

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Trial Court Case No. 2008-AL-04-00887

Ja Ja D.B. Okera, Appellant,

v.

South Carolina Department of Corrections, Respondent.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The Respondent, the South Carolina Department of Corrections ["SCDC"], respectfully submits the following Statement of Issues on Appeal:

- I. Did the Administrative Law Court properly affirm SCDC's decision to deny all of the prison industries pay claims raised by the Appellant in his administrative grievance when it concluded that the Appellant failed to file his grievance within the 15-day filing deadline established by paragraph 13.1 of SCDC's Inmate Grievance System Policy Number GA-01.12?
- II. Did the Appellant articulate any other legitimate issues in his instant appeal?

STATEMENT OF THE CASE

By an order dated and filed June 29, 2009 and bearing docket number 08-ALJ-04-00887-AP, the Honorable Carolyn C. Matthews, Administrative Law Judge ["ALJ"] of the South Carolina Administrative Law Court ["ALC"], considered the Appellant's appeal of a final decision issued by SCDC by which the agency denied a prison industries back pay claim articulated by the Appellant, Inmate Ja Ja D.B. Okera (also known as Michael Burns), in an administrative grievance he filed in 2005. (Supp. R. pp. 59 – 60).

I. THE ADMINISTRATIVE GRIEVANCE, DESIGNATED AS ECI-2087-05, FILED BY THE APPELLANT WITH SCDC UNDER ITS POLICY NUMBER GA-01.12

A. THE APPELLANT'S STEP 1 GRIEVANCE AND SCDC'S RESPONSE

The Appellant filed a Step 1 grievance on or about July 11, 2005, and the responsible SCDC official assigned the Appellant's grievance the following number: ECI-2087-05. (Supp. R. pp. 18). In his Step 1 grievance, the Appellant articulated the following claim(s) for relief:

From June 25, 1997 to August 9, 1999, I was employed at Evans Correctional Institution's Prison Industry.¹ For a designated period of time (determined by the amount of hours worked) [I] was paid a 'training

¹ SCDC respectfully argues that any claim by the Appellant that he "was employed" either by SCDC or by the private industry sponsor which participated in the prison industries project operated by SCDC at Evans CI, ESCOD, Inc., is flatly negated by the South Carolina Supreme Court's decision in *Williams, et al., v. S.C. Dep't of Corr. and Williams Technologies, Inc.*, 372 S.C. 255, 641 S.E.2d 885, 887 – 88 (2007).

pay' of .25¢ an hour, and then an increase to \$1.00 an hour. Most of my 'training pay' hours were completed during overtime hours when there was a high demand for products. After the stipulated training pay hours were met, my pay was increased to \$5.25 an hour. (Please See Attachment for Basis of Grievance). (Supp. R. p. 18).

By written response dated September 27, 2005, the warden at Evans CI denied the claim articulated by the Appellant in his Step 1 grievance, because the warden determined that the Appellant's Step 1 grievance was untimely. (Supp. R. p. 19). Specifically, the warden determined that the Appellant did not file his Step 1 grievance within the 15-day deadline established by paragraph 13.1 of the November 1, 2004 edition of SCDC's Inmate Grievance System Policy Number GA-01.12.²

The Appellant acknowledged receipt of the warden's written denial of his grievance on October 7, 2005, and the denial served upon the Appellant advised him that he could appeal the warden's decision within five (5) days of his receipt of the decision. (Supp. R. p. 19).

B. THE APPELLANT'S STEP 2 APPEAL AND SCDC'S REPLY

On or about October 10, 2005, the Appellant filed a Step 2 appeal by which he challenged the warden's denial of his Step 1 grievance. (Supp. R. pp. 20 – 22). In his Step 2 appeal, the Appellant challenged the warden's conclusions that the Appellant was required to file his grievance within the 15-day deadline established by Policy Number GA-01.12. (Supp. R. p. 22). Specifically, the Appellant contended that the 15-day deadline did not apply to his

² Policy Number GA-01.12 is the SCDC policy that establishes the procedure by which an inmate must file and prosecute an administrative grievance, and the edition of Policy Number GA-01.12 issued by SCDC on November 1, 2004 applied to the processing and adjudication of the Appellant's Step 1 grievance and Step 2 appeal. Paragraph 13.1 of the November 1, 2004 edition of Policy Number GA-01.12 provided as follows:

If an informal resolution is not possible, the grievant will complete Form 10-5, Step 1 ... and will submit the Form to an employee designated by the Warden (not the Inmate Grievance Coordinator) **within 15-days of the alleged incident. An Inmate will submit a grievance within the time frames established in this policy.** [emphasis supplied].

grievance, because his grievance fell within one of the exceptions to the 15-day deadline established by paragraph 13.9 of Policy Number GA-01.12.

By written decision dated January 13, 2006, SCDC's General Counsel, David M. Tatarsky, Esquire, denied the Appellant's Step 2 appeal, and, in affirming the denial of the Appellant's Step 1 grievance, SCDC's General Counsel concluded as follows: (Supp. R. p. 21).

As stated in the response to your Step 1 grievance, two (2) 2004 decisions of the South Carolina Supreme Court apply to both your Step 1 grievance and your Step 2 appeal, Adkins, et al. v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq. and, specifically, 24-3-430(D). Therefore, contrary to the statements you made in your Step 2 appeal, Adkins and Wicker clearly apply to your grievance.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1 of Policy Number GA-01.12, and the exceptions to this deadline recognized by paragraph 13.9 of Policy Number GA-01.12, that you did not submit your Step 1 grievance by the deadline set forth in this policy.

The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequently, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over eight (8) years after you first started participating in the project located at Evans CI, and nearly 11 months after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under SCDC's applicable policy.

II. THE APPELLANT'S FIRST APPEAL TO THE ALC, DESIGNATED BY THE ALC CLERK OF COURT AS 06-ALJ-04-00173-AP, RELATED TO SCDC'S DECISION TO DENY HIS PRISON INDUSTRIES BACK PAY CLAIM

A. THE ALC'S JULY 17, 2008 ORDER IN THE MATTER DESIGNATED AS 06-ALJ-04-00173-AP

The Appellant appealed SCDC's decision to deny the prison industries back pay claim he articulated in his administrative grievance designated as ECI-2087-05 to the ALC. On May 2,

2006, the Appellant submitted a brief with supporting documents to the ALC in support of his appeal, which the ALC Clerk of Court's Office designated as docket number 06-ALJ-04-00173-AP. (R. pp. 22 – 27).

By an order dated and filed July 17, 2008, the ALC considered the Appellant's appeal of SCDC's decision to deny the prison industries back pay claim he articulated in his administrative grievance designated as ECI-2087-05. (Supp. R. pp. 1 – 5). Ultimately, the ALC neither affirmed nor reversed SCDC's denial of the Appellant's prison industries back pay claim. Instead, the ALC remanded the dispute back to SCDC with the following directive:

IT IS HEREBY ORDERED that [SCDC] **shall** determine if Appellant filed his grievance in the instant matter while he was employed under the prison industries program relating to the instant matter, or if Appellant filed his grievance within 15 days of the time he completed, terminated, or ceased employment under the prison industries program. [SCDC's] decision to deny Appellant's grievance **must be affirmed** if it is determined that Appellant did not file within the fifteen-day time period, as stated above. [emphasis supplied]. (Supp. R. p. 4).

B. THE APPELLANT'S APPEAL OF THE ALC'S JULY 17, 2008 ORDER IN THE MATTER DESIGNATED AS 06-ALJ-04-00173-AP TO THIS COURT AND THIS COURT'S ORDER DATED OCTOBER 13, 2008

The Appellant appealed the order issued by the ALC on July 17, 2008, an order which reflected ALC docket number 06-ALJ-04-00173-AP, to this Court, and, by an order dated and filed October 13, 2008, this Court transferred the Appellant's appeal of the ALC's July 17, 2008 order back to the ALC pursuant to South Carolina Appellate Court Rule ["SCACR"] 204. (R. pp. 2 – 3).

