

21937

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Admin. Law Judge

Case No.: 2014-002172

Grievance No.: BRCE-0594-07

Joshua Cramer, #251406,

Appellant,

South Carolina Department of Corrections,

✓

Respondent.

RECEIVED

MAR 12 2015

SC Court of Appeals

RECORD ON APPEAL

Other Counsel of Record:

Lake Summers
339 Heyward St., Suite 200
Columbia, SC 29201

Joshua Cramer
#251406
Lieber C/I SA-17
P.O. Box 205
Ridgeville, SC 29472
Appellant, Pro Se

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Josh Cramer
#251406
BRCI Mont-258
4460 Broad River Rd.
Columbia, SC 29210

Oct. 17, 2011

Martha Roaf
Cooper Trust Financial Branch
4444 Broad River Rd. / P.O. Box 10211
Columbia, SC 29221

Re: Long-Term Savings

Dear Ma'am:

My Long-Term savings (LTS) account balance on 1/1/10 was \$3,444.58. As of 10/11/11 my balance is \$3,444.88. That's an increase of .30¢. In past years, particularly while I was working the 1099's I received at the end of each year showed I was earning significantly more interest on my LTS account than what I've earned the last two years. Also, I haven't received a 1099 for the last two years.

Can you please tell me what kind of account my LTS is in, and why my interest rate has dropped well below 10%. Also, I'd like to know who is managing my LTS and what is my current interest rate. Thank you.

Sincerely,

Josh Cramer

next page →
10-25-11 Evie Link

cc: File

ROA p.1

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE CORRESPONDENCE**

INMATE: Josh Cramer
SCDC# 251406
INSTITUTION: Broad River
FROM: Financial Accounting Branch
SUBJECT: **INTEREST PAID ON PRISON INDUSTRIES ACCOUNT**
DATE: 10/25/11

I AM IN RECEIPT OF YOUR RECENT LETTER REGARDING THE INTEREST PAID ON YOUR PRISON INDUSTRIES ACCOUNT.

INTEREST: Interest will be paid to all inmates with monthly average balances of greater than \$10.00. Upon receipt of an interest deposit from the State Treasurer's Office, interest will be distributed to individual inmate accounts in accordance with SC State Law, Section 24-3-40.

The interest rate is comparable to rates paid for similar accounts and services at local financial institutions.

Inmates are not charged service fees for excessive transactions or penalized for falling below a certain balance level. The average balance of \$10.00 is much lower than the \$500 average balance for Wachovia to earn interest. The rate of interest paid varies from period to period depending upon interest received from State Treasurer's office.

Lieber

Joshua Cramer
#251402
Lieber 51A SA-17
P.O. Box 201
Ridgewood, SC 29472

March 31, 2014

Martha Reed
Cooper Trust Financial Branch
4444 Broad River Rd.
Columbia, SC 29221

Re: Long Term Savings Balance

Dear Madam:

Can you please tell me the balance of my Long-Term Savings
account? Thank you.

Sincerely,

Joshua Cramer

\$3,577.76

44-14

E. Link

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

TO: NAME: <i>Mr. Driskell</i>	TITLE: <i>Business Manager</i>	DATE: <i>10-7-11</i>
INMATE'S NAME: <i>Josh Cramer</i>		SCDC #: <i>251406</i>
INSTITUTION: <i>BRCI</i>		LIVING QUARTERS: <i>Mont.-258</i>

My last paycheck from Rm Design (P.I.-2) was 1/1/10 and my Long-Term Savings balance was 3,444.58. Will you please let me know how much interest I've drawn since then and what my current Long-Term Savings balance is. Thank you.

DISPOSITION BY STAFF MEMBER:

8/19/10 - Interest = *0.15* <+>
 8/19/11 - Interest = *.15* <+>
 Balance as of 10/11/11 = *3444.88*

DATE:

10/11/11

SIGNATURE:

Driskell

PACSTMT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
PRISON INDUSTRIES ACCOUNTING
EARNINGS AND DEDUCTIONS STATEMENT
PAYROLL DATE 10/16/12

SCDC ID 00251406 CRAMER, JOSHUA KERR

LOCATION : 0211 BROAD RIVER CI

PLANT CODE : 350 STANDARD PLYWOOD-BRCI

HOURS WORKED: 40.00 HOURLY RATE: 7.25

TRANSACTION DESCRIPTION	PAYEE	MEMO AMOUNT	DEPOSIT AMOUNT	WITHDRAWAL AMOUNT	BALANCE
BEGINNING BALANCE					3,544.57
GROSS PAY		328.09			
FEDERAL TAX		8.02			
FICA		18.54			
STATE TAX		5.48			
OTHER CG DEDUCTIONS		.00			
NET PAY			296.05		3,840.62
PGM FEE: VICTM COMP	GOV OFFICE - VICTIM ASSISTANCE			32.81	3,807.81
VICTIM COMP-SCDC	SCDC /VICTIM ASSISTANCE WAGE R			32.81	3,775.00
PGM FEE: ROOM/BOARD	SC DEPT CORRECTIONS (R& BOARD)			82.02	3,692.98
CASH FOR INMATE	E. H. COOPER TRUST FUND			115.60	3,577.38

RoA p.5

PACSTMT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
PRISON INDUSTRIES ACCOUNTING
EARNINGS AND DEDUCTIONS STATEMENT
PAYROLL DATE 12/14/07

SCDC ID 00251406 CRAMER, JOSHUA KERR
LOCATION : 0211 BROAD RIVER CI
PLANT CODE : 344 RM DESIGN WOOD PRODUCTS
HOURS WORKED: 56.00 HOURLY RATE: 6.15

TRANSACTION DESCRIPTION	PAYEE	MEMO AMOUNT	DEPOSIT AMOUNT	WITHDRAWAL AMOUNT	BALANCE
BEGINNING BALANCE					1,708.10
GROSS PAY		344.40			
FEDERAL TAX		.00			
FICA		26.35			
STATE TAX		2.72			
OTHER CG DEDUCTIONS		.00			
NET PAY			315.33		2,023.43
PGM FEE: VICTM COMP	GOV OFFICE - VICTIM ASSISTANCE			68.88	1,954.55
PGM FEE: ROOM/BOARD	SC DEPT CORRECTIONS (R& BOARD)			86.10	1,868.45
CASH FOR INMATE	E. H. COOPER TRUST FUND			125.91	1,742.54

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

2007 1099-INT FINANCIAL ACCOUNTING BRANCH DATE: 01/22/08

4444 BROAD RIVER ROAD

COLUMBIA SC 29210

57-6007591

SS: 248-69-4158 ACCOUNT: 00251406

INMATE NAME: JOSHUA K CRAMER
(0211) BROAD RIVER CI CO209A

INTEREST PAID TO YOU
IS BEING REPORTED TO THE
INTERNAL REVENUE SERVICE \$ 54.89

ROA p. 6

PACSTMT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
PRISON INDUSTRIES ACCOUNTING
EARNINGS AND DEDUCTIONS STATEMENT
PAYROLL DATE 12/16/08

SCDC ID 00251406 CRAMER, JOSHUA KERR
LOCATION : 0211 BROAD RIVER CI
PLANT CODE : 344 RM DESIGN WOOD PRODUCTS
HOURS WORKED: 32.75 HOURLY RATE: 7.05

TRANSACTION DESCRIPTION	PAYEE	MEMO AMOUNT	DEPOSIT AMOUNT	WITHDRAWAL AMOUNT	BALANCE
BEGINNING BALANCE					3,152.57
GROSS PAY		230.88			
FEDERAL TAX		.00			
FICA		17.67			
STATE TAX		.32			
OTHER CG DEDUCTIONS		.00			
NET PAY			212.89		3,365.46
PGM FEE: VICTM COMP	GOV OFFICE - VICTIM ASSISTANCE			46.18	3,319.28
PGM FEE: ROOM/BOARD	SC DEPT CORRECTIONS (R& BOARD)			57.72	3,261.56
CASH FOR INMATE	E. H. COOPER TRUST FUND			85.90	3,175.66

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

008 1099-INT FINANCIAL ACCOUNTING BRANCH DATE: 01/15/09

4444 BROAD RIVER ROAD

COLUMBIA SC 29210

57-6007591

SS: 248-69-4158 ACCOUNT: 00251406

INMATE NAME: JOSHUA K CRAMER
(0211) BROAD RIVER CI MLT1096B

INTEREST PAID TO YOU
IS BEING REPORTED TO THE
INTERNAL REVENUE SERVICE \$ 40.33

Roap.7

PACSTMT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
PRISON INDUSTRIES ACCOUNTING
EARNINGS AND DEDUCTIONS STATEMENT
PAYROLL DATE 12/16/09

SCDC ID 00251406 CRAMER, JOSHUA KERR
LOCATION : 0211 BROAD RIVER CI
PLANT CODE : 344 RM DESIGN- PIE
HOURS WORKED: 8.75 HOURLY RATE: 7.85

TRANSACTION DESCRIPTION	PAYEE	MEMO AMOUNT	DEPOSIT AMOUNT	WITHDRAWAL AMOUNT	BALANCE
BEGINNING BALANCE					3,434.96
GROSS PAY		68.68			
FEDERAL TAX		.00			
FICA		5.25			
STATE TAX		.00			
OTHER CG DEDUCTIONS		.00			
NET PAY			63.43		3,498.39
PGM FEE: VICTM COMP	GOV OFFICE - VICTIM ASSISTANCE			13.74	3,484.65
PGM FEE: ROOM/BOARD	SC DEPT CORRECTIONS (R& BOARD)			17.17	3,467.48
CASH FOR INMATE	E. H. COOPER TRUST FUND			25.65	3,441.83

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

2009 1099-INT

FINANCIAL ACCOUNTING BRANCH

DATE: 01/22/10

4444 BROAD RIVER ROAD

COLUMBIA SC 29210

57-6007591

SS: 248-69-4158

ACCOUNT: 00251406

INMATE NAME: JOSHUA K CRAMER
(0211) BROAD RIVER CI

M00241B

INTEREST PAID TO YOU
IS BEING REPORTED TO THE
INTERNAL REVENUE SERVICE \$ 10.47

RoA p. 8

"HISTORY"

FINAL

BIL: 384
 RTN: 114
 ACN: 68
 TYP: General Bill GB
 INB: Senate
 IND: 19990121
 PSP: Anderson
 SPO: Anderson, Washington, Matthews, Patterson, Glover, Ford, Reese
 DDN: l:\council\bill\ggs\22116cm99.doc
 DPB: 19990603
 LAD: 19990601
 GOV: S
 DGA: 19990611
 SUB: Prisoner confinement, Correction Department to consider proximity to home of convicted person, inmate wages, disposition

HST:

Body	Date	Action Description	Com	Leg Involved
-----	19990702	Act No. A68		
-----	19990611	Signed by Governor		
-----	19990609	Ratified R114		
<u>Senate</u>	19990603	Concurred in House amendment, enrolled for ratification		
<u>House</u>	19990602	Read third time, returned to Senate With amendment		
<u>House</u>	19990601	Amended, read second time		
<u>House</u>	19990526	Committee report: Favorable Final version	27	H3M
<u>House</u>	19990427	Introduced, read first time, Upon debate referred to Committee	27	H3M
<u>Senate</u>	19990422	Read third time, sent to House		
<u>Senate</u>	19990421	Read second time		
<u>Senate</u>	19990420	Committee report: Favorable	03	SCP
<u>Senate</u>	19990121	Introduced, read first time, referred to Committee	03	SCP

Copy attached

Printed Versions of This Bill

Ordered Printed on 19990420
 Ordered Printed on 19990526
 Ordered Printed on 19990601

TXT:

- original bill introduced 1/21/99 w/o any reference to Funds
- 8-15-99 nothing added
- 6/11 B(3) added

(A68, R114, S384)

AN ACT TO AMEND SECTION 24-3-30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF PLACES OF CONFINEMENT FOR A PERSON CONVICTED OF AN OFFENSE AGAINST THE STATE, SO AS TO PROVIDE THAT THE DEPARTMENT OF CORRECTIONS SHALL CONSIDER PROXIMITY TO THE HOME OF THE CONVICTED PERSON IN DESIGNATING THE PLACE OF HIS CONFINEMENT UNDER CERTAIN CIRCUMSTANCES; AND TO AMEND SECTION 24-3-40, AS AMENDED, RELATING TO THE DISPOSITION OF WAGES OF A PRISONER ALLOWED TO WORK AT PAID EMPLOYMENT, SO AS TO REVISE THE AMOUNTS THAT THE DEPARTMENT OF CORRECTIONS DEDUCTS FROM A PRISONER'S GROSS WAGES TO SATISFY HIS RESTITUTION, CHILD SUPPORT, AND OTHER OBLIGATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

Place of confinement for a prisoner

SECTION 1. Section 24-3-30 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-30. (A) Notwithstanding the provisions of Section 24-3-10 or another provision of law, a person convicted of an offense against the State must be in the custody of the Department of Corrections, and the department shall designate the place of confinement where the sentence must be served. The department may designate as a place of confinement an available, a suitable, and an appropriate institution or facility including, but not limited to, a county jail or work camp whether maintained by the Department of Corrections, or otherwise. However, the consent of the officials in charge of the county institutions so designated must be obtained first. If imprisonment for three months or less is ordered by the court as the punishment, all persons so convicted must be placed in the custody, supervision, and control of the appropriate officials of the county in which the sentence was pronounced, if the county has facilities suitable for confinement. A county or municipality, through mutual agreement or contract, may arrange with another county or municipality or a local regional correctional facility for the detention of its prisoners. The

Department of Corrections must be notified by the county officials concerned not less than six months before the closing of a county prison facility which would result in the transfer of the prisoners of the county facility to facilities of the department.

(B) The department shall consider proximity to the home of a person convicted of an offense against the State in designating the place of his confinement if this placement does not jeopardize security as determined by the department. Proximity to a convicted person's home must not have precedence over departmental criteria for institutional assignment.

(C) Each county administrator, or the equivalent, having charge of county prison facilities, upon the department's designating the county facilities as the place of confinement of a prisoner, may use the prisoner assigned to them for the purpose of working the roads of the county or other public work. A prisoner assigned to the county must be under the custody and control of the administrator or the equivalent during the period to be specified by the director at the time of the prisoner's assignment, but the assignment must be terminated at any time the director determines that the place of confinement is unsuitable or inappropriate, or that the prisoner is employed on other than public works. If, upon termination of the assignment, the prisoner is not returned, habeas corpus lies."

Deductions from the gross wages of a prisoner

SECTION 2. Section 24-3-40 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-40. (A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections.

The Director of the Department of Corrections shall deduct the following amounts from the gross wages of the prisoner:

(1) If restitution to a particular victim or victims has been ordered by the court, then twenty percent must be used to fulfill the restitution obligation. If a restitution payment schedule has been ordered by the court pursuant to Section 17-25-322, the twenty percent must be applied to the scheduled payments. If restitution to a particular victim or victims has been ordered but a payment schedule has not been specified by the court, the director shall impose a payment schedule of

equal monthly payments and use twenty percent to meet the payment schedule so imposed.

(2) If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then the twenty percent referred to in subsection (1) must be placed on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the 'Victims of Crime Act of 1984', Public Law 98-473, Title II, Chapter XIV, Section 1404, if the prisoner is engaged in work at paid employment in the community. If the prisoner is employed in a prison industry program, then the twenty percent referred to in subsection (1) must be applied to the South Carolina Victims Compensation Fund.

(3) Thirty-five percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the guardian of the child or children or to appropriate clerks of court, in the case of court ordered child support, for application toward payment of child support obligations, whichever is appropriate. If there are no child support obligations, then twenty-five percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board. Furthermore, if there are no child support obligations, then ten percent must be made available to the inmate during his incarceration for the purchase of incidentals pursuant to subsection (4). This is in addition to the ten percent used for the same purpose in subsection (4).

(4) Ten percent must be available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate's choice.

(5) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner.

(6) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of incidentals pursuant to subsection (4).

(B) The Department of Corrections shall return a prisoner's wages held in escrow pursuant to subsection (A) as follows:

(1) A prisoner released without community supervision must be given his escrowed wages upon his release.

(2) A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate (or distributed to the persons or entities of his choice.

(3) A prisoner released to community supervision shall receive two hundred dollars or the escrow balance, whichever is less, upon his release. Any remaining balance must be disbursed to the Department of Probation, Parole and Pardon Services. The prisoner's supervising agent shall apply this balance toward payment of the prisoner's housing and basic needs and dispense any balance to the prisoner at the end of the supervision period."

Time effective

SECTION 3. This act takes effect upon approval by the Governor, and Section 2 applies to wages earned beginning with the first day of the second month after the signature of the Governor.

Ratified the 9th day of June, 1999.

Approved the 11th day of June, 1999.

South Carolina General Assembly
113th Session, 1999-2000

Download This Version in Microsoft Word format

Bill 384

~~Indicates Matter Stricken~~

Indicates New Matter

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 20, 1999

4/22/99 sent to HSE

S. 384

Introduced by Senators Anderson, Washington, Matthews, Patterson, Glover, Ford and Reese

S. Printed 4/20/99--S.

Read the first time January 21, 1999.

THE COMMITTEE ON CORRECTIONS AND PENOLOGY

To whom was referred a Bill (S. 384), to amend Section 24-3-30, as amended, Code of Laws of South Carolina, 1976, relating to the designation of places of confinement for a person convicted of an offense against the State, etc., respectfully

REPORT:

That they have duly and carefully considered the same, and recommend that the same do pass:

DAVID L. THOMAS, for Committee.

A BILL

TO AMEND SECTION 24-3-30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF PLACES OF CONFINEMENT FOR A PERSON CONVICTED OF AN OFFENSE AGAINST THE STATE, SO AS TO PROVIDE THAT THE DEPARTMENT OF CORRECTIONS SHALL CONSIDER PROXIMITY TO THE HOME OF THE CONVICTED PERSON IN DESIGNATING THE PLACE OF HIS CONFINEMENT UNDER CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 24-3-30 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-30. (A) Notwithstanding the provisions of Section 24-3-10 or another provision of law, a person convicted of an offense against the State must be in the custody of the Department of Corrections of the State, and the department shall designate the place of confinement where the sentence must be served. The department may designate as a place of confinement an available, a suitable, and an appropriate institution or facility including, but not limited to, a county jail or work camp whether maintained by the Department of Corrections or otherwise. However, the consent of the officials in charge of the county institutions so designated must be obtained first. If imprisonment for three months or less is ordered by the court as the punishment, all persons so convicted must be placed in the custody, supervision, and control of the appropriate officials of the county in which the sentence was pronounced, if the county has facilities suitable for confinement. A county or municipality, through mutual agreement or contract, may arrange with another county or municipality or a local regional correctional facility for the detention of its prisoners. The Department of Corrections must be notified by the county officials concerned not less than six months before the closing of a county prison facility which would result in the transfer of the prisoners of the county facility to facilities of the department.

(B) The department shall consider proximity to the home of a person convicted of an offense against the State in designating the place of his confinement if this placement does not jeopardize security as determined by the department. Proximity to a convicted person's home must not have precedence over departmental criteria for institutional assignment.

(C) Each county administrator, or the equivalent, having charge of county prison facilities, upon the department's designating the county facilities as the place of confinement of a prisoner, may use the prisoner assigned to them for the purpose of working the roads of the county or other public work. A prisoner so assigned to the county must be under the custody and control of the administrator or the equivalent during the period to be specified by the director at the time of the prisoner's assignment, but the assignment must be terminated at any time the director determines that the place of confinement is unsuitable or inappropriate, or that the prisoner is employed on other than public works. If, upon termination of the assignment, the prisoner is not returned, habeas corpus lies."

SECTION 2. This act takes effect upon approval by the Governor.

----XX----

This web page was last updated on Friday, June 26, 2009 at 3:02 P.M.

South Carolina General Assembly
113th Session, 1999-2000

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Bill 384

~~Indicates Matter Stricken~~

Indicates New Matter

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 26, 1999

S. 384

Introduced by Senators Anderson, Washington, Matthews, Patterson, Glover, Ford and Reese

S. Printed 5/26/99--H.

Read the first time April 27, 1999.

THE COMMITTEE ON MEDICAL, MILITARY, PUBLIC, AND MUNICIPAL AFFAIRS

To whom was referred a Bill (S. 384), to amend Section 24-3-30, as amended, Code of Laws of South Carolina, 1976, relating to the designation of places of confinement for a person convicted of an offense against the State, etc., respectfully

REPORT:

That they have duly and carefully considered the same, and recommend that the same do pass:

JOE E. BROWN, for Committee.

STATEMENT OF ESTIMATED FISCAL IMPACT

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES IS:

\$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES IS:

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\$0 (No additional expenditures or savings are expected)

EXPLANATION OF IMPACT:

A review of this bill by the department indicates there will be no impact to the General Fund of the State nor on federal and/or other funds.

Approved By:

Don Addy

Office of State Budget

A BILL

TO AMEND SECTION 24-3-30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF PLACES OF CONFINEMENT FOR A PERSON CONVICTED OF AN OFFENSE AGAINST THE STATE, SO AS TO PROVIDE THAT THE DEPARTMENT OF CORRECTIONS SHALL CONSIDER PROXIMITY TO THE HOME OF THE CONVICTED PERSON IN DESIGNATING THE PLACE OF HIS CONFINEMENT UNDER CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 24-3-30 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-30. (A) Notwithstanding the provisions of Section 24-3-10 or another provision of law, a person convicted of an offense against the State must be in the custody of the Department of Corrections of the State, and the department shall designate the place of confinement where the sentence must be served. The department may designate as a place of confinement an available, a suitable, and an appropriate institution or facility including, but not limited to, a county jail or work camp whether maintained by the Department of Corrections, or otherwise. However, the consent of the officials in charge of the county institutions so designated must be obtained first. If imprisonment for three months or less is ordered by the court as the punishment, all persons so convicted must be placed in the custody, supervision, and control of the appropriate officials of the county in which the sentence was pronounced, if the county has facilities suitable for confinement. A county or municipality, through mutual agreement or contract, may arrange with another county or municipality or a local regional correctional facility for the detention of its prisoners. The Department of Corrections must be notified by the county officials concerned not less than six months before the closing of a county prison facility which would result in the transfer of the prisoners of the county facility to facilities of the department.

(B) The department shall consider proximity to the home of a person convicted of an offense against the State in designating the place of his confinement if this placement does not jeopardize security as determined by the department. Proximity to a convicted person's home must not have precedence over departmental criteria for institutional assignment.

(C) Each county administrator, or the equivalent, having charge of county prison facilities, upon the department's designating the county facilities as the place of confinement of a prisoner, may use the

ROA p. 17

prisoner assigned to them for the purpose of working the roads of the county or other public work. A prisoner so assigned to the county must be under the custody and control of the administrator or the equivalent during the period to be specified by the director at the time of the prisoner's assignment, but the assignment must be terminated at any time the director determines that the place of confinement is unsuitable or inappropriate, or that the prisoner is employed on other than public works. If, upon termination of the assignment, the prisoner is not returned, habeas corpus lies."

SECTION 2. This act takes effect upon approval by the Governor.

---XX---

This web page was last updated on Friday, June 26, 2009 at 3:02 P.M.

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South Carolina General Assembly
113th Session, 1999-2000

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Bill 384

~~Indicates Matter Stricken~~

Indicates New Matter

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

June 1, 1999

S. 384

Introduced by Senators Anderson, Washington, Matthews, Patterson, Glover, Ford and Reese

S. Printed 6/1/99--H.

Read the first time April 27, 1999.

A BILL

TO AMEND SECTION 24-3-30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF PLACES OF CONFINEMENT FOR A PERSON CONVICTED OF AN OFFENSE AGAINST THE STATE, SO AS TO PROVIDE THAT THE DEPARTMENT OF CORRECTIONS SHALL CONSIDER PROXIMITY TO THE HOME OF THE CONVICTED PERSON IN DESIGNATING THE PLACE OF HIS CONFINEMENT UNDER CERTAIN CIRCUMSTANCES.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 24-3-30 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-30. (A) Notwithstanding the provisions of Section 24-3-10 or another provision of law, a person convicted of an offense against the State must be in the custody of the Department of Corrections of the State, and the department shall designate the place of confinement where the

RoA p. 19

sentence must be served. The department may designate as a place of confinement an available, a suitable, and an appropriate institution or facility including, but not limited to, a county jail or work camp whether maintained by the Department of Corrections, or otherwise. However, the consent of the officials in charge of the county institutions so designated must be obtained first. If imprisonment for three months or less is ordered by the court as the punishment, all persons so convicted must be placed in the custody, supervision, and control of the appropriate officials of the county in which the sentence was pronounced, if the county has facilities suitable for confinement. A county or municipality, through mutual agreement or contract, may arrange with another county or municipality or a local regional correctional facility for the detention of its prisoners. The Department of Corrections must be notified by the county officials concerned not less than six months before the closing of a county prison facility which would result in the transfer of the prisoners of the county facility to facilities of the department.

(B) The department shall consider proximity to the home of a person convicted of an offense against the State in designating the place of his confinement if this placement does not jeopardize security as determined by the department. Proximity to a convicted person's home must not have precedence over departmental criteria for institutional assignment.

(C) Each county administrator, or the equivalent, having charge of county prison facilities, upon the department's designating the county facilities as the place of confinement of a prisoner, may use the prisoner assigned to them for the purpose of working the roads of the county or other public work. A prisoner so assigned to the county must be under the custody and control of the administrator or the equivalent during the period to be specified by the director at the time of the prisoner's assignment, but the assignment must be terminated at any time the director determines that the place of confinement is unsuitable or inappropriate, or that the prisoner is employed on other than public works. If, upon termination of the assignment, the prisoner is not returned, habeas corpus lies."

SECTION 2. Section 24-3-40 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-40. (A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. ~~The Director of the Department of Corrections shall withhold five percent of the gross wages and promptly place these funds on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the "Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, Section 1404". The director may withhold from the wages costs incident to the prisoner's confinement as the Department of Corrections considers appropriate and reasonable. These withholdings must be deposited to the maintenance account of the Department of Corrections. The balance of the wages, in the discretion of the director and in proportions determined by the director, may be disbursed to the prisoner, the prisoner's dependents, and the victim of the crime or deposited to the credit of the prisoner.~~

The director of the Department of Corrections shall deduct the following amounts from the gross wages of the prisoner:

(1) If restitution to a particular victim or victims has been ordered by the court, then twenty percent must be used to fulfill the restitution obligation. If a restitution payment schedule has been ordered by the court pursuant to Section 17-25-322, the twenty percent must be applied to the scheduled payments. If restitution to a particular victim or victims has been ordered but a payment schedule has

ROAp 20

not been specified by the court, the director shall impose a payment schedule of equal monthly payments and use twenty percent to meet the payment schedule so imposed.

(2) If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then the twenty percent referred to in subsection (1) must be placed on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the 'Victims of Crime Act of 1984', Public Law 98-473, Title II, Chapter XIV, Section 1404, if the prisoner is engaged in work at paid employment in the community. If the prisoner is employed in a prison industry program, then the twenty percent referred to in subsection (1) must be applied to the South Carolina Victims Compensation Fund.

(3) Thirty-five percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the guardian of the child or children or to appropriate clerks of court, in the case of court ordered child support, for application toward payment of child support obligations, whichever is appropriate. If there are no child support obligations, then twenty-five percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board. Furthermore, if there are no child support obligations, then ten percent must be made available to the inmate during his incarceration for the purchase of incidentals pursuant to subsection (4). This is in addition to the ten percent used for the same purpose in subsection (4).

(4) Ten percent must be available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate's choice.

(5) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner.

(6) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of incidentals pursuant to subsection (4).

(B) The Department of Corrections shall return a prisoner's wages held in escrow pursuant to subsection (A) as follows:

(1) A prisoner released without community supervision must be given his escrowed wages upon his release.

(2) A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice.

(3) A prisoner released to community supervision shall receive two hundred dollars or the escrow balance, whichever is less, upon his release. Any remaining balance must be dispersed to the Department of Probation, Parole, and Pardon Services. The prisoner's supervising agent shall apply this balance toward payment of the prisoner's housing and basic needs and dispense any balance to the prisoner at the end of the supervision period."

SECTION 3. This act takes effect upon approval by the Governor and Section 2 applies to wages earned beginning with the first day of the second month after the signature of the Governor.

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ROA p. 21

This web page was last updated on Friday, June 26, 2009 at 3:02 P.M.

"HISTORY"[Home](#) > [Search Legislation](#)

Book

Search Legislation**All Sessions 101-120 (1975-2014)**[Send to Printer](#)[Back to Results](#)appropriate found 2 times. [Next](#)**Session 113 (1999-2000)****H 3216****H 3216 General Bill, By Campsen and Rodgers**

A BILL TO AMEND SECTION 24-3-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DISPOSITION OF WAGES OF A PRISONER ALLOWED TO WORK AT PAID EMPLOYMENT SO AS TO PROVIDE A DISTRIBUTION PLAN FOR THE WAGES THAT INCLUDES PAYMENTS FOR VICTIM RESTITUTION, CHILD SUPPORT, PRISONER ROOM AND BOARD, PRISONER INCIDENTALS, AND PRISONER ESCROW ACCOUNT.

01/06/99 House Prefiled
 01/06/99 House Referred to Committee on Judiciary
 01/12/99 House Introduced and read first time HJ-80
 01/12/99 House Referred to Committee on Judiciary HJ-80
 04/27/99 House Committee report: Favorable with amendment Judiciary HJ-3
 04/28/99 House Debate interrupted HJ-37
 04/29/99 House Requests for debate-Rep(s). Scott, Pinckney, Lloyd, Parks, Clyburn, Howard, Jennings, Moody-Lawrence, Lee, Cobb-Hunter, Phillips, McMahan, D. Smith, Campsen, Fleming, Woodrum, Altman, Whipper and Kennedy HJ-20
 → 05/06/99 House Requests for debate removed-Rep(s). Jennings HJ-20
 05/26/99 House Amended HJ-116
 05/26/99 House Read second time HJ-124
 05/26/99 House Roll call Yeas-93 Nays-7 HJ-124
 05/27/99 House Read third time and sent to Senate HJ-132
 06/01/99 Senate Introduced and read first time SJ-15
 06/01/99 Senate Referred to Committee on Corrections and Penology SJ-15

5384 Received From
 Senate 4/22/99

copy of HJ-116

VERSIONS OF THIS BILL

April 27, 1999

May 26, 1999

upon death
 of person include in estate or distributed to — of his choice

Indicates Matter Stricken**Indicates New Matter****AMENDED**

May 26, 1999

H. 3216

Introduced by Reps. Campsen and Rodgers

S. Printed 5/26/99--H.

Read the first time January 12, 1999.

RoA p. 23

A BILL

TO AMEND SECTION 24-3-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DISPOSITION OF WAGES OF A PRISONER ALLOWED TO WORK AT PAID EMPLOYMENT SO AS TO PROVIDE A DISTRIBUTION PLAN FOR THE WAGES THAT INCLUDES PAYMENTS FOR VICTIM RESTITUTION, CHILD SUPPORT, PRISONER ROOM AND BOARD, PRISONER INCIDENTALS, AND PRISONER ESCROW ACCOUNT.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 24-3-40 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-40. (A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. ~~The Director of the Department of Corrections shall withhold five percent of the gross wages and promptly place these funds on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the "Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, Section 1404". The director may withhold from the wages costs incident to the prisoner's confinement as the Department of Corrections considers appropriate.~~ Next and reasonable. These withholdings must be deposited to the maintenance account of the Department of Corrections. The balance of the wages, in the discretion of the director and in proportions determined by the director, may be disbursed to the prisoner, the prisoner's dependents, and the victim of the crime or deposited to the credit of the prisoner.

The Director of the Department of Corrections shall deduct the following amounts from the gross wages of the prisoner:

- (1) If restitution to a particular victim or victims has been ordered by the court, then twenty percent must be used to fulfill the restitution obligation. If a restitution payment schedule has been ordered by the court pursuant to Section 17-25-322, the twenty percent must be applied to the scheduled payments. If restitution to a particular victim or victims has been ordered but a payment schedule has not been specified by the court, the director shall impose a payment schedule of equal monthly payments and use twenty percent to meet the payment schedule so imposed.
- (2) If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then the twenty percent referred to in subsection (1) must be placed on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the 'Victims of Crime Act of 1984', Public Law 98-473, Title II, Chapter XIV, Section 1404, if the prisoner is engaged in work at paid employment in the community. If the prisoner is employed in a prison industry program, then the twenty percent referred to in subsection (1) must be applied to the South Carolina Victims Compensation Fund.
- (3) Forty-percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the Previous appropriate clerks of court for application toward payment of child support obligations. If there are no child support obligations, then one-half of the forty-percent referred to in this subsection must be used by the Department of Corrections to defray the cost of the prisoner's room and board. This is in addition to the fifteen percent used for the same purpose in subsection (4). Furthermore, if there are no child support obligations, then the other half of the forty percent referred to in this subsection must be made available to the inmate during his incarceration for the purchase of incidentals. This is in addition to the fifteen-percent used for the same purpose in subsection (5).

ROA p. 24

(4) Fifteen percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board.

(5) Fifteen percent must be available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate's choice.

(6) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner.

(7) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of incidentals.

(B) The Department of Corrections shall return a prisoner's wages held in escrow pursuant to subsection (A) as follows:

(1) A prisoner released without community supervision must be given his escrowed wages upon his release.

(2) A prisoner serving life in prison shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice.

(3) A prisoner released to community supervision shall receive two hundred dollars or the escrow balance, whichever is less, upon his release. Any remaining balance must be dispersed to the Department of Probation, Parole, and Pardon Services. The prisoner's supervising agent shall apply this balance toward payment of the prisoner's housing and basic needs and disburse any balance to the prisoner at the end of the supervision period."

SECTION 2. This act takes effect upon approval by the Governor and applies to wages earned beginning with the first day of the second month after the signature of the Governor.

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South Carolina General Assembly
113th Session, 1999-2000

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Bill 3216

~~Indicates Matter Stricken~~

Indicates New Matter

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

REPRINT

~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 27, 1999

H. 3216

Introduced by Reps. Campsen and Rodgers

S. Printed 4/27/99--H.

Read the first time January 12, 1999.

THE COMMITTEE ON JUDICIARY

To whom was referred a Bill (H. 3216), to amend Section 24-3-40, as amended, Code of Laws of South Carolina, 1976, relating to the disposition of wages of a prisoner, etc., respectfully

REPORT:

That they have duly and carefully considered the same, and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Section 24-3-40 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-40. (A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. ~~The Director of the Department of Corrections shall withhold five percent~~

~~of the gross wages and promptly place these funds on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the "Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, Section 1404". The director may withhold from the wages costs incident to the prisoner's confinement as the Department of Corrections considers appropriate and reasonable. These withholdings must be deposited to the maintenance account of the Department of Corrections. The balance of the wages, in the discretion of the director and in proportions determined by the director, may be disbursed to the prisoner, the prisoner's dependents, and the victim of the crime or deposited to the credit of the prisoner.~~

The director of the Department of Corrections shall deduct the following amounts from the gross wages of the prisoner:

(1) If restitution to a particular victim or victims has been ordered by the court, then twenty percent must be used to fulfill the restitution obligation. If a restitution payment schedule has been ordered by the court pursuant to Section 17-25-322, the twenty percent must be applied to the scheduled payments. If restitution to a particular victim or victims has been ordered but a payment schedule has not been specified by the court, the director shall impose a payment schedule of equal monthly payments and use twenty percent to meet the payment schedule so imposed.

(2) If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then the twenty percent referred to in subsection (1) must be placed on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the 'Victims of Crime Act of 1984', Public Law 98-473, Title II, Chapter XIV, Section 1404, if the prisoner is engaged in work at paid employment in the community. If the prisoner is employed in a prison industry program, then the twenty percent referred to in subsection (1) must be applied to the South Carolina Victims Compensation Fund.

(3) Twenty percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the appropriate clerks of court for application toward payment of child support obligations. If there are no child support obligations, then one-half of the twenty percent referred to in this subsection must be used by the Department of Corrections to defray the cost of the prisoner's room and board. This is in addition to the fifteen percent used for the same purpose in subsection (4). Furthermore, if there are no child support obligations, then the other half of the twenty percent referred to in this subsection must be made available to the inmate during his incarceration for the purchase of incidentals. This is in addition to the ten percent used for the same purpose in subsection (5).

(4) Fifteen percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board.

(5) Ten percent must be available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate's choice.

(6) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner.

(7) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of

incidentals.

(B) The Department of Corrections shall return a prisoner's wages held in escrow pursuant to subsection (A) as follows:

(1) A prisoner released without community supervision must be given his escrowed wages upon his release.

(2) A prisoner serving life in prison shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice.

(3) A prisoner released to community supervision shall receive two hundred dollars or the escrow balance, whichever is less, upon his release. Any remaining balance must be dispersed to the Department of Probation, Parole, and Pardon Services. The prisoner's supervising agent shall apply this balance toward payment of the prisoner's housing and basic needs and dispense any balance to the prisoner at the end of the supervision period."

SECTION 2. This act takes effect upon approval by the Governor and applies to wages earned beginning with the first day of the second month after the signature of the Governor. /

Amend title to conform.

JAMES H. HARRISON, for Committee.

A BILL

TO AMEND SECTION 24-3-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DISPOSITION OF WAGES OF A PRISONER ALLOWED TO WORK AT PAID EMPLOYMENT SO AS TO PROVIDE A DISTRIBUTION PLAN FOR THE WAGES THAT INCLUDES PAYMENTS FOR VICTIM RESTITUTION, CHILD SUPPORT, PRISONER ROOM AND BOARD, PRISONER INCIDENTALS, AND PRISONER ESCROW ACCOUNT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 24-3-40 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-40. (A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. ~~The Director of the Department of Corrections shall withhold five percent of the gross wages and promptly place these funds on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the "Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, Section 1404". The director may withhold from the wages costs incident to the prisoner's confinement as the Department of Corrections considers appropriate and reasonable. These withholdings must be deposited to the maintenance account of the Department of Corrections. The balance of the wages, in the discretion of the director and in proportions determined by the director, may be disbursed to the prisoner, the prisoner's dependents, and the victim of the crime or deposited to the credit of the prisoner.~~

The director of the Department of Corrections shall deduct those amounts, if any, required by law for federal and state tax withholdings and then shall distribute the balance as follows:

(1) If restitution to a particular victim or victims has been ordered by the court, then thirty-five percent must be used to fulfill the restitution obligation. If a restitution payment schedule has been ordered by the court pursuant to Section 17-25-322, the thirty-five percent must be applied to the scheduled payments. If restitution to a particular victim or victims has been ordered but a payment schedule has not been specified by the court, the director shall impose a payment schedule of equal monthly payments and use thirty-five percent to meet the payment schedule so imposed.

(2) If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then the thirty-five percent referred to in subsection (1) above must be placed on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the 'Victims of Crime Act of 1984', Public Law 98-473, Title II, Chapter XIV, Section 1404.

(3) In addition to the restitution payments of subsections (1) and (2) above, five percent must be deposited with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the "Victims of Crime Act of 1984", Public Law 98-473, Title II, Chapter XIV, Section 1404.

(4) Twenty percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the appropriate clerks of court for application toward payment of child support obligations. If there are no child support obligations, then one-half of the twenty percent referred to in this subsection must be used by the Department of Corrections to defray the cost of the prisoner's room and board. This is in addition to the twenty percent used for the same purpose in subsection (5) below. Furthermore, if there are no child support obligations, then the other half of the twenty percent referred to in this subsection must be held in an escrow account for the benefit of the prisoner. This is in addition to the ten percent used for the same purpose in subsection (7) below.

(5) Twenty percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board.

(6) Ten percent must be available to the inmate during his incarceration for the purchase of incidentals.

(7) Ten percent must be held in an escrow account for the benefit of the prisoner.

(B) The Department of Corrections shall return a prisoner's wages held in escrow pursuant to (A)(4) and (A)(7) of this section as follows:

(1) A prisoner released without community supervision must be given his escrowed wages upon his release.

(2) A prisoner serving life in prison shall have his escrowed wages included in his estate upon death.

(3) A prisoner released to community supervision shall receive two hundred dollars or the escrow balance, whichever is less, upon his release. Any remaining balance must be dispersed to the Department of Probation, Parole, and Pardon Services. The prisoner's supervising agent shall apply

this balance toward payment of the prisoner's housing and basic needs and disperse any balance to the prisoner at the end of the supervision period."

SECTION 2. This act takes effect upon approval by the Governor and applies to wages earned beginning with the first day of the second month after the signature of the Governor.

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This web page was last updated on Friday, June 26, 2009 at 2:57 P.M.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Joshua Cramer
SCDC NUMBER: 251406
INSTITUTION: Broad River
HOUSING UNIT: Murray 266
WORK ASSIGNMENT: P.I. - 2

APR 26 2007
GDL

Office Use Only
Grievance No. BRCI-0594-07
Code: General MV
Policy _____
Disc. Hear. _____
Class. _____
Date Received 4/26/07
IGC Initials ULM

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

See Attachment.

ACTION REQUESTED: Correct payment of all monies.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Not Applicable.

Joshua Cramer 4-26-07
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response

- ☒ I accept the action taken by the IGC and consider the matter closed.
☒ I do not accept the action taken and wish to appeal.

Debra Haalima 6-7-2012
IGC Signature Date
Debra 2/11
Grievant Signature Date

WARDEN'S DECISION AND REASON:

SEE ATTACHED

- ☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

Joshua C. [Signature] 7/13/12
Grievant Signature Date

[Signature] 7-11-12
Warden Signature Date

[Signature] 7/12/12
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

Joshua Cramer
BRC1-0594-07

APR 26 2007

Joshua Cramer #25140
F/m Grievance

Attached Issues

- 1) Section 24-3-430(D) created a liberty interest in the \$1.90 difference between the prevailing wage (\$7.35) paid by the private sector employer for grievant's "regular" hour labor and the wage (\$5.45) paid grievant by SCDC during the course of grievant's private sector employment [May 2, 2005 to current date] and grievant is entitled to said monies.
- 2) Section 24-3-430(D) created a liberty interest in the \$2.85 difference between the prevailing wage (\$11.03) paid by the private sector employer for grievant's "overtime" hour labor and the wage (\$8.18) paid grievant by SCDC during the course of grievant's private sector employment, as stated in Issue #1, above, and grievant is entitled to said monies.
- 3) Grievant has a liberty interest in the interest earned on the amounts complained of in Issues #2 and #3, above.
- 4) Section 24-3-430(A)(5) & 24-3-430(B)(2) created a liberty interest in escrowed wages where in grievant is entitled to complete and immediate access to the amount of his escrowed wages to distribute them to persons or entities of his choice at the time said wages were escrowed for grievant's benefit, but grievant is serving life without parole, and is denied access.

Joshua Cramer
BRCI-0514-07

APR 26 2007

Joshua Cramer #251406
F/m Grievance

Attached Issues (cont.)

- 5.) Grievant has a liberty interest in interest earned on the amount complained of in Issue #1), above, at a guaranteed investment rate comparable to Treasury Bills or Certificates of Deposit.

Step 1 Grievance Response
June 7, 2012

Name	SCDC #	Grievance #	Project
Joshua Cramer	251406	BRCI-0594-07	R.M. Design

In accordance with the unpublished opinion issued on January 25, 2012 by the South Carolina Court of Appeals and the order issued by the South Carolina Court of Appeals on March 29, 2012 which denied your petition for rehearing, I have undertaken a new review of your Step 1 grievance bearing your signature and dated April 26, 2007. The responsible SCDC official provided your Step 1 with the following designation: BRCI-0594-07.

In your Step 1, you asserted that you were entitled to the prevailing wage for your "regular" hours work as follows:

- 1) Section 24-3-430(D) created a liberty interest in the (\$1.90) difference between the prevailing wage (\$7.35) paid by the private sector employer for grievant's "regular" hour labor and the wage (\$5.45) paid grievant by SCDC during the course of grievant's private sector employment (May 2, 2005 to current date) and grievant is entitled to said monies.

You then asserted that you were entitled to the prevailing wage for your "overtime" labor as follows:

- 2) Section 24-3-430(D) created a liberty interest in the (\$2.85) difference between the prevailing wage (\$11.03) paid by the private sector employer for the grievant's "overtime" hour labor and the wage (\$8.18) paid grievant by SCDC during the course of grievant's private sector employment, as stated in Issue #1, above, and grievant is entitled to said monies.

You further claimed you were entitled to interest on your "regular" and "overtime" hours as follows:

- 3) Grievant has liberty interest in the interest earned on the amount complained of in Issues #2 and #3, above.

You then claimed that you were entitled to complete and immediate access to your escrowed wages as follows:

- 4) Section 24-3-430(A)(5) & 24-3-430(B)(2) created a liberty interest in escrowed wages where in grievant is entitled to complete and immediate access to the amount of his escrowed wages to distribute them to persons or entities of his choice at the time said wages were escrowed for grievant's benefit, but grievant is serving life without parole and is denied access.

You further claimed that you were entitled to interest associated with your escrowed wages as follows:

Step 1 Grievance Response
June 7, 2012

Name	SCDC #	Grievance #	Project
Joshua Cramer	251406	BRCI-0594-07	R.M. Design

5) Grievant has a liberty interest in interest earned on the amount complained of in Issue #4, above, at a guaranteed investment rate comparable to Treasury Bills or Certificates of Deposit.

Finally, you requested the following relief in your grievance:

Correct payment of all monies.

Your prison industries participation and pay records were reviewed by the responsible officials at SCDC Headquarters in Columbia. These records confirm that you voluntarily participated in the prison industries project operated by SCDC at Broad River CI in which R.M. Design participates as the private industry sponsor. These pay records also reflect that SCDC began paying you on or about July 15, 2005 for the labor you voluntarily provided in the project at Broad River, and they reflect that SCDC remitted its final payment to you on or about January 1, 2010.

After carefully considering the arguments you made justifying the action you request, I deny the prison industries pay claims from your Step 1 grievance designated as BRCI-0594-07.

Two (2) decisions issued by the South Carolina Supreme Court in 2004 apply to the claims you presented in your Step 1: Adkins v. S.C. Dep't of Corr. and Wicker v. S.C. Dep't of Corr. Both of these cases discussed S.C. Code Ann. Section 24-3-40, Section 24-3-310, *et seq.* and, specifically, Section 24-3-430(D). The South Carolina Supreme Court issued these decisions on August 23, 2004.

Adkins and Wicker recognized that inmates possessed a pre-existing right to file administrative grievances concerning their prison industries pay. Under Wicker, such grievances must be filed, processed, and determined in accordance with the provisions of the agency's Inmate Grievance System Policy.

In Torrence v. S.C. Dep't of Corr., the South Carolina Supreme Court issued another decision which applies to your claims. In Torrence, the South Carolina Supreme Court again acknowledged that inmates could file grievances in accordance with the agency's Inmate Grievance System, currently designated as Policy Number GA-01.12, by which they could challenge their prison industries pay.

SCDC has published editions of its Inmate Grievance System Policy for nearly 20 years if not longer. Starting in the mid-1990s, SCDC's Inmate Grievance System Policy consisted of two (2) parts: Policy Number PS-10.01 and Policy Number PS-10.01 (OP). ¶ 14(a) of Policy Number PS-10.01 (OP) required that inmates submit their Step 1 grievance forms "within seven (7) days of the alleged incident." Exceptions to the deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

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Name	SCDC #	Grievance #	Project
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On October 1, 1997, SCDC issued new editions of Policy Numbers PS-10.01 and PS-10.01 (OP). In the October 1, 1997 edition of Policy Number PS-10.01 (OP), SCDC changed ¶ 14(a) to require that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

On January 30, 1998, SCDC issued a new edition of its Inmate Grievance System Policy, and, just as before, the policy consisted of two (2) parts. However, SCDC re-designated these two (2) parts as Policy Number GA-01.12 and Policy Number GA-01.12 (OP). ¶ 14(a) of Policy Number GA-01.12 (OP) required that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Once again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

The agency consolidated Policy Numbers GA-01.12 and GA-01.12 (OP) into a single policy when it issued a new edition of Policy Number GA-01.12 on April 1, 2000, and the 15-day filing deadline appeared in this edition of the policy as well as every edition issued since April 1, 2000.

I conclude, after reviewing your Step 1 in light of Adkins, Wicker, Torrence, the 15-day filing deadline from every edition of Policy Number GA-01.12 issued since April 1, 2000, as well as the exceptions to these deadlines from ¶ 14(g) and ¶ 15 of these editions, that you did not submit your Step 1 grievance within 15 days of the incident upon which you anchored the claims you presented in your Step 1, namely the date upon which SCDC both first began paying you for your prison industries labor and began applying statutorily mandated deductions to your pay pursuant to S.C. Code Ann. Section 24-3-40.

The grievance filing deadline established in every edition of the agency's Inmate Grievance System Policy applied and continues to apply to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the deadline applies to your grievance.

Moreover, you filed your Step 1 nearly two (2) years after SCDC first paid you for your voluntary participation in the prison industries project operated by SCDC at Broad River in which R.M. Design participated as the private industry sponsor. You also filed your Step 1 nearly two (2) years after SCDC began applying the statutorily mandated deductions to your prison industries pay pursuant to Section 24-3-40. For that matter, you filed your Step 1 nearly one (1) year after the South Carolina Supreme Court issued its decisions in Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under the agency's Inmate Grievance System Policy.

In making this determination, I rely on the following decisions from the South Carolina Administrative Law Court ["ALC"]: Daughtry, #250139, v. S.C. Dep't of Corr., Docket No. 04-ALJ-00783-AP; Grimmett, Jr., #102226, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00757-AP; Larrimore, #238126, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00470-AP; Manigault, #280550, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00756-AP; McLemore, #127966, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00023-AP; Pipkin, #283616, v. S.C. Dep't of Corr.,

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Docket No. 05-ALJ-04-00733-AP; Sapp, #218694, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00732-AP; Sumter, #242379, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00749-AP; Smiley, #262734, v. S.C. Dep't of Corr., Docket No. 08-ALJ-04-00571-AP; Williams, #187203, vs. S.C. Dep't of Corr., Docket No. 06-ALJ-04-622-AP; and Wright, #200123, v. S.C. Dep't of Corr., 2006 WL 1430140 (ALJD 2006).

I also rely upon the following decisions issued by the ALC since March 1, 2012: Ackerman, #266928, et al., v. S.C. Dep't of Corr., Docket Nos. 07-ALJ-04-00444-AP, et seq.; Arnold, #238375, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00200-AP; Bridgeman, #130350, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00610-AP; Gibson, #241326, v. S.C. Dep't of Corr., Docket No. 10-ALJ-04-00007-AP; Jones, #130817, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-0506-AP; Keitt, #277284, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-0519-AP; and Lampley, #97724, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00489-AP.

Additionally, in light of the chronology associated with the filing of your Step 1, I find that your claim is barred by the doctrine of laches.

To the extent that you claim in your Step 1 that you worked for or were otherwise "employed" by R.M. Design, I conclude that you never "worked" for nor were you ever "employed" by that entity. I also conclude that neither Adkins nor Wicker declared that you or inmates in your position were "employed" by SCDC, R.M. Design, for that matter, any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's decision in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of private industry sponsors like R.M. Design.

Therefore, to the extent you use the terms "worked for," "employee," "employed," or "employment" within your Step 1 grievance to describe your participation, I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Broad River.

Additionally, I deny your claim that you are entitled to any relief under Section 24-3-430(D), the so-called "prevailing wage" provision. Specifically, as the prison industries project in which you participated at Broad River was a project for which SCDC received certification under the federal government's Prison Industries Enhancement Certification Program ["PIECP"], I conclude that the provisions of Section 24-3-410(B)(7) – not Section 24-3-430(D) – applied to the rate of pay SCDC was required to remit to you under Section 24-3-40(A) for the labor you voluntarily provided to this project. In making this conclusion, I rely upon the decision issued by the circuit court in Adkins, which concluded that inmates who participated in an identically certified SCDC prison industries project did not possess a viable claim for back wages or higher wages under the provisions of Section 24-3-430(D).

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Even if you have a viable claim for relief under § 24-3-430(D), I conclude that SCDC paid you the proper rate of pay for the labor you voluntarily provided to the federally certified prison industries project it operates at Broad River. In making this conclusion, I rely upon the guidelines established by the federal government, specifically the United States Department of Justice's Bureau of Justice Administration [known as "BJA"]. BJA published the guidelines applicable to the PIECP in the Federal Register, specifically 64 FR 17000. Within these guidelines, BJA declared that the rate at which inmates are paid for the labor they voluntarily provide to PIECP projects, like the project in which you participated at Broad River, cannot be set below the federal minimum wage.

The federal minimum wage was \$5.15 from September 1, 1997 to July 23, 2007. The federal minimum wage increased to \$5.85 per hour on July 24, 2007 and it stayed at this rate until July 23, 2008. The federal minimum wage increased to \$6.55 per hour effective July 24, 2008 and it remained at that rate until July 23, 2009. The federal minimum wage increased again to \$7.25 per hour effective July 24, 2009 and it remains at that rate today.

Thus, with the possible exception of July 2007, August 2008, and July 2009, SCDC paid you at least the federal minimum wage for the labor you voluntarily provided to the prison industries project it operates at Broad River.

I also conclude that SCDC does not owe you \$1.90, \$2.85, or any other amount for every labor hour you voluntarily provided to the federally certified prison industries project operated by SCDC at Broad River. Under the contracts struck between SCDC and R.M. Design, SCDC legitimately charges R.M. Design an hourly rate for "overhead cost" in addition to the hourly rate SCDC pays inmates in accordance with both state and federal law.

The circuit court in Adkins concluded that SCDC's practice of invoicing private industry sponsors, like R.M. Design, such an hourly "overhead cost" was accepted by BJA, the federal agency responsible for certification of both the prison industries project at issue in Adkins and the prison industries project at issue in the instant case.

SCDC's assessment of this "overhead cost" does not violate any applicable South Carolina statute, because the assessment of this cost allows SCDC to comply with a variety of the applicable prison industries statutes, including Section 24-3-400. These statutes, including Section 24-3-400, either directly or indirectly compel SCDC to collect an hourly "overhead cost" or "administrative charge" from private industry sponsors, like R.M. Design, so that it may cover the expenses it incurs as a consequence of operating the project in which you voluntarily participated at Broad River.

Furthermore, I find that your claim of being entitled to complete and immediate access to your escrowed wages pursuant to § 24-3-40(B)(2) is without merit. Section 24-3-40(A)(5) requires SCDC to deduct 10% of an inmates wages and hold them "in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B) directs SCDC to "return a prisoner's wages held in escrow pursuant to [§ 24-3-40(A)]" only when an inmate leaves SCDC's custody. When

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June 7, 2012

Name	SCDC #	Grievance #	Project
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an inmate is serving a life sentence, Section 24-3-40(B)(2) provides the inmate with "the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice." This provision directs SCDC to distribute these escrowed monies only upon the inmate's death, and not prior to that event. Nothing in any provision of Section 24-3-40(B) authorizes an inmate to have complete and immediate access to any of these monies while still lawfully held in SCDC's custody. Any other interpretation would conflict with the remaining provisions of Section 24-3-40(B).

To the extent that you claim that SCDC is denying you interest on your escrowed wages, I find this claim is also without merit. SCDC complies with Section 24-3-40(A)(5) by depositing the interest you have earned on your monies held in escrow into your account every month. Each pay period you receive an account statement showing the amount of interest deposited into your account. Nothing in any provision of Section 24-3-40 or, for that matter, any other applicable prison industries statute requires that you receive a guaranteed interest rate comparable to Treasury Bills, Certificates of Deposits, or any other set interest rate.

To the extent you claim SCDC has unconstitutionally denied you of your property or liberty interest in these wages without due process of law, I deny your claim. Under Wicker, you and other inmates in your position may exercise your due process rights and litigate your pay disputes with SCDC through SCDC's inmate grievance system. Therefore, SCDC has not denied you due process of law and the filing deadline from the editions of the agency's Inmate Grievance System Policy applies to your claim.

Finally, regarding your demand for "interest" in your grievance, no decision of the South Carolina Supreme Court or any provision of any edition of the agency's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, or for that matter, costs or attorneys' fees in connection with SCDC's review and processing of your grievance.

Therefore, for all of the above stated reasons, I deny the claims you articulated your Step 1 grievance designated as BRCI-0594-07 in their entirety.

Due by 7/18/12

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Joshua Cramer
SCDC NUMBER: 251406 JUL 16 2012
INSTITUTION: BROAD RIVER GDE
HOUSING UNIT: Mont.-266 JUL 18 2012
WORK ASSIGNMENT: Gym INMATE GRIEVANCE

Office Use Only
Grievance No. BRC-0894-2
Code: General P1
Policy _____
Disc. Hear. _____
Class. _____
Date Received 7-19-2012
IGC Initials _____

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

see attachment.

Jeffrey Cramer 7-16-12
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED
RESPONSE

[Signature]
Signature

2/25/14
Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature

Date

IGC Signature

Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

Joshua Cram
#251406
month-266
Grievance No.
BRCI-0594-07

STEP 2 ATTACHMENT

First, I do not wish to appeal the issues I raised regarding the prevailing wage and overtime pay, however I do wish to appeal my issues regarding my escrowed wages.

In response to the warden's decision I would initially point out that the "15-day filing deadline" is being applied incorrectly in regards to my escrowed wages. The policy uses the verbage "within 15 days of the incident." The term "incident" is used in its singular form. In simple terms if SEDC did something wrong or unlawful, etc., then that inmate would have to file a grievance within 15 days of the thing which SEDC did. In my case my escrowed wages are being held unlawfully. This incident occurs everyday and has occurred everyday since I began working in P.I.-2 in 2005. As a result the one "incident" of denying me access to my escrowed wages has become multiple incidents and will continue to turn into more incidents. My issue revolves around whether SEDC has a right, legally, to deny me access to money that I lawfully earned. To attempt to bar a resolution of my claim by saying I did not file a grievance 15 days from the first time SEDC denied me access to my money is not in the interest of justice and makes it look ~~like~~ like if an inmate doesn't grieve an incident within 15 days of SEDC first doing it, then SEDC has a right to keep doing it regardless of whether it is unlawful or not.

In my step 1 I stated pursuant to law that I had a right to distribute my escrowed wages to a person of my choice. At no point in section 24-3-46(1)(2) does it say the prisoner's wages can only be returned "when an inmate leaves SEDC's custody" as the warden

stated in his decision. Rather the subsection simply states that a "prisoner serving a life sentence... shall have the option..." to distribute his escrowed wages to "... a person of his choice..."

My escrowed wages are monies that I lawfully earned. They belong to me, not anyone else. I should have a right to distribute these wages to a person of my choice for my benefit, as the Legislature intended when they stated in section 24-3-40(A)(5) that the wages were for the "benefit of the prisoner."

Lastly, in relation to the interest on the escrowed wages the percentage SCDC has become laughable at best. For example, in my last check on 1/1/10 I had \$3,444.58 in my Long Term Savings (LTS). By 10/11/11, almost two years later, my LTS grew to \$3,444.88. That is 30¢ in interest. In addition, the interest being paid to inmates differs from one inmate to the next. Some inmates are being paid a decent amount of interest while other inmates like myself are basically not being paid any interest at all.

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I have reviewed the Step 2 appeal you filed in your grievance designated as BRCI-0594-07. In your Step 2, you limited your appeal of the issues you raised in your original Step 1 grievance:

First, I do not wish to appeal the issues I raised regarding the prevailing wage and overtime pay, however I do wish to appeal my issues regarding my escrowed wages.

To be clear, by limiting your Step 2 appeal to cover only the issues regarding your escrowed wages, you have abandoned all of the claims you first raised in your Step 1 grievance regarding the "prevailing wage" and overtime pay.

Along with your Step 2, I have also reviewed your Step 1, and the warden's response to your Step 1. By this reply, I concur with the warden's response to all of the issues you raised in your Step 1 regarding your escrowed wages, and I deny your Step 2.

In your Step 1, you made the following claim about access to your escrowed wages:

Section 24-3-430(A)(5) & 24-3-430(B)(2) created a liberty interest in escrowed wages where in grievant is entitled to complete and immediate access to the amount of his escrowed wages to distribute them to persons or entities of his choice at the time said wages were escrowed for grievant's benefit, but grievant is serving life without parole and is denied access.

You further claimed in your Step 1 that you were entitled to interest as follows:

Grievant has a liberty interest in interest earned on the amount complained of in Issue #4, above, at a guaranteed investment rate comparable to Treasury Bills or Certificates of Deposit.

In your Step 2, you re-stated the claims you made in your Step 1 in the following manner:

In my Step 1, I stated pursuant to law that I had a right to distribute my escrowed wages to a person of my choice. At no point in section 2403040(B)(2) does it say the prisoner's wages can only be returned "when an inmate leaves SCDC's custody" as the warden stated in his decision. Rather the subsection simply states that a "person serving a life sentence ... shall have the option ... to distribute his escrowed wages to ... a person of his choice ..."

You then argued as follows in your Step 2:

My escrowed wages are monies that I lawfully earned, they belong to me, not anyone else. I should have a right to distribute these wages to a person of my choice for my benefit, as the Legislature intends when the stated in

Step 2 Grievance Response

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section 24-3-40(A)(5) that the wages were for the "benefit of the prisoner."

You ended your Step 2 as follows:

Lastly, in relation to the interest on the escrowed wages the percentage SCDC has become laughable at best. For example, in my last check on 1/1/10 I had \$3,444.58 in my Long Term Savings (LTS). By 10/11/11, almost two years later, my LTS grew to \$3,444.88. That is [\$0.30] in interest. In addition, the interest being paid to inmates differs from one inmate to the next. Some inmates are being paid a decent amount of interest while other inmates like myself are basically not being paid any interest at all.

As the warden observed in his response to your Step 1, your prison industries participation and pay records were reviewed by the responsible officials at SCDC Headquarters in Columbia. These records confirm that you voluntarily participated in the prison industries project operated by SCDC at Broad River CI in which R.M. Design participates as the private industry sponsor. These pay records also reflect that SCDC began paying you on or about July 15, 2005 for the labor you voluntarily provided in the project at Broad River, and they reflect that SCDC remitted its final payment to you on or about January 1, 2010.

As the warden correctly stated in his response, two (2) decisions issued by the South Carolina Supreme Court in 2004 apply to the claims you presented in your Step 1: Adkins v. S.C. Dep't of Corr. and Wicker v. S.C. Dep't of Corr. Both of these cases discussed S.C. Code Ann. Section 24-3-40, Section 24-3-310, *et seq.* and, specifically, Section 24-3-430(D). The South Carolina Supreme Court issued these decisions on August 23, 2004.

Adkins and Wicker recognized that inmates possessed a pre-existing right to file administrative grievances concerning their prison industries pay. Under Wicker, such grievances must be filed, processed, and determined in accordance with the provisions of the agency's Inmate Grievance System Policy. In Torrence v. S.C. Dep't of Corr., the South Carolina Supreme Court issued another decision which applies to your claims. In Torrence, the South Carolina Supreme Court again acknowledged that inmates could file grievances in accordance with the agency's Inmate Grievance System, currently designated as Policy Number GA-01.12, by which they could challenge their prison industries pay.

As accurately explained by the warden in his response, SCDC has published editions of its Inmate Grievance System Policy for nearly 20 years if not longer. Starting in the mid-1990s, SCDC's Inmate Grievance System Policy consisted of two (2) parts: Policy Number PS-10.01 and Policy Number PS-10.01 (OP). ¶ 14(a) of Policy Number PS-10.01 (OP) required that inmates submit their Step 1 grievance forms "within seven (7) days of the alleged incident." Exceptions to the deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

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Name	SCDC #	Grievance #	Project
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On October 1, 1997, SCDC issued new editions of Policy Numbers PS-10.01 and PS-10.01 (OP). In the October 1, 1997 edition of Policy Number PS-10.01 (OP), SCDC changed ¶ 14(a) to require that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

As the warden further explained in his response to your Step 1, SCDC issued a new edition of its Inmate Grievance System Policy on January 30, 1998, and, just as before, the policy consisted of two (2) parts. However, SCDC re-designated these two (2) parts as Policy Number GA-01.12 and Policy Number GA-01.12 (OP). ¶ 14(a) of Policy Number GA-01.12 (OP) required that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Once again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

The agency consolidated Policy Numbers GA-01.12 and GA-01.12 (OP) into a single policy when it issued a new edition of Policy Number GA-01.12 on April 1, 2000, and the 15-day filing deadline appeared in this edition of the policy as well as every edition issued since April 1, 2000.

Like the warden, I conclude, after reviewing your Step 1 in light of Adkins, Wicker, Torrence, the 15-day filing deadline from every edition of Policy Number GA-01.12 issued since April 1, 2000, as well as the exceptions to these deadlines from ¶ 14(g) and ¶ 15 of these editions, that you did not submit your Step 1 grievance within 15 days of the incident upon which you anchored the claims you presented in your Step 1, namely the date upon which SCDC both first began paying you for your prison industries labor and began applying statutorily mandated deductions to your pay pursuant to S.C. Code Ann. Section 24-3-40.

I fully concur with the warden's determination that the grievance filing deadline established in every edition of the agency's Inmate Grievance System Policy applied and continues to apply to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the deadline applies to your grievance.

As you filed your Step 1 on or about April 26, 2007, I find that the warden correctly determined that you filed your Step 1 nearly two (2) years after SCDC first paid you for your voluntary participation in the prison industries project operated by SCDC at Broad River in which R.M. Design participated as the private industry sponsor. I also find that that warden correctly determined that you also filed your Step 1 nearly two (2) years after SCDC began applying the statutorily mandated deductions to your prison industries pay pursuant to Section 24-3-40, including Section 24-3-40(A)(5). The warden also correctly determined that you filed your Step 1 nearly one (1) year after the South Carolina Supreme Court issued its decisions in Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under the agency's Inmate Grievance System Policy.

In denying your Step 2, I concur with the warden's reliance on all of the decisions from the ALC that he cited in his response to your Step 1. Additionally, in denying your Step 2, I have considered the decision issued by the South Carolina Court of Appeals in *Patterson v. S.C. Dep't of Corr.*, 2010-UP-292 (S.C. Ct. App. May 27, 2010) ("[SCDC] denied Patterson's grievance based on [¶ 13.1], which states an inmate must file a grievance within fifteen days of the alleged

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incident. ... Patterson should have filed his grievance within fifteen days of December 6, 2004, when he originally discovered that [SCDC] lost his inmate property.”).

Additionally, in light of the chronology associated with your filing of your Step 1, I concur with the warden’s determination that your claims are barred by the doctrine of laches.

Regarding your claim of being entitled to complete and immediate access to the amount of your escrowed monies pursuant to Section 24-3-40(B)(2), I agree with the warden’s denial of your claim. Section 24-3-40(A)(5) requires SCDC to deduct 10% of an inmate’s wages and hold them “in an interest bearing escrow account for the benefit of the prisoner.” Section 24-3-40(B) directs SCDC to “return a prisoner’s wages held in escrow pursuant to [Section 24-3-40(A)]” only when an inmate leaves SCDC’s custody. When an inmate is serving a life sentence, Section 24-3-40(B)(2) provides the inmate with “the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice.” You did not completely quote Section 24-3-40(B)(2) in your Step 2. The entirety of this provision directs SCDC to distribute these escrowed monies only upon the inmate’s death, and not prior to that event. Nothing in any provision of Section 24-3-40(B) authorizes an inmate to have complete and immediate access to any of these monies while still lawfully held in SCDC’s custody. Any other interpretation would conflict with the remaining provisions of Section 24-3-40(B).

You further asserted in your Step 2 that, by its interpretation of Section 24-3-40(B), SCDC is denying you any benefit from their escrowed monies without access to the principal or interest. Again, I deny your claim. You do receive a benefit under the provisions of Section 24-3-40(B)(2), namely the option to designate, during your lifetime, persons or entities of your choice who will receive your escrowed monies, and you may do so without the need to prepare and execute a will.

In both your Step 1 and your Step 2, you demanded immediate access to your escrowed monies so that you could immediately distribute the monies to persons or entities of your choice. However, I conclude that you will not receive any personal benefit by immediately distributing such monies to persons or entities of your choice. Therefore, I concur with the warden’s determination that no provision of Section 24-3-40 requires inmates to have complete and immediate access to any of these monies while they are still lawfully held in SCDC’s custody.

You further asserted in your Step 2 that SCDC does not apply the proper rate of interest to the monies subject to Section 24-3-40(A)(5), and I again deny your claim. SCDC complies with Section 24-3-40(A)(5) by depositing interest you have earned on your monies held in escrow into your account every month. SCDC receives interest payments from the State Treasurer’s Office and then SCDC deposits that interest into your escrow account. The amount of interest you receive on such monies is simply not determined by SCDC. Finally, I agree with the warden’s conclusion that nothing in any provision of Section 24-3-40 or any other applicable prison industries statute requires that you receive a guaranteed interest rate comparable to Treasury Bills, Certificates of Deposits, or any other set interest rate.

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To the extent that you claimed in your Step 2 that SCDC has unconstitutionally denied you of your property interest in these monies without due process of law, I deny your claim. As recognized by our Supreme Court in Wicker and Torrence, SCDC's inmate grievance system complies with minimum due process requirements. As also recognized in Wicker, you and other inmates in your position may exercise your pre-existing due process rights and litigate your PI pay disputes with SCDC through SCDC's Inmate Grievance System Policy. Therefore, SCDC has not denied you due process of law, and the filing deadline from the various editions of the agency's policy applies to the PI pay claims you originally articulated in your Step 1, including your claim to the monies subject to Sections 24-3-40(A)(5) and 24-3-40(B)(2).

For all of the above stated reasons, I concur with the warden's response to your Step 1 grievance designated as BRCI-0594-07 concerning the issues you raised about your escrowed wages, and I deny your Step 2 appeal.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Joshua Cramer; #251406

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. ALJ-04-
GRIEVANCE NO.: BRCI-0594-07

Notice is hereby given that Joshua Cramer does hereby appeal the final decision of the South Carolina Department of Corrections dated 2-25-14 and received on 2-26-14, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

S.C. Code Ann. § 24-3-430(A)(5) requires SCDC to deduct 10% of an inmate's wages and hold them "in an interest bearing escrow account for the benefit of the prisoner." § 24-3-430(B)(2) provides the inmate with "the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice." SCDC is violating the provision of § 24-3-430(B)(2) by not allowing me to distribute my escrowed wages to a person of my choice and is holding my escrowed wages in an account bearing little to no interest.

Joshua Cramer

Appellant's Name

Lieber C/I SA-17/P.O. Box 205

Mailing Address

Ridgeville, SC 29472

City, State, Zip Code

Joshua Cramer

Signed

3-3-14

Dated

CERTIFICATE OF SERVICE

I hereby certify that I, Joshua Cramer (your name), on the 5 day of March, 20 14, in Ridgeville (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served:

Clerk's Office / SC Admin. Law Court

Address: 1205 Pendleton St., Suite 224

City, State, Zip Code: Columbia, SC 29201

JUL 27 2012

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

MALONE, THOMPSON
SUMMERS & OTT, LLC

Francis Ackerman, #266928, et al.,	)	Docket Nos. 07-ALJ-04-00444 through 00449-AP
	)	Docket Nos. 07-ALJ-04-00500 through 00548-AP
	)	0549-IJ, 0550 through 07-00559-AP
Appellants,	)	Docket Nos. 07-ALJ-04-00623 through 00632-AP
	)	Docket Nos. 07-ALJ-04-00671 through 00677-AP
	)	Docket Nos. 07-ALJ-04-00691, 0752, 0798, 0826,
	)	0856 through 0868-AP
vs.	)	Docket Nos. 07-ALJ-04-00869 through 00872-AP
	)	Docket Nos. 07-ALJ-04-00444, 0876, 0885
	)	Docket Nos. 08-ALJ-04-00141 through 00149-AP
	)	Docket Nos. 08-ALJ-04-00169 through 0171-AP
	)	Docket No. 08-ALJ-04-00192-AP
	)	Docket Nos. 08-ALJ-04-00966 through 01022-IJ
South Carolina Department of Corrections,	)	Docket Nos. 08-ALJ-04-01023 through 01045-IJ
	)	Docket No. 09-ALJ-04-00304-IJ
	)	
Respondent.	)	SECOND AMENDED ORDER¹

STATEMENT OF THE CASE

In this consolidated action before the Administrative Law Court (ALC), the Appellants appeal the denial by the South Carolina Department of Corrections (Department or DOC) of 197 administrative grievances filed by them under DOC Policy Number GA-01.12 (GA-01.12). The Appellants include current and former inmates of the Department who either currently participate or at one time participated in the prison industries project operated by the Department at Lieber Correctional Institution (Lieber) in which Williams Technologies, Inc. (WTI), and now Caterpillar, Inc., act as the private industry sponsors. The Appellants argue that they are entitled to back pay and a higher hourly rate of pay for the labor they have provided or currently provide to the prison industries project operated at Lieber. Specifically, the Appellants contend that they are entitled to the "prevailing wage" under S.C. Code Ann. § 24-3-430(D) (2007).

Pursuant to an April 14, 2010 order, this court, in the interest of judicial economy, instructed the parties that it would consider the issues relevant to the Appellants' appeals in three

¹ This Order is issued pursuant to an Order of the South Carolina Court of Appeals allowing the Administrative Law Court to issue this Second Amended Order to correct a clerical error. This Order is amended to correct the caption to include the docket numbers of four (4) inmates inadvertently omitted.

FILED

July 26, 2012

SC ADMIN. LAW COURT

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levels. In the first level of review, which was set forth in an order dated March 10, 2011, the court addressed the following two issues: (1) did Adkins v. S.C. Department of Corrections, 360 S.C. 413, 602 S.E.2d 51 (2004) and Wicker v. S.C. Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) create new substantive rights and/or new remedies? and (2) do Adkins and Wicker apply prospective or retrospectively? As discussed in the March 10, 2011 order, the court found that Adkins and Wicker created neither new substantive rights nor new remedies and that both decisions applied retrospectively.

The court now turns to the second level of review, which involves the timeliness of the filing of the Appellants' grievances under GA-01.12. The Appellants make the following arguments: (1) the Appellants' grievances are not time-barred under the fifteen-day time limit for filing grievances set forth in Paragraph 13.1 of GA-01.12 because they concern policies/procedures and thus fall under Paragraph 13.9; (2) the Appellants had reasonable cause under Paragraph 13.9 of GA-01.12 not to file within Paragraph 13.1's fifteen-day time limit; (3) the Department's application of Paragraph 13.1 violated the Appellants' due process rights because it cut off the Appellants' claims before they accrued; (4) the Department waived Paragraph 13.1 because it did not raise Paragraph 13.1 until the Step 2 appeal and it considered the Appellants' grievances on the merits before invoking Paragraph 13.1; (5) the Department was equitably estopped from raising Paragraph 13.1; (6) the Appellants were "effectively barred" from exercising their grievance and appeal rights before Adkins and Wicker and therefore Paragraph 13.1's fifteen-day filing deadline was tolled prior to the issuance of those decisions; (7) Paragraph 13.1's fifteen-day filing deadline was tolled by the filing of the Appellants' class action suit in circuit court; and (8) the Appellants complied with Paragraph 13.1 by filing their grievances within fifteen days of a term of employment.

BACKGROUND

In 2002, the Appellants filed a class action lawsuit in circuit court against the Department and WTI in which they sought back pay and higher current pay under the provisions of Section 24-3-430(D). In that lawsuit, which was captioned Williams v. S.C. Department of Corrections, the Appellants alleged a cause of action under South Carolina's Payment of Wages Act, claiming they were due lost wages because they were not paid the "prevailing wage" as specified in Section 24-3-430(D).

On August 23, 2004, while the Appellants' class action lawsuit was pending, the Supreme Court issued its decisions in Wicker and Adkins. In those two cases, inmates who then participated or at one time participated in a prison industries projects operated by the Department alleged that they were entitled to the "prevailing wage" pursuant to Section 24-3-430(D). As discussed in this court's March 10, 2011 order, the Supreme Court held that Section 24-3-430(D) did not give rise to a private cause of action,² but that inmates could pursue their claims under the Department's grievance policies and, if necessary, appeal the Department's decision to the ALC.³

After Adkins and Wicker were issued on August 23, 2004, the Appellants' counsel filed grievances with Department officials at Lieber on behalf of the Appellants. Although Department officials had begun processing those grievances, on November 3, 2004, the circuit court judge presiding over the class action lawsuit, which was still active, stayed the Department's efforts to process and adjudicate all administrative grievances—including the Appellants'—which it had received from or on behalf of inmates who articulated pay claims attributed to their participation in the Department's project at Lieber. After it imposed this stay on November 3, 2004, however, the circuit court granted motions for dismissal filed by both the Department and WTI, and, by an order filed on July 1, 2005, the circuit court dismissed the Appellants' class action lawsuit and decertified the class it had originally recognized. In its July 1, 2005 order, the circuit court also lifted the stay it had imposed on November 3, 2004. However, because the Appellants subsequently appealed the circuit court's order, the stay imposed by the circuit court on November 3, 2004 was reimposed.

On February 26, 2007, the South Carolina Supreme Court affirmed the circuit court's dismissal of the class action lawsuit in its opinion, Williams v. S.C. Department of Corrections, 372 S.C. 255, 641 S.E.2d 885 (2007), and, as a result, the stay imposed by the circuit court on November 3, 2004 ceased being effective on or about May 22, 2007. Thereafter, the Department resumed processing and adjudicating the Appellants' grievances. Ultimately, the Department issued final decisions denying each Appellant's respective grievance, largely finding that the grievances were not filed within the fifteen-day time period required under Paragraph 13.1 of

² Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55.

³ Wicker, 360 S.C. at 423-25, 602 S.E.2d at 57-58.

GA-01.12. The Appellants timely appealed those decisions to this court. Subsequently, during a conference call held on February 25, 2010, the parties agreed to consolidate the appeals for the purposes of briefing and filing the record.

ISSUES ON APPEAL

1. Are the Appellants' grievances not time-barred under the fifteen-day time limit for filing grievances set forth in Paragraph 13.1 of GA-01.12 because they concern "policies/procedures" and thus fall under Paragraph 13.9 of GA-01.12?
2. Did the Appellants have reasonable cause not to file within Paragraph 13.1's fifteen-day time limit?
3. Did the Department's application of Paragraph 13.1 violate the Appellants' due process rights because it cut off the Appellants' claims before they accrued?
4. Did the Department waive its right to raise Paragraph 13.1's fifteen-day time limit?
5. Was the Department equitably estopped from raising Paragraph 13.1?
6. Was the fifteen-day time limit set forth in Paragraph 13.1 tolled until after the issuance of Adkins and Wicker because, prior to that time, the Appellants were "effectively barred" from exercising their grievance and appeal rights?
7. Was the fifteen-day time limit set forth in Paragraph 13.1 tolled by the filing of the Appellants' class action suit in circuit court?
8. Did the Appellants comply with Paragraph 13.1 by filing their grievances within fifteen days of a term of employment?

STANDARD OF REVIEW

As set forth above, this case is before the ALC on appeal from consolidated final decisions of the Department pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2010) of the Administrative Procedures Act (APA). As such, the Administrative Law Judge (ALJ) sits in an appellate capacity under the APA rather than as an independent finder of fact. In South Carolina, the provisions of the APA—specifically Section 1-23-380(A)(5)—govern the circumstances in which an appellate body may reverse or modify an agency decision. That section states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (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.

S.C. Code Ann. § 1-23-380(5) (Supp. 2010).

DISCUSSION

I. Did the Appellants' claims involve a DOC "policy/procedure" such that there was no time limit to file under Paragraph 13.9 of GA-01.12?

Paragraph 13.1 of GA-01.12 generally requires that Step 1 grievances be filed "within 15 days of the alleged incident." DOC Policy Number GA-01.12, ¶ 13.1. However, Paragraph 13.9 of GA-01.12 provides that "[e]xceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures." DOC Policy Number GA-01.12, ¶ 13.9. In the present case, the Appellants contend that their grievances concerned DOC "policies/procedures" and that no time limit therefore applied to the filing of their grievances. I disagree.

Before delving into the specifics of the Appellants' argument, it is necessary to briefly discuss the nature of, and the purpose behind, Paragraph 13.1's fifteen-day filing deadline. By issuing GA-01.12, the Department has unquestionably established a prescribed procedure for handling inmate grievance matters that has been approved by the South Carolina Supreme Court. See Al-Shabazz v. State, 338 S.C. 354, 373, 527 S.E.2d 742, 752 (2000) ("We hold that Department's disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in Wolff v. McDonnell, *supra*. We note that Department also prepared its grievance procedures in compliance with the Civil Rights of Institutionalized Persons Act."). The Department's prescribed procedure further sets forth a specific time frame to exercise the rights created under those provisions. Therefore, as discussed below, it appears that the Department's regulations are a "statute of creation."

Under South Carolina law, a statute that creates a new liability and affixes the time within which an action may be commenced is a “statute of creation,” and commencement within the time affixed is an indispensable condition of the action. Knight Publ’g Co. v. Univ. of S.C., 295 S.C. 31, 33, 367 S.E.2d 20, 22 (1988), overruled on other grounds by McLendon v. S.C. Dep’t of Highways and Public Transp., 313 S.C. 525, 443 S.E.2d 539 (1994). Although the failure to timely commence an action pursuant to a statute of creation is not a subject matter jurisdiction defect, such an action “cannot be maintained unless brought within the time allowed by that statute.” Simpson v. Sanders, 314 S.C. 413, 415 n.1, 445 S.E.2d 93, 94 n.1 (1994). When a statute both creates a cause of action and includes a time limit for its commencement, compliance with the time limit is a condition precedent to the maintenance of the action. 54 C.J.S. Limitations of Actions § 31 (updated Dec. 2011). “Such a statutory time limit conditions the existence of the right of action, thereby creating a substantive, rather than procedural, limitation on the right. Bringing suit within the prescribed time is a condition of liability itself, not of the remedy alone.” Id.

The rationale behind a statute of creation is similar to that of a statute of limitations. Significantly, South Carolina courts have held that “[s]tatutes of limitations are not simply technicalities,” but rather are “fundamental to a well-ordered judicial system.” Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). “The purpose of statutes of limitation is to ensure litigation is ‘brought within a reasonable time in order that evidence be reasonably available and there be some end to litigation.’” Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (quoting Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct. App. 2008)). “Statutes of limitation embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690 (quoting Moates, 322 S.C. at 176, 470 S.E.2d at 404). Moreover, statutes of limitations relieve courts of the burden of trying stale claims of those who have “slept on their rights.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690.

In the present case, the court finds that the Appellants’ interpretation of the term “policies/procedures” in Paragraph 13.9 is overly expansive. The Appellants appear to argue that the term, which is not defined in GA-01.12, refers to any “act or method of proceeding in an

action.” However, if the term were construed that broadly, Paragraph 13.9’s exception would effectively swallow Paragraph 13.1’s general rule. Because such a construction would fail to give proper effect to Paragraph 13.1’s fifteen-day filing deadline, it must be rejected. Cf. State ex rel. McLeod v. Nessler, 273 S.C. 371, 373, 256 S.E.2d 419, 420 (1979) (“In determining the meaning of a statute, it is the duty of this Court to give force and effect to all parts of the statute, if possible.”); Hinton v. S.C. Dep’t of Prob., Parole & Pardon Servs., 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004) (“Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect”) (emphasis added).

Moreover, the Appellants’ broad interpretation of the term “policies/procedures” does not comport with public policy. The Department has a legitimate interest in investigating grievances while they are still new, and thus public policy calls for the application of some limitations period to the Appellants’ prevailing wage claims. See Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004) (noting that the prison system has a legitimate interest in investigating complaints while they are still fresh); see also Woodford v. Ngo, 548 U.S. 81, 95 (2006) (“When a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved.”). Here, the fifteen-day filing deadline from Paragraph 13.1 is the only limitations period applicable to these claims.⁴ Therefore, ruling in favor of the Appellants would mean that inmates would not be required to file prevailing wage grievances within any set time period. Due in part to public policy concerns over such a result, this court has consistently held that prevailing wage claims do not involve the Department’s “policies or procedures.” See, e.g., Lawson v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 12, 2007); Wright v. S.C. Dep’t of Corr., 06-ALJ-04-00114-AP, 2006 WL 1430140 (S.C. Admin. Law Ct. Apr. 28, 2006).

The importance of filing deadlines is underscored by the facts of this case. The record demonstrates the Department did not begin receiving Step 1s from the Appellants regarding their prevailing wage claims until September 22, 2004. The record also reflects that a significant

⁴ The statutory provisions upon which Appellants base their pay claims do not create a private right of action. See Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Therefore, statutes of limitations derived from state law do not apply to Appellants’ claims. See Telford v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 14, 2007).

number of the Appellants began participating in the prison industries project at Lieber in 1999. Thus, approximately five years passed between when these Appellants began participating in the project and when they filed their Step 1s challenging their pay. Clearly, the passage of five years could significantly affect the Department's ability to defend the Appellants' claims.⁵

In contrast to the Appellants, the Department—the agency that drafted Paragraph 13.9—presents a very persuasive construction of the term “policies/procedures.” In its brief, the Department argues:

[T]he terms “policies” and “procedures” constitute approved guidelines for handling the agency's day-to-day operations as well as statements expressing the basic expectations of conduct for agency staff and inmates. More formally stated, the terms “policies” and “procedures” constitute agency directives deemed by the responsible agency officials as “necessary to preserve internal order and discipline, and to maintain institutional security in the prison.”

(footnote and citations omitted). This interpretation is consistent with the way in which “policies/procedures” is used throughout GA-01.12. See Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Ct. App. 2003) (holding that undefined terms “must be construed in context”). Significantly, nearly all of the references to “policy/procedure” in GA-01.12 are to the official policies and procedures set forth within that document or another similar operating document issued by the Department. See, e.g., DOC Policy Number GA-01.12, ¶ 1.3 (“Every inmate assigned to a South Carolina Department of Corrections (SCDC) institution is eligible to utilize the grievance system as set forth in this policy/procedure.”) (emphasis added); DOC Policy Number GA-01.12, Note to ¶ 10.5 (“The Warden's decision to grant restitution/monetary reimbursement will not require additional approval to have state provided like/issued items issued or deposits made to the grievant's E.H. Cooper Account so long as the amount of reimbursement is within the monetary limits of SCDC Policy/Procedure OP-22.03”) (emphasis added); DOC Policy Number GA-01.12, ¶ 13.1 (“No inmate (except the grievant, if s/he requests it) and no employee (other than those specified in this policy/procedure) will be given a copy of a grievance.”) (emphasis added); DOC Policy

⁵ The court notes in this regard that the statutory deadline for filing wage recovery claims under South Carolina's Payment of Wages Act is three years. See S.C. Code Ann. § 41-10-80(C) (Supp. 2010) (“Any civil action for the recovery of wages must be commenced within three years after the wages become due.”).

Number GA-01.12, ¶ 17 (“The Inmate Grievance Branch will serve as monitor to ensure compliance with **this policy/procedure.**”) (emphasis added).

In addition to being supported by the text of GA-01.12, the Department’s interpretation of the term “policies/procedures” in Paragraph 13.9 avoids the public policy problems inherent in the Appellants’ construction. Under the Department’s interpretation, the filing of a “policies/procedures” grievance under Paragraph 13.9 would not force the Department to defend actions it took many years ago. Rather, the Department would merely be required to determine whether the “policies/procedures” it currently has in effect should be changed.

I find that the Department’s interpretation of “policies/procedures” is reasonable and should be accepted by this court. In that light, it is clear that the Appellants’ prevailing wage claims do not concern “policies/procedures” as that term is used in Paragraph 13.9.

The Appellants’ attempt to argue otherwise by pointing to this court’s use of the term “policies” in its March 10, 2011 order is unpersuasive. Specifically, Appellants refer to the following portion of the court’s order:

Paragraph 7 of DOC Policy Number GA-01.12, which has existed in some form since May 1, 1996, sets forth the issues that are considered grievable by DOC. Among other grievable issues, it includes the following: “Department policies/procedures, directives, or conditions which directly affect an inmate.” DOC Policy Number GA-01.12, ¶ 7.1 (emphasis added). **Unquestionably, inmates are “directly affect[ed]” by DOC policies that cause them to be paid less than that required by law.** Thus, this provision, which is very broad in scope, encompasses prevailing wage claims.

(emphasis added).

Although the court employed the term “policies” in discussing the Appellants’ claims, its use of that term was made in the context of determining whether the Appellants’ claims were grievable under Paragraph 7.1 of GA-01.12. The court was simply describing the Appellants’ claims; it was not ruling on whether the Department did in fact have policies to underpay inmates. Moreover, in utilizing the term “policies,” the court was referring to its broad meaning as “course[s] of action,”⁶ not to the meaning ascribed to the term in Paragraph 13.9. The sentence highlighted above was meant to convey the court’s conclusion that the Department’s

⁶ See Dictionary.com, <http://dictionary.reference.com> (last visited Jan. 23, 2012) (defining “policy”).

alleged action in the case (i.e., deciding to pay the Appellants less than the prevailing wage) would have, if true, created a "condition" that "directly affected" the Appellants.⁷

While the Appellants contend that the term "policies" should be given the same meaning in Paragraph 7.1 as it is in Paragraph 13.9, Paragraph 7.1 makes grievable not only "policies/procedures" that directly affect inmates, but also "directives" and "conditions." See DOC Policy Number GA-01.12, ¶ 7.1 ("The following issues will be considered grievable: Department policies/procedures, directives, or conditions which directly affect an inmate.") (emphasis added). Thus, ruling that the Appellants' grievances do not concern "policies/procedures" under Paragraph 13.9 is not inconsistent with ruling that the Appellants' claims were grievable under Paragraph 7.1.

For the foregoing reasons, I conclude that prevailing wage claims do not constitute grievances concerning "policies/procedures" under Paragraph 13.9 of GA-01.12. Rather, I find that prevailing wage claims are "incident" grievances and thus must be filed within the fifteen-day timeframe set forth in Paragraph 13.1.

II. Did the Appellants have reasonable cause under Paragraph 13.9 not to file within Paragraph 13.1's fifteen-day time frame?

The Appellants next argue that, if this court determines that their Step 1 grievances constituted "incident" grievances and, therefore, were subject to Paragraph 13.1's fifteen-day filing deadline, they had "reasonable cause" under Paragraph 13.9 not to file their Step 1s before the South Carolina Supreme Court issued its opinions in Adkins and Wicker. Specifically, the Appellants contend that the Department's "practice of denying grievability" for prevailing wage claims, as well as the ALC's en banc order in McNeil v. South Carolina Department of Corrections, 00-ALJ-04-00336-AP (S.C. Admin. Law Ct. Sept. 5, 2001), "effectively barred"

⁷ In this court's view, the Appellants' wage rates were "condition[s]" affecting their participation in the prison industries project operated at Lieber. Indeed, the Prison Industries Act specifically refers to inmates' "rates of pay" as "conditions of employment." See S.C. Code Ann. § 24-3-315 (2007) (The director must determine prior to using inmate labor in a prison industry project that it will not displace employed workers, that the locality does not have a surplus of available labor for the skills, crafts, or trades that would utilize inmate labor, and that the rates of pay and other conditions of employment are not less than those paid and provided for work of similar nature in the locality in which the work is performed.") (emphasis added).

them from exercising their grievance and appeal rights prior to the issuance of Adkins and Wicker.⁸ I disagree.

Paragraph 13.9 of GA-01.12 provides in pertinent part:

Exceptions [to the 15 day time limit requirement] may . . . 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.**

DOC Policy Number GA-01.12, ¶ 13.9 (emphasis added).

Paragraph 13.9 clearly states that “documented reasonable cause” must be shown as to why the fifteen-day time limit “was not met,” and that any such waiver of the time limit must be “requested by the grievant.” Thus, exceptions to the fifteen-day filing deadline are not automatic or guaranteed. Instead, the grievant must affirmatively request a waiver to the fifteen-day time limit and provide documented reasonable cause in support for such a request.

As reflected by the record, no Appellant requested a waiver to the fifteen-day time limit in his Step 1 grievance by which he asserted “reasonable cause” as permitted by Paragraph 13.9. Also, no Appellant provided “documented reasonable cause” in the manner required by Paragraph 13.9. Therefore, no Appellant satisfied the procedural requirements set forth in Paragraph 13.9.

Instead, the vast majority of the Appellants first explicitly invoked such a “reasonable cause” exception in their Notices of Appeal to this court. By only invoking this exception within their Notices of Appeal, the Appellants failed to afford the Department an opportunity to consider their request. Accordingly, this issue has not been properly preserved by the Appellants. See Brown v. S.C. Dep’t of Health & Envtl. Control, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002) (“[I]ssues not raised to and ruled on by the agency are not preserved for judicial consideration.”); Kiawah Resort Assocs. v. S.C. Tax Comm’n, 318 S.C. 502, 505, 458 S.E.2d 542, 544 (1995) (holding that a court reviewing a decision of an administrative agency on appeal cannot consider issues that were not raised to and ruled upon by the agency).

⁸ In McNeil, the ALC held that its appellate jurisdiction in inmate appeals was limited to either: (1) cases in which an inmate contended that prison officials had erroneously calculated his sentence, sentence related credits, or custody status; or (2) cases in which the Department had taken an inmate’s created liberty interest as punishment in a major disciplinary hearing.

Furthermore, even if this issue were preserved, I find that it lacks merit. In its March 10, 2011 order, this court expressly held that “Adkins and Wicker did not create new substantive rights, new grievance remedies, or new appeal remedies.” In doing so, the court explained that under the broad provision of Paragraph 7.1 of GA-01.12, the Appellants’ prevailing wage claims were grievable and had, in fact, been held to be so by an Administrative Law Judge in 2001.

This court also specifically rejected the Appellants’ argument that the ALC’s decision in McNeil made prevailing wage claims unappealable prior to the issuance of Wicker. The court explained: “Because the ALC is a lower court, its decisions do not constitute binding precedent. Given that the ALC cannot create judicial precedent, it certainly cannot answer legal questions with “finality.” (citations omitted).

Indeed, as the Department correctly notes, the McNeil decision was not the final word on the appealability of inmate grievances. In Sullivan v. S.C. Dep’t of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003), a decision issued a year prior to Adkins and Wicker, our Supreme Court specifically instructed the ALC to refrain from relying upon McNeil when determining its jurisdiction to hear inmate appeals. See id. at 445 n.5, 586 S.E.2d at 128 n.5 (“[B]ecause we know McNeil has been relied upon by the ALJ in other cases to deny jurisdiction, the ALJD and the circuit court are instructed to look to this opinion, not McNeil, for guidance in future cases.”). Moreover, in that case, the Supreme Court reiterated its holding in Al-Shabazz that procedural due process was guaranteed whenever an inmate was deprived of an interest encompassed by “the Fourteenth Amendment’s protection of liberty and property.”⁹ Id. at 441-42, 586 S.E.2d at 126 (emphasis added). Notwithstanding the issuance of Sullivan in August 2003, the earliest any of the Appellants filed a grievance regarding their prevailing wage claims was September 22, 2004. Thus, in light of Sullivan, it seems disingenuous for the Appellants to suggest that they would have filed their grievances earlier had it not been for McNeil.

For these reasons, I find that the Appellants’ contention that they were “effectively barred” from filing their Step 1s before the issuance of Adkins and Wicker is without merit.

⁹ In Al-Shabazz, our Supreme Court, quoting U.S. Supreme Court precedent from 1972, held that “[t]he requirements of procedural due process apply . . . to the deprivation of interests encompassed by the Fourteenth Amendment’s protection of liberty and property.” Al-Shabazz, 338 S.C. at 369, 527 S.E.2d at 750 (quoting Bd. of Regents of State Colleges v. Roth, 408 U.S. 564, 569 (1972)).

III. Did the Department violate the Appellants' due process rights by applying the fifteen-day filing deadline in Paragraph 13.1 to their claims?

Next, the Appellants argue that their right to file Step 1 grievances regarding their prevailing wage claims did not accrue until the issuance of Adkins and Wicker and that they could not enforce such rights until the issuance of those two decisions. Therefore, they argue that the Department denied them due process by applying Paragraph 13.1's fifteen-day filing deadline to those grievances involving prevailing wage claims that arose prior to the issuance of Adkins and Wicker. I disagree.

As discussed above, this court's March 10, 2011 order previously determined that "Adkins and Wicker did not create new substantive rights, new grievance remedies, or new appeal remedies." Thus, the court has already determined that the Appellants possessed grievance rights and appellate remedies concerning their prevailing wage claims prior to the Supreme Court's issuance of Adkins and Wicker.

Furthermore, it should be noted that, in Al-Shabazz, 338 S.C. 354, 374-75, 527 S.E.2d 742, 753 (2000), our Supreme Court held that "[DOC]'s disciplinary and grievance procedures comply with the minimal due process required in such proceedings." Al-Shabazz, 338 S.C. at 374-75, 527 S.E.2d at 753 (emphasis added). The Court also determined that "an inmate may seek review of [DOC's] final decision in an administrative matter under the APA," and that "[p]lacing review of these cases within the ambit of the APA will ensure that inmate receives due process." Id. at 369, 527 S.E.2d at 750 (emphasis added). Thus, the Court recognized that inmates received due process by filing a grievance with the Department and then appealing the Department's final decision regarding the grievance to the ALC.

The Court also recognized as much in Wicker when it rejected the notion that the ALC lacked jurisdiction to review the Department's denial of an inmate's prevailing wage grievance. See Wicker, 360 S.C. at 424-25, 602 S.E.2d at 57-58. The Court concluded that because the inmate was entitled to due process with regard to his prevailing wage claim under Al-Shabazz, the Department's denial of his grievance was reviewable by the ALC. Id. Thus, the Court implicitly acknowledged that inmates receive due process by processing their prevailing wage claims through the Department's grievance system and the review procedures of the APA.

In conclusion, this court's March 10, 2011 order and the relevant precedent from our Supreme Court clearly contradict the Appellants' claim that the Department denied them due process by invoking the fifteen-day filing deadline set forth in Paragraph 13.1. The Appellants' failure to timely avail themselves to the process available to them is exclusively attributable to their own failure to act in conformity with the provisions of this paragraph. Consequently, the Department's application of the fifteen-day filing deadline to the Appellants' prevailing wage claims that arose before the issuance of Adkins and Wicker did not violate their due process rights.

IV. Did the Department waive its right to raise Paragraph 13.1's fifteen-day time limit?

Next, the Appellants argue that the Department waived its right to apply the fifteen-day filing deadline to their Step 1 grievances for the following reasons: (1) the language in Paragraph 13.9 and the instructions on the Department's pre-printed Step 1 grievance form, which both state that policy grievances may be filed at any time, are inconsistent with an intent to raise the fifteen-day filing deadline; (2) for 153 inmates, the Department did not raise timeliness as an issue in its responses to the Appellants' Step 1 grievances; and (3) for 32 Step 1 responses, and 136 Step 2 final decisions, the Department raised the fifteen-day filing deadline and considered the merits of the Appellants' prevailing wage claims. As discussed below, I find the Appellants' arguments unpersuasive.

A

As stated above, the Appellants contend that the language in Paragraph 13.9 and the instructions appearing on the preprinted Step 1 grievance form are inconsistent with the Department's intent to assert the fifteen-day filing deadline as a basis by which to deny the prevailing wage claims articulated by the Appellants within their Step 1s. I disagree.

"Waiver is a voluntary and intentional abandonment or relinquishment of a known right." Eason v. Eason, 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009) (quoting Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994)). It may be either express or implied. Lyles v. BMI, Inc., 292 S.C. 153, 158, 355 S.E.2d 282, 285 (Ct. App. 1987). Acts that are inconsistent with the continued assertion of a right may give rise to a waiver. Provident Life and Acc. Ins.

Co. v. Driver, 317 S.C. 471, 478, 451 S.E.2d 924, 928 (Ct. App. 1994). Waiver is an affirmative defense, and the burden of proof is upon the party who asserts it. Id. at 478, 451 S.E.2d at 929.

Here, the Department applied the fifteen-day filing deadline set forth in Paragraph 13.1 to the Appellants' prevailing wage claims because those claims represented "incidents" by which the Appellants challenged the conditions of their participation in the prison industries project at Lieber. Importantly, the pre-printed form and Paragraph 13.1 expressly stated that inmates were required to file their Step 1s within 15 days of any alleged "incident." Thus, the Department's application of the fifteen-day filing deadline in Paragraph 13.1 was entirely consistent with the Department's grievance policy and the pre-printed Step 1 forms.

Although the Step 1 form and Paragraph 13.9 provided an exception to the fifteen-day filing deadline for grievances concerning "policies/procedures," nothing in the Department's grievance policy or in the language of the pre-printed Step 1 form suggested that prevailing wage claims constituted policies/procedures grievances under Paragraph 13.9. By merely providing an exception to the fifteen-day filing deadline, the Department did not waive its right to invoke the fifteen-day deadline for cases falling outside that exception. Accordingly, I find that the Department did not waive the fifteen-day deadline in Paragraph 13.1 for filing incident grievances by issuing the language in Paragraph 13.9 or the instructions on the pre-printed Step 1 grievance form.

B

The Appellants also argue that the Department waived the fifteen-day filing deadline in Paragraph 13.1 because it did not raise timeliness as an issue in 153 of its responses to the Appellants' Step 1 grievances. I disagree.

"Administrative agencies have an inherent authority to reconsider a prior determination which is not final" 2 Am. Jur. 2d Administrative Law § 468 (updated Nov. 2011). As discussed below, the responses provided to the Appellants' Step 1s did not constitute final decisions of the Department. Accordingly, during the Step 2 review process, the Department was authorized to reverse the Step 1 decision or, alternatively, to uphold the Step 1 decision on different grounds.

Paragraph 13 of the Department's grievance policy sets forth the steps in the grievance process. Per Paragraph 13.1, an inmate must complete a Step 1 grievance form in which he must

articulate the basis of his complaint. The inmate must then submit that form to an employee designated by the Warden within fifteen days of the alleged "incident." DOC Policy Number GA-01.12, ¶ 13.1. Paragraph 13.2 further articulates that the Step 1 must be forwarded to the Institutional Inmate Grievance Coordinator, who, if unable to resolve the matter informally, must conduct a complete investigation and make recommendations to the Warden. DOC Policy Number GA-01.12, ¶ 13.2. The Warden must respond to the inmate "in writing . . . indicating in detail the rationale for the decision rendered and any recommended remedies." DOC Policy Number GA-01.12, ¶ 13.3.

If the inmate is unsatisfied with the response at the institutional level, he may appeal under Paragraphs 13.4 and 13.5 by filing a "Step 2" appeal and thereby seek a final agency decision. Paragraph 13.4 provides that "[i]f the grievant is not satisfied with the decision of the Warden, the grievant may next appeal to the Division Director of Operations for **final resolution of the grievance.**" DOC Policy Number GA-01.12, ¶ 13.4 (emphasis added). Furthermore, Paragraph 13.5 states: "The responsible official will render the **final decision on the grievance** within 60 days from the date that the Institutional Inmate Grievance Coordinator received the appeal of the Warden's decision. . . . **The response of the responsible official will be the Department's final response in the matter.**" DOC Policy Number GA-01.12, ¶ 13.5 (emphases added).

Thus, under Paragraphs 13.4 and 13.5, the final decisions concerning the issues raised in the Appellants' grievances were rendered by the responsible official at the agency level, and this official's response to the Step 2 appeals constituted the final agency decisions. Therefore, because the Department raised the issue of the fifteen-day filing deadline in its Step 2 decisions, the failure by the Warden to raise the issue in some of his Step 1 decisions did not constitute waiver of the issue. Rather, as noted above, the Department possessed the authority to modify the Warden's Step 1 decisions because they were not final.

For instance, in Friends of Potter Marsh v. Peters, 371 F. Supp. 2d 1115 (D. Alaska 2005), the plaintiffs objected to the Secretary of Transportation's waiver, in a federal transportation legislation guidance, of a statutory requirement that Surface Transportation Program projects not be located on local roads or rural minor collectors. The defendants moved

to dismiss the matter, contending that there had been no final agency action. The court granted the defendant's motion to dismiss, explaining:

Even if Plaintiffs are correct that the waiver is invalid, an erroneous legal interpretation at one stage in the process is not a final agency action. There is still time for the Secretary to change or modify the waiver, issue an individualized waiver, or the agency may not need to rely on the waiver.

Id. at 1122 (emphasis added).

Like the legislation guidance at issue in Peters, the Step 1s in this case were not final agency decisions. In its Step 2 responses, the Department retained the right to come to a different conclusion than that reached in the Step 1 responses. Just as the Department could have reversed the Step 1 decisions, it also had the authority to affirm the Step 1 decisions on other grounds. Thus, because the Step 1 responses were not final agency decisions, the mere fact that the Department failed to invoke the fifteen-day filing deadline when it issued some of the Step 1 responses did not preclude it from raising the issue in its Step 2 responses.

The Appellants' reliance on Ross v. County of Bernalillo, 365 F.3d 1181 (10th Cir. 2004), abrogated in part by Jones v. Bock, 549 U.S. 199 (2007), is misplaced. In that case, the Tenth Circuit addressed whether an inmate had exhausted his administrative remedies regarding his claim that the prison shower was unreasonably dangerous where the inmate failed to file a complaint within the three-day timeframe set forth in the prison's procedures. The Tenth Circuit concluded that because prison officials had accepted his complaint and found in his favor, the inmate had exhausted his administrative remedies. Specifically, the court held:

We need not address in the abstract whether Ross' complaint was timely because in this case the prison did actually consider it. Nothing in the record suggests that MCDC treated Ross' complaint as untimely; indeed, Ross received a favorable response and a mat was placed in the shower as he requested. If a prison accepts a belated filing, and considers it on the merits, that step makes the filing proper for purposes of state law and avoids exhaustion, default, and timeliness hurdles in federal court.

Id. at 1186.

The present case is distinguishable from Ross. In Ross, the court based its decision on the fact that "[n]othing in the record suggests that MCDC treated Ross' complaint as untimely" and that "Ross received a favorable response" to his complaint. Id. Here, in contrast, the Department found against the Appellants in its responses to both the Appellants' Step 1s and

Step 2s. Moreover, in its responses to the Appellants' Step 2s, the Department made it clear that it considered the Appellants' grievances to be untimely.

Accordingly, because the Department raised the issue of the fifteen-day filing deadline in its Step 2 decisions, it did not waive its right to do so in the present appeal.

C

Finally, the Appellants note that there are 32 Step 1 responses and 136 Step 2 final decisions in which the Department both raised the fifteen-day filing deadline in Paragraph 13.1 and considered the merits of the Appellants' prevailing wage claims. The Appellants contend that with respect to those responses, waiver should apply because the Department's consideration of the merits was inconsistent with an intent to rely on Paragraph 13.1. I disagree.

In the responses at issue, the Department plainly stated that the Appellants' prevailing wage claims were time-barred under Paragraph 13.1. While the Department also addressed the merits of the Appellants' claims within those responses, that mere fact did not preclude the Department from applying the fifteen-day filing deadline from Paragraph 13.1. The Department's decisions must be read in their entirety. When done so, it is plain that there is no basis for concluding that the Department waived, either expressly or impliedly, its right to invoke the fifteen-day filing deadline. Cf. Brooks v. Walls, 279 F.3d 518, 523 (7th Cir. 2002) (holding that when a state court rules against a party on both procedural and substantive grounds, the court "has not abandoned the procedural ground but has instead added a substantive failing to the procedural one.")¹⁰

¹⁰ Appellants cite Pozo v. McCaughtry, 286 F.3d 1022 (7th Cir. 2002) for the proposition that courts are divided on the issue of whether a filing that is dismissed as both untimely and unmeritorious is properly filed. In that case, the Seventh Circuit considered whether a prisoner's failure to take a timely administrative appeal within the state system meant that he failed to exhaust state remedies for purposes of 42 U.S.C. § 1997e(a). Although the court answered the question in the affirmative, in dicta it stated that "[c]ases look both ways on the question whether a document that is rejected as *both* late and unmeritorious counts as properly filed." Id. at 1025.

Appellants now attempt to rely on that statement, but they neglect to discuss the U.S. Supreme Court's subsequent decision in Pace v. DiGuglielmo, 544 U.S. 408 (2005). In that case, the Court addressed whether a state post-conviction petition that the state court had rejected as untimely could nonetheless be considered "properly filed" for the purposes of the tolling provision of 28 U.S.C. § 2244(d)(2). After noting the division among the circuit courts on the issue, the Court held: "[T]ime limits, no matter their form, are 'filing' conditions. Because the state court rejected petitioner's PCRA petition as untimely, it was not 'properly filed'. . . ." Id. at 417; see also Carey v. Saffold, 536 U.S. 214, 226 (2002) (holding that if a state court clearly ruled that a prisoner's application for collateral review was untimely, then "that would be the end of the matter" for federal purposes, "regardless of whether [the state court] also addressed the merits of the claim, or whether its timeliness ruling was 'entangled' with the merits."). In light of the U.S. Supreme Court's holding in Pace, this court is unwilling to rely upon any federal circuit court decision holding that a document dismissed as both untimely and unmeritorious is properly filed.

V. Was the Department equitably estopped from raising Paragraph 13.1?

Next, the Appellants contend that the Department is equitably estopped from raising the fifteen-day filing deadline in Paragraph 13.1. Specifically, the Appellants argue that Paragraph 13.9 and the pre-printed Step 1 form “lulled” them into believing that their prevailing wage claims were policy grievances and thus could be filed “at any time.” I disagree.

“The essential elements of equitable estoppel are divided between the estopped party and the party claiming estoppel.” Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). The elements of equitable estoppel as related to the party being estopped are: (1) conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. Id. The party asserting estoppel must show: (1) lack of knowledge, and the means of knowledge, of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change of position in reliance on the conduct of the party being estopped. Id. at 84-85, 650 S.E.2d at 470. The party asserting equitable estoppel bears the burden of establishing all of the elements. Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 682 S.E.2d 1, 7 (Ct. App. 2009).

Under South Carolina law, a party may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute was induced by the party’s conduct. Kleckley v. Nw. Nat. Cas. Co., 338 S.C. 131, 136, 526 S.E.2d 218, 220 (2000). The South Carolina Supreme Court has described the necessary “inducement” as follows:

Such inducement may consist of an express representation that the claim will be settled without litigation or conduct that suggests a lawsuit is not necessary. The defendant’s conduct may also involve inducing the plaintiff either to believe that an amicable adjustment of the claim will be made without suit or to forbear exercising the right to sue.

Id. at 136-37, 526 S.E.2d at 220 (citations omitted).

Here, the only conduct of the Department that the Appellants point to in making their estoppel argument is the Department’s issuance of Paragraph 13.9 and the Step 1 instructions. However, Paragraph 13.9 and the Step 1 instructions did not state that *all* grievances could be

filed outside of Section 13.1's fifteen-day deadline. Rather, they merely stated that grievances concerning "policies/procedures" could be filed outside of that deadline. Additionally, both Paragraph 13.1 and the Step 1 instructions clearly notified the Appellants that "incident" grievances had to be filed within fifteen days. Although the Appellants claim they thought that Paragraph 13.9 applied to their prevailing wage claims, there is no evidence that the Department, through its words or actions, induced the Appellants into believing that their grievances constituted "policies/procedures" grievances. Therefore, the Appellants have failed to show that the Department engaged in conduct which "amount[ed] to a false representation," or conduct which was "calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert." See Strickland, 375 S.C. at 84, 650 S.E.2d at 470.

The Appellants have also failed to establish that the Department engaged in the type of "inducement" described in Kleckley. See Kleckley, 338 S.C. at 136-37, 526 S.E.2d at 220. There is no evidence the Department did anything that would have induced the Appellants into believing that filing a grievance was unnecessary. Rather, the record merely shows that the Department issued a grievance policy that set forth, in a straightforward fashion, different time periods for filing different types of grievances. In the court's view, such evidence, on its own, is insufficient to establish an estoppel claim. A party should not be able to avoid the consequences of a filing deadline simply by claiming that it misinterpreted the deadline.¹¹ For these reasons, I find that the Department is not equitably estopped from raising the fifteen-day filing deadline in Paragraph 13.1.

VI. Was the fifteen-day time limit set forth in Paragraph 13.1 tolled until after the issuance of Adkins and Wicker?

Next, the Appellants argue that the fifteen-day filing deadline in Paragraph 13.1 was tolled until after the issuance of Adkins and Wicker because, prior to that time, Appellants were "effectively barred" from exercising any grievance and appeal rights. I disagree.

Where a statute sets forth a limitation period for commencement of an action, courts have invoked the doctrine of equitable tolling to suspend the statutory period "to ensure fundamental

¹¹ Significantly, there is no evidence that any of the Appellants ever asked the Department whether a prevailing wage claim constituted an "incident" grievance or a grievance concerning "policies/procedures."

practicality and fairness.” Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009) (quoting Rodriguez v. Superior Court, 98 Cal. Rptr. 3d 728, 736 (Cal. Ct. App. 2009)). Equitable tolling is a judicially created doctrine, and it stems from the judiciary’s inherent power to formulate rules of procedure “where justice demands it.” Hooper, 386 S.C. at 115, 687 S.E.2d at 32. The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. Id.

Equitable tolling is reserved for extraordinary circumstances, and it is rarely applied in South Carolina. American Legion Post 15 v. Horry County, 381 S.C. 576, 582, 674 S.E.2d 181, 184 (Ct. App. 2009). The threshold necessary to trigger equitable tolling is very high, lest the exception swallow the rule. Ex parte Ward, 46 So. 3d 888, 897 (Ala. 2007). Our Court of Appeals has explained:

[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation.

Pelzer v. State, 378 S.C. 516, 522, 662 S.E.2d 618, 621 (Ct. App. 2008) (quoting Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir. 2000)).

Typically, equitable tolling applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control. Hooper, 386 S.C. at 116, 687 S.E.2d at 32; see also 54 C.J.S. Limitations of Actions § 133 (updated Dec. 2011) (“The statute of limitations generally will not be tolled when the plaintiff has slept on his or her rights, but only when he or she has been prevented from asserting them.”). However, as the South Carolina Supreme Court has noted, courts have flexibility in applying equitable remedies such as tolling:

“The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other.” Equitable tolling may be applied where it is justified under all the circumstances. We agree, however, that equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use.

Hooper, 386 S.C. at 116-17, 687 S.E.2d at 33 (citations omitted).

Turning to the present case, the court notes at the onset it is questionable whether Paragraph 13.1’s fifteen-day filing deadline is subject to tolling. As noted above, it appears that

the deadline is a statute of creation. Unlike statutes of limitations, statutes of creation cannot be tolled. See 54 C.J.S. Limitations of Actions § 5 (updated Dec. 2011) (“Statutes of limitations are subject to tolling, whereas statutes of creation are not.”).

Even if the deadline can be tolled, the circumstances do not warrant the application of equitable tolling here. The Appellants contend that tolling should be applied because the McNeil decision prevented them from filing their grievances. However, as noted above, McNeil was an ALC decision and did not constitute binding precedent. See 21 C.J.S. Courts § 212 (updated Dec. 2011). Had the Appellants timely filed grievances and had the ALC denied their grievances based upon McNeil, the Appellants could have appealed to the Court of Appeals, which possessed the authority to reverse McNeil. In fact, as discussed above, the pertinent portions of McNeil were unmistakably superseded by the Sullivan decision in August 2003— a full year before any of the Appellants filed a grievance. See Sullivan, 355 S.C. at 445 n.5, 586 S.E.2d at 128 n.5. Thus, while McNeil may have discouraged the Appellants from filing their prevailing wage grievances, it did not bar them from doing so.

Furthermore, the “interests of justice” do not call for the application of equitable tolling in this case. There is no evidence that the Department prevented the Appellants from timely filing their grievances. Moreover, if equitable tolling were applied here, the Department would be forced to defend actions it took many years ago. As our Court of Appeals has noted, the passage of time can greatly hinder a party’s ability to defend against a claim:

[W]ith the passage of time, evidence becomes more difficult to obtain and is less reliable. Physical evidence is lost or destroyed, witnesses become impossible to locate, and memories fade. With passing time, a defendant faces an increasingly difficult task in formulating and mounting an effective defense.

Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 163, 511 S.E.2d 699, 706 (Ct. App. 1999), aff’d, 341 S.C. 320, 534 S.E.2d 672 (2000).

While not tolling Paragraph 13.1 will mean the dismissal of nearly all of the Appellants’ prevailing wage claims, in Adkins, our Supreