

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

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SC Court of Appeals

Francis Ackerman, #266928, Malik Aljalil, #219551,
Linso Allen, #269378, Michael Benninger, #264212,
Frederic Brown, #289602, Timothy Brown, #238461,
Terrell Buchanon, #277262, Christopher Buch, #200690,
Rudy Cassady, #238732, Sheldon Clark, #264772,
Zawaski Cobb, #187136, Kamathene Cooper, #145333,
Gladstone Cummings, #267450, Patrick Curtis, #175139,
Quintin Daniels, #196284, Curtis Davis, #238776,
Heyward Dempsey, #134171, Phillip Denney, #240678,
Paul Durham, #219573, Jerome Durham, #270393, Keith
Eigner, #299153, Bernard Felder, #122099, Jermaine
Garriett, #191274, Fred Gatewood, #289775, Dennis
Goff, #177506, Gregory Grant, #109656, Nelson
Hampton, #286427, James Hartman, #219770, Gary
Hayes, #263985, Michael Hood, #279987, Nikia Law,
#260855, Stephen Lease, #137016, Harry Leonard,
#249996, Herbert McFadden, #184297, Michael
McFarland, #266870, Earl Mack, #216237, John Moultri,
#276527, Matin Muntaqim, #266870, Tony Pitts,
#280597, Germaine Pringle, #250390, Gene Richardson,
#93614, Dennis Richey, #233472, Ignacio Rivera,
#300424, Vondell Sanders, #241308, James Sattler,
#235043, Joseph Schmitz, #173987, Arthur Scott,
#251957, Jerome Scott, #153381, Roosevelt Scott,
#275631, Archie Simmons, #161419, Robert Smith,
#199324, James Williams, #282929, Gary Bryant,
#258972, Harlon Edger, #261866, Johnny Holden,
#245199, Don Hughes, #256862, Michael Key, #266890,
Archie Lee, #226354, Isaac Richardson, #232574,
Larkland Richards, #281768, John Wojcik, #219463,
James Bogan, #288111, Larry Burke, #281911, Jammie
Gaymon, #208922, David Harrell, #260004, Jeff Stinson,
#260047, Ricky Libby, #274681, Alain Lareua, #128014,
Quentin Baker, #297868, Frank Corley, #292975, James
Jackson, #267718, Quintin Linen, #238553, Thomas
Miles, #246763, Chauncy Orr, #177069, Isaiah Scott,

#228008, Eric Youmous, #281091, Derek Carter,
#275938, Willie Hare, #256641, Ernest Miller, #235474,
Robert Norris, #266101, Ronald Simmons, #267937,
Samuel Simmons, #302393, William Thomas, #272501,
Anthony Murphy, #295893, Anthony Murray, #237867,
Johnny Hayes, #267910, Roy Morris, #288777, Daniel
Dewey, #276678, Nehemiah Greene, #243339, Leroy
Choice, #113990, James McFadden, #235419, Francis
Prioleau, #268813, Darrell Rochester, #146731, Wilbur
Jordan, #292264, Alvin Stewart, #278595, Kevin Poston,
#266083, Kevin Smith, #272440, Donald Robinson,
#277520, Douglas Bude, #263537, Willie Elder,
#246208, Rogelio Zavala, #245106, Dennis Knight,
#286981, Jacob Beach, #301270, Francis Ackerman,
#266928, Darrin Miller, #259593, Edward Bryant,
#255998, Sherman Austin, #20028, Michael Baylor,
#265682, Taurus Bowman, #252745, Kenneth Carter,
#243538, Calvin Drummond, #236322, David Feggins,
#287157, Terry Ferguson, #299080, Willie House,
#257820, Peter Jenkins, #257321, Percy Martin,
#270035, James Murray, #165487, Stephone Simmons,
#300422, Larry McClam, #282972, Tyrone Aiken,
#244428, Tyrone Aiken, #248367, Frank Anderson,
#282800, Ronald Brewer, #285756, Keith Brown,
#295762, Pete Bryant, #242370, Michael Busques,
#191961, Richard Butler, #162467, Gary Davis,
#106144, Anthony English, #238474, Kerlan Etheredge,
#236635, James Evans, #267837, Jose Flores, #240563,
Robert Garrett, #291096, Reginald Geddis, #183851,
Richard Graham, #228235, Gary Grooms, #283860,
Wayne Harlan, #245705, Johnny Hayes, #267910,
Steven Hickenbottom, #196263, Alfred Joyner, #260442,
Donald Lyles, #296135, Henry Baker, #263398, Thomas
Carter, #249362, Thomas Butler, #257552, Bobby
Williams, #261486, Ray Wells, #173651, Rodney
Pressley, #177947, Keith Kelly, #257556, Maxie
Gamble, #254413, James Enriquez, #215539, Perry
Deveaux, #109601, James Wells, #180458, Cedric
Martino, #291396, Donald McAteer, #292961, Robert
Wydman, #260331, Anthony Wright, #214007, Derrick

Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears, #281697, Timothy Smith, #296539, Davis Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911; George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235864, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsen, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118, Appellants,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2012-210588

**RESPONDENT SCDC'S MOTION TO STRIKE ITEMS FROM
THE APPELLANTS' "ADDITIONAL" DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

I. RELEVANT CHRONOLOGY

By a submission dated February 8, 2013, the Appellants, by and through their counsel, filed their Amended Initial Brief for the above-captioned consolidated appeal.

By a submission also dated February 8, 2013, the Appellants, by and through their counsel, filed their Designation of Matter to be Included in the Record on Appeal for the instant

matter. By their Designation of Matter, the Appellants proposed 44 enumerated items for inclusion into the Record in this matter.

However, by a filing dated November 27, 2013, the Respondent, the South Carolina Department of Corrections [“SCDC”], moved, pursuant to South Carolina Appellate Court Rule [“SCACR”] 240, to strike 32 of the 44 enumerated items identified by the Appellants for inclusion into the Record in their February 8, 2013 submission.¹

By a submission dated January 7, 2014, the Appellants, as provided under SCACR 208(a)(3), filed their Initial Reply Brief.

Rather than filing any argument or material in opposition to SCDC’s November 27, 2013 Motion to Strike, the Appellants, by another submission also dated January 7, 2014, filed a submission styled as “Additional Designation of Matter to be Included in the Record on Appeal.”² By their “Additional Designation of Matter,” the Appellants proposed an additional 38 items for inclusion into the Record in this matter.

II. OVERVIEW OF RELIEF SOUGHT BY SCDC

Succinctly stated, SCDC, by and through its undersigned counsel, hereby respectfully moves this Court to strike 37 of the 38 items identified within the Appellants’ January 7, 2014 “Additional Designation of Matter” from inclusion into the Record it considers for this matter.

¹ As of the date of its instant motion, SCDC’s November 27, 2013 Motion to Strike is still pending with this Court, and, to date, the Appellants have not filed any argument or material in opposition to SCDC’s November 27, 2013 Motion to Strike.

² By an amended order the Clerk issued on January 31, 2014, the time for serving and filing the Appellants’ Return to SCDC’s first motion to strike material from the Appellants’ original Designation of Matter, which SCDC filed November 27, 2013, was extended until February 9, 2014. Obviously, SCDC’s undersigned counsel anticipates that the Appellants’ counsel will also file a response to SCDC’s instant motion to strike the Appellants’ “Additional Designation of Matter.”

III. PROVISIONS OF THE APPLICABLE APPELLATE COURT RULES

SCACR 209(a) is entitled “Time to Serve and File,” and, in pertinent part, it provides as follows:

At the same time a party serves his initial brief(s) under Rule 208, to include a reply brief,³ he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposed to include in the record on appeal.

SCACR 209(b), which is entitled “Content,” provides as follows:

The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation **may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]**. A party shall not include any matter in his Designation which is not relevant to the appeal. [emphasis supplied].

SCACR 210 is entitled “Record on Appeal,” and SCACR 210(c), which is entitled “Content,” reads as follows:

The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. **The Record shall not, however, include matter which was not presented to the lower court or tribunal.** Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index. Where a portion of a page of the trial transcript, or a page of an exhibit or document, is to be included in the Record on Appeal, the entire page shall be included. When a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record, to include the caption and signature(s); provided, however, that the portion of a pleading showing verification or service shall not be included unless relevant to the appeal. If the original court reporter's numbering has been deleted, the Record on Appeal shall contain ellipses

³ It appears that the Appellants relied upon this clause from SCACR 209(a) when they submitted their January 7, 2014 “Additional Designation of Matter.” Obviously, the additional materials they designated for inclusion are still subject to the provisions of SCACR 209(b) and 210.

or other notation indicating when pages of the court reporter's transcript have been omitted. [emphasis supplied].

SCACR 210(h) is entitled “Review Limited to Record on Appeal,” and it provides as follows:

Except as provided by Rule 212⁴ and Rule 208(b)(1)(C) and (2), the appellate court **will not consider** any fact which does not appear in the Record on Appeal. [emphasis supplied].

IV. THE ALC’S AUGUST 5, 2011 ORDER

Along with the applicable provisions of the appellate court rules, SCDC, just as it did in its November 27, 2013 Motion to Strike, anchors its instant motion upon an order issued August 5, 2011 by the South Carolina Administrative Law Court [“ALC”] as it considered the instant consolidated appeal.⁵ The ALC explained the circumstances under which it issued its August 5, 2011 order as follows:⁶

On May 6, 2011, [SCDC] filed and served the 1st Supplemental Record on Appeal in the above-captioned consolidated matter in accordance with this Court’s Order issued March 10, 2011. Appellants thereafter moved to include additional materials in the 1st Supplement Record on Appeal [filed] May 6, 2011. On July 8, 2011, this Court conducted a teleconference with counsel for the parties concerning the Appellants’ Motion to Supplement the Contents of the 1st Supplemental Record on Appeal dated May 23, 2011.

