates that he may be trusted, he may extend the limits of the place of confinement of the prisoner by authorizing him to work at paid employment. . . .”) (emphasis added).

Nothing in the language of the Act indicates this change should apply retroactively. Wiesart v. Stewart, 379 S.C. 300, 665 S.E.2d 187 (Ct. App. 2008) (“Generally, statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision in the enactment or clear legislative intent to the contrary.”). Therefore, it is my opinion this change should only be applied to offenses occurring after June 2, 2010.

Section 31

Section 31 creates a new provision in the Youthful Offender Act, S.C. Code Ann. § 24-19-10 requiring a three-year minimum sentence for youthful offenders serving a sentence for burglary, second degree.

Sections 32-36

These sections do not appear to require interpretation beyond the language of the statute.

Sections 37 and 38

Section 37 makes several changes to the structure of certain drug offenses. Affected offenses are now eligible for parole, supervised furlough, community supervision, and work release, despite the fact the some of the offenses affected are Class A, B, and C felonies. As with many other sections of the Act, because nothing in the language of this section indicates the change applies retroactively, this change should only be applied to offenses occurring after June 2, 2010.

As to the affected Class A, B, and C felonies, nothing in the text of these sections directly addresses the issue of whether inmates convicted of these offenses are still required to serve 85% of their sentences before early release, discharge, or community supervision. Consequently, reading Sections 37 and 38 in conjunction with S.C. Code Ann. § 24-13-150(A), inmates convicted of these offenses are apparently still required to serve 85% of their sentences before release, unless they are granted parole. Similarly, nothing in the text of the changes appears to affect the requirement for these offenses that inmates must have served 80% of their actual term of imprisonment before becoming eligible for work release.

Pursuant to these changes, inmates convicted of all listed offenses are no longer ineligible for work release simply because of their conviction for that offense. However, the inmate may still be deemed ineligible for work release for any other valid reason.

The following offenses are affected by this change:

<u>Offense</u>	<u>Statute</u>	<u>Current CDR Code</u>
Manufacturing/distribution narcotic, 1 st offense	§ 44-53-370(b)(1)	183
Manufacturing/distribution narcotic, 2 nd offense	§ 44-53-370(b)(1)	184

Manufacturing/distribution narcotic, 3 rd offense For 3rd offense, it applies only if prior offenses were for possession as defined in §§ 44-53-370(c) & (d) (CDR codes 176, 177, 178, 179, 180, 182, 659, 2921 3011, 3012, 3013).	§ 44-53-370(b)(1)	185
Manufacturing/distribution controlled sub., 1 st offense	§ 44-53-370(b)(2)	186
Manufacturing/distribution controlled sub., 2 nd offense	§ 44-53-370(b)(2)	187
Manufacturing/distribution controlled sub., 3 rd offense § 44-53-370(b)(2) For 3rd offense, it applies only if prior offenses were for possession as defined in §§ 44-53-370(c) & (d) (CDR codes 176, 177, 178, 179, 180, 182, 659, 2921 3011, 3012, 3013).	§ 44-53-370(b)(2)	188
Manufacturing/distribution schedule IV, 1 st offense	§ 44-53-370(b)(3)	189
Manufacturing/distribution schedule IV, 2 nd offense § 44-53-370(b)(3)	§ 44-53-370(b)(3)	190
Manufacturing/distribution schedule V, 1 st offense	§ 44-53-370(b)(4)	191
Manufacturing/distribution schedule V, 2 nd offense	§ 44-53-370(b)(4)	192
Possession narcotic, 1 st offense	§ 44-53-370(d)(1)	176
Possession narcotic, 2 nd offense	§ 44-53-370(d)(1)	177
Possession narcotic, 3 rd offense	§ 44-53-370(d)(1)	178
Possession controlled sub., 1 st offense	§ 44-53-370(d)(2)	179
Possession controlled sub., 2 nd offense	§ 44-53-370(d)(2)	180
Possession cocaine, 1 st offense	§ 44-53-370(d)(3)	3011
Possession cocaine, 2 nd offense	§ 44-53-370(d)(3)	3012
Possession cocaine, 3 rd offense	§ 44-53-370(d)(3)	3013
Possession controlled sub. 1 st offense	§ 44-53-370(d)(4)	
Possession controlled sub. 2 nd offense	§ 44-53-370(d)(4)	182
Possession < 1 gram cocaine 1 st offense	§ 44-53-375(A)	
Possession < 1 gram cocaine 2 nd offense	§ 44-53-375(A)	3017
Possession < 1 gram cocaine 3 rd offense	§ 44-53-375(A)	3016
PWID cocaine, 1 st offense	§ 44-53-370(B)	3198 3014
PWID cocaine, 2 nd offense	§ 44-53-370(B)	3199 3015
PWID cocaine, 3 rd offense For 3rd offense, it applies only if prior offenses	§ 44-53-370(B)	3200 3039

were for possession as defined in § 44-53-375(A) (CDR Codes 3016 and 3017.		
---	--	--

In addition to the offenses listed above, the statute contains provisions applicable to third offenses for certain crimes which only have statutory penalties for “second or subsequent offenses.” For these offenses, the Act nonetheless specifies that inmates convicted of a third or subsequent offense are eligible parole, supervised furlough, community supervision, and work release only if their prior offenses are among those specifically listed. The following chart shows these offenses and their special requirements:

<u>Offense</u>	<u>Statute</u>	<u>CDR Code</u>	<u>Only Eligible if All Priors Are</u>
Manufacturing/distribution schedule IV, 3 rd offense	§ 44-53-370(b)(3)	None	§§ 44-53-370(c) & (d) (CDR codes 176, 177, 178, 179, 180, 182, 659, 2921 3011, 3012, 3013)
Manufacturing/distribution schedule V, 3 rd offense	§ 44-53-370(b)(4)	None	§§ 44-53-370(c) & (d) (CDR codes 176, 177, 178, 179, 180, 182, 659, 2921 3011, 3012, 3013)

On these two offenses, further technical guidance is needed to determine whether it is possible to discern whether the offense is actually a third offense for inmates convicted of “second or subsequent offenses.”

Sections 39-47

These sections do not appear to require interpretation beyond the language of the statute.

Section 48

Section 48 creates a new “reentry supervision” program for inmates who: (1) are not subject to the community supervision program; (2) and have been incarcerated a minimum of two years. Re-entry supervision commences 180 days from SCDC’s projected release date. However, the period of reentry supervision is reduced by any term of probation following the inmate’s sentence. We are currently awaiting guidance from SCDPPPS on whether this section applies retroactively.

In light of references to the supervised furlough program elsewhere in the Sentencing Reform Act, this program apparently does not entirely displace the supervised furlough program already in place.

Sections 49-66

These sections do not appear to require interpretation beyond the language of the statute.

Questions

Any questions about the implementation of this memorandum or its application to a particular inmate may be directed to the Office of General Counsel at 896-8508.

Campbell v. S.C. Department of Corrections
C/A No.: 2020-CP-40-04701

EXHIBIT H

(April 2016 email)

To: Stephanie Givens (C055503)[Givens.Stephanie@doc.sc.gov]
Cc: Joette Scarborough (Scarbor)[Scarborough.Joette@doc.sc.gov]; Stephanie Willis (WilliSt)[Willis.Stephanie@doc.sc.gov]; Erin Ferencik (Stat01)[Ferencik.Erin@doc.sc.gov]; Deanne Williams (Roesner)[Williams.Deanne@doc.sc.gov]; Tom Osmer (C056394)[Osmer.Tom@doc.sc.gov]; Trevis Shealy (Trevis)[Shealy.Trevis@doc.sc.gov]; Joey Moss (Moss)[Moss.Joey@doc.sc.gov]
From: Charles Bradberry (C050581)
Sent: Fri 4/1/2016 12:01:25 PM
Importance: Normal
Subject: Inmates Released on March 21, 2016 As a Result of the Bolin Court Ruling
Received: Fri 4/1/2016 12:01:25 PM
[FINALv2.xlsx](#)

Stephanie,

The attached list of inmates is the same list I sent to you yesterday, except one inmate, Inmate #358468, was removed from the list. He is still incarcerated. The list contains 231 inmates, all of whom were released on March 21, 2016.

Charles Bradberry
Director of Research and Statistics
South Carolina Department of Corrections
4444 Broad River Rd., Columbia, SC 29210
(803) 896-3918

Campbell v. S.C. Department of Corrections
C/A No.: 2020-CP-40-04701

EXHIBIT I

(May 2016 email)

To: classification[classification@doc.sc.gov]; Annese Boyd (BoydAne)[Boyd.Annese@doc.sc.gov]; Barbara Reames (Reames)[Reames.Barbara@doc.sc.gov]; Brandon Byrd (C052232)[Byrd.Brandon@doc.sc.gov]; Brenda Scott-Hickmon (C017586)[Scott-Hickmon.Brenda@doc.sc.gov]; Claudia Bailey-Lumpkins (BaileyC)[Bailey-Lumpkins.Claudia@doc.sc.gov]; Cynthia York (YorkCyn)[York.Cynthia@doc.sc.gov]; Daniel Brasington (C022883)[Brasington.Daniel@doc.sc.gov]; Denise Bailey (WatDeni)[Bailey.Denise@doc.sc.gov]; Dianne Moore (MooreDi)[Moore.Dianne@doc.sc.gov]; Felicia Ogunsile (OgunFel)[Ogunsile.Felicia@doc.sc.gov]; Gregory Stinson (Stinson)[Stinson.Gregory@doc.sc.gov]; Heather Green (C040733)[Green.Heather@doc.sc.gov]; Howard Tucker (Howard)[Tucker.Howard@doc.sc.gov]; James Bethea (BetheaJ)[Bethea.James@doc.sc.gov]; Janice Lawter (LawterJ)[Lawter.Janice@doc.sc.gov]; Jerlean Nelson (NelsonJ)[Nelson.Jerlean@doc.sc.gov]; Jerry Haynes (HayneJe)[Haynes.Jerry@doc.sc.gov]; Jessica Jimenez (C051681)[Jimenez.Jessica@doc.sc.gov]; Kanita Harley (C043713)[harley.kanita@doc.sc.gov]; Karen Fowler (FowleKa)[Fowler.Karen@doc.sc.gov]; Katrina King(King.Katrina@doc.sc.gov); Keisha Fogle (FogleK)[Fogle.Keisha@doc.sc.gov]; Lynn Quarles (C025422)[Quarles.Lynn@doc.sc.gov]; Mamie Greene (C028602)[Greene.Mamie@doc.sc.gov]; Minnie Macon (C004909)[Macon.Minnie@doc.sc.gov]; Peggi McNair (C051015)[McNair.Peggi@doc.sc.gov]; Pia Friday (C040069)[Friday.Pia@doc.sc.gov]; Rosa Hilton (HiltonR)[Hilton.Rosa@doc.sc.gov]; Stacey Richardson (RichardS)[Richardson.Stacey@doc.sc.gov]; Stewart Golden (GoldenS)[Golden.Stewart@doc.sc.gov]; Tonja Alexander (C025944)[Alexander.Tonja@doc.sc.gov]; Valerie Whitaker (C001977)[Whitaker.Valerie@doc.sc.gov]; Valorie Smith (C016450)[Smith.Valorie@doc.sc.gov]; Wanda Pugh (HamWand)[Pugh.Wanda@doc.sc.gov]

Cc: Sandra Best (C006448)[Best.Sandra@doc.sc.gov]; Classification Branch Chiefs[ClassificationBranchChiefs@doc.sc.gov]; Central Classification Office[CentralClassificationOffice@doc.sc.gov]; Kennard Dubose (C053012)[Dubose.Kennard@doc.sc.gov]; Rebekah Crider (Coreyre)[Crider.Rebekah@doc.sc.gov]; Portia Quiller (Quiller)[Quiller.Portia@doc.sc.gov]; Alice Mascio (Mascio)[Mascio.Alice@doc.sc.gov]; Tessie Smith (SmithTe)[Smith.Tessie@doc.sc.gov]; Donikia Gray (C050268)[Gray.Donikia@doc.sc.gov]; Sharon Gaddist (C051085)[Gaddist.Sharon@doc.sc.gov]

From: Joette Scarborough (Scarbor)

Sent: Mon 5/2/2016 5:52:03 PM

Importance: Normal

Subject: ADDITIONAL RELEASE: Court of Appeal ruling in Bolin and Fowler cases

Received: Mon 5/2/2016 5:52:04 PM

[DateChangesByInstThruJune30.pdf](#)

[DateChangesByInst.pdf](#)

The South Carolina Department of Probation, Parole and Pardon Services and the SCDC General counsel's office have made a decision to treat inmates sentenced to drug offenses under the Bolin/Fowler ruling with offense dates prior to the act (June 2, 2010) as retroactive.

- ✓ This means that all inmates sentenced to one of the affected drug offenses, regardless of their offense dates are affected.
- ✓ The ruling now applies to inmates sentences to applicable drug offenses regardless of the date sentenced
- ✓ We have an additional **310** inmates impacted by this recent ruling with past maxout/SRP dates.
- ✓ These inmates will be released on June 1, 2016.
- ✓ There are also an additional **200** inmates with parole/maxout/SRP date changes affected by the ruling.
 - These inmates must be informed of their new release eligibility dates.
- ✓ All Bolin related cases will now have a parole hearing date.

BACKGROUND OF CASE:

- The Omnibus Crime Reduction and Sentence Reform Act of 2010 (2010 Crime Bill) signed into law on June 2, 2010 made certain drug offenses that were previously 85% non-parolable, parolable.
- When these offenses were made parolable the SCDC awarded the inmates EWC/EEC and goodtime credits at the parolable rate (20 day goodtime a month and up to 15 days credit a month) and allowed the inmate to receive yearly parole consideration but the SCDC still required

the inmate to serve 85% of his sentence.

- Inmate Bolin filed a grievance alleging that his sentence should not be 85%. He contend that the 85% requirement did not apply to him because his crime was no longer considered non-parolable by virtue of the 2010 Crime Bill
 - The case went to step 2 grievance and was denied. The inmate appealed to the Administrative Law Court (ALC). The ALC upheld SCDC determination that inmate must serve 85% of his sentence before he is eligible for release
 - The case was then referred to the Court of Appeals. In November 2015, the Court of Appeals reversed the ALC ruling.
 - SCDC filed a petition for rehearing in the case challenging the court's opinion but the petition was denied.
 - On February 24, 2016, the Court of Appeal filed an opinion in the Bolin case. Although the petition was denied, the new opinion corrected some of the factual inaccuracies but reached the same conclusion as did the November opinion.
 - The Bolin and Fowler case basically held that inmates sentenced to specific parolable drug offenses as outlined in the 2010 Crime Bill should get credits at the same rate as any parolable inmate and should not have to serve a mandatory 85%
 - In addition to parole eligibility, these inmates are also eligible for supervised re-entry and work release.
 - This ruling has affected a number of inmates in SCDC and will require some immediate releases. June 1, 2016 has been set as the release date for inmates with past-max dates
- ✓ The Classification staff will be required to meet with each affected inmate and inform the inmate of the date change.
- ✓ Bus riders and private transports will be released on June 2, 2016



Joette D. Scarborough

**Division Director
Classification and Inmate Records
South Carolina Department of Corrections
(803) 896-8551**

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2020-CP-40-05532

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

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No.: 2020-CP-40-04701

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No. 2020-CP-40-05660

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

Henry Belton, Plaintiff, v. South Carolina Department of Corrections, Defendant.	C.A. No. 2017-CP-40-00556 MEMORANDUM OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS IN RESPONSE TO PLAINTIFFS’ SECOND AMENDED MOTION FOR CLASS CERTIFICATION
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Plaintiffs in this action have filed a Motion for Class Certification, which in its amended form is styled “Second Amended Motion for Class Certification.” In their Memorandum in Support of their motion, filed May 18, 2021, Plaintiffs devote the majority of their space to arguing the merits of the case, ignoring the Supreme Court’s holding that “[a] court may not look to the merits when determining whether to certify a class.” *Tilley v. Pacesetter Corp.*, 333 S.C. 33, 43, 508 S.E.2d 16, 21 (1998).

Because Plaintiffs have made argument on the merits, however, it is appropriate to note that U.S. Magistrate Judge Kevin F. McDonald, in a Report and Recommendation in this case while it was in federal court, recommended that summary judgment be granted for SCDC with regard to Plaintiff Campbell’s state law claims. *Campbell v. S.C. Dep’t of Corr.*, No. 6:16-CV-3265-MGL-KFM, 2018 WL 7820956 (D.S.C. Oct. 1, 2018). Magistrate Judge McDonald noted (*id.* at 11) that Plaintiff Campbell was never unlawfully restrained, because he was released before April 1, 2016, the date of the remittitur in *Bolin v. S.C. Dept. of Corr.*, 781 S.E.2d 914, 916 (S.C. Ct. App. 2016), reh’g denied (Feb. 24, 2016), and before the time to petition for certiorari had expired. Magistrate Judge McDonald also agreed with SCDC that Campbell’s claim would in any event be barred by the immunities afforded by the South Carolina Tort Claims Act. *Id.* *11-*12.

Those recommendations were not acted on by the district judge in the federal case. Instead, the district court issued a Text Order (attached) dismissing, without prejudice, SCDC's Motion for Summary Judgment, pending the outcome of motions regarding the federal claims, which were ultimately dismissed in their entirety. Plaintiffs abandoned one or more federal claims in the district court, and the Fourth Circuit ordered that the remaining federal claims be dismissed. *Campbell v. Florian*, 972 F.3d 385, 398 (4th Cir. 2020), as amended (Aug. 28, 2020). Specifically, the Fourth Circuit held that the two SCDC individual Defendants, Florian and Tatarsky, did not act unreasonably (Florian) or with deliberate indifference (Tatarsky)--although Plaintiffs persist in arguing otherwise in this Court. With the Fourth Circuit's decision, all federal claims were dismissed, and the state law claims were remanded to this Court.

SCDC intends to file a Motion for Summary Judgment in this Court, in which SCDC will contend that this action should be dismissed for the reasons set forth in the Report and Recommendation, and also, to the extent applicable, for the reasons set forth in the Fourth Circuit's decision.

With regard to the class certification motion itself, SCDC believes that while the case will ultimately prove to be unmeritorious, the following requisites for class certification have been met:

1. The proposed Class includes 419 inmates, which meets the numerosity requirement.
2. To some extent, common legal and factual issues make class treatment preferable.

However, SCDC disagrees with Plaintiffs' assertion (Memo in Support at 19-20) that if liability were found to exist, damages should be awarded in a uniform or *per diem* manner. Plaintiffs' Memorandum is conspicuously devoid of authority on this point. In fact, the general rule is that "The recovery of damages in actions for false

imprisonment is governed by the usual rules relating to damages in civil actions.”

35 C.J.S. False Imprisonment § 84. Nothing in South Carolina law indicates otherwise. At this point, SCDC would therefore ask that the Court hold in abeyance the issue of whether damages can or should be addressed on a uniform class-wide basis, and instead make that determination only if liability is decided in Plaintiffs’ favor.

3. To some extent, Plaintiffs’ claims are typical of the proposed class. SCDC would point out that the claims of some putative class members might be barred by the statute of limitations. In addition, the claims of some putative class members may stand or fall on the issue of the date of their release. SCDC suggests that issues of this kind need not bar class certification, but may eventually require the establishment of subclasses if any liability is found to exist at all, which SCDC denies.
4. Plaintiffs will fairly and adequately represent the Class. SCDC has no reason to dispute this point.
5. It is likely that each class member’s damages will exceed \$100.

CONCLUSION

For the foregoing reasons, 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.

Respectfully submitted,

DAVIDSON, WREN & PLYLER P.A.

s/Kenneth P. Woodington

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August 19, 2021

From: SCDEfilingstat@scd.uscourts.gov
To: scd_ecf_nef@scd.uscourts.gov
Subject: Activity in Case 6:16-cv-03265-MGL Campbell v. South Carolina Department of Corrections et al Order
Date: Thursday, March 21, 2019 3:06:45 PM

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U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 3/21/2019 at 3:05 PM EDT and filed on 3/21/2019

Case Name: Campbell v. South Carolina Department of Corrections et al

Case Number: [6:16-cv-03265-MGL](#)

Filer:

Document Number: 95(No document attached)

Docket Text:

TEXT ORDER: Pending a final determination on Defendants Florian and Tatarsky's qualified immunity claim and the effect of the ALC's interpretation of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 on Plaintiff Campbells (Campbell) claims, Campbell's motion for summary judgment on his false imprisonment claim [68] is **DISMISSED WITHOUT PREJUDICE** with leave to refile, Campbell's motion to certify [66] is **DISMISSED WITHOUT PREJUDICE** with leave to refile, and Defendant SCDC and Stirling motion to stay consideration of Campbells motion to certify [74] is **RENDERED AS MOOT**. Campbell has indicated he does not oppose dismissal of his constitutional claims against Defendant Stirling. Accordingly, SCDC and Stirling's motion for summary judgment [67] is **GRANTED** as to Campbell's constitutional claims against Stirling and **DISMISSED WITHOUT PREJUDICE** with leave to refile as to his state claims against SCDC. **IT IS SO ORDERED**. Signed by Honorable Mary Geiger Lewis on 3/21/2019. (gpre,)

6:16-cv-03265-MGL Notice has been electronically mailed to:

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6:16-cv-03265-MGL Notice will not be electronically mailed to:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2020-CP-40-05532

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

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No.: 2020-CP-40-04701

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No. 2020-CP-40-05660

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

Henry Belton,

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

C.A. No. 2017-CP-40-00556

**CORRECTED MOTION FOR SUMMARY JUDGMENT
(SOUTH CAROLINA DEPARTMENT OF CORRECTIONS)**

The South Carolina Department of Corrections (SCDC), the sole remaining Defendant in these consolidated actions, hereby moves for summary judgment on the ground that there is no genuine issue as to any material fact and that SCDC is entitled to judgment as a matter of law.

More specifically, the grounds for this motion are as follows:

1. No Plaintiff was at any time unlawfully restrained by SCDC.
2. All of Plaintiffs' claims are barred by certain provisions of the South Carolina Tort Claims Act, as set forth more specifically in the Memorandum in Support filed herewith.
3. The gross negligence standard for which Plaintiffs contend does not apply factually or legally to this case.

This motion is based upon the pleadings filed in this case, the supporting memorandum, with exhibits filed herewith, previous filings in the record of this case of which the Court may take notice, the rules of court; and any other matters as may be allowed by the Court.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT SCDC

COLUMBIA, SOUTH CAROLINA

August 9, 2023

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2020-CP-40-05532

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

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No.: 2020-CP-40-04701

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No. 2020-CP-40-05660

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

Henry Belton,

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

C.A. No. 2017-CP-40-00556

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
(SOUTH CAROLINA DEPARTMENT OF CORRECTIONS)**

The South Carolina Department of Corrections, the sole remaining Defendant in these consolidated actions, submits this Memorandum in Support of its Motion for Summary Judgment, filed this date.

1. Summary of Procedural History.

Plaintiff Marion Campbell filed the lead case in this consolidated class action on August 17, 2016 in the Charleston County Court of Common Pleas, joining individual and class claims against SCDC and its director. The action was removed to federal court. Campbell then filed an amended complaint adding federal claims for deliberate indifference against SCDC lawyers Chris Florian and David Tatarsky. In 2020 the Fourth Circuit (reversing a district court order to the contrary) dismissed Florian and Tatarsky on the ground that they had qualified immunity. *Campbell v. Florian*, 972 F.3d 385 (4th Cir. 2020). This left only the state law claims against SCDC. The U.S. District Court declined to exercise supplemental jurisdiction over those state law claims against SCDC, and the case was remanded to the South Carolina circuit court.

On November 23, 2020, the Honorable Jennifer B. McCoy, Circuit Court Judge, transferred the *Campbell* action from Charleston County to the Richland County Court of Common Pleas by agreement of the parties. The other above-named Plaintiffs either filed actions in Richland County or had them transferred here. On March 16, 2021, the Honorable L. Casey Manning, Chief Administrative Judge for the Fifth Judicial Circuit consolidated those actions, designated the matter complex, and assigned it to the Honorable Jocelyn Newman.

All of the various Complaints have alleged two state law causes of action: (1) false imprisonment and (2) common law liability for alleged gross negligence and recklessness. SCDC answered, generally denying the allegations of the Complaints and alleging (among other things), various immunities under the Tort Claim Act.

Thereafter, Plaintiffs moved for class certification, appointment of class counsel, and for entry of a class notice plan. The Court granted the motion in part by Order dated November 19, 2019.

Plaintiffs' counsel then worked with SCDC to establish a list containing the names of approximately 420 putative class members. Plaintiffs' counsel filed status reports with the Court, describing their efforts to notify the class members.

On June 3, 2023, the Court held a status conference. The Court and the parties agreed to a motion and briefing schedule, and the present motion is filed on the agreed-upon due date, as slightly modified thereafter. Response briefs are currently due to be filed on or before September 12.

2. Statutory framework.

(NOTE: The following summary of the facts and the governing statutes is taken largely from the Fourth Circuit’s opinion in *Campbell v. Florian*, 972 F.3d 385, 389 (4th Cir. 2020), the appeal involving Plaintiff Campbell’s federal claims against individual SCDC Defendants Florian and Tatarsky.)

In South Carolina, the imposition of, for example, a seven-year sentence does not necessarily mean that the convicted person will remain behind bars for seven years. As relevant here, South Carolina inmates may be entitled to apply work credits and good-time credits to the balance of their sentence. For every two days that an inmate works on a “productive duty assignment,” he may receive a day's credit. § 24-13-230(A). And prisoners who “faithfully observed all the rules of the institution where [they are confined],” are granted good-time credits “at the rate of twenty days for each month served.” § 24-13-210(A).

Although these credits may cut the time a prisoner spends behind bars, they do not apply to all South Carolina inmates without restriction. The South Carolina legislature has classified certain offenses as “no parole offenses.” S.C. Code § 24-13-100. In effect, and as applied here, this is a shorthand term for offenses in which the persons convicted of these offenses must serve at least eighty-five percent of their sentence as imposed before they are eligible for any kind of early release, whether through parole or otherwise. § 24-13-150(A) (“Notwithstanding any other provision of law ... an inmate convicted of a ‘no parole offense’ ... is not eligible for early release, discharge, or community supervision ... until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed.”); *see also* §§ 24-13-210(B), -230(B). As a result, an inmate's work and good-conduct credits do not kick in for “no parole offenders” until they have

served eighty-five percent of their sentence. In South Carolina, this is known as the “eighty-five-percent rule.”

These cases arise from the SCDC's application of the “no parole offense” label to Plaintiffs’ convictions. The named Plaintiffs were all convicted of offenses under §§ 44-53-370, -375(A) & (B). On June 2, 2010, the Omnibus Crime Reduction and Sentencing Reform Act of 2010 (“Omnibus Act”) took effect, and Sections 37 and 38 of the Omnibus Act appended the following paragraph to §§ 44-53-370, -375(A) & (B):

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.

While the Omnibus Act amended those three statutes defining offenses, it did not amend § 24-13-100, which controlled “no parole offense” classifications. Nor did the Omnibus Act amend § 24-13-150(A), which enumerates the consequences of the no-parole-offense designation. This created an arguable contradiction in South Carolina law: The Omnibus Act suggests that certain inmates were “eligible for parole ... work credits, education credits, and good conduct credits.” §§ 44-53-370, -375(A) & (B). But those three statutes still fell within § 24-13-100’s classification of “no parole offenses,” and so the eighty-five percent rule still precluded Campbell, for example, from gaining early release based on those credits. Compounding the confusion, both § 24-13-150(A) and §§ 44-53-370, -375(A) & (B) claimed to apply “notwithstanding any other provision of law.”

To fulfill its responsibilities—including determining parole eligibility and calculating release dates based on earned credits—the SCDC needed to sort through the new law in all its contradictions. The task fell to Chris Florian, the SCDC's deputy general counsel. Florian pored over the South Carolina caselaw on statutory interpretation and legislative intent. And based on

his review, he concluded that South Carolina law required the SCDC to adopt a legal interpretation that harmonized potentially contradictory provisions of a statute, if possible. *See, e.g., Justice v. Pantry*, 330 S.C. 37, 496 S.E.2d 871, 874 (Ct. App. 1998) (citing *State v. Hood*, 181 S.C. 488, 188 S.E. 134, 136 (1936)). Applying this principle, Florian drafted a memorandum in June 2010 (shortly after the effective date of the amendments), describing how he believed the Omnibus Act should be interpreted. Exhibit 1, attached.

In his memo, Florian proceeded through the Omnibus Act section by section, and he summarized the changes that each section made. As for Sections 37 and 38 (amending S.C. Code § 44-53-375(B)), Florian concluded that an inmate convicted under § 44-53-375(B) was now eligible for parole. But if the inmate was not granted parole, the no-parole-offense restrictions—including the eighty-five-percent rule—would then apply:

Section 37 makes several changes to the structure of certain drug offenses. Affected offenses are now eligible for parole, supervised furlough, community supervision, and work release, despite the fact the some of the offenses affected are [classified as serious] felonies. As with many other sections of the Act, because nothing in the language of this section indicates the change applies retroactively, this change should only be applied to offenses occurring after June 2, 2010.

. . . [N]othing in the text of these sections directly addresses the issue of whether inmates convicted of these offenses are still required to serve 85% of their sentences before early release, discharge, or community supervision. Consequently, reading Sections 37 and 38 in conjunction with S.C. Code Ann. § 24-13-150(A), [the “no parole offenses” section,] inmates convicted of these offenses are apparently still required to serve 85% of their sentences before release, unless they are granted parole. ...

Ex. 1, p. 3.

This interpretation, Florian believed, resolved the Omnibus Act's contradictions: By statutorily designating § 44-53-375(B) a “no parole offense,” yet otherwise permitting “eligibility”

for parole, the Omnibus Act gave the SCDC the discretion to parole certain inmates. But the Act did not remove the otherwise applicable general restrictions placed on a “no parole offense.”

David Tatarsky, the SCDC’s general counsel and Florian’s boss, read the Florian Memo, familiarized himself with its contents, and approved it. The Florian Memo was then passed around the department and used to evaluate prisoners’ eligibility for parole, credits, and release.

Several years after the SCDC adopted the Florian Memo, an inmate named Michael Bolin, who was convicted in May 2012, challenged the department’s interpretation of the Omnibus Act. Like Campbell and others, Bolin had been sentenced under § 44-53-375(B)(2). This offense, he claimed, was no longer subject to the eighty-five-percent rule and its consequences following the Omnibus Act amendments. Once he exhausted his options within the SCDC, Bolin marshalled his arguments before the South Carolina Administrative Law Court. The Administrative Law Court endorsed Florian’s interpretation of the Omnibus Act and dismissed Bolin’s case. *Bolin v. South Carolina Dep’t of Corrections*, No. 13-ALJ-04-0534-AP (S.C. Admin. Law Ct. Feb. 24, 2014). Exhibit 2, attached.

Bolin then challenged the Administrative Law Court’s decision in the South Carolina Court of Appeals. Siding with Bolin, the appeals court held that an offense under § 44-53-375(B) is no longer a “no-parole offense.” *Bolin v. South Carolina Dep’t of Corrections*, 415 S.C. 276, 781 S.E.2d 914, 916–17 (Ct. App. 2016). The court acknowledged that the no-parole-offense designation in § 24-13-100 might be considered more specific than the amendment to § 44-53-375(B). *See id.* at 917; *cf. Varsity Corp. v. Howe*, 516 U.S. 489, 511 (1996) (“[T]he specific governs the general.”). But the appeals court reasoned that the words, “notwithstanding any other provision of law,” in § 44-53-375(B) expressed the “intent to repeal” any other provision, to the extent it conflicts. *Bolin*, 781 S.E.2d at 917. And the court believed that the Omnibus Act’s amendments to

§ 44-53-375(B) would be “meaningless” if they did not “implicit[ly] repeal” the no-parole-offense designation in § 24-13-100. *Id.* at 917. Combined with the general intent to “conserve taxpayer dollars by allowing earlier release dates,” the appeals court's analysis demanded Bolin's interpretation. *Id.* at 918.

3. SCDC's actions after the Court of Appeals decision in the *Bolin* case.

The Court of Appeals issued its initial decision in *Bolin* on November 12, 2015. Following a petition for rehearing filed by SCDC, the Court of Appeals issued a corrected opinion on February 24, 2016. The remittitur in *Bolin* was issued on April 1, 2016. Exhibit 3. At some point before then, SCDC had already elected not to file a petition for certiorari with the Supreme Court of South Carolina in *Bolin*. Exhibit 4, Tatarsky Deposition, 52:10-20. Accordingly, on March 21, 2016, before the 30-day time period to petition to the Supreme Court had expired, SCDC released approximately 190 inmates, including most of the named Plaintiffs in this case, who, like Bolin, were sentenced after June 2, 2010, the effective date of the statutory amendment. This meant that those 190 inmates were released several days before *Bolin* became final. That release included all inmates whose sentencing situations were similar to those of inmate Bolin and who were sentenced after June 2, 2010, the effective date of the statutory amendments.

After the remittitur in *Bolin* was issued on April 1, 2016, SCDC and the Department of Probation, Parole & Pardon Services began to consider whether to release those inmates whose sentences were ordered prior to the June 2, 2010 effective date of the statutory amendments, despite the longstanding rule that “the common law requires that a convicted criminal receive the punishment in effect at the time he is sentenced” *State v. Varner*, 310 S.C. 264, 265, 423 S.E.2d 133, 133–34 (1992). The Florian Memorandum had concluded on June 22, 2010, some years earlier, that

As with many other sections of the Act, because nothing in the language of this section indicates the change applies retroactively, this change should only be applied to offenses occurring after June 2, 2010.

Exhibit 1 at 3.

Those two agencies decided, however, that they would release the inmates sentenced prior to June 2, 2010 as well. Exhibit 4, Tatarsky Deposition, 66:8 through 67:14. As a result, approximately 230 additional inmates were released on or about June 1, 2016. Between those two sets of releases, along with a small number of individualized exceptions, all inmates whose offences carried sentences described in *Bolin* were released, regardless of whether the sentences were imposed before or after June 2, 2010.¹

SUMMARY OF ARGUMENT

Plaintiffs' false imprisonment claim is barred because no members of the plaintiff class were restrained unlawfully. *See, e.g., Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 456 S.E.2d 429, 432 (S.C. Ct. App. 1995)(unlawful restraint is one of the elements of a false imprisonment claim). For those inmates released prior to the effective date of *Bolin*, SCDC's actions were in conformity with the interpretation of the statute in effect since its enactment and that had been confirmed and declared by the Administrative Law Court. The group of inmates released after *Bolin* became effective had no legal right to be given the benefit of changes in sentencing laws that occurred after they were sentenced. *State v. Varner, supra*. Accordingly, neither group was unlawfully restrained.

¹ Plaintiffs' counsel have created a spreadsheet containing information concerning the approximately 420 to 425 persons whom they claim are class members. It appears that the second column, entitled "List," was intended to categorize the inmates released on March 21, 2016, as "66-10" inmates, while those released on June 1, 2016 are listed as "66-9" inmates. Presumably, Plaintiffs' counsel will attach this list to their Motion for Summary Judgment. If not, SCDC will provide a version of the list that shows release dates in SCDC's response to Plaintiffs' filing.

Plaintiffs' claims of gross negligence are barred because the gross negligence standard does not apply to actions of the kind taken by SCDC. And even if that standard did apply, no negligence was present at all, much less gross negligence.

Finally, even if Plaintiffs could somehow show that they were unlawfully restrained, which SCDC emphatically denied, Plaintiffs' claims are equally barred by several different provisions of the Tort Claims Act.

PREVIOUS RULINGS IN THIS AND OTHER SIMILAR CASES

The current motions are not the first time Plaintiffs' claims have been considered by a court. When Plaintiff Campbell's case was still in federal court in 2018, all parties in that case, including SCDC, filed motions for summary judgment. As pertinent here, U.S. Magistrate Judge Kevin F. McDonald issued a Report and Recommendation ("McDonald R&R") in 2018, recommending that Plaintiffs' state law claims against SCDC should be dismissed in their entirety.² *Campbell v. S.C. Dep't of Corr.*, No. 6:16-CV-3265-MGL-KFM, 2018 WL 7820956 (D.S.C. Oct. 1, 2018), report and recommendation rejected on other grounds, No. CV 6:16-3265-MGL-KFM, 2019 WL 1297005 (D.S.C. Mar. 21, 2019), *rev.d sub nom. Campbell v. Florian*, 972 F.3d 385 (4th Cir. 2020), as amended (Aug. 28, 2020).

A copy of the McDonald R&R is attached as Exhibit 5.

