THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC 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.

FINAL APPELLANT'S BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. SCDC is immune from liability on Plaintiffs' false imprisonment claim pursuant to the exceptions to the waiver of immunity under the South Carolina Tort Claims Act.

A. Plaintiffs' claim for false imprisonment arises out of SCDC's failure to enforce relevant provisions of the Omnibus Act to release Plaintiffs' from incarceration at an earlier time; therefore, SCDC is immune from liability pursuant to the exception to the waiver of immunity providing that a governmental entity is not liable for loss resulting from the adoption, enforcement, or compliance with any law or failure to adopt or enforce any law.

B. SCDC's interpretation of the Omnibus Act and its application of that interpretation to inmate release dates involves the exercise of discretion or judgment for which a governmental entity is immune from liability.

C. SCDC's interpretation of the Omnibus Act and its application of that interpretation to inmate release dates invokes immunity for the decision to or implementation of release of an inmate.

D. The gross negligence standard of the custodial immunity exception to the waiver of immunity should not be read into the subsections under which SCDC is immune from liability because SCDC neither pled immunity under this subsection nor is it applicable; further, the United States Court of Appeals for the Fourth Circuit has already made findings in this case which establish that SCDC was not grossly negligent.

II. SCDC did not unlawfully restrain any member of the plaintiff class as required for a false imprisonment claim.

A. The Omnibus Act did not apply retroactively to those class members sentenced before the effective date of the Act; therefore, because these class members were not entitled to any early release under the Act, SCDC did not unlawfully restrain them.

B. Inmates sentenced after the effective date of the Omnibus Act were validly restrained by SCDC until this Court determined that the relevant provisions of the Act should be construed to apply credits for early release.

III. The alleged injuries of each class member stemmed from the same, singular act by SCDC in interpreting the Omnibus Act and applying its interpretation to inmate release dates; therefore, the complaint alleges only one occurrence for which the total sum potentially recoverable under the Tort Claims Act is six hundred thousand dollars regardless of the number of claims or actions involved.

IV. Because Plaintiffs' false imprisonment and negligence/gross negligence claims are premised upon the same factual allegations, the immunities and monetary limitations of liability under the Tort Claims Act also apply to Plaintiffs' negligence/gross negligence claim to limit liability.

STATEMENT OF THE CASE

On August 17, 2016, Respondent Marion Campbell filed a class action complaint in the Court of Common Pleas for Charleston County against Appellant South Carolina Department of Corrections ("SCDC") and Bryan Stirling, the Director of SCDC at the time. [R.pp. 81-95; Compl.] Campbell alleged that SCDC falsely imprisoned him and the class who, as a result of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 (the "Omnibus Act"), should have been released sooner than the inmate release dates calculated by SCDC. [R.p. 85; Id. at p. 1.] Among the claims brought by Campbell against SCDC and Stirling were false imprisonment and negligence/gross negligence. [R.pp. 90-93; Id. at ¶¶ 28-47.] Campbell sought actual, consequential, and punitive damages on behalf of himself and the class. [R.p. 94; Id. at p. 10.]

The action was removed to the United States District Court for the District of South Carolina by SCDC and Stirling on September 29, 2016. [R.pp. 96-99; Notice of Removal.] Campbell then filed an amended class action complaint on May 16, 2017 which added deliberate indifference claims pursuant to 42 U.S.C. § 1983 against SCDC General Counsel David Tatarsky and Deputy General Counsel Chris Florian arising out of the implementation of the Omnibus Act. [R.pp. 101; 105-106; 113-114; Am. Compl., ¶¶ 4-5, 32-37, 78-82.] In the Amended Complaint, Campbell once again asserted claims for false imprisonment and negligence/gross negligence against SCDC. [R.pp. 110-113; Id. at ¶¶ 58-77.] Campbell also brought certain deliberate indifference claims against Stirling. [R.p.

114; Id. at ¶¶ 83-86.] Campbell continued to seek on behalf of himself and the class actual, consequential, and punitive damages. [R.pp. 114-115; Id. at pp. 15-16.]

SCDC and Stirling answered the amended complaint on May 25, 2017, denying its material allegations. [R.pp. 117-125; Answer.] SCDC further asserted as an affirmative defense the immunities of the South Carolina Tort Claims Act, including §§ 15-78-60(1)(2)(3)(4)(5)(21), and (23). [R.p. 123; Id. at ¶ 37.]

All parties moved for summary judgment in the District Court case. On October 1, 2018, the United States Magistrate Judge recommended the grant of summary judgment in favor of SCDC, Stirling, Tatarsky, and Florian. The Magistrate Judge also recommended the denial of Campbell's motion for summary judgment. The Magistrate Judge recommended that SCDC was immune from liability under S.C. CODE ANN. § 15-78-60(4) (providing immunity 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(5) (providing immunity for losses resulting from "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"); and S.C. CODE ANN. § 15-78-60(21) (providing immunity for losses resulting from "the decision to or implementation of release . . . of any persons in the custody of any governmental entity, including [an] inmate"). [R.pp. 314-339; Report and Recommendation (Campbell v. S.C. Dep't of Corr., No. 6:16-CV-3265-MGL-KFM, 2018 WL 7820956 (D.S.C. Oct. 1, 2018)).]

The District Court rejected the Report and Recommendation on March 21, 2019 and denied the motion for summary judgment of SCDC attorneys Tatarsky and Florian.

[R.pp. 528-539; District Court Order (Campbell v. S.C. Dep't of Corr., No. CV 6:16-3265-MGL-KFM, 2019 WL 1297005 (D.S.C. Mar. 21, 2019)).] By a separate text order issued the same day, the District Court granted Defendant Stirling's motion for summary judgment and dismissed without prejudice both Campbell's and SCDC's motions for summary judgment with leave to refile as to the state claims. [R.pp. 43-44; see April 15, 2025 Order, pp. 2-3.] Campbell did not reassert any claims against Stirling, and he is no longer a defendant in this case.

On August 28, 2020, the United States Court of Appeals for the Fourth Circuit issued an amended opinion reversing the District Court's denial of the motion for summary judgment of SCDC attorneys Tatarsky and Florian. [R.pp. 1-10: Fourth Circuit Opinion (Campbell v. Florian, 972 F.3d 385 (4th Cir. 2020), as amended (Aug. 28, 2020)).] The Fourth Circuit determined Tatarsky and Florian did not act with deliberate indifference and were entitled to qualified immunity. Campbell's claims against Tatarsky and Florian were dismissed with prejudice. [R.pp. 1-10; Id.]

Following the Fourth Circuit's dismissal of Tatarsky and Florian, the District Court remanded Campbell's remaining state law claims for false imprisonment and negligence/gross negligence against SCDC to the Court of Common Pleas for Charleston County. [R.pp. 11-12; Text Order entered September 30, 2020.] Venue was subsequently transferred by consent to the Richland County Court of Common Pleas, and several additional actions stating similar claims were consolidated. [R.p. 44; April 15, 2025 Order, p. 3.] The Trial Court conditionally certified the consolidated class as a class action on November 19, 2021. [R.pp. 22-41; Certification Order.]

On August 9, 2023, SCDC filed a motion and memorandum for summary judgment on the false imprisonment and negligence/gross negligence claims of the plaintiff class arguing, in part, that no plaintiff was at any time unlawfully restrained by SCDC and that SCDC was entitled to immunity under the Tort Claims Act, including §§ 15-78-60(4), (5), and (21) for the failure to enforce any law, the exercise of discretion, and the decision to or implementation of release of an inmate. [R.pp. 268-344; Mtn. for Summary Judgment, Memo., and Exs.]

Plaintiffs also filed a motion for summary judgment on their false imprisonment claim. [R.pp. 345-474; Plaintiffs' Mtn. for Summary Judgment, Memo., and Exs.] Plaintiffs further requested the Trial Court to order as a matter of law that each plaintiff within the class could claim a separate occurrence under the Tort Claims Act. [R.p. 346; Plaintiffs' Mtn. for Summary Judgment, p. 2.] The parties thereafter submitted opposition and supplemental memorandums on the cross-motions for summary judgment. [R.pp. 487-608; 475-486; 615-619; 620-636; Plaintiffs' Opp. Memo. and Exs; SCDC Opp. Memo.; SCDC Supp. Memo.; Plaintiffs' Response to Supp. Memo.]

A hearing on the cross-motions for summary judgment was held before The Honorable Jocelyn Newman on February 12, 2025. [R.pp. 716-776; Hearing Tr.] On April 15, 2025, the Trial Court granted summary judgment in favor of Plaintiffs on the false imprisonment claim and denied SCDC's motion for summary judgment on the negligence/gross negligence claim. The Trial Court further ruled that each individual class members' false imprisonment arising out of SCDC's interpretation of the Omnibus Act constituted a separate compensable occurrence under the Tort Claims Act. [R.pp. 42-77; April 15, 2025 Order.]

Pursuant to Rule 59(e), SCRCP, SCDC timely moved for reconsideration of the Trial Court's Order. [R.pp. 637-672; Mtn. and Am. Mtn. for Reconsideration.] The Trial Court denied the motion for reconsideration on August 25, 2025. [R.pp. 78-80; Form 4 Order.]

