

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

Isiah James, Jr. and George Lee Tomlin, )

Plaintiffs, )

vs. )

The South Carolina Department of )  
Corrections, )

Defendant. )

IN THE COURT OF COMMON PLEAS )  
THIRTEENTH JUDICIAL CIRCUIT )

C/A No.: 2013-CP-23-02017 )

ORDER

RECEIVED

OCT 14 2015

SC Court of Appeals

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2015 AUG 31 PM 4 46

This matter came before the Court on July 24, 2015. The plaintiffs appeared *pro se* and the defendant appeared through its counsel, Russell W. Harter, Jr., of the firm Chapman, Harter & Harter. The matter before me at this time involves a Motion for Summary Judgment filed on behalf of the defendant on June 3, 2015 and the Plaintiffs' Motion for Partial Summary Judgment as to the plaintiffs' Fourth Cause of Action filed on July 13, 2015.

**NATURE OF CLAIMS**

The plaintiffs in this action allege numerous claims arising out of different subjects and circumstances. Plaintiff James asserts in his Amended and Supplemental Complaint thirteen (13) different Causes of Action. Plaintiff Tomlin appears to assert two (2) Causes of Action, which are included in the Third and Fourth Causes of Action referred to in the Amended Complaint.

In Plaintiff James's First Cause of Action, he requests that the Court declare SCDC's earned work credit policy OP-21.07 unconstitutional, and in plaintiff's Second Cause of Action he requests that said policy be declared an *ex post facto* law. Plaintiff James's Third and Fourth Causes of Action relate to James's claim for wages in connection with a previously filed grievance, which was appealed. James's Fifth Cause of Action relates to his claim for eligibility

for work release. James's Sixth and Thirteenth Causes of Action relate to institutional lockdowns at SCDC. James's Seventh Cause of Action relates to allegations concerning the actions of an adjustment committee on or about April 21, 1980 and March 24, 1982, which he alleges regarding an unprocessed grievance. James's Eighth, Tenth, Eleventh, and Twelfth Causes of Action relate to FOIA requests, and James's Ninth Cause of Action relates to a claim related to SCDC's use of videoconference in determining parole eligibility. Plaintiff Tomlin's claims relate to the Third and Fourth Causes of Action wherein Tomlin alleges entitlement to wages and to costs related to the issuance of an Order of the South Carolina Department of Appeals dated November 23, 2010.

At the time of the hearing, counsel for the defendant presented an outline to the court to summarize the allegations of the various Causes of Action of the Plaintiffs. The various Causes of Action will be discussed and addressed to the extent they are related by subject matter.

In support of the Defendant's Motion for Summary Judgment, numerous affidavits have been filed by SCDC, addressing the plaintiffs' various claims. The plaintiffs have not submitted any affidavits, either in support of their motion or in opposition to the defendant's motion.

#### **SUMMARY JUDGMENT STANDARD**

Defendant moves for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Rule 56(c) of the South Carolina Rules of Civil Procedure provides in pertinent part:

The judgment sought shall be rendered forthwith in the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

A party opposing a properly supported motion for Summary Judgment may not rest on mere allegations or denials of his pleadings, but must set forth or point to specific facts showing that there is a genuine issue of material fact. *See, e.g. Baughman v. A.T.&T. Co.*, 306 S.C. 101, 117, 410 S.E.2d 537, 547 (1991) (bald allegations deemed insufficient to create a genuine issue of fact.) When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

#### **JAMES'S FIRST, SECOND, AND FIFTH CAUSES OF ACTION.**

James, in his Complaint, in his First, Second, and Fifth Causes of Action complains of SCDC policies that relate to earned work credits and eligibility for work release. Nowhere does James come forward with any valid arguments to support his claim that SCDC's policies that relate to earned work credits and/or work release are unconstitutional or that they have been misapplied to him. SCDC is necessarily vested with the authority to implement and apply policies that relate to earned work credits for inmates and their eligibility for work release. James has failed to point to specific facts and/or law to support these Causes of Action. James has further failed to make a showing sufficient to create a genuine issue of material fact, as to these various claims to defeat summary judgment.

#### **JAMES'S THIRD AND FOURTH CAUSES OF ACTION**

In the Third and Fourth Causes of Action, James alleges that he is entitled to wages in connection with participation in the Prison Industries Program. James bases his claims on an Order issued by the Administrative Law Court on February 7, 2006 [Docket No. 05-ALJ-04-

00739-AP]. In that Order, Administrative Law Judge Carolyn Mathews heard the plaintiff's grievance and issued an Order stating as follows:

IT IS THEREFORE ORDERED that the Department determine from its records the number of hours Appellant was paid a training wage for hours worked in the Prison Industries System.

IT IS FURTHER ORDERED that the Department calculate the wages owed to Inmate at the prevailing wage (\$5.25 per hour) and pay Appellant the difference between the wages owed and the wages paid within thirty (30) days of the date of this Order.