The ALC, with certain clearly articulated caveats, ruled in SCDC’s favor regarding the Appellants’ May 23, 2011 “Motion to Supplement the Contents of the 1st Supplemental Record on Appeal.” By doing so, the ALC excluded a myriad of materials that the Appellants sought to

⁴ As it did in its November 27, 2013 Motion to Strike, SCDC again respectfully submits that no provision of SCACR 212 applies to its current dispute with the Appellants.

⁵ SCDC’s undersigned counsel included a copy of the ALC’s August 5, 2011 order as the first exhibit in support of its November 27, 2013 Motion to Strike.

⁶ See ALC’s August 5, 2011 Order, p. 1.

include in the Record compiled so that the ALC could conduct its “Level One” and “Level Two” phases of review.

Critically, the Appellants did not and still have not appealed the rulings issued by the ALC in its August 5, 2011 order. For that matter, the Appellants did not identify an objection or exception to any of the rulings issued by the ALC in its August 5, 2011 order as an issue on appeal in their Initial Brief to this Court.

In their January 7, 2014 “Additional Designation of Matter,” just as they did in their February 8, 2013 Designation of Matter, the Appellants designated for inclusion in the Record to be considered by this Court many of the items specifically excluded by the ALC in its August 5, 2011 order. For that matter, the Appellants confusingly identified materials in their January 7, 2014 “Additional Designation of Matter” that they had already identified within their February 8, 2013 Designation of Matter.

Therefore, SCDC respectfully submits that materials specifically and explicitly excluded from the Record by the ALC in its August 5, 2011 order should not be included in the Record considered by this Court. Furthermore, SCDC respectfully submits that materials that the Appellants did not propose or otherwise make any effort to include in the Record considered by the ALC should be not included in the Record by this Court. Finally, SCDC respectfully submits that the Record considered by this Court should not include materials which are irrelevant to the instant consolidated appeal.

The following table addresses each of the 38 items identified by the Appellants within their January 7, 2014 “Additional Designation of Matter, and SCDC respectfully submits that it provides a concise and accurate basis in support of its instant motion to strike all but one (1) of these 38 items:

# from Appellants' "Additional Designation of Matter"	Description Provided by Appellants	Included by SCDC in its November 27, 2013 Designation of Matter ⁷	Reason for Dispute and/or Grounds to Strike Item from Appellants' "Additional Designation of Matter"
1	January 11, 2001 Step 1 grievance of Darrell Williams, containing May 24/29, 2001 SCDC Step 1 response	NO	The Appellants made no effort to include these items in the Record considered by the ALC, and these items do not appear in the Record considered by the ALC. Therefore, this item should not be included in the Record considered by this Court.
2	January 26, 2001 step 2 grievance of Darrell Williams, containing August 3, 2001 SCDC step 2 final decision	NO	The Appellants made no effort to include these items in the Record considered by the ALC, and these items do not appear in the Record considered by the ALC. Therefore, this item should not be included in the Record considered by this Court.
3	December 5, 2001 ALC Order of Dismissal of Darrell Williams' wage appeal	NO	The Appellants made no effort to include this item in the Record considered by the ALC, and this item does not appear in the Record considered by the ALC. Therefore, this item should not be included in the Record considered by this Court. Additionally, SCDC respectfully notes that no evidence exists to suggest or otherwise confirm that Mr. Williams appealed the ALC's December 5, 2001 to the circuit court or this Court.

⁷ SCDC's undersigned counsel included a copy of its Designation of Matter as the second exhibit in support of its November 27, 2013 Motion to Strike.

# from Appellants' "Additional Designation of Matter"	Description Provided by Appellants	Included by SCDC in its November 27, 2013 Designation of Matter ⁷	Reason for Dispute and/or Grounds to Strike Item from Appellants' "Additional Designation of Matter"
4	May 23, 2011 appellants' cover letter and ALC motion to supplement record and extend filing date of appellants' brief, with Exhibits 1, 2 (with proposed record documents attached), and 3, and Certificate of Service. The following proposed record documents are specifically designated:	NO	The Appellants previously identified these materials in their original Designation of Matter. As SCDC demonstrated in its first Motion to Strike, the ALC, by its August 5, 2011 order (p. 19), explicitly excluded the instant item(s) from the Record it considered. ⁸ (See SCDC's November 27, 2013 Motion to Strike, item #41, p. 18 and n. 5).