SCDC served and filed its Notice of Appeal to this Court on or about September 19, 2025.

STATEMENT OF FACTS

On April 22, 2010, Marion Campbell was indicted in Colleton County, South Carolina for "manufacturing or distribution of cocaine base" (third offense). [R.pp. 101-102; Am. Compl., ¶ 8.] On December 2, 2011, Campbell pled guilty to distribution of crack cocaine (second offense) in violation of S.C. CODE ANN. § 44-53-375(B)(2). [R.p. 102; Id. at ¶ 10.] A circuit court judge sentenced Campbell to twenty-five years imprisonment, suspended to service of seven years with five years probation. [R.p. 102; Id. at ¶ 11.]

Under South Carolina law, inmates may be entitled to apply work credits and good-time credits to the balance of their sentence in order to be eligible for earlier release than the imposed sentence. For every two days that an inmate works on a "productive duty assignment," the inmate may receive a day's credit. S.C. CODE ANN. § 24-13-230(A). Inmates who "faithfully observed all the rules of the institution where [they are] confined and [who have] not been subjected to punishment for misbehavior" are granted good-time credits "at the rate of twenty days for each month served." S.C. CODE ANN. § 24-13-210(A).

The above-mentioned credits do not apply to all South Carolina inmates without restriction. The Legislature has classified certain offenses as "no parole offenses." S.C.

CODE ANN. § 24-13-100. "No parole offenses" included any "class A, B, or C felony." Id. Inmates convicted of these offenses must serve at least eighty-five percent of their sentence as imposed before they are eligible for early release, discharge, or community supervision. 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 and sentenced to the custody of the Department of Corrections . . . 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.").

As a result, work and good-conduct credits do not kick in for "no parole offenders" until they have served eighty-five percent of their sentence. This is known as the "eighty-five percent rule." In addition, no parole offenders earn fewer work and good-conduct credits than other offenders. See S.C. CODE ANN. §§ 24-13-210(B), -230(B).

The offense for which Campbell pled guilty, S.C. CODE ANN. § 44-53-375(B)(2), is designated as a Class A felony under S.C. CODE ANN. § 16-1-90(A). At the time Campbell was indicted, his offense, a Class A felony, was therefore classified as a "no parole offense" under S.C. CODE ANN. § 24-13-100 subject to the eighty-five percent rule.

Following Campbell's indictment but prior to his sentencing, the Legislature enacted the Omnibus Crime Reduction and Sentencing Reform Act of 2010 with an effective date of June 2, 2010 (the "Omnibus Act"). Sections 37 and 38 of the Omnibus Act appended the following paragraph to § 44-53-375(B) of the South Carolina Code:

> 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 2010 South Carolina Laws Act 273, §§ 37, 38 (S.B. 1154).

While the Omnibus Act amended § 44-53-375(B) to provide that a second offense [of which Campbell was sentenced] under such subsection may be eligible for parole, the Omnibus Act did not amend § 24-13-100 which controlled "no parole" classifications and designated a Class A felony as a "no parole offense." Nor did the Omnibus Act amend § 16-1-90(A) which designated an offense under § 44-53-375(B)(2) as a Class A felony. Finally, the Omnibus Act also did not amend § 24-13-150(A) which enumerated the consequences of the no parole offense designation and mandated that inmates must serve at least eighty-five percent of their sentence as imposed before they are eligible for early release, discharge, or community supervision.

As the United States Court of Appeals for the Fourth Circuit recognized, this created "an arguable contradiction in South Carolina law" because while the Omnibus Act suggested that Campbell was " eligible for parole, . . . work credits, education credits, and good conduct credits," § 44-53-375(B) still fell within § 24-13-100's classification of a "no parole offense" such that the eighty-five percent rule would still preclude Campbell from gaining early release based on those credits. [R.pp. 2-3; Campbell v. Florian, 972 F.3d 385, 389 (4th Cir. 2020).] Further, as the Fourth Circuit observed, "[c]ompounding the confusion, both § 24-13-150(A) and § 44-53-375(B) claimed to apply 'notwithstanding any other provision of law.'" [R.p. 3; Id. at 390.]

The Fourth Circuit found SCDC "needed to sort through the new law in all its contradictions" "[t]o fulfill its responsibilities – including determining parole eligibility and calculating release dates based on earned credits." [R.p. 3; Id.**]** The task fell to Chris Florian, SCDC's Deputy General Counsel. [R.p. 562; Florian Dep., p. 11, ll. 2-23.]

Florian's particular expertise at SCDC was in sentencing law. [R.p. 563; Id. at p. 16, ll. 19-21.]

Within a few days of the Omnibus Act being enacted, Florian was assigned by General Counsel David Tatarsky to review the Act, interpret its provisions, and provide legal guidance to the agency. It was clear to Florian that the Omnibus Act was going to have a significant effect on the agency. [R.pp. 565; 566; 543; 547; Id. at pp. 21, ll. 3-13; 27, ll. 16-22; Tatarsky Dep., pp. 11, l. 23 – 12, l. 1; 26, ll. 10-13.] Florian began studying the Omnibus Act, outlining various sections in order to pull out those that would have a direct impact on the agency. [R.p. 567; Florian Dep., p. 29, ll. 3-17.] He noted that certain portions of the Omnibus Act were unclear upon his reading of it, and he began researching the issues presented, including reviewing relevant sections of the South Carolina Code, court decisions, and any other legal authorities that might speak to the presented legal issues so he could interpret and apply the Omnibus Act. While performing this work, Florian was aware of the legal concepts of statutory construction and legislative intent, and he researched existing South Carolina case law in an attempt to apply these principles to his analysis. [R.pp. 567; 568; 592-593; Id. at pp. 31, l. 22 – 32, l. 24; 34, l. 16 – 35, l. 14; 132, l. 7 – 133, l. 16.]

Florian interpreted the Omnibus Act to be inconsistent in a number of respects, including regarding its use of terms and its fundamental intent. Florian testified that "[a]t times the law seemed to be intending to reduce inmate sentences, but other places you would see it actually increasing penalties." [R.pp. 568-569; Id. at pp. 36, l. 23 – 37, l. 6.] To resolve the noted inconsistencies, Florian looked "at how those terms were used elsewhere in the South Carolina [C]ode and [looked] to try and synthesize the act with existing law and to basically apply the law as – as a court looking at the law would interpret it." [R.p. 569; Id. at p. 37, ll. 7-16.]

Florian kept General Counsel Tatarsky informed of his progress in researching the provisions of the Omnibus Act. [R.pp. 567; Id. at pp. 30, l. 17 – 31, l. 20.] Florian did not solicit advice on interpretation of the Omnibus Act from other attorneys or law firms in forming his opinions, testifying that there would have been little use in such an exercise as solicitors, assistant solicitors, and circuit judges were in the habit of calling him for advice in interpreting sentencing provisions. [R.pp. 568; 579; 591; Id. at pp. 35, l. 15 – 36, l. 5; 80, ll. 12 – 22; 128, ll. 4-19.]

Based upon his research and the rules of statutory construction, Florian drafted a memorandum describing how he believed the Omnibus Act should be interpreted. [R.pp. 569; Id. at pp. 37, ll. 17 – 24.] In his memorandum, 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 ANN. § 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 [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 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. . . .

[R.p. 294; Florian Memorandum dated June 22, 2010, 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 SCDC the discretion to parole certain inmates. Notwithstanding this, the Act did not remove the otherwise applicable general restrictions placed on a "no parole offense." [R.pp. 576; 576-577; 577-578; Florian Dep., pp. 66, l. 12 – 67, l. 4; 67, ll. 14-24; 68, l. 25 – 69, l. 15; 72, l. 25 – 74, l. 17.]

SCDC's General Counsel Tatarsky read the Florian memorandum, familiarized himself with its contents, and approved it. [R.pp. 551; 552; Tatarsky Dep., pp. 44, ll. 6-8; 46, ll. 21-24.] The Florian memorandum was passed around the department and used to evaluate inmates' eligibility for parole, credits, and release. [R.pp. 577; 578; Florian Dep., pp. 70, l. 22 – 72, l. 24; 75, ll. 15-21.] Based upon the Florian memorandum and its analysis of the Omnibus Act, the technical staff of SCDC's Resource and Information Management Division programmed and made the coding changes necessary to the computer system which would automatically calculate and recalculate max-out dates for inmates. [R.pp. 565; 566; 546; Florian Dep., pp. 21, l. 25 – 22, l. 11; 25, ll. 4-22; Tatarsky Dep., pp. 21, l. 18 – 22, l. 6.]

After SCDC adopted the Florian Memorandum, an inmate named Michael Bolin challenged SCDC'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 appealed to the South Carolina Administrative Law Court. On February 24, 2014, the Administrative Law Court endorsed Florian's interpretation of the Omnibus Act, finding nothing in the amended language of § 44-53-375(B) reflected a legislative intent to remove the eighty-five percent requirement. The Administrative Law Court dismissed Bolin's case. [R.pp. 298-302; 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 this Court. Siding with Bolin, this Court held that an offense under § 44-53-375(B) is no longer a "no-parole offense." [R.pp. 779-785; Bolin v. South Carolina Dep't of Corrections, 415 S.C. 276, 282-86, 781 S.E.2d 914, 916–19 (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). [R.p. 782; see id. at 283, 781 S.E.2d at 917]; cf. Varity Corp. v. Howe, 516 U.S. 489, 511 (1996) ("[T]he specific governs the general."). The Court, however, 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. [R.pp. 781-782; Bolin, 415 S.C. at 282-83, 781 S.E.2d at 917.]

The Court also stated 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. [R.p. 782; Id. at 283, 781 S.E.2d at 917.] Combined with the general intent to "conserve taxpayer dollars by allowing earlier release dates," the Court adopted Bolin's interpretation. [R.pp. 782-783; Id. at 285, 781 S.E.2d at 918.]

This Court issued its initial decision in Bolin on November 12, 2015. [R.pp. 401-410; Bolin opinion.] Following a petition for rehearing filed by SCDC, the Court issued a corrected opinion on February 24, 2016. [R.p. 779; Bolin (2016).] SCDC elected not to file a petition for writ of certiorari with the Supreme Court of South Carolina. [R.p. 553; Tatarsky Dep., p. 52, ll. 10-20.] 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 the June 2, 2010 effective date of the Omnibus Act. [R.p. 413; SCDC Responses to First Requests to Admit, ¶ 8.]

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 Omnibus Act. The remittitur in Bolin was subsequently issued on April 1, 2016. [R.pp. 303-305; Remittitur.] That meant those 190 inmates were released several days before the Bolin decision became final.

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.

[R.p. 294; Florian Memorandum, p. 3.]

Indeed, the Omnibus Act included a savings provision which provided:

> SECTION 65. The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

See 2010 South Carolina Laws Act 273, § 65 (S.B. 1154) (emphasis added).

Nevertheless, the two agencies decided that they would release the inmates sentenced prior to June 2, 2010 as well. [R.pp. 557; Tatarsky Dep., pp. 66, l. 8 – 67, l. 14.] As a result, approximately 230 additional inmates were released on or about June 1, 2016. [R.p. 414; SCDC Responses to First Requests to Admit, ¶ 12.] Between these two sets of releases, along with a small number of individualized exceptions, all inmates whose offenses carried sentences described in Bolin were released, regardless of whether the sentences were imposed before or after June 2, 2010.

Following release, Campbell filed the instant class action suit arising out of the claim that inmates were incarcerated past their max-out release dates. The action was removed to federal court where ultimately the Fourth Circuit considered claims of deliberate indifference against Florian and Tatarsky. In holding that Florian and Tatarsky were not deliberately indifferent in failing to properly apply work and good-conduct credits, the Fourth Circuit concluded Florian acted "reasonably" to confront the statutory interpretation problem before him as a "careful attorney would." [R.p. 6; Campbell v.

Florian, 972 F.3d 385, 395 (4th Cir. 2020).] The Fourth Circuit held Florian acted reasonably in interpreting the Omnibus Act even though this Court later disagreed with his position. [R.p. 8; Id. at 398.] Therefore, Florian and Tatarsky were entitled to qualified immunity. [R.p. 9; Id. at 399.]

After the case was remanded back to state court, the Trial Court granted summary judgment in favor of Plaintiffs on their false imprisonment claim and denied summary judgment to SCDC on the negligence/gross negligence claim. SCDC now challenges the Trial Court's ruling for the reasons set forth herein.

STANDARD OF REVIEW

The parties filed cross-motions for summary judgment pursuant to Rule 56, SCRCP; therefore, the parties concede the issue before the Court should be decided as a matter of law. Wiegand v. U.S. Auto. Ass'n, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011); see also S.C. Pub. Int. Found. v. Calhoun Cty. Council, 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021) ("When the parties file cross-motions for summary judgment, the issue becomes a question of law for [appellate courts] to decide de novo."). When cross motions for summary judgment have been filed, the court assumes there is no evidence to consider which has not already been filed by the parties to the case. Mead v. Beaufort Cty. Assessor, 419 S.C. 125, 131, 796 S.E.2d 165, 168 (Ct. App. 2016).

ARGUMENT

I. SCDC is immune from liability on Plaintiffs' false imprisonment claim pursuant to the exceptions to the waiver of immunity under the South Carolina Tort Claims Act.

The Trial Court erred in granting summary judgment in favor of Plaintiffs on the false imprisonment claim because SCDC is immune from liability under the South Carolina

Tort Claims Act, S.C. CODE ANN. § 15-78-10 *et seq.* The Tort Claims Act governs all tort claims in South Carolina against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. See Murphy v. Richland Mem'l Hosp., 317 S.C. 560, 562, 455 S.E.2d 688, 689 (1995); Wells v. City of Lynchburg, 331 S.C. 296, 302, 501 S.E.2d 746, 749 (Ct. App. 1998); S.C. CODE ANN. § 15-78-20(b) ("The remedy provided by [the Tort Claims Act] is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)."); S.C. CODE ANN. § 15-78-70(a) ("[The Tort Claims Act] constitutes the exclusive remedy for any tort committed by an employee of a governmental entity."). "The provisions of [the Act] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State." S.C. CODE ANN. § 15-78-20(f) (emphasis added).

In this case, Plaintiffs' false imprisonment claim against SCDC invokes the provisions and immunities of the Tort Claims Act. The Act defines "governmental entity" as "the State and its political subdivisions." See S.C. CODE ANN. § 15-78-30(d). The term "State" under the Act includes agencies. § 15-78-30(e). Thus, SCDC as an agency is a governmental entity subject to the Tort Claims Act.

While the Tort Claims Act provides that the State, its agencies, political subdivisions, and other governmental entities are "liable for their own torts in the same manner and to the same extent as a private individual under like circumstances," the Act also provides certain limitations and exceptions to liability. S.C. CODE ANN. §§ 15-78-40, -60. In particular, governmental entities are not liable for "loss" resulting from:

> (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;
>
> [and]
>
> (21) the decision to or implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity, including but not limited to a prisoner, inmate, juvenile, patient, or client or the escape of these persons.

S.C. CODE ANN. §§ 15-78-60(4), (5), and (21).

Any one of these exceptions to the waiver of immunity independently bar Plaintiffs' false imprisonment claim against SCDC.

A. Plaintiffs' claim for false imprisonment arises out of SCDC's failure to enforce relevant provisions of the Omnibus Act to release Plaintiffs' from incarceration at an earlier time; therefore, SCDC is immune from liability pursuant to the exception to the waiver of immunity providing that a governmental entity is not liable for loss resulting from the adoption, enforcement, or compliance with any law or failure to adopt or enforce any law.

Plaintiffs' claim for false imprisonment stems from SCDC's purported failure to properly implement and enforce the provisions of the Omnibus Act for release of Plaintiffs. As noted above, SCDC is not liable for any loss resulting from the "adoption, enforcement, or compliance with any law or <u>failure to adopt or enforce any law</u> . . . ." S.C. CODE ANN. § 15-78-60(4) (emphasis added).

The Trial Court ruled that this exception to the waiver of immunity did not apply because SCDC merely failed to comply with the Omnibus Act and the exception to the waiver of immunity provided in § 15-78-60(4) did not provide immunity for a failure to comply with the law. In so ruling, the Trial Court failed to give effect to the plain language of the statute providing immunity for the failure to enforce any law.

"A basic rule of statutory construction is that the words must be given their plain and ordinary meaning without resort to a subtle or forced construction which limits or expands the statute's operation." Adkins v. Varn, 312 S.C. 188, 191, 439 S.E.2d 822, 824 (1993). "Where a statute contains terms which are clear and unambiguous, a court must apply those terms according to their literal meaning." Id. If a word is not defined in the statute, the court may look to the "usual dictionary meaning to supply its meaning." Lee v. Thermal Eng'g Corp., 352 S.C. 81, 92, 572 S.E.2d 298, 304 (Ct. App. 2002).

Merriam-Webster provides the following definitions of the term "enforce":

1. to give force to: strengthen

2. to urge with energy
   Enforce arguments

3. constrain, compel
   Enforce obedience

4. obsolete: to effect by gain or force

5. to carry out effectively
   Enforce laws.

See Merriam-Webster, "Enforce," www.merriamwebster.com/dictionary/enforce (last visited April 13, 2026).

Noted synonyms of "enforce" are the terms "implement" and "apply." Id.

The term "implement," as the term "enforce," also means "to take steps to put into practice: carry out." https://www.merriam-webster.com/dictionary/implement (last visited April 13, 2026). And "carry out" means "to put into execution." See https://www.merriam-webster.com/dictionary/carry%20out (last visited April 13, 2026). Similarly, "apply" means "to put into operation or effect; *apply* a law." https://www.merriam-webster.com/dictionary/apply (last visited April 13, 2026).

Black's Law Dictionary also defines the term "enforce" as "to give force or effect to (as law, etc.); to compel obedience to." ENFORCE, Black's Law Dictionary (12th ed. 2024) (emphasis added).

Accordingly, one plain meaning of the term "enforce" is to give force or effect to laws and to carry out or implement those laws. The definition of the term "enforce" is not limited to the meaning "to compel." The Trial Court's order erroneously only focused on the definition of "enforce" meaning "to compel."

SCDC was created as a department of the executive branch of the state government. S.C. CODE ANN. § 1-30-10(A). Its functions as designated by statute are to "implement and carry out policy of the State with respect to its prison system . . . and the performance of such other duties and matters as may be delegated to it pursuant to law." S.C. CODE ANN. § 24-1-30 (emphasis added); [R.p. 8; see also Campbell v. Florian, 972 F.3d 385, 398 (4th Cir. 2020) (recognizing State has empowered SCDC to implement sentencing law).]

Plaintiffs' Amended Complaint expressly alleges that SCDC attorneys Florian and Tatarsky "directed SCDC in implementing the [Omnibus Act]." [R.p. 105; Am. Compl., ¶ 32.] Plaintiffs further allege SCDC "implemented" the Omnibus Act by only changing the status of Campbell and the class to eligible for parole without giving effect to the rest of the Act. [R.pp. 105-106; Id. at ¶¶ 33-36.] In addition, Plaintiffs note SCDC has the responsibility for "applying" sentence reduction credits prescribed by statute. [R.p. 111; Id. at ¶ 62.]

SCDC General Counsel Tatarsky agreed that SCDC had "a fundamental duty and responsibility to implement the intent of the legislature in carrying out the mandates of the Omnibus Act." [R.pp. 546; 552; Tatarsky Dep., p. 23, ll. 13-19; <u>see also</u> <u>id.</u> at p. 47, ll. 19-20 ("[SCDC] interpreted the Act to the best of our ability and tried to implement it that way.").] Deputy Counsel Florian also acknowledged SCDC was charged with implementing the Omnibus Act correctly. [R.pp. 565; 574-575; 592; Florian Dep., pp. 23, 19 – 24, l. 3; <u>see also</u> <u>id.</u> at pp. 60, l. 24 – 61, l. 1 ("SCDC . . . is to carry out the law and the sentence imposed on the inmates . . . ."); p. 129, ll. 8-19 (noting part of the duty of SCDC is to "implement the various statutes that deal with such sentencing").]

SCDC therefore did not have a duty to merely to comply with the Omnibus Act. SCDC was rather charged with implementing, carrying out, and applying the Act. As these terms all relate to the plain meaning of the term "enforce," SCDC thus had a duty to enforce the provisions of the Omnibus Act.

Central to Plaintiffs' false imprisonment claim is that SCDC did not correctly and properly enforce the provisions of the Omnibus Act in determining release dates. This claim squarely fits into the exception to the waiver of immunity for the <u>"failure to . . . enforce any law</u> . . . ." S.C. CODE ANN. § 15-78-60(4) (emphasis added).

In <u>Adkins v. Varn</u>, 312 S.C. 188, 439 S.E.2d 822 (1993), the Supreme Court considered whether § 15-78-60(4) provided immunity to Greenville County for its failure to enforce an ordinance. The case arose when several vicious dogs chased a young girl on a bicycle into a street. The girl was struck and killed by an automobile as she attempted to flee from the dogs. Local residents had complained about the dogs to county animal control, and one neighbor had called the County at least five times just prior to the accident.

The trial court dismissed the action, finding the County was immune from liability for failure to enforce an ordinance. The Supreme Court agreed:

> The present facts establish that the County had notice that several vicious dogs were at large in the neighborhood. The facts also show that the County, for whatever reason, did not enforce the ordinance on these particular animals. It is undisputed that the County is a governmental entity within the meaning of the South Carolina Torts Claim Act, and therefore, is subject to the provisions of S.C. CODE ANN. § 15–78–60(4).
>
> 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 an ordinance; therefore, the County is immune from suit for any loss as a result of their non-enforcement of the animal control ordinance.

Id. at 191–92, 439 S.E.2d at 824.

Plaintiffs' complaint here, as in Adkins, also arises out of SCDC's failure to enforce the provisions of the Omnibus Act as applicable to Plaintiffs. Under the Tort Claims Act, a governmental entity is immune when it fails to enforce the provisions of a statute as it is alleged that SCDC did in this case. See also Repko v. Cty. of Georgetown, 424 S.C. 494, 500-01, 504, 507-08, 818 S.E.2d 743, 747, 749, 751 (2018) (holding county was immune from property owner's negligence action under the Tort Claims Act's exception for the failure to enforce any law, regulation, or written policy where property owner claimed the county failed to comply with or enforce its rules, regulations, and policies governing its handling of a letter of credit covering remaining cost of completion of infrastructure).

Accordingly, the Trial Court erred in granting summary judgment to Plaintiffs on the false imprisonment claim and ruling that § 15-78-60(4) did not provide immunity to SCDC for its purported failure to enforce the provisions of the Omnibus Act. Because SCDC is entitled to immunity under § 15-78-60(4) of the Tort Claims Act, it is entitled to the grant of summary judgment on the false imprisonment claim.

B. SCDC's interpretation of the Omnibus Act and its application of that interpretation to inmate release dates involves the exercise of discretion or judgment for which a governmental entity is immune from liability.

Alternatively, SCDC is also not liable on Plaintiffs' false imprisonment claim because it is immune from liability under S.C. CODE ANN. § 15-78-60(5) which provides a governmental entity is not liable for loss resulting from "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."

The decision by SCDC attorneys how to apply the Omnibus Act to the sentences for certain crimes constituted a quintessential discretionary decision by a governmental official. When the Supreme Court largely abolished sovereign immunity in McCall by Andrews v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985), the Court noted that governmental entities would continue to be immune for discretionary acts:

> We hold that the 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.

Id. at 246, 329 S.E.2d at 742 (emphasis added).

When the Legislature enacted the Tort Claims Act, it codified the McCall exceptions. Williams v. Condon, 347 S.C. 227, 249, 553 S.E.2d 496, 508 (Ct. App. 2001). Among the McCall exceptions codified was § 15-78-60(5) for loss resulting from "the exercise of discretion or judgment by the governmental entity or employee . . . ."

To establish discretionary immunity, "the governmental entity must prove that the governmental employees, faced with alternatives, actually weighed competing considerations and made a conscious choice." Wright v. S.C. Dep't of Transportation, 437 S.C. 184, 202, 877 S.E.2d 788, 797 (Ct. App. 2022) (internal citations omitted). "The governmental entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before them." Id. (internal citations omitted).

The evidence in this case shows that SCDC met this standard for establishing discretionary immunity. As the Fourth Circuit found in this case, Florian acted reasonably to confront the statutory interpretative problem before him in construing the Omnibus Act. [R.p. 6; Campbell v. Florian, 972 F.3d 385, 395 (4th Cir. 2020).] He read the Act, and he outlined the Act's sixty to ninety pages to determine which sections impacted SCDC. He pulled and reviewed existing statutes that the Omnibus Act impacted. He also reviewed case law on statutory construction and legislative intent. [R.pp. 6-7; 567; 568; 592-593; Id. at 395-96; Florian Dep., pp. 29, ll. 3-17; 33, ll. 16-23; 34, l. 16 – 35, l. 14; 132, l. 7 – 133, l. 16.]

In the process of analyzing the Omnibus Act, Florian recognized it contained inconsistencies. When Florian saw inconsistencies, he focused "on interpreting . . . each provision of the statute and understanding it in . . . context." [R.pp. 7; 568-569; Campbell, 972 F.3d at 396; Florian Dep., pp. 36, l. 23 – 37, l. 16.]

And of course, the inconsistency relevant here was the Omnibus Act's amendment to allow persons convicted under S.C. CODE ANN. § 44-53-375(B) to be eligible for parole without amending either S.C. CODE ANN. § 24-13-100 which designated no parole offenses or S.C. CODE ANN. § 24-13-150(A) which required inmates convicted of no parole offenses to serve eighty-five percent of their sentences. Both § 24-13-150(A) and § 44-53-375(B) claimed to apply "notwithstanding any other provision of law." [R.pp. 575-576; 577-578; Florian Dep., pp. 64, l. 2 – 67, l. 4; 72, l. 7 – 74, l. 17.]

Florian employed the normal tools of statutory construction to give his best interpretation of the Omnibus Act as, noted by the Fourth Circuit, "a careful attorney would." [R.pp. 6-7; Campbell, 972 F.3d at 395-96.] He thus used "accepted professional standards appropriate to resolve the issue" before him. Wright v. S.C. Dep't of Transportation, 437 S.C. at 202, 877 S.E.2d at 797.

Florian used his judgment and discretion to interpret and resolve the inconsistencies created by the Omnibus Act and to determine what actions were required to be taken in carrying out the requirements of the Act. [R.pp. 592-592; Florian Dep., pp. 132, l. 7 – 133, l. 16.] S.C. CODE ANN. § 15-78-60(5) expressly provides that a governmental entity is not liable for loss resulting from "the exercise of discretion or judgment by the governmental entity or employee . . . ." Id. (emphasis added). Under the circumstances of this case, the type of discretionary, governmental decision-making employed here is immune from liability in a civil action for money damages.

The Trial Court declined to give effect to § 15-78-60(5) and afford SCDC immunity for the exercise of discretion or judgment by its employees based upon this Court's decision in Bolin v. S.C. Dep't of Corr., 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016) which determined that SCDC erred in its interpretation of the Omnibus Act and its provisions surrounding no parole offenses. The Trial Court ruled that because SCDC's interpretation was "unreasonable" and "patently erroneous," this meant SCDC's employees could not have used discretion.

There is no question that this Court determined that SCDC attorneys were wrong in their interpretation of the Omnibus Act and its relevant provisions applicable to this case. But being wrong does not negate that they nevertheless exercised discretion and judgment in interpreting the provisions of the Act. The Fourth Circuit recognized in this case that incorrect legal analysis can still occur despite "careful and thoughtful legal interpretations":

> 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").

[R.p. 7; Campbell, 972 F.3d at 396-97.[1]]

A legal conclusion later deemed unreasonable by a court does not mean that the legal analysis was done without discretion and without judgment. As the Supreme Court of this State has recognized, "[t]he exercise of discretion includes the right to be wrong." McCall, 285 S.C. at 246, 329 S.E.2d at 742. That hindsight later proved SCDC's

[1] Indeed, the case of Davis v. S.C. Dep't of Pub. Safety, 328 S.C. 578, 493 S.E.2d 871 (Ct. App. 1997), rev'd, 335 S.C. 51, 515 S.E.2d 761 (1999), and overruled by Thompson v. S.C. Dep't of Pub. Safety, 335 S.C. 52, 515 S.E.2d 761 (1999) illustrates how even two different appellate courts can reach differing statutory interpretations. In Davis, this Court found an agency's interpretation of a term in a statute "clearly erroneous." In Thompson, the Supreme Court disagreed with this Court's interpretation and reversed. Does that mean this Court failed to use discretion and judgment? Of course not.

discretionary determination of the meaning of the Omnibus Act erroneous provides no basis for defeating immunity from money damages.

The issue here goes to the very heart of the nature of sovereign immunity for executive functions, as the McCall court acknowledged when it declined to abrogate that immunity (later codified as S.C. CODE ANN. § 15-78-60(5)). Executive agencies and their counsel are frequently called upon to make decisions about how to construe statutes that are "rarely draft[ed] . . . as clearly as courts would like . . . ." [R.p. 8; Campbell, 972 F.2d at 398.] Section 15-78-60(5) protects the decision-making by executive agencies by allowing them to make such decisions without the fear of civil liability for money damages. The Trial Court therefore erred in failing to rule that SCDC is also independently immune from Plaintiffs' false imprisonment claim under § 15-78-60(5) for the exercise of discretion or judgment.

C. SCDC's interpretation of the Omnibus Act and its application of that interpretation to inmate release dates invokes immunity for the decision to or implementation of release of an inmate.

Section 15-78-60(21) of the Tort Claims Act provides immunity to a governmental entity for a loss arising out of "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."

Plaintiffs' claim here arises out of SCDC's responsibility for properly applying statutorily prescribed sentence reduction credits to an inmate's term of incarceration and releasing the inmate at the appropriate time. [See R.pp. 110-113; Am. Compl., ¶¶ 58-77.] The claim is in essence that SCDC failed to calculate proper release dates and implemented release too late.

The provisions of Section 15-78-60(21) "must be liberally construed in favor of limiting the liability of the State." S.C. CODE ANN. § 15-78-20(f) (emphasis added). By its explicit language, Section 15-78-60(21) applies to decisions to and the implementation of release of inmates. Liberally construed, this subsection includes the implementation of a release which results in an inmate being released beyond a purported proper release date. There is no language in this subsection otherwise limiting the reach of the immunity provided thereunder. Accordingly, SCDC is immune as a matter of law from Plaintiffs' false imprisonment claim under § 15-78-60(21) for its implementation of release dates for the class members.

D. The gross negligence standard of the custodial immunity exception to the waiver of immunity should not be read into the subsections under which SCDC is immune from liability because SCDC neither pled immunity under this subsection nor is it applicable; further, the United States Court of Appeals for the Fourth Circuit has already made findings in this case which establish that SCDC was not grossly negligent.

As noted above, SCDC is entitled to blanket immunity from Plaintiffs' false imprisonment claim under either S.C. CODE ANN. § 15-78-60(4) for the failure to enforce a law, § 15-78-60(5) for the exercise of discretion or judgment, or § 15-78-60(21) for the decision to or implementation of release of an inmate.

In denying SCDC's motion for summary judgment on the gross negligence claim, the Trial Court ruled that the gross negligence standard under S.C. CODE ANN. § 15-78-60(25) must be read into all other applicable Tort Claims Act exemptions. [R.pp. 71-74; April 15, 2025 Order, pp. 30-33.] The Trial Court did not, however, rule that the gross negligence standard found in § 15-78-60(25) must be read into the exemptions upon which SCDC relied for immunity to Plaintiffs' false imprisonment claim. Therefore, because the

Trial Court did not rule that this immunity provision applied to the false imprisonment claim, that should end the matter and SCDC should be entitled to blanket immunity under §§ 15-78-60(4), (5), or (21).

Out of an abundance of caution, SCDC nevertheless addresses this exception to the waiver of immunity. Section 15-78-60(25) provides a governmental entity is not liable for a loss resulting from:

> 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.

Id. (emphasis added).

This section "is usually applied in situations where a governmental entity is responsible for the actual physical accountability for the person and not merely the person's interest in property." Plyler v. Burns, 373 S.C. 637, 652, 647 S.E.2d 188, 196 (2007). "The unambiguous language of [§ 15-78-60(25)] clearly refers to the protection of the physical person." Id. at 653, 647 S.E.2d at 197.

As an initial matter, SCDC did not plead or rely upon the immunity set forth in § 15-78-60(25) and therefore, its gross negligence standard should not be read in to the immunity provided to SCDC under §§ 15-78-60(4), (5), and (21). In its Answer, SCDC only specifically pled immunity under §§ 15-78-60(1)(2)(3)(4)(5)(21) and (23), none of which contain a gross negligence standard. [R.pp. 123; Answer, ¶ 37.] See Jones v. Lott, 387 S.C. 339, 348, 692 S.E.2d 900, 905 (2010), abrogated in part on other grounds by Repko v. Cty. of Georgetown, 424 S.C. 494, 818 S.E.2d 743 (2018) (holding a gross negligence standard did not apply because the defendant did not plead a section of the Tort Claims Act containing a gross negligence standard).

Second, for a gross negligence standard to be read into another immunity provision, "the immunity provision containing the gross negligence standard must actually apply to the case . . . ." Repko v. Cty. of Georgetown, 424 S.C. 494, 504, 818 S.E.2d 743, 749 (2018) (emphasis in original). Section 15-78-60(25) does not apply to this case because, as the Supreme Court observed, this section refers to the "protection of the physical person." Plyler v. Burns, 373 S.C. at 653, 647 S.E.2d at 196. Plaintiffs' claims in this case do not arise from claims of physical harm.

Third, if Plaintiffs argue, and the Court agrees, that § 15-78-60(25) does apply to the facts of this case, then the application of this section in fact provides another avenue of immunity to SCDC. Section 15-78-60(25) provides that the governmental entity will be immune from any loss resulting from the "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 . . . ." It is only if the governmental entity exercises the responsibility or duty in a "grossly negligent manner" that immunity will not be afforded to the governmental entity. Id.

Here, the record yields only one conclusion: that SCDC and its employees did not exercise their responsibility or duty over Plaintiffs in a grossly negligent manner.

The Fourth Circuit has already made findings in this case that are inconsistent with negligence, much less gross negligence. The Fourth Circuit concluded "Florian acted reasonably to confront the interpretive problem before him." [R.p. 6; Campbell v. Florian, 972 F.3d 385, 395 (4th Cir. 2020) (emphasis added).] It further found "Florian approached the relevant statutory-interpretation questions as a careful attorney would." [R.p. 6; Id. (emphasis added).]

The Fourth Circuit observed that merely because Florian's interpretation was ultimately found incorrect, an inference of negligence is impermissible. [R.p. 7; Id. at 396-97.] It found "incorrect legal opinion[s] often occur[] without some negligent. . . act or omission." [R.p. 7; Id. at 396.] That an "unreasonable outcome" of statutory interpretation occurs "cannot support an inference" that one was "negligent" in their analysis. [R.pp. 7; Id. at 397.]

The Fourth Circuit further rejected Campbell's argument that Florian should have done more to have assured his interpretation of the Omnibus Act was correct. [R.pp. 8; Id.]The Fourth Circuit was not persuaded by Campbell's expert's opinion that Florian should have either (1) obtained a declaratory judgment from a court confirming his interpretation of the applicable provisions of the Omnibus Act; or (2) asked someone outside SCDC (either the Attorney General or an outside law firm) for a legal opinion. [R.pp. 8; Id.]

Campbell's expert could not identify anyone who could have acted as a proper opposing party for a declaratory judgment under South Carolina law. [R.p. 8; Id.] Second, 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." [R.p. 8; Id.] The Fourth Circuit stated it was not reckless for SCDC to rely on its own expertise and it may have even been "unreasonable for Florian to defer to someone less qualified." [R.p. 8; Id.] In summary, the Fourth Circuit held "Florian acted reasonably when he interpreted the Omnibus Act – even though a court later disagreed." [R.p. 8; Id. at 398.]

Based upon the Fourth Circuit's decision in this very case, it is simply undisputed as a matter of law that SCDC did not exercise any responsibility or duty of any inmate arising out of the interpretation of the Omnibus Act in a grossly negligent matter. Accordingly, under § 15-78-60(25), SCDC is immune from liability arising out of the responsibility or duty of any inmate with respect to Plaintiffs' false imprisonment claim.[2]

In summary, the gross negligence standard of S.C. CODE ANN. § 15-78-60(25) should not be read into §§ 15-78-60(4), (5), and (21) which provide blanket immunity to SCDC because the Trial Court did not rule that it applied as to the false imprisonment claim and SCDC did not plead immunity under § 15-78-60(25). If, however, Plaintiffs argue, and this Court agrees, that § 15-78-60(25) and its gross negligence standard applies and is read into all applicable immunities, then as a matter of law, the record establishes that SCDC was not grossly negligent and thus is entitled to immunity.

II. SCDC did not unlawfully restrain any member of the plaintiff class as required for a false imprisonment claim.

As set forth above, SCDC is entitled to immunity under the Tort Claims Act from Plaintiffs' false imprisonment claim. Therefore, the Court does not need to undertake any

[2] As noted above, in denying SCDC's motion for summary judgment on the negligence claim, the Trial Court ruled that the gross negligence standard under S.C. CODE ANN. § 15-78-60(25) must be read into all other applicable Tort Claims Act exemptions. It then found the gross negligence standard under § 15-78-60(25) is a jury issue. [R.pp. 74; April 15, 2025 Order, p. 33.] If § 15-78-60(25) applies in this case, its immunity provision and its exception for responsibility or duty exercised in a grossly negligent manner applies to all torts equally, both the false imprisonment and negligence causes of action. It does not make sense that the Trial Court would grant summary judgment to Plaintiffs on the false imprisonment claim while holding that there is a jury issue under this exception to the waiver of immunity on the negligence claim. The gross negligence standard under § 15-78-60(25) is not a standard relating to any particular cause of action, but rather relates to whether the immunity arising out of the responsibility or duty of an inmate can be asserted. The question is whether the responsibility or duty is exercised in a grossly negligent matter. If the responsibility or duty was not exercised in a grossly negligent manner, then the governmental entity is entitled to immunity on any tort claim, whether it is a negligence or false imprisonment claim. While SCDC does not believe there is any jury issue as to whether it acted in a grossly negligent manner, if the gross negligence exception to the immunity under § 15-78-60(25) applies to the negligence claim, it likewise applies to the false imprisonment claim and Plaintiffs are not entitled to summary judgment as a matter of law on the false imprisonment claim since the Trial Court found the exception presents a jury issue.

further analysis. Nevertheless, Plaintiffs' false imprisonment claim is also barred because no member of the plaintiff class was unlawfully restrained. "In order to recover under a theory of false imprisonment, the complainant must establish (1) the defendant restrained him; (2) the restraint was intentional; and (3) the restraint was unlawful." Argoe v. Three Rivers Behav. Health, L.L.C., 392 S.C. 462, 473, 710 S.E.2d 67, 73 (2011) (internal citation omitted).

On March 21, 2016, SCDC released approximately 190 inmates who were sentenced after the June 2, 2010 effective date of the Omnibus Act (the "post-2010 amendment inmates"). On or about June 1, 2016, SCDC decided to release an additional 230 inmates who were sentenced before the June 2, 2010 date of the Omnibus Act (the "pre-2010 amendment inmates"). As set forth below, neither group was restrained unlawfully by SCDC.

A. The Omnibus Act did not apply retroactively to those class members sentenced before the effective date of the Act; therefore, because these class members were not entitled to any early release under the Act, SCDC did not unlawfully restrain them.

The pre-2010 amendment inmates were not unlawfully restrained because Section 38 of the Omnibus Act did not apply retroactively to entitle the pre-2010 amendment inmates to any earlier release.

"The retrospective application of a statute is not favored, and statutes are presumed to be prospective in effect." Williams v. Jeffcoat, 444 S.C. 224, 241, 906 S.E.2d 588, 597 (2024) (internal citation omitted). A statute will not be applied retroactively "unless that result is so clearly compelled as to leave no room for doubt." Id. (internal citation omitted); see also Neel v. Shealy, 261 S.C. 266, 273, 199 S.E.2d 542, 545 (1973) ("In the construction of statutes there is a presumption that statutory enactments are to be considered prospective rather than retrospective in their operation unless the intention to make them retrospective is clearly apparent from the terms thereof."). "The statute must contain express words evincing intent that it be retroactive or words necessarily implying such intent." State v. Brown, 402 S.C. 119, 127, 740 S.E.2d 493, 497 (2013).

The Legislature included a savings law within the Omnibus Act The savings clause provides:

> The repeal or amendment by the provisions of this act [of][3] any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

See 2010 South Carolina Laws Act 273 § 65 (S.B. 1154).

The express language of the savings clause included in the Omnibus Act thus provides the following:

1. the repeal or amendment by the Act of any law will not affect rights, duties or liabilities or discharge or extinguish any penalty, forfeiture or liability incurred under the repealed or amended law unless the repealed or amended provision expressly provides;

2. all laws repealed or amended by the Act are to be treated as remaining in full force and effect for purpose of sustaining any vested right or criminal prosecution; and

3. all laws repealed or amended by the Act are treated as remaining in full force and effect for the enforcement of rights, duties, penalties, forfeitures and liabilities as they stood under the repealed or amended laws.

[3] The savings clause states "by the provisions of this act or any law," but it appears the word "or" is a typographical error that should read "of."

Id.

The pre-2010 amendment inmates were prosecuted and convicted under S.C. CODE ANN. § 44-53-375(B) prior to the Omnibus Act. Pre-amendment, these inmates were not eligible for parole and had to serve eighty-five percent of their sentences. The Omnibus Act, effective June 2, 2010, permitted those convicted under this offense after the effective date of the Act to be eligible for parole and thus, as later found by this Court in Bolin v. S.C. Dep't of Corr., 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016), not subject to the eighty-five percent rule.

The savings clause of the Omnibus Act expressly provided that it would not affect any penalty, forfeiture or liability incurred under the repealed or amended law. Prohibition against parole is a penalty, forfeiture, or liability. See Warden, Lewisburg Penitentiary v. Marrero, 417 U.S. 653, 664, 94 S. Ct. 2532, 41 L. Ed. 2d 383 (1974). Therefore, the penalties the pre-2010 amendment inmates incurred as a result of their convictions under the prior version of § 44-53-375(B), including ineligibility for parole and having to serve eighty-five percent of their sentences before they were eligible for certain credits, remained in effect under the savings clause of the Omnibus Act. Nothing in Section 38 of the Omnibus Act expressly provided that the amendments to § 44-53-375(B) should be applied retroactively. See 2010 South Carolina Laws Act 273 § 38 (S.B. 1154).

In Brown, the Supreme Court determined the savings clause of the Omnibus Act operated to preclude the retroactive application of an amendment to a larceny statute redefining grand larceny as larceny of goods or other personalty in excess of $2,000, instead of $1,000, as set forth in pre-amendment version of statute. 402 S.C. at 125-28, 740 S.E.2d at 495-97. The court noted that the Omnibus Act's savings clause provided that the amendment to the larceny statute did not affect liability incurred under the prior version of the statute. Id. at 128, 740 S.E.2d at 497. Likewise, the Omnibus Act's savings clause does not affect any rights or penalties incurred by inmates convicted under the prior version of § 44-53-375(B).

The savings clause of the Omnibus Act confirms the Legislature's intent that the amendment to § 44-53-375(B) be applied only prospectively. State v. Hilton, 406 S.C. 580, 588, 752 S.E.2d 549, 553 (Ct. App. 2013). The Trial Court, in determining whether the statute could be applied retroactively, focused on whether it was remedial, including whether courts from other jurisdictions considered statutes relating to parole remedial. [R.pp. 56-57; April 15, 2025 Order, pp. 15-16.] As this Court has previously observed, however, a "clear expression of legislative intent obviates the need for [the court] to determine whether the amendment was substantive or procedural." Hilton, 406 S.C. at 588, 752 S.E.2d at 553; State v. Bolin, 381 S.C. 557, 562, 673 S.E.2d 885, 887 (Ct. App. 2009) ("By stating that the [Protection of Persons and Property Act] is to have no effect on pending actions, criminal prosecutions, rights, duties, or liabilities, and that all laws repealed or amended by the Act must be treated as remaining in full force and effect, the clear language of the Act indicates that it is prospective.").

Because the relevant provisions of the Omnibus Act did not operate retroactively, the pre-2010 amendment inmates were never unlawfully restrained by SCDC. Those pre-2010 amendment inmates were never entitled to be eligible for parole and exempt from the eighty-five percent rule. The pre-2010 amendment inmates cannot maintain a claim for false imprisonment as a matter of law because they cannot show that their restraint by SCDC was unlawful as required for a false imprisonment claim. Argoe v. Three Rivers

Behav. Health, L.L.C., 392 S.C. 462, 473, 710 S.E.2d 67, 73 (2011) (holding plaintiff could not prevail on claim for false imprisonment where she was detained pursuant to valid probate court orders).