As set forth in more detail below, the McDonald R&R concluded that Plaintiff Campbell, who was sentenced after the 2010 amendments were enacted, was never unlawfully restrained, Ex. 5 at 21-22, and that even if unlawful restraint had been present, Plaintiff's state tort claims against SCDC were barred by the immunities afforded by the Tort Claims Act. *Id.* at 22-24. In so

² Plaintiff Campbell filed the action on behalf of a putative class, but class certification was not acted on.

recommending, the McDonald R&R cited four different exceptions to the waiver of sovereign immunity, any one of which is sufficient to require the dismissal of this action.³

As matters turned out, District Judge Mary G. Lewis did not rule either way on the parts of the McDonald R&R that recommended dismissal of the state law claims against SCDC. She denied summary judgment to the SCDC individual Defendants Florian and Tatarsky, who successfully appealed to the Fourth Circuit. As already noted, the Fourth Circuit reversed, and ordered those two Defendants dismissed. Once the Fourth Circuit ordered the dismissal of the federal claims against the individuals, Judge Lewis declined to exercise supplemental jurisdiction over state law claims against SCDC, and remanded the Campbell case to this Court.

Other South Carolina cases have also held that the South Carolina Tort Claims Act precludes state law claims against SCDC for alleged overdetention. *See, e.g., Kifayatuthelezi v. S.C. Dep't of Corr.*, No. 817CV03139TLWJDA, 2019 WL 4675355, at *7 (D.S.C. Mar. 4, 2019), report and recommendation adopted, No. 817CV03139TLWJDA, 2019 WL 4671159 (D.S.C. Sept. 25, 2019), *aff'd*, 805 F. App'x 229 (4th Cir. 2020), cert. denied, 141 S.Ct. 1062 (2021). There, as here, the plaintiff asserted claims of false imprisonment and gross negligence, contending that he should have been released earlier than he was. 2019 WL 4675355, at *4. The Report and Recommendation in that case concluded that the basis for Plaintiff's state-law claims was SCDC's "implementation and enforcement of the order imposing Plaintiff's sentence," and that as such, those claims were barred by § 15-78-60(3), which bars liability arising from the "execution, enforcement, or implementation of the orders of any court." 2019 WL 4675355 at *7. The District Court adopted that recommendation of the Magistrate Judge. Plaintiff appealed to the Fourth

³ The federal case did not involve any inmates who were sentenced prior to the 2010 statutory amendments.

Circuit, which affirmed the dismissal of the case, and the U.S. Supreme Court denied the plaintiff's Petition for Certiorari. While this federal case is not binding on this Court, it, like the McDonald R&R, is highly persuasive. It is unlikely that Plaintiffs will be able to distinguish it from the present case in any way.

Finally, *Jackson v. S.C. Dep't of Corr.*, No. CV 3:14-2262-MGL-SVH, 2016 WL 403588, at *2 (D.S.C. Jan. 12, 2016), report and recommendation adopted, No. CV 3:14-02262-MGL, 2016 WL 374826 (D.S.C. Feb. 1, 2016), is another South Carolina case to the same effect. Like the McDonald R&R, in which *Jackson* is cited, *Jackson* also held that S. C. Code Ann. § 15–78–60(3) bars false imprisonment claim against SCDC for overdetention.

ARGUMENT

1. **None of the members of the plaintiff class were unlawfully restrained.**

As indicated above, there are two distinct groups of inmates in the plaintiff class. The group sentenced after the 2010 amendments took place, herein the “post-2010 amendment inmates,” were all released in March 2016, before *Bolin* became final. The other group, the “pre-2010 amendment inmates,” were all released on June 1, 2016, after *Bolin* became final, but none of them were legally entitled to the benefit of the 2010 amendments.

a. **Post-2010 amendment inmates (sentenced after 2010 amendments, released March 21, 2016).**

This group of plaintiffs was released from incarceration on March 21, 2016, some days prior to April 1, 2016, the effective date of the Court of Appeals decision in *Bolin, supra*, SCDC could, in good faith, have asked the Supreme Court of South Carolina to reverse the Court of Appeals, citing the reasons set forth in the ALC opinion, *Bolin v. South Carolina Department of Corrections*, Opinion No. 13-ALJ-04-0534-AP (S.C. Admin. Law Ct., 2/24/2014). Had SCDC elected to file a petition for certiorari in the *Bolin* case, the effective date of the Court of Appeals’

decision would have been pushed back a number of months beyond April 1, 2016, even if the Supreme Court of South Carolina had denied certiorari. This group of inmates therefore has nothing to complain about, because if SCDC had sought certiorari, they could have validly been held for at least as long as it would have taken the Supreme Court to decide SCDC's petition. Instead, SCDC declined to seek certiorari, and these inmates were released before April 1, 2016, the date of the issuance of the remittitur in *Bolin* and therefore the effective date of the Court of Appeals decision in that case. It is the issuance of the remittitur, and not the issuance of the opinion of the appellate court, that constitutes the final disposition of a case. *See, e.g., McDowell v. S.C. Dep't of Soc. Servs.*, 300 S.C. 24, 26, 386 S.E.2d 280, 281 (Ct. App. 1989), cited in the McDonald R&R, Exhibit 5 at 17.

The McDonald R&R was therefore correct in concluding that the continued restraint of Campbell (and by implication, others also) until the date of the remittitur was lawful. Ex. 5 at 22. Indeed, the Magistrate held that "If the SCDC had released the plaintiff and others while the ALC decision was in effect, such an action would have been in contravention of the statute as interpreted by the ALC and arguably would have been a reckless act on the part of the SCDC." *Id.* at 21 (emphasis added).

As the McDonald R&R held in the present case in the context of qualified immunity,

the plaintiff has not identified any court decision in existence at the time defendant Florian authored his memorandum of June 22, 2010, that would have put him or defendant Tatarsky on notice that their analysis of the effects of the Act were incorrect, let alone that their "conduct was unlawful." This is because no such notice existed prior to the Court of Appeals' decision in *Bolin*.

* * *

[T]here was no controlling precedent to guide defendants Tatarsky and Florian as the analysis of the issue was performed in 2010. Moreover, the decision of the ALC indicated that the defendants had interpreted the Act correctly. It was not until the *Bolin* decision was issued by the Court of

Appeals five years later that the defendants' interpretation of the Act was found to be incorrect.

ECF No. 86 at 13, 16 (emphasis added).

For all of these reasons, the release of this class of inmates prior to *Bolin*'s taking effect means that there was no unlawful restraint of any of these inmates. Their false imprisonment claim therefore fails.

b. Pre-2010 amendment inmates (sentenced before 2010 amendments, released June 1, 2016).

This issue arises in the present consolidated cases for the first time, because the *Campbell* case did not involve inmates who had been sentenced prior to the enactment of the 2010 amendments.

The law has been settled for centuries that “In the absence of a controlling statute, the common law requires that a convicted criminal receive the punishment in effect at the time he is sentenced, unless it is greater than the punishment provided for when the offense was committed.” *State v. Varner*, 310 S.C. 264, 265, 423 S.E.2d 133, 133–34 (1992) (emphasis added) (citing cases as old as *State v. Addington*, 18 S.C.L. (2 Bail.) 516 (1831). Continuing, *Varner* held that

The correct penalty is the one in effect at the time of sentencing, even if the penalty is repealed while appeal is pending. *State v. Hamblin*, 4 S.C. (4 Rich.) 1, 3 (1872). Thus, a criminal defendant receives the benefit of punishment mitigated by legislative amendment only when the amendment becomes effective before sentence is pronounced. See *Addington*, 18 S.C.L. (2 Bail.) at 518.

310 S.C. at 265, 423 S.E.2d at 134.⁴

⁴ As an aside, it can be pointed out that federal caselaw has long been to the same effect. See, e.g., *Dorsey v. United States*, 567 U.S. 260, 272 (2012) (“Case law also makes clear that penalties are ‘incurred’ under the older statute when an offender becomes subject to them, i.e., commits the underlying conduct that makes the offender liable,” citing *United States v. Reisinger*, 128 U.S. 398, 401 (1888).

Plaintiffs have so far not offered any argument that overrides this principle. Nor is it likely that Plaintiffs will be able to cite any relevant authority that would support such a claim. The inmates released on June 1, 2016 therefore cannot complain, because far from being released too late, they were apparently released earlier than strictly required by the law.

3. The claims of all class members are barred by several different provisions of the Tort Claims Act.

The McDonald R&R agreed with SCDC that “even if the plaintiff can show that he was unlawfully restrained, . . . the plaintiff’s state law causes of action against it are barred by the immunities afforded by the South Carolina Tort Claims Act.” Exhibit 5 at 22. The R&R then briefly discussed the reasons why several different provisions of the Tort Claims Act, or any one of them, sufficed to bar Plaintiffs’ claims completely.

a. Section 15-78-60(3)(precluding liability arising from the “execution, enforcement, or implementation of the orders of any court”).

As the Magistrate Judge concluded, “implementing or enforcing the sentence pronounced by a court implicates this subsection.” Exhibit 5 at 22, citing ECF No. 67-2, Florian Dep. 129 (part of SCDC’s role is to “implement the sentences handed down by the judiciary”)(attached as Exhibit 6) and *Jackson v. S.C. Dep’t of Corr.*, C.A. No. 3:14-2262-MGL-SVH, 2016 WL 403588, at *2 (D.S.C. Jan. 12, 2016) (finding that the Tort Claims Act precluded SCDC’s liability on the plaintiff’s claim for false imprisonment), R&R adopted by 2016 WL 374826 (D.S.C. Feb. 1, 2016).

As already noted above, the R&R correctly concluded “[u]ntil the decision by the Court of Appeals in *Bolin* finding that the SCDC’s interpretation of the Act was in error, the effective date of which was April 1, 2016, the defendant SCDC lawfully incarcerated the plaintiff. Accordingly, this subsection immunizes the SCDC.” Exhibit 5 at 22.

b. Section 15-78-60(4)(precluding liability for losses resulting from the “adoption, enforcement, or compliance with any law or failure to adopt or enforce any law. . .”).

As regards this subsection, the Report and Recommendation reached the following conclusions:

As argued by the SCDC, a common sense reading of the allegations in this case shows that the plaintiff is ultimately complaining about SCDC’s enforcement of or compliance with the Act. By its plain language, this subsection also provides immunity for the failure to enforce a law, which is precisely what the plaintiff blames for his alleged prolonged detention (see doc. 25, am. comp. ¶¶ 58-77). *See Adkins v. Varn*, 439 S.E.2d 822, 824 (S.C. 1993) (“The provisions of Section 15–78–60(4) are clear and unambiguous on their face, and are not subject to judicial interpretation. The statute clearly exempts from liability any loss resulting from the failure to enforce [a law].”).

Exhibit 5 at 23. Plaintiffs have previously claimed the issue in this case is SCDC’s lack of compliance with the 2010 amendments. In fact, however, SCDC was enforcing or complying with the law as interpreted by the agency in 2010 and as ratified by the ALC in 2014. A later court interpretation that reached a different conclusion does not mean that SCDC was not enforcing or complying with the law as it was understood prior to April 1, 2016, when the *Bolin* court’s view became law.

c. Section 15-78-60(5)(retaining governmental immunity for “the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform”).

Plaintiff Campbell argued in the federal case, and may again, that, as paraphrased in the Report and Recommendation, SCDC should be liable to Plaintiff because the immunities under Sections 15-78-60(4) and –(5) are subject to a requirement that the acts in question were discretionary (as opposed to ministerial) and that there must be “proof[that] the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice

using accepted professional standards.’ *Hawkins v. City of Greenville*, 594 S.E.2d 557, 564 (S.C. Ct. App. 2004).” ECF No. 86 at 23. The Magistrate Judge correctly rejected this argument, holding that

The evidence in this case shows that the SCDC meets this standard. As defendant Florian testified at his deposition, he reviewed the 2010 statute, did legal research, and reached a legal opinion about how the 2010 statute interacted with the so-called 85% rule (doc. 72-3, Florian dep. 132-33). Further, the ALC agreed with the SCDC attorney’s interpretation of the Act. While the Court of Appeals ultimately concluded that the SCDC’s interpretation was in error, the evidence does not show that the SCDC’s interpretation fell outside “accepted professional standards.”

The decision of how to apply the 2010 statute to the sentences for certain crimes constituted the quintessence of a discretionary decision by governmental officials. Even when the Supreme Court of South Carolina largely abolished governmental immunity in decided *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), the Court took pains to point out that

[T]he abrogation of the rule will not extend to legislative, judicial and executive acts by individuals acting in their official capacity. These discretionary activities cannot be controlled by threat of tort liability by members of the public who take issue with the decisions made by public officials. We expressly decline to allow tort liability for these discretionary acts. The exercise of discretion includes the right to be wrong.

285 S.C. at 246, 329 S.E.2d at 742. The kinds of interpretations and decisions that the 2010 statute required SCDC to make are a paradigm example of “discretionary activities [that] cannot be controlled by threat of tort liability by members of the public who take issue with the decisions made by public officials.” And as the Supreme Court recognized, “[t]he exercise of discretion includes the right to be wrong.” *Id.*

4. Plaintiffs’ assertion of gross negligence does not apply to this case.

- a. § 15-78-60(25), which would permit liability in cases of gross negligence in certain circumstances, does not apply to this case.**

Plaintiffs have attempted to argue the applicability of § 15-78-60(25), a subsection that SCDC has not raised. That subsection provides that immunity is not waived for any “responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner; . . .”

That subsection does not mention “release, discharge, parole, or furlough” of inmates. Plaintiff’s claim, however, is that SCDC did not timely release the Plaintiffs. The McDonald R&R therefore correctly held that any such acts are governed by § 15-78-60(21), which does not contain a gross negligence standard. Specifically, subsection -60(21) provides that immunity is not waived when the issue in the case involves “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; . . .” The McDonald R&R therefore concluded that

This case deals exclusively with SCDC’s “decision to” and “implementation of release” of the plaintiff. To the extent this clear language requires any interpretation, that balance must tip in favor of SCDC. *See id.* § 15-78-200 (“The provisions of this chapter establish limitations on and exemptions to the liability of the governmental entity and must be liberally construed in favor of limiting the liability of the governmental entity.”).

Ex. 5 at 23-24.

If Plaintiffs continue to insist that SCDC could be held liable under the inapplicable gross negligence standard, SCDC will address any such argument in its response brief. For now, SCDC will simply note that there is no factual issue as to gross negligence for the same reasons that the McDonald R&R concluded that Defendants Florian and Tatarsky were not deliberately indifferent:

Arguably, Florian and Tatarsky could have known that there was some risk that a court might disagree with their interpretation of the Act, but

there is nothing in the record to show that they knew at the time there was a substantial or excessive risk of such. As Florian testified, he received frequent calls from judges and solicitors seeking advice on sentencing issues. In the absence of guiding judicial authority, there was no particular reason for him to question his own judgment in this instance. Indeed, the ALC held that the defendants' interpretation of the Act was correct in February 2014, and it was not until the decision by the Court of Appeals in *Bolin* that the defendants became aware that their interpretation of the Act was, in fact, incorrect. Based upon the foregoing, the plaintiff fails to show that these defendants were deliberately indifferent, and summary judgment should thus be granted to Florian and Tatarsky on the Eighth Amendment claim.

Exhibit 5 at 9-10.

This holding means that gross negligence cannot be present in this case. It has been held many times that a showing of gross negligence does not establish deliberate indifference, because the latter requires a greater showing than the former. *See, e.g., Jensen v. Conrad*, 570 F.Supp. 114, 122 (D.S.C.1983)(“A governmental official may act with gross negligence toward an individual placed in his care by inadvertently exposing him to obvious and extreme dangers. However, unless that official was actually aware of the dangers involved and failed to act to provide reasonable protection due to a conscious lack of concern for the individual's safety, the official did not act with deliberate indifference”). Similarly, the Second Circuit has noted in *Doe v. New York City Dept. of Social Services*, 649 F.2d 134, 143 (2d Cir.1981) that “there can be instances where glaring negligence may not constitute deliberate indifference. . . .” The McDonald R&R therefore correctly concluded that because “these officials’ conduct was not deliberately indifferent to [the plaintiff’s] rights, it logically follows that their conduct did not exhibit gross negligence. . . .” Exhibit 5 at 11, quoting *Harris v. Magnusson*, C.A. No. 1:11-cv-472-GZS, 2012 WL 3960172, at *5 (D. Maine Aug. 3, 2012).

CONCLUSION

For the foregoing reasons, SCDC respectfully submits that its Motion for Summary Judgment should be granted, and that this case should be dismissed in its entirety.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT SCDC

COLUMBIA, SOUTH CAROLINA

August 9, 2023

EXHIBIT 1

Florian Memorandum, dated June 22, 2020

Memorandum

To: State Classification and Inmate Records
From: Chris Florian, SCDC Staff Attorney
Re: The Omnibus Crime Reduction and Sentencing Reform Act of 2010
Date: June 22, 2010

On June 2, 2010, the Governor signed into law the Omnibus Crime Reduction and Sentencing Reform Act of 2010. The Act makes several significant changes which affect the South Carolina Department of Corrections. This memorandum will address issues related to the calculation of sentences, work release eligibility, and other significant changes. Please note this memo is not an exhaustive list of the contents of the Act; the Act makes numerous changes in the law which are not discussed in this memo because those changes represent relatively straight-forward amendments, such as altering the mandatory minimum sentence for a particular crime.

This memo will be divided into sections mirroring the structure of the Act.

Sections 1 -5

These sections do not appear to require interpretation beyond the language of the statute.

Section 6

Section 6 of the Act creates a new Class C felony offense called assault and battery of a high and aggravated nature (ABHAN) to be codified at S.C. Code Ann. § 16-3-600(B). This is a new offense with a new penalty, and it should not be confused with the common law offense previously known as ABHAN. Section 6 also creates new offenses known as assault and battery in first, second, and third degree. This change is effective for offenses occurring after June 2, 2010.

Section 7

This section abolishes the common law offense formerly known as ABHAN. It also abolishes several other offenses. This change is effective for offenses occurring after June 2, 2010.

Sections 8-12

These sections do not appear to require interpretation beyond the language of the statute.

Section 13

Section 13 adds a new provision permitting an inmate's sentence to be reduced by the court if the inmate provided aid to an SCDC employee or volunteer who was in danger of

being seriously injured or killed. SCDC's role in such a proceeding is limited – the motion must be made by the circuit solicitor in the county where the defendant's case arose. The language of the statute does not prevent the State's motion from being based on conduct occurring before June 2, 2010. This provision is to be codified at S.C. Code Ann. § 17-25-65.

Sections 14-19

These sections do not appear to require interpretation beyond the language of the statute.

Section 20

Section 20 amends the language of S.C. Code Ann. § 17-25-45(D) to allow a person serving a life sentence without the possibility of parole to be eligible for work release if (1) the person is sentenced for voluntary manslaughter, kidnapping, carjacking, second-degree burglary, armed robbery, or attempted armed robbery; (2) the crime did not involve criminal sexual conduct or an additional violent crime; and (3) the inmate is within three years of release from imprisonment.

In my opinion, this provision will have no practical affect since an inmate serving a life sentence would never be within three years of release from imprisonment.

Sections 21-26

These sections do not appear to require interpretation beyond the language of the statute.

Sections 27-30

These sections amend the language of several statutes – including the offense statute for possession of a weapon during the commission of a violent crime (S.C. Code Ann. § 16-23-490) – to allow a person serving a sentence for a violent offense to be eligible for work release if (1) the person is sentenced for voluntary manslaughter, kidnapping, carjacking, second-degree burglary, armed robbery, or attempted armed robbery; (2) the crime did not involve criminal sexual conduct or an additional violent crime; and (3) the inmate is within three years of release from imprisonment. The inmate may be eligible even though the offense is a “no parole” offense.

Pursuant to these changes, inmates convicted of the listed offenses are no longer ineligible for work release simply because of their conviction for that offense. However, the inmate may still be deemed ineligible for work release for any other valid reason. S.C. Code Ann. § 24-3-20(B) (“When the director determines that the character and attitude of a prisoner reasonably indicates that he may be trusted, he may extend the limits of the place of confinement of the prisoner by authorizing him to work at paid employment. . . .”) (emphasis added).

Nothing in the language of the Act indicates this change should apply retroactively. Wiesart v. Stewart, 379 S.C. 300, 665 S.E.2d 187 (Ct. App. 2008) (“Generally, statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision in the enactment or clear legislative intent to the contrary.”). Therefore, it is my opinion this change should only be applied to offenses occurring after June 2, 2010.

Section 31

Section 31 creates a new provision in the Youthful Offender Act, S.C. Code Ann. § 24-19-10 requiring a three-year minimum sentence for youthful offenders serving a sentence for burglary, second degree.

Sections 32-36

These sections do not appear to require interpretation beyond the language of the statute.

Sections 37 and 38

Section 37 makes several changes to the structure of certain drug offenses. Affected offenses are now eligible for parole, supervised furlough, community supervision, and work release, despite the fact the some of the offenses affected are Class A, B, and C felonies. As with many other sections of the Act, because nothing in the language of this section indicates the change applies retroactively, this change should only be applied to offenses occurring after June 2, 2010.

As to the affected Class A, B, and C felonies, nothing in the text of these sections directly addresses the issue of whether inmates convicted of these offenses are still required to serve 85% of their sentences before early release, discharge, or community supervision. Consequently, reading Sections 37 and 38 in conjunction with S.C. Code Ann. § 24-13-150(A), inmates convicted of these offenses are apparently still required to serve 85% of their sentences before release, unless they are granted parole. Similarly, nothing in the text of the changes appears to affect the requirement for these offenses that inmates must have served 80% of their actual term of imprisonment before becoming eligible for work release.

Pursuant to these changes, inmates convicted of all listed offenses are no longer ineligible for work release simply because of their conviction for that offense. However, the inmate may still be deemed ineligible for work release for any other valid reason.

The following offenses are affected by this change:

<u>Offense</u>	<u>Statute</u>	<u>Current CDR Code</u>
Manufacturing/distribution narcotic, 1 st offense	§ 44-53-370(b)(1)	183
Manufacturing/distribution narcotic, 2 nd offense	§ 44-53-370(b)(1)	184

Manufacturing/distribution narcotic, 3 rd offense For 3rd offense, it applies only if prior offenses were for possession as defined in §§ 44-53-370(c) & (d) (CDR codes 176, 177, 178, 179, 180, 182, 659, 2921 3011, 3012, 3013).	§ 44-53-370(b)(1)	185
Manufacturing/distribution controlled sub., 1 st offense	§ 44-53-370(b)(2)	186
Manufacturing/distribution controlled sub., 2 nd offense	§ 44-53-370(b)(2)	187
Manufacturing/distribution controlled sub., 3 rd offense § 44-53-370(b)(2) For 3rd offense, it applies only if prior offenses were for possession as defined in §§ 44-53-370(c) & (d) (CDR codes 176, 177, 178, 179, 180, 182, 659, 2921 3011, 3012, 3013).	§ 44-53-370(b)(2)	188
Manufacturing/distribution schedule IV, 1 st offense	§ 44-53-370(b)(3)	189
Manufacturing/distribution schedule IV, 2 nd offense § 44-53-370(b)(3)	§ 44-53-370(b)(3)	190
Manufacturing/distribution schedule V, 1 st offense	§ 44-53-370(b)(4)	191
Manufacturing/distribution schedule V, 2 nd offense	§ 44-53-370(b)(4)	192
Possession narcotic, 1 st offense	§ 44-53-370(d)(1)	176
Possession narcotic, 2 nd offense	§ 44-53-370(d)(1)	177
Possession narcotic, 3 rd offense	§ 44-53-370(d)(1)	178
Possession controlled sub., 1 st offense	§ 44-53-370(d)(2)	179
Possession controlled sub., 2 nd offense	§ 44-53-370(d)(2)	180
Possession cocaine, 1 st offense	§ 44-53-370(d)(3)	3011
Possession cocaine, 2 nd offense	§ 44-53-370(d)(3)	3012
Possession cocaine, 3 rd offense	§ 44-53-370(d)(3)	3013
Possession controlled sub. 1 st offense	§ 44-53-370(d)(4)	
Possession controlled sub. 2 nd offense	§ 44-53-370(d)(4)	182
Possession < 1 gram cocaine 1 st offense	§ 44-53-375(A)	
Possession < 1 gram cocaine 2 nd offense	§ 44-53-375(A)	3017
Possession < 1 gram cocaine 3 rd offense	§ 44-53-375(A)	3016
PWID cocaine, 1 st offense	§ 44-53-370(B)	3198 3014
PWID cocaine, 2 nd offense	§ 44-53-370(B)	3199 3015
PWID cocaine, 3 rd offense For 3rd offense, it applies only if prior offenses were for possession as defined in § 44-53-	§ 44-53-370(B)	3200 3039

375(A) (CDR Codes 3016 and 3017.

In addition to the offenses listed above, the statute contains provisions applicable to third offenses for certain crimes which only have statutory penalties for “second or subsequent offenses.” For these offenses, the Act nonetheless specifies that inmates convicted of a third or subsequent offense are eligible parole, supervised furlough, community supervision, and work release only if their prior offenses are among those specifically listed. The following chart shows these offenses and their special requirements:

<u>Offense</u>	<u>Statute</u>	<u>CDR Code</u>	<u>Only Eligible if All Priors Are</u>
Manufacturing/distribution schedule IV, 3 rd offense	§ 44-53-370(b)(3)	None	§§ 44-53-370(c) & (d) (CDR codes 176, 177, 178, 179, 180, 182, 659, 2921 3011, 3012, 3013)
Manufacturing/distribution schedule V, 3 rd offense	§ 44-53-370(b)(4)	None	§§ 44-53-370(c) & (d) (CDR codes 176, 177, 178, 179, 180, 182, 659, 2921 3011, 3012, 3013)

On these two offenses, further technical guidance is needed to determine whether it is possible to discern whether the offense is actually a third offense for inmates convicted of “second or subsequent offenses.”

Sections 39-47

These sections do not appear to require interpretation beyond the language of the statute.

Section 48

Section 48 creates a new “reentry supervision” program for inmates who: (1) are not subject to the community supervision program; (2) and have been incarcerated a minimum of two years. Re-entry supervision commences 180 days from SCDC’s projected release date. However, the period of reentry supervision is reduced by any term of probation following the inmate’s sentence. We are currently awaiting guidance from SCDPPPS on whether this section applies retroactively.

In light of references to the supervised furlough program elsewhere in the Sentencing Reform Act, this program apparently does not entirely displace the supervised furlough program already in place.

Sections 49-66

These sections do not appear to require interpretation beyond the language of the statute.

Questions

Any questions about the implementation of this memorandum or its application to a particular inmate may be directed to the Office of General Counsel at 896-8508.

EXHIBIT 2

*Bolin v. South Carolina Dep't of
Corrections,*
No. 13-ALJ-04-0534-AP (S.C. Admin.
Law Ct. Feb. 24, 2014).

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael Heath Bolin, #341806,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 13-ALJ-04-0534-AP
Grievance No.: CAWC 29-12

RECEIVED
ORDER
MAR 10 2014
SC Court of Appeals

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed July 23, 2013 by Michael Heath Bolin ("Appellant"), who is incarcerated with the South Carolina Department of Corrections ("SCDC").

Appellant filed a Step One Grievance on October 17, 2012, claiming his sentences should be considered non-violent and not subject to the requirement that Appellant serve 85% of his sentence before he becomes eligible for release. This grievance was upheld in regards to Appellant's classification as violent, but denied as to the 85% service requirement. Appellant then filed a Step Two Grievance on July 9, 2013. This grievance was investigated and denied. Appellant filed his Notice of Appeal on July 23, 2013 claiming that his offenses of Possession with Intent to Distribute Methamphetamine, second offense, and Conspiracy to Manufacture Methamphetamine, second offense, should not be considered "no parole" offenses and therefore, the Appellant should not be required to serve 85% of his sentence.

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The ALC's appellate jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his/her sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id.

When reviewing the SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 380, 527 S.E.2d at 756. Consequently, the review in these cases is limited to the record presented. An Administrative Law Judge may not substitute her judgment

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FEB 24 2014

SC ADMIN. LAW COURT

for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5). The ALC will not disturb the findings of an administrative agency if its findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the conclusion reached by the administrative agency. Trimmier v. S.C. Dep't of Labor, Licensing & Regulation, 405 S.C. 239, 246, 746 S.E.2d 491, 494 (Ct. App. 2013) (quoting Porter v. S.C. Pub. Serv. Comm'n, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998)). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995) (quoting Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984)).

LAW/ANALYSIS

On May 15, 2012, Appellant plead guilty to Possession with Intent to Distribute Methamphetamine, second offense; Conspiracy to Manufacture Methamphetamine, second offense; Possession of Methamphetamine, second offense; and Unlawful Possession of a Pistol. Appellant was sentenced to concurrent terms of five years' incarceration on each of the methamphetamine charges, and Appellant received a concurrent one-year sentence for Unlawful Possession of a Pistol. Both parties agree that Appellant's convictions for Possession of Methamphetamine, second offense, in violation of S.C. Code Ann. § 44-53-375(A) and Unlawful Possession of a Pistol are not subject to the requirement that an offender serve 85% of his sentence. Therefore, the only sentences at issue in this appeal are those for Possession with Intent to Distribute Methamphetamine, second offense, and Conspiracy to Manufacture Methamphetamine, second offense, both in violation of S.C. Code Ann. § 44-53-375(B)(2).

The requirement that an inmate convicted of a "no parole" offense serve 85% of the sentence is found in S.C. Code Ann. § 24-13-150(A), which reads:

Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, an inmate convicted of a "no parole offense" as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent

of the actual term of imprisonment imposed. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended. Nothing in this section may be construed to allow an inmate convicted of murder or an inmate prohibited from participating in work release, early release, discharge, or community supervision by another provision of law to be eligible for work release, early release, discharge, or community supervision.

Under S.C. Code Ann. § 24-13-100, a “no parole” offense is defined as “a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more.” Both Possession with Intent to Distribute Methamphetamine, second offense, and Conspiracy to Manufacture Methamphetamine, second offense are punishable by up to thirty years’ incarceration. See S.C. Code Ann. § 44-53-375(B)(2).

The Appellant contends that his conviction is not subject to the requirement that an inmate serve 85% of the sentence. Appellant relies upon language added to S.C. Code Ann. § 44-53-375(B) by the Omnibus Crime Reduction and Sentencing Reform Act of 2010, which reads:

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.

See S.C. Act No. 273 (June 2, 2010). The Appellant contends that with the enactment of the Omnibus Crime Reduction, the General Assembly decided to drastically lessen the punishment for drug offenses, and to provide for probation and parole for offenders who were previously ineligible for probation and parole. However, nothing in the amended language of Section 44-53-375(B) reflects a legislative intent to remove the 85% requirement. See State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (“Whenever possible, legislative intent should be found in the plain language of the statute itself.”). The plain language of the statute states that an offender is “eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.” None of these items is incompatible with the requirement that an inmate serve 85% of their sentence. See S.C. Code Ann. § 24-13-210(B) (providing for good time credits for offenders who are subject to the 85% requirement); see also S.C. Code Ann. § 24-13-230(B) (providing for work and education credits for offenders who are

subject to the 85% requirement); see also S.C. Code Ann. § 24-21-560(A) (requiring participation in the community supervision program for offenders subject to the 85% requirement).

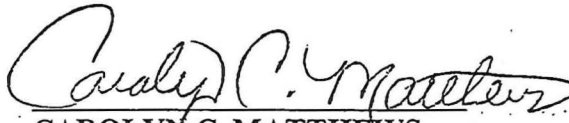
The words of a statute must be construed in a manner which harmonizes its subject matter and accords with its general purposes. Cabiness v. Town of James Island, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011) (citing Eagle Container Co. v. County of Newberry, 379 S.C. 564, 570, 666 S.E.2d 892, 896 (2008)). Here, under the amended language, inmates are eligible for parole, but if they are not paroled, they are still required to serve 85% of their sentences. See S.C. Code Ann. § 24-13-150(A) ("Notwithstanding any other provision of law...an inmate convicted of a 'no parole offense' as defined in Section 24-13-100...is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed.").

The Appellant claims that the amended provisions of S.C. Code Ann. § 44-53-375 take Appellant out from under the "no parole" provision of S.C. Code Ann. § 24-13-150. However, the plain language of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 did not alter the requirement of service of 85% of an inmate's sentence. Therefore, the Appellant's sentence has been correctly calculated.

Based upon the foregoing,

IT IS HEREBY ORDERED that the final decision of the SCDC is **AFFIRMED**.

AND IT IS SO ORDERED.


CAROLYN C. MATTHEWS
 S.C. Administrative Law Court

February 24, 2014
 Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the _____ in the above entitled action upon all parties to _____ by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 24th day of February 2014

By: NURERO
 Judicial Law Clerk

EXHIBIT 3

Remittitur in *Bolin* case, dated April 1, 2016



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 01, 2016

The Honorable Jana E. Shealy
Edgar A. Brown Building
1205 Pendleton Street
Suite 224
Columbia SC 29201

REMITTITUR

Re: Michael Bolin v. SCDC
Lower Court Case No. 2013ALJ040534AP
Appellate Case No. 2014-000461

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jenny A. Kitchings", written over the typed name.

CLERK

Enclosure

cc: Trent Neuell Pruett, Esquire
Christina Catoe Bigelow, Esquire

The South Carolina Court of Appeals

Michael Heath Bolin, #341806, Appellant,

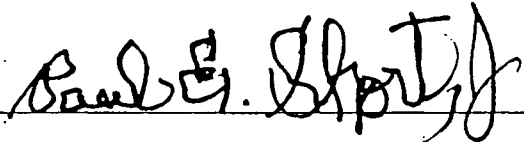
v.

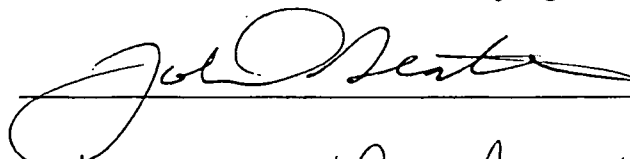
South Carolina Department of Corrections, Respondent.

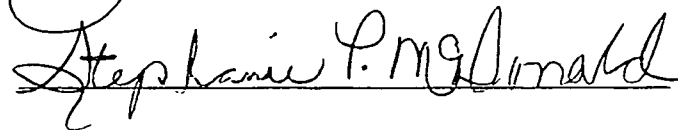
Appellate Case No. 2014-000461

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover any material fact or principle of law that has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied. However, Opinion Number 5361, filed November 12, 2015, is withdrawn and the attached opinion is substituted.

 J.

 J.

 J.

Columbia, South Carolina

cc:
Trent Neuell Pruett, Esquire
Christina Catoe Bigelow, Esquire
The Honorable Carolyn C. Matthews

FILED

St 2/24/16

EXHIBIT 4

Tatarsky Deposition excerpts

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

MARION KATRELL CAMPBELL,)
on behalf of himself and)
all others similarly)
situated,)

Plaintiffs,)

vs.)

SOUTH CAROLINA DEPARTMENT)
OF CORRECTIONS, BRIAN P.)
STIRLING, CHRIS FLORIAN,)
and DAVID TATARSKY,)

Defendants.)

C.A. No. 6:16-cv-03265-MGL

VIDEOTAPED DEPOSITION OF DAVID TATARSKY

TAKEN ON BEHALF OF THE PLAINTIFF MARION KATRELL CAMPBELL
AND THE CLASS

NOVEMBER 16, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CHRISTOPHER McDOWELL,)

Plaintiff,)

vs.)

C.A. No. 2:16-CV-03379-TLW-MGB

BRYAN P. STIRLING,)
SOUTH CAROLINA)
DEPARTMENT OF)
CORRECTIONS, CHRIS)
FLORIAN and DAVID)
TATARSKY,)

Defendants.)

HENRY BELTON,)

Plaintiff,)

vs.)

BRYAN P. STIRLING,)
SOUTH CAROLINA)
DEPARTMENT OF)
FLORIAN and DAVID)
TATARSKY,)

Defendants.)

LARRY HAMPTON,)

Plaintiff,)

vs.)

BRYAN P. STIRLING,)
SOUTH CAROLINA)
DEPARTMENT OF)
CORRECTIONS, CHRIS)
FLORIAN and DAVID)
TATARSKY,)

Defendants.)

1 DAVID PAYTON, JR.,)

2)

3 Plaintiff,)

4 vs.)

5)

6 BRYAN P. STIRLING,)

7 SOUTH CAROLINA)

8 DEPARTMENT OF)

9 CORRECTIONS, CHRIS)

10 FLORIAN and DAVID)

11 TATARSKY,)

12)

13 Defendants.)

14 MICHAEL SMOAK,)

15)

16 Plaintiff,)

17 vs.)

18)

19 BRYAN P. STIRLING,)

20 SOUTH CAROLINA)

21 DEPARTMENT OF)

22 CORRECTIONS, CHRIS)

23 FLORIAN and DAVID)

24 TATARSKY,)

25)

Defendants.)

VIDEOTAPED DEPOSITION OF DAVID TATARSKY, produced, sworn and examined on November 16, 2017, between the hours of 8:59 in the forenoon and 10:32 in the forenoon of that day, at the Kansas City Airport Marriott, 775 Brasilia Avenue, Kansas City, Missouri 64153, before Karen Crossley, a Certified Shorthand Reporter, a Certified Court Reporter (MO), within and for the State of Missouri, in a certain cause now pending in the United States District Court for the District of South Carolina, Greenville Division and in the United States District Court for the District of South Carolina, Charleston Division, between MARION KATRELL CAMPBELL, et al., Plaintiffs, vs. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, et al., Defendants; CHRISTOPHER McDOWELL, et al., Plaintiffs, vs. BRYAN P. STIRLING, et al., on behalf of the Plaintiffs MARION KATRELL CAMPBELL, et al.

A P P E A R A N C E S

For the Plaintiffs Marion Katrell Campbell and
the Class:

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South Carolina Department of Corrections
(by telephone):

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Davidson & Lindemann, P.A.
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803-806-8222
wdavidson@dml-law.com

Also present: Michael Dennis, videographer

Court Reporter:
Karen Crossley, CSR/CCR
Missouri CCR #912

1 2016, the conclusions of the court of appeals did not
2 change?

3 A. That's correct.

4 Q. Isn't it true that the court of appeals again
5 stated that SCDC had interpreted the Act unreasonably?

6 A. Again if that's --

7 MR. DAVIDSON: Object as to form.

8 A. If that's a quote, I have no reason to argue with
9 it.

10 Q. (By Mr. Whetstone) Based on documents provided to
11 us in discovery, the e-mails and other communications,
12 we've been provided with, SCDC moved pretty quickly and
13 pretty quickly made the decision that it would not
14 petition or assert or continue to appeal the ruling of
15 the court of appeals, didn't it?

16 A. Yes, sir, that decision was made.

17 Q. I believe that decision was confirmed around
18 February the 29th of 2016. Does that sound about right
19 to you?

20 A. Sounds about right, yes, sir.

21 Q. And in discussing that decision, SCDC
22 acknowledged that there were hundreds of inmates in
23 custody who were past their max out dates, isn't that
24 correct?

25 A. I don't remember the numbers, but certainly a

1 A. For Mr. Bolin, yes, sir.

2 Q. All right. Would I be correct that Mr. Bolin
3 then appealed his decision to the court of appeals?

4 A. That's correct.

5 Q. Eddie Nelson. Okay. Would I also be correct,
6 this was all handled under the Shabazz procedure?

7 A. Yes, sir.

8 Q. Would I also be correct that in this case, what
9 the decisions being made by the legal staff and the
10 Department of Corrections and the interpretation of the
11 2010 statute dealt with the decision on the release or
12 discharge of inmates from the Department of Corrections?

13 MR. WHITE: Object to the form.

14 MR. WHETSTONE: Object to the form of the
15 question.

16 A. Yes, sir.

17 Q. (By Mr. Davidson) It also dealt with how the
18 department would implement those releases, correct?

19 A. Yes, sir.

20 Q. Would I also be correct that at some point there
21 was some question about whether or not the Bolin opinion
22 should be considered and should -- the interpretation as
23 handed down by the court in the Bolin opinion should be
24 handled in a retrospective or retroactive manner?

25 A. Yes, sir.

1 Q. And was that a joint decision between PPP Pardon
2 and Parole Board and the Department of Corrections?

3 A. Yes, sir. There was communication back and forth
4 about that.

5 Q. All right. And as a result of that, the
6 department went along with the interpretation of PPP and
7 released some inmates in June of 2016 I believe?

8 MR. WHETSTONE: Object to the form of the
9 question.

10 A. I believe that's correct, yes, sir.

11 Q. (By Mr. Davidson) Those would be the individuals
12 that were given the benefit of the retroactive
13 interpretation of the opinion and the statute, correct?

14 A. Yes, sir.

15 MR. DAVIDSON: All right. That's all I
16 have. Thank you, sir.

17 MR. WHETSTONE: Nothing further. Thank you.

18 EXAMINATION

19 QUESTIONS BY MR. WHITE:

20 Q. I just have one more quick question.

21 Mr. Tatarsky, if the law on retroactive application of
22 the statute is clear and unambiguous, that's another law
23 that you and Mr. Florian and any other attorneys at SCDC
24 are required to follow, correct?

25 A. Yes, sir.

EXHIBIT 5

McDonald R&R, 10/1/18

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Mark Katrell Campbell,

Plaintiff,

vs.

South Carolina Department of
Corrections, Brian P. Stirling,
Chris Florian, and David Tatarsky,

Defendants.

Civil Action No. 6:16-cv-3265-MGL-KFM

REPORT OF MAGISTRATE JUDGE

This matter is before the court on defendants' motions for summary judgment and to stay (docs. 65, 67, 74) and the plaintiff's motions for class certification and for summary judgment (docs. 66, 68). Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Civ. Rule 73.02(B)(2)(d) (D.S.C.), this magistrate judge is authorized to review all pretrial matters in cases filed under Title 42, United States Code, Section 1983 and submit findings and recommendations to the district court.

I. PROCEDURAL HISTORY

The plaintiff, who is represented by counsel, is a former inmate of the South Carolina Department of Corrections ("SCDC"). He filed his putative class action complaint in state court on August 17, 2016, against defendants SCDC and Stirling, the Director of the SCDC (doc. 1-1). On September 29, 2016, the defendants removed the case to federal court (doc. 1). On May 16, 2017, the plaintiff filed an amended complaint adding as defendants Florian, former Deputy General Counsel for the SCDC, and Tatarsky, former General Counsel for the SCDC (doc. 25).

On May 7, 2018, the defendants filed motions for summary judgment (doc. 65, 67). On the same date, the plaintiff filed motions for class certification and for summary judgment (doc. 66, 68). On June 1, 2018, the defendants filed responses in opposition to

the plaintiff's motions for summary judgment and for class certification (docs. 72, 73). Defendants Stirling and SCDC also filed a motion to stay consideration of the plaintiff's motion for class certification (doc. 74). On the same date, the plaintiff filed responses in opposition to the defendants' motions for summary judgment (docs. 75, 76). On June 8, 2018, the defendants and the plaintiff filed replies (docs. 78, 79, 80). The plaintiff also filed a response to the motion to stay on June 8, 2018 (doc. 81).

II. FACTS PRESENTED

On March 6, 2010, the plaintiff was arrested for the distribution of crack cocaine, third offense, in violation of South Carolina Code § 44-53-375 (doc. 25, am. comp. ¶ 8). On December 2, 2011, he pled guilty to the lesser included offense of distribution of crack cocaine, second offense, in violation of Section 44-53-375(B)(2) (*id.* ¶ 10). The plaintiff was sentenced to a term of 25 years in prison, suspended to service of seven years with five years probation (*id.* ¶ 11). Following his sentencing, he served a term of imprisonment in the SCDC between 2011 and his release on March 21, 2016 (*id.* ¶¶ 13, 23).

Prior to 2010, inmates sentenced for certain offenses were ineligible for "early release, discharge, or community supervision" until they had "served at least eighty-five percent of the actual term of imprisonment imposed" S.C. Code Ann. § 24-13-150. These offenses, known as "no parole offenses," *see id.*, were defined by Section 24-13-100 to include any Class A, B, or C felony. *Id.* § 24-13-100. In addition to being ineligible for early release, discharge, or community supervision, three additional conditions applied to "no parole offenses":

- (1) no-parole offenders are given significantly less credits for good conduct, work, or education than other offenders, (2) no-parole offenders are required to participate in a community supervision program before their sentences are considered completed, and (3) no-parole offenders are required to serve eighty percent of their sentences before they are eligible for work release.

Bolin v. S.C. Dep't of Corr., 781 S.E.2d 914, 916 (S.C. Ct. App. 2016) (citations omitted).

The offense for which the plaintiff was sentenced was a "no parole offense." *Id.*

Following the plaintiff's arrest but prior to his sentencing, the South Carolina Legislature enacted the Omnibus Crime Reduction and Sentencing Reform Act of 2010 ("the Act"), with an effective date of June 10, 2010 (doc. 25, am. comp. ¶ 27). The Act did not amend the definition of "no parole offense" contained in Section 24-13-100 and did not reduce the maximum penalty for a second offense. *Bolin*, 781 S.E.2d at 917. However, the Act added the following language to Section 44-53-375(B): "*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." *Id.* (quoting 2010 Act No. 273, § 38) (emphasis added in *Bolin*).

Sentencing law was the particular area of subject matter expertise and *de facto* area of responsibility of defendant Florian, who, as noted above, is a former Deputy General Counsel for the SCDC (doc. 65-2, Florian dep. 16). Within a few days of the Act being enacted, Florian was assigned to review it. It was clear to Florian that the Act was going to have a significant effect on the SCDC (*id.* 21). Florian began studying the Act, outlining various sections in order to pull out those that would have a direct impact on his agency's operation (*id.* 29). Florian followed up his reading with legal research, reading existing case law in an attempt to interpret and apply the Act. While performing this work, Florian was aware of the legal concepts of statutory construction and legislative intent and researched existing South Carolina cases in an attempt to apply these principles to his analysis (*id.* 34-35). Florian interpreted the Act to be inconsistent in a number of respects, including regarding its use of terms and its fundamental intent (*id.* 36-37).

In a memorandum dated June 22, 2010, Florian made the following observations and analyses with regards to the Act:

Section 37 makes several changes to the structure of certain drug offenses. Affected offenses are now eligible for parole, supervised furlough, community supervision, and work release, despite the fact that some of the offenses affected are Class A,

B, and C felonies. As with many other sections of the Act, because nothing in the language of this section indicates the change applies retroactively, this change should only be applied to offenses occurring after June 2, 2010.

As to the affected Class A, B, and C felonies, nothing in the text of these sections directly addresses the issue of whether inmates convicted of these offenses are still required to serve 85% of their sentences before early release, discharge, or community supervision. Consequently, reading Sections 37 and 38 in conjunction with S.C. Code Ann. § 24-13-150(A), inmates convicted of these offenses are apparently still required to serve 85% of their sentences before release, unless they are granted parole. Similarly, nothing in the text of the changes appears to affect the requirement for these offenses that inmates must have served 80% of their actual term of imprisonment before becoming eligible for work release.

(Doc. 66-4 at 4, Florian memo).¹ Florian testified that the purpose of the memorandum “was to inform other employees of the [SCDC] of our interpretation of the law” (doc. 65-2, Florian dep. 37). As interpreted by Florian, the Act impacted the parole eligibility of inmates sentenced pursuant to Section 44-53-375(B), but did not impact the 85% requirement, which was not mentioned in the Act (doc. 67-2, Florian dep. 68-69). In other words, the Act was interpreted to make certain offenses parole eligible; however, if the inmate was not granted parole, he would be subject to the 85% requirement (*id.*).

On October 17, 2012, inmate Michael Heath Bolin filed a step 1 grievance with the SCDC. Pursuant to the provisions of the Act, Bolin claimed that his Possession with Intent to Distribute Methamphetamine, second offense, and Conspiracy to Manufacture Methamphetamine, second offense sentences (both violations of South Carolina Code § 44-53-375(B)(2)) were not subject to the requirement that an offender serve 85% of the sentence. The SCDC agreed that his sentences were now considered non-violent, but denied his claim as to the 85% requirement. Bolin filed a step 2 grievance on July 9, 2013,

¹ Defendants Florian and Tatarsky cite exhibit 2 to their motion for summary judgment as Florian’s memorandum (doc. 65-1 at 3-4) (citing doc. 65-3). However, their exhibit 2 is a PowerPoint presentation rather than the June 22, 2010, memorandum (*compare* doc. 65-3 with doc. 66-4).

which was denied. Bolin then appealed the step 2 decision to the Administrative Law Court (“ALC”) on July 23, 2013.

On February 24, 2014, the ALC issued its ruling, holding that the SCDC’s interpretation of the Act was correct:

[N]othing in the amended language of Section 44-53-375(B) reflects a legislative intent to remove the 85% requirement. . . . The plain language of the statute states that an offender is "eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits." None of these items is incompatible with the requirement that an inmate serve 85% of their sentence. See S.C. Code Ann. § 24-13-210(B) (providing for good time credits for offenders who are subject to the 85% requirement); see also S.C. Code Ann. § 24-13-230(B) (providing for work and education credits for offenders who are subject to the 85% requirement); see also S.C. Code Ann. § 24-21-560(A) (requiring participation in the community supervision program for offenders subject to the 85% requirement).

(Doc. 68-4 at 4, *Bolin v. S.C. Dep’t of Corr.*, Opinion No. 13-ALJ-04-0534-AP) (S.C. Admin. Law Ct. Feb. 24, 2014)).

Bolin appealed this decision, and on November 12, 2015, the Court of Appeals of South Carolina issued its initial decision (doc. 25, am. comp. ¶ 21). Following a petition for rehearing, the Court of Appeals issued its corrected opinion on February 24, 2016, which rendered the same conclusions of law as the original November 2015 opinion (*id.* ¶ 41). *Bolin v. S.C. Dep’t of Corr.*, 781 S.E.2d 914 (S.C. Ct. App. 2016). The Court of Appeals, holding that the sole issue was a question of statutory interpretation, reversed the ALC and ruled that the 85% requirement of Section 24-13-150 did not apply to Bolin’s conviction pursuant to the operation of the Act. *Id.* at 916-19. Like the ALC, the Court of Appeals found it necessary to engage in an exercise in statutory construction in order to determine legislative intent. *Id.* at 917-18. However, where the ALC ruled that “nothing in the amended language of Section 44-53-375(B) reflects a legislative intent to remove the 85% requirement,” the Court of Appeals held that the addition of the phrase “[n]otwithstanding any other provision of law” to Section 44-53-375 expressed an intent “to repeal section

24-13-100 to the extent it conflicts with amended sections of 44-53-375.” *Id.* at 917. The Court of Appeals noted that it was “unreasonable” for the SCDC “to characterize an offense for which the offender is eligible for parole as a no-parole offense pursuant to section 24–13–100, even if the maximum sentence for the offense places it within a classification encompassed by section 24–13–100” and that the SCDC had “ignore[d] the purpose of the Act” in arguing that amended Section 44-53-375 did not conflict with Sections 24-13-100 and -150. *Id.* at 918. Where the ALC found that “the plain language of the statute” indicated that an offender would be eligible for parole, supervised furlough, work release, etc., and that there was nothing incompatible with offering these sentencing options while requiring an offender to serve 85% of his sentence, the Court of Appeals found it “unlikely that the legislature intended for this requirement to apply to the amended provisions of section 44-53-375(B).” *Id.* at 919.

On February 24, 2016, the Court of Appeals denied rehearing on the issue. *Id.* at 914. On February 29, 2016, the SCDC confirmed that it would not further appeal the decision (doc. 68-2, Tatarsky dep. 52). On March 21, 2016, the SCDC released over 200 inmates, including the plaintiff, who were affected by the *Bolin* decision (doc. 25, am. comp. ¶ 23; doc. 68-6 at 3, Requests to Admit Nos. 8, 9 & ex. A). The remittitur was issued by the Court of Appeals on April 1, 2016 (doc. 72-1). The plaintiff alleges in his amended complaint that he should have been released on or about November 2, 2014 (doc. 25, am. comp. ¶ 18).²

In his amended putative class action complaint, the plaintiff alleges causes of action for false imprisonment and negligence/ gross negligence/ recklessness against defendant SCDC; violations of the Eighth and Fourteenth Amendments to the United States Constitution against defendants Florian and Tatarsky; and violations of the Eighth and Fourteenth Amendments against defendant Stirling (doc. 25, am. comp. ¶¶ 58-86).

² In his motion for partial summary judgment, the plaintiff argues that he should have been released on September 16, 2014 (doc. 68-1 at 11).

III. APPLICABLE LAW AND ANALYSIS

A. Summary Judgment Standard

Federal Rule of Civil Procedure 56 states, as to a party who has moved for summary judgment: “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). As to the first of these determinations, a fact is deemed “material” if proof of its existence or nonexistence would affect the disposition of the case under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of material fact is “genuine” if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. *Id.* at 257. In determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the district court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings; rather, he must demonstrate that specific, material facts exist that give rise to a genuine issue. *Id.* at 324. Under this standard, the existence of a mere scintilla of evidence in support of the plaintiff’s position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude the granting of the summary judgment motion. *Id.* at 248. “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.*

B. Defendants Tatarsky and Florian

Defendants Tatarsky and Florian have moved for summary judgment as to the causes of action alleged against them, and the plaintiff opposes the motion (docs. 65, 76, 79).

1. Eighth Amendment Claim

In the third cause of action, the plaintiff alleges that the actions of defendants Florian and Tatarsky deprived him “of his right to be free from cruel and unusual punishment, including unlawful detention under the 8th Amendment” (doc. 25, am. comp. ¶ 79).

Defendants Tatarsky and Florian first argue that unlawful detention claims are more typically addressed under the Fourth Amendment’s guarantees against unreasonable searches and seizures, whereas Eighth Amendment claims prohibit cruel and unusual punishment (doc. 65-1 at 7). The plaintiff counters that “[i]ncarceration beyond the termination of one’s sentence may state a claim under the due process clause and the eighth amendment” (doc. 76 at 3) (quoting *Golson v. Dep’t of Corr.*, Nos. 80-7344, 90-7345, 1990 WL 141470, at *1 (4th Cir. Oct. 2, 1990)).

The Court of Appeals for the Third Circuit in *Sample v. Diecks* articulated the standard for an Eighth Amendment claim in this context:

[A] plaintiff must first demonstrate that a prison official had knowledge of the prisoner’s problem and thus of the risk that unwarranted punishment was being, or would be, inflicted. Second, the plaintiff must show that the official either failed to act or took only ineffectual action under circumstances indicating that his or her response to the problem was a product of deliberate indifference to the prisoner’s plight. Finally, the plaintiff must demonstrate a causal connection between the official’s response to the problem and the infliction of the unjustified detention.

885 F.2d 1099, 1110 (3rd Cir. 1989). *See also Haygood v. Younger*, 769 F.2d 1350, 1355 (9th Cir.1985) (“Detention beyond the termination of a sentence could constitute cruel and unusual punishment if it is the result of “deliberate indifference” to the prisoner’s liberty

interest . . .) (citation omitted); *Golson*, 1990 WL 141470, at *1 (“To prevail under an eighth amendment theory, a plaintiff must demonstrate that defendants acted with deliberate indifference.”) (citations omitted). Deliberate indifference is shown when a prison official acts or fails to act despite knowledge of a substantial risk of serious harm to an inmate. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

The plaintiff has not shown that defendants Florian and Tatarsky were deliberately indifferent. Even if the plaintiff has shown that defendants were negligent, he fails to establish a claim, as mere negligence cannot support a claim for violation of the Eighth Amendment. *Ruefly v. Landon*, 825 F.2d 792, 794 (4th Cir. 1987).

The plaintiff’s expert, Robert Daly, faults the defendants for not asking the agency director for his interpretation of the Act, although he does not say that he thinks it would have been proper for the attorneys to have deferred to the agency director on a question of interpretation of law (doc. 76-5, Daly dep. 29-30). He also faults the defendants for not seeking a declaratory judgment on the meaning of the Act, although he admits he is not aware of the identity of anyone who could have acted as the opposing party in interest required for such an action in the relevant time period (*id.* 53-54; doc. 65-4, Daly dep. 61). The plaintiff argues that Daly’s opinion that Florian’s interpretation of the Act in the June 2010 memorandum was “so obviously wrong that only an incompetent policymaker would have implemented such an illogical policy” (doc. 76-5, Daly dep. 33) is “unrebutted evidence a jury could credit in concluding Florian and Tatarsky failed to act or were ineffectual in so doing” (doc. 76 at 10). Arguably, Florian and Tatarsky could have known that there was some risk that a court might disagree with their interpretation of the Act, but there is nothing in the record to show that they knew at the time there was a substantial or excessive risk of such. As Florian testified, he received frequent calls from judges and solicitors seeking advice on sentencing issues. In the absence of guiding judicial authority, there was no particular reason for him to question his own judgment in this instance. Indeed, the ALC held that the defendants’ interpretation of the Act was correct in February 2014, and it was not until the decision by the Court of Appeals in *Bolin* that the defendants became aware

that their interpretation of the Act was, in fact, incorrect. Based upon the foregoing, the plaintiff fails to show that these defendants were deliberately indifferent, and summary judgment should thus be granted to Florian and Tatarsky on the Eighth Amendment claim.

2. Fourteenth Amendment Claim

The plaintiff also alleges in his third cause of action that the actions of defendants Tatarsky and Florian violated his right “to be free from loss of liberty without due process of law, pursuant to the 14th Amendment” (doc. 25, am. comp. ¶ 79). The plaintiff does not address the defendants’ argument that summary judgment should be granted as to any procedural due process claim as the plaintiff and others affected by the SCDC’s interpretation of the Act were afforded procedural due process through Bolin’s grievance process, the appeal to the ALC, and the ultimate decision by the Court of Appeals (doc. 65-1 at 11-13). Accordingly, summary judgment is appropriate as to any procedural due process allegation by the plaintiff against Tatarsky and Florian.

The plaintiff argues that, rather than a procedural due process claim as construed by the defendants, his claim is one of a denial of substantive due process (doc. 76 at 15). Substantive due process bars “certain government actions regardless of the fairness of the procedures used to implement them.” *Daniels v. Williams*, 474 U.S. 327, 331 (1986). Its use is limited to abuses of power that “shock the conscience.” *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). The Court of Appeals for the Fourth Circuit has stated in an unpublished case that “[i]ncarceration beyond the termination of one’s sentence may state a claim under the due process clause and the eighth amendment” and that “to recover under the due process clause, a plaintiff must establish that defendants acted with something more than mere negligence.” *Golson*, 1990 WL 141470, at *1 (citations omitted). “However, the Supreme Court has held that if a claim is covered by a specific constitutional provision, such as the Eighth Amendment, the claim must be analyzed under the standard appropriate to that specific provision and not under the substantive due process clause.” *Perrault v. Wisconsin*, C.A. No. 15-cv-144-BBC, 2015 WL

5032656, at *2 (W.D. Wis. Aug. 25, 2015) (citing *County of Sacramento*, 523 U.S. at 842; *Graham v. Connor*, 490 U.S. 386, 395 (1989); *Childress v. Walker*, 787 F.3d 433, 438 (7th Cir.2015)). See also *Cruz-Caraballo v. Rodriguez*, 113 F. Supp.3d 484, 492-93 (D. P.R. 2014) (finding the plaintiff's claim of incarceration beyond the termination of his prison sentence should be viewed under the purview of the Eighth Amendment rather than the Fourteenth Amendment).

Under either the substantive due process clause or the Eighth Amendment, the plaintiff has failed to show deliberate indifference or conscience-shocking conduct on the part of these defendants, as discussed above. *Harris v. Magnusson*, C.A. No. 1:11-cv-472-GZS, 2012 WL 3960172, at *5 (D. Maine Aug. 3, 2012) (“Because I have concluded that on these facts, these officials' conduct was not deliberately indifferent to [the plaintiff's] rights, it logically follows that their conduct did not exhibit gross negligence or arbitrariness that would shock the conscience.”). Accordingly, summary judgment should be granted to Florian and Tatarsky on the plaintiff's Fourteenth Amendment claim.

3. Qualified Immunity

Defendants Florian and Tatarsky further argue that they are entitled to qualified immunity, and, therefore, they are entitled to summary judgment even if the plaintiff was able to state Eighth Amendment and due process claims against them. The undersigned agrees.

Qualified immunity protects government officials performing discretionary functions from civil damage suits as long as the conduct in question does not “violate clearly established rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Thus, qualified immunity is lost if an official violates a constitutional or statutory right of a plaintiff that was clearly established at the time of the alleged violation such that an objectively reasonable official in the official's position would have known of the right. *Id.*

To determine whether qualified immunity applies, a district court must determine a plaintiff has alleged the deprivation of an actual constitutional right at all and

whether the particular right was clearly established at the time of the alleged violation. See *Tolan v. Cotton*, 134 S.Ct. 1861, 1865-66 (2014) (*per curiam*); and *Wilson v. Layne*, 526 U.S. 603, 609 (1999). “The judges of the district courts and the courts of appeals should be permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand.” *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

Taken in the light most favorable to the plaintiff, it is undisputed that defendants Tatarsky and Florian were attorneys employed by SCDC and were acting within the scope of their duties as SCDC attorneys. The plaintiff’s expert, Daly, testified as follows in his deposition:

Q. Prior to the ALC’s issuance of its opinion in the *Bolin* matter, the calculation date of the plaintiff’s sentence was, in fact, the province of SCDC, was it not?

A. Right. They do the sentence calculations.

Q. That’s their job?

A. That’s their job, right.

Q. Okay. And prior to the issuance of the Court of Appeals decision, no higher court or other competent legal authority had directed that Campbell be released on any date other than what SCDC had determined his date to be?

A. Correct.

(Doc. 65-4, Daly dep. 45-46).

Assuming for purposes of this motion that the plaintiff has stated a viable claim for a violation of a constitutional right, the undersigned finds that the plaintiff cannot show these defendants violated “clearly established statutory or constitutional rights of which a reasonable person should have known.” *Pearson*, 555 U.S. at 230. A “right is clearly established only if its contours are sufficiently clear that ‘a reasonable official would understand that what he is doing violates that right.’ ” *Booker v. S.C. Dept. of Corr.*, 855 F.3d 533, 538 (4th Cir. 2017) (citing *Carroll v. Carman*, 135 S.Ct. 348, 350 (2014)). As the

court stated in *Booker*, “The unlawfulness of the official’s conduct must be ‘apparent’ in ‘light of pre-existing law.’” *Id.* (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). Further, “[t]o be clearly established, ‘existing precedent must have placed the statutory or constitutional question beyond debate.’” *Id.* (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011)). “Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions. When properly applied, it protects ‘all but the plainly incompetent or those who knowingly violate the law.’” *Al-Kidd*, 563 U.S. at 743 (quoting *Wilson*, 526 U.S. at 618).

The plaintiff argues that, during the time period in question, “it was clearly established in this circuit, and beyond, that causing the prolonged detention of an inmate who repaid his debt to society could give rise to constitutional tort liability” (doc. 76 at 16). However, the plaintiff has defined the right too broadly. To determine whether a right was “clearly established” at the time of the alleged misconduct, the inquiry “must be undertaken in light of the specific context of the case.” *Saucier v. Katz*, 533 U.S. 194, 201 (2001). For a right to be clearly established, its contours “must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Id.* at 202 (quoting *Anderson*, 483 U.S. at 640).

Applying this authority to the facts of this case, the plaintiff has not identified any court decision in existence at the time defendant Florian authored his memorandum of June 22, 2010, that would have put him or defendant Tatarsky on notice that their analysis of the effects of the Act were incorrect, let alone that their “conduct was unlawful.” This is because no such notice existed prior to the Court of Appeals’ decision in *Bolin*. Indeed, the indication of the ALC was that defendant Florian’s analysis was correct. The amended complaint clearly identifies the Court of Appeals’ *Bolin* decision and no other as the authority that indicates the defendants misinterpreted the Act and its application to the plaintiff and others like him (doc. 25, am. comp. ¶ 39), and as the authority for the position that the defendants’ interpretation of the Act was “unreasonable” (*id.* ¶ 42). Defendants Florian and

Tatarsky performed their analysis of the ramifications of the Act five years before the Court of Appeals issued the *Bolin* decision.

The plaintiff's expert, Daly, testified as follows in his deposition:

Q. You acknowledge that SCDC formulated its decision on the interpretation of the Act prior to the issue of the Court of Appeals decision in *Bolin*?

A. I do.

Q. And your prior answer leads me to believe you understand that prior to the Court of Appeals issuing its decision in *Bolin*, the Administrative Law Court had considered the agency's interpretation of the Act?

A. In 2014.

Q. All Right.

A. Yes.

Q. And do you acknowledge the jurisdiction and authority of the Administrative Law Court?

A. I do.

Q. You acknowledge them to be a court of competent jurisdiction in their area?

A. I do.

Q. And do you understand the issue before the Administrative Law Court in *Bolin* was the same as the issues confronted by the Court of Appeals in its decision?

A. I do.

Q. In the wake of the ALC's decision and prior to the issuance of the Court of Appeals decision on the Bolin matter, is there anything you can point to from any court of competent jurisdiction that you contend would put the agency on notice that its interpretation of the Act was wrong?

A. From a court of competent jurisdiction? No. No.

(Doc. 65-4, Daly dep. 33-37).

In a similar case in the District of Arizona, a former inmate alleged that he was wrongfully imprisoned for three years by the defendant Department of Corrections officials. *Stein v. State of Arizona*, C.A. No. cv 09-1505-PHX-MHM, 2010 WL 2541136 (D. Ariz. June 28, 2010). The court considered whether the defendants were entitled to qualified immunity. *Id.* at *5-6. The court acknowledged that there is a broad federal constitutional right to be free from wrongful incarceration; however, the court noted that “the right allegedly violated must be defined at the appropriate level of specificity before a court can determine if it was clearly established.” *Id.* at *6 (quoting *Cousins v. Lockyer*, 568 F.3d 1069 (9th Cir.2009)). In *Stein*, the court concluded that “an official would not have known that a term of lifetime probation for the crime of attempted sexual assault with a minor was unlawful as there was no clearly established law so holding until [the Arizona Supreme Court’s decision in *State v. Peek*, 195 P.3d 641 (Ariz. 2008)].” *Id.* The Court of Appeals for the Ninth Circuit affirmed the decision, finding that the district court “properly concluded that the defendants enjoy qualified immunity.” *Stein v. Ryan*, 662 F.3d 1114, 1118 (9th Cir. 2011).

In another analogous case, the Court of Appeals for the Seventh Circuit considered whether prison officials were entitled to qualified immunity on a former inmate’s claims that they violated his constitutional rights by keeping him in prison a year longer than his sentence required based upon a mistaken interpretation of a state statute. *Campbell v. Peters*, 256 F.3d 695, 700-702 (7th Cir. 2001). The plaintiff in that case, like the plaintiff here, argued that he had “shown that it was clearly established that incarcerating a prisoner beyond the termination of his sentence without penological justification violates the Eighth Amendment as cruel and unusual punishment.” *Id.* at 700. The court noted that, “[a]t a general level, this proposition may be true, although the courts that have recognized this problem have been careful to note that the extended incarceration must also be the product of deliberate indifference before a constitutional violation, as opposed to an error of state law, is implicated.” *Id.* (citations omitted). The court reasoned that it did “not deal with generalities. Instead, we must determine whether it was clearly established that the defendants, in revoking the good conduct credits and computing a new release date after

the recommitment, were violating Campbell's constitutional rights by requiring him to serve more time than state law and his sentence required.” *Id.* (citation omitted). The court noted that “[i]t was not until July 30, 1990 that a state trial court definitively interpreted the statute to bar revocation of good conduct credit after recommitment”; the defendants “were relying upon a reasonable interpretation of a state statute in revoking the credits”; and “[a]lthough a court later found that interpretation to be incorrect, there was no case law or other controlling authority that required such a conclusion. Indeed, the defendants' interpretation had actually prevailed twice in the Circuit Court and was based upon the state legislature's grant of wide discretion to prison officials in granting and revoking good conduct credits” *Id.* at 701-702. *See also Summers v. Adams*, 669 F. Supp.2d 637, 639 (D.S.C. 2009).

Similarly here, there was no controlling precedent to guide defendants Tatarsky and Florian as the analysis of the issue was performed in 2010. Moreover, the decision of the ALC indicated that the defendants had interpreted the Act correctly. It was not until the *Bolin* decision was issued by the Court of Appeals five years later that the defendants' interpretation of the Act was found to be incorrect. As the defendants did not violate a clearly established right, they are entitled to qualified immunity, and the claims against them should be dismissed.

C. Defendant Stirling

Defendant Stirling has moved for summary judgment as to the cause of action alleged against him, and the plaintiff opposes the motion (docs. 67, 75, 78).

1. Eighth and Fourteenth Amendment Claims

The plaintiff alleges in his fourth cause of action that defendant Stirling violated his rights under the Eighth and Fourteenth Amendments by deciding “to continue [his] unlawful detention” and “creating an arbitrary release date weeks and months in the future” (doc. 25, am. comp. ¶¶ 83-86). Defendant Stirling argues that the plaintiff has failed to sufficiently allege and show that his actions violated the plaintiff's constitutional rights, that the plaintiff has failed to sufficiently allege and show that he is liable under a supervisory liability theory, and that he is entitled to qualified immunity. The undersigned agrees.

Defendant Stirling first notes that it is not clear from the amended complaint in what capacity he is named in this action (doc. 67-1 at 6 n.5). He argues that, to the extent he is named in his official capacity, any such claim would fail because a state official named in his official capacity is not a “person” under Section 1983 and because the Eleventh Amendment would bar such a claim (*id.*) (citing *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989) (since “a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official’s office,” a state official acting in his official capacity is not a person under § 1983)). The plaintiff does not respond to this argument in the response in opposition to the motion (*see generally* doc. 75). Accordingly, defendant Stirling’s motion for summary judgment should be granted as to any claims against him in his official capacity.

The plaintiff alleges that when the Court of Appeals issued its opinion in *Bolin* on February 24, 2016, “SCDC did not immediately release the unlawfully incarcerated inmates, despite the fact it had the entire pendency of the appeal and, particularly, the months after the adverse November 2015 decision, to prepare for a likely mass release” (doc. 25, am. comp. ¶ 43). The plaintiff and over 200 other inmates were released on March 21, 2016, which the plaintiff’s claims was an “arbitrary release date” (*id.* ¶ 44).

The plaintiff has failed to show that defendant Stirling’s response to the issue at hand was a product of deliberate indifference. *Sample*, 885 F.2d at 1110. First, the decision in *Bolin* was issued on February 24, 2016, but the remittitur was not issued by the Court of Appeals until April 1, 2016 (doc. 72-1). *See, e.g., McDowell v. S.C. Dep’t of Soc. Servs.*, 386 S.E.2d 280, 281 (S.C. Ct. App. 1989) (“We think it clear that the ‘final disposition’ of the instant case occurred . . . when the Clerk of the Court of Common Pleas filed the remittitur and not . . . when this court filed its opinion.”). Further, defendant Stirling testified in his affidavit that, following the issuance of the decision in *Bolin*, it was decided that a petition for certiorari would not be filed, and the staff of the SCDC began the process of preparing to release the inmates affected by the *Bolin* decision (doc. 67-4, Stirling aff. ¶¶3-4). The release date of March 21, 2016, was selected by the staff to give the staff time

to check the records regarding the release of the inmates, to contact and arrange followup medical or mental health care for the inmates being released, to ensure that there were no detainers outstanding for those inmates who were anticipated to be released, and to permit the orderly release of the inmates back into the community (*id.* ¶ 5). Further, defendant Tatarsky testified that “the process of releasing an inmate is not something that can happen just in the blink of an eye” (doc. 67-3, Tatarsky dep. 53). Moreover, the release date ultimately chosen was prior to the issuance of the remittitur by the Court of Appeals and within the time remaining to appeal the decision to the Supreme Court of South Carolina, which the defendant ultimately decided not to pursue. As argued by the defendants, the plaintiff has failed to show that an earlier release date was even possible. The plaintiff has not set forth any evidence that defendant Stirling was negligent in his actions, much less any evidence that meets the much higher standard of deliberate indifference. *See Parrish v. Cleveland*, 372 F.3d 294, 302 (4th Cir. 2004) (“Deliberate indifference is a very high standard—a showing of mere negligence will not meet it.”).

The defendants further argue that the plaintiff has failed to provided sufficient evidence of a post-*Iqbal* supervisory liability claim. The Supreme Court has repeatedly held that “masters do not answer for the torts of their servants” under Section 1983. *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). The Court has also noted that mere “knowledge and acquiescence” in the misconduct of subordinates is insufficient to establish supervisory liability. *Id.* On the contrary, “each Government official, his or her title notwithstanding, is only liable for his or her own misconduct.” *Id.* Stated differently, “[b]ecause vicarious liability is inapplicable to . . . [Section] 1983 suits, a plaintiff must plead that each Government-official defendant, through the official’s own individual actions, has violated the Constitution.” *Id.* at 676. As described by the Court of Appeals for the Fourth Circuit, this requirement is “designed to ensure that the serious burdens of defending against this sort of lawsuit are visited upon a departmental supervisor only when the complaint plausibly suggests that the supervisor engaged in his or her own misconduct.” *Evans v. Chalmers*,

703 F.3d 636, 661 (4th Cir. 2012) (Wilkinson, J., concurring) (internal alterations and quotation marks omitted).

To the extent the plaintiff seeks to hold defendant Stirling liable for interpreting the Act, the evidence is clear that matters like this were delegated to the Office of General Counsel (see doc. 67-2, Florian dep. 127, 132; doc. 67-3, Tatarsky dep. 13, 26). Courts have routinely held that a supervisory official that delegates matters to his subordinates does not violate the constitution. See, e.g., *West v. Tillman*, 496 F.3d 1321, 1332 (11th Cir. 2007) (sheriff who delegated day-to-day operation of detention facility to jail warden was not liable under § 1983 for detainee's delayed release). The plaintiff does not allege, and there is no evidence to suggest, that defendant Stirling should have had any reason to doubt the competence or capability of the Office of General Counsel to make analyses, interpretations, and decisions like those involved in the present case. Moreover, in order to reach defendant Stirling on a supervisory liability claim, the plaintiff would have to prove his claim against Florian and/or Tatarsky, which, as discussed above, he cannot do. See *Waybright v. Frederick Cty.*, 528 F.3d 199, 203 (4th Cir. 2008) ("The § 1983 claim against [individual state officer] is the gateway to all the other § 1983 claims, for supervisors and municipalities cannot be liable under § 1983 without some predicate constitutional injury at the hands of the individual state officer, at least in suits for damages.") (citations omitted).

Based upon the foregoing, defendant Stirling should be granted summary judgment on the plaintiff's claims against him under the Fourteenth Amendment and the Eighth Amendment. See *Harris*, 2012 WL 3960172, at *5 ("Because I have concluded that on these facts, these officials' conduct was not deliberately indifferent to [the plaintiff's] rights, it logically follows that their conduct did not exhibit gross negligence or arbitrariness that would shock the conscience.").

2. Qualified Immunity

Defendant Stirling argues that even if the plaintiff could show that he violated the plaintiff's constitutional rights, he is entitled to qualified immunity, and, therefore, summary judgment is appropriate. The undersigned agrees.

The plaintiff cannot show that defendant Stirling violated a clearly established right. First, prior to the *Bolin* decision, no court had ruled that the SCDC's interpretation of the Act was in error. In addition, there was no clearly established right of the plaintiff to be released within a set time after a court decision interpreting the law pertaining to the sentence. The decision of the Court of Appeals, which involved someone other than the plaintiff in this case, did not order the immediate release even of the inmate who filed that case. Further, as defendant Stirling points out, no case from either the Supreme Court of the United States or the Court of Appeals for the Fourth Circuit has addressed this issue. However, it has been held elsewhere that there is no clearly established right to release within a certain time after an event that required the recalculation of the sentences of numerous inmates. See, e.g., *Scott v. Baldwin*, 720 F.3d 1034, 1037 (8th Cir. 2013) ("The plaintiffs cite no authority that clearly required [the defendant Director of the Department of Corrections] to recalculate their release dates within a certain time. Under the circumstances, the law did not fairly warn him that the amount of time spent recalculating thousands of release dates, including the plaintiffs', recklessly disregarded their constitutional right to release.") (citation omitted). The plaintiff argues that the issue in this case "is not the length of time it took to recalculate release dates, but rather the timeliness of the release" (doc. 75 at 12). However, the defendants have presented evidence showing that this is a distinction without a difference as the recalculation of the release dates of the inmates affected by the *Bolin* decision was at least part of the reason the March 21, 2016, release date was selected. As defendant Stirling did not violate a clearly established right, he is entitled to qualified immunity, and the claims against him should be dismissed.

D. Defendant SCDC

The plaintiff alleges in his first cause of action that the defendant SCDC did not release him upon service of his term of incarceration less sentence reduction credits, and thus the SCDC falsely imprisoned him (doc. 25, am. comp. ¶¶58-69). The plaintiff also alleges a cause of action for negligence/ gross negligence/ recklessness against the defendant SCDC based upon its alleged failure to properly calculate his sentence and his continued restraint past the date upon which he should have lawfully been released (*id.* ¶¶70-77). Defendant SCDC has moved for summary judgment as to these causes of action, and the plaintiff opposes the motion (docs. 67, 75, 78). The plaintiff has filed a partial motion for summary judgment as to the false imprisonment cause of action, which the defendant SCDC opposes (docs. 68, 72, 80).

The plaintiff argues that he has proven the elements of a claim for false imprisonment (doc. 68-2 at 10): the defendant SCDC restrained him; (2) the restraint was intentional; and (3) the restraint was unlawful. *Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 456 S.E.2d 429, 432 (S.C. Ct. App. 1995) (citation omitted). The plaintiff contends that he “maxed out his sentence on September 16, 2014,”³ and thus his continued incarceration until March 21, 2016, constitutes false imprisonment (doc. 68-1 at 11-12). The undersigned disagrees. Under the SCDC’s interpretation of the Act, the plaintiff and other affected inmates were not eligible for release, and the ALC had validated that conclusion in its decision in the *Bolin* case. If the SCDC had released the plaintiff and others while the ALC decision was in effect, such an action would have been in contravention of the statute as interpreted by the ALC and arguably would have been a reckless act on the part of the SCDC. Further, as discussed above, the plaintiff was released from incarceration some days prior to April 1, 2016, the date of the remittitur in *Bolin v. S.C. Dept. of Corr.*, 781

³ In his amended complaint, the plaintiff alleges that he should have been released on or about November 2, 2014 (doc. 25, am. comp. ¶ 18).

S.E.2d 914, 916 (S.C. Ct. App. 2016), *reh'g denied* (Feb. 24, 2016), and before the time to petition for certiorari had expired. Accordingly, the plaintiff's continued restraint during this time period was lawful.

Furthermore, even if the plaintiff can show that he was unlawfully restrained, the SCDC argues in its motion for summary judgment that the plaintiff's state law causes of action against it are barred by the immunities afforded by the South Carolina Tort Claims Act ("SCTCA"). The undersigned agrees. The SCTCA "governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees." *Proctor v. Dep't of Health & Envtl. Control*, 628 S.E.2d 496, 502 (S.C. Ct. App. 2006) (internal quotation marks and citation omitted). See S.C. Code Ann. § 15-78-20(b). The Act functions as a limited waiver of sovereign immunity. *Proctor*, 628 S.E.2d at 502. The Act currently contains 40 enumerated exceptions to the waiver of sovereign immunity. *Id.* See S.C. Code Ann. § 15-78-60.

Defendant SCDC argues that several of the immunities apply to the present case. Section 15-78-60(3) precludes liability arising from the "execution, enforcement, or implementation of the orders of any court. . . ." As argued by the SCDC, implementing or enforcing the sentence pronounced by a court implicates this subsection (doc. 67-2, Florian dep. 129 (part of SCDC's role is to "implement the sentences handed down by the judiciary")). See *Jackson v. S.C. Dep't of Corr.*, C.A. No. 3:14-2262-MGL-SVH, 2016 WL 403588, at *2 (D.S.C. Jan. 12, 2016) (finding that the SCTCA precluded SCDC's liability on the plaintiff's claim for false imprisonment), *R&R adopted by* 2016 WL 374826 (D.S.C. Feb. 1, 2016). Until the decision by the Court of Appeals in *Bolin* finding that the SCDC's interpretation of the Act was in error, the effective date of which was April 1, 2016, the defendant SCDC lawfully incarcerated the plaintiff. Accordingly, this subsection immunizes the SCDC.

Defendant SCDC also cannot be held liable for losses resulting from the "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law

. . . .” S.C. Code Ann. § 15-78-60(4). As argued by the SCDC, a common sense reading of the allegations in this case shows that the plaintiff is ultimately complaining about SCDC’s enforcement of or compliance with the Act. By its plain language, this subsection also provides immunity for the failure to enforce a law, which is precisely what the plaintiff blames for his alleged prolonged detention (see doc. 25, am. comp. ¶¶ 58-77). See *Adkins v. Varn*, 439 S.E.2d 822, 824 (S.C. 1993) (“The provisions of Section 15–78–60(4) are clear and unambiguous on their face, and are not subject to judicial interpretation. The statute clearly exempts from liability any loss resulting from the failure to enforce [a law].”).

The defendant SCDC further argues that another source of immunity is Section 15-78-60(5), which retains governmental immunity for “the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform.” The plaintiff argues (doc. 68-1 at 13-14) that this immunity and the one discussed above (Section 15-78-60(4)) are subject to a requirement that the acts in question were discretionary (as opposed to ministerial) and that there must be “proof [that] the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards.” *Hawkins v. City of Greenville*, 594 S.E.2d 557, 564 (S.C. Ct. App. 2004). The evidence in this case shows that the SCDC meets this standard. As defendant Florian testified at his deposition, he reviewed the 2010 statute, did legal research, and reached a legal opinion about how the 2010 statute interacted with the so-called 85% rule (doc. 72-3, Florian dep. 132-33). Further, the ALC agreed with the SCDC attorney’s interpretation of the Act. While the Court of Appeals ultimately concluded that the SCDC’s interpretation was in error, the evidence does not show that the SCDC’s interpretation fell outside “accepted professional standards.”

Further, the defendant SCDC cannot be liable for any loss resulting from “the decision to or implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity” S.C. Code Ann. § 15-78-60(21). This case deals exclusively with SCDC’s “decision to” and “implementation of release” of the plaintiff. To the extent this clear language requires any interpretation, that balance must tip in favor

of SCDC. See *id.* § 15-78-200 (“The provisions of this chapter establish limitations on and exemptions to the liability of the governmental entity and must be liberally construed in favor of limiting the liability of the governmental entity.”).

Based upon the foregoing, defendant SCDC’s motion for summary judgment (doc. 67) should be granted, and the plaintiff’s partial motion for summary judgment (doc. 68) should be denied.

IV. CONCLUSION AND RECOMMENDATION

Now, therefore, based upon the foregoing,

IT IS RECOMMENDED that the defendants’ motions for summary judgment (docs. 65, 67) be granted and that the plaintiff’s motion for summary judgment (doc. 68) be denied. It is further recommended that the defendants’ motion to stay (doc. 74) consideration of the motion to certify class pending ruling on the motions for summary judgment be granted in the interest of judicial economy.

IT IS SO RECOMMENDED.

s/Kevin F. McDonald
United States Magistrate Judge

October 1, 2018
Greenville, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

EXHIBIT 6

Excerpt from Florian deposition

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

MARION KATRELL CAMPBELL, on behalf)
of himself and all others)
similarly situated,)
Plaintiff,)
V.) CIVIL ACTION NO.
SOUTH CAROLINA DEPARTMENT OF) 6:16-cv-03265-MGL
CORRECTIONS, BRIAN P. STIRLING,)
CHRIS FLORIAN, and DAVID TATARSKY,)
Defendants.)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CHRISTOPHER McDOWELL,)
Plaintiff,)
V.) CIVIL ACTION NO.
BRYAN P. STIRLING, SOUTH) 2:16-cv-03379-TLW-MGL
CAROLINA DEPARTMENT OF)
CORRECTIONS, CHRIS FLORIAN,)
and DAVID TATARSKY,)
Defendants.) (Caption continues)

VIDEO-RECORDED DEPOSITION
- of -
CHRISTOPHER D. FLORIAN

taken on behalf of the Plaintiffs on Thursday,
October 19, 2017, at the offices of Paul Frank
Collins P.C., One Church Street, Burlington,
Vermont, commencing at 9:04 AM.

2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

HENRY BELTON,
Plaintiff,

V.

CIVIL ACTION NO.
2:16-cv-03379-TLW-MGL

BRYAN P. STIRLING, SOUTH
CAROLINA DEPARTMENT OF
CORRECTIONS, CHRIS FLORIAN,
and DAVID TATARSKY,
Defendants.

LARRY HAMPTON,
Plaintiff,

V.

BRYAN P. STIRLING, SOUTH
CAROLINA DEPARTMENT OF
CORRECTIONS, CHRIS FLORIAN,
and DAVID TATARSKY,
Defendants.

DAVID PAYTON, JR.,
Plaintiff,

V.

BRYAN P. STIRLING, SOUTH
CAROLINA DEPARTMENT OF
CORRECTIONS, CHRIS FLORIAN,
and DAVID TATARSKY,
Defendants.

MICHAEL SMOAK,
Plaintiff,

V.

BRYAN P. STIRLING, SOUTH
CAROLINA DEPARTMENT OF
CORRECTIONS, CHRIS FLORIAN,
and DAVID TATARSKY,
Defendants.

APPEARANCES:

ON BEHALF OF THE PLAINTIFF (No. 6:16-cv-03265-MGL):

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ALSO PRESENT: DAVID TATARSKY (Via Telephone)

VIDEO TECHNICIAN: GEORGE DOUD, CLVS

COURT REPORTER: JOHANNA MASSÉ, RMR, CRR

1 South Carolina?

2 A. Yes, sir. I presented at the solicitors'
3 conference; I presented for the public defenders'
4 conference on multiple occasions; I presented CLEs in
5 Columbia for members of the bar in general; I believe I
6 may have even presented at one of the judicial
7 conferences.

8 Q. All right. Now, part of the duties of the
9 Department of Corrections is to implement the sentences
10 handed down by the judiciary; is that correct?

11 MR. WHETSTONE: Object to the form.

12 A. That is correct.

13 Q. Part of that duty is to be able to interpret
14 and implement the various statutes that deal with such
15 sentencing?

16 MR. WHETSTONE: Object to the form.

17 A. That's correct.

18 Q. Is that correct?

19 A. Yes, that's correct.

20 Q. Now, do you happen to have the red-line
21 version of S. 1154, which I believe is SCDC000846, the
22 Omnibus Act, with you?

23 MR. ROLLINS: Hang on a minute. Give me that
24 number again, please, Will.

25 MR. DAVIDSON: It's your Bates number, Cliff,

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2020-CP-40-05532

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

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No.: 2020-CP-40-04701

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No. 2020-CP-40-05660

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

Henry Belton,

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

C.A. No. 2017-CP-40-00556

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
AS TO COUNT ONE – FALSE IMPRISONMENT**

The Plaintiffs, individually and on behalf of the class they represent, move this Honorable Court pursuant to Rule 56(a), SCRCP for an order granting summary judgment against Defendant South Carolina Department of Corrections as to Plaintiffs' First Cause of Action, false imprisonment. For the reasons set forth in the attached memorandum, there is no genuine issue of material fact as to Count One and Plaintiffs are entitled to judgment as a matter of law, including a judgment that each inmate within the class may claim a separate occurrence under the S.C. Tort Claims Act.

WHEREFORE, Plaintiffs respectfully request that this Court grant summary judgment to Plaintiffs as to Count One, including a judgment that each inmate within the class may claim a separate occurrence under the S.C. Tort Claims Act.

[Signature on following page]

Respectfully submitted,

s/Andrew R. Hand

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ATTORNEYS FOR PLAINTIFFS

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2020-CP-40-05532

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

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No.: 2020-CP-40-04701

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No. 2020-CP-40-05660

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

Henry Belton,

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

C.A. No. 2017-CP-40-00556

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
AS TO COUNT ONE – FALSE IMPRISONMENT**

The Plaintiffs, individually and on behalf of the class they represent, have moved this Honorable Court for an order granting summary judgment against Defendant South Carolina Department of Corrections as to their First Cause of Action, false imprisonment. The Motion should be granted for the reasons that follow:

I. PROCEDURAL HISTORY

This class action involves 413 class members who were incarcerated by the South Carolina Department of Corrections [hereinafter “SCDC”] beyond their sentence maxout dates, some for periods exceeding five (5) years. The class members, collectively, were wrongfully incarcerated and deprived of their liberty and freedom of movement for more than 185,000 total days. For context, this represents more than five hundred (500) collective years of time served by members of this class that was unlawful and violative of these inmates’ rights.

Since 2016, Plaintiff Class Representatives and the absent class members have pursued a remedy for their wrongful detention by SCDC. Class Representative Marion Campbell initiated the suit as a putative class action on August 17, 2016 in the Charleston County Court of Common

Pleas. The action alleged state law claims of false imprisonment and negligence/gross negligence, as well as various claims for constitutional violations.

In the seven years since that action was filed, the case has wound its way from the Circuit Court in Charleston County to the United States District Court, and then to the Fourth Circuit Court of Appeals upon appeal by then-Defendants Chris Florian and David Tatarsky. After the Fourth Circuit reversed District Court Judge Mary Lewis's ruling that Plaintiffs' Eighth Amendment claim was viable, only the state law claims remained. This case was then remanded back to Charleston County and venue transferred to Richland County. This Honorable Court accepted assignment of the action as complex litigation and conditionally certified the class.

Given the protracted procedural history of this case and the thorough discovery that was completed long ago, all parties have agreed that briefing and disposition of the matters of law underlying this action is appropriate at this time.

II. INTRODUCTION

In 2010, the South Carolina Legislature passed the Omnibus Crime Reduction and Sentencing Reform Act, Act No. 273, 2010 S.C. Acts 1937 [hereinafter the "Omnibus Act" or simply the "Act"]. This historic piece of legislation was passed, in part, for the explicit purpose of removing obstacles to the early release of inmates convicted of certain non-violent crimes by employing "evidence-based practices for smarter use of correctional funds":

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, Section 1.

A major facet of the Omnibus Act was enumeration of a laundry list of previously “no-parole” offenses which were to become parole eligible. Ex. A: Florian Depo. Excerpts 64:2-9. The “parolable” versus “no-parole” classification is critical for at least two reasons. First, inmates earn “good time” credits, education credits, and work credits at a dramatically lower rate for no-parole versus parolable offenses.¹ Second, irrespective of earned sentence reduction credits, inmates must serve 85% of their sentences for offenses that are classified as no-parole offenses. Ex. B: Tatarsky Depo. Excerpts: 42:22-43:12; Ex. A: Florian Depo. Excerpts: 62:25-63:12.

SCDC quickly decided that the Omnibus Act did not mean what it said. Despite the plain language and stated intent of the Act, SCDC continued to impose the 85% service requirement for the newly parolable offenses and continued to calculate earned sentence reduction credits at the minimal no-parole rate. In other words, SCDC unilaterally created a bizarre category of “parolable, no-parole offenses” out of whole cloth. Ex. B: Tatarsky Depo. Excerpts: 43:21-44:8; Ex. A: Florian Depo. Excerpts: 64:14-23.

One inmate, Michael Bolin, recognized that SCDC was wrong and had failed to calculate his release date in accordance with the mandates of the Omnibus Act. He filed a grievance and then appealed. An administrative law judge rubber-stamped SCDC’s calculation. Ex. C: ALJ Decision. Bolin then appealed to the South Carolina Court of Appeals which, on November 12, 2015, issued a strongly worded opinion, holding 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

¹ “[T]here is stark contrast between the credits allowed for inmates convicted of parolable offenses and the credits allowed for no-parole offenders.” *Bolin v. S.C. Dep’t of Corr.*, 415 S.C. 276, 285, 781 S.E.2d 914, 918 (Ct. App. 2016).

“affords no basis for the perpetuation of a patently erroneous application of the statute.”

Ex. D: *Bolin* Decision of 11/12/15, at 3 (emphasis added).

The Court of Appeals stated the obvious in concluding that “[i]t is unreasonable to characterize an offense for which the offender is eligible for parole as a no-parole offense.” Ex. D: *Bolin* Decision of 11/12/15, at 7 (emphasis added). It held that SCDC’s “interpretation was illogical and inconsistent with the legislative intent behind the Omnibus Act.” Ex. D: *Bolin* Decision of 11/12/15, at 6 (emphasis added)..

Despite this admonition from the Court of Appeals, SCDC inexplicably clung to its erroneous determination. It refused to recalculate the sentences for the impacted inmates it had illegally kept behind bars for so long. It made no preparations at all to release those inmates. Instead, it moved for rehearing, filing a “Suggestion for Rehearing *En Banc*.” On February 24, 2016, with SCDC having continued its wrongful detention of impacted inmates for three more months, the Court of Appeals issued a revised opinion with only minor changes. The opinion retained the same strongly worded findings and conclusions holding that SCDC’s interpretation of the Act was “patently erroneous” and “unreasonable.” *Bolin*, 781 S.E.2d at 916, 918.

By February 29, 2016, SCDC had decided to forego further appeals. Ex. B: Tatarsky Depo. Excerpts: 52:10-20; Ex. E: Defendants’ Joint Response to First Requests to Admit No. 73. Despite this, SCDC continued to detain the impacted inmates in violation of the Court of Appeals’ order, and even determined to use lethal force if any of the impacted inmates sought to leave. Ex. B: Tatarsky Depo. Excerpts, 63:17 – 65:11.

SCDC then set a mass release date for yet another month in the future. On March 21, 2016, more than 4 months after the initial *Bolin* decision declaring SCDC’s application of the Omnibus Act unreasonable and patently erroneous, SCDC released approximately 226 inmates, including

Class Representatives Marion Campbell, Wardell Williams, and Harry Simmons. Ex. E: Defendants' Joint Response to First Requests to Admit Nos. 8 & 9.

The March mass release was not the end of the issue for SCDC, however. SCDC later concluded with the help of the SC Pardon and Parole Board that the Omnibus Act applied to reduce the sentences of inmates who were arrested prior to its effective date—not just to those who were arrested after its effective date. This application should have been obvious to SCDC, as the plain language and stated intent of the Act was to address a present and ongoing problem with lengthy and incongruent prison sentences, and the effect that such sentences were having on the state. In the wake of that epiphany, it released a group of 193 additional inmates. Those inmates, including Class Representatives David Payton, Jr., Isiah Rollins, Larry Hampton, Christopher McDowell, and Michael Smoak, were released on June 2-3, 2016, with their unlawful detention at that point having been extended more than 6 additional months beyond the November *Bolin* decision. Ex. E: Defendants' Joint Response to First Requests to Admit No. 12.²

III. STANDARD GOVERNING SUMMARY JUDGMENT

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

² Of note, between June 2010 and the 2016 period when SCDC finally changed its sentence calculation formula, hundreds if not thousands of inmates had already been released after serving unlawfully extended periods of incarceration. SCDC, however, was unable to identify and produce any data on inmates impacted by the Omnibus Act who had already been released during that time.

746, 749 (Ct. App. 1998); *see also Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997) (“Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.”).

Under Rule 56(c) of the South Carolina Rules of Civil Procedure, a court should grant summary judgment if the record shows there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law.

Summary judgment is not solely a defensive mechanism. Rule 56 expressly contemplates the availability of summary judgment to a claimant. Rule 56(a), SCRPC. Regardless of which party ultimately is responsible for proof and persuasion, the party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party has met that burden, the nonmoving party must come forward and demonstrate that such an issue does exist. *Id.*

IV. UNDISPUTED FACTS PERTINENT TO SUMMARY JUDGMENT AS TO FALSE IMPRISONMENT

The record contains a wealth of admitted facts established by SCDC’s Responses to Plaintiffs’ Requests to Admit.³ There is also a strong foundation of established facts arising from the *Bolin* decision by the South Carolina Court of Appeals, a case in which SCDC was a party. Facts which are no longer in dispute include:

³ The admissions are derived from SCDC’s responses to two sets of Requests to Admit served while the case was pending in Federal Court. *See* Ex. E: Defendants’ Joint Response to First Requests to Admit Nos. 1, 21, 22, 23, 27, 28, 29, 30, 31, 33, 44, 45, 46, 47, 50, 52 67, 69, 71, 72, 73; Ex. F: Defendant SCDC’s Response to Second Requests to Admit Nos. 5, 6, 15.. Some of the admissions relate to Marion Campbell, who was the sole named Plaintiff while the case was pending in Federal Court; however, the substance of the admissions applies equally to the remaining class representatives and to each member of the class.

- SCDC is charged with calculating sentences and release dates in accordance with the statutory law enacted by the South Carolina Legislature. [No. 67, First R/A]
- Reasonable corrections officials would not believe it permissible to require inmates to remain in custody beyond their max-out sentence release dates. [No. 15, Second R/A]
- An inmate has fully served his incarceration at the completion of a properly calculated maxout date. [No. 1, First R/A]
- SCDC continued to incarcerate Marion Campbell in prison by force from September 17, 2014 to March 21, 2016. [No. 21, First R/A]
- SCDC had no pending charges on which to detain Marion Campbell as of September 17, 2014 through March 21, 2016. [No. 27, First R/A]
- SCDC had no valid warrant to detain Marion Campbell as of September 17, 2014 through March 21, 2016. [No. 28, First R/A]
- SCDC had no probable cause to detain Marion Campbell as of September 17, 2014 through March 21, 2016. [No. 29, First R/A]
- SCDC continued to incarcerate the inmates listed on Ex. A to Plaintiff's First Requests to Admit in prison by force after his or her "NEW MAXOUT DATES" and/or "SR DATES." [No. 22, First R/A]
- SCDC continued to incarcerate the inmates listed on Ex. B to Plaintiff's First Requests to Admit in prison by force after his or her "NEW DATES" and/or "SR DATES." [No. 23, First R/A]
- SCDC had no new pending charges, probable cause and/or valid warrants on which to detain the inmates listed on Ex. A [to Plaintiff's First Requests to Admit] between the "NEW MAXOUT DATES," and/or "SR DATES" for each and March 21, 2016. [No. 30, First R/A]
- SCDC had no new pending charges, probable cause and/or valid warrants on which to detain the inmates listed on Ex. B [to Plaintiff's First Requests to Admit] between the "NEW DATES" and/or "SR DATES" and June 1, 2016. [No. 31, First R/A]
- SCDC incarcerated the inmates for the stated number of days (counting the day of release) following their max-out or supervised release dates set forth in Plaintiff's First Set of Requests to Admit Nos. 50 and 52. [Nos. 50, 52, First R/A]
- SCDC was aware on November 12, 2015, that the *Bolin* decision of that date issued by the S.C. Court of Appeals potentially impacted hundreds of its inmates. [No. 69, First R/A]

- Between November 12, 2015 and February 24, 2016, SCDC took no action to recalculate the release or supervised re-entry dates for each inmate potentially impacted by the *Bolin* decision issued by the S.C. Court of Appeals on November 12, 2015. [No. 71, First R/A]
- Between November 12, 2015 and February 24, 2016, SCDC took no action to prepare for the release of inmates potentially impacted by the *Bolin* decision issued by the S.C. Court of Appeals on November 12, 2015. [No. 72, First R/A]
- On or before February 29, 2016, SCDC made the decision that it would not petition for certiorari with regard to the *Bolin* decision issued by the S.C. Court of Appeals on February 24, 2016. [No. 73, First R/A]
- SCDC acted unreasonably in characterizing offenses for which the offender is eligible for parole as no-parole offenses. *Bolin*, 781 S.E.2d at 918.
- SCDC’s interpretation of the Omnibus Act was “patently erroneous.” *Bolin*, 781 S.E.2d at 916.
- The max-out sentence release dates for the inmates listed in Ex. A [to Plaintiff’s First Requests to Admit], properly calculated pursuant to the Omnibus Act, is listed under the Column “NEW MAXOUT.” [No. 5, Second R/A]
- The max-out sentence release dates for the inmates listed in Ex. B [to Plaintiff’s First Requests to Admit], properly calculated pursuant to the Omnibus Act, is listed under the Column “NEW DATE.” [No. 6, Second R/A]
- SCDC is currently bound by the specific holdings of the South Carolina Court of Appeals in *Bolin*. [Nos. 44–47, First R/A]

V. ARGUMENT

The right to self-determination is fundamental to the human condition. Incarceration is the ultimate impingement upon this right in all particulars, including the most basic right to freedom of movement. The magnitude of the intrusion upon personal freedom imposed by incarceration was aptly characterized by both SCDC attorneys involved in SCDC’s patently unreasonable interpretation of the Omnibus Act, when both were unwilling to state any sum of money that would convince them to spend time incarcerated in a prison’s general population. Ex. A: Florian Depo. Excerpts: 125:10–13; Ex. B: Tatarsky Depo. Excerpts: 59:9–60:5 (expressing uncertainty whether one million dollars was sufficient for one day in prison). It is this condition which the class

members were made to suffer for periods of days, months, and years as a result of SCDC's wanton, cavalier, and unlawful actions in this case.

A. *False Imprisonment under South Carolina Law*

Under South Carolina law, false imprisonment is the unlawful restraint of an individual's liberty or freedom of locomotion. *Zimmerman v. Savage*, 745 F.Supp.2d 664, 683 (D.S.C. 2010). The tort exists to protect each citizen's personal interest in freedom, as a matter of right, from restraint of movement. *Thompson v. Smith*, 289 S.C. 334, 345 S.E.2d 500, 502 (1986).

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, 456 S.E.2d 429, 432 (1995).

South Carolina case law addressing false imprisonment arises most frequently in the context of false arrest. False arrest is deemed a species of false imprisonment. *Carter v. Bryant*, 429 S.C. 298, 306, 838 S.E.2d 523, 527 (Ct. App. 2020), *petition for cert. filed* (S.C. Mar. 16, 2020); *id.* ("False arrest and false imprisonment overlap; the former is a species of the latter." (quoting *Wallace v. Kato*, 549 U.S. 384, 388 (2007))).

False imprisonment is a broader concept than false arrest and encompasses many more factual scenarios. False imprisonment embodies any "unlawful restraint or detention of another against his will, without authority of law, by actual force or reasonably apprehended force." *State v. Bernstein*, 295 S.C. 52, 54, 367 S.E.2d 152, 153 (1988), quoting C.J.S. *False Imprisonment* § 71 (1960) (emphasis added). For example, a false imprisonment claim may arise from the involuntary commitment to a hospital or a mental facility. *See, e.g., Argoe v. Three Rivers Behav. Health, LLC*, 392 S.C. 462, 710 S.E.2d 67 (2011).

False imprisonment is not grounded in negligence or gross negligence. The concept of unlawful detention, irrespective of the nature of the detention, is governed by an objective standard. *Mack v. Lott*, 415 S.C. 22, 23, 780 S.E.2d 761 (2015). Application of these principles 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 claim 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.

The first two elements of false imprisonment are irrefutable in this case. Without question, Plaintiff Class Representatives and the absent class members were intentionally restrained by SCDC until the dates of the two mass releases described above. The only question left to consider, then, is whether that restraint was unlawful. This determination must be considered based on an objective standard, not viewed through the prism of SCDC's unreasonable and patently erroneous conclusions as to the Omnibus Act. When considered under this objective standard, there can be no doubt that SCDC's actions were unlawful.

B. The Unlawfulness of the Detention of the Impacted Inmates was Decided by the Bolin Court

SCDC detained Plaintiffs and the members of the class in prison based on the wrongful application of an 85% percent service requirement and sentence reduction credits reserved solely

for no-parole offenses. The South Carolina Court of Appeals ruled that those actions were not in accordance with law. *Bolin v. S.C. Dep't of Corr.*, 415 S.C. 276, 781 S.E.2d 914 (2016).

The Court of Appeals began its definitive denunciation of SCDC's parolable, no-parole theory by acknowledging that "the interpretation of a statute by the agency charged with its administration, 'will be the accorded the most respectful consideration.'" *Id.*, 415 S.C. at 280, 781 S.E. 2d at 916. Despite that "most respectful consideration," the Court of Appeals, in an exquisitely detailed and well-reasoned decision, concluded that this highly deferential standard would "afford[] no basis for the perpetuation of a patently erroneous application of the statute.'" *Id.*, citing *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575–76 (2010). The Court of Appeals concluded:

It is without doubt that the statutory definition of the term "no-parole offense" in section 24-13-100, i.e. "class A, B, or C felony . . .," simply describes the types of offenses for which the offender is not eligible for parole. This interpretation is consistent with provisions in related statutes stating that a no-parole offender is not eligible for parole. Thus, it is unreasonable to characterize an offense for which the offender is eligible for parole as a no-parole offense pursuant to section 24-13-100, even if the maximum sentence for the offense places it within a category encompassed by section 23-13-100.

Bolin, 415 S.C. at 283-84, 781 S.E.2d 917–18 [emphasis added]. Indeed, this was the only reasonable reading of the Act—the Court of Appeals might just as easily have instructed SCDC that water is wet or that the sky is blue before it reached this reasoned conclusion, which was the only one allowed by the plain language and stated intent of the Act.

However, in a breathtakingly arrogant dismissal of the decision of the South Carolina Court of Appeals, SCDC tried to explain away the *Bolin* decision to District Court Judge Mary Lewis as nothing more than the Court of Appeals' "characterization of any opinion contrary to its own as being 'patently erroneous' and 'unreasonable.'" Ex. G: SCDC's Reply Memorandum in Support of Summary Judgment, Dkt. No. 78 at 2 (filed June 8, 2018). It continued in that vein, calling the

Court of Appeals’ careful and pointed language nothing more than “that court’s own descriptions intended to bolster its own decision on the issue of statutory construction.” *Id.* at 3. SCDC thus casted aside the decision of the South Carolina Court of Appeals on South Carolina law with the liberty of a homeowner discarding unwanted mail.

SCDC has also tried to minimize the impact of *Bolin* by describing the disparity between SCDC’s and the administrative law judge’s interpretation of the Omnibus Act on the one hand, and the Court of Appeals’ interpretation on the other, as simply showing that “‘plain meaning’ is often in the eye of the beholder.” *Id.* at 2–3. In fact, SCDC’s “interpretation” of the Act never passed the smell test, and the fact that SCDC was able to persuade an administrative law judge toward its view before the Court of Appeals decisively corrected it is both unfortunate and evidences only SCDC’s ability to advance nonsensical interpretations of plainly worded law. In any event, the *Bolin* decision binds SCDC on the final element of false imprisonment—the unlawfulness of the class members’ detention—and conclusively resolves the false imprisonment analysis in Plaintiffs’ favor.

Knowing that it is bound by *Bolin*, the primary argument SCDC has advanced throughout this case is that the prolonged incarceration of the impacted inmates was lawful until a court, in a final, binding decision, said it was not:

It is admitted that subsequent to the issuance of the Court of Appeals decision and a period of consideration for the agency to consider further appeals, the agency was bound by the specific holding or holdings of that decision.

Ex. E: Defendants’ Joint Responses to First Requests to Admit Nos. 44–47. That, however, is not how the law works. SCDC’s position that the law is what SCDC says it is, and when SCDC says it, flies in the face of hundreds of years of legal tradition and established judicial authority. *See*

Marbury v. Madison, 5 U.S. 137, 177 (1803) (“It is emphatically the province of the Judicial Department to say what the law is.”).

More importantly for present purposes, the Court of Appeals’ decision rested upon a reasoned interpretation of a plainly worded statute that was enacted in 2010. SCDC’s actions, then, were illegal the moment it determined to act contrary to that law. The effect of the Court of Appeals’ decision was not to transform something that had once been lawful into something that was unlawful. Rather, the effect of that decision was to order SCDC to comply with that law as it was written in 2010. The fact that SCDC had to be ordered by a court before it would comply with the law does not mean that SCDC was right until it wasn’t. It means that it was wrong all along, and it is unfortunate that the Court of Appeals had to specifically order SCDC’s compliance with the Act before it was willing to comply.

C. The Bolin Court Proclaimed What the Omnibus Act Always Required and its Application is Retrospective.

Besides belittling the Court of Appeals and its decision-making ability, SCDC attempts to avoid the impact of the *Bolin* decision by trying to substitute the appellate remitter date for the effective date set forth in the Omnibus Act. In essence, SCDC seeks to fast-forward the effective date of the 2010 Omnibus Act not just to November 2015, when the Court of Appeals first ruled, not just to February 2016 when the Court of Appeals issued a slightly modified opinion, but to April 1, 2021 when the Court of Appeals mandate came down in *Bolin*. For example, SCDC has stated that Class Representative Marion Campbell’s properly calculated maxout date under the Omnibus Act - September 17, 2014 - did not actually become his maxout date until April 1, 2016. SCDC’s nonsensical theory appears to be that the proper application of the Omnibus Act was suspended until an appeal produced a result that told SCDC how to properly do its job and appellate avenues were abandoned.

Judicial decisions, unlike non-remedial statutory enactments, are generally retroactive in application. The theoretical basis for broad retroactivity of judicial decisions is that courts (unlike legislatures) do not make, but merely find, the law. Stated another way, courts, in issuing decisions, enunciate the law as it has always existed. This basic principle of jurisprudence has governed South Carolina judicial decision-making for more than 100 years. The South Carolina Supreme Court in *Roof v. Charlotte, C. & A.R. Co.* 4 S.C. 61, 63 (1872) stated its view that the court’s role is not “to pronounce a new law, but to maintain and expound the old one, *jus dicere et non jus dare*.”

Modern courts describe the rule regarding retroactivity of judicial decisions thus:

The general rule regarding retroactive application of judicial decisions is that decisions creating new substantive rights have prospective effect only, whereas decisions creating new remedies to vindicate existing rights are applied retrospectively.” *Toth v. Square D Co.*, 298 S.C. 6, 8, 377 S.E.2d 584, 585 (1989). Prospective application is required when liability is created where none formerly existed. *Id.*⁴

Simmons v. S.C. Farm Bureau Mut. Ins. Co., 301 S.C. 267, 269–70, 391 S.E.2d 560, 562 (1990). This only makes sense. As here, Plaintiffs’ rights under the Omnibus Act were established by the Legislature when that law passed. The Court of Appeals’ decision interpreting the Act merely observed and confirmed that fact and ordered SCDC to comply with the Act as written. In doing so, the Court of Appeals ordered a remedy to vindicate a right that had existed since 2010. *See Miranda C. v. Nissan Motor Co.*, 402 S.C. 577, 586, 741 S.E.2d 34, 39 (Ct. App. 2013) (citing *Harper v. Va. Dep’t of Taxation*, 509 U.S. 86, 95–96, 113 S.Ct. 2510, 125 L.Ed.2d 74 (1993)) (discussing the “presumptively retroactive effect” of civil decisions); *see also* 20 Am.Jur.2d *Courts* § 150 (2013) (“[I]t is said that, unlike legislation, which is presumptively prospective in operation, judicial decisions are presumptively retrospective.”).

⁴ The *Bolin* decision did not create new liability for SCDC where none previously existed—false imprisonment has been a viable claim against the state for decades.

This presumptive retroactivity of judicial decisions has been stated in many different contexts. *See, e.g., Carolina Chloride, Inc.*, 391 S.C. at 433–34, 706 S.E.2d at 503 (finding that a judicial decision should be applied retroactively when it created no new right or cause of action but rather abandoned a former test and restated the focus for what a landowner must prove to entitle him to damages in an inverse condemnation action); *Osborne v. Adams*, 346 S.C. 4, 12–13, 550 S.E.2d 319, 323–24 (2001) (finding retroactive application of case law clarifying which professional relationships created a non-delegable duty in common law negligence cases was appropriate because case law neither created a new cause of action nor abolished any existing immunities).

The *Bolin* court did not overrule long-standing precedent. It did not declare a law unconstitutional nor modify any rights or relationships that arose under the statute. The *Bolin* court rather declared the meaning of a six-year-old statute that had been misapplied since its enactment in an unreasonable and patently erroneous fashion by SCDC ignoring the plain language and explicit intent of the Omnibus Act. This means that the impacted inmates had a right as of June 2, 2010—the effective date of the Omnibus Act—to a proper calculation of their sentences under its terms. The *Bolin* decision did not create new rights for these impacted inmates but merely vindicated their existing rights as to proper credit for service reduction credits and determination of their maxout release date uninhibited by a non-applicable 85% service requirement.

For these reasons, there can be no argument that the 185,276 days served by the impacted inmates beyond their maximum terms of confinement was in any manner lawful. They were held not in accordance with, but rather in violation of, the law as it existed at that time. The detention was therefore unlawful. It was unlawful for the period of 2010 to 2014 when the administrative law court ruled as it did, it was unlawful while the *Bolin* case was pending before the Court of

Appeals, it was unlawful during the period between the initial decision of the Court of Appeals and the issuance of the revised decision in *Bolin*, it was unlawful when SCDC decided to forgo further appeals, and it was unlawful right up until the moment these inmates were finally granted their freedom. Just as an employer, found guilty of wrongful termination, may be liable for back pay during the period it litigated and appealed the case, there is no “litigation privilege” by which SCDC may shield itself from incurring liability for damages while it dithers about in court. To so rule would mean that the government is allowed to violate the law until a court tells it to stop. That is not how responsible government operates, and it should not be permitted here.

SCDC cannot prevail on an argument of good faith or reasonable reliance. It cannot import qualified immunity into a state law false imprisonment claim. SCDC, just like anyone else, is conclusively presumed to have knowledge of the existing law. *City of Newberry v. Newberry Elec. Co-op., Inc.*, 387 S.C. 254, 264, 692 S.E.2d 510, 515 (2010). Ignorance, including misinterpretation, of the law is not a valid justification for violating the law. *Id.* at 515 n.4; see also, e.g., *Horry Cty. v. City of Myrtle Beach*, 288 S.C. 412, 420–21, 343 S.E.2d 36, 40–41 (Ct. App. 1986). SCDC’s actions were objectively unreasonable as detailed by the *Bolin* court, and they were unreasonable for the duration of its illegal conduct.

D. A Detention, Though Legal at Inception, May Become Unlawful so as to Support a False Imprisonment Claim

SCDC has also argued that because each impacted inmate’s original incarceration was lawful, it could not become unlawful at some later date. That position makes no sense, particularly where, as here, the South Carolina Legislature passed a statute **that explicitly changed the law of their incarceration**. The Legislature is allowed to change the law, and SCDC is obligated to follow it, whether it wants to or not. Thus, when these inmates’ sentences were completed according to the requirements of the Omnibus Act, any lawful justification for their continued confinement

ended. See, e.g., *Bennett v. Ohio Dep't of Rehab. & Corr.*, 60 Ohio St. 3d 107, 109, 573 N.E.2d 633, 636 (1991):

It is clear that a person who intentionally confines another cannot escape liability by arguing that he or she was initially privileged to impose the confinement. Once the initial privilege expires, the justification for continued confinement expires and possible liability for false imprisonment begins. See *Leger v. Warren* (1900), 62 Ohio St. 500, 57 N.E. 506, paragraph one of the syllabus; 1 Restatement of the Law 2d, Torts (1965) 67, Section 45 (“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.”).

So it is here, and SCDC’s decision to continue confining inmates who had served their sentences under South Carolina law was, in fact, unlawful. For these reasons, all the elements of false imprisonment are clearly and manifestly met and proved beyond question based upon the admitted facts in this case. Plaintiffs are, therefore, entitled to judgment in their favor as to SCDC’s liability for false imprisonment.

E. SCDC’s Affirmative Defenses Do Not Preclude Summary Judgment

SCDC’s affirmative defenses are without merit as a matter of law and do not preclude summary judgment on the claim of false imprisonment. SCDC asserts as defenses the exemptions to tort claims set forth in the S.C. Tort Claims Act sections 15-78-60(1)(2)(3)(4)(5)(21) and (23) (Fifth Defense); other provisions of the S.C. Tort Claims Act sections 15-78-20, 30(f), 40, and 50(b) (Sixth Defense); statute of limitations (Third Defense); discretionary immunity (Eighth Defense); and failure to exhaust administrative remedies (Ninth Defenses).

1. Tort Claims Act Exemptions (Fifth Defense)

The S.C. Tort Claims Act exemptions pled by SCDC, on their face, do not apply to preclude the claims of false imprisonment under the admitted facts of this case.

With regard to exemptions (1), (2), (4), and (5),⁵ as Plaintiffs note below, these exemptions do not apply to the conduct at issue here. Even if the exemptions were applicable here, however, SCDC cannot meet the burden imposed by the S.C. Supreme Court in *Hawkins v. City of Greenville*:

For each of these specific provisions, the determination of immunity from tort liability turns on the question of whether the acts in question were discretionary rather than ministerial. A finding of immunity under the Act is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards. The governmental entity bears the burden of establishing discretionary immunity as an affirmative defense.

358 S.C. 280, 594 S.E.2d 557, 564 (Ct. App. 2004) (citations omitted) (emphasis added). SCDC's actions, however, were directly counter to the concept of "accepted professional standards." The S.C. Court of Appeals has already found and concluded that SCDC's interpretation of the Omnibus Act was patently erroneous and that the basis for its interpretation—characterizing offenses eligible for parole as no-parole offenses—was unreasonable. SCDC's actions, then, come nowhere close to the "accepted professional standards" requirement announced by the Court of Appeals. SCDC cannot avail itself of these exemptions for that reason alone.

Specifically regarding section S.C. Code Ann. § 15-78-60(1) exempting "legislative, judicial, or quasi-judicial action or inaction," nothing in SCDC's conduct is even remotely

⁵ These exemptions are:

- (1) legislative, judicial, or quasi-judicial action or inaction;
- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies
- (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee.

S.C. Code Ann. § 15-78-60(1)(2)(4)(5).

legislative, judicial, or quasi-judicial. SCDC is clearly a part of the executive branch of South Carolina government, as opposed to the judicial or legislative branch. S.C. Code Ann. § 1-30-10(A) (“There are hereby created, within the executive branch of the state government, the following departments: . . . 5. Department of Corrections . . .” (emphasis added)). In addition, the S. C. Court of Appeals has held that operational functions of state government fall outside the exemption. *Sales v. S.C. Dep’t of Transportation*, No. 2014-000582, 2016 WL 3607225, at *4 (S.C. Ct. App. June 30, 2016); *see also Proctor*, 368 S.C. at 306, 628 S.E.2d at 511 (stating governmental functions that are operational in nature are “not the type of discretionary act contemplated in the Tort Claims Act”). The *Proctor* court also noted that “[t]he fact that the [government] employees had to make decisions or exercise some judgment in their activities is not determinative [of whether the action at issue is discretionary or operational]”). *Id.* at 306–07, 628 S.E.2d at 511. Here, SCDC’s actions were unquestionably operational as opposed to discretionary. SCDC has no discretion to refuse to release inmates after their sentences have been served—that is a matter decided by South Carolina law. SCDC’s actions and decisions with respect to releasing inmates on time is, therefore, purely operational and not discretionary.

Likewise, with regard to S.C. Code Ann. § 15-78-60(2) exempting “administrative action or inaction of a legislative, judicial, or quasi-judicial nature,” SCDC’s actions, again, were operational and in no way legislative, judicial, or quasi-judicial in nature under any stretch of the imagination and were carried out in the course of its operations within the executive branch of South Carolina government, which actions were required and mandated by South Carolina law.

The exemption stated in section 15-78-60(3) relating to “execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process” is not applicable. When the class members’ maximum sentences expired per the terms of the Omnibus Act, there was no order or process remaining to enforce or implement. Even if SCDC

were to argue that the administrative law judge’s decision was an order within the contemplation of section 15-78-60(3), that order was purely a ruling on a grievance filed by the one inmate, entered on February 24, 2014, almost four (4) years after SCDC began misapplying the Omnibus Act to keep inmates in the prison system. So this exemption does not apply here, either.

The exemption stated in section 15-78-60(4) grants immunity for “adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.” In this case, the basis for SCDC’s liability is its failure to comply with the Omnibus Act. The immunity granted by this exemption is specifically for the “adoption, enforcement, or compliance” with a law or the failure to adopt or enforce a law. The legislature did not provide immunity for a failure to comply with the law. This overt omission in statutory language cannot be cast aside—the Legislature intended not to provide immunity for failures to comply with statutes as written, which is exactly what SCDC did in this case. Accordingly, SCDC’s conduct falls outside the plain language of the exemption.

Section 15-78-60(5) exempts the state from liability for actions that are a matter of discretion, subject to the *Hawkins* analysis described above, which commands proof that there was a “conscious choice using accepted professional standards.” *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557, 564 (Ct. App. 2004) (citations omitted). The findings of the *Bolin* court, which bind SCDC, dispel any notion that SCDC’s “patently erroneous” and “unreasonable” interpretation of the Omnibus Act was the product of “accepted professional standards.” The requirement that such discretionary decisions be the product of accepted professional standards has been invoked by the courts in numerous disparate contexts. *See, e.g., Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002) (negligent supervision and retention of employee claims);

Clark v. S.C. Dep't of Pub. Safety, 353 S.C. 291, 304, 578 S.E.2d 16, 22 (Ct. App. 2002), *aff'd*, 362 S.C. 377, 608 S.E.2d 573 (2005) (involving a high-speed police chase).

In any event, again, the focus of a false imprisonment claim is unlawful detention. SCDC's role in releasing inmates when their sentences are complete is prescribed by law and affords no discretion to SCDC to hold inmates past the time when their sentences are complete. SCDC's timely release of prisoners is, thus, a purely operational, not discretionary, function.

Nor does the Tort Claims Act exemption stated in section 15-78-60(21) 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."

Plaintiff's claim for false imprisonment arises from his unlawful detention – the failure to release him. As the South Carolina Supreme Court noted in *Faile v. S.C. Dep't of Juvenile Justice* regarding section 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. 315, 566 S.E.2d 536, 545 (2002) (emphasis added). The clear meaning and intent of section 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 class members, rather than terminating that relationship as required by the Omnibus Act. The plain language of this exemption contemplates the governmental entity having some decisionmaking power over the release of the inmate, which

here SCDC did not—the time in which inmates were supposed to be released is prescribed by the Omnibus Act, which SCDC simply failed to follow. Accordingly, the Tort Claims Act exemption stated in section 15-78-60(21) does not apply.

The S.C. Tort Claims Act exempts the state from liability under subsection (23) for the “institution or prosecution of any judicial or administrative proceeding.” SCDC has never instituted or prosecuted any legal proceeding relating to the Omnibus Act. It did contest Michael Bolin’s grievance, but even that proceeding did not occur until the 2012 to 2013 timeframe, years after the effective date of the Omnibus Act. By then, damage and losses were already accruing to the dozens of inmates whose properly calculated release dates had passed. Nor was SCDC’s defense of the *Bolin* grievance a proximate cause of the damages to the class. The damages to the class arise from the patently erroneous and unreasonable decision by SCDC to equate parolable offenses with no-parole offenses and deprive these inmates of the earlier release dates contemplated by the Legislature when it passed the Omnibus Act.

2. Misc. Tort Claims Act Provisions (Sixth Defense)

None of the provisions cited in the Ninth Defense—S.C. Tort Claims Act Section 15-78-20, 30(f), 40, and 50(b)—provide any direct immunity to SCDC.

Section 15-78-20 is simply a statement of the general intent of the Legislature regarding waiver of immunity. Section 15-78-30(f) merely defines “loss.” Section 15-78-40 states:

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

The above provisions, rather than providing a defense, demonstrate that SCDC is liable for the tort of false imprisonment to the same extent as a private individual unless appropriate Tort Claims Act exemptions apply, which they do not.

S.C. Tort Claims Act section 15-78-50(b) relates to liability based on the actions of a state employee:

In no case is a governmental entity liable for a tort of an employee where that employee, if a private person, would not be liable under the laws of this State.

This provision is not applicable to the admitted facts with regard to false imprisonment—SCDC has admitted that it and its employees held these inmates past their lawful release dates. For the reasons stated *supra*, liability for false imprisonment in this case is clear and established as a matter of law. Thus, this provision provides no safe harbor for SCDC.

3. Statute of Limitations (Fourth Defense)

The statute of limitations defense pled by SCDC does not preclude any claim for false imprisonment in this action. The cause of action for false imprisonment in South Carolina, in accord with most jurisdictions, accrues upon release:

We embrace the rule adopted by other jurisdictions that the statute of limitations for false imprisonment begins to run when the plaintiff is released following an arrest. *Campbell v. Hyatt Regency*, 388 S.E.2d 341, 342 (Ga.Ct.App.1989) (“An action for false imprisonment ‘must be brought within two years of its accrual ... which is from the release from imprisonment.’”).

Canzater v. City of Columbia, No. 2004-UP-054, 2004 WL 6248833, at *1 (S.C. Ct. App. Jan. 22, 2004); *see also Brooks v. Johnson*, C.A. No. 2:15-1074, 2016 WL 551958 at *4 (D.S.C. Jan. 20, 2016).

The class members were released from their wrongful detention, at the earliest, on March 21, 2016. This action was commenced on August 17, 2016 as a putative class action, with 4 months and 27 days having expired from the statute of limitations for the March releasees, and 2 months 16 days for the June releasees. In *American Pipe and Construction Co. v. Utah*, 414 U.S. 538 (1974), the U.S. Supreme Court established that the filing of a putative class action tolls the statute

of limitations period for the individual claims of the purported class members. In March 2019, at the same time she ruled on the individual defendants' qualified immunity claims, Judge Lewis, in carefully chosen language, dismissed the Motion for Class Certification without prejudice. She did not deny the Motion, but simply pulled it from the docket. This case has, thus, remained a class action throughout its pendency, with the Motion to Certify re-filed on October 12, 2020, promptly after remand. The initial filing of this action tolled the statute of limitations, and it has remained tolled during the pendency of this case, which has always been a class action. Accordingly, SCDC's statute of limitations defense as to false imprisonment has no merit.

4. Discretionary Immunity (Eighth Defense)

As noted above, the complained-of actions of SCDC raised in this case are operational rather than discretionary matters. In any event, any finding of discretionary immunity would require proof by SCDC that "the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards." *Hawkins, supra*. SCDC's conduct, however, has already been adjudged "unreasonable" and patently erroneous; thus, SCDC cannot meet its affirmative burden and cannot prevail on a discretionary immunity defense.

5. Failure to Exhaust Administrative Remedies (Nineth Defense)

SCDC, for its Nineth Defense, contends that Plaintiffs have not exhausted administrative remedies. The sole administrative remedies SCDC might be referencing fall under the Prison Litigation Reform Act ("PLRA"). SCDC apparently contends that the Class Representatives and all class members should have filed grievances and proceeded through the full administrative process to adjudicate the exact same issues already adjudicated in a final and binding decision by the S.C. Court of Appeals.

With respect to federal civil rights claims under 42 U.S.C. § 1983, the PLRA provides that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility *until such administrative remedies as are available are exhausted*.” 42 U.S.C. § 1997e(a) (emphasis added). However, there is no such exhaustion provision with respect to claims under South Carolina state law.

South Carolina does have an Inmate Litigation Act (“ILA”), S.C. Code Ann. § 24-27-100, *et seq.* The South Carolina Supreme Court has noted that “the Legislature may have modeled the ILA on the federal Prison Litigation Reform Act” and that while “[t]he ILA does not expressly reference the PLRA . . . numerous provisions virtually mirror each other.” *Wade v. State*, 348 S.C. 255, 260 n.2, 559 S.E.2d 843 (2002). Unlike the PLRA, the ILA does *not* contain an exhaustion requirement.

Likewise, the SCTCA does not require exhaustion of administrative remedies. *See* S.C. Code Ann. §§ 15-78-10 to 15-78-220. The South Carolina Administrative Procedures Act (“SCAPA”) does contain an exhaustion requirement and states that “[a] party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1.” S.C. Code Ann. § 1-23-380. However, the SCTCA explicitly provides that “[t]he handling and disposition of claims filed under this chapter are not subject to the provisions of Article 3, Chapter 23 of Title 1.” S.C. Code Ann. § 15-78-80(f).

Judge Timothy M. Cain of the United States District Court for the District of South Carolina has recently analyzed this very issue in a case where claims were brought under the SCTCA against SCDC and the inmate alleged he was attacked and stabbed by other inmates. In

Battle v. S.C. Dept. of Corrections, C.A. No. 9:19-cv-1739-TMC (D.S.C. Sept. 14, 2021), SCDC argued that the SCAPA imposed exhaustion requirements with respect to the plaintiff's claims under the SCTCA. The court disagreed and held as follows:

The court agrees with Battle that, unlike the PLRA, **state law does not impose exhaustion requirements to his claims under SCTCA**. As noted in Battle's reply to Defendant's objections, the plain language of the SCTCA does not include any provision requiring exhaustion of administrative remedies. *See* S.C. Code Ann. §§ 15-78-10 to 15-78-220. Moreover, the SCTCA expressly states that any claim filed under the SCTCA is not subject to the SCAPA exhaustion provision. S.C. Code Ann. § 15-78-80(f) ("The handling and disposition of claims filed under this chapter are not subject to the provisions of Article 3, Chapter 23 of Title 1."). Accordingly, the court concludes SCTCA claims are not subject to the provisions of the SCAPA. *See Wilson v. Hampton Cty.*, No. 9:05-cv-1777-PMD, 2005 WL 2877725, at *3-4 (D.S.C. Oct. 31, 2005) (holding that "claim under the SCTCA is not subject to the provisions of the South Carolina Administrative Procedures Act"). Defendants' objection is overruled.

Id. at 14-15 (emphasis added).

Therefore, because Plaintiffs' claims under the SCTCA are not subject to an exhaustion of administrative remedies requirement, SCDC's arguments on this ground are without merit and should be rejected.

In addition, with regard to any alleged failure to exhaust remedies under the PLRA, neither the Class Plaintiffs nor the class members were prisoners at the time this action was commenced. The provisions of the Act, therefore, are inapplicable. *See Jackson v. Fong*, 870 F.3d 928 (9th Cir. 2017).

F. Each Miscalculation of Sentence Dates Causing Prolonged Incarceration to a Class Member is a Separate Occurrence under the South Carolina Tort Claims Act

Under the South Carolina Tort Claims Act, a plaintiff is limited to a recovery of \$300,000.00 per occurrence pursuant to section 15-78-120(a)(4). 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). The South Carolina Supreme Court has held that, with proper evidence and

on-point jury findings, a verdict can include multiple occurrences. *See, e.g., Boiter v. S.C. Dept. of Transp.*, 393 S.C. 123, 131-32, 712 S.E.2d 401, 405 (2011).

The essence of the tort of false imprisonment consists of depriving a person of his or her liberty without lawful justification. *Jones v. City of Columbia*, 301 S.C. 62, 389 S.E.2d 662 (1990); *Thomas v. Colonial Stores, Inc.*, 236 S.C. 95, 113 S.E.2d 337 (1960). This is a class action consisting of several hundred individuals who each, separately, endured the requisite loss of liberty and freedom. Each endured a separate tort, with the requisite deprivation commencing on a different date and sustained for a different length of time. Each day SCDC retained custody of an inmate in violation of the Omnibus Act could, in fact, be viewed broadly as a new deprivation of that inmate's freedom of movement, and thus a separate and distinct occurrence of false imprisonment.

At the very least, however, SCDC made a conscious and deliberate decision to confine each one of these inmates past their lawful release dates, and each of the 413 individual class members' claims is compensable as a separate occurrence.⁶ SCDC may argue that its decision to hold these inmates past their lawful release dates was a single act and, thus, a single occurrence. Each of these inmates is a living, breathing human who must be treated as such under the law. SCDC had an inherent and statutory responsibility to release each one of these inmates when their sentences were completed. A new and distinct false imprisonment claim arose from its failure to do so inuring to the benefit of each inmate when their properly calculated maxout date passed. . . . To hold otherwise would mean that SCDC is not required to make a conscious and responsible

⁶ Given the number of individuals involved and the magnitude of the case, for the purposes of this motion, Plaintiffs seek only a ruling that there are 413 separate occurrences in this case—one for each wrongfully imprisoned inmate. If the Court does not decide in the Plaintiffs' favor as a matter of law on this issue, the Plaintiffs reserve the right to allow the jury to find as many occurrences as the evidence supports at trial.

decision, in accordance with the governing law, with respect to each inmate in its care when it comes time to release that inmate.

While SCDC most certainly made a monumental series of global errors in its interpretation of the Omnibus Act, it also made the decision to perpetuate those errors as to each one of these inmates. When SCDC applied those errors to hold each impacted inmate past his or her properly calculated release date, a new and separate claim as to that particular inmate arose for false imprisonment. Each claim for false imprisonment necessarily constitutes a separate occurrence..

VI. CONCLUSION

For the foregoing reasons, there is no genuine issue as to any material fact necessary for Plaintiffs and the class to prevail on the false imprisonment claim and Plaintiffs respectfully urge this Court to grant summary judgment as to this claim, and to find that each inmate may claim a separate occurrence under the S.C. Tort Claims Act.

[Signature on following page]

Respectfully submitted,

s/Andrew R. Hand

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ATTORNEYS FOR PLAINTIFFS

EXHIBIT A
(FLORIAN DEPO. EXCERPTS)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

MARION KATRELL CAMPBELL, on behalf)
of himself and all others)
similarly situated,)
Plaintiff,)
V.) CIVIL ACTION NO.
) 6:16-cv-03265-MGL
)
SOUTH CAROLINA DEPARTMENT OF)
CORRECTIONS, BRIAN P. STIRLING,)
CHRIS FLORIAN, and DAVID TATARSKY,)
Defendants.)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CHRISTOPHER McDOWELL,)
Plaintiff,)
V.) CIVIL ACTION NO.
) 2:16-cv-03379-TLW-MGL
)
BRYAN P. STIRLING, SOUTH)
CAROLINA DEPARTMENT OF)
CORRECTIONS, CHRIS FLORIAN,)
and DAVID TATARSKY,)
Defendants.) (Caption continues)

VIDEO-RECORDED DEPOSITION
- of -
CHRISTOPHER D. FLORIAN

taken on behalf of the Plaintiffs on Thursday,
October 19, 2017, at the offices of Paul Frank
Collins P.C., One Church Street, Burlington,
Vermont, commencing at 9:04 AM.

1 subject to 85 percent or not, both of those have
2 consequences for the offender. Absolutely.

3 Q. So the 85 percent rule on -- there's an 85
4 percent rule on no-parole offenses; is that correct?

5 A. Correct. Under the South Carolina code.

6 Q. And explain the 85 percent rule for me,
7 please.

8 A. Certainly. The 85 percent rule is called the
9 85 percent rule because it requires an offender subject
10 to that rule to serve 85 percent of their sentence
11 before they are eligible for release from
12 incarceration. Once -- they get to that 85 percent
13 through the accrual of good-time credits, earned work
14 credits, earned education credits potentially, so if
15 they don't earn those credits, if they lose their
16 good-time credits or fail to earn them in the first
17 place, they may serve more than 85 percent.

18 Once an offender has completed their term of
19 85 percent, they're then released; they're subject to a
20 program called the community supervision program, which
21 is supervision by Triple P for a period of years. I
22 believe it's two years depending on the length of the
23 sentence; and if they violate the terms of that
24 program, they can be then reincarcerated.

25 Q. No-parole offenses can receive certain

1 credits, but they don't get the same credits that
2 parolable offenses do, do they?

3 A. Correct. They earn -- they earn the same
4 kinds of credits, but they earn them at a lower rate.
5 For example, an offender serving -- let's just call it
6 a regular sentence, an offense not subject to 85
7 percent. They earn credits at the rate of 20 days a
8 month for good-time credits, whereas an offender
9 serving an 85 percent sentence earns three days per
10 month, so there's the difference there. Similar
11 differences apply to earned work credits and education
12 credits.

13 Q. And there are some other significant
14 consequences to no-parole offenses, too, aren't there?

15 A. There -- there are. The community supervision
16 program, as I mentioned before, that's -- that's very
17 different from what happens when an offender is serving
18 an offense that's not subject to 85 percent. When they
19 max out, if they don't have probation afterwards, then
20 they are -- or reentry supervision, they've served
21 their time. In contrast, 85 percent offenders have
22 that period of supervision built in. As well, an
23 offender subject to 85 percent may impact their
24 classification within SCDC. It may have other impacts
25 going forward in the minds of a sentencing judge as

1 well, I suppose, but that's a bit speculative.

2 Q. And the Omnibus Act created categories of
3 nonviolent offenses that it converted from no-parole
4 offenses to parole offenses, didn't it?

5 A. It made certain offenses eligible for parole
6 that were formerly not eligible for parole. And under
7 the Court of Appeals' interpretation of the law in
8 Bolin we now know that those offenses are not subject
9 to 85 percent.

10 Q. But in -- in -- and according to Bolin, they
11 are not no-parole offenses; isn't that correct?

12 A. Right. Right. In other words, they're not
13 subject to 85 percent.

14 Q. And in your legal opinion that you issued on
15 behalf of SCDC in 2010, you kind of created a hybrid of
16 parolable/no-parolable offenses, didn't you?

17 MR. ROLLINS: Object to the form.

18 A. I don't think I created it. That was my
19 interpretation of what the act had done.

20 Q. That's what made sense to you at the time?

21 A. Well, that is my -- that was my legal
22 interpretation of what had been -- what was ordered as
23 part of the act, what the legislature had intended.

24 Q. So in your view those offenders were eligible
25 for parole but received no benefit of having -- that

1 whatever remedies they're entitled to under the law. I
2 don't think it's a judgment call.

3 Q. All right. And, Mr. Florian, how much money
4 would it take to get you to spend a year in general
5 population in one of SCDC's prison facilities?

6 MR. ROLLINS: Object to the form.

7 MR. DAVIDSON: Same objection.

8 A. I wouldn't spend a year in the general
9 population.

10 Q. There's no amount of money that would get you
11 to spend a year in general population in SCDC, fair?

12 MR. ROLLINS: Object to the form.

13 A. That's correct.

14 Q. I mean, a million dollars wouldn't do it,
15 right?

16 MR. ROLLINS: Object to the form.

17 A. I -- I'm not -- I wouldn't -- I'm not
18 interested in money. I'm interested in -- in my time,
19 and I wouldn't want to spend my time that way.

20 MR. WHITE: All right. I do not think I have
21 any further questions at this time. Mr. Florian,
22 please answer any questions that any other lawyers in
23 the room have.

24 MR. ROLLINS: And this is Cliff Rollins.

25 MR. DAVIDSON: You all want to take a break --

EXHIBIT B
(TATARSKY DEPO. EXCERPTS)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

MARION KATRELL CAMPBELL,)
on behalf of himself and)
all others similarly)
situated,)
)
Plaintiffs,)
) C.A. No. 6:16-cv-03265-MGL
vs.)
)
SOUTH CAROLINA DEPARTMENT)
OF CORRECTIONS, BRIAN P.)
STIRLING, CHRIS FLORIAN,)
and DAVID TATARSKY,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF DAVID TATARSKY
TAKEN ON BEHALF OF THE PLAINTIFF MARION KATRELL CAMPBELL
AND THE CLASS

NOVEMBER 16, 2017

1 A. I'm not trying to be -- I mean I don't
2 understand. I mean obviously the decision about whether
3 our interpretation of whether an offense is parolable or
4 not is an important factor, but I'm not sure what you
5 mean by beyond that exactly.

6 Q. Parole offenses and no parole offenses treated
7 differently in regard to how they give credit for
8 educational credits and time served and different things
9 like that?

10 A. Yes, sir. I understand. Yes.

11 Q. So wouldn't that be significant?

12 A. Yes, sir.

13 Q. That was the case even before the Omnibus Act,
14 wasn't it?

15 A. Yes, sir.

16 Q. Is there an 85 percent rule on no parole offenses
17 under the law in the state of South Carolina?

18 A. An 85 percent rule? I mean there are statutes
19 that talk about, I mean, the service -- again I'm not
20 sure I understand. There are statutes that address no
21 parole offenses and 85 percent, yes.

22 Q. Well, explain to me what the 85 percent means,
23 what 85 percent rule means.

24 A. That my recollection is that there was a certain
25 category of offenses that for those purposes, the inmate

1 had to serve at least 85 percent of the sentence before
2 they could be released, and as you mentioned, it also
3 had implications for rates of credits they could earn,
4 things like that as compared to a regular sentence in
5 which the inmates typically would not have to serve 85
6 percent before they would become eligible for parole and
7 they would earn higher credits potentially.

8 Q. So someone who is serving time has to do 85
9 percent, they still get some credits that are
10 calculated, but those credits cannot reduce that 85
11 percent, can they?

12 A. That's correct.

13 Q. Does the Omnibus Act create specific categories
14 of non violent offenses that it converted from no parole
15 offenses to parolable offenses?

16 A. I'm not -- I'm not sure. I mean I can remember
17 specific offenses that were converted I think from
18 non-parolable to parolable, but I don't recall if they
19 were statutorily violent or non violent, so that part I
20 don't know.

21 Q. Well, the legal opinion issued by the office of
22 general counsel for the Department of Corrections in
23 2010, based on Mr. Florian's research, was to create a
24 new category of offense, wasn't it? Sort of a hybrid
25 creation called parolable/no parolable offenses?

1 MR. DAVIDSON: Object as to form.

2 A. I know what you're talking about in Mr. Florian's
3 memo, yes.

4 Q. (By Mr. Whetstone) So you agree with that?

5 A. Yes, sir, I think so.

6 Q. That was an opinion that was reviewed and
7 approved by you, isn't that correct?

8 A. That's correct.

9 Q. That buck stops with you, doesn't it?

10 A. Yes, sir. In the legal office, yes, sir.

11 Q. So throughout the implementation of the Omnibus
12 Act, the department of general counsel coined the term
13 of 85 percent parolable offenses, isn't that correct?

14 A. According to term, like I say, as you said, I
15 think Chris used it in his memos. I don't -- I don't
16 remember if it became sort of a term of art like you
17 were talking about with max out date earlier, but I am
18 familiar with the phrase. We probably used it as a
19 shorthand at least.

20 Q. Doesn't that create a whole new category?

21 A. Well, as I say, we -- certainly, yeah, in our
22 office, yeah. It is a new category of offense, yes.

23 Q. So in essence, would that create -- what that
24 meant was you created parolable/no parole offenses?

25 A. Now I mean we interpreted the law to the best of

1 2016, the conclusions of the court of appeals did not
2 change?

3 A. That's correct.

4 Q. Isn't it true that the court of appeals again
5 stated that SCDC had interpreted the Act unreasonably?

6 A. Again if that's --

7 MR. DAVIDSON: Object as to form.

8 A. If that's a quote, I have no reason to argue with
9 it.

10 Q. (By Mr. Whetstone) Based on documents provided to
11 us in discovery, the e-mails and other communications,
12 we've been provided with, SCDC moved pretty quickly and
13 pretty quickly made the decision that it would not
14 petition or assert or continue to appeal the ruling of
15 the court of appeals, didn't it?

16 A. Yes, sir, that decision was made.

17 Q. I believe that decision was confirmed around
18 February the 29th of 2016. Does that sound about right
19 to you?

20 A. Sounds about right, yes, sir.

21 Q. And in discussing that decision, SCDC
22 acknowledged that there were hundreds of inmates in
23 custody who were past their max out dates, isn't that
24 correct?

25 A. I don't remember the numbers, but certainly a

1 on extra staff, no, sir.

2 Q. (By Mr. Whetstone) So you and your staff were
3 able to go home and have dinner with your families while
4 these inmates continued to be wrongfully incarcerated,
5 isn't that right?

6 MR. ROLLINS: Object to the form.

7 MR. DAVIDSON: Object to the form.

8 A. We went home at the end of the day.

9 Q. (By Mr. Whetstone) How important is it to you to
10 not have to spend one day in jail?

11 MR. ROLLINS: Object to the form.

12 MR. DAVIDSON: Object to the form.

13 A. I don't know. I heard that in Mr. Florian's
14 deposition. I'm not sure. There might be a dollar
15 value. You said to me a million dollars maybe or
16 something, I don't know. I mean I wouldn't want to go
17 back -- go back. I've never been in prison. I wouldn't
18 want to go to prison, but there might be a dollar figure
19 that would make it --

20 Q. Like a million dollars would do it?

21 A. I don't know. Just as I say, I think that -- I
22 just don't think that I can say there's no amount of
23 money that would cause me to go -- to not be willing to
24 go to prison.

25 Q. Regardless of what the number is, it would be a

1 pretty high number for you to spend one day in prison,
2 wouldn't it?

3 A. Sure.

4 MR. DAVIDSON: Objection to the form.

5 A. Absolutely.

6 MR. WHETSTONE: I don't have any other
7 questions. Ask any questions Mr. White has, please.

8 EXAMINATION

9 QUESTIONS BY MR. WHITE:

10 Q. Mr. Tatarsky, my name is Kyle White and I
11 represent several individuals that we'll discuss in a
12 minute. Are you okay to continue?

13 A. Yes, sir. Sure.

14 Q. All right. I represent a gentleman named
15 Christopher McDowell. Do you know anything about
16 Mr. McDowell?

17 A. No, sir.

18 Q. Also represent an individual named Henry Belton.
19 Do you know anything about Mr. Belton?

20 A. No, sir.

21 Q. Same question as to Mr. Larry Hampton. Do you
22 know anything about Mr. Hampton?

23 A. No, sir.

24 Q. I also represent a gentleman named David Payton,
25 Jr. Do you know anything about Mr. Payton, Jr.?

1 A. In general, yes, sir.

2 Q. And just so the jury understands, there was a lag
3 in time between February 24th, 2016 and the time the
4 inmates were actually released, correct?

5 A. Yes, sir.

6 Q. And for some, that was a period of a few months
7 and for some that was a few months longer, correct?

8 A. I believe so, yes, sir.

9 Q. And during that period of time, I don't want to
10 replot all the ground because Mr. Whetstone has covered
11 some of this, but during that period of time -- sorry.
12 Let me back up. How many employees do you figure SCDC
13 had while you were employed with the South Carolina
14 Department of Corrections?

15 A. The entire agency?

16 Q. Yes.

17 A. Ballpark somewhere between five and six thousand
18 I believe.

19 Q. And all those employees between February 24, 2016
20 and the time that my clients were released from prison,
21 all those employees could leave work at the end of the
22 day, at the end of their shift and go home to their
23 family as Mr. Whetstone discussed, correct?

24 A. Yes, sir.

25 Q. All those thousands of employees could leave

1 their post at the end of their shift, they could get in
2 their car and drive wherever they wanted to, right?

3 A. Yes, sir.

4 Q. They could go eat at whatever restaurant they
5 felt like eating at, right?

6 A. Yes, sir.

7 Q. They could go to Chili's or Applebee's or
8 McDonald's or wherever they felt like eating at the
9 time, correct?

10 A. Yes.

11 Q. They could hug their children, right, if they had
12 some?

13 A. Yes, sir.

14 Q. They could go home and have dinner with their
15 family, right?

16 A. Yes, sir.

17 Q. And the inmates that I have mentioned, during
18 that period of time between February 24th, 2016 and the
19 time they were ultimately released, those inmates could
20 not leave the facility in which they were incarcerated
21 to do any of those things, correct?

22 A. That's correct.

23 MR. DAVIDSON: Object to form.

24 Q. (By Mr. White) What would that have been called
25 had one of those -- what would that have been called by

1 SCDC had one of those inmates attempted to leave the
2 facility in which they were incarcerated during that
3 period of time?

4 A. If they attempted to leave? It would be called an
5 escape.

6 Q. And SCDC -- if they attempted to leave after the
7 Bolin opinion in February, 2016, would SCDC have taken
8 any measures necessary to prevent those individuals from
9 leaving?

10 A. If they decided on their own and just tried to
11 leave the institution?

12 Q. Yes.

13 A. Yes, sir. We would have stopped that.

14 Q. And what measures are taken by SCDC, if you know,
15 in order to prevent an inmate from leaving a facility in
16 which they're incarcerated?

17 A. Well, I mean it can be anything up to and
18 including lethal force.

19 Q. And explain for the jury what you mean by lethal
20 force.

21 A. Lethal force, for example, if an inmate in a
22 fenced institution had actually hit the fence and was
23 climbing over the fence trying to escape, the
24 correctional officers would be within their power and
25 policy to shoot that individual.

1 Q. Okay. And shoot them to kill, right?

2 A. That's the only kind of shooting they're trained
3 in, yes, sir.

4 Q. And that applies -- what you're saying, what
5 you've explained to the jury about this deadly force and
6 shooting to kill, that's something that would have been
7 used by SCDC to keep any of the affected inmates from
8 escaping as SCDC would have termed it between
9 February 24th, 2016 and the time they were released.
10 Fair, sir?

11 A. Yes, sir.

12 MR. WHITE: I think those are all the
13 questions I have. I appreciate your time today, sir.
14 Please answer any questions anyone else in the room has
15 or on the phone.

16 A. Okay.

17 MR. ROLLINS: I don't have anything. Will,
18 do you have any questions?

19 EXAMINATION

20 QUESTIONS BY MR. DAVIDSON:

21 Q. I just have a couple. Mr. Tatarsky, am I right
22 there's a great deal of discussion about the court of
23 appeals opinion? In the Bolin case, am I correct that
24 the administrative law court found in favor of the
25 department's interpretation?

EXHIBIT C
(ALJ DECISION)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael Heath Bolin, #341806,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 13-ALJ-04-0534-AP
Grievance No.: CAWC 29-12

RECEIVED
ORDER
MAR 10 2014
SC Court of Appeals

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed July 23, 2013 by Michael Heath Bolin ("Appellant"), who is incarcerated with the South Carolina Department of Corrections ("SCDC").

Appellant filed a Step One Grievance on October 17, 2012, claiming his sentences should be considered non-violent and not subject to the requirement that Appellant serve 85% of his sentence before he becomes eligible for release. This grievance was upheld in regards to Appellant's classification as violent, but denied as to the 85% service requirement. Appellant then filed a Step Two Grievance on July 9, 2013. This grievance was investigated and denied. Appellant filed his Notice of Appeal on July 23, 2013 claiming that his offenses of Possession with Intent to Distribute Methamphetamine, second offense, and Conspiracy to Manufacture Methamphetamine, second offense, should not be considered "no parole" offenses and therefore, the Appellant should not be required to serve 85% of his sentence.

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The ALC's appellate jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his/her sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. Id.

When reviewing the SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 380, 527 S.E.2d at 756. Consequently, the review in these cases is limited to the record presented. An Administrative Law Judge may not substitute her judgment

FILED
FEB 24 2014

for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5). The ALC will not disturb the findings of an administrative agency if its findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the conclusion reached by the administrative agency. Trimmier v. S.C. Dep't of Labor, Licensing & Regulation, 405 S.C. 239, 246, 746 S.E.2d 491, 494 (Ct. App. 2013) (quoting Porter v. S.C. Pub. Serv. Comm'n, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998)). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995) (quoting Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984)).

LAW/ANALYSIS

On May 15, 2012, Appellant plead guilty to Possession with Intent to Distribute Methamphetamine, second offense; Conspiracy to Manufacture Methamphetamine, second offense; Possession of Methamphetamine, second offense; and Unlawful Possession of a Pistol. Appellant was sentenced to concurrent terms of five years' incarceration on each of the methamphetamine charges, and Appellant received a concurrent one-year sentence for Unlawful Possession of a Pistol. Both parties agree that Appellant's convictions for Possession of Methamphetamine, second offense, in violation of S.C. Code Ann. § 44-53-375(A) and Unlawful Possession of a Pistol are not subject to the requirement that an offender serve 85% of his sentence. Therefore, the only sentences at issue in this appeal are those for Possession with Intent to Distribute Methamphetamine, second offense, and Conspiracy to Manufacture Methamphetamine, second offense, both in violation of S.C. Code Ann. § 44-53-375(B)(2).

The requirement that an inmate convicted of a "no parole" offense serve 85% of the sentence is found in S.C. Code Ann. § 24-13-150(A), which reads:

Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, an inmate convicted of a "no parole offense" as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent

of the actual term of imprisonment imposed. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended. Nothing in this section may be construed to allow an inmate convicted of murder or an inmate prohibited from participating in work release, early release, discharge, or community supervision by another provision of law to be eligible for work release, early release, discharge, or community supervision.

Under S.C. Code Ann. § 24-13-100, a “no parole” offense is defined as “a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more.” Both Possession with Intent to Distribute Methamphetamine, second offense, and Conspiracy to Manufacture Methamphetamine, second offense are punishable by up to thirty years’ incarceration. See S.C. Code Ann. § 44-53-375(B)(2).

The Appellant contends that his conviction is not subject to the requirement that an inmate serve 85% of the sentence. Appellant relies upon language added to S.C. Code Ann. § 44-53-375(B) by the Omnibus Crime Reduction and Sentencing Reform Act of 2010, which reads:

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.

See S.C. Act No. 273 (June 2, 2010). The Appellant contends that with the enactment of the Omnibus Crime Reduction, the General Assembly decided to drastically lessen the punishment for drug offenses, and to provide for probation and parole for offenders who were previously ineligible for probation and parole. However, nothing in the amended language of Section 44-53-375(B) reflects a legislative intent to remove the 85% requirement. See State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (“Whenever possible, legislative intent should be found in the plain language of the statute itself.”). The plain language of the statute states that an offender is “eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.” None of these items is incompatible with the requirement that an inmate serve 85% of their sentence. See S.C. Code Ann. § 24-13-210(B) (providing for good time credits for offenders who are subject to the 85% requirement); see also S.C. Code Ann. § 24-13-230(B) (providing for work and education credits for offenders who are

subject to the 85% requirement); see also S.C. Code Ann. § 24-21-560(A) (requiring participation in the community supervision program for offenders subject to the 85% requirement).

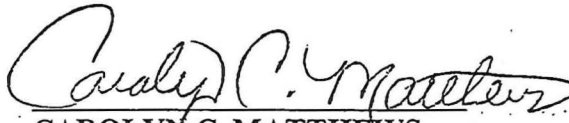
The words of a statute must be construed in a manner which harmonizes its subject matter and accords with its general purposes. Cabiness v. Town of James Island, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011) (citing Eagle Container Co. v. County of Newberry, 379 S.C. 564, 570, 666 S.E.2d 892, 896 (2008)). Here, under the amended language, inmates are eligible for parole, but if they are not paroled, they are still required to serve 85% of their sentences. See S.C. Code Ann. § 24-13-150(A) ("Notwithstanding any other provision of law...an inmate convicted of a 'no parole offense' as defined in Section 24-13-100...is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed.").

The Appellant claims that the amended provisions of S.C. Code Ann. § 44-53-375 take Appellant out from under the "no parole" provision of S.C. Code Ann. § 24-13-150. However, the plain language of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 did not alter the requirement of service of 85% of an inmate's sentence. Therefore, the Appellant's sentence has been correctly calculated.

Based upon the foregoing,

IT IS HEREBY ORDERED that the final decision of the SCDC is **AFFIRMED**.

AND IT IS SO ORDERED.


CAROLYN C. MATTHEWS
 S.C. Administrative Law Court

February 24, 2014
 Columbia, South Carolina

CERTIFICATE OF SERVICE
 This is to certify that the undersigned has this date served the _____ in the above entitled action upon all parties to _____ by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency (Mail Service) addressed to the party(ies) or their attorney(s).
 This 24th day of February 2014
 By: NURERO
 Judicial Law Clerk

EXHIBIT D
(11/12/15 *BOLIN* DECISION)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Michael Heath Bolin, #341806, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2014-000461

Appeal From The Administrative Law Court
Carolyn C. Matthews, Administrative Law Judge

Opinion No. 5361
Heard September 8, 2015 – Filed November 12, 2015

REVERSED

Trent Neuell Pruett, of Pruett Law Firm, of Gaffney, for
Appellant.

Daniel John Crooks, III, of the South Carolina
Department of Corrections, of Columbia, for Respondent.

GEATHERS, J.: Appellant Michael Bolin (Inmate) challenges a decision of the South Carolina Administrative Law Court (ALC) upholding a determination of the South Carolina Department of Corrections (DOC) that Inmate must serve eighty-five percent of his sentence before he is eligible for early release, discharge, or community supervision. Inmate argues that the eighty-five-percent requirement of section 24-13-150 of the South Carolina Code (Supp. 2014) does not apply to any of the offenses to which he pled guilty because they are not considered "no-parole offenses." We reverse the ALC's decision.

FACTS/PROCEDURAL HISTORY

On May 15, 2012, Inmate pled guilty to possession of methamphetamine, second offense (possession), possession of methamphetamine with intent to distribute, second offense (intent to distribute), conspiracy to manufacture methamphetamine, second offense (conspiracy), and unlawful possession of a pistol. He was sentenced to five years' imprisonment on each methamphetamine offense and one year of imprisonment for the weapon offense, to run concurrently.

Curiously, after Inmate began serving his sentence, DOC informed him that he was eligible for parole on his conspiracy conviction and intent to distribute conviction under section 44-53-375(B) of the South Carolina Code (Supp. 2014) but if he was not granted parole, these offenses would be treated as no-parole offenses under section 24-13-100 of the South Carolina Code (2007) and section 24-13-150 of the South Carolina Code (Supp. 2014).¹ Section 24-13-100 defines the term "no-parole offense," and section 24-13-150 requires an inmate convicted of a no-parole offense to serve at least eighty-five percent of his sentence before he is eligible for early release, discharge, or community supervision.²

Subsequently, Inmate filed a Step 1 grievance form with DOC, stating that DOC incorrectly calculated his projected release date by requiring him to serve eighty-five percent of his sentence and, thus, treating his conspiracy and intent to distribute offenses as no-parole offenses under section 24-13-100. Inmate asserted that the amended provisions of section 44-53-375(B) preclude DOC from treating

¹ Inmate committed these offenses on April 7, 2011, and July 12, 2011, respectively. Both parties agree that Inmate's other offenses, simple possession of methamphetamine, second offense, and possession of a pistol, are not subject to the eighty-five-percent requirement.

² Section 24-13-150(A) states, in pertinent part, "Notwithstanding any other provision of law, . . . an inmate convicted of a 'no[-]parole offense' . . . is not eligible for early release, discharge, or community supervision . . . until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed."

these offenses as no-parole offenses.³ After this grievance was denied, Inmate filed a Step 2 grievance form, which was also denied.

Inmate appealed DOC's determination to the ALC, and the ALC upheld the determination. This appeal followed.

ISSUE ON APPEAL

Did the ALC err in concluding that Inmate must serve at least eighty-five percent of his sentence before he is eligible for early release, discharge, or community supervision?

STANDARD OF REVIEW

Section 1-23-610(B) of the South Carolina Code (Supp. 2014) sets forth the standard of review when this court is sitting in review of a decision by the ALC on an appeal from an administrative agency. Specifically, section 1-23-610(B) allows this court to reverse the ALC's decision if it violates a constitutional or statutory provision or is affected by any other error of law.⁴ Here, the sole issue on review involves a question of statutory interpretation, which is a question of law "subject to de novo review." *Barton v. S.C. Dep't of Prob. Parole & Pardon Servs.*, 404 S.C. 395, 414, 745 S.E.2d 110, 120 (2013).

Further, 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." *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575-76 (2010) (quotation marks omitted).

LAW/ANALYSIS

Inmate contends that the eighty-five-percent requirement of section 24-13-150 does not apply to his conspiracy and intent to distribute convictions because they are no longer considered no-parole offenses by virtue of the 2010 amendment

³ Inmate also complained that DOC incorrectly classified his conspiracy offense as a violent offense. DOC ultimately resolved this particular part of Inmate's grievance in his favor.

⁴ S.C. Code Ann. § 1-23-610(B)(a), (d) (Supp. 2014).

to section 44-53-375(B), which addresses the possession, manufacture, or trafficking of methamphetamine. We agree.

As previously stated, section 24-13-150 requires an inmate who has been convicted of a no-parole offense to serve eighty-five percent of his sentence before he is eligible for "early release, discharge, or community supervision."⁵ A no-parole offense is defined, in pertinent part, in section 24-13-100 as "a class A, B, or C felony."⁶ Whether a felony is a Class A, B, or C felony depends on the maximum sentence for the felony—a Class A felony is a felony punishable by not more than thirty years, a Class B felony is a felony punishable by not more than twenty-five years, and a Class C felony is a felony punishable by not more than twenty years. S.C. Code Ann. § 16-1-20 (2003); *see also* S.C. Code Ann. § 16-1-30 (2003) ("All criminal offenses created by statute after July 1, 1993, must be classified according to the maximum term of imprisonment provided in the statute and pursuant to Sections 16-1-10 and 16-1-20, except as provided in Section 16-1-10(D)."); S.C. Code Ann. § 16-1-10(D) (Supp. 2014) (listing offenses that are exempt from classification).

Prior to June 2, 2010, conspiracy to manufacture methamphetamine, second offense, and possession with intent to distribute methamphetamine, second offense, were in fact considered no-parole offenses. In other words, section 44-53-375(B) imposed a maximum sentence of thirty years for a second offense of possession

⁵ In contrast, most inmates who have been convicted of a parolable, nonviolent offense are required to serve only twenty-five percent of their sentences before becoming eligible for parole. *See* S.C. Code Ann. § 24-21-610 (2007) (requiring a prisoner convicted of a parolable, nonviolent offense to serve "at least one-fourth of the term of a sentence" before the Parole Board "may . . . parole" the prisoner). Of course, an inmate's eligibility for parole merely gives the Parole Board the *authority* to grant parole—the decision to grant or deny parole is within the Parole Board's discretion, as indicated by the legislature's use of the word "may" in section 24-21-610. *See Robertson v. State*, 276 S.C. 356, 358, 278 S.E.2d 770, 771 (1981) ("Ordinarily, 'may' signifies permission and generally means the action spoken of is optional or discretionary."). Notably, if the Parole Board denies parole to an eligible inmate, it must review the inmate's case on a yearly basis. *See* S.C. Code Ann. § 24-21-620 (2007) ("Upon an affirmative determination, the prisoner must be granted a provisional parole or parole. Upon a negative determination, the prisoner's case shall be reviewed every twelve months thereafter for the purpose of such determination.").

⁶ Section 24-13-100 was enacted in 1995. *See* Act No. 83, 1995 S.C. Acts 551.

with intent to distribute methamphetamine or conspiracy to manufacture methamphetamine. *See* Act No. 127, 2005 S.C. Acts 1497 (increasing the maximum sentence from twenty-five to thirty years). Accordingly, these offenses were considered Class A felonies and, thus, no-parole offenses. *See* S.C. Code Ann. § 16-1-20(A) (2003) (stating that a person convicted of a Class A felony must be imprisoned for "not more than thirty years"); S.C. Code Ann. § 24-13-100 (2007) (including a Class A felony in the definition of no-parole offense).

However, on June 2, 2010, the Omnibus Crime Reduction and Sentencing Reform Act of 2010 (the Act) became effective. While the Act did not decrease the maximum sentence for a second offense of possession with intent to distribute methamphetamine or conspiracy to manufacture methamphetamine, it amended section 44-53-375(B) to add the following language: "*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). Similar language was added to subsection (A) of section 44-53-375 and various provisions in section 44-53-370 covering controlled substances.

The Act did not amend the definition of the term "no-parole offense" in section 24-13-100. Nonetheless, the legislature's use of the phrase "Notwithstanding any other provision of law," in the amendments to sections 44-53-375 and -370 expresses its intent to repeal section 24-13-100 to the extent it conflicts with amended sections 44-53-375 and -370. *See Stone v. State*, 313 S.C. 533, 535, 443 S.E.2d 544, 545 (1994) (holding that when two statutes "are in conflict, the more recent and specific statute should prevail so as to repeal the earlier, general statute"); *Hair v. State*, 305 S.C. 77, 79, 406 S.E.2d 332, 334 (1991) ("The law clearly provides that if two statutes are in conflict, the latest statute passed should prevail so as to repeal the earlier statute to the extent of the repugnancy."); *Strickland v. State*, 276 S.C. 17, 19, 274 S.E.2d 430, 432 (1981) ("[S]tatutes of a specific nature are not to be considered as repealed in whole or in part by a later general statute *unless* there is a direct reference to the former statute or *the intent of the legislature to do so is explicitly implied therein*." (emphases added)). Even if the language of section 24-13-100 could be considered more specific than the amendment to section 44-53-375(B), the intent to repeal section 24-13-100 to the extent it conflicts with the amendments to sections 44-53-370 and -375 is "explicitly implied" in the language of the amendments stating, "Notwithstanding any other provision of law." *See Strickland*, 276 S.C. at 19, 274

S.E.2d at 432 ("[S]tatutes of a specific nature are not to be considered as repealed in whole or in part by a later general statute *unless* there is a direct reference to the former statute or *the intent of the legislature to do so is explicitly implied therein.*" (emphases added)). Without this implicit repeal, the amendments themselves would be meaningless. *See State v. Long*, 363 S.C. 360, 364, 610 S.E.2d 809, 811 (2005) ("The legislature is presumed to intend that its statutes accomplish something.").

DOC interprets the interplay between amended section 44-53-375(B), the definition of no-parole offense in section 24-13-100, and the eight-five-percent requirement in section 24-13-150 to allow a person convicted of a second offense under section 44-53-375(B) to be eligible for parole the first time he is considered by the Parole Board. However, DOC argues that if such an inmate is initially denied parole, he would be required to serve eighty-five percent of his sentence before he is once again considered to be eligible for parole or other early release, discharge, or community supervision. That is, he is not considered for parole on a yearly basis under section 24-21-620.

According to DOC, a second offense under section 44-53-375(B) is still considered a no-parole offense unless the inmate is granted parole. In other words, DOC treats this particular second offense as both a parolable offense and a no-parole offense. This interpretation is illogical and inconsistent with the legislative intent behind section 44-53-375(B), section 24-13-100, and section 24-13-150. *See Sweat*, 386 S.C. at 350, 688 S.E.2d at 575 ("All rules of statutory construction are subservient to the one that the 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." (quotation marks omitted)); *id.* ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers."); *id.* at 351, 688 S.E.2d at 575 ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention."); *State v. Johnson*, 396 S.C. 182, 188, 720 S.E.2d 516, 520 (Ct. App. 2011) ("In interpreting a statute, the court will give words their plain and ordinary meaning, and will not resort to forced construction that would limit or expand the statute.").

It is without doubt that the statutory definition for the term "no-parole offense" in section 24-13-100, i.e., "a class A, B, or C felony . . .," simply

describes the types of offenses for which the offender is not eligible for parole.⁷ *See Sweat*, 386 S.C. at 350, 688 S.E.2d at 575 ("The Court should give words their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." (quotation marks omitted)); *id.* ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." (quotation marks omitted)). Yet, the plain language of the amendment to section 44-53-375(B) adds a provision expressly allowing first offenders or second offenders to be eligible for parole, expressing an intent to treat first offenders and second offenders the same for purposes of the collateral consequences of the offense, i.e., exempt from the consequences of a no-parole offense. Thus, it is unreasonable to characterize an offense for which the offender is eligible for parole as a no-parole offense.

Accordingly, section 24-13-100, which was enacted in 1995,⁸ conflicts with the legislative intent behind the 2010 amendment to section 44-53-375(B). In addition to the plain language of the amendment itself, legislative intent is expressly addressed in Section I of the Act, which states, in pertinent part,

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*

⁷ This is consistent with provisions in related statutes clarifying that a no-parole offender is not eligible for parole. *See* S.C. Code Ann. § 24-21-30(A) (2007) ("A person who commits a 'no[-]parole offense' as defined in Section 24-13-100 on or after the effective date of this section is not eligible for parole consideration . . ."); § 24-21-30(B) ("Nothing in this subsection may be construed to allow any person who commits a 'no[-]parole offense' as defined in Section 24-13-100 on or after the effective date of this section to be eligible for parole."); *Beaufort Cnty. v. S.C. State Election Comm'n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011) ("[I]t is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result.").

⁸ *See* Act No. 83, 1995 S.C. Acts 551.

smarter use of correctional funding, and improve public safety.

2010 Act No. 273, § 1 (emphases added). Hence, one of the Act's objectives is to conserve taxpayer dollars by allowing earlier release dates for inmates convicted of less serious offenses. In light of this objective, it makes little sense to allow the Parole Board to review the case of an inmate convicted of a drug offense for the purpose of determining whether he is entitled to parole only to suspend the Parole Board's yearly review schedule for that inmate should he not be granted parole the first time.

DOC argues that amended section 44-53-375 does not conflict with sections 24-13-100 and -150 because offenders can be afforded each item listed in the amendment, i.e., parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits, without altering an eighty-five-percent service requirement for those not granted parole. DOC explains that none of the items in this list are incompatible with a requirement that an offender not granted parole serve eighty-five percent of his sentence. In support of this argument, DOC cites the following provisions: S.C. Code Ann. § 24-13-210(B) (Supp. 2014) (providing for good conduct credits at the rate of three days for each month served for no-parole offenders subject to the eighty-five-percent requirement); S.C. Code Ann. § 24-13-230(B) (Supp. 2014) (providing for work and education credits at the rate of six days for every month of employment or enrollment for no-parole offenders); S.C. Code Ann. § 24-21-560(A) (2007) (requiring no-parole offenders to participate in a community supervision program).

However, we note the stark contrast between the credits allowed for inmates convicted of parolable offenses and the credits allowed for no-parole offenders. *See* S.C. Code Ann. § 24-13-210(A), (B) (Supp. 2014) (allowing twenty days for each month served for inmates convicted of parolable offenses versus three days for each month served for no-parole offenders); S.C. Code Ann. § 24-13-230(A), (B) (Supp. 2014) (allowing zero to one day for every two days of employment or enrollment for inmates convicted of parolable offenses versus six days for every month of employment or enrollment for no-parole offenders).

Further, DOC has not explained away the following language from the amendment: "[A] person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted" The disparity between this allowance and the requirement that an offender serve eighty-five percent of his sentence makes it unlikely that the

legislature intended for the eighty-five-percent requirement to apply to the amended provisions of section 44-53-375(B).

DOC also argues that Inmate's interpretation of the amendment would render the language referencing community supervision meaningless because "only offenders serving sentences for 'no[-]parole offenses' are required to participate in community supervision." That may have been true before the amendments to sections 44-53-370 and -375 were enacted, but these amendments now *expressly allow* offenders to participate in community supervision as an alternative to the use of taxpayer funds to house them in prison. *See* 2010 Act No. 273, § 1 ("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.*" (emphasis added)).

Based on the foregoing, we hold that a second offense under section 44-53-375(B) is no longer a no-parole offense. *See Sweat*, 386 S.C. at 350, 688 S.E.2d at 575 ("All rules of statutory construction are subservient to the one that the 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." (quotation marks omitted)). Therefore, the ALC erred in rejecting Inmate's interpretation of the statutes in question.

CONCLUSION

Accordingly, we reverse the ALC's decision.

REVERSED.

SHORT and MCDONALD, JJ., concur.

EXHIBIT E

**(DEFENDANTS' JOINT RESPONSES TO
PLAINTIFF'S FIRST SET OF REQUESTS
TO ADMIT) (REDACTED TO REMOVE
PUTATIVE CLASS MEMBER AND
INFORMATION)**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
C/A No.: 6:16-cv-03265-MGL-KFM

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

Plaintiff,

v.

South Carolina Department of
Corrections, Brian P. Stirling, Chris
Florian, and David Tatarsky,

Defendants.

**DEFENDANTS' JOINT RESPONSES TO
PLAINTIFF'S FIRST SET OF REQUESTS TO
ADMIT**

**TO: RICHARD A. HARPOOTLIAN, ESQUIRE, CHRISTOPHER P. KENNEY,
ESQUIRE, CHARLES W. WHETSTONE, ESQUIRE, CHERYL PERKINS, ESQUIRE
AND PHILIP A. BERLINSKY, ESQUIRE, COUNSEL FOR PLAINTIFF AND
PLAINTIFF ABOVE-NAMED:**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, the Defendants hereby
respond to Plaintiff's First Requests to Admit as follows:

1. An inmate of SCDC has fully served and completed the incarceration portion of
his sentence on his or her max-out date.

**RESPONSE: Defendants admit that an inmate has fully served his incarceration at the
completion of a properly calculated max-out date.**

2. Marion Campbell (SCDC#295866) completed the incarceration portion of his
sentence and reached his max-out date on September 16, 2014 according to SCDC records. See
Exhibit A.

**RESPONSE: Denied. Marion Campbell's max-out date was September 4, 2016 until after
the *Bolin* decision became final and his max-out date was recalculated.**

3. The inmates listed on Ex. A completed the incarceration portion of their sentences and reached their max-out dates for purposes of release or supervised re-entry on the dates listed for each under the column headings NEW MAXOUT and/or SR DATE.

RESPONSE: Denied.

4. The inmates listed on Ex. B completed the incarceration portion of their sentences and reached their max-out dates for purposes of release or supervised re-entry on the dates listed for each under the column headings NEW DATE and/or SR DATE.

RESPONSE: Denied.

5. SCDC miscalculated Marion Campbell's release date.

RESPONSE: Denied. SCDC properly calculated Marion Campbell's release date under the agency's interpretation of the Act, which was the effective interpretation until the Court of Appeals released the *Bolin* decision.

6. SCDC miscalculated the release and/or supervised re-entry dated for every inmate listed on Ex. A.

RESPONSE: Denied.

7. SCDC miscalculated the release and/or supervised re-entry date for every inmate listed on Ex. B.

RESPONSE: Denied.

8. SCDC detained Marion Campbell in custody until March 21, 2016.

RESPONSE: Admitted.

9. SCDC detained the inmates listed on Ex. A in custody until March 21, 2016.

RESPONSE: Admitted.

10. Ex. A documents 231 miscalculations of release or supervised re-entry dates by SCDC.

RESPONSE: Denied.

11. Ex. B documents 194 miscalculations of release or supervised re-entry dates by SCDC.

RESPONSE: Denied.

12. SCDC detained the inmates listed on Ex. B in custody until June 1, 2016 (for private transports) and June 2, 2016 (for bus riders).

RESPONSE: Admitted.

13. SCDC's legal authority to detain Marion Campbell terminated after September 16, 2014.

RESPONSE: Denied.

14. SCDC's legal authority to detain that each inmate listed on Ex. A terminated after the "NEW MAXOUT DATE" or "SR DATE" listed on Ex. A for each inmate.

RESPONSE: Denied.

15. SCDC's legal authority to detain that each inmate listed on Ex. B terminated after the "NEW DATE" or "SR DATE" listed on Ex. B for each inmate.

RESPONSE: Denied.

16. Marion Campbell regained his constitutional right to liberty and freedom after September 16, 2014.

RESPONSE: Denied. By way of explanation, rights of inmates may be subject to constraints or limitations during the period of their incarceration. Likewise, constitutional rights are subject to reinterpretation or reevaluation by the judiciary, but inmates do not "lose" their constitutional rights simply by virtue of being incarcerated. Therefore, Marion Campbell could not "regain" a constitutional right because he did not "lose" one.

17. Each inmate on Ex. A regained his or her constitutional right to liberty and freedom after the "NEW MAXOUT DATE" for that inmate as listed on Ex. A.

RESPONSE: Denied. By way of explanation, rights of inmates may be subject to constraints or limitations during the period of their incarceration. Likewise, constitutional rights are subject to reinterpretation or reevaluation by the judiciary, but inmates do not "lose" their constitutional rights simply by virtue of being incarcerated. Therefore, the inmates did not "regain" a constitutional right because they did not "lose" a constitutional right.

18. Each inmate on Ex. B regained his or her constitutional right to liberty and freedom after the "NEW DATE" for that inmate as listed on Ex. B.

RESPONSE: Denied. By way of explanation, rights of inmates may be subject to constraints or limitations during the period of their incarceration. Likewise, constitutional rights are subject to reinterpretation or reevaluation by the judiciary, but inmates do not "lose" their constitutional rights simply by virtue of being incarcerated. Therefore, the inmates did not "regain" a constitutional right because they did not "lose" a constitutional right.

19. Each inmate on Ex. A regained his or her constitutional right to the full extent of liberty and freedom supervised re-entry allows after the new "SR DATE" for that inmate as listed on Ex. A.

RESPONSE: Denied. By way of explanation, rights of inmates may be subject to constraints or limitations during the period of their incarceration. Likewise, constitutional rights are subject to reinterpretation or reevaluation by the judiciary, but inmates do not "lose" their constitutional rights simply by virtue of being incarcerated. Therefore, the

inmates did not “regain” a constitutional right because they did not “lose” a constitutional right.

20. Each inmate on Ex. B regained his or her constitutional right to the full extent of liberty and freedom supervised re-entry allows after the new “SR DATE” for that inmate as listed on Ex. B.

RESPONSE: Denied. By way of explanation, rights of inmates may be subject to constraints or limitations during the period of their incarceration. Likewise, constitutional rights are subject to reinterpretation or reevaluation by the judiciary, but inmates do not “lose” their constitutional rights simply by virtue of being incarcerated. Therefore, the inmates did not “regain” a constitutional right because they did not “lose” a constitutional right.

21. SCDC continued to incarcerate Marion Campbell in prison by force from September 17, 2014 to March 21, 2016.

RESPONSE: Admitted.

22. SCDC continued to incarcerate each inmate listed on Ex. A in prison by force after his or her “NEW MAXOUT DATES” and/or “SR DATES” listed for each inmate on Ex. A.

RESPONSE: Admitted.

23. SCDC continued to incarcerate each inmate listed on Ex. B in prison by force after his or her “NEW DATES” and/or “SR DATES” listed for each inmate on Ex. B.

RESPONSE: Admitted.

24. After September 16, 2014 to March 21, 2016, SCDC continued to incarcerate Marion Campbell against his will.

RESPONSE: The answering parties are unable to truthfully admit or deny this request because they are not able to testify to Marion Campbell’s private thoughts or beliefs. To

the extent that Marion Campbell's state of mind was indicated by his actions, it is denied, as Marion Campbell filed no grievance with regards to his continued incarceration.

25. SCDC continued to incarcerate each inmate listed on Ex. A against his or her will after his or her 'NEW MAXOUT DATES' and/or 'SR DATES' listed for each inmate on Ex. A. **RESPONSE:** The answering parties are unable to truthfully admit or deny part of this request because they are not able to testify to the various inmates' private thoughts or beliefs, and therefore cannot testify to the state of their "will." To the extent that the state of mind of these inmates was indicated by their actions, then it is denied as to those inmates who filed no grievance with regards to their continued incarceration. It is admitted that the inmates on Ex. A continued to be incarcerated until March 21, 2016.

26. SCDC continued to incarcerate each inmate listed on Ex. B against his or her will after his or her "NEW MAXOUT DATES" and/or "SR DATES" listed for each inmate on Ex. B. **RESPONSE:** The answering parties are unable to truthfully admit or deny part of this request because they are not able to testify to the various inmates' private thoughts or beliefs, and therefore cannot testify to the state of their "will." To the extent that the state of mind of these inmates was indicated by their actions, then it is denied as to those inmates who filed no grievance with regards to their continued incarceration. It is admitted that the inmates on Ex. B continued to be incarcerated until June 1, 2016.

27. SCDC had no pending charges on which to detain Marion Campbell as of September 17, 2014 through March 21, 2016.

RESPONSE: Admitted. Marion Campbell was being detained on the basis of the offenses for which he had already been sentenced.

28. SCDC had no valid warrant to detain Marion Campbell as of September 17, 2014 through March 21, 2016.

RESPONSE: Admitted. Marion Campbell was being detained on the basis of the offenses for which he had already been sentenced.

29. SCDC has no probable cause to detain Marion Campbell as of September 17, 2014 through March 21, 2016.

RESPONSE: Admitted. Marion Campbell was being detained on the basis of the offenses for which he had already been sentenced.

30. SCDC had no new pending charges, probably cause and/or valid warrants on which to detain the inmates listed on Ex. A between the “NEW MAXOUT DATES,” and/or “SR DATES” for each and March 21, 2016.

RESPONSE: Admitted. These inmates were being detained on the basis of offenses for which they had already been sentenced.

31. SCDC had no new pending charges, probably cause and/or valid warrants on which to detain the inmates listed on Ex. B between the “NEW DATES” and/or “SR DATES” and June 1, 2016.

RESPONSE: Admitted. These inmates were being detained on the basis of offenses for which they had already been sentenced.

32. SCDC lacks discretion to incarcerate an inmate past the completion of his or her sentence in the absence of new charges.

RESPONSE: Defendants admit only that when a question of law arises about the interpretation of a sentencing statute, SCDC’s discretion to incarcerate the inmate ends when a court of competent jurisdiction has ruled on the issue, barring new charges. Any remaining contentions of this Request are denied.

33. SCDC’s duty to release an inmate from incarceration as of the completion of the incarceration portion of his or her sentence is absolute.

RESPONSE: Defendants admit only that the duty to release an inmate from incarceration as of the completion of the incarceration portion of his sentence is absolute as long as there is no question regarding the interpretation of the relevant sentencing statute. Any remaining contentions of this Request are denied.

34. SCDC's incarceration of Marion Campbell from September 17, 2014 to March 21, 2016 was unlawful.

RESPONSE: Denied.

35. SCDC's incarceration of each inmate listed on Ex. A from his or her "NEW MAXOUT DATE" AND/OR "SR DATE" TO March 21, 2016 was unlawful

RESPONSE: Denied.

36. SCDC's incarceration of each inmate listed on Ex. B from his or her "NEW DATE" and/or "SR DATE" TO June 2, 2016 (or June 2, 2016 for bus riders) was unlawful.

RESPONSE: Denied.

37. South Carolina drug offenses impacted by the Omnibus Crime Reduction and Sentencing Reform Act of 2010 [hereinafter "the Omnibus Act"] do not require SCDC to engage in victim notifications prior to inmate release.

RESPONSE: Denied.

38. SCDC's calculation of Marion Campbell's release date by applying sentence reduction credits at the rate for non-parolable offenses was unreasonable.

RESPONSE: Denied.

39. SCDC's calculation of the release date for each inmate listed on Ex. A by applying sentence reduction credits at the rate for non-parolable offenses was unreasonable.

RESPONSE: Denied.

40. SCDC's calculation of the release date for each inmate listed on Ex. B by applying sentence reduction credits at the rate for non-parolable offenses was unreasonable.

RESPONSE: Denied.

41. SCDC's calculation of Marion Campbell's release date by requiring him to serve 85% of his sentence was unreasonable.

RESPONSE: Denied.

42. SCDC's calculation of the release date for each inmate listed on Ex. A by requiring service of 85% of the sentence imposed was unreasonable.

RESPONSE: Denied.

43. SCDC's calculation of the release date for each inmate listed on Ex. B by requiring service of 85% of the sentence imposed was unreasonable.

RESPONSE: Denied.

44. SCDC is bound by the finding of the South Carolina Court of Appeals that "it is unreasonable to characterize an offense for which the offender is eligible for parole as a no-parole offense pursuant to section 24-3-100, even if the maximum sentence for the offense places it within a classification encompassed by section 24-13-100."

RESPONSE: It is admitted that, subsequent to the issuance of the Court of Appeal's decision and a period of consideration for the agency to consider further appeals, the agency was bound by the specific holding or holdings of that decision. Otherwise, this Request is denied.

45. SCDC is bound by the finding of the South Carolina Court of Appeals that "one of the [Omnibus Crime Reduction and Sentencing Reform] Act's objectives is to conserve taxpayer dollars by allowing earlier release dates for inmates convicted of less serious offenses.

RESPONSE: It is admitted that, subsequent to the issuance of the Court of Appeal's decision and a period of consideration for the agency to consider further appeals, the agency was bound by the specific holding or holdings of that decision. Otherwise, this Request is denied.

46. The South Carolina Court of Appeals found, with regard to the conclusions of the Administrative Law Judge in Bolin vs The State: "an agency's interpretation 'affords no basis for the perpetuation of a patently erroneous application of a statute.'"

RESPONSE: It is admitted that, subsequent to the issuance of the Court of Appeal's decision and a period of consideration for the agency to consider further appeals, the agency was bound by the specific holding or holdings of that decision. Otherwise, this Request is denied.

47. SCDC is bound by the finding of the South Carolina Court of Appeals that: DOC ignore[d] the purpose of the [Omnibus Crime Reduction and Sentencing Reform] Act."

RESPONSE: It is admitted that, subsequent to the issuance of the Court of Appeal's decision pending a period of consideration for the agency to consider filing a petition for certiorari, the agency was bound by the specific holding or holdings of that decision. Otherwise, this Request is denied.

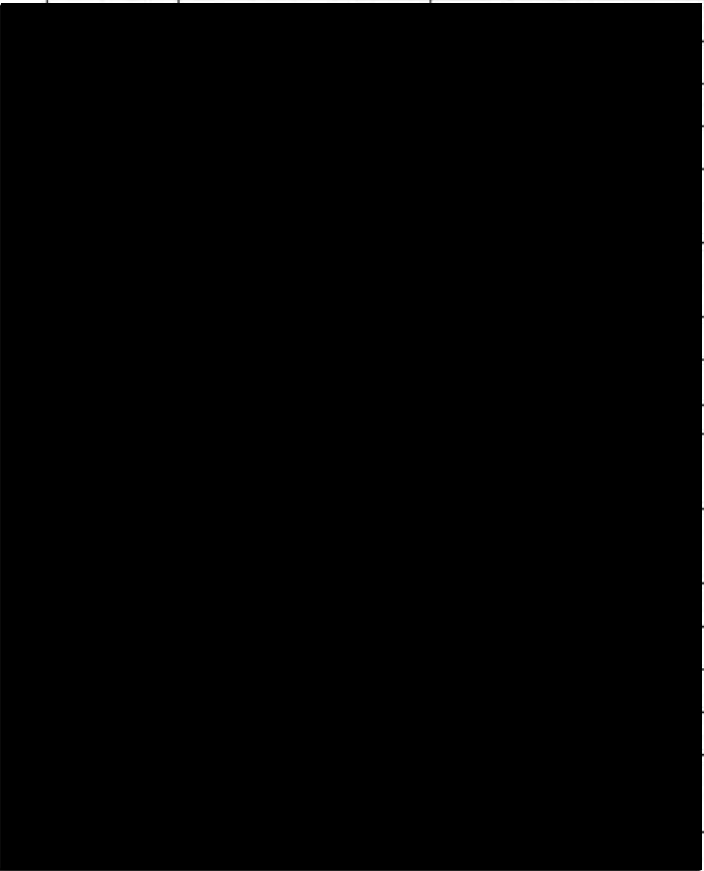
48. SCDC unlawfully incarcerated Marion Campbell for 552 days (counting the day of release)

RESPONSE: Denied.

49. SCDC unlawfully incarcerated the following inmates for the stated number of days (counting the day of release):

ROA_0422

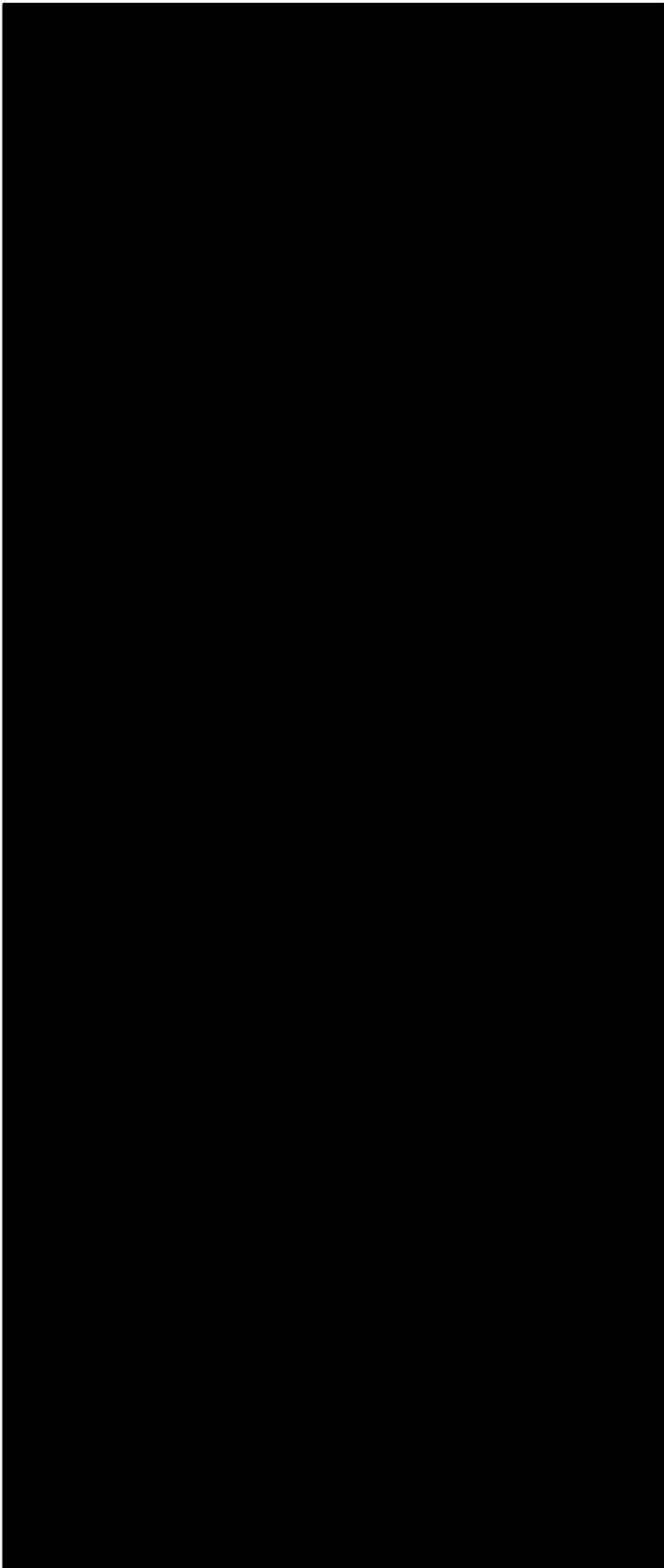
ELECTRONICALLY FILED - 2023 Aug 09 09:4:09 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4005532

SCDC#	LAST NAME	FIRST NAME	DAYS UNLAWFULLY INCARCERATED
			275
			176
			397
			214
			316
			88
			104
			306
			635
			230
			268
			384
			28
			270
			226

ROA_0423

ELECTRONICALLY FILED - 2023 Aug 09 09:4:09 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4005532

	205
	349
	147
	166
	43
	456
	85
	310
	474
	207
	254
	122
	3
	49
	113
	81
	103
	162
	137
	693
	214
	84
	11
	648
	633
	845
	10
	198
	181



776
294
191
14
143
517
484
75
334
21
669
43
482
360
295
160
68
345
532
61
176
47
321
406
13
308
20
94
347
149
292
599

ROA_0425

562

118

28

492

29

200

217

320

242

204

306

309

595

654

314

329

549

614

252

44

191

362

14

423

407

207

204

48

470

405

ROA_0426

204

57

309

168

197

637

147

50

94

367

374

259

166

190

25

411

336

108

341

233

138

278

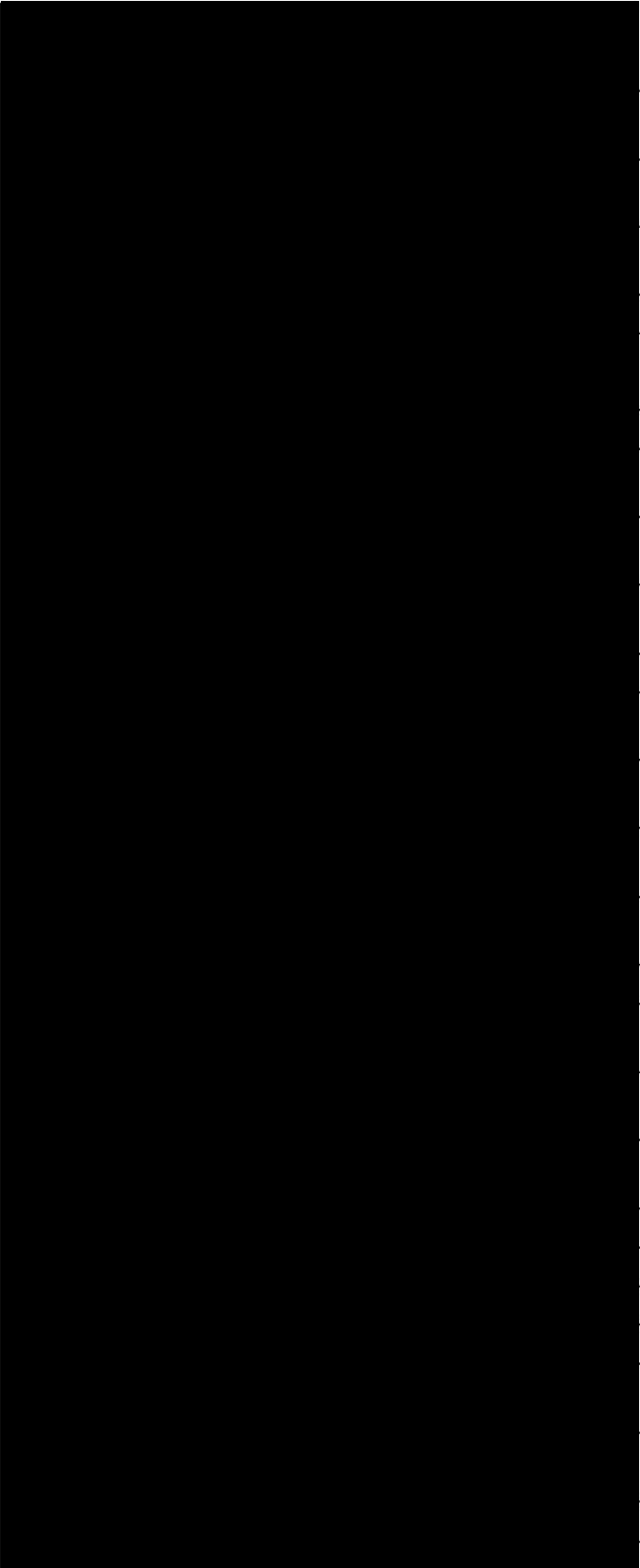
51

166

4

47

ROA_0427



363
5
92
122
252
28
181
14
160
80
169
347
50
191
88
435
22
55
118
117
277
554
449
349
607
176

ROA_0428

ELECTRONICALLY FILED - 2023 Aug 09 09:4:09 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4005532

140

550

447

67

158

384

267

39

59

70

711

203

24

395

83

191

701

338

306

98

152

551

167

93

78

220

644

665

ROA_0429

ELECTRONICALLY FILED - 2023 Aug 09 4:09 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4005532

530

88

216

511

219

105

148

154

688

581

365

336

186

551

552

322

336

103

50

102

352

505

451

405

371

264

239

105

15

210

473

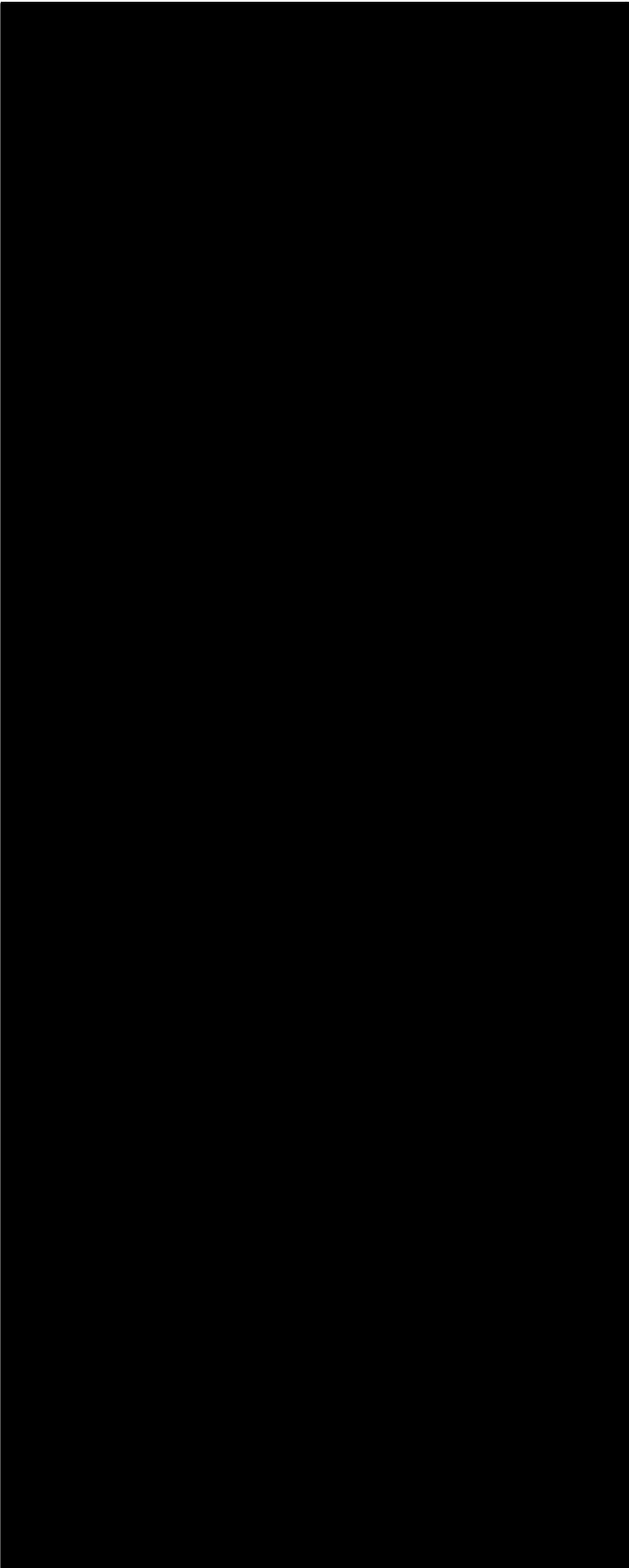
	676
	504
	571
	125
	53
	315
	220
	550

RESPONSE: Denied.

50. SCDC incarcerated the following inmates for the stated number of days (counting the day of release) following their max-out or supervised release dates:

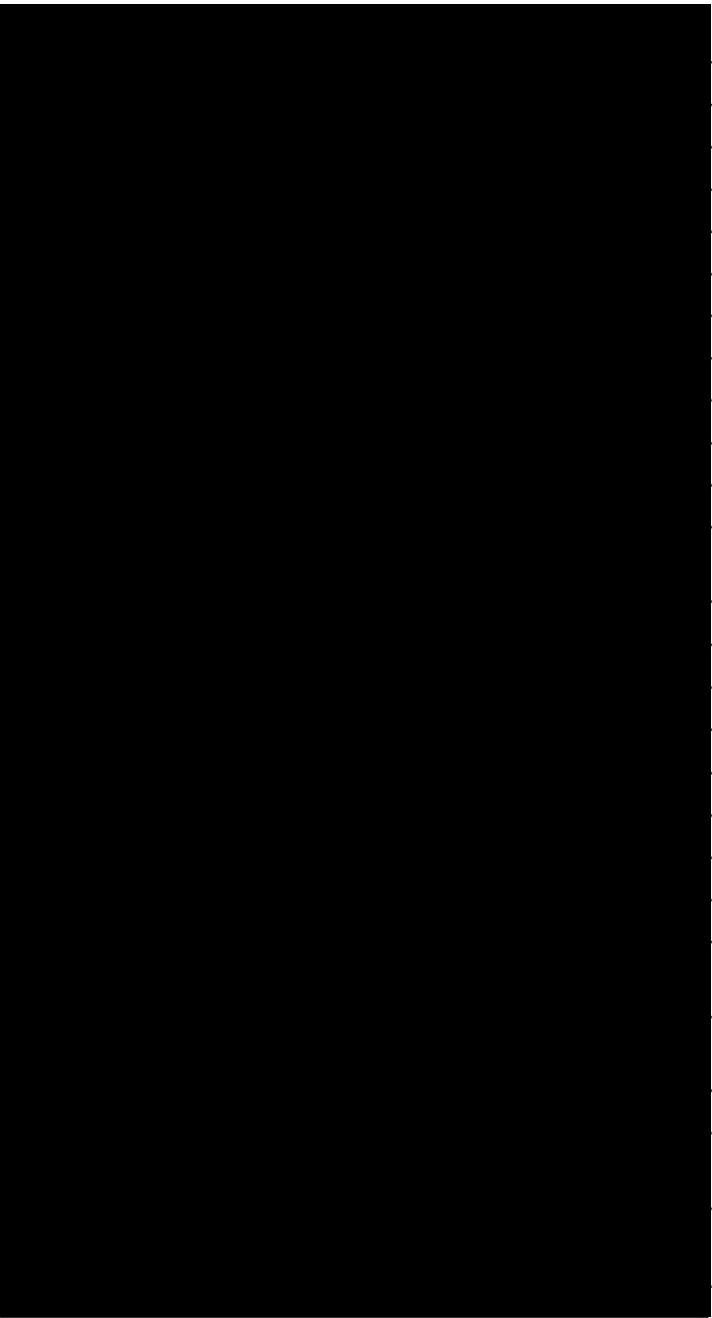
SCDC#	LAST NAME	FIRST NAME	DAYS UNLAWFULLY INCARCERATED
			275
			176
			397
			214
			316
			88
			104
			306
			635
			230
			268
			384
			28

ROA_0431



270
226
205
349
147
166
43
456
85
310
474
207
254
122
3
49
113
81
103
162
137
693
214
84
11
648
633
845
10
198
181
776
294
191
14
143

ROA_0432



517
484
75
334
21
669
43
482
360
295
160
68
345
532
61
176
47
321
406
13
308
20
94
347
149

ROA_0433

292

599

562

118

28

492

29

200

217

320

242

204

306

309

595

654

314

329

549

614

252

44

191

362

14

423

407

207

204

48

470

ROA_0434

ELECTRONICALLY FILED - 2023 Aug 09 4:09 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4005532

405

204

57

309

168

197

637

147

50

94

367

374

259

166

190

25

411

336

108

341

233

138

278

51

166

ROA_0435

4

47

363

5

92

122

252

28

181

14

160

80

169

347

50

191

88

435

22

55

118

117

277

554

449

349

ROA_0436

ELECTRONICALLY FILED - 2023 Aug 09 4:09 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4005532

607

176

140

550

447

67

158

384

267

39

59

70

711

203

24

395

83

191

701

338

306

98

152

551

167

93

78

ROA_0437

220

644

665

530

88

216

511

219

105

148

154

688

581

365

336

186

551

552

322

336

103

50

102

352

505

451

405

371

264

239

105

ROA_0438

	15
	210
	473
	676
	504
	571
	125
	53
	315
	220
	550

RESPONSE: To the extent that Plaintiff contends that the stated period of additional detention was unlawful, denied. Otherwise admitted.

51. SCDC unlawfully incarcerated the following inmates for the stated number of days (counting the day of release):

SCDC#	LAST NAME	FIRST NAME	DAYS UNLAWFULLY INCARCERATED
			497
			255
			298
			857
			513
			396
			87
			92
			395
			1,825
			505
			314
			987
			2,321
			869

ROA_0439

2,029

881

1,071

378

920

298

1,682

1,728

5

685

1,049

202

854

1,081

850

683

1,009

421

357

674

1,984

643

439

574

68

799

46

571

888

ROA_0440

944

2,035

424

556

581

494

1,197

770

850

889

923

273

525

292

1,254

1,353

94

385

424

727

690

565

119

1,307

792

286

1,063

1,446

810

1,087

1,099

169

ROA_0441

ELECTRONICALLY FILED - 2023 Aug 09 4:09 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4005532

1,197

859

457

565

826

505

317

1,677

1,010

638

877

441

995

670

478

5

1,163

1,730

806

308

875

11

782

1,064

836

1,522

605

1,793

924

1,508

1,330

ROA_0442

926

1,268

2,239

220

289

605

1,117

1,772

1,600

113

309

1,401

792

341

305

599

1,873

712

411

700

739

845

224

681

326

1,359

1,170

1,154

503

690

ROA_0443

890

12

867

1,050

254

33

983

1,339

299

1,862

599

699

1,596

624

1,146

1,490

75

891

123

2,446

641

630

956

482

792

1,922

559

288

670

975

690

1,169

823

695

431

1,013

927

1,078

882

1,728

967

714

1,264

439

581

444

557

1,657

409

376

564

956

1,053

1,050

988

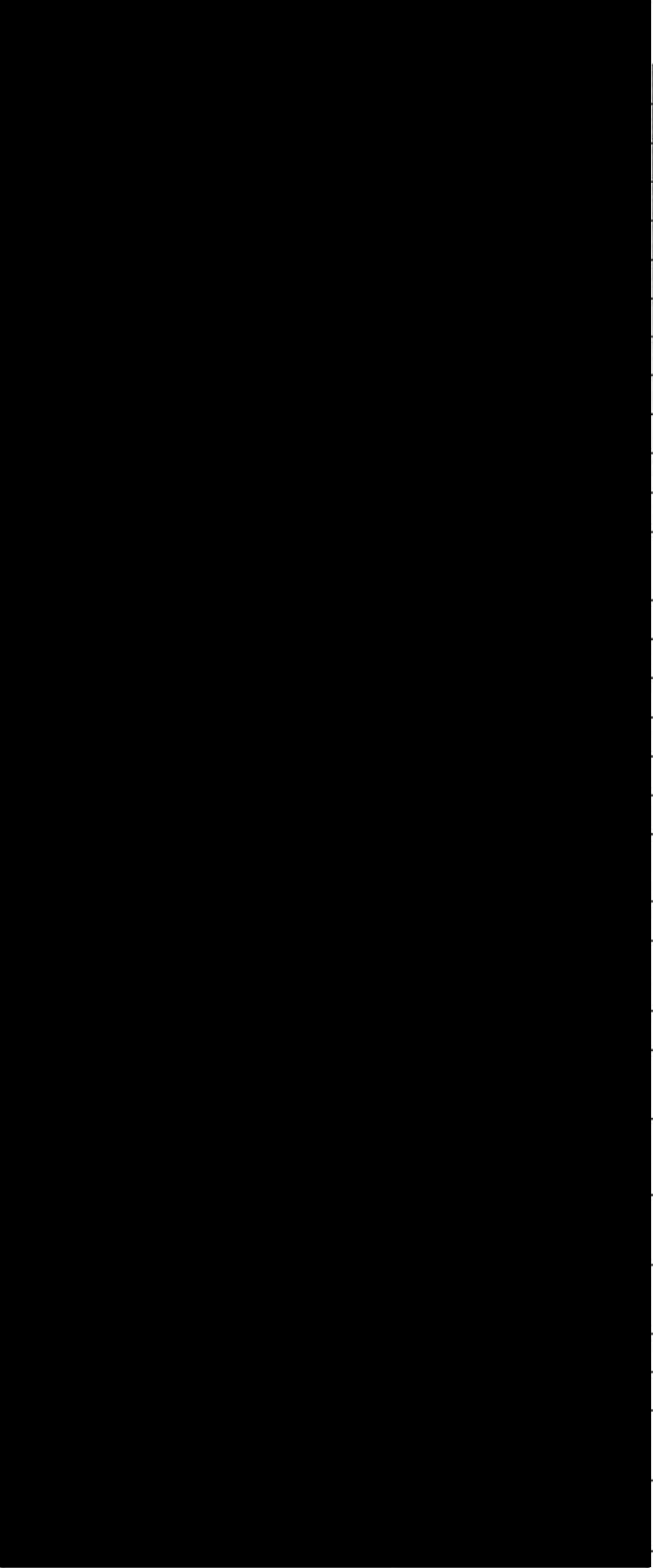
RESPONSE: Denied.

52. SCDC incarcerated the following inmates for the stated number of days (counting the day of release) beyond their maxout or supervised re-entry dates:

SCDC#	LAST NAME	FIRST NAME	DAYS UNLAWFULLY INCARCERATED
			497
			255
			298

ROA_0445

ELECTRONICALLY FILED - 2023 Aug 09 09:4:09 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4005532



857
513
396
87
92
395
1,825
505
314
987
2,321
869
2,029
881
1,071
378
920
298
1,682
1,728
5
685
1,049
202
854
1,081
850
683
1,009
421
357

ROA_0446

ELECTRONICALLY FILED - 2023 Aug 09 4:09 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4005532

674

1,984

643

439

574

68

799

46

571

888

944

2,035

424

556

581

494

1,197

770

850

889

923

273

525

292

1,254

1,353

94

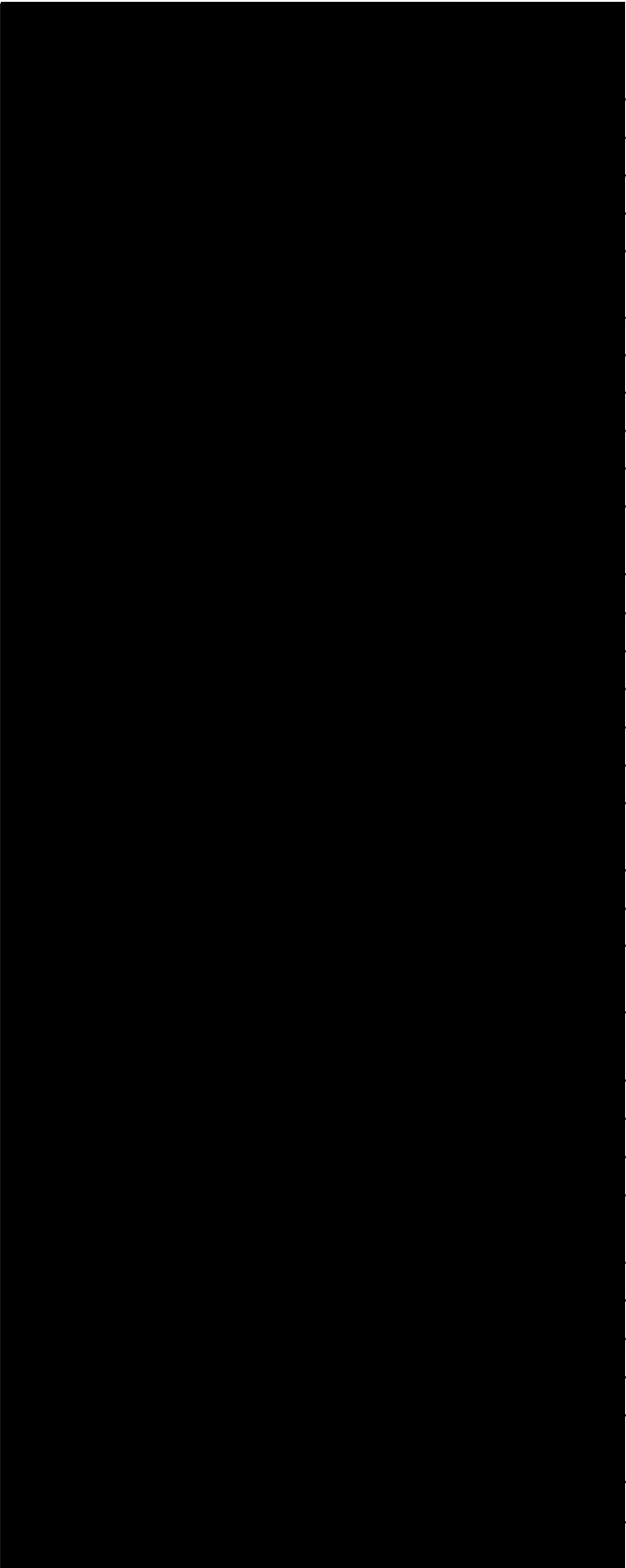
385

424

727

690

ROA_0447



565
119
1,307
792
286
1,063
1,446
810
1,087
1,099
169
1,197
859
457
565
826
505
317
1,677
1,010
638
877
441
995
670
478
5
1,163
1,730
806
308
875
11

ROA_0448

782

1,064

836

1,522

605

1,793

924

1,508

1,330

926

1,268

2,239

220

289

605

1,117

1,772

1,600

113

309

1,401

792

341

305

599

1,873

712

411

700

739

845

ROA_0449

ELECTRONICALLY FILED - 2023 Aug 09 09:4:09 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4005532

224

681

326

1,359

1,170

1,154

503

690

890

12

867

1,050

254

33

983

1,339

299

1,862

599

699

1,596

624

1,146

1,490

75

891

123

2,446

641

630

956

482

ROA_0450

ELECTRONICALLY FILED - 2023 Aug 09 09:4:09 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4005532

792

1,922

559

288

670

975

690

1,169

823

695

431

1,013

927

1,078

882

1,728

967

714

1,264

439

581

444

557

1,657

409

376

564

956

1,053

1,050

988

RESPONSE: To the extent that Plaintiff contends that the stated period of additional detention was unlawful, denied. Otherwise admitted.

53. Each inmate within SCDC custody has a constitutional right to be released at the completion of the incarceration portion of his or her sentence.

RESPONSE: Admitted.

54. The constitutional right to liberty and freedom is violated when a prison inmate is detained by the Department of Corrections after his or her max-out date and without new charges.

RESPONSE: Denied as stated.

55. The constitutional right to liberty and freedom is violated when a prison inmate is detained by the Department of Corrections after his or her max-out date without a warrant.

RESPONSE: Denied as stated. By way of explanation, SCDC does not detain inmates on the basis of warrants.

56. The constitutional right to liberty and freedom is violated when a prison inmate is detained by the Department of Corrections after his or her max-out date without probable cause.

RESPONSE: Denied as stated. By way of explanation, SCDC does not detain inmates on the basis of probable cause.

57. The constitutional right to due process is violated when a prison inmate is detained by the Department of Corrections after his or her max-out date without new charges.

RESPONSE: Denied. The constitutional right to due process is violated when an inmate plaintiff establishes that he was deprived of a constitutionally protected life, liberty, or property interest, and then further establishes that the procedural safeguards accompanying the deprivation of that interest were constitutionally inadequate.

58. The constitutional right to due process is violated when a prison inmate is detained by the Department of Corrections after his or her max-out date without a warrant.

RESPONSE: Denied. The constitutional right to due process is violated when an inmate plaintiff established that he was deprived of a constitutionally protected life, liberty, or property interest, and then further establishes that the procedural safeguards accompanying the deprivation of that interest were constitutionally inadequate.

59. The constitutional right to due process is violated when a prison inmate is detained by the Department of Corrections after his or her max-out date without probable cause.

RESPONSE: Denied. The constitutional right to due process is violated when an inmate plaintiff established that he was deprived of a constitutionally protected life, liberty, or property interest, and then further establishes that the procedural safeguards accompanying the deprivation of that interest were constitutionally inadequate

60. The constitutional right to freedom from cruel and unusual punishment is violated when a prison inmate is detained by the Department of Corrections after his or her max-out date without new charges.

RESPONSE: Denied. The right to be free from cruel and unusual punishment is violated when an inmate plaintiff establishes that the conditions he was exposed to constitute cruel and unusual punishment.

61. The constitutional right to freedom from cruel and unusual punishment is violated when a prison inmate is detained by the Department of Corrections after his or her max-out date without a warrant.

RESPONSE: Denied. The right to be free from cruel and unusual punishment is violated when an inmate plaintiff establishes that the conditions he was exposed to constitute cruel and unusual punishment.

62. The constitutional right to freedom from cruel and unusual punishment is violated when a prison inmate is detained by the Department of Corrections after his or her max-out date without probable cause.

RESPONSE: Denied. The right to be free from cruel and unusual punishment is violated when an inmate plaintiff establishes that the conditions he was exposed to constitute cruel and unusual punishment.

63. An individual's right to liberty and freedom has been a clearly established constitutional right since at least June 2, 2010.

RESPONSE: Although subject to certain limitations by the exercise of the power of the sovereign, an individual's general right to liberty and freedom has been clearly established as a right since the founding of the Republic. To the extent that the Request inquires if it was clearly established that any Defendant's interpretation of the Act was incorrect as of June 2, 2010, that is denied.

64. An individual's right to due process has been a clearly established constitutional right since at least June 2, 2010.

RESPONSE: The general concept of an individual's right to due process was established well before the Plaintiff in this case was born. However, to the extent that this Request attempts to inquire if it was clearly established that the acts of any Defendant in this matter violated any individual's right to due process as of June 2, 2010, that is denied.

65. An individual's right to freedom from cruel and unusual punishment has been a clearly established constitutional right since at least June 2, 2010.

RESPONSE: The general concept of any individual's right to freedom from cruel and unusual punishment process was established well before the Plaintiff in this case was born. However, to the extent that this Request attempts to inquire if it was clearly established that the acts of any Defendant in this matter violated any individual's right to freedom from cruel and unusual punishment as of June 2, 2010, that is denied.

66. An individual's right to freedom from incarceration beyond the expiration of his or her sentence has been a clearly established right since at least June 2, 2010.

RESPONSE: As to the general concept, admitted. To the extent that this Request attempts to inquire if it was clearly established as of June 2, 2010 that the acts of any Defendant in this matter violated any individual's right to freedom from incarceration beyond the expiration of his or her sentence, such is denied.

67. SCDC is charged with calculating sentences and release dates in accordance with the statutory law enacted by the South Carolina Legislature.

RESPONSE: Admitted.

68. SCDC was aware on November 22, 2015, that the South Carolina Court of Appeals had unanimously rejected its decision to incarcerate inmates with parolable offences under the Omnibus Act for at least 85% of their sentences.

RESPONSE: Denied. By way of explanation, a petition for an *en banc* rehearing had been filed.

69. SCDC was aware on November 22, 2015, that the *Bolin* decision of that date issued by the South Carolina Court of Appeals for South Carolina potentially impacted hundreds of its inmates.

RESPONSE: Admitted.

70. Between November 22, 2015 and February 24, 2016, SCDC took no action to identify inmates potentially impacted by the *Bolin* decision issued by the S.C. Court of Appeals on November 22, 2015.

RESPONSE: Denied. By way of explanation, the Defendants were aware that there was a class of inmates sentenced under the Act who would be impacted if the *Bolin* decision was finalized.

71. Between November 22, 2015 and February 24, 2016, SCDC took no action to recalculate the release or supervised re-entry dates for each inmate potentially impacted by the *Bolin* decision issued by the S.C. Court of Appeals on November 22, 2015.

RESPONSE: Admitted.

72. Between November 22, 2015 and February 24, 2016, SCDC took no action to prepare for the release of inmates potentially impacted by the *Bolin* decision issue by the S.C. Court of Appeals on November 2, 2015.

RESPONSE: Admitted.

73. On or before February 29, 2016, SCDC made the decision that it would not petition for certiorari with regard to the *Bolin* decision by the S.C. Court of Appeals on February 24, 2016.

RESPONSE: Admitted.

74. On November 22, 2015 and each date thereafter through March 21, 2016, SCDC made a knowing and deliberate decision to continue to detain each inmate listed on Ex. A, past their maxout dates, by requiring service of 85% of their sentences for offences made parolable by the Omnibus Act.

RESPONSE: Denied. As of November 22, 2015, ACDC began considering its options with regards to further appellate review. After determining not to pursue further appellate review, the agency began conducting the operations necessary for the release of large numbers of inmates.

75. On November 22, 2015 and each date thereafter through March 21, 2016, SCDC made a knowing and deliberate decision to continue to detain each inmate listed on Ex. A past their maxout dates, by applying service reductions credits to offences made parolable by the Omnibus Act, at the rate for non-parolable offences.

RESPONSE: Denied as stated.

76. SCDC's selection of March 21, 2016, to release from its custody the inmates listed on Ex. A was solely for the convenience of SCDC.

RESPONSE: Denied.