This ALC Order was not filed until March 6, 2006. Thereafter, SCDC and James both appealed the Administrative Law Court's decision to the Circuit Court for the Fourteenth Judicial Circuit. In connection with that appeal, Circuit Judge James C. Williams, Jr. issued an Order dated November 3, 2006 granting SCDC's appeal and denying James's appeal. On page two of its Order, the Court stated:

With James' consent and agreement, this Court REMANDS the determination of the applicable "prevailing wage" for James' prison industries labor back to the ALC.

The circuit court went on to say in its Order:

This Court concludes, contrary to the ALC's analysis and ruling, that the hourly rate of \$5.25 does not represent the "prevailing wage" for the labor James provided to the prison industries project operated by SCDC's, DOI at RCI.

The court further said:

In its analysis of James' "prevailing wage" claim, the ALC ignored the opinion of our Supreme Court in Atkins and the companion case to Wicker.

Thereafter, James appealed to the South Carolina Court of Appeals, and in an unpublished opinion number 2010-UP-251 filed April 26, 2010, the Court of Appeals reversed in part, affirmed in part, and vacated in part the Order of Judge Williams. In the Court of Appeals'

Opinion the history of James's claim is discussed and the Court makes clear reference to the fact that in the Circuit Court, with the consent of James, the prevailing wage issue was remanded to the ALC. Importantly, there is no part of the opinion that directs SCDC to pay James at any prevailing wage rate and there is no ruling that establishes a "prevailing wage" rate.

The fact is that James's claims set forth in the Third and Fourth Causes of Action relate to matters that were the subject of a grievance filed by James over wages. That grievance resulted in an appeal to the Administrative Law Court, an appeal to the Circuit Court in civil action 06-CP-27-130 and 176, and a further appeal to the South Carolina Court of Appeals, as discussed above.

James's recourse and/or remedy as to his wage claim, if any, is to return to those tribunals, not to file this separate suit. In light of the other proceedings in the Administrative Law Court, the Circuit Court of Jasper County, and the Court of Appeals related to this very same issue, this Court would lack subject matter jurisdiction of James's wage issue dispute. Again, James cannot file this new action to ask this Court to address those claims he raised and litigated in other courts and in other proceedings.

However, with respect to the actual merits of James's wage loss claim and in further support of its Motion for Summary Judgment, SCDC submitted an affidavit dated December 3, 2014 from Debra Long, Fiscal Analyst II. In her affidavit, Ms. Long states that she has reviewed SCDC's financial records and work assignment records related to Isiah James, and based on those records it appears that James was hired on a cleanup crew as a custodial worker under the prison industries program on or about January 13, 2000 and that he remained in that position until approximately June of 2000. The affidavit of Debra Long goes on to explain that SCDC discontinued the practice of paying inmates a training wage on July 1, 1999, which was before

James began working in the prison industry program at Ridgeland Correctional Institution. Based on that information, her affidavit recites that James does not appear to be due any compensation based on the wording of Judge Matthew's Administrative Law Court Order. Notwithstanding the issue of subject matter jurisdiction, it therefore appears from the Affidavit of Debra Long that James is not entitled to any additional compensation, from SCDC.

Further, as to James's Third and Fourth Causes of Action, there is no Order and/or ruling that James is entitled to any compensation or payments for wages. Therefore, to the extent the Third and/or Fourth Causes of Action asks the Court to declare that James is entitled to any payment of a judgment, or as a judgment creditor, James has failed to provide evidence to support any such claim.

#### **JAMES'S SIXTH AND THIRTEENTH CAUSES OF ACTION.**

In James's Sixth and Thirteenth Causes of Action he alleges that he was subjected to an institutional lockdown beginning May 22, 2011 and another institutional lockdown on January 21, 2014. He complains about the conditions of his confinement during those lockdowns.

In support of its Motion for Summary Judgment, SCDC submitted the Affidavit of Warden Leverne Cohen. The Affidavit of Warden Cohen provides the surrounding circumstances of the lockdowns. The institutional lockdown on May 22, 2011 resulted after an inmate was stabbed in the neck in a gang-related incident. That inmate had to be airlifted to a hospital. The Affidavit of Warden Cohen states that the institution was placed on lockdown so that the gang-related stabbing could be investigated and so that gang members could be identified, removed, and separated.

Warden Cohen also states in his Affidavit that an institutional lockdown was initiated on January 21, 2014 in response to weapons and ammunition found in the unit where inmate James was being housed. The entire unit had to be searched and secured.

