

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JAN 22 2015

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
G. THOMAS COOPER, JR., CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2013-002306

Basil W. Akbar

Appellant,

v.

South Carolina Department of Corrections

Respondents.

SUPPLEMENTAL RECORD ON APPEAL

Basil W. Akbar, 065498 (Pro Se)
Lee County Corr. Inst.
990 Wisacky Hwy., Flo. 2213-S
Bishopville, S.C. 29010

Daniel R. Settana, Jr.
Post Office Drawer 7217
Columbia, S.C. 29202
(803) 256-4645

Attorney for Respondents.

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The South Carolina Court of Appeals

Basil W. Akbar, Appellant,

v.

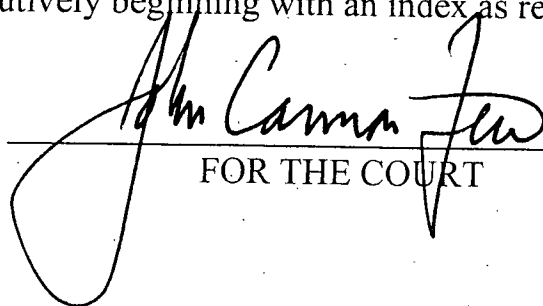
South Carolina Department of Corrections, Respondent.

Appellate Case No. 2013-002306


ORDER

This appeal was dismissed on October 20, 2014, due to Appellant's failure to serve a supplemental record on appeal including all matters designated by Respondent as required by this court's order of June 23, 2014. Appellant has filed a motion to reinstate, explaining he has now served Respondent with Respondent's designations of matter. Appellant has also attached copies of the documents he served on Respondent.

After careful consideration of Appellant's filings, this appeal is reinstated. Although our review of Appellant's filings indicates Appellant has served Respondent with most¹ of the documents designated by Respondent, Appellant has not served the documents in the form of a supplemental record on appeal. Within thirty days, Appellant shall serve Respondent with a supplemental record on appeal containing all matter designated by Respondent that was not included in the record on appeal that was filed with this court on April 30, 2014. The supplemental record shall be numbered consecutively beginning with an index as required by Rule 210, SCACR.


C.J.
FOR THE COURT

FILED

1/8/15 

¹ It appears that Appellant did not served Respondent with items 1, 6, 9, or 13 from Respondent's designation of matter.

Columbia, South Carolina

cc:

Basil W. Akbar, 065498

Erin Farrell Farthing, Esquire

Daniel R Settana, Jr., Esquire

Brandon Paul Jones, Esquire

The South Carolina Court of Appeals

Basil W. Akbar, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2013-002306

ORDER

The appellant has failed to file a supplemental record on appeal that includes all matters designated by the respondent, as required by Rule 210(c) of the South Carolina Appellate Court Rules (SCACR) and this Court's order dated June 23, 2014. Accordingly, this appeal is dismissed. Remittitur will be sent pursuant to Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina


cc:

Basil W. Akbar, 065498

Erin Farrell Farthing, Esquire

Daniel R Settana, Jr., Esquire

Brandon Paul Jones, Esquire

FILED
10/20/14 

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
2013 CP400 301
Case No.

Basil W. AKBAR,
Plaintiff,

vs.

South Carolina Department
of CORRECTIONS; Bill Byars;
Martha Roof; Debrah Long;
Lisa Johnson;
AND and John Doe.
Defendants.

SUMMONS

RICHLAND COUNTY
FILED
2013 JAN 16 PM 2:23
JEANNETTE W. HERRIDGE
C.C.P. & G.S.

YOU ARE HEREBY SUMMONS, and REQUIRED to answer the Complaint
herein, a copy of which is here with SERVED upon you, and to SERVE a
copy of your answer to this Complaint upon the subscriber at the
address shown below within thirty (30) days after service hereof,
exclusive of the day of such service, and if you fail to answer the
Complaint, Judgment by Default will be RENDERED against you for the
Relief demanded in the Complaint.

Date: October 1, 2012

Basil W. Akbar
Basil W. AKBAR, 065498
Lee County Corr. Inst.,
990 Wisacky Highway, KERR, 2224-W
Bishopville, S.C. 29010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Basil W. Akbar,
Plaintiff,

Case No.

vs.

COMPLAINT

South Carolina Department
of Corrections; Bill Byars;
Martha Roof; Debrah Long;
Lisia Johnson;
ANN and John Doe.
Defendants.

(Jury Trial Demanded)

2013 JAN 16 PM 2:23
JEANETTE W. HOBRIE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

The Plaintiff, Complaining of the above-named Defendants,
would show the Court:

1. The Plaintiff, Basil W. Akbar, at all times relevant herein a
State Prisoner currently incarcerated at the Lee County Correction
Institution, 990 Wisacky Highway, Richland C-119, Bishopville, S.C. 29010.

2. The Defendant, South Carolina Department of Corrections
(SCDC / Department) includes all staff, Departments, Institutions, Officials,
Employees, and Director, as well as whom SCDC is liable for, is
sued for willful, gross negligent, malicious tortious acts, as
names and set forth herein, as allowed under the South Carolina
Torts Claim Act; and is sued, seeking declaratory, injunctive and
monetary relief.

3. The Defendant, Bill Byars, is the Director of SCDC, he is
responsible for overall supervision of its staff, Employees, and the
Agency daily operations, the welfare of each prisoner, the implementa-
tion and enforcement of all Rules / Regulations governing prisoner and
SCDC's employees and their training. He is sued in his individual/
Official Capacity (s).