77. On November 22, 2015 and each date thereafter through June 1, 2016, SCDC made a knowing and deliberate decision to continue to detain each inmate listed on Ex. B past their maxout dates, by requiring service of 85% of their sentences for offences made parolable by the Omnibus Act.

RESPONSE: Denied. As of November 22, 2015, ACDC began considering its options with regards to further appellate review. After determining not to pursue further appellate

review, the agency began conducting the operations necessary for the release of large numbers of inmates.

78. On November 22, 2015, and each date thereafter through June 1, 2016, SCDC made a knowing and deliberate decision to continue to detain each inmate listed on Ex. B, past their maxout dates, by applying service reductions credits to offences made parolable by the Omnibus Act, at the rate for non-parolable offences.

RESPONSE: Denied. As of November 22, 2015, ACDC began considering its options with regards to further appellate review. After determining not to pursue further appellate review, the agency began conducting the operations necessary for the release of large numbers of inmates.

79. No one in the SCDC Office of General Counsel tracked the Omnibus Act as it worked its way through the S.C. Legislature in 2010.

RESPONSE: Denied.

80. The Omnibus Act created issues of great significance for SCDC.

RESPONSE: Denied as stated.

81. SCDC consented to jurisdiction of the United States District Court for the State of South Carolina over both the state and federal law claims by petitioning for removal of the case on September 16, 2016, asking that “this court take jurisdiction of the above-entitled cause and all further proceedings in said cause.”

RESPONSE: Admitted.

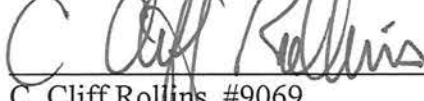
82. SCDC was aware of questions concerning its application of the Omnibus Act as early as the filing of a grievance with regard thereto by Michael Heath Bolin.

RESPONSE: Admitted with regards to the issues raised by Michael Heath Bolin, otherwise denied.

Dated this the 12th day of April, 2018.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.



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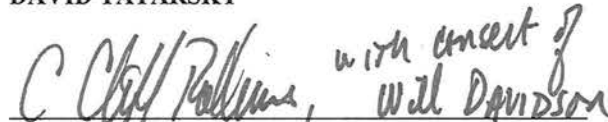
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COUNSEL FOR DEFENDANTS CHRIS FLORIAN AND
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COUNSEL FOR DEFENDANTS SCDC AND STIRLING

EXHIBIT F
(SCDC'S RESPONSES TO SECOND
REQUESTS TO ADMIT)

Marion Katrell Campbell, on behalf of
himself and all others similarly situated

Plaintiff,

v.

South Carolina Department of
Corrections, Bryan P. Stirling, Chris
Florian, and David Tatarsky,

Defendants.

Civil Action No. 6:16-cv-03265-MGL-KFM

**DEFENDANTS SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS AND
BRYAN P. STIRLING'S RESPONSES TO
PLAINTIFF'S SECOND REQUESTS TO
ADMIT**

1

204 #1

RESPONSE #3**Denied.**

4. Bryan Stirling was aware when he set the release date of June 1, 2015 (June 2, 2016 for bus riders) that most of the inmates to be released had already been incarcerated weeks to years beyond their max-out sentence release dates.

RESPONSE #4**Denied.**

5. The max-out sentence release dates for the inmates listed in Ex. A, properly calculated pursuant to the Omnibus Crime Reduction and Sentencing Reform Act of 2010 [the "Omnibus Act"], is listed under the Column "NEW MAXOUT."

RESPONSE #5**Admitted.**

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

RESPONSE #6**Admitted.**

7. Incarceration beyond expiration of an inmate's sentence implicates the Eighth Amendment right to freedom from cruel and unusual punishment.

RESPONSE #7**Denied.**

8. Incarceration of more than one month beyond expiration of an inmate's sentence violates the inmate's Eighth Amendment right to freedom from cruel and unusual punishment.



RESPONSE #8**Denied.**

9. Incarceration of more than two months beyond expiration of an inmate's sentence violates the inmate's Eighth Amendment right to freedom from cruel and unusual punishment.

RESPONSE #9**Denied.**

10. Incarceration of more than three months beyond expiration of an inmate's sentence violates the inmate's Eighth Amendment right to freedom from cruel and unusual punishment.

RESPONSE #10**Denied.**

11. Incarceration of more than four months beyond expiration of an inmate's sentence violates the inmate's Eighth Amendment right to freedom from cruel and unusual punishment.

RESPONSE #11**Denied.**

12. Incarceration of more than five months beyond expiration of an inmate's sentence violates the inmate's Eighth Amendment right to freedom from cruel and unusual punishment.

RESPONSE #12**Denied.**

13. Incarceration of more than six months beyond expiration of an inmate's sentence violates the inmate's Eighth Amendment right to freedom from cruel and unusual punishment.

RESPONSE #13**Denied.**

14. Incarceration of more than one year beyond expiration of an inmate's sentence violates the inmate's Eighth Amendment right to freedom from cruel and unusual punishment.

RESPONSE #14

Denied.

15. Reasonable corrections officials would not believe it permissible to require inmates to remain in custody beyond their max-out sentence release dates.

RESPONSE #15

Admitted.

16. An inmate's right to be released at the lawful conclusion of a prison sentence was a clearly established right under the Eighth Amendment as of June 1, 2010.

RESPONSE #16

Denied.

17. State officials violate an inmate's Eighth Amendment rights when they are deliberately indifferent to the risk that the inmate may be incarcerated beyond his release date.

RESPONSE #17

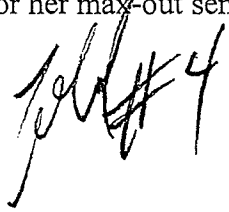
Admitted.

18. SCDC was on notice at least by the date that Michael Heath Bolin filed a grievance with regard to his sentence calculation that SCDC's interpretation of the Omnibus Act was called into question.

RESPONSE #18

This Defendant admits that Mr. Bolin's grievance raised an issue about his sentence.

19. An inmate incarcerated beyond his or her max-out sentence release date is entitled to full compensation for the extra time served.



RESPONSE #19**Denied.**

20. The cost to the State of South Carolina during 2016 expended for incarceration of an inmate within the SCDC was approximately \$49.50 per day.

RESPONSE #20**Admitted.**

21. The cost to the State of South Carolina during 2015 expended for incarceration of an inmate within the SCDC was approximately \$48.96 per day.

RESPONSE #21**Admitted.**

22. The cost to these State of South Carolina during 2014 expended for incarceration of an inmate within the SCDC was approximately \$47.55 per day.

RESPONSE #22**Admitted.**

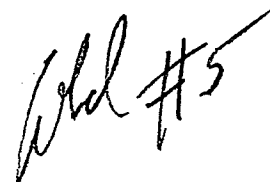
23. The cost to the State of South Carolina during 2013 expended for incarceration of an inmate within the SCDC was approximately \$45.32 per day.

RESPONSE #23**Admitted.**

24. The cost to the State of South Carolina during 2012 expended for incarceration of an inmate within the SCDC was approximately \$41.85 per day.

RESPONSE #24**Admitted.**

25. The cost to the State of South Carolina during 2011 expended for incarceration of an inmate within the SCDC was approximately \$39.48 per day.

A handwritten signature in black ink, followed by the number "#5".

RESPONSE #25**Admitted.**

26. The cost to the State of South Carolina during 2010 expended for incarceration of an inmate within the SCDC was approximately \$39.58 per day.

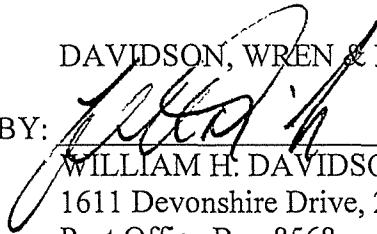
RESPONSE #26**Admitted.**

27. During periods of illegal incarcerations, SCDC caused certain inmates listed on Exhibits A and B to labor on behalf of SCDC without payment of the minimum wage rate required by state and/or federal labor laws.

RESPONSE #27

The Defendants object to this request as it is compound in nature and violates Rule 36(a)(3).

DAVIDSON, WREN & PLYLER, P.A.

BY: 

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ATTORNEY FOR DEFENDANTS SCDC AND
STIRLING

COLUMBIA, SOUTH CAROLINA
APRIL 20, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Marion Katrell Campbell, on behalf of
himself and all others similarly situated

Plaintiff,

v.

South Carolina Department of
Corrections, Brian P. Stirling, Chris
Florian, and David Tatarsky,

Defendants.

Civil Action No. 6:16-cv-03265-MGL-KFM

CERTIFICATE OF SERVICE

The undersigned employee of Davidson, Wren & Plyler, P.A., attorneys for the Defendants does hereby certify that service of the **Defendants SCDC's and Stirling's Responses To Plaintiff's Supplemental Interrogatories** and **Defendants SCDC's and Stirling's Responses To Plaintiff's Second Request to Admit** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 20th day of April, 2018, addressed as follows:

Richard A. Hartpootlian, Esquire
Christopher P. Kenney, Esquire
W. Baker All, Esquire
Richard A. Hartpootlian, P.A.
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Columbia, South Carolina 29202

CERTIFICATE OF SERVICE

Civil Action No. 6:16-cv-03265-MGL-KFM

SCDC & Stirling – Responses to Supp Interrogatories & 2nd Requests for Production

April 20, 2018

Page Two

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EXHIBIT G

**(SCDC’S REPLY MEMORANDUM IN
SUPPORT OF SUMMARY JUDGMENT, D.
6/8/2018, FEDERAL DKT. 78)**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Marion Katrell Campbell, on behalf of	)	Civil Action No. 6:16-cv-03265-MGL-KFM
himself and all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	REPLY
	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR SUMMARY JUDGMENT
South Carolina Department of Corrections	)	ON BEHALF OF DEFENDANTS SOUTH
and Bryan P. Stirling, Chris Florian, and	)	CAROLINA DEPARTMENT OF
David Tatarsky,	)	CORRECTIONS AND BRYAN P.
	)	STIRLING
Defendants.	)	
_____	)	

Defendants South Carolina Department of Corrections (“SCDC”) and Bryan P. Stirling, by and through their undersigned counsel, submit the following Reply in support of their Motion for Summary Judgment, ECF No. 67, and in response to ECF No. 75, Plaintiff’s Response in Opposition that motion.

ARGUMENT

All of Plaintiff’s claims are fatally flawed, because as these Defendants have previously pointed out, Plaintiff Campbell was released from incarceration some days prior to April 1, 2016, the effective date of the Court of Appeals decision in *Bolin v. S.C. Dept. of Corr.*, 781 S.E.2d 914, 916 (S.C. Ct. App. 2016), *reh’g denied* (Feb. 24, 2016). SCDC could, in good faith, have asked the Supreme Court to reverse the Court of Appeals, citing the reasons set forth in the ALC opinion, *Bolin v. South Carolina Department of Corrections*, Opinion No. 13-ALJ-04-0534-AP (S.C. Admin. Law Ct., 2/24/2014). And if SCDC had elected to file a petition for certiorari in the *Bolin* case, the effective date of the Court of Appeals’ decision would have been pushed back a

number of months after April 1, 2016, even if the Supreme Court of South Carolina had denied certiorari. Plaintiff Campbell therefore has nothing to complain about, because he could have validly been held for some months longer. SCDC had the valid option of seeking certiorari. Instead, SCDC declined to seek certiorari, and Plaintiff was released before the effective date of the Court of Appeals decision adjusting maxout dates.

1. The restraint of Plaintiff during the pertinent time periods was lawful.

Plaintiff's false imprisonment claims, as well as his federal claims, are based solely and entirely on the erroneous premise that at time of his release, his "properly calculated max-out date was September 17, 2014." ECF No. 75 at 3. As these Defendants have previously pointed out, ECF No. 67 at 4-6, the time when that date became his maxout date occurred was not until April 1, 2016, the date of the remittitur in the *Bolin* case. Prior April 1, 2016, Campbell was legally in custody of SCDC. Because false imprisonment cannot occur when the restraint or imprisonment complained of is lawful, *Prosser v. Parsons*, 245 S.C. 493, 498, 141 S.E.2d 342, 345 (1965), Plaintiff does not have a false imprisonment claim.

Plaintiff's response sets forth several arguments that dispute the efficacy of Tort Claims Act immunities, ECF No. 75 at 2-7, but the Court need not reach those arguments given that Plaintiff's incarceration was lawful at all times prior to his release. If the Court nevertheless elects to address the immunity issues, these Defendants would refer the Court to their previous discussion of applicable immunities, ECF No. 75 at 7-12 and ECF No. 67-1 at 11-13.

Plaintiff places much reliance on the Court of Appeals' characterization of any opinion contrary to its own as being "patently erroneous" and "unreasonable." ECF No. 75 at 4, 5, 8 and 11 (five times in one paragraph). However, the conflicting interpretations of the statute by SCDC and the ALC on the one hand, and the Court of Appeals on the other hand, merely illustrate the

point that “‘plain meaning’ is often in the eye of the beholder.” *Washington Legal Found. v. U.S. Sentencing Comm’n*, 17 F.3d 1446, 1449 (D.C. Cir. 1994). *See also, e.g., Abuelhawa v. United States*, 556 U.S. 816 (2009), in which the Supreme Court unanimously rejected the Fourth Circuit’s unanimous opinion that had been based on alleged “plain meaning” of a statute. Where, as in *Abuelhawa* and the present case, there can be such a wide divergence among reasonable minds of what the “plain meaning” of a statute is, the plain meaning rule must be eliminated as a source of assistance in determining whether discretion was reasonably exercised. The characterizations of “patently erroneous” and “unreasonable” were in any event not necessary to the Court of Appeals’ decision regarding the construction of the applicable statutes, but rather consisted of that court’s own descriptions intended to bolster its own decision on the issues of statutory construction.

2. Plaintiff has not controverted Defendant Stirling’s contention that the Amended Complaint does not allege a Section 1983 claim against Defendant Stirling.

Defendant Stirling pointed out in connection with his Motion for Summary Judgment that the Amended Complaint did not plead sufficient personal involvement by Stirling, and likewise did not plead facts relative to the additional elements of a post-*Iqbal* supervisory liability claim. ECF No. 67-1 at 6-9. Plaintiff’s Memorandum in Opposition contains no response at all to these contentions by Defendant Stirling. As a result, and for that reason alone, the claims against Defendant Stirling should be dismissed.

3. Because Plaintiff was still in lawful confinement at the time of his release, there was no violation of a constitutional right, much less a clearly established constitutional right.

In determining whether an official is entitled to qualified immunity, two questions must be answered. Courts generally ask first whether a constitutional violation has been established.

Williams v. Ozmint, 716 F.3d 801, 805 (4th Cir. 2013). If so, the court then considers whether the right allegedly violated was clearly established at the time of the challenged conduct. *Id.* The court has discretion to determine the order in which the questions should be addressed. *Id.* at 806.

For the reasons set forth above and in prior filings (ECF Nos. 67-1 and 72), Plaintiff was still in lawful confinement at the time of his release. Accordingly, even if Plaintiff's Section 1983 claim can be said to survive his failure to plead it, as discussed in the preceding point, there was no violation of any constitutional right of Plaintiff at all, much less a clearly established right. The earliest date that the right of Plaintiff Campbell to be released was established was April 1, 2016, the effective date of the *Bolin* case.¹ By that time, Plaintiff Campbell had already been released. Plaintiff has therefore neither shown that a constitutional right was violated at all or that it was clearly established as of the time of the complained-of action.²

4. Even if all other requirements for a Section 1983 claim against Defendant Stirling had been met, Plaintiff has not proven the necessary elements of his Eighth Amendment claim.

While Defendant Stirling submits that the grounds set forth above are more than adequate to require the dismissal of the Section 1983 claim against him, it should also be noted that

¹ Plaintiff incompletely cites, and therefore misrepresents, a response by Defendants to one of the Requests for Admission in this case. Plaintiff asserts that the Defendants "admitted" that "An individual's right to freedom from incarceration beyond the expiration of his or her sentence has been a clearly established right since at least June 2, 2010." However, the actual response of the Defendants was as follows: "'As to the general concept - admitted. To the extent that this Request attempts to inquire if it was clearly established as of June 2, 2010 that the acts of any Defendant in this matter violated any individual's right to freedom from incarceration beyond the expiration of his or her sentence, such is denied.'" ECF No. 75-1 at 8.

² Plaintiff appears to claim in the alternative that his right to release became established on or about February 29, 2016, when SCDC decided not to petition for certiorari in *Bolin*. However, and as already noted, that date is of no legal effect, because *Bolin* did not take effect until April 1, 2016. In addition, there was nothing irrevocable about SCDC's February 2016 decision until on or about March 25, 2016, the deadline for filing a petition for certiorari.

Plaintiff cannot in any event show a constitutional violation. Plaintiff's Memorandum in Opposition argues only that there was an Eighth Amendment violation.³

As this Court has recognized, "Even if a prisoner is incarcerated after his sentence expires, it is only cruel and unusual punishment if it is the product of deliberate indifference. *See, e.g., Burke v. Johnston*, 452 F.3d 665, 669 (7th Cir.2006); *Moore v. Tartler*, 986 F.2d 682, 686 (3rd Cir.1993). *Howard v. Ozmint*, No. CA 608CV03171GRA, 2009 WL 4809427, at *3 (D.S.C. Dec. 9, 2009). The facts of the present case do not suggest "deliberate indifference," as that term is used in this context. The kind of action by prison authorities that constitutes such indifference is instead to be found in such cases *as Russell v. Lazar*, 300 F. Supp. 2d 716 (E.D. Wis. 2004), the sole case cited by Plaintiff on this point. There it was held that an Eighth Amendment deliberate indifference claim had been stated where the plaintiff alleged that prison officials miscalculated his release date, that he advised defendants of their mistake and asked them to recalculate his sentence, and that they deliberately ignored his requests. In the present case, by contrast, Defendant Stirling was aware of Plaintiff's contentions, and rather than being indifferent to them, at first authorized litigation of the state law sentencing issues, and then after further consideration, decided to acquiesce in the Court of Appeals' decision in the *Bolin* case. Such a scenario simply does not fit within the concept of deliberate indifference as that term is applied in this context.

CONCLUSION

For the foregoing reasons and those set forth in ECF Nos. 67-1 and 72, Defendants SCDC and Stirling respectfully submit that summary judgment should be entered in their favor.

³ The Memorandum in Opposition does not mention due process.

Respectfully submitted,

DAVIDSON, WREN & PLYLER P.A.

s/Kenneth P. Woodington

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Counsel for Defendants SCDC and Bryan Stirling

Columbia, South Carolina

June 8, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No. 2020-CP-40-05532

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

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No.: 2020-CP-40-04701

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

C/A No. 2020-CP-40-05660

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

Plaintiffs,

v.

South Carolina Department of
Corrections,

Defendant.

Henry Belton,

Plaintiff,

v.

South Carolina Department of
Corrections,

Defendant.

C.A. No. 2017-CP-40-00556

**MEMORANDUM OF
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

The South Carolina Department of Corrections, the sole remaining Defendant in these consolidated actions, submits this Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment ("Pl. Mem.").

In SCDC's Memorandum in Support of its own Motion for Summary Judgment ("SCDC Mem."), filed August 9, 2023, SCDC cited and quoted extensively from a Report and Recommendation of U.S. Magistrate Judge Kevin F. McDonald ("McDonald R&R") in Plaintiff Campbell's case while the federal issues in that case were still in federal court. The 25-page McDonald R&R, 2018 WL 7820956 (D.S.C. Oct. 1, 2018), was attached as Exhibit 5 to SCDC's Memorandum in Support.

The McDonald R&R held in detail that the defenses raised by SCDC barred all of the claims presented in that case, which are identical to those in these consolidated cases, excepting

only one class of plaintiff inmates whose claims were not presented in the *Campbell* case.¹ Plaintiffs simply ignore the McDonald R&R.

As Plaintiffs recognize, “The essence of the tort of false imprisonment consists of depriving a person of his or her liberty without lawful justification.” Pl. Mem. at 28, citing *Jones v. City of Columbia*, 301 S.C. 62, 389 S.E.2d 662 (1990). However, Plaintiffs cannot show that any member of the plaintiff-inmate class was detained at a time when their incarceration could arguably have been deemed to have been “without lawful justification.” Plaintiffs cite a number of “undisputed facts” or “admitted facts,” Pl. Mem. at 8-9. but none of those facts are determinative of the disputed legal issues in the case.

1. SCDC had “lawful justification” to detain all members of the plaintiff-inmate class, whether they were sentenced before the 2010 amendments were enacted or after those amendments were enacted.

It should be reiterated from the very outset that, even before *Bolin v. South Carolina Dep't of Corrections*, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016) took effect on April 1, 2016, SCDC had already (on March 21, 2016) released those inmates who had been sentenced after the 2010 amendments were enacted. The other class of inmates, those sentenced prior to the effective date of the 2010 amendments, were never entitled to the sentencing changes the *Bolin* court found to have resulted from the 2010 amendments, but SCDC released them ahead of time anyway, on June 1, 2016. SCDC has previously set forth these points, which present the most direct and simple bases for dismissing Plaintiffs’ claims. SCDC Mem. at 12-15. None of the various arguments raised by Plaintiffs can overcome those dispositive factual and legal points, although SCDC will discuss herein the issues raised by Plaintiffs.

¹ As SCDC has previously noted, SCDC Mem. at 14-15, that class of inmates never had a right to be released, because they were sentenced prior to the 2010 amendments taking effect.

2. SCDC's interpretation of the 2010 amendments was a discretionary decision for which immunity is provided, both by the Tort Claims Act and under longstanding common law immunity principles.

SCDC has previously pointed out that the McDonald R&R concluded that Plaintiffs' claims were barred by S.C. Code § 15-78-60(5)(retaining governmental immunity for "the exercise of discretion or judgment by the governmental entity or employee. . ."). SCDC Mem. at 16-17, citing and quoting the McDonald R&R, Exhibit 5 to that Memorandum, at 23. Magistrate Judge McDonald, citing pp. 132-133 of the Florian deposition, Exhibit 7, attached, concluded that Florian "reviewed the 2010 statute, did legal research, and reached a legal opinion about how the 2010 statute interacted with the so-called 85% rule (doc. 72-3, Florian dep. 132-33)." McDonald R&R at 23.

Several times, Plaintiffs cite *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004) for the principle that a governmental entity must prove that "faced with alternatives, [it] actually weighed competing considerations and made a conscious choice using accepted professional standards." 358 S.C. at 293, 594 S.E.2d at 564. Pl. Mem. at 19. At no time, however, do Plaintiffs deny that SCDC, and particularly its attorneys who made the judgment call about how to interpret the statute, failed to weigh competing considerations and make a conscious choice. Such an argument would have been futile even Plaintiffs had attempted it, because Florian's uncontradicted testimony is that he (a) "analyzed the various legal documents and came up with [his] opinion of the act meant in regard to what we've been referring as the 85 percent rule. . .," Ex. 6, Florian Deposition at 132, and (b) during the process, he "analyzed the various statutory sections and interpreted the various case law in regard to those statutes. . . ." *Id.* As the Fourth Circuit described it, "Florian pored over the South Carolina caselaw on statutory interpretation and

legislative intent.” *Campbell v. Florian*, 972 F.3d 385, 390 (4th Cir. 2020). (As with the McDonald R&R, Plaintiffs do not discuss the Fourth Circuit’s opinion.)

Instead of trying to show that SCDC, through its designated employee Florian, failed to weigh competing considerations and make a conscious choice, Plaintiffs argue only that because the Court of Appeals (although not the ALC) disagreed with Florian’s interpretation, that interpretation was not in accord with “accepted professional standards.” *Hawkins, supra*. In other words, the rule advocated by Plaintiffs would be that an attorney whose statutory interpretation was later rejected by a court failed to meet accepted professional standards. Such an argument, however, flies in the face of the long-established principle that “[t]he exercise of discretion includes the right to be wrong.” *McCall v. Batson*, 285 S.C. 243, 246, 329 S.E.2d 741, 742 (1985).

Plaintiffs rely heavily on the Court of Appeals’ passing use of the terms “patently erroneous” and “unreasonable” to describe the view of the statute espoused by SCDC and the ALC. Pl. Mem. at 5, 11, 12, 16, 17, 19, 21, 23, 25. Indeed, those words in the *Bolin* opinion are practically the only thing the Plaintiffs rely on. But the issue before the Court of Appeals involved Bolin’s challenge to the length of his sentence, rather than the entirely separate question in a damage case of whether SCDC weighed competing considerations and make a conscious choice, such that it would be entitled to immunity from a damage case in the event its interpretation was later found by a court to have been wrong.

Moreover, the *Bolin* court clearly could have reached its conclusions about the meaning of the 2010 amendments without needing to use the terms “patently erroneous” or “unreasonable.” The court could simply have set forth its view of the statute and the reasons it believed that view to be correct. Its additional comments on its view of SCDC’s interpretation therefore pertained to “a matter not necessarily involved in the case, and [the statements are] not binding as authority.

Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, is not the court's decision.” *Nash v. Tindall Corp.*, 375 S.C. 36, 40–41, 650 S.E.2d 81, 83 (Ct. App. 2007), quoting 21 C.J.S. Courts § 227 (2006). As the portion of C.J.S. quoted in *Nash* further explained,

A court is bound not only by the result but also by those portions of the opinion that are necessary to that result, and thus, the reasoning of the court that furnishes the exclusive basis for the conclusion reached is not obiter dictum. However, statements in an opinion that merely constitute the reasoning, arguments, references, illustrations, and analogies are generally not precedents.

21 C.J.S. Courts § 227 (emphasis added). As Justice Few has succinctly put it, citing *Nash*, “Dictum is not the law.” *Gordon v. Lancaster*, 425 S.C. 386, 395, 823 S.E.2d 173, 177 (2018).

The Fourth Circuit, in reviewing the actions of SCDC attorneys Florian and Tatarsky, rejected a contention very similar to the one Plaintiffs persist in making now. That court concluded that liability does not arise merely because a state actor adopted a statutory construction that was later rejected by a court. The Fourth Circuit first pointed out that the 2010 statutory amendments contained “an arguable contradiction in South Carolina law,” 972 F.3d at 389, creating “compound[ed] confusion,” *id.* at 390, which meant that “SCDC needed to sort through the new law in all its contradictions.” *Id.* The Fourth Circuit described Florian’s interpretation as one he believed to have “resolved the Omnibus Act's contradictions.” *Id.*

The district court in *Campbell* reached the conclusion Plaintiffs are now trying to reassert here, which would be to hold SCDC liable to Plaintiffs as a result of actions of Florian and Tatarsky based on the *Bolin* court’s use of the terms “unreasonable” and “patently erroneous.” The district court held that the meaning of the 2010 amendments was “obvious,” and that “Campbell's Eighth Amendment right was, therefore, clearly established. So Florian and Tatarsky were not entitled to qualified immunity.” 972 F.3d at 392.

The Fourth Circuit emphatically disagreed with the district court’s (and the Plaintiffs’) view of the effect to be given to those dicta in *Bolin*. As a result, the Fourth Circuit reversed, dismissing the claims against Florian and Tatarsky, and holding that “[s]imply put, the record shows Florian acted reasonably to confront the interpretive problem before him.” *Id.* at 395. (Emphasis added.) For the same reasons cited by the Fourth Circuit in dismissing Plaintiffs’ federal claims, Plaintiffs’ state law claims based on the dicta in *Bolin* should also be dismissed.

The Fourth Circuit’s opinion set forth a detailed analysis showing why the mere fact of a statutory construction later rejected by a court does not give rise to liability of a state agency:

An incorrect legal opinion often occurs without some negligent (much less reckless) act or omission. In our adversarial legal system, roughly 50% of litigants lose—and thus have pressed an incorrect legal opinion. Competent administrative agencies and lower courts are often overturned despite careful and thoughtful legal interpretations. Indeed, the South Carolina Administrative Law Court (an independent body) first upheld Florian’s reading of the Omnibus Act. And even at the highest levels of the law, four colleagues at times share an “incorrect” or “unreasonable” opinion. See Brett M. Kavanaugh, Fixing Statutory Interpretation, 129 Harv. L. Rev. 2118, n.4 (2016)(listing recent “divides in statutory interpretation cases”). An unreasonable outcome in that context cannot support an inference that the dissenters were negligent or criminally reckless in their analysis.

972 F.3d at 396–97. Nor can it support an inference that the state actor did not act in accordance with “accepted professional standards,” as Plaintiffs try to argue.

The conflicting interpretations of the statute by SCDC and the ALC on the one hand, and the Court of Appeals on the other hand, merely illustrate the point that “‘plain meaning’ is often in the eye of the beholder.” *Washington Legal Found. v. U.S. Sentencing Comm’n*, 17 F.3d 1446, 1449 (D.C. Cir. 1994). *See also, e.g., Abuelhawa v. United States*, 556 U.S. 816 (2009), in which the Supreme Court unanimously rejected the Fourth Circuit’s unanimous opinion that had been

based on alleged “plain meaning” of a statute. Obviously, there can be a wide divergence among reasonable minds of what the “plain meaning” of a statute is, and the present case is no exception.

In addition, notably missing from Plaintiffs’ memorandum is any quotation of the text of the 2010 amendments which are so supposedly clear, according to Plaintiffs. (The 2010 Omnibus Act appended an identical paragraph to three subsections: §§ 44-53-370, -375(A) & (B).) Plaintiffs assert in effect that the statute is as clear as if it had said that “that water is wet or that the sky is blue.” Pl. Mem. at 12. However, they do not quote the 2010 amendments at all, presumably because the text of those amendments, read in conjunction with other statutes regarding the same subject matter, are less clear than a statement that “water is wet.” The Fourth Circuit, which unlike the South Carolina Court of Appeals, was reviewing the statute in the context of tort liability, expressed several times its view that the 2010 amendments involved “confusion” and “contradictions.” Plaintiffs’ failure to quote the amendments only confirms that the statutory scheme was far from clear once the amendments were added to it.

Finally, the Supreme Court of South Carolina has long recognized the immunity of public officials when they are performing discretionary acts. In *Long v. Seabrook*, 260 S.C. 562, 569, 197 S.E.2d 659, 662 (1973), it was held that “[i]n a tort suit against a public official whose duties are discretionary, it must be shown that in the performance or non-performance of those duties the public official was guilty of corruption, or bad faith, or influenced by malicious motives, before a recovery can be had.” (citing *Dunbar v. Fant*, 170 S.C. 414, 170 S.E. 460 (1933)). Plaintiffs have not argued, nor can they argue, that SCDC’s interpretation was motivated by such factors.

3. SCDC’s exercise of discretion did not occur at merely an “operational” level.

Plaintiffs briefly assert that SCDC’s act of interpreting the statute was not entitled to discretionary immunity because, they claim, that act of interpretation was merely “operational.”

Pl. Mem. at 20. There are at least two reasons why this argument is unavailing. First and foremost, although Plaintiffs fail to mention the point, the Supreme Court has expressly declined to recognize a distinction between immune acts and under the Tort Claims Act and allegedly non-immune “operational” acts. *Clark v. S.C. Dep't of Pub. Safety*, 362 S.C. 377, 387, 608 S.E.2d 573, 579 (2005)(“The Department contends the Court of Appeals created a distinction between planning and operational activities in determining Bradley's conduct was not subject to discretionary immunity. We decline at this time and under the facts of this case to recognize such a distinction.”). The Court of Appeals itself subsequently has pointed out that the Supreme Court has declined to recognize such a distinction. *Shelley v. S.C. Highway Patrol*, 432 S.C. 335, 345, 852 S.E.2d 220, 225 (Ct. App. 2020). Plaintiffs’ attempt to label SCDC’s actions as “operational” therefore must fail, because that attempt is based solely on a disavowed line of authority.

Secondly, and in any event, there can be no doubt that in deciding how the 2010 amendments should be interpreted, SCDC made a decision that involved “the exercise of discretion or judgment by the governmental entity or employee. . . .” S.C. Code § 15-78-60(5). No matter how a mere “operational” act may ultimately be defined, in the event that our Supreme Court ever decides to deny immunity for such acts, the interpretation of a statute at the agency’s highest levels cannot be compared to an ad hoc “operational decision” such as might occur in an individualized situation.

4. Plaintiffs’ claim that *Bolin* should be given retroactive effect does not support their claim for damages when SCDC’s action was taken as a result of the exercise of discretion.

Plaintiffs claim that *Bolin* should be given retroactive effect, meaning that damages should be awarded. However, to so hold would be to nullify the principle that state agencies, in the exercise of their discretion, have “the right to be wrong,” *McCall, supra*. That “right to be wrong”

would be abrogated if damages were awarded whenever an agency's discretionary decision was later held to have been "wrong." At most, the only retroactive effect that SCDC needed to give to *Bolin* was to apply it, once it became final with the issuance of the remittitur, in such a way as to release those inmates whose sentences were effectively declared by *Bolin* to have had an earlier expiration date than had previously been understood. Those releases did occur, and that was the only retroactive effect to which Plaintiffs may have been entitled.

5. SCDC and the McDonald R&R have already addressed Plaintiffs' other arguments against applying Tort Claims Act immunities.

In support of its Motion for Summary Judgment, SCDC asserted immunities under § 15-78-60(5)(exercise of discretion, discussed above) and also under the following additional provisions of the Tort Claims Act: §15-78-60(3)(enforcement, etc., of court orders); 60(4)(compliance with any laws; and -60(21)(decisions related to inmate releases).² SCDC has extensively discussed why any or all of these subsections provide SCDC with immunity from this action. SCDC Mem. at 15-18. In each instance, SCDC quoted from the McDonald R&R, which Plaintiffs have so far chosen to ignore. Plaintiffs' Memorandum argues nothing that SCDC and the McDonald R&R have not already addressed.

6. Even if SCDC were to found liable, its interpretation of the 2010 amendments constituted only one "occurrence" under S. C. Code § 15-78-30(g).

For the reasons set forth above, SCDC firmly denies that it is liable in any way to any of the plaintiff class members. However, in the event that the Court holds otherwise, SCDC submits

² Plaintiffs have also argued that various other defenses raised in SCDC's Answers are unavailing. Pl. Mem. at 19-20 (discussing §§ 15-78-30(1) and -(2); Pl. Mem. at 23-27 (discussing several other issues not now argued by SCDC). SCDC has not raised those defenses in its Motion for Summary Judgment.

that, contrary to Plaintiffs' assertion on this point (Pl. Mem. at 27-29), SCDC's interpretation of the 2010 amendments constituted only one "occurrence" under S. C. Code § 15-78-30(g).

Section 15-78-120 of the South Carolina Tort Claims Act establishes the monetary caps or limits on a governmental entity's liability for money damages. Section 15-78-120(a) provides that "no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence." S.C. Code Ann. § 15-78-120(a). The Tort Claims Act must be liberally construed to limit the liability of the state and its political subdivisions. S.C. Code Ann. § 15-78-20(f). *Faile v. South Carolina Department of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536, 540 (2002)("[p]rovisions establishing limitations on liability must be liberally construed in the State's favor"). The Tort Claims Act defines "occurrence" as "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g).

Plaintiffs argue that "SCDC made a conscious and deliberate decision to confine each one of these inmates past their lawful release dates, and each of the 413 individual class members' claims is compensable as a separate occurrence," and that as a result, there were 413 separate occurrences in this case—one for each member of the inmate class. Pl. Mem. at 28. However, the Supreme Court has held several times that "the burden to prove more than one occurrence rested on the plaintiff." *Boiter v. S.C. Dep't of Transp.*, 393 S.C. 123, 133, 712 S.E.2d 401, 406 (2011), citing *Chastain v. AnMed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010). Plaintiff has produced no evidence that "SCDC made a conscious and deliberate decision" regarding the nature of the sentences of each of the 413 inmate class members. To prove such an argument, Plaintiffs would need to show that SCDC reconsidered Florian's interpretation of the 2010 amendments for every inmate sentenced under §§ 44-53-370, -375(A) & (B). This was simply not the case. Instead,

SCDC made only one decision regarding the interpretation of the 2010 amendments and then applied that single decision to the sentences of each of the 413 inmates.

Plaintiffs argue that each application of SCDC's interpretation to each affected inmate was a new "occurrence." However, the Supreme Court has made it clear that it is erroneous to tie "the number of occurrences to the number of injuries. . . ." *Boiter*, 393 S.C. at 134, 712 S.E.2d at 406. Plaintiffs are asking the Court to reach the very conclusion rejected by the Supreme Court in *Boiter*.

CONCLUSION

For the foregoing reasons, as well as those previously set forth in connection with its own Motion for Summary Judgment, SCDC respectfully submits that its Motion for Summary Judgment should be granted, Plaintiffs' Motion for Summary Judgment should be denied, and that these consolidated cases should be dismissed in their entirety.

Respectfully submitted,

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