In its October 13, 2008 order, this Court determined that the ALC's July 17, 2008 order was not immediately appealable, because the ALC's order remanded the Appellant's prison industries back pay claim back to SCDC with a directive to SCDC to precisely determine the chronology associated with when the Appellant voluntarily participated in the prison industries

project at issue in relation to when the Appellant filed his administrative grievance. This Court also determined that, once SCDC made its determination regarding the chronology associated with the Appellant's back pay claim, the Appellant was entitled to "appeal again to the ALC." Thus, this Court declined to consider the merits of the Appellant's appeal of the ALC's July 17, 2008 order, and, instead, transferred the Appellant's appeal back to the ALC. (R. p. 3).

III. THE APPELLANT'S SECOND APPEAL TO THE ALC, DESIGNATED BY THE ALC CLERK OF COURT AS 08-ALJ-04-00887-AP, RELATED TO SCDC'S DECISION TO DENY HIS PRISON INDUSTRIES BACK PAY CLAIM

A. THE APPELLANT'S SECOND NOTICE OF APPEAL

After this Court issued its October 13, 2008 order transferring the Appellant's appeal of the ALC's July 17, 2008 order back to the ALC, the Appellant filed a second notice of appeal with the ALC on or about October 28, 2008. The ALC Clerk of Court assigned the following docket number to the Appellant's second appeal: 08-ALJ-04-00887-AP.³ (Supp. R. p. 24).

In the second Notice of Appeal he filed with the ALC on or about October 28, 2008, the Appellant requested that the ALC, in light of the order issued by this Court on October 12, 2008, again consider his appeal of SCDC's decision to deny the prison industries back pay claim he raised in the grievance designated as ECI-2087-05, and, within this second Notice of Appeal, the Appellant argued as follows:

In violation of State statutory provisions, [SCDC] did not pay me the required wages during the period I worked for Evans C.I.'s Prison Industry, depriving me of state created liberty/property interests, thereby, denying me due process guaranteed by S.C. Const. Art. I. § 3, and U.S. Const. 14th Amendment. **I assert that the 15 day statute of limitations is not applicable in this case.** And the administrative findings prejudiced me, because it violates constitutional and statutory provisions; exceeds the statutory authority of the agency; arbitrary; and an abuse of discretion. [emphasis supplied]. (Supp. R. p. 24).

³ As a consequence of this action, the following two (2) ALC docket numbers correspond to the Appellant's appeal of SCDC's decision to deny the prison industries back pay claim raised by the Appellant in his administrative grievance designated as ECI-2087-05: 06-ALJ-04-173-AP and 08-ALJ-04-00887-AP.

B. SCDC'S RESPONSE TO THE ALC'S ORDER DATED JULY 17, 2008 IN LIGHT OF THIS COURT'S ORDER DATED OCTOBER 13, 2008

In light of the order issued by this Court on October 13, 2008, SCDC, on December 29, 2008, filed materials with the ALC which were responsive to the directive issued by the ALC in its July 17, 2008 order. (Supp. R. pp. 6 – 42).

Specifically, SCDC supplemented the Record on Appeal with the Appellant's prison industries pay records. (Supp. R. pp. 30 – 42). These pay records reflected that the Appellant began voluntarily participating in the prison industries project operated by SCDC at Evans CI on or about August 29, 1997, and they also reflected that the Appellant's voluntary participation in the prison industries project ended on or about September 1, 1999. (Supp. R. p. 42 and p. 34).

As the Appellant filed his Step 1 grievance with SCDC on July 11, 2005, the Appellant's prison industries pay records confirmed that the Appellant filed his Step 1 grievance nearly eight (8) years after the Appellant began voluntarily participating in the prison industries project at issue and, critically, nearly six (6) years after the Appellant concluded his voluntary participation in the prison industries project at issue.

Thus, SCDC argued to the ALC that its decision to deny the prison industries back pay claim raised by the Appellant in his administrative grievance designated as ECI-2087-05 must be affirmed, because, under the terms of the ALC's July 17, 2008 order, SCDC demonstrated that the Appellant filed his grievance more than 15 days after he concluded his voluntary participation in the prison industries project operated by SCDC at Evans CI. (Supp. R. pp. 7 – 8).

C. THE APPELLANT'S JANUARY 20, 2009 BRIEF IN SUPPORT OF HIS SECOND APPEAL TO THE ALC, DESIGNATED BY THE ALC CLERK OF COURT AS 08-ALJ-04-00887-AP

In support of his second appeal to the ALC of SCDC's denial of the prison industries back pay claim he articulated in the grievance designated as ECI-2087-05, which the ALC Clerk

of Court designated as docket number 08-ALJ-04-00887-AP, the Appellant filed his “Appellant’s Brief” and allied documents with the ALC on or about January 20, 2009. (Supp. R. pp. 43 – 56). In his brief, the Appellant presented the following “Statement of Issues on Appeal:”

- 1) Does the 15 day [statute] of limitations apply to policy/procedure?
- 2) If I was denied access to the courts because of [SCDC’s] discontinuation of needed law material, is the 15 day [statute] of limitation applicable?
- 3) Did SCDC’s discontinuation of Southeastern Reporters deny me knowledge of a ‘cause of action’ created by Wicker vs. SCDC, 360 SC 421, 602 SE.2d 56 (2004) decision?
- 4) Does the notice given to me by prisoner Thomas Torrence, # 094651, constitute a cause of action?
- 5) Did the agency’s failure to comply with South Carolina Code Annotation § 24-3-430(D)⁴ deny me due process?
- 6) Am I entitled to prevailing, and overtime wages?
- 7) Is it legal for SCDC to create policy/procedure(s) that violates or conflicts with State [statutes] denying me the liberty/property interests created by the [statutes]? (Supp. R. p. 43).

In the portion of his brief entitled “Statement of the Case,” the Appellant alleged the following:

July 22, 2008, I received Judge Matthews’ FINAL ORDER (in the case of 06-ALJ-04-00173-AP) allowing the agency to determine if I filed my grievance timely. **If so, my grievance must be REVERSED; if not, the decision must be AFFIRMED.**

August 22, 2008, I timely submitted a Notice of Appeal, and Motion [and] Affidavit To Proceed In Forma Pauperis, and Memo. In Support with the Court of Appeals, arriving on August 27/08. September 8/08 I was given notice of the assigned case tracking number. However, September 18/08, I received a letter from Deputy Clerk, Ms. V. Claire Allen, requesting a

⁴ S.C. Code Ann. § 24-3-430(D) provides that “[n]o inmate participating in the [prison industries] program may earn less than the **prevailing wage** for work of similar nature in the private sector.” [emphasis supplied].

memo addressing the issue of appealability, which was timely submitted and received by the Ct. of App.s September 29/08.

An ORDER was issued October 13, 2008, and received by me on October 15/08 holding that “. . . the ALC’s order was not immediately appealable as it merely remanded the matter to [SCDC].” *Id.* But since [SCDC] has now ruled, I am entitled to reappeal to the ALC. *Id.* With that being so, I timely submitted a notice of appeal, filed Oct. 28/08, and assigned, again, to Judge Matthews on November 13, 2008. [emphasis supplied]. (Supp. R. p. 44).

In the section of his brief entitled “Argument,” the Appellant separately addressed each of the issues he presented in his “Statement of Issues on Appeal.” In support of his first argument,⁵ the Appellant articulated the following:

Section (§) 13.10 of SCDC Policy, GA-01.12, “Inmate Grievance System” (July 1, 2008), states, in part, that “[e]xceptions to the 15 day time limit requirement will be made for grievances concerning Policy/Procedure.”

SCDC has been paying prisoners [employed] in Evans Prison Industry (P.I.) minimum wage since at least 1997 (the year of my employment), and still does to date, . . . over 11 years later. (see EXHIBIT A). As EXHIBIT A reveals, the payment of minimum wage at [Evans CI] P.I. is policy/procedure, which is an exception to the 15 day limitations requirement established by SCDC grievance policy, *supra*, at § 13.10.⁶ Therefore I request that SCDC’s decision be REVERSED, and relief sought, granted. (Supp. R. pp. 44 – 45).