4. The Defendant, Martha Root, at all times Relevant served as an SCDC Finance Accountant, charged with vicarious/direct management of SCDC's E.H. Cooper Trust Account. She is sued in her individual / official capacity(s).

5. The Defendant, Debrah Long, at all times Relevant served as an SCDC Finance Accountant, charged with vicarious/direct management of SCDC's E.H. Cooper Trust Account. She is sued in her individual / official capacity(s).

6. The Defendant, Lisa Johnson, at all times Relevant served as an SCDC Grievance Clerk, charged with carrying out her duties in a lawful and constitutional manner. She is sued in her individual / official capacity(s).

7. The Defendants, Ann and John Doe, are Agency / Employees of SCDC, and upon completion of discovery will be named, and sued in their individual / official capacity(s).

8. All the Defendants have acted, and continued to act under color of state law at all times Relevant to this complaint; and pursuant to S.C. Code Ann. § 24-1-220, must be brought in name of Director.

JURISDICTION

9. This action is brought pursuant to S.C. Code Ann. §§ 15-78-10 thru 15-78-190 (Supp. 2002), seeking monetary, declaratory and injunctive relief, for wrongs done by Defendants in accordance with S.C. Tort Claims Act, and § 16-5-60 (1985).

STATEMENT OF FACTS

10. The Plaintiff pled guilty to murder in 1971, and received a sentence of life with parole eligibility... and from July 1979 thru April 1981 the Plaintiff [AKBAR] were constitutionally assigned to SCDC's Work Release Programs, and employed at Owen Electric & Steel Company, and weekly deductions were taken for, "Mandatory Long Term Escrow Savings Account"... and Room and Board, and subsequently released on conditional parole April 1981 day of parole hearing. However, balance of Escrow

Account was not Release. On April 1985 Akbar's conditional parole was revoked in absence and returned to the restraint of SDC, Akbar contends that he has an vested interest right to his work release escrow account.

STATEMENT OF CASE

11. This Complaint raised from an Inmate Grievance(s), [Lee C.I. #2323-09, #0813-10, #1270-10, and #1398-10] initiated by the Plaintiff Basil W. Akbar (Akbar), filed between August 17, 2009 thru June 7, 2010, and Administrative Law Court Appeal filed, and dated December 31, 2010 claiming that his Liberty Interest Rights, Statutory Rights, Rule, Regulations, and Department's Policies governing procedures was grossly violated.

12. On October 22, 2008, Akbar initiated correspondence with SDC's Financial Business Office [Martha Roof], and second request on December 1, 2008 upon no reply... and after numerous phone calls via family members; Akbar's request to staff member was returned with disposition dated June 18, 2009, from [Debrah Long] SDC's Financial Account Branch whom fail to address concerns. A third request was served on Ms. M. Roof and Ms. D. Long, via "Certified Mail"... seeking information pertaining to said "Work Release Escrow Account" pursuant to S.C. Code Ann. §§ 30-4-10 thru 30-4-110. However defendants fail to respond, or make said account transparent upon request under the SDC's definition of Department's Policy "Employee Account, ADM-15.12."

13. On August 17, 2009, Akbar filed a "Step 1" grievance (Lee C.I. #2323-09) that was returned unprocessed, and on March 17, 2010, Akbar file a second grievance (Lee C.I. #0813-10), asserting fraudulent appropriation of his work release escrow savings account... and likewise returned unprocessed by Ms. Lisa Johnson Grievance Clerk, stating, "According to Agency Policy GA-01.12, you have (15) Fifteen days from the date of the alleged incident to file a grievance on this issue"... however suggested that Akbar submit a request to Ms. Melton, Lee C.I. Business Office to address issue.

14. Akbar was informed for the first time "February 9, 2009" that according to the system you do not have an account of work release in 1981. That account was probably closed and archived when you were release in 1981."

15. As a Results a Third grievance (Lee C.I. #1278-10) was filed and returned unprocessed by Ms. L. Johnson Grievance Clerk.

16. On June 7, 2010, Akbar filed grievance (Lee C.I. #1598-10) contending that grievance Clerk and SCDC deprived, and violated his vested liberty interest entitlement, civil and Constitutional rights.

17. On December 31, 2010, Akbar filed a S.C. Administrative Law Court (ALC) Notice of Appeal, contending that the Department had "Procedurally Defaulted" raised as one of numerous issues, that was dismissed when the ALC impermissibly heighten the standard of review.

CLAIMS

FIRST CAUSE OF ACTION PROCEDURAL DEFAULT

18. The Plaintiff Realleges each and every allegation set forth above as if repeated herein verbatim, and further alleges:

19. Akbar contends that Defendants SCDC and Bill Byars Director, by virtue of Chapter 78 of Title 15 § 24 South Carolina Code of Law is responsible for the conduct of the Defendants as set forth above, said conduct being grossly negligent, wilfully, wanton and reckless in the particular to wit:

a. SCDC's conduct constituted procedural default, and reprisal where prison officials fail to process grievance(s) within fixed time at each stage, and safeguard against reprisal, and

b. grievance Lee C.I. #1598-10, filed June 7, 2010 went unaddressed passed fix time limit, in violation of SCDC's Policy GA-01.12; Nelson Consent Decree, page 38, § 2; 1st, 5th and 14th Amendment of State and Federal Constitution; S.C. Const. Art. 1, § 3; and established law.

c. SCDC/officials did wilfully and intentionally fail to perform ministerial duties ... fail to keep within time restraint in and exceeded the power conferred upon the Agency by clearly established authority ... ignoring its own guidelines, constituting default.