The Affidavit of Warden Cohen further details that pursuant to SCDC policies and procedures during institutional lockdowns precautions are taken to secure the facility and as a result, inmate showers were delayed; however, inmates had access to water in their cells. The Affidavit of Warden Cohen further points out that all inmates are afforded an opportunity to exercise through the in-cell exercise program, that mail is hand-delivered to inmates, that inmates have access to legal materials that are delivered to their cell, and that institutional lockdowns are necessary from time to time to secure safety for inmates and staff.

It appears that the institutional lockdowns on May 22, 2011 and January 21, 2014 were reasonable and appropriate under the circumstances as are outlined in Warden Cohen's Affidavit.

It is necessarily incumbent upon SCDC administrators and staff to take measures to maintain and restore order in prison facilities, and inmate James has failed to provide any evidence that the institutional lockdowns in question were not necessary for security reasons.

I find that as to James's claim in his Sixth and Thirteenth Causes of Action there is no genuine issue of any material fact to support James's claim.

**JAMES'S EIGHTH, TENTH, ELEVENTH, AND TWELFTH CAUSES OF  
ACTION INVOLVING FOIA REQUESTS.**

James asserted separate Causes of Action related to FOIA Requests dated March 20, 2013; April 25, 2013; May 4, 2013; and May 27, 2014.

As to James's asserted claim related to the Eighth Cause of Action under FOIA, the South Carolina Department of Corrections submitted in support of its motion the Affidavit of Janice Kenealy, a supervisor of the inmate records management system. From the Affidavit of

Janice Kenealy it appears that she received a request for information from the plaintiff on March 27, 2013, and she then contacted the Office of General Counsel for permission and/or clarification as to James's request. Ms. Kenealy was advised that James was requesting SCDC Form 19-69 and she received approval to produce that form to him. Ms. Kenealy's Affidavit shows that on March 29, 2013, she checked with central records and it appears that she could not locate the paperwork at that time. Ms. Kenealy then contacted Ridgeland Correctional Institution and directed that the requested paperwork be provided to inmate James. It does not appear from the record that SCDC was able to find documentation to confirm that the requested information was provided to the plaintiff at that time; however, the record is clear that the requested information was provided to James on July 10, 2015 and James acknowledges receipt of that information at this hearing.

As to James's Tenth Cause of Action he makes reference to a FOIA request dated April 25, 2013 requesting information concerning the random selection drug test list for dates July 27, 2006 and September 7, 2006. In response to this claim, SCDC has provided Affidavits from Angela Harden of the Office of Inspector General and Alice Mascio, the Division Director of Visitation and Inmate Drug Testing. It appears from these affidavits that no such request was ever received, but in any event the Affidavit of Alice Mascio confirms that the random list is only maintained for a short period of time. Alice Mascio's affidavit further confirms that the plaintiff's request for the random drug information list back in 2006 would not have been available at the time of his request, if made, in 2013.

As to James's Eleventh Cause of Action concerning a FOIA request dated May 3, 2013 regarding SCDC's disruptive lockdown policy, the defendant provided the Affidavit of N. Dayne Haile, Administrative Coordinator of the South Carolina Department of Corrections. The

Affidavit of Dayne Haile and the attachment to her affidavit confirms that on May 16, 2013 SCDC responded to inmate James and informed him that inmates are not allowed to view Restricted policies. James was further informed that Non-Restricted and/or Limited policies could be viewed at the institution law library at RCI. It is clear that SCDC responded to James's request dated May 4, 2013.

James's Twelfth Cause of Action relates to an alleged FOIA Request dated May 7, 2014. In response to this claim, SCDC provided the Affidavit of Dayne Haile which indicates that no request for such information was received by the Office of General Counsel or the Director's Office. The alleged request of May 7, 2014 by James apparently requests a list of inmates subject to random drug tests on December 13, 2013. Even if that request were submitted it would appear that based on the Affidavit of Alice Mascio that SCDC would not likely have that information given the time frame involved.

Inmate James has presented no arguments and/or affidavits to specifically contradict the affidavits and documentation presented by SCDC concerning James's claims for FOIA requests in his Eighth, Tenth, Eleventh, and Twelfth Causes of Action and SCDC's responses. I find that James is not entitled to any additional documents and/or relief in connection with any alleged FOIA claims.

#### **TOMLIN'S THIRD AND FOURTH CAUSES OF ACTION.**

Tomlin has come forward with no evidence to support any assertion that he is entitled to any wages from SCDC. Tomlin does, however, assert the position that he was awarded costs of \$304.88 by Order of the South Carolina Court of Appeals dated November 23, 2010. The Affidavit of Debra Long confirms that upon a review of Tomlin's Cooper account, payment of costs of \$304.88 was not previously credited to Tomlin's account. It appears from the Affidavit

of Debra Long that on November 13, 2014, during the pendency of this action, a payment was processed for that amount into the Cooper Account of George Lee Tomlin. Further, based on the Affidavit of Debra Long there are no additional monies and/or payments due to George Lee Tomlin by and/or from the South Carolina Department of Corrections. Inmate Tomlin has not come forward with any evidence to refute that position and/or conclusion.