⁸ The Appellants' counsel recently moved the ALC to include these materials in the Record compiled in a matter directly related to the instant consolidated appeal: *Fred Gatewood v. S.C. Dep't of Corr.*, ALC Docket No. 07-ALJ-04-00517-AP. Inmate Gatewood filed one of the 197 appeals of which this consolidated matter is comprised. By an order dated filed July 5, 2013, this Court advised the parties that the ALC had jurisdiction to proceed on the merits in *Gatewood*. By an order filed November 12, 2013, the ALC rejected the effort by the Appellants' counsel to supplement the record in *Gatewood* with at least a portion of "Appendix 1" and apparently allied notes. SCDC's undersigned counsel included a copy of the ALC's November 12, 2013 order in *Gatewood* as the third and final exhibit in support of its November 27, 2013 Motion to Strike. The ALC observed and ruled as follows (pp. 2 – 3):

Furthermore, Appellant argues in Section II(C) of [his September 17, 2013 Motion to Supplement Record] that page 12 of Appendix 1 attached to Appellant's Level 2 Brief should be included in the Record on Appeal. (footnote omitted). Previously, Appellant filed a motion to include the same material found in "Exhibit 1" in the Record on Appeal; but the Court denied the inclusion of Exhibit 1 in its August 5, 2011 Order. In that same order, the Court nevertheless allowed Appellant to submit this exhibit in support of his Brief, **which Appellant did in the form of Appendix 1 and notes**. The Court also allowed Appellant to present his argument in subsequent levels of review as appropriate.

Appellant now argues that because the Court allowed Appellant to "proffer" Appendix 1 in support of his brief, this converted Appendix 1 into a proffer of proof of excluded evidence under Rule 58(D), SCALCR and therefore should be part of the Record on Appeal. Rule 58(D), SCALCR states that "[w]here applicable, the record of a contested case shall consist of: (D) [a]ll proffers of proof of excluded evidence." **Appellant misconstrues this rule. The rule does not permit the inclusion into the Record on Appeal proffers of excluded evidence to supplement the Record in a prior stage of an appeal.** Rather, it allows inclusion of proffers of proof of evidence excluded in the contested case below. **Here, the Court allowed Appellant to attach Appendix 1 to his Brief, but this was merely to support his argument and was not a proffer of proof of excluded evidence in the contested case.** The Court had already denied Exhibit 1's inclusion in the Record on Appeal before Appendix 1 was attached to Appellant's Brief. [emphasis supplied].

# from Appellants' "Additional Designation of Matter"	Description Provided by Appellants	Included by SCDC in its November 27, 2013 Designation of Matter ⁷	Reason for Dispute and/or Grounds to Strike Item from Appellants' "Additional Designation of Matter"
4(a)	Document #8, August 8, 2008 SCDC spreadsheet	NO	The Appellants previously identified these materials or at least part of these materials in their original Designation of Matter. As SCDC demonstrated in its first Motion to Strike, the ALC, by its August 5, 2011 order (p. 19), explicitly excluded the instant item(s) from the Record it considered. (See SCDC's November 27, 2013 Motion to Strike, item #42, p. 19).
4(b)	Document #9, Earned Work Credit (EWC) sample record for T. Aiken, #244428	NO	The Appellants previously identified these materials in their original Designation of Matter. As SCDC demonstrated in its first Motion to Strike, the ALC, by its August 5, 2011 order (p. 19), explicitly excluded the instant item(s) from the Record it considered. (See SCDC's November 27, 2013 Motion to Strike, item #42, p. 19).
4(c)	Document #10, Inmate Job/School Assignment (19-54) sample record for T. Aiken, #24428	NO	The Appellants did not identify these materials within their original Designation of Matter. However, the ALC, by its August 5, 2011 order (p. 9, item #24), explicitly excluded the instant item(s) from the Record it considered.

# from Appellants' "Additional Designation of Matter"	Description Provided by Appellants	Included by SCDC in its November 27, 2013 Designation of Matter ⁷	Reason for Dispute and/or Grounds to Strike Item from Appellants' "Additional Designation of Matter"
4(d)	Documents #12 – 14, Original and two class action complaints of January 29, 2002, July 1, 2002 and February 12, 2003 in <u>Darrell Williams, et al. v. SCDC, et al.</u> , No. 02-CP-18-134 (Dorchester County)	NO	The Appellants previously identified these materials in their original Designation of Matter. As SCDC demonstrated in its first Motion to Strike, the ALC, by its August 5, 2011 order (p. 11, item #29), explicitly excluded the instant item(s) from the Record it considered. (See SCDC's November 27, 2013 Motion to Strike, items #15, 16, and 17, pp. 9 – 10).
4(e)	Document #15, September 9, 2004 remittiturs for <u>Adkins, et al. v. SCDC</u> , 2000-CP-40-4761 and <u>Wicker v. SCDC</u> , 2001-CP-30-00330	NO	The Appellants previously identified these materials in their original Designation of Matter. As SCDC demonstrated in its Motion to Strike, the ALC, by its August 5, 2011 order (p. 11, item #29), explicitly excluded the instant item(s) from the Record it considered. (See SCDC's November 27, 2013 Motion to Strike, items #10 and 11, p. 8).

# from Appellants' "Additional Designation of Matter"	Description Provided by Appellants	Included by SCDC in its November 27, 2013 Designation of Matter ⁷	Reason for Dispute and/or Grounds to Strike Item from Appellants' "Additional Designation of Matter"
4(f)	Documents #16, Judge Goodstein's April 19, 2005 order, corrected June 23, 2005, in <u>Darrell Williams, et al., v. SCDC, et al., No. 02-CP-18-134</u> (Dorchester County)	NO	The Appellants previously identified these materials in their original Designation of Matter. As SCDC demonstrated in its first Motion to Strike, the ALC, by its August 5, 2011 order (p. 11, item #30), explicitly excluded the instant item(s) from the Record it considered. (See SCDC's November 27, 2013 Motion to Strike, item #1, p. 7).
4(g)	Documents #19 – 20, May 25 and 26, 2005 notices of appeal in <u>Darrell Williams, et al., v. SCDC, et al., No. 02-CP-18-134</u>	NO	The Appellants previously identified these materials in their original Designation of Matter. As SCDC demonstrated in its first Motion to Strike, the ALC, by its August 5, 2011 order (p. 11, second item designated as #31), explicitly excluded the instant item(s) from the Record it considered. (See SCDC's November 27, 2013 Motion to Strike, items #25 and 26, p. 13).

# from Appellants' "Additional Designation of Matter"	Description Provided by Appellants	Included by SCDC in its November 27, 2013 Designation of Matter ⁷	Reason for Dispute and/or Grounds to Strike Item from Appellants' "Additional Designation of Matter"
4(h)	Document #21, June 7, 2005 L. Summers' letter to D. Westbrook re automatic stay during appeal	NO	The Appellants previously identified these materials in their original Designation of Matter. As SCDC demonstrated in its first Motion to Strike, the ALC, by its August 5, 2011 order (p. 11, item #32), explicitly excluded the instant item(s) from the Record it considered. (See SCDC's November 27, 2013 Motion to Strike, item #37, p. 16).
4(i)	Document #22, March 22, 2007 remittitur for class action appeal in <u>Darrell Williams, et al., v. SCDC, et al.</u> , No. 02-CP-18-134 (Dorchester County)	NO	The Appellants previously identified these materials in their original Designation of Matter. As SCDC demonstrated in its first Motion to Strike, the ALC, by its August 5, 2011 order (p. 12, item #33), explicitly excluded the instant item(s) from the Record it considered. (See SCDC's November 27, 2013 Motion to Strike, item #12, p. 9).
4(j)	Documents #23 – 24, April 19, 2007 transcript pages and April 20, 2007 order in <u>In re Inmate Grievances of Gene Richardson, et al. v. SCDC</u> , No. 02-CP-18-134 (Dorchester County)	NO	The Appellants previously identified these materials in their original Designation of Matter. As SCDC demonstrated in its first Motion to Strike, the ALC, by its August 5, 2011 order (p. 12, item #34), explicitly excluded the instant item(s) from the Record it considered. (See SCDC's November 27, 2013 Motion to Strike, item #23, p. 13).

# from Appellants' "Additional Designation of Matter"	Description Provided by Appellants	Included by SCDC in its November 27, 2013 Designation of Matter ⁷	Reason for Dispute and/or Grounds to Strike Item from Appellants' "Additional Designation of Matter"
4(k)	Document #26, December 8, 2008 L. Summers' fax/e-mail	NO	The Appellants previously identified these materials in their original Designation of Matter. As SCDC demonstrated in its first Motion to Strike, the ALC, by its August 5, 2011 order (p. 13, item #36), explicitly excluded the instant item(s) from the Record it considered. (See SCDC's November 27, 2013 Motion to Strike, item #40, p. 17).
4(l)	Document #30, April 25, 2007 D. Westbrook's letter	NO	The Appellants previously identified these materials in their original Designation of Matter. As SCDC demonstrated in its first Motion to Strike, the ALC, by its August 5, 2011 order (p. 13, item #40), explicitly excluded the instant item(s) from the Record it considered. (See SCDC's November 27, 2013 Motion to Strike, item #38, p. 16).
4(m)	Document #31, June 4, 2007 D. Westbrook letter to L. Summers re Amendments/Exhibits	NO	The Appellants previously identified these materials in their original Designation of Matter. As SCDC demonstrated in its first Motion to Strike, the ALC, by its August 5, 2011 order (p. 13, item #40), explicitly excluded the instant item(s) from the Record it considered. (See SCDC's November 27, 2013 Motion to Strike, item #39, p. 16).

# from Appellants' "Additional Designation of Matter"	Description Provided by Appellants	Included by SCDC in its November 27, 2013 Designation of Matter ⁷	Reason for Dispute and/or Grounds to Strike Item from Appellants' "Additional Designation of Matter"
4(n)	Documents #36 – 48, Certificates of Service for inmates Lyles, L. Mack, Stephone Simmons, Jordan, Bogan, Busques, R. Butler, K. Carter, Clark, Hare, A. Murphy, J. Scott, R. Simmons	NO	<p>The Appellants previously identified at least some of these materials in their original Designation of Matter. As SCDC demonstrated in its first Motion to Strike, the ALC, by its August 5, 2011 order (p. 15, item #43), explicitly excluded the materials for <u>M. Busques, R. Butler, K. Carter, S. Clark, W. Hare, A. Murphy, J. Scott, and R. Simmons</u> from the Record it considered. (See SCDC's November 27, 2013 Motion to Strike, item #22, p. 12). Unless the materials for <u>Lyles, L. Mack, Stephone Simmons, Jordan, or Bogan</u> appear in the "1st Supplemental Record on Appeal" or the materials SCDC filed with the ALC on August 29, 2011 and September 6, 2011 in satisfaction of the ALC's August 5, 2011 order, SCDC respectfully submits that they should not be included in the Record before this Court.</p>