SECOND CAUSE OF ACTION TORTUOUS ACTS

20. The Plaintiff realleges each and every allegation set forth above as if repeated herein verbatim, and further alleges:

21. The conduct of Defendants, staff, employees, officials and Agents, constituted gross negligent, willful, wanton and intentional violations by virtue of Chapter 78 Title 15 South Carolina Code of Laws; S.C. Code §§ 24-3-20 thru 24-3-40; under the SCDC's definition of Policy #ADM-15.12; 1st, 5th, 8th and 14th Amendments, State and Federal Constitution(s), S.C. Constitution Art. I, § 3, as set forth above:

- a. in that Defendants refusal / failure to make Work Release Escrow Account transparent to him, and as a punishment.
- b. in that Defendants deprived him of benefit of interest pursuant to S.C. Code § 24-3-40... and deprived of personal property void due process, and
- c. in depriving him of reporting of mistake in Account, and did unlawfully silence his speech.
- d. in that Defendants fail to investigate, or correct mistake, or explain why the account is correct.

THIRD CAUSE OF ACTION OUTRAGE

22. The Plaintiff realleges each and every allegation set forth above as if repeated herein verbatim, and further alleges:

23. The Plaintiff contends that the conduct of the Defendants as set forth above was outrageous in nature, in that conduct was atrocious and utterly intolerable in a civilized community and so of extreme and outrageous as to exceed all possible bounds of decency, thus denying fundamental liberty interest protected by Due Process Clause; such conduct was deliberate, intentional, reckless and an arbitrary abuse of power sufficient to

Shock the Judicial conscience. Defendants acted with full appreciation of the effect of its action, thus CERTAIN cause AKBAR to suffer physical, psychological, and emotional distress... and in that Defendants willfully and grossly violated Provisions, Laws, Rules, Regulations and Constitutional Rights, without regards for AKBAR's life, liberty or property, while being denied due process, equal protection of the law, and property interest rights:

- a. in that Defendants deprived AKBAR of civil liberty amenability to civil action... liability to actions seeking remedies... and enforcement of personal rights based on tort pertaining to the rights and duties... and rights to legal proceedings concerning these rights,
- b. in that Defendants deprived him of his civil rights belonging to AKBAR by violation of his civil rights as a citizen, and member of civil society, and society, and social equality, and
- c. in that Defendants arbitrarily... Repeated... intentional acts and omission did unlawfully impeded/obstructed the due course of justice... and subverted AKBAR's rights.
- d. in that Defendants unlawfully infringed upon AKBAR's free speech and property rights, as he sought the status and balance of his work release escrow account... Redress Relief... Remedy and Recovery.

FOURTH CAUSE OF ACTION FRAUDULENT APPROPRIATION/DAMAGES

24. The Plaintiff Realleges each and every allegation set forth above as if repeated herein verbatim, and further alleges:

25. As a direct and proximate results of the aforesaid acts and omission on the part of the Defendants, the Plaintiff has been injured and damaged, in that he has been fraudulently deprived of property [money], privileges and immunities afforded to citizens of the State of South Carolina, and has been

subjected to cruel and unusual punishment... deprived of liberty and property entitlement, due process and equal protection of the law, thereby entitling him to recover actual and compensatory damages from the Defendants... and is further entitled to punitive/exemplary damages from the Defendants, as the conduct of such Defendants as set forth herein was willful, wanton, reckless and grossly negligent, as well as knowing, intentional and malicious.

- a. in that SCDC's Financial Account Branch is charged with the fiduciary duty and obligation to Akbar, the beneficiary of Work Release Escrow Savings Account #065498.
- b. in that SCDC/Defendants are required under Policy ADM-15.12 Close-out of Inmate Account, Section 20, Work Release Program Inmate Unclaimed Account... letter will be sent to the last known address of the account holder whose balance is \$50.00, or more, and
- c. in that Akbar never closed-out his Work Release Escrow Account... and were paroled and release on the same day, and was not advised or given notice regarding closing-out Escrow Account.

26. The Plaintiff further seeks leave for Discovery pursuant to Rule 33 and 34, S.C.R.Civ. Proc., and reserves rights to amend pleadings after discovery is completed from time of service until time of hearing of this action.

RELIEF

WHEREFORE, Plaintiff request this Honorable Court grant the following relief:

A. Issue a Declaratory Judgment in that Defendants violated state provisions, laws, rules and regulations when that:

1. in that defendants under SCDC's definition of Policies, ADM-15.12, Closed-out of Inmate Account, and GA-01.12, Informal Resolution violated procedures and process.

2. in that defendants fail to carry-out fiduciary duty/obligation owed to [AKBAR] beneficiary of account.
3. in that defendants ERRONEOUSLY RENDERED AKBAR PERMANENTLY INELIGIBLE FOR ATTAINING HIS WORK RELEASE ESCROW ACCOUNT FUNDS, UPON UNJUSTIFIED CLAIM.
4. in that AKBAR'S liberty interest and PROPERTY interest RIGHTS WAS PROPERLY ESTABLISHED.