⁵ Echoing the first issue on appeal he identified to the ALC, the Appellant prefaced his first argument as follows: “The 15 day [statute] of limitations does not apply to SCDC policy/procedure.”

⁶ Paragraph 13.10 of the January 1, 2006 edition of Policy Number GA-01.12 provided exceptions to the 15-day deadline. The November 1, 2004 edition of Policy Number GA-01.12 was in effect when the Appellant filed his Step 1 grievance. Paragraph 13.9 of the November 1, 2004 edition provided the following exceptions to the 15-day deadline:

Exceptions to the 15-day time limit requirement will be made for grievances concerning policies/procedures. Exceptions may also be made for incident grievances by the Chief/designee, Inmate Grievance Branch, provided that documented reasonable cause can be demonstrated as to why the original time frame was not met, e.g., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc. The waiver must be requested by the grievant.

In support of his second argument,⁷ the Appellant articulated the following:

The agency is relying on two (2) cases [Adkins], and [Wicker] that it and/or the General Counsel has/have denied me access to. Adkins et. al and Wicker are 2004 cases that are contained in 602 SE 2d. However, the last Southeastern Reporter received by ECI's institutional law library is 578, 2nd edition, (see EXHIBIT B). The agency's decision to discontinue Southeastern Reporters for its institutional law libraries denied me access to the courts by the fact that I had no way of knowing about Wicker, nor Adkins et. al.

The decision of Wicker created a 'cause of action' enabling me to file a grievance at that time, but as stated above, I could not have known. For that reason, the 15 day [statute] of limitation is inapplicable, and the relief sought should be granted. (Supp. R. p. 45).

In support of his third argument,⁸ the Appellant articulated the following:

For the sake of judicial economy, I incorporate here, verbatim, the argument presented in issue 2a above. Further, Rumpf v. Massachusetts Mut. 357 SC 386, 593 SE2d. 183 (2004) ("Under the discovery rule, a cause of action accrues for purposes of the [statute] of limitations when a plaintiff has notice that he might have a remedy for a harm."). Here I was denied that notice. (Supp. R. pp. 46).

In support of his fourth argument,⁹ the Appellant articulated the following:

I was [a part] of a class action suit in relation to P.I.'s prevailing wage (Torrence, Ward et. al v. SCDC, and the State of South Carolina, C/A # 01-CP-40-3409),¹⁰ however, in July, 2005, before my transfer from Lieber C.I., Torrence, #094651, informed me that the case might be dismissed, so I should file a grievance concerning the prevailing wages. So days later, I filed my initial grievance, (July 11, 2005).

⁷ Echoing the second issue on appeal he identified to the ALC, the Appellant prefaced his second argument as follows: "The [statute] of limitations is inapplicable because SCDC denied me access to the courts by discontinuing needed law material."

⁸ Echoing the third issue on appeal he identified to the ALC, the Appellant prefaced his third argument as follows: "[SCDC'S] discontinuation of Southeastern Reporters denied me knowledge of a cause of action created by Wicker's decision."

⁹ Echoing the fourth issue on appeal he identified to the ALC, the Appellant prefaced his fourth argument as follows: "The notice given to me by T. Torrence constitute a cause of action."

¹⁰ The Appellant referenced the South Carolina Supreme Court's opinion in *Torrence v. S.C. Dep't of Corr.*, 373 S.C. 586, 646 S.E.2d 866 (2007).

In June, 2007 (almost 2 yrs. after filing my initial grievance; and more than 1 yr. after I filed my brief in [the ALC]) I received a letter from Torrence's lawyer, Ms. Helen T. McFadden, Esquire, informing me that she told Torrence and Ward to inform us to "... file a Wicker type claim . . .". (see EXHIBIT C). So as advised by his lawyer, Torrence advised me to do so – a cause action.

Unlike in this instance, a notice was posted at ECI on 10-20-08 concerning a class action lawsuit filed by Darryl Williams on behalf of prisoners currently participating in, or once participated in the SCDC/Williams Technologies, Inc. P.I. Project at Lieber CI.¹¹ (see EXHIBIT D). The suit was dismissed relying on Adkins et. al. and Wicker, but the notice states, in part, that "[i]nmates who participate or participated in this project may, if they have not already done so, file Step 1 grievances and Step 2 appeal against SCDC . . .". emphasis added. This is the same scenario as with my case . . . my grievance was filed before I was legally notified that I should. (see EXHIBIT C). The same legal principle applies. Therefore, the SCDC's decision should be REVERSED, and relief sought, granted. (Supp. R. p. 47).

In support of his fifth argument,¹² the Appellant articulated the following:

South Carolina Code Ann. § 24-3-430(D) states that "[n]o inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector." This [statute] is perfectly clear in its language, creating liberty/property interest in the wages I seek. The denial of said wages denied me the protection of liberty and property interests created by the state, and protected under due process – state and federal constitutions. Therefore, the SCDC's decision should be REVERSED, and relief granted. (Supp. R. p. 47).

In support of his sixth argument,¹³ the Appellant articulated the following:

Wicker did not seek prevailing wages. He sought minimum wage for the training pay hours. That is not my request. I seek to be paid the

¹¹ By referencing "a notice was posted," the Appellant referenced a "Notice Flyer" consisting of a two (2) page document posted throughout SCDC institutions by SCDC officials in October 2008. SCDC posted this two (2) page document pursuant to the order of dismissal issued by the circuit court in *Williams v. S.C. Dept. of Corr. and Williams Technologies, Inc.*, 372 S.C. 255, 641 S.E.2d 885 (2007). As stated in the very last point of this posting's first page, "[t]he information and deadline appearing on this notice apply only to inmates who participate or at one time participated in the SCDC/Williams Technologies PI project located at [Lieber Correctional Institution]." Obviously, the Appellant did not participate in any prison industries project operated by SCDC at Lieber CI.

¹² Echoing the fifth issue on appeal he identified to the ALC, the Appellant prefaced his fifth argument as follows: "The Agency's failure to comply with South Carolina code annotation § 24-3-430(D) denied me due process."

¹³ Echoing the sixth issue on appeal he identified to the ALC, the Appellant prefaced his sixth argument as follows: "I am entitled to prevailing and overtime wages."

prevailing wages paid to the private sector for similar work done by me while [employed] at P.I. as required by S.C. Code Ann. §24-3-430(D).

I am entitled to overtime wages, because SCDC paid me overtime (time & ½) of \$7.86 based on the \$5.25 hourly wage. So if SCDC would have complied with § 24-3-430(D) initially, my overtime pay would have been based on the prevailing hourly wage.

[SCDC's] failure to comply with S.C. Code Ann. § 24-3-430(D) denied me due process guaranteed by the 14th Amendment to the U.S. Constitution, and Article I § 3 of the S.C. Constitution. Therefore, the SCDC's decision should be REVERSED, and relief sought, granted. (Supp. R. p. 48).

In support of his seventh and final argument,¹⁴ the Appellant articulated the following:

South Carolina Code Annotation § 24-1-30¹⁵ states: "There is hereby created as an administrative agency of the State government the Department of Corrections. The functions of the Department shall be to implement and carry out the policy of the State with respect to its prison system, as set forth in § 24-1-20,¹⁶ and the performance of such other duties and matters as may be delegated to it pursuant to law."

Administrative agencies are required to formulate and promulgate rules and regulations governing their activities and the activities of those whom they regulate. However, ALL agencies must comply with the [statutes] that originally brought them into existence. Here legislation, has not given [SCDC] power to create policies/procedures that conflicts with state law. (see § 24-1-30 supra). The agency may not confer power upon itself. Louisiana Public Service Com'n v. F.C.C., ___ US ___, 106 S.Ct. 1890, 1901 (1986).

Therefore, SCDC, in this instance, has acted beyond its authority. For that reason, I ask that the wages I seek be granted, reversing the agency's decision. (Supp. R. pp. 48 - 49).

¹⁴ Echoing the seventh issue on appeal he identified to the ALC, the Appellant prefaced his seventh argument as follows: "It is illegal for SCDC to create policy/procedure that violates (or overrides) state [statute]."

¹⁵ Section 24-1-30 is entitled "Department of Corrections created; functions."

¹⁶ Section 24-1-20 is entitled "Declaration of policy," and provides as follows:

It shall be the policy of this State in the operation and management of the Department of Corrections to manage and conduct the Department in such a manner as will be consistent with the operation of a modern prison system, and with the view of making the system self-sustaining, and that those convicted of violating the law and sentenced to a term in the State Penitentiary shall have humane treatment, and be given opportunity, encouragement and training in the matter of reformation.

In the section of his brief entitled "Conclusion," the Appellant offered the following general demand for relief:

As shown above, I was denied due process guaranteed by the 5th, and 14th Amendments to the U.S. Const.; and liberty and property interests created by S.C. Code Ann. § 24-3-430(D).

For such, I request to be paid the difference between the wages actually paid to me, and the prevailing wages that should have been paid to me for each hour, and fraction of an hour, worked by me, to include the overtime wages, and the interest earned on same wages. (Supp. R. p. 49).

IV. THE ORDERS ISSUED BY THE ALC IN JUNE 2009 REGARDING THE APPELLANT'S GRIEVANCE DESIGNATED AS ECI-2087-05

A. THE ALC'S JUNE 2, 2009 ORDER, BEARING DOCKET NUMBER 06-ALJ-04-00173-AP, WHICH AFFIRMED SCDC'S DENIAL OF THE APPELLANT'S PRISON INDUSTRIES BACK PAY CLAIM

By an order issued June 2, 2009 and bearing docket number 06-ALJ-04-00173-AP, the ALC denied the Appellant's appeal of SCDC's decision to deny the prison industries back pay claim raised by the Appellant's grievance designated as ECI-2087-05. (Supp. R. pp. 57 – 58).

The ALC accepted the argument articulated by SCDC in its December 29, 2008 filing that the Appellant failed to timely file his Step 1 grievance under the provisions of Policy Number GA-01.12 by ruling as follows:

This matter was dismissed by final order dated June 17, 2008 on the basis that the Department was to determine if the Appellant filed his grievance in the instant matter while he was employed under the prison industries program or within fifteen days of the time he completed, terminated, or ceased employment under the prison industries program. That Order was appealed to the South Carolina Court of Appeals. **In the Department's memorandum to the South Carolina Court of Appeals, it informs them that Appellant'[s] last day of work in the prison industries was many years prior to his filing of a grievance and therefore was not timely.**

This matter is now before me pursuant to an Order dated October 13, 2008 which remitted this case to the ALC from the South Carolina Court of Appeals. Based on the Department's memorandum, this appeal must be

dismissed because Appellant failed to file his grievance in the instant matter while he was employed under the prison industries program, or within fifteen days of the time he completed, terminated, or ceased employment under the prison industries program.

The Supreme Court of South Carolina has unequivocally held in Wicker v. South Carolina Dep't of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) that: (1) an inmate is entitled to file a grievance when not being paid the prevailing wage; (2) the ALC has jurisdiction to review the Department's failure to pay the prevailing wage; and, (3) an inmate is entitled to be paid the prevailing wage while working in the private sector program. Id. at 421, 602 S.E.2d at 56.

In addition to the requirement that an inmate must file a grievance within fifteen days of an alleged incident, SCDC Policy Number GA-01-12, paragraph 13.1 states that "[i]nmates will only be allowed to submit one grievance per incident or circumstance." [emphasis supplied]. (Supp. R. p. 57).

B. THE ALC'S JUNE 29, 2009 ORDER, BEARING DOCKET NUMBER 08-ALJ-04-00887-AP, WHICH AFFIRMED SCDC'S DENIAL OF THE APPELLANT'S PRISON INDUSTRIES BACK PAY CLAIM

By a subsequent and nearly identical order issued June 29, 2009, and bearing docket number **08-ALJ-04-00887-AP**, the ALC again denied the Appellant's appeal of SCDC's decision to deny the prison industries back claim. (Supp. R. pp. 59 – 60).

The ALC again accepted the argument articulated by SCDC in its December 29, 2008 filing that the Appellant failed to timely file his Step 1 grievance under the provisions of Policy Number GA-01.12 by ruling as follows:

This matter was remanded to the Department on July 17, 2008 to determine if the Appellant filed his grievance in the instant matter while he was employed under the prison industries program or within fifteen days of the time he completed, terminated, or ceased employment under the prison industries program. The Record on Appeal was supplemented on December 29, 2008. **In the record, it appears that Appellant failed to file his step one grievance six years after his last day of work in the prison industries. Therefore, Appellant's Appeal was untimely.**

Based on the Record on Appeal, this appeal must be dismissed because Appellant failed to file his grievance in the instant matter while he was

employed under the prison industries program, or within fifteen days of the time he completed, terminated, or ceased employment under the prison industries program.

The Supreme Court of South Carolina has unequivocally held in Wicker v. South Carolina Dep't of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) that: (1) an inmate is entitled to file a grievance when not being paid the prevailing wage; (2) the ALC has jurisdiction to review the Department's failure to pay the prevailing wage; and (3) an inmate is entitled to be paid the prevailing wage while working in the private sector program. Id. at 421, 602 S.E.2d at 56.¹⁷

In addition to the requirement that an inmate must file a grievance within fifteen days of an alleged incident, SCDC Policy Number GA-01-12, paragraph 13.1 states that "[i]nmates will only be allowed to submit one grievance per incident or circumstance." [emphasis supplied]. (Supp. R. p. 59).

V. THE APPELLANT'S INSTANT APPEAL TO THIS COURT OF THE ALC'S JUNE 29, 2009 ORDER, BEARING DOCKET NUMBER 08-ALJ-04-00887-AP, HIS RECORD ON APPEAL, AND HIS APRIL 14, 2010 FINAL BRIEF

The Appellant submitted his Notice of Appeal of the ALC's second order, issued June 29, 2009 and bearing docket number 08-ALJ-04-00887-AP, to this Court on or about July 29, 2009.¹⁸ (Supp. R. p. 61).

¹⁷ The ALC has also affirmed SCDC's application of the 15-day filing deadline established by paragraph 13.1 of Policy Number GA-01.12 in the following cases, all of which involved prison industries back pay claims raised by SCDC inmates:

- *Cramer*, #251406, v. SCDC, ALC Docket No. 08-ALJ-04-00577-AP;
- *Daughtry*, #250139, v. SCDC, ALC Docket No. 04-ALJ-00783-AP;
- *Grimmett, Jr.*, #102226, v. SCDC, ALC Docket No. 05-ALJ-04-00757-AP;
- *Larrimore*, #238126, v. SCDC, ALC Docket No. 09-ALJ-04-00470-AP;
- *McLemore*, #127966, v. SCDC, ALC Docket No. 09-ALJ-04-00023-AP;
- *Manigault*, #280550, v. SCDC, ALC Docket No. 05-ALJ-04-00756-AP;
- *Pipkin*, #283616, v. SCDC, ALC Docket No. 05-ALJ-04-00733-AP;
- *Sapp*, #218694, v. SCDC, ALC Docket No. 05-ALJ-04-00732-AP;
- *Sumter*, #242379, v. SCDC, ALC Docket No. 05-ALJ-04-00749-AP;
- *Smiley*, #262734, v. SCDC, ALC Docket No. 08-ALJ-04-00571-AP.
- *Wright*, #200123, v. SCDC, 2001 WL 1430140 (ALJD 2006);
- *Williams*, #187203, vs. SCDC, ALC Docket No. 06-ALJ-04-622-AP.

¹⁸ No material exists within the Record on Appeal submitted by the Appellant to this Court in the instant matter that the Appellant ever filed a Notice of Appeal regarding the ALC's first order dated June 2, 2009 and bearing docket number 06-ALJ-04-00173-AP.