# from Appellants' "Additional Designation of Matter"	Description Provided by Appellants	Included by SCDC in its November 27, 2013 Designation of Matter ⁷	Reason for Dispute and/or Grounds to Strike Item from Appellants' "Additional Designation of Matter"
4(o)	Document #50, substitute September 22, 2004 Certificate of Service for multiple filings	YES	By its August 5, 2011 order (<u>p. 18, item #44</u>), the ALC directed SCDC to include these materials in the Record, and, on August 29, 2011, SCDC's undersigned counsel filed these materials with the ALC for inclusion in the Record. Therefore, these materials should appear in the Record considered by this Court.
5	September 13, 2011 appellants' cover letter and Level Two ALC brief with Appendices 1 and 2 (with proposed record documents attached), and Certificate of Service. The following Appendix 2 proposed record documents are specifically designated:	NO	As illustrated below, all of these materials are duplicative of the materials designated by the Appellants in Items 4 and 4(a) – (n) above.
5(a)	Document #8, August 8, 2008 SCDC spreadsheet	NO	Duplicative of Item #4(a) above.
5(b)	Document #9, SCDC Earned Work Credit (EWC) assignment records whose work dates are reflected in Appendix 1 column 9, consisting of 125 pages	NO	Duplicative of Item #4(b) above.
5(c)	Document #10, SCDC Inmate/Job Assignment (19-54) records whose work dates are reflected in Appendix 1 column 9, consisting of 87 pages	NO	Duplicative of Item #4(c) above.
5(d)	Document #12, original complaint of January 29, 2002 in <u>Darrell Williams, et al. v. SCDC, et al.</u> , No. 02-CP-18-134 (Dorchester County)	NO	Duplicative of Item #4(d) above.

# from Appellants' "Additional Designation of Matter"	Description Provided by Appellants	Included by SCDC in its November 27, 2013 Designation of Matter ⁷	Reason for Dispute and/or Grounds to Strike Item from Appellants' "Additional Designation of Matter"
5(d)	Document #13, class action amended complaint of July 1, 2002 in <u>Darrell Williams, et al. v. SCDC et al.</u> , No. 02-CP-18-134 (Dorchester County)	NO	Duplicative of Item #4(d) above.
5(d)	Document #14, class action amended complaint of February 12, 2003 in <u>Darrell Williams, et al. v. SCDC et al.</u> , No. 02-CP-18-134 (Dorchester County)	NO	Duplicative of Item #4(d) above.
5(e)	Document #15, September 9, 2004 remittiturs for <u>Adkins, et al. v. SCDC</u> , 2000-CP-40-04761; and <u>Wicker v. SCDC</u> , 2001-CP-30-00330	NO	Duplicative of Item #4(e) above.
5(f)	Documents #16, Judge Goodstein's April 19, 2005 order, corrected June 23, 2005, in <u>Darrell Williams, et al., v. SCDC, et al.</u> , No. 02-CP-18-134 (Dorchester County)	NO	Duplicative of Item #4(f) above.
5(g)	Documents #19 – 20, May 25 and 26, 2005 notices of appeal in <u>Darrell Williams, et al., v. SCDC, et al.</u> , No. 02-CP-18-134 (Dorchester County)	NO	Duplicative of Item #4(g) above.
5(h)	Document #21, June 7, 2005 L. Summers' letter to D. Westbrook re automatic stay during appeal	NO	Duplicative of Item #4(h) above.
5(i)	Document #22, March 22, 2007 remittitur for class action appeal in <u>Darrell Williams, et al., v. SCDC, et al.</u> , No. 02-CP-18-134 (Dorchester County)	NO	Duplicative of Item #4(i) above.
5(j)	Documents #23 – 24, April 19, 2007 transcript pages and April 20, 2007 order in <u>In re Inmate Grievances of Gene Richardson, et al. v. SCDC</u> , No. 02-CP-18-134 (Dorchester County)	NO	Duplicative of Item #4(j) above.
5(k)	Document #26, December 8, 2008 L. Summers' fax/e-mail	NO	Duplicative of Item #4(k) above.

# from Appellants' "Additional Designation of Matter"	Description Provided by Appellants	Included by SCDC in its November 27, 2013 Designation of Matter ⁷	Reason for Dispute and/or Grounds to Strike Item from Appellants' "Additional Designation of Matter"
5(l)	Document #30, April 25, 2007 D. Westbrook's letter re Amendments/Exhibits	NO	Duplicative of Item #4(l) above.
5(m)	Document #31, June 4, 2007 D. Westbrook letter to L. Summers re Amendments/Exhibits	NO	Duplicative of Item #4(m) above.
5(n)	Documents #41 – 48, Certificates of Service for inmates Busques, R. Butler, K. Carter, Clark, Hare, A. Murphy, J. Scott, R. Simmons	NO	Duplicative of Item #4(n) above.
6	June 17, 2011 SCDC Response to Appellants' Motion to Supplement Record of May 23, 2011	NO	SCDC respectfully submits that this item constitutes argument by its own counsel before the ALC regarding the Appellants' efforts to supplement the Record, and, as such, it should not be included in the Record considered by this Court.
7	November 30, 2011 SCDC Level Two ALC brief	NO	SCDC respectfully submits that this item constitutes argument by its own counsel before the ALC during the ALC's "Level Two" stage of review, and, as such, it should not be included in the Record considered by this Court.
8	December 22, 2011 SCDC Level Two ALC supplemental brief	NO	SCDC respectfully submits that this item constitutes argument by its own counsel before the ALC during the ALC's "Level Two" stage of review, and, as such, it should not be included in the Record considered by this Court.

III. ARGUMENT

As reflected by the above-provided table, SCDC respectfully submits that this Court should strike 37 of the 38 items designated for inclusion into the Record for this matter by the Appellants in their January 7, 2014 “Additional Designation of Matter.” For the sake of clarity, SCDC moves the Court to exclude the following 37 items from inclusion into the Record it considers in this matter: #1, #2, #3, #4, #4(a), #4(b), #4(c), #4(d), #4(e), #4(f), #4(g), #4(h), #4(i), #4(j), #4(k), #4(l), #4(m), #4(n), #5, #5(a), #5(b), #5(c), #5(d), #5(e), #5(f), #5(g), #5(h), #5(i), #5(j), #5(k), #5(l), #5(m), #5(n), #6, #7, and #8.⁹

Succinctly stated, none of the 37 above-listed items identified by the Appellants for inclusion in the Record before this Court are eligible for inclusion.

Under SCACR 210(c), the Record before this Court “shall not ... include matter which was not presented to the lower court or tribunal.” The Appellants moved to supplement the “1st Supplemental Record on Appeal” filed by SCDC with the ALC on May 6, 2011 with the vast majority of the above-listed 37 items. However, the ALC, as clearly reflect in its August 5, 2011 order, explicitly rejected the Appellants’ efforts to include these items.¹⁰

Furthermore, SCDC again respectfully submits that materials that the Appellants did not propose or otherwise make any effort to include in the Record considered by the ALC should be not included in the Record by this Court. Moreover, SCDC again respectfully submits that the Record considered by this Court should not include materials which are irrelevant to the instant consolidated appeal.

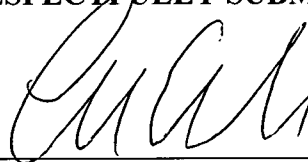
⁹ For the sake of further clarity, SCDC agrees that, as also reflected by the above-provided table, that the materials which comprise item #4(o) from the Appellants’ January 7, 2014 “Additional Designation of Matter” should be included in the Record considered by this Court.

¹⁰ To the extent that the Appellants assert, in any return they may file to SCDC’s instant motion, that they, by their May 23, 2011 motion to supplement the “1st Supplemental Record on Appeal, “presented” such items to the ALC, SCDC respectfully directs this Court’s attention to the ruling recently issued by the ALC when confronted with a nearly identical motion filed by the Appellants’ counsel in Gatewood. *See* note 8 above.

Finally, SCDC respectfully submits neither the provisions of SCACR 208(b)(1)(C) nor the provisions of SCACR 208(b)(2) provide the Appellants any justification by which any of the 37 above-listed items may be legitimately included in the Record before this Court.

To put it plainly, the Appellants should not be able to include in the Record before this Court materials that the ALC, the lower tribunal in this matter, explicitly declined to include in the Record it considered when it adjudicated the merits at the "Level Two" stage of the Appellants' appeal. Likewise, the Appellants should not be able to include in the Record before this Court materials for which they made no effort to include in the Record considered by the ALC and which the ALC did not include in the Record it considered when it adjudicated the merits at the "Level Two" stage of the Appellants' appeal.

RESPECTFULLY SUBMITTED:



February 10, 2014

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Francis Ackerman, #266928, Malik Aljalil, #219551,
Linso Allen, #269378, Michael Benninger, #264212,
Frederic Brown, #289602, Timothy Brown, #238461,
Terrell Buchanon, #277262, Christopher Buch, #200690,
Rudy Cassady, #238732, Sheldon Clark, #264772,
Zawaski Cobb, #187136, Kamathene Cooper, #145333,
Gladstone Cummings, #267450, Patrick Curtis, #175139,
Quintin Daniels, #196284, Curtis Davis, #238776,
Heyward Dempsey, #134171, Phillip Denney, #240678,
Paul Durham, #219573, Jerome Durham, #270393, Keith
Eigner, #299153, Bernard Felder, #122099, Jermaine
Garriett, #191274, Fred Gatewood, #289775, Dennis
Goff, #177506, Gregory Grant, #109656, Nelson
Hampton, #286427, James Hartman, #219770, Gary
Hayes, #263985, Michael Hood, #279987, Nikia Law,
#260855, Stephen Lease, #137016, Harry Leonard,
#249996, Herbert McFadden, #184297, Michael
McFarland, #266870, Earl Mack, #216237, John Moultri,
#276527, Matin Muntaqim, #266870, Tony Pitts,
#280597, Germaine Pringle, #250390, Gene Richardson,
#93614, Dennis Richey, #233472, Ignacio Rivera,
#300424, Vondell Sanders, #241308, James Sattler,
#235043, Joseph Schmitz, #173987, Arthur Scott,
#251957, Jerome Scott, #153381, Roosevelt Scott,
#275631, Archie Simmons, #161419, Robert Smith,
#199324, James Williams, #282929, Gary Bryant,
#258972, Harlon Edger, #261866, Johnny Holden,
#245199, Don Hughes, #256862, Michael Key, #266890,
Archie Lee, #226354, Isaac Richardson, #232574,
Larkland Richards, #281768, John Wojcik, #219463,
James Bogan, #288111, Larry Burke, #281911, Jammie
Gaymon, #208922, David Harrell, #260004, Jeff Stinson,
#260047, Ricky Libby, #274681, Alain Lareua, #128014,
Quentin Baker, #297868, Frank Corley, #292975, James
Jackson, #267718, Quintin Linen, #238553, Thomas
Miles, #246763, Chauncy Orr, #177069, Isaiah Scott,

#228008, Eric Youmous, #281091, Derek Carter,
#275938, Willie Hare, #256641, Ernest Miller, #235474,
Robert Norris, #266101, Ronald Simmons, #267937,
Samuel Simmons, #302393, William Thomas, #272501,
Anthony Murphy, #295893, Anthony Murray, #237867,
Johnny Hayes, #267910, Roy Morris, #288777, Daniel
Dewey, #276678, Nehemiah Greene, #243339, Leroy
Choice, #113990, James McFadden, #235419, Francis
Prioleau, #268813, Darrell Rochester, #146731, Wilbur
Jordan, #292264, Alvin Stewart, #278595, Kevin Poston,
#266083, Kevin Smith, #272440, Donald Robinson,
#277520, Douglas Bude, #263537, Willie Elder,
#246208, Rogelio Zavala, #245106, Dennis Knight,
#286981, Jacob Beach, #301270, Francis Ackerman,
#266928, Darrin Miller, #259593, Edward Bryant,
#255998, Sherman Austin, #20028, Michael Baylor,
#265682, Taurus Bowman, #252745, Kenneth Carter,
#243538, Calvin Drummond, #236322, David Feggins,
#287157, Terry Ferguson, #299080, Willie House,
#257820, Peter Jenkins, #257321, Percy Martin,
#270035, James Murray, #165487, Stephone Simmons,
#300422, Larry McClam, #282972, Tyrone Aiken,
#244428, Tyrone Aiken, #248367, Frank Anderson,
#282800, Ronald Brewer, #285756, Keith Brown,
#295762, Pete Bryant, #242370, Michael Busques,
#191961, Richard Butler, #162467, Gary Davis,
#106144, Anthony English, #238474, Kerlan Etheredge,
#236635, James Evans, #267837, Jose Flores, #240563,
Robert Garrett, #291096, Reginald Geddis, #183851,
Richard Graham, #228235, Gary Grooms, #283860,
Wayne Harlan, #245705, Johnny Hayes, #267910,
Steven Hickenbottom, #196263, Alfred Joyner, #260442,
Donald Lyles, #296135, Henry Baker, #263398, Thomas
Carter, #249362, Thomas Butler, #257552, Bobby
Williams, #261486, Ray Wells, #173651, Rodney
Pressley, #177947, Keith Kelly, #257556, Maxie
Gamble, #254413, James Enriquez, #215539, Perry
Deveaux, #109601, James Wells, #180458, Cedric
Martino, #291396, Donald McAteer, #292961, Robert
Wydman, #260331, Anthony Wright, #214007, Derrick

Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears, #281697, Timothy Smith, #296539, Davis Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235864, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsen, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118, Appellants,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2012-210588

PROOF OF SERVICE

I certify that I have served a copy of **Respondent SCDC's Motion to Strike Items from the Appellants' "Additional" Designation of Matter to be Included in the Record on Appeal** upon the above named Appellants by mailing a copy of it to their counsel, first class postage pre-paid, at the following address:

RECEIVED
FEB 10 2014
SC Court of Appeals

Douglas H. Westbrook, Esquire
Attorney at Law
23 Broad Street
Charleston, South Carolina 29401



LAKE E. SUMMERS

February 10, 2014