**OTHER CLAIMS REFERENCED IN THE AMENDED AND/OR  
SUPPLEMENTAL COMPLAINT.**

The Amended and/or Supplemental Complaint makes reference to alleged federal claims; however, in prior proceedings in the United States District Court and in the Court of Common Pleas of Greenville County, any such federal claims have been disposed of and/or dismissed and/or waived.

Specifically, as to the Plaintiffs' Ninth Cause of Action, the United States District Court dismissed that claim to the extent it asserted any due process violations. James has failed to create any genuine issue of material fact to support that claim based on state law.

**PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT  
FILED JULY 13, 2015.**

The plaintiffs filed a Motion for Partial Summary Judgment on July 13, 2015 which I have considered. The Plaintiffs' Motion for Partial Summary Judgment relates specifically to the Fourth Cause of Action in the Amended Complaint, and I find as a matter of law that the Plaintiffs' Motion for Partial Summary Judgment should be denied for the reasons stated above and specifically for the reasons stated in granting summary judgment to the defendant as to the Plaintiffs' Fourth Cause of Action.

**CONCLUSION**

To the extent the plaintiffs' claims are based on any prior Order of Court, or on common or statutory law, their alleged claims cannot survive summary judgment based on the record before me.


Also, if and to the extent the Plaintiffs' Complaint can be interpreted as to attempt to allege any claims that are subject to the South Carolina Tort Claims Act, the provisions of the South Carolina Tort Claims Act provide for immunity and limitations of liability which would bar and/or preclude James and Tomlin from any recovery for any tort claim. S.C. Code Ann. § 15-78-60 (2) provides for immunity of administrative action or inaction; (3) provides immunity for the execution, enforcement, or implementation of court Orders; (4) provides immunity for the adoption, enforcement, and/or compliance of written policies; (5) provides immunity for the exercise of an employee's exercise of discretion or judgment; (21) provides immunity related to the decision, implementation, release, and/or discharge of a prisoner; and (25) provides for immunity related to the supervision, protection, control, or confinement of a prisoner except upon a showing of gross negligence. There is absolutely no evidence in this record that would support a showing of gross negligence and/or any actions by SCDC to obviate the immunity granted under S.C. Code Ann. § 15-78-60 for any tort claim.

After giving due and careful consideration to the claims set forth in the Plaintiffs' Complaint, and after considering all of the evidence properly before me, I find that there is no genuine issue of any material fact, and SCDC is entitled to Judgment as a matter of law as to all of the claims and causes of action outlined above.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Defendant's Motion for Summary Judgment is granted as to all causes of action and the Plaintiffs' Amended and Supplemental Complaints are dismissed with prejudice.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Plaintiffs' Motion for Partial Summary Judgment is denied.

**IT IS SO ORDERED THIS** 21<sup>st</sup> **DAY OF** August, 2015.



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The Honorable Daniel D. Hall  
Circuit Court Judge

STATE OF SOUTH CAROLINA )  
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 COUNTY OF GREENVILLE )  
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Isiah James, Jr. and George Lee Tomlin )  
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The South Carolina Department of )  
Corrections )  
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IN THE COURT OF COMMON PLEAS  
 THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2013\_-CP-23-02017

**MOTION AND ORDER INFORMATION  
 FORM AND COVER SHEET**

FILED - CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
 2015 JUL 31 PM 4 48

Plaintiff's Attorney:  
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 Address:  
 Isiah James, Jr., #96883 RCI,  
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 29936/George Lee Tomlin,  
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 Ridgeland, SC 29936  
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Defendant's Attorney:  
 Russell W. Harter, Jr, Bar No. 2778  
 Address:  
 Chapman Harter & Harter, PA PO Box 10224  
 Greenville, SC 29603  
 Phone: 864.233.4500 Fax 864.232.1710  
 E-mail: rwhjr@chhlaw.net Other: \_\_\_\_\_

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: \_\_\_\_\_  
 Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed:  YES/ NO

**SECTION II: Motion/Order Type**

- Written motion attached  
 Form Motion/Order  
 I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for  Plaintiff /  Defendant August 31, 2015  
 Date submitted

**SECTION III: Motion Fee**

- PAID - AMOUNT: \$ \_\_\_\_\_  
 EXEMPT: (check reason)  Rule to Show Cause in Child or Spousal Support  
 Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRCP)  
 Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions  
 Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

**JUDGE'S SECTION**

- Motion Fee to be paid upon filing of the attached order. JUDGE CODE \_\_\_\_\_  
 Other: Date: \_\_\_\_\_

CLERK'S VERIFICATION

Collected by: SMK Date Filed: 8-31-15  
 MOTION FEE COLLECTED: \$ PREVIOUSLY PAID  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

SCCA 233 (11/2003)