On or about March 22, 2010, the Appellant submitted his "Record on Appeal" to this Court in support of his appeal of the ALC's July 29, 2009 order.

The Appellant filed his "Final Brief" with this Court on or about April 14, 2010, and the Appellant articulated the following "Statement of Issues on Appeal" in his "Final Brief," which are either identical or very similar to the issues he identified within the brief he filed with the ALC on or about January 20, 2009:¹⁹

- 1) Did the ALC [err] in upholding the agency's claim that the 15 day [statute] of limitations applies in this case?
- 2) Does the 15 day [statute] of limitations apply in this case?
- 3) Did the ALJ Abuse her discretion by not addressing the points/issues of the Appellant's brief in her final order?
- 4) Did the ALC Abuse its discretion by [not] responding to appellant's inquiries after the issuing of the final order?
- 5) Did [SCDC] deny me access to the courts by denying me knowledge of causes of action in Wicker v SCDC, and Adkins et.al. v. SCDC by discontinuing needed law materials from institutional law libraries?
- 6) Was appellant entitled to submit a brief in this case?

In the portion of his brief entitled "Statement of the Case,"²⁰ the Appellant argued as follows:

Appellant (I) filed Step 1 grievance July 11/05. October 7/05, denial was received stating that [Adkins], nor [Wicker] required that I nor any other "inmate" in my "position" be paid overtime wages, and that grievance was not timely filed. Step 2 was timely filed, and its denial was received January 24/06. Notice of Appeal was timely submitted, and was filed February 22/06 with the ALC. A FINAL ORDER, filed July 17/08, ordered SCDC to make a determination that was not included in its brief. August 22, 2008, I appealed to the S.C. Court of Appeals; but in an Oct. 13/08 ORDER, the Court determined that the case was not appealable, and allowed me to appeal again to the ALC. The ALC filed my Notice of

¹⁹ See pp. 7 – 8 above.

²⁰ See Appellant's April 14, 2010 Brief, pp. 1 – 2.

Appeal Oct. 28/08, and assigned it to Judge Matthews. She issued a FINAL ORDER dismissing my case. I timely appealed to the S.C. Court of Appeals, and received by the Court August 3/09. I later requested an extension, and was given to January 4/10. But because of Evans C.I.'s warden's abuse(s), I missed my deadline, but I submitted a motion to reinstate my case on Jan. 21/10. On February 1, 2010, an Order was issued construing my Motion to Reinstate as a motion for an extension giving me to March 4, 2010 to serve and file Initial Brief and Designation of Matters on Appeal.

Much like he did in the brief he submitted to the ALC on or about January 20, 2009, the Appellant, in the portion of his brief to this Court entitled "Argument," separately argued each of his six (6) "Statements of Issue on Appeal." The Appellant, with regard to his first issue on appeal,²¹ argued as follows:

I asserted (as I do now) that the 15 day [statute] of limitations does not apply in this case for the following reasons:

In my Appellant's Brief (08-ALJ-04-00887-AP). . . I argued that the rate of pay paid to Evans Correctional Institution's (ECI's) prison industry (PI) workers is policy/procedure practiced by [SCDC], and proven to be so with evidence from P.I.'s SCDC official who stated that ". . . the Federal min wage Rate is \$6.55/hr." and that they ". . . Comply with all Federal Wage Requirements." . . .

Pursuant to SCDC inmate (I/M) Grievance System policy, GA 01.12, § 13.10 (July 1/08), "[e]xceptions to the 15 day time limit requirement will be made for grievances concerning policy/procedure." (emphasis added). Therefore, I asserted (as I do here) that the 15 day [statute] of limitations in inapplicable. (Id.)

In Point 2a . . . , I argued (as I do now) that SCDC denied me access to the courts by discontinuing needed law material. It points out that respondent relied on Adkins et al., and Wicker – two (2) cases that were not available to ECI's prison population. . . . As shown, the last Southeastern Reporter received by ECI's law library is 578. And with Adkins et. al., and Wicker being in 602 Southeastern Reporter, I had no way of knowing the decisions of Adkins et. al., nor Wicker. And as substantiated by SCDC/General Counsel, Adkins et. al. & Wicker were causes of action . . . that SCDC denied me the knowledge of.

²¹ Echoing the first issue on appeal he identified to this Court, the Appellant prefaced his first argument as follows: "The ALJ erred [sic] by upholding the Agency's clam that the 15 day [statute] of limitations applies to this case." See Appellant's April 14, 2010 Brief, pp. 2 – 3.

Point/issue 3a simply provided case law supporting the cause of action in point/issue 2a supra. . . .

Point/issue 4a . . . revealed that I was also [a part] of a class action in the case of Torrence, Ward et. al. v. SCDC & the State of South Carolina,²² C/A# 01-CP-40-3409. . . . And evidence that I did not have in the case of 06-ALJ-04-00173-AP to prove this point was presented in this case. . . . I argued that it also was a cause of action. I gave an example of a cause of action initiated by Darryl Williams' class action against Williams Technologies Inc. at Lieber Corr. Inst²³. . . . I argued that the scenarios were similar (with the exception of me filing my grievance as informed by T. Torrence long before I received the letters from Ms. McFadden.)

So as shown by the arguments readdressed above, the 15 day [statute] of limitations does not apply in this case.

The Appellant, with regard to his second issue on appeal,²⁴ argued as follows:

For the sake of judicial economy, I incorporate here, verbatim, the argument presented in issue 1a supra.

With regard to his third issue on appeal,²⁵ the Appellant argued as follows:

In an order from the S.C. Court of Appeals filed Oct. 13/08 concerning the [appealability] of case # 06-ALJ-04-00173-AP, I was “. . . entitled to appeal again to the ALC,” because “. . . the Department . . . “had finally ruled. . . . October 28/08, my Notice of Appeal was filed with the ALC, and assigned a new docket number. . . . On January 20/09, I deposited my brief into the institutional mailbox. . . . However, instead of addressing the points of my brief, the ALJ only addressed respondent's [statute] of limitations claim that was supplemented Dec. 29/08. . . .

Because I was allowed to appeal again to the ALC, and given a new docket #, I was entitled, . . . REQUIRED! to submit a new brief. (see ALC Rules § V. Special Appeals # 60(A) which states in part that “[u]nless

²² See note 10 above.

²³ See note 11 above.

²⁴ Echoing the second issue on appeal he identified to this Court, the Appellant prefaced his second argument as follows: “Does the 15 day [statute] of limitations apply in this case?” See Appellant's April 14, 2010 Brief, pp. 3 – 4.

²⁵ Echoing the third issue on appeal he identified to this Court, the Appellant prefaced his third argument as follows: “The ALJ Abused her discretion by not addressing the issues of Appellant's Brief in her Final Order.” See Appellant's April 14, 2010 Brief, pp. 4 – 5.

otherwise ordered, the party first noticing the appeal shall file an original brief within sixty-five (65) days after the date of assignment.” (emphasis added). (Note that there was not an order issued otherwise.)

In my brief, I addressed the same points/issues I argued in my previous case . . . with two (2) additional points/issues . . . ; evidence NOT PREVIOUSLY AVAILABLE . . . I assert that all seven (7) points have merit, and should have been addressed by Judge Matthews in her final order.

At this point, for the sake of judicial economy, I incorporate here, verbatim, the argument presented in point/issue 1a supra.

As shown, all seven (7) points/issues addressed supra have substantially more merit than the respondent’s claim. But yet, the ALJ saw fit to disregard them all, thereby, abusing her discretion, denying me due process.

The Appellant argued as follows regarding his fourth issue on appeal:²⁶

My filing deadline fell on a weekend, therefore, I had to mail it the following business day. Monday, Jan. 19th/09 was an official holiday, so Tuesday, Jan. 20th/09 was the next business day. But when I reported to the mailroom, it was closed. Not knowing whether inauguration day was an official holiday, I added the last sentence to my certificate of service, and placed my Appellant’s Brief in the institutional mailbox. . . . After weeks of not receiving my return copy, I forwarded a letter of inquiry dated Feb. 16/09, but mailed Feb. 17/09. After no response, I sent a second letter of inquiry dated April 3/09. . . . AGAIN!, after no response on June 15/09, I sent a third letter of inquiry. . . . But I still did not receive my return copy – not even a response. Then on or about June 30th/09, I received the FINAL ORDER dismissing my case. But then finally, approx. 16 days AFTER receiving my case’s dismissal, and five (5) months AFTER my first inquiry, on July 16/09, I received an unsigned (unofficial) memo from the “Clerk’s Office” stating that there “is not a copy of a brief filed.” . . .

I assert that the ALC purposely delayed its response to my inquiries. And because of it, I might have been unjustly denied redress. However, I am of the opinion that had Judge Matthews not received my brief, she would have dismissed my case on that basis. (see ALC Rules, § V. Special Appeals # 60(A) & 62). Additionally, opposing counsel would have motioned to have my case dismissed. Again, my opinion.

²⁶ Echoing the fourth issue on appeal he identified to this Court, the Appellant prefaced his fourth argument as follows: “The ALC Abused its discretion by not responding to my inquiries after the issuing of the final order.” See Appellant’s April 14, 2010 Brief, pp. 5 – 6.

I do not know whether there was a conspiracy or not, but I know that proper procedure was not followed. And for that reason, I was denied due process.

The Appellant then argued as follows regarding his fifth issue on appeal:²⁷

For the sake of judicial economy, I incorporate here, verbatim line 21 (ln. 22 of initial brief) of page two (2) thru to line 5 (ln. 6 of initial brief) of page three (3) supra.

Therefore, SCDC/General Counsel denied me access to the courts in relation to this matter.

Finally, the Appellant argued as follows regarding his sixth issue on appeal:²⁸

Because the South Carolina Court of Appeals allowed me to appeal again to the ALC, it allowed me to reargue my case. My case was given a new docket number (08-ALJ-04-00887-AP), an assigned date, an assigned judge, and I was forwarded the court rules for special appeals. Also, there was not an order enclosed stating that I could not submit a brief in this case. Therefore, I adhered to the rules. And Rule 60(A) states in part that “. . . the party first noticing the appeal shall file an original brief within sixty-five (65) days after the date of assignment.” (emphasis added). Therefore, I was entitled, . . . REQUIRED to submit a brief.

In the section of his brief entitled “Conclusion,” the Appellant offered the following general demand for relief:

As shown, I was denied due process guaranteed by the 5th and 14th Amendments to the U.S. Constitution; and liberty and property interests created by S.C. Code Ann. § 24-3-430(D). For such, I request that the ALJ’s decision be REVERSED, and that I be paid the difference between the wages actually paid to me, and the prevailing wages that should have been paid to me for each hour, and fraction of an hour worked by me, to include the overtime wages, and the interest earned on same wages. And any other relief that the Court deems warranted.

²⁷ Echoing the fifth issue on appeal he identified to this Court, the Appellant prefaced his fifth argument as follows: “SCDC denied me access to the courts by denying me knowledge of causes of action in Wicker, and Adkins et al. by discontinuing needed law material from institutional law libraries?” See Appellant’s April 14, 2010 Brief, p. 6.

²⁸ Echoing the sixth issue on appeal he identified to this Court, the Appellant prefaced his sixth argument as follows: “I was entitled to submit a brief in this case.” See Appellant’s April 14, 2010 Brief, pp. 6 – 7.

STANDARD OF REVIEW

In *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (Ct. App. 2008), this Court recognized that S.C. Code Ann. § 1-23-610 (1976 as amended) establishes the appropriate standard of review for its consideration of a decision by the ALC concerning an appeal from an administrative agency. Section 1-23-610(B) provides that:

The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

ARGUMENT

I. THE ALC PROPERLY AFFIRMED SCDC'S DECISION TO DENY THE APPELLANT'S PRISON INDUSTRIES BACK PAY CLAIM BY CONCLUDING THAT THE APPELLANT FAILED TO FILE HIS GRIEVANCE WITHIN THE 15-DAY FILING DEADLINE ESTABLISHED BY PARAGRAPH 13.1 OF THE NOVEMBER 1, 2004 EDITION OF POLICY NUMBER GA-01.12

SCDC addresses the first two (2) issues identified by the Appellant in his April 14, 2010 final brief to this Court immediately below.

A. KEY PARAGRAPHS FROM THE ALC'S JUNE 29, 2009 FINAL ORDER

In its June 29, 2009 order, the ALC affirmed SCDC's denial of the Appellant's prison industries back pay claim as follows:

In the record, it appears that Appellant failed to file his step one grievance six years after his last day of work in the prison industries. Therefore, Appellant's Appeal was untimely.

Based on the Record on Appeal, this appeal must be dismissed because Appellant failed to file his grievance in the instant matter while he was employed under the prison industries program, or within fifteen days of the time he completed, terminated, or ceased employment under the prison industries program.

The Supreme Court of South Carolina has unequivocally held in Wicker v. South Carolina Dep't of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) that: (1) an inmate is entitled to file a grievance when not being paid the prevailing wage; (2) the ALC has jurisdiction to review the Department's failure to pay the prevailing wage; and (3) an inmate is entitled to be paid the prevailing wage while working in the private sector program. Id. at 421, 602 S.E.2d at 56.²⁹

In addition to the requirement that an inmate must file a grievance within fifteen days of an alleged incident, SCDC Policy Number GA-01-12, paragraph 13.1 states that "[i]nmates will only be allowed to submit one grievance per incident or circumstance." (Supp. R. p. 59).

B. OUR SUPREME COURT'S DECISIONS IN *Al-Shabazz* AND *Wicker* ESTABLISHED THAT THE APPELLANT'S CLAIM FELL UNDER THE 15-DAY FILING DEADLINE PROVIDED IN POLICY NUMBER GA-01.12

As properly determined by the ALC, our Supreme Court's decision in *Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004), as well as its decision in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000), establish that the prison industries back pay claims articulated by the Appellant in his Step 1 grievance and Step 2 appeal fall under the 15-day filing deadline provided in paragraph 13.1 of the November 1, 2004 edition of Policy Number GA-01.12. Paragraph 13.1 of the November 1, 2004 edition of Policy Number GA-01.12 required that inmates file Step 1 grievances "**within 15 days of the alleged incident.**" [emphasis supplied].

In *Wicker*, our Supreme Court considered the proper method by which an inmate may litigate a prison industries back pay claim. In *Wicker's* companion case, *Adkins v. S.C. Dep't. of*

²⁹ See note 17 above.

Corr., 360 S.C. 413, 602 S.E.2d 51 (2004), our Supreme Court held that inmates do not possess a private right of action in circuit court under the applicable prison industries statutes by which to litigate prison industries back pay claims. Instead, the *Wicker* Court, 602 S.E.2d at 57, held as follows:

However, simply because *Wicker* may not file a civil claim for damages in circuit court does not mean he is without any remedy. There are numerous issues relating to inmates which, although not giving rise to a private, civil cause of action, **are nonetheless grievable through [SCDC's] internal grievance processes**. ... Accordingly, we hold that although *Wicker* has no claim for civil damages, he properly filed a grievance with [SCDC]. [emphasis supplied].

Thus, the *Wicker* Court directed inmates to pursue their prison industries back pay claims through SCDC Policy Number GA-01.12.

Furthermore, the *Wicker* Court, 602 S.E.2d at 57, after examining *Al-Shabazz*, held that SCDC's adjudication of an inmate's grievance articulating a prison industries back pay claim is reviewable by the ALC.

In *Al-Shabazz*, our Supreme Court considered whether an inmate may challenge an internal disciplinary action through a post conviction relief action. The *Al-Shabazz* Court, 527 S.E.2d at 754, held that SCDC's decisions concerning non-collateral or administrative matters, such as inmate disciplinary matters, are reviewable by the ALC. In reaching this holding, the *Al-Shabazz* Court, 527 S.E.2d at 751 – 52, reviewed the internal process by which SCDC adjudicated inmate disciplinary infractions. As recognized by the *Al-Shabazz* Court, 527 S.E.2d at 751, SCDC's Manual for Operations, Inmate Disciplinary System, No. OP-22.14 established the procedures by which SCDC may impose disciplinary action on inmates. In its review of the provisions encompassed by SCDC's Inmate Disciplinary System, the *Al-Shabazz* Court, 527 S.E.2d at 752, recognized the following:

The warden reviews the disciplinary hearing officer's decision, and may approve, modify or reverse it. Manual for Operations, Inmate Disciplinary System, No. OP-22.14. If an inmate is dissatisfied with the decision, he must file an appeal **within fifteen days** of receiving the written decision of the disciplinary hearing officer. *Id.* Department requires the disciplinary hearing officer to inform an inmate of the right to appeal a finding of guilt and the penalty imposed. *Id.* [emphasis supplied].

After concluding its review of the provisions encompassed by SCDC's Inmate Disciplinary System, the *Al-Shabazz* Court, 527 S.E.2d at 752, then recognized that an inmate may appeal a decision rendered by SCDC under its Inmate Disciplinary System by initiating an administrative grievance under the provisions of SCDC's Inmate Grievance System Policy Number GA-01.12, the same policy under review in the ALC's June 29, 2009 order:

An inmate appeals the decision by initiating a grievance. [Policy Number GA-01.12]. The matter is reviewed by the institutional inmate grievance coordinator, who recommends a course of action to the prison warden after interviewing affected employees and inmates. The warden must respond to the inmate in writing within a specified period. The inmate may appeal the warden's decision to the appropriate deputy director, inspector general, or general counsel of [SCDC]. That person's response is [SCDC's] final decision in the matter.

The *Al-Shabazz* Court, 527 S.E.2d at 752, then provided the following holding:

We hold that [SCDC's] disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in [*Wolff v. McDonnell*, 418 U.S. 539 (1974)]. **[SCDC] also prepared its grievance procedures in compliance with the Civil Rights of Institutionalized Persons Act, 42 U.S.C.A. §§ 1997-1997j (1994 & Supp.1999); see also 28 C.F.R. §§ 40.1 to 40.22 (1998) (standards for inmate grievance procedures).** [emphasis supplied].

C. NO ASPECT OF OUR SUPREME COURT'S DECISIONS IN *Adkins, Al-Shabazz, Torrence, Wicker, OR Williams* INVALIDATES OR EVEN CALLS INTO QUESTION THE 15-DAY FILING DEADLINE ESTABLISHED BY POLICY NUMBER GA-01.12.

Ultimately, SCDC respectfully argues that the provisions of Policy Number GA-01.12 apply to all inmate grievances regardless of whether the inmate is challenging a disciplinary

action or prison industries pay practices. Thus, as the *Al-Shabazz* Court concluded that SCDC's grievance procedures comply with federal law, the application of common sense and the absence of any authority to the contrary yield that the conclusion that the 15-day filing deadline from paragraph 13.1 of Policy Number GA-01.12 is valid, and consequentially, the 15-day filing deadline applies to the prison industries back pay grievance filed by the Appellant.

As recognized by the ALC in its June 29, 2009 order, the Appellant obviously exceeded the 15-day filing deadline established by paragraph 13.1 of the November 1, 2004 edition of Policy Number GA-01.12 when he filed his Step 1 grievance nearly six (6) years after he concluded his voluntary participation in the prison industries project at issue. (Supp. R. p. 59). Moreover, as determined by SCDC's General Counsel in his denial of the Appellant's Step 2 appeal, the record in this matter reveals that the Appellant obviously exceeded the 15-day filing deadline established by paragraph 13.1 of the November 1, 2004 edition of Policy Number GA-01.12 since he filed his Step 1 grievance nearly eight (8) years after he began voluntarily participating in the prison industries project at issue. (Supp. R. p. 21).

Again, our Supreme Court in *Al-Shabazz* held that SCDC's Inmate Grievance System Policy Number GA-01.12 complied with federal law governing inmate grievances, and, thus, common sense dictates that the provisions of Policy Number GA-01.12, including the 15-day filing deadline established in paragraph 13.1 of the policy, are valid. In *Torrence v. S.C. Dept. of Corr.*, 373 S.C. 586, 646 S.E.2d 866, 870 (2007), our Supreme Court held that, "like inmates, the victim and dependent beneficiaries shall be able to maintain their own claims through [SCDC's] **internal grievance procedure.**" [emphasis supplied]. The *Adkins* Court, 602 S.E.2d at 55, held that inmates may not bring a private right of action to challenging the payment of wages, while the *Wicker* Court directed inmates to litigate prison industries back pay claims via SCDC Policy

Number GA-01.12. Furthermore, in *Williams v. S.C. Dept. of Corr. and Williams Technologies, Inc.*, 372 S.C. 255, 641 S.E.2d 885 (2007), our Supreme Court held that inmates could not bring a private right of action against either SCDC or a prison industries private industry sponsor under our state's Payment of Wages Act. The *Williams* Court, 641 S.E.2d at 886, n. 1, also recognized that, pursuant to *Wicker*, inmates were directed to litigate prison industries back wage claims within the forum established by SCDC Policy Number GA-01.12.

Thus, *Adkins*, *Torrence*, *Wicker*, and *Williams* all recognized that Policy Number GA-01.12 provides the proper forum in which inmates may challenge SCDC's prison industries pay practices, and none of these decisions invalidated or even called into question the applicability of the 15-day filing deadline articulated within the policy. In light of these decisions, the ALC, by its June 29, 2009 order, correctly affirmed SCDC's decision which denied the prison industries back pay claim articulated by the Appellant in his administrative grievance, because the Appellant failed to timely file his administrative grievance in accordance with the applicable SCDC policy. Accordingly, SCDC respectfully submits that this Court should deny the Appellant's appeal and affirm the ALC's ruling.

II. THE APPELLANT ARTICULATED NO OTHER LEGITIMATE ISSUES IN HIS APPEAL

A. THE ALC, BY NOT ADDRESSING SOME OF THE ISSUES RAISED BY THE APPELLANT IN HIS JANUARY 20, 2009 BRIEF IN THE ORDER IT ISSUED JUNE 29, 2009 FOR THE MATTER DESIGNATED AS 08-ALJ-04-00887-AP, DID NOT ABUSE ITS DISCRETION

In the third issue on appeal he identified in his April 14, 2010 final brief to this Court, the Appellant claimed that the ALC abused its discretion by not addressing some of the issues he raised in the brief he submitted to the ALC dated January 20, 2009 in the order it issued June 29, 2009. In the order it issued June 29, 2009 bearing docket number 08-ALJ-04-00887-AP, the

ALC affirmed SCDC's decision to deny the Appellant's prison industries back pay claim, because the Appellant failed to timely file his administrative grievance designated as ECI-2087-05. The ALC rendered its final decision after considering the materials submitted by SCDC on December 29, 2009, materials which supplemented the Record on Appeal in this matter as directed by the ALC in the order it issued July 17, 2008 bearing docket number 06-ALJ-04-00173-AP.

ALC Rule 65 is entitled "opinion" and provides, in relevant part, as follows:

The Administrative Law Judge may affirm any ruling, order or judgment **upon any ground(s) appearing in the Record**. [emphasis supplied].

The 2009 Revised Notes accompanying ALC Rule 65 provide as follows:

Rule 65 incorporates the portion of Rule 220,³⁰ SCACR, which allows the judge to affirm **upon any ground appearing in the Record and to decline to address points which are without merit**. [emphasis supplied].