The Trial Court also based its ruling that the pre-2010 amendment inmates were unlawfully restrained upon the South Carolina Department of Probation, Parole, and Pardon's (DPPP) decision to treat the Omnibus Act as retroactive and DPPP's finding that the alleged intent of the Act was "to reduce prison populations." [R.p. 58; April 15, 2025 Order, p. 17.] Any legislative intent of the Act to reduce prison populations does not suggest that the Legislature intended the Act to apply retroactively, especially in light of its inclusion of the savings clause. If the Legislature had wanted to provide for retroactive application of the Act, it could have done so. See United States v. Bullard, 645 F.3d 237, 248 (4th Cir. 2011) ("Congress's desire to have the [Fair Sentencing Act of 2010] implemented quickly in no way suggests that it also intended to have the Act apply retroactively to defendants sentenced before it was passed. Congress knows how to explicitly provide for retroactive application when it so desires.").

The Trial Court further ruled that SCDC was prohibited from arguing that the pre-2010 amendment inmates were not unlawfully held because SCDC made certain admissions regarding the max-out sentence release dates for the pre-2010 amendment inmates. [R.p. 56; April 15, 2025 Order, p. 15.] The Trial Court misconstrued and improperly broadened SCDC's limited admissions.

The requests for admissions did not ask SCDC to admit that the pre-2010 amendment inmates' detention was unlawful for purposes of a false imprisonment claim. Instead, the admissions relied upon by the Trial Court stated the following:

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.

[R.p. 461; SCDC Responses to Second Requests to Admit, ¶ 6.]

52. SCDC incarcerated the following inmates [list of pre-2010 amendment inmates] for the stated number of days (counting the day of release) beyond their maxout or supervised re-entry dates:

RESPONSE: To the extent Plaintiff contends that the stated period of additional detention was unlawful, denied. Otherwise admitted.

[R.pp. 444-451; SCDC Responses to First Requests to Admit, ¶ 52 (emphasis added).]

SCDC's responses admitted only to the calculations of release dates under the Omnibus Act. SCDC specifically denied that any period of additional detention was unlawful.

That SCDC chose to voluntarily release the pre-2010 amendment inmates before they were entitled to be released under the Omnibus Act in no way admits that the Act applied retroactively. Under the savings clause of the Omnibus Act, SCDC had the legal authority to detain the pre-2010 amendment inmates under the law as it stood when they were convicted prior to the Omnibus Act amendments. Accordingly, the pre-2010 amendment inmates have no viable claim for false imprisonment against SCDC as a matter of law. The Trial Court erred in granting summary judgment to those pre-2010 amendment Plaintiffs on the false imprisonment claim.

B. Inmates sentenced after the effective date of the Omnibus Act were validly restrained by SCDC until this Court determined that the relevant provisions of the Act should be construed to apply credits for early release.

The post-2010 amendment inmates were also not unlawfully restrained as required for a false imprisonment claim. No one disputes that Campbell and other class members were committed to SCDC under valid and lawful sentencing orders. See Argoe v. Three Rivers Behav. Health, L.L.C., 392 S.C. 462, 472-73, 710 S.E.2d 67, 73 (2011) (holding mental patient could not state claim for false imprisonment where she was committed under lawful court order).

After Campbell and the class members were committed to SCDC, SCDC's actions thereafter were in conformity with the agency's interpretation of Section 38 of the Omnibus Act. The Administrative Law Court subsequently issued an order upholding SCDC's interpretation of the Omnibus Act and as such authorized SCDC's detention of those inmates convicted under S.C. CODE ANN. § 44-53-375(B). [R.pp. 298-302; Bolin v. South Carolina Dep't of Corrections, No. 13-ALJ-04-0534-AP (S.C. Admin. Law Ct. Feb. 24, 2014).]

Not until this Court's decision in Bolin v. S.C. Dep't of Corr., 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016) was it definitively determined that SCDC's interpretation of the relevant provisions of the Omnibus Act was incorrect. This Court's decision was not final until April 1, 2016 when the Remittitur was issued. [R.pp. 303-305; Remittitur.] SCDC released the post-2010 amendment inmates by March 21, 2016, before this Court's decision was final and operative. See McDowell v. S.C. Dep't of Soc. Servs., 300 S.C. 24, 27, 386 S.E.2d 280, 281 (Ct. App. 1989) (holding final disposition of case occurs when the remittitur is filed).

The Trial Court granted Plaintiffs' motion for summary judgment on the false imprisonment claim based on the principle that judicial decisions in civil cases are applied retroactively. The Trial Court's focus on the retroactivity of judicial opinions is misplaced. SCDC did apply this Court's opinion in Bolin retroactively by releasing the post-2010 amendment inmates. If SCDC had applied Bolin prospectively, it would have only applied the relevant amendments of the Omnibus Act to those inmates sentenced after the issuance of the Bolin opinion. SCDC did not do that; instead, it released those inmates sentenced before the issuance of the Bolin opinion.

Rather, the relevant inquiry for a false imprisonment claim is whether SCDC lawfully restrained the post-2010 amendment inmates pursuant to valid authority. As explained above, because the post-2010 amendment inmates were confined pursuant to valid sentencing orders and under the agency's interpretation of the relevant provisions of the Omnibus Act, confirmed by the Administrative Law Court as a correct interpretation, SCDC did not unlawfully restrain these inmates for purposes of a false imprisonment claim. Accordingly, Plaintiffs were not entitled to summary judgment on the false imprisonment claim.

III. The alleged injuries of each class member stemmed from the same, singular act by SCDC in interpreting the Omnibus Act and applying its interpretation to inmate release dates; therefore, the complaint alleges only one occurrence for which the total sum potentially recoverable under the Tort Claims Act is six hundred thousand dollars regardless of the number of claims or actions involved.

The Trial Court further erroneously ruled that each detention of each inmate class member constituted a separate occurrence under the Tort Claims Act. As set forth in Sections I. and II. hereof, SCDC denies that it is liable on the false imprisonment claim and further maintains it is immune from liability under the Tort Claims Act. To the extent this

Court holds otherwise, SCDC argues the Trial Court misapplied the limitation on liability as set forth in Section 15-78-120(a) of the Tort Claims Act. Instead, under the explicit language of the Tort Claims Act, the allegations of the Amended Complaint only state one "occurrence" as that term is defined in the Act.

Section 15-78-120 of the Tort Claims Act establishes the monetary caps or limits on a governmental entity's liability for money damages. S.C. CODE ANN. § 15-78-120(a)(1) provides "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 regardless of the number of agencies or political subdivisions involved."

In addition, the Act further limits the total monetary recovery arising out of a single occurrence regardless of the number of claims or actions involved: "the total sum recovered hereunder arising out of a single occurrence shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved." § 15-78-120(a)(2).

The term "occurrence" as defined in the Act "means an unfolding sequence of events which proximately flow from a single act of negligence." § 15-78-30(g). The burden to prove "more than one occurrence rest[s] on the plaintiff." Boiter v. S.C. Dep't of Transp., 393 S.C. 123, 133, 712 S.E.2d 401, 406 (2011). The number of occurrences under § 15-78-120(a) is also not tied to "the number of injuries sustained" by the plaintiffs. Id. at 134, 712 S.E.2d at 406.

In Boiter, the Supreme Court addressed the meaning of "occurrence" under the Tort Claims Act and "whether two separate governmental entities' negligent acts, which resulted in severe injuries to [the plaintiffs], constitute[d] one or two occurrences under the Tort Claims Act." Id. at 125-26, 712 S.E.2d at 402.

In Boiter, the plaintiffs were injured when the motorcycle they were riding collided with a car at an intersection. The red signal light bulbs for the road which the car driver was traveling on had burned out earlier that day. The plaintiffs sued both the Department of Transportation ("SCDOT") and the Department of Public Safety ("SCDPS"). With respect to SCDOT, the plaintiffs alleged it failed to implement an appropriate re-lamping policy to replace bulbs in traffic signals before they burn out. With respect to SCDPS, the plaintiffs alleged that a citizen's call one hour and twenty-seven minutes prior to the accident reporting the outage should have resulted in SCDPS notifying a trooper to report to the scene and direct traffic. The negligence of the agencies was undisputed. At trial, the jury awarded the plaintiffs a total of $1.875 million dollars. Id. at 126, 712 S.E.2d at 402-03.

Pursuant to the Tort Claims Act, the trial court reduced the verdict to $300,000 for each plaintiff, for a total of $600,000, finding only one occurrence. Id. at 126-27, 712 S.E.2d at 403. The plaintiffs appealed the trial court's finding of one occurrence, arguing that the two separate acts of negligence committed by SCDOT and SCDPS resulted in two separate occurrences. Id. at 131, 712 S.E.2d at 405. The Supreme Court agreed with the plaintiffs and found the facts in the case presented "a classic case of two occurrences" under the Tort Claims Act's definition of occurrence as "an unfolding sequence of events which proximately flow from a single act of negligence." Id. at 131-32, 712 S.E.2d at 405.

The Supreme Court reversed the trial court's finding of only one occurrence and focused on the existence of "two independent and separate acts of negligence":

> We are persuaded that two independent and separate acts of negligence occurred here—one by SCDOT and one by SCDPS. There is no indication that the Respondents' actions combined to form a single act of negligence. . . . [W]e have two separate and distinct acts of negligence involving two separate and distinct entities together with separate verdicts against each of them. As found by the jury, SCDOT was negligent in not having a re-lamping policy in place, and SCDPS was negligent in not following its own policy to notify a SCDOT technician when a light had burned out. Based on the facts presented here, we cannot see how SCDOT's negligent act "unfolded" into SCDPS' negligent act. SCDPS only became involved due to a citizen call regarding the burned-out light bulb; SCDOT never called SCDPS regarding the light, and SCDPS never informed SCDOT about the citizen call. We can find no causal connection between the actions of SCDOT and SCDPS; had the jury not found SCDOT negligent, the verdict against SCDPS could still stand, and the converse is also true. Therefore, we do not believe that these two separate and independent acts of negligence constituted an unfolding sequence of events which injured the [plaintiffs].

Id. at 134, 712 S.E.2d at 406-07.

Contrary to the two independent and separate acts of negligence present in Boiter, the basis for Plaintiffs' claim here is the legal opinion by SCDC attorneys which incorrectly interpreted the relevant provisions of the Omnibus Act. Throughout the case, Plaintiffs have alleged all claims of the class arise "from the same acts and omissions." [R.p. 109; Amended Compl., ¶ 53.] In seeking class certification, Plaintiffs represented that the claims and defenses turned "on the same operative conduct." [R.p. 145; Memo. in Support of Second Am. Mtn. for Class Certification, p. 17.] Plaintiffs further alleged that the false imprisonment and negligence claims of the class were supported by the same conduct: "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." [R.pp. 147; 134; Id. at p. 19; see also p. 6 ("419 inmates were erroneously detained . . . because of SCDC's gross negligence in failing to implement [the Omnibus Act]).")]

The analysis of the Florian Memorandum was used to program the SCDC computer system which would automatically calculate and recalculate max-out dates for inmates based on certain parameters. [R.pp. 565; 546; Florian Dep., pp. 21, l. 25 – 22, l. 11; Tatarsky Dep., pp. 21, l. 18 – 22, l. 6.] Florian explained the law and how it should be interpreted to the technical staff of SCDCs Resource and Information Management Division who would program and make the coding changes necessary to the computer system to carry out the requirements of the Omnibus Act as to calculation of max-out dates. [R.p. 566; Floridan Dep., p. 25, ll. 4-22.]

There was one singular act of alleged negligence in this case – the legal interpretation of the Omnibus Act. The SCDC computer program was coded based upon that legal advice which automatically calculated inmate max-out dates. This squarely falls within the definition of "occurrence" as defined in the Tort Claims Act - "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. CODE ANN. § 15-78-30(g).

This case is comparable to Giannini v. S.C. Dep't of Transp., 378 S.C. 573, 664 S.E.2d 450 (2008). In Giannini, an automobile accident occurred on Interstate 77 when a Ford Expedition hydroplaned and crossed the center median, striking two other vehicles. The driver of one vehicle was killed, while the driver of the other vehicle and her passenger were seriously injured. Id. at 578, 664 S.E.2d at 452.

The estate of the deceased motorist and the other injured driver and passenger filed tort claims against the SCDOT alleging it was negligent in failing to install median barriers. The jury returned verdicts of $1.5 million dollars to the estate, $745,000 to the injured driver, and $645,000 to the injured passenger. The trial court reduced the verdicts to

$200,000 for each plaintiff in accordance with the statutory limitations of liability set forth by the Tort Claims Act, particularly in conformity with the requirement that "the total sum recovered hereunder arising out of a single occurrence shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved." Id. at 578, 583-84, 664 S.E.2d at 452-53, 455.

The plaintiffs challenged the Tort Claims Act's limitation to a $600,000 aggregate verdict as violating equal protection. The Supreme Court rejected their argument, finding "the limitation accords with the stated legislative purpose of preserving finite governmental assets." Id. at 583-85, 664 S.E.2d at 455-56.

What the Giannini case implicitly sanctions is the Legislature's cap of a government entity's monetary liability based upon a single occurrence despite the number of plaintiffs, injuries, or claims. In Giannini, one negligent act of the SCDOT in failing to install median barriers resulted in multiple injuries to different individuals. Thus, the monetary cap of $600,000 applied even though multiple claims were involved.

In this case, there was a singular rendering of legal advice. That singular legal advice was then used to calculate inmate sentences under an automated computer system.

The Trial Court ruled that the "why" of the wrongful detentions was not relevant for purposes of a false imprisonment claim, and that detention of each inmate constituted a separate occurrence. [R.p. 67; April 15, 2025 Order, p. 26.] In making this ruling, the Trial Court completely disregarded the explicit language of the Tort Claims Act.

The "why" is relevant because the Act expressly limits the total sum to be recovered arising out of a "single occurrence" no matter the number of claims or actions involved. S.C. CODE ANN. § 15-78-120(a)(2). And the term "occurrence" itself focuses on the "why"

– it means “an unfolding sequence of events” “proximately flow[ing] from a single act of negligence.” § 15-78-30(g). The “why” the sequence of events happened is due to the “single act of negligence.”

The Trial Court cannot simply ignore the language of the Tort Claims Act to find that the false imprisonment claim of the class here does not fall under the Act’s monetary caps. The claim only arose because of one singular act – the incorrect legal advice. From that singular act unfolded the miscalculation of inmate max-out dates.

Because the alleged injuries of each class member stemmed from the same, singular act, there is only a single occurrence as that term is defined in the Tort Claims Act. Under S.C. CODE ANN. § 15-78-120(a)(2), the total sum the class may potentially recover in aggregate, if SCDC is even liable, is limited to $600,000.00. The Trial Court thus erred in ruling that the injury of each class member constitutes a separate occurrence under the Tort Claims Act.

IV. Because Plaintiffs’ false imprisonment and negligence/gross negligence claims are premised upon the same factual allegations, the immunities and monetary limitations of liability under the Tort Claims Act also apply to Plaintiffs’ negligence/gross negligence claim to limit liability.

The Trial Court granted summary judgment to Plaintiffs on the false imprisonment claim while denying summary judgment to SCDC on the negligence/gross negligence claim. While SCDC recognizes the denial of summary judgment is typically not appealable, <u>see</u> <u>Ballenger v. Bowen</u>, 313 S.C. 476, 477-78, 443 S.E.2d 379, 380 (1994), the parties here moved for cross-summary judgment on claims arising out of the same set of facts. Plaintiffs moved for summary judgment on the false imprisonment claim, while SCDC moved for summary judgment on both the false imprisonment and negligence/gross negligence claims.

The false imprisonment and negligence/gross negligence claims brought by Plaintiff are each based on the same set of facts – that SCDC was responsible for properly applying statutorily prescribed sentence reduction credits to an inmate's term of incarceration and releasing the inmate at the appropriate time and that SCDC failed to do so. [See R.pp. 110-113; Am. Compl., ¶¶ 58-77.] Plaintiffs do not base either claim on additional factual allegations to distinguish the claims from each other.

When the parties moved for cross-summary judgment on claims arising from identical facts underlying each claim, the parties conceded the issue before the Court should be decided as a matter of law. Wiegand v. U.S. Auto. Ass'n, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011). The question thus becomes which party is entitled to summary judgment as a matter of law.

If this Court should determine that SCDC is immune under the Tort Claims Act from liability on Plaintiffs' false imprisonment claim, such immunity would apply equally to the negligence/gross negligence claim which is duplicative of the false imprisonment claim. The Tort Claims Act and its exceptions to the waiver of immunity apply to both the torts of false imprisonment and negligence. See S.C. CODE ANN. § 15-78-20(a) ("[I]t is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein.") (emphasis added); § 15-78-20(b) ("The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter.") (emphasis added); § 15-78-30(b) ("'Claim' means any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty") (emphasis added); § 15-78-40 ("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.") (emphasis added).

Furthermore, if the Court rejects SCDC's arguments that it is not liable for or immune from the false imprisonment claim but agrees Plaintiffs have asserted only one "occurrence" under the Tort Claims Act with respect to the false imprisonment claim, this analysis would also apply to the negligence/gross negligence claim.

Therefore, because the parties moved for cross-summary judgment on claims based upon the same set of facts, SCDC requests the Court, should it agree with SCDC as to its arguments on the false imprisonment claim, to likewise hold that SCDC is entitled to the immunities and limitation of liability as set forth in the Tort Claims Act on the negligence/gross negligence claim as well.

CONCLUSION

For the reasons set forth herein, SCDC respectfully requests this Court to reverse the grant of summary judgment to Plaintiffs on the false imprisonment claim and to enter judgment in favor of SCDC on the false imprisonment and negligence/gross negligence claims. Alternatively, SCDC requests the Court to reverse the Trial Court's ruling that Plaintiffs have asserted multiple occurrences under the Tort Claims Act.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Appellant's Brief complies with Rule 211(b), SCACR.

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