B. ISSUE INJUNCTIVE AND MANDATORY INJUNCTIVE ORDERS THAT DEFENDANTS, STAFF, EMPLOYEES, OFFICIALS AND AGENTS:

1. Refrain from arbitrarily imposing RESTRAINTS NOT PRESCRIBED/APPLICABLE IN AKBAR'S CASE.
2. that AKBAR'S [1979-1981] WORK RELEASE ESCROW ACCOUNT BE MADE IMMEDIATELY TRANSPARENT... balance... status, and INTEREST... TRANSFERRED TO HIS E.H. COOPER ACCOUNT, OR DESIGNEE.

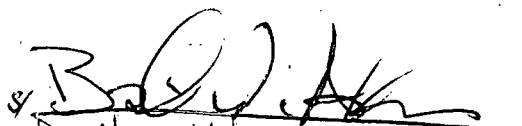
C. GRANT DAMAGES IN THE AMOUNT OF:

1. \$600,000 the statutory limit, jointly/ severally against all named defendant(s).

D. GRANT PUNITIVE DAMAGES OF \$300,000 AGAINST EACH DEFENDANTS.

E. AND FOR SUCH OTHER AND FURTHER RELIEF AS THE COURT MAY DEEM PROPER AND JUST.

Bishopville, S.C.
Date: June 14, 2011
October 1, 2012


Basil W. Akbar, 065498
Lee County CORR. INST,
990 Wisacky Highway, Rich. C-119
Bishopville, S.C. 29010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Basil W. AKBAR, 065498
Plaintiff;

C/A No. 2013-CP-40-0301

VS.

PLAINTIFF'S NOTICE OF MOTION,
AND MOTION TO COMPEL

South Carolina Department of
Corrections; Bill Byars; et al.,
Defendants,

TO: ERIN F. FARTHING, ATTORNEY FOR DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE, that the Plaintiff will move before the Richland County Court of Common Pleas, on the fourth (4) days after service hereof at 10:00 a.m., or as soon thereafter as motion may be heard for an order compelling the Defendants to answer Plaintiff's Interrogatories; Production of Documents; and Admissions.

NOW COMES, the Plaintiff who respectfully moves the court for order pursuant to Rule 37, SCRPC, compelling the Defendants to answer the Plaintiff's Interrogatories; Production of Documents; and Admissions. In support thereof the Plaintiff would show the Court:

This Motion is made on the grounds that the Defendants has been uncooperative, and fail to comply with Rules 33, 34, and 36, SCRPC. The Defendants has failed to answer the Plaintiff's Discovery, within thirty (30) days after service, impeding the Plaintiff's opportunity to amend his Complaint.

Plaintiff avers that he needs discovery to defend against Defendant's Motion for Dismissal/ Summary Judgment, and further submits that Discovery Request is Relevant Evidence, and Defendants would not be prejudiced, nor would security be compromised.

Plaintiff avers that there are numerous allegations alleged against Defendants, and that genuine issues of material facts in dispute exist, and he is impaired in his ability to prepare for hearing because he does not

have all necessary documents to complete the Record, and therefore cannot adequately prepare accordingly, or fully and fairly present his case.

WHEREFORE, the Plaintiff's prayer is that Motion be granted, and any other Relief fair and Just.

Date: July 3, 2013

Basil W. Akbar

Basil W. Akbar, 065498
Lee County Corr. Inst.
990 Wisacky Hwy., Flo. 2213-S
Bishopville, S.C. 29010

CERTIFICATE OF SERVICE

I, Basil W. Akbar, hereby certify that I have served a copy of the foregoing upon Defendant's Counsel of Records, by United States Postal Services, postage prepaid at:

Erin F. Farthing, Attorney
1303 Blanding Street
P.O. Drawer 7217
Columbia, S.C. 29202

Date: July 3, 2013

Basil W. Akbar

Basil W. Akbar, 065498
Lee County Corr. Inst.
990 Wisacky Hwy., Flo. 2213-S
Bishopville, S.C. 29010

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Basil W. Akbar, #065498)
)
Plaintiff,)
)
v.)
)
South Carolina Department of Corrections,)
Bill Byers, Martha Roof, Debrah Long,)
Lisia Johnson, Ann and John Doe,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C/A No: 2013-CP-40-0301

**NOTICE OF MOTION AND
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

TO: BASIL W. AKBAR, #65498, PRO SE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendants, by and through their undersigned attorneys, will move the Court for an Order granting them summary judgment in this case pursuant to the grounds set forth in this Motion. Said Motion will be heard on August 7, 2013 or at other such time and place as may be set by the Court in the Court of Common Pleas for Richland County, of which you will be notified.

The Defendants move pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an Order granting the Defendants' Summary Judgment and dismissing the case against them on the grounds that the pleadings, discovery, and material on file show that there is no genuine issue as to any material fact, and they are entitled to judgment as a matter of law for the following reasons:

1. The Plaintiff fails to state a cause of action under the Constitution and laws of the United States or the State of South Carolina; the claims are frivolous and without merit; there is no genuine issue as to any material fact; and the Complaint does not state a claim upon which relief can be granted;

ELL

2. Defendants Byers, Roof, Long, and Johnson are immune from suit pursuant to the doctrine of qualified immunity;

3. Defendants are immune from suit pursuant to the doctrine of sovereign immunity;

4. Plaintiff has improperly named as Defendants individual employees of a governmental entity, who were acting, at all times relevant herein, within the course and scope of their employment with the South Carolina Department of Corrections ("SCDC"), a governmental entity and agency of the State of South Carolina. Pursuant to S.C. Code Ann. Sections 15-78-70 and 15-78-200, when bringing an action against a governmental entity or against an employee acting on behalf of a governmental entity, only the agency or political subdivision shall be named as defendant. If an employee is individually named in a suit, the governmental entity shall be substituted for that employee. The individually named Defendants in the present action were acting as agents and employees of the SCDC at all times relevant herein and therefore the proper entity to defend this matter is the SCDC. Further, SCDC is immune from suit pursuant to S.C. Code Ann. § 15-78-60(1), (2), (3), (4), (5), (17), (20), (23) and (25).

5. Plaintiff failed to exhaust his readily available administrative and state court remedies prior to initiating this action.

6. Plaintiff's remedy, if any, lies exclusively within the jurisdiction of the Administrative Law Judge Division, pursuant to the holdings of *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000), *Sullivan v. South Carolina Dep't of Corrections*, 355 S.C. 437, 586 S.E.2d 124 (2003) and their progeny.

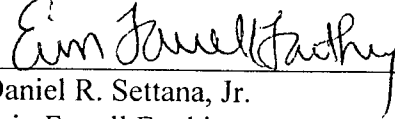
7. Plaintiff has failed to plead or establish the prerequisites for injunctive relief.

8. Plaintiff's claims are barred by res judicata and/or collateral estoppel.

9. Plaintiff's claims are barred by the applicable statute of limitations.

This Motion is supported by the pleadings in the case, the South Carolina Rules of Civil Procedure, the South Carolina Tort Claims Act, the statutory and case law of the United States of America and the State of South Carolina, the affidavits of Noel Hebert, Ann Hallman, Janice Kenealy, the attached exhibits, and any such other and further documents as this court may accept for filing.

Respectfully submitted,



Daniel R. Settana, Jr.

Erin Farrell Farthing

McKay, Cauthen, Settana & Stublely, P.A.

1303 Blanding Street

P. O. Drawer 7217

Columbia, SC 29202

(803) 256-4645

Attorneys for Defendants

Columbia, South Carolina
July 22, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Basil W. Akbar, #065498)
)
)
Plaintiff,)
)
v.)
)
South Carolina Department of Corrections,)
)
Bill Byers, Martha Roof, Debrah Long,)
)
Lisia Johnson, Ann and John Doe,)
)
)
Defendant.)
)

IN THE COURT OF COMMON PLEAS
C/A No: 2013-CP-40-0301

AFFIDAVIT OF ANN HALLMAN

PERSONALLY APPEARED before me, Ann Hallman, who first being duly sworn deposes and avers the following:

1) I am currently employed by the State of South Carolina and the South Carolina Department of Corrections (SCDC) as the Branch Chief of Inmate Grievances. I have held this position since May 2011. I was the Inmate Grievance Administrator assigned to Broad River Correctional Institution from July 2007 until May 2011

2) I certify that the attached copy of the following documents pertaining to Inmate Basil W. Akbar, #065498, are true and accurate copies of the records which are maintained by the South Carolina Department of Corrections in the normal course of business.

3) The attached documents consist of:

a) Step 1 Grievance filed by Basil W. Akbar, #065498, on August 17, 2009 (SCDC Grievance Lee CI 2323-09).

b) Step 1 Grievance filed by Basil W. Akbar, #065498, on March 17, 2010 (SCDC Grievance Lee CI 0813-10).

c) Step 1 Grievance filed by Basil W. Akbar, #065498, on April 29, 2010 (SCDC Grievance Lee CI 1270-10).

7
d) Step 1 Grievance filed by Basil W. Akbar, #065498, on June 2, 2010 (SCDC Grievance Lee CI 1598-10) with attachments.

e) Step 2 Grievance regarding Basil W. Akbar, #065498, forwarded to the Central Office on March 29, 2011 (SCDC Grievance Lee CI 1598-10).

FURTHER THE AFFIANT SAYETH NOT.

Ann Hallman
Ann Hallman

SWORN TO AND SUBSCRIBED before me
This 22nd day of July, 2013.

Amey J. Colley
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 10/26/2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Basil W. Akbar, #065498)
)
Plaintiff,)
)
v.)
)
South Carolina Department of Corrections,)
Bill Byers, Martha Roof, Debrah Long,)
Lisia Johnson, Ann and John Doe,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
C/A No: 2013-CP-40-0301

AFFIDAVIT OF NOEL HEBERT

PERSONALLY APPEARED before me, Noel Hebert, who first being duly sworn deposes and avers the following:

- 1) I am currently employed by the State of South Carolina and the South Carolina Department of Corrections (SCDC) as an Accounting Manager. I have held this position since November 2011.
- 2) I have reviewed the employment and financial records for Inmate Basil W. Akbar, #065498, which are maintained by the South Carolina Department of Corrections in the normal course of business.
- 3) These records reflect that Inmate Akbar was employed in an SCDC work program from in or around March 1980 until in or around April 1981, when he was released on parole.
- 4) If Inmate Akbar had any funds remaining from his work program, it would be contained within a work center account with the SCDC. Inmate Akbar's records reflect that Inmate Akbar does not have any funds in a work center account with the SCDC. In fact, Inmate

Akbar does not have a work center account with the SCDC, and has not had one since at least 1994.

FURTHER THE AFFIANT SAYETH NOT.

Noel Hebert

Noel Hebert

SWORN TO AND SUBSCRIBED before me

This 27 day of July, 2013.

Walter Spivey
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: June 16, 2021

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Basil W. Akbar, #065498)
)
 Plaintiff,)
)
 v.)
)
 South Carolina Department of Corrections,)
 Bill Byers, Martha Roof, Debrah Long,)
 Lisia Johnson, Ann and John Doe,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 C/A No: 2013-CP-40-0301

**DEFENDANTS' NOTICE OF MOTION
 AND MOTION FOR PROTECTIVE
 ORDER AND TO STAY DISCOVERY**

FILED
 RICHLAND COUNTY
 JUL 22 PM 4:17
 CHRISTINE W. POBRIDE
 C.C.P. & G.S.

TO: BASIL W. AKBAR, #65498, PRO SE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that on August 7, 2013, or at such other time as the Court may set, of which you will be notified, the Defendants, by their undersigned attorneys, will move the Court pursuant to Rule 26(c) of the SCRCP, for a Protective Order or in the alternative to stay discovery on the following grounds:

- 1) Plaintiff is a prisoner proceeding *pro se* and it proceeding in this case *in forma pauperis*;
- 2) In his Complaint, filed pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et seq*, the Plaintiff claims that he did not receive wages he claims were withheld by the SCDC during the time he was on work release from 1979 through 1981;
- 3) Defendants filed a timely Motion to Dismiss the Plaintiff's Complaint as a whole based on grounds including Rule 12(b)(1), (2), (4), (5) and (6), SCRCP, on August 25, 2010. One of the grounds for this Motion is that the Plaintiff's claims are barred by the statute of limitations. This Motion has yet to be ruled upon by this Court¹;

¹ Defendants are also filing a Motion for Summary Judgment contemporaneously based largely on statute of

1 EFP
 23.

4) Furthermore, in Defendants' Motion to Dismiss, Defendants have moved to dismiss the individually named Defendants from the present action as they are not proper parties pursuant to S.C. Code Ann. §§ 15-78-70 and 15-78-200;

5) Plaintiff has served numerous discovery requests to the Defendants. Defendants have provided Plaintiff with responses to this discovery, which set forth Defendants objections to Plaintiff's requests (*See Exhibit A*);

6) This Court has the power to make any discovery order as justice requires within its discretion upon a showing of good cause. Rule 26(b)(1) instructs the court to limit the frequency or extent of discovery if justice so requires to protect a party or witness from annoyance, embarrassment, oppression, or undue burden or expense.

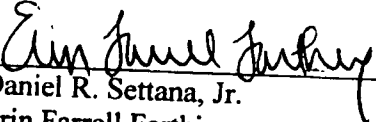
7) Specifically, Defendants contend the discovery sought by the Plaintiff is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence, overly vague and ambiguous, unduly burdensome taking into account the circumstances of the case. Additionally, much of the information or documents sought by the Plaintiff are available to the Plaintiff through another source that is more convenient, less burdensome, or less expensive. Furthermore, a number of the discovery requests made by the Defendant implicate the privacy rights of the Defendants, other employees of the SCDC, and other inmates of the SCDC. Some of the information or documents requested by Plaintiff may also be restricted, as their production would jeopardize the safety of the officers and staff at SCDC, and would impede on their ability to maintain proper order within SCDC's institutions. Finally, most of the information sought by Plaintiff concerns documents and policies from more than thirty years ago. If these documents still exist, they will be extremely difficult, if not impossible, to locate;

limitations.

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8) These Defendants request a Protective Order and that this Court stay pending discovery until such time as it rules on the Rule 12 motion previously filed, as well as any other dispositive motion, in particular concerning the statute of limitations issue.

It is well settled that the trial court enjoys considerable discretion in deciding discovery matters. This Court may grant the relief requested by these Defendants based on Rules 26(c)(1), (2), (3) and (4), SCRPC.


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Attorneys for Defendants

Columbia, South Carolina
July 22, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Basil W. Akbar, #065498)
)
 Plaintiff,)
)
 v.)
)
 South Carolina Department of Corrections,)
 Bill Byers, Martha Roof, Debrah Long,)
 Lisia Johnson, Ann and John Doe,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 C/A No: 2013-CP-40-0301

**DEFENDANTS' ANSWERS TO
 PLAINTIFF'S INTERROGATORIES
 AND REQUEST FOR PRODUCTION
 OF DOCUMENTS**

TO: BASIL W. AKBAR, #65498, PRO SE PLAINTIFF:

Defendants hereby respond to Plaintiff's Interrogatories and Request for Production of Documents pursuant to Rules 33 and 34 of the South Carolina Rules of Civil Procedure as follows:

1. On July 18, 1979 thru April 8, 1982, the Plaintiff were authorized to participate in Community Work Release Programs by the South Carolina Department of Corrections (SCDC) Director to work at paid employment. If so, produce copy of the then promulgated policies and regulations used to administer the programs.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant further objects to this Request because it is vague and ambiguous as written; it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence; and it is overly broad and therefore unduly burdensome. Defendants further object because Defendants are informed and believe that the Plaintiff can obtain these documents through another source that is more convenient, less burdensome, or less expensive. Specifically, the Defendants are informed and believe that the Plaintiff has access all current, non-restricted SCDC policies at his institution's law library. If Plaintiff requires access to a prior policy, he can request that these policies be made available at his institution's law library.

2. Provide complete copy of any and all SCDC's Financial Accounting Branch Business Office Records Relating to the Plaintiff Basil W. Akbar's [#065498] Work Release

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Paid Employment Programs, Archives Records Produced to Micro-Fiche Record, or stored electronically for examination, audit and inspection to include but not limited to:

- a. any and all SCDC's Accountence deductions from gross wages.
- b. authorized percentage(s) of funds held from each pay check.
- c. total amount of wages held in Long Term Saving Interest bearing escrow account #065498.
- d. history of interest drawn on Work Release Escrow Account #065498.
- e. Complete history of status, balance of account, and dates of any withdrawal from account #065498.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant objects to this Request because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to the extent that the information requested by Plaintiff is restricted due to safety concerns. Notwithstanding these objections, there is no such account under Plaintiff's name or SCDC number. Further, any documents regarding Plaintiff's pay from 1979 through 1982 would be very difficult if not impossible to locate as it has been more than thirty years since that time. Therefore, Defendants object to this request as unduly burdensome.

3. Copy of the SCDC's Lee county West Yard Prison Industries Agreement, entered/signed by the Plaintiff September 3, 2008.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant objects to this Request because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. This request seeks information that appears to be related to the claims made in the Plaintiff's proposed "Supplemental Complaint." The Court has not yet ruled on this "Supplemental Complaint," and it has not yet been served on any of the new proposed Defendants.

4. Copy of the General Operating Procedures for Lee C.I. West Yard Prison Industries.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant objects to this Request because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. This request seeks information that appears to be related to the claims made in the Plaintiff's proposed "Supplemental Complaint." The Court has not yet ruled on this "Supplemental Complaint," and it has not yet been served on any of the new proposed Defendants.

EFF

→ 5. Complete Copy of Plaintiff's Lee County [2008] Prison Industries work production and evaluation reports.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant objects to this Request because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. This request seeks information that appears to be related to the claims made in the Plaintiff's proposed "Supplemental Complaint." The Court has not yet ruled on this "Supplemental Complaint," and it has not yet been served on any of the new proposed Defendants.

→ 6. Complete copy of any and all Incident Reports, Investigation Reports, and EWC write-up, regarding the Plaintiff's termination from Lee County Prison Industries Rehabilitation Work Program.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant objects to this request because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. This request seeks information that appears to be related to the claims made in the Plaintiff's proposed "Supplemental Complaint." The Court has not yet ruled on this "Supplemental Complaint," and it has not yet been served on any of the new proposed Defendants.

7. Names and SCDC number of the six (6) West Yard Prison Industries Inmate Workers terminated on or about March 14, 2009, upon order of Larry Clutter that included Plaintiff.

RESPONSE: Defendants object to this Interrogatory because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant objects to this interrogatory because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. This Interrogatory seeks information that appears to be related to the claims made in the Plaintiff's proposed "Supplemental Complaint." The Court has not yet ruled on this "Supplemental Complaint," and it has not yet been served on any of the new proposed Defendants. Defendants further object to this interrogatory to the extent that it implicates privacy rights of other inmates.

8. Complete copy of any and all evidence relied upon that the Officials believes constituted Plaintiff's termination, and.

EJK

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant objects to this Request because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. This request seeks information that appears to be related to the claims made in the Plaintiff's proposed "Supplemental Complaint." The Court has not yet ruled on this "Supplemental Complaint," and it has not yet been served on any of the new proposed Defendants.

9. Complete copy of any and all evidence relied upon that include witness statements and/or Reports in support of termination.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant objects to this Request because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. This request seeks information that appears to be related to the claims made in the Plaintiff's proposed "Supplemental Complaint." The Court has not yet ruled on this "Supplemental Complaint," and it has not yet been served on any of the new proposed Defendants.

10. Current mailing address of pro se Defendants, Leon Visintainer former SCDC's Prison Industries Operation Manager; Larry Clutter former Lee C.I. Prison Industries Supervisor; and former Lee C.I. Warden Anthony Padula.

RESPONSE: Defendants object to this Interrogatory because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant also objects to this Interrogatory because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to the extent that the information requested by Plaintiff is restricted, as its production would jeopardize the safety of these individuals and their families. Additionally, these individuals are not currently Defendants in this action, as the Court has not yet ruled on Plaintiff's Motion to File a Supplemental Complaint.

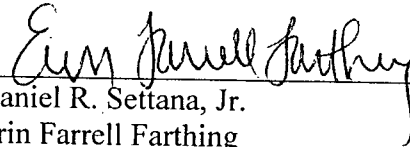
11. Has SCDC allowed inmates while incarcerated to make withdrawal from their Long Term Savings Account? If so, when, and what circumstances.

RESPONSE: Defendants object to this Interrogatory because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant further objects to this Interrogatory because it is vague and ambiguous as written; it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence; and it is overly broad and therefore unduly burdensome.

ELP

12. Provide copy of criteria, policy, related directive, and application for withdrawal from Long Term Savings by incarcerated inmates.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object to this request to the extent it seeks information or documents not in the possession, custody or control of Defendants. Defendants further object because Defendants are informed and believe that the Plaintiff can obtain these documents through another source that is more convenient, less burdensome, or less expensive. Specifically, the Defendants are informed and believe that the Plaintiff has access all current, non-restricted SCDC policies at his institution's law library.



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Attorneys for Defendants

Columbia, South Carolina
July 22, 2013

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
Basil W. Akbar, #065498)	C/A No: 2013-CP-40-0301
Plaintiff,)	
v.)	
South Carolina Department of Corrections,)	DEFENDANTS' ANSWERS TO
Bill Byers, Martha Roof, Debrah Long,)	PLAINTIFF'S SECOND
Lisia Johnson, Ann and John Doe,)	INTERROGATORIES AND
Defendant.)	REQUEST FOR PRODUCTION
)	OF DOCUMENTS

TO: BASIL W. AKBAR, #65498, PRO SE PLAINTIFF:

Defendants hereby respond to Plaintiff's Interrogatories and Request for Production of Documents pursuant to Rules 33 and 34 of the South Carolina Rules of Civil Procedure as follows:

1. Names and addresses of SCDC's Financial Branch Accountant, Manager(s) responsible for overseeing Inmates Escrow Work Release Long Term Savings Account, between 1979 thru 1985.

RESPONSE: Defendants object to this Interrogatory because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant also objects to this Interrogatory because it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to the extent that the information requested by Plaintiff is restricted, as its production would jeopardize the safety of these individuals and their families.

2. Complete copy of SCDC's Policy # ADM-15.12 Employee account; and relate Adm-15.12 regulations in effect between 1979 thru 1985.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object because Defendants are informed and believe that the

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Plaintiff can obtain these documents through another source that is more convenient, less burdensome, or less expensive. Specifically, the Defendants are informed and believe that the Plaintiff has access all current, non-restricted SCDC policies at his institution's law library. Further, Defendants are unaware of any such policy for the dates of 1979 through 1985.

3. Complete copy of duty and description of Inmate Grievance clerk; and Administrative Grievance Coordinator.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendant further objects to this request because it is vague and ambiguous as written, and Defendants are unable to determine what Plaintiff is seeking. Defendants further object to this request as it is neither relevant to a claim or defense in this action, nor reasonably calculated to lead to the discovery of admissible evidence; and it is overly broad and therefore unduly burdensome

4. Complete Copy of SCDC's Grievance Policy #GA-01.12.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Defendants further object because Defendants are informed and believe that the Plaintiff can obtain these documents through another source that is more convenient, less burdensome, or less expensive. Specifically, the Defendants are informed and believe that the Plaintiff has access all current, non-restricted SCDC policies at his institution's law library.

5. Is there a written SCDC Policy that requires procedural time limit/allotted time to exhaust preliminary informal resolution, if so, produce complete copy.

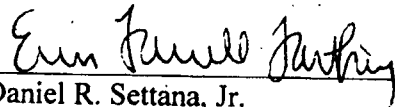
RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case. Notwithstanding this objection, see the SCDC's Grievance Policy, #GA-01.12, and see Defendants' Response to Plaintiff's Request number 4 above.

6. State concisely with specificity what event, explanation, and justification marks the time, or place of alleged incident relied on that the defendants believe justify agency posture; and produce documented evidence.

RESPONSE: Defendants object to this Request because there is an outstanding Motion to Dismiss in this case seeking the dismissal of this case.

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Defendant further objects to this request because it is vague and ambiguous as written, and Defendants are unable to determine what Plaintiff is seeking.



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(803) 256-4645
Attorneys for Defendants

Columbia, South Carolina
July 22, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Basil W. Akbar,)
)
 Plaintiff,)
)
 v.)
)
 South Carolina Department of Corrections,)
 et al.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2013-CP-40-0301

**ORDER DENYING PLAINTIFF'S
 MOTION FOR RECONSIDERATION**


2013 DEC 10 AM 11:39
 JEANETTE W. MOORE
 C.C.P. & G.S.
 FILED

This matter comes before the Court by way of Plaintiff's Motion to Reconsider pursuant to Rule 59(e), SCRCF. Specifically, Plaintiff Basil W. Akbar asks this Court to reconsider its Order filed September 26, 2013 granting Defendants' Motion for Summary Judgment.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Plaintiff's Motion under to Rule 59(e), SCRCF to Reconsider this Court's Order filed September 26, 2013. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
 December 9, 2013



 G. Thomas Cooper, Jr., Judge
 Fifth Judicial Circuit

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JAN 22 2015

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
G. THOMAS COOPER, JR., CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2013-002306

Basil W. Akbar

Appellant,

v.

South Carolina Department of Corrections

Respondents.

CERTIFICATE OF SERVICE

I, Basil W. Akbar (Pro Se), hereby certify that Respondents' Counsel of Record was served copy of the Appellant's Supplemental Record on Appeal items 1, 6, 9, 10, 15, and attachments; and ANNEX Certificate of Counsel, via the United States Postal Service, postage prepaid at: Daniel R. Settona, Jr., Post Office Drawer 7217, Columbia, S.C. 29202.

Date: January 16, 2015



Basil W. Akbar, 065498 (Pro Se)
Lee County Corr. Inst.
990 Wisacky Hwy., Flo. 2213-S
Bishopville, S.C. 29010

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JAN 22 2015

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
G. THOMAS COOPER, JR., CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2013-002306

Basil W. Akbar

Appellant,

v.

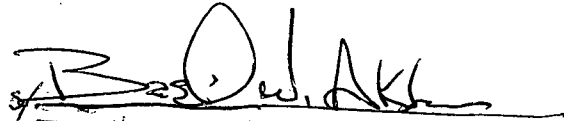
South Carolina Department of Corrections

Respondents.

CERTIFICATE OF COUNSEL

Appellant certify that the RECORD ON APPEAL contains all material proposed to be included by Respondents' designation of matter to be included in the RECORD ON APPEAL.

Date: January 16, 2015



Basil W. Akbar, 063498, (Pro Se)

LEE COUNTY CORR. INST.

990 Wisacky Hwy., Flo. 2213-S
Bishopville, S.C. 29010