Thus, the ALC was entitled, pursuant to ALC Rule 65, to affirm SCDC's decision denying the Appellant's prison industries back pay claim based solely upon the portions of the record which revealed that the Appellant failed to file his administrative grievance designated as ECI-2087-05 within the 15-day filing deadline provided in Policy Number GA-01.12. Moreover, the Appellants arguments that the ALC failed to address the issues he raised within his multiple filings with the ALC are completely without merit, because the ALC was not required to address every issue raised by the Appellant in his multiple filings.

Likewise, this Court may, pursuant to SCACR 220(c), affirm the ALC's July 29, 2009 order which affirmed SCDC's denial of the Appellant's prison industries back pay claim based upon the same material from the Record on Appeal, and, this Court need not address every

³⁰ SCACR 220(c) is entitled "Affirmance on Any Ground Appearing in Record" and provides as follows:

The appellate court may affirm any ruling, order, decision or judgment **upon any ground(s) appearing in the Record on Appeal**. [emphasis supplied].

meritless point raised by the Appellant within his final brief. Accordingly, SCDC respectfully submits that this Court should deny the Appellant's appeal and affirm the ALC's ruling.

B. SCDC DID NOT DENY THE APPELLANT ACCESS TO THE COURTS BY FAILING TO PROVIDE HIM WITH NOTICE OF THE DECISIONS IN *Adkins* AND *Wicker* OR BY THE MANNER IN WHICH IT MAINTAINS ITS LAW LIBRARIES

In the fifth issue on appeal he identified within the April 14, 2010 final brief he submitted to this Court, the Appellant contended that SCDC denied him access to the courts and "knowledge" of a cause of action recognized in *Wicker*, because it discontinued the Southeastern Reporter in SCDC's libraries. Therefore, according to the Appellant's logic, the 15-day deadline by which he was required to file his administrative grievance designated as ECI-2087-05 did not apply. The Appellant also argues that SCDC should have notified him of the Supreme Court's decisions in *Adkins* and *Wicker* since SCDC posted a "Notice Flyer" after the Supreme Court's decision in *Williams*.³¹

Prisoners, like the Appellant, and other citizens, "are presumed to know the requirements of the law and act in conformity with them." *Terrell, # 2345852 v. S.C. Dep't of Corr.*, 2006 WL 1430146 (ALJD 2006). *See also American Legion Post 15 v. Horry County*, 381 S.C. 576, 674 S.E.2d 181, 185 (Ct. App. 2009) ("Citizens are presumed to know the law and are charged with exercising reasonable care to protect their interests.").

Moreover, the Appellant filed his Step 1 grievance over eight (8) years after he started participating in the prison industries project operated by SCDC at Evans in which ESCOD was the private industry sponsor, six (6) years after he concluded his participation in this project, and over 11 months after our Supreme Court issued its decisions in *Adkins* and *Wicker*. Therefore, under the authorities cited above, the Appellant was charged with knowledge of § 24-3-430(D),

³¹ See note 11 above.

the so-called "prevailing wage" provision, *Adkins*, and *Wicker*, and, thus, SCDC did not have a duty to notify him of any provision of the law, or of any cases interpreting that law.

C. THE ALC DID NOT ABUSE ITS DISCRETION BY NOT RESPONDING TO THE APPELLANT'S CORRESPONDENCE UNTIL AFTER THE ALC ISSUED ITS JUNE 29, 2009 ORDER BEARING DOCKET NUMBER 08-ALJ-04-00887-AP

In the fourth issue on appeal he identified within the April 14, 2010 final brief he submitted to this Court, the Appellant contended that the ALC abused its discretion by purportedly not responding to inquires he forwarded to the ALC after it issued his June 29, 2009 order.

The Appellant filed his brief in support of his appeal designated by the ALC Clerk of Court as 08-ALJ-04-00887-AP on or about January 20, 2009. According to the Appellant, he sent numerous letters to the ALC after he did not receive a file-stamped copy of his January 20, 2009 brief, and the Appellant further contended that the ALC did not respond to his inquiries regarding his January 20, 2009 brief until after it issued its June 29, 2009 order bearing docket number 08-ALJ-04-00887-AP. In addition, the Appellant contends that the ALC informed him that it had not received his January 20, 2009 brief.

However, by his above articulated argument, the Appellant failed to raise any issue for appellate review. Specifically, the Appellant failed to articulate how a purported lack of response from the ALC to his correspondence regarding whether or not the ALC received his January 20, 2009 brief, a brief in which the Appellant articulated nearly identical arguments to those he raised in the brief he originally submitted to the ALC in May 2006 regarding SCDC's denial of his administrative grievance designated as ECI-2087-05, affects the merits of the ALC's June 29, 2009 order bearing docket number 08-ALJ-04-00887-AP or otherwise

constitutes reversible error pursuant to § 1-23-610(B). Consequently, SCDC respectfully submits that this Court should deny the Appellant's appeal and affirm the ALC's ruling.

D. THE APPELLANT'S ARGUMENT THAT HE SHOULD HAVE BEEN ALLOWED TO FILE A BRIEF WITH THE ALC IS MOOT IN LIGHT OF THE REALITY THAT HE ACTUALLY DID FILE A BRIEF WITH THE ALC IN SUPPORT OF HIS APPEAL

Regarding the sixth issue on appeal he identified in the April 14, 2010 final brief he submitted to this Court, the Appellant contended that the order issued by this Court on October 13, 2008 authorized him to file a second appeal with the ALC after this Court remanded his appeal back to the ALC. Again, the ALC's original order dated July 17, 2008, which reflected ALC docket number 06-ALJ-04-0173-AP, remanded the Appellant's prison industries back pay claim back to SCDC with a directive to SCDC to precisely determine the chronology associated with when the Appellant voluntarily participated in the prison industries project at issue in relation to when the Appellant filed his administrative grievance. For some reason, therefore, the Appellant contends that he was required to submit his January 20, 2009 brief, pursuant to ALC Rule 60(A).

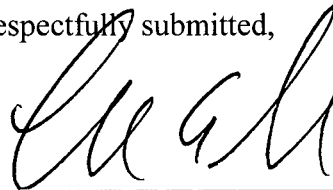
However, the Appellant's argument that he was entitled to file a brief to the ALC in support of his appeal designated as 08-ALJ-04-00887-AP is irrelevant, without merit, and, ultimately, moot, because the Appellant submitted a brief to ALC on or about January 20, 2009. Consequently, the Appellant's argument on this issue should be dismissed.

CONCLUSION

Finally, in the section of the April 14, 2010 final brief he submitted to this Court entitled "Conclusion," the Appellant argued that he "was denied due process guaranteed by the 5th and 14th Amendments to the U.S. Constitution; and liberty and property interests created by S.C. Code Ann. § 24-3-430(D)." However, since the Appellant provided no authority in support of his conclusory argument that SCDC or any representative of SCDC denied him due process rights secured to him by the 5th and 14th Amendments to the United States Constitution, SCDC respectfully argues that the Appellant abandoned this issue in his instant appeal. *See In re McCracken*, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001) (holding an issue is abandoned on appeal if the argument is not supported by authority or is conclusory).

As SCDC's above-provided analysis negates the Appellant's argument that he was denied liberty and property interests created by § 24-3-430(D), this Court should affirm the ALC's June 29, 2009 order bearing docket number 08-ALJ-04-00887-AP.

Respectfully submitted,



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Columbia, South Carolina
July 19, 2010

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Trial Court Case No. 2008-AL-04-00887

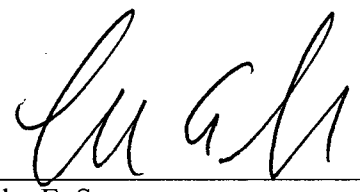
Ja Ja D.B. Okera, Appellant,

v.

South Carolina Department of Corrections, Respondent.

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that this Brief complies with Rule 211(b), SCACR.



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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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Carolyn C. Matthews, Administrative Law Judge

Trial Court Case No. 2008-AL-04-00887

Ja Ja D.B. Okera, Appellant,

v.

South Carolina Department of Corrections, Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the **Respondent's Brief** on the above named *pro se* Appellant by mailing a copy of it to the *pro se* Appellant at the following address:

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July 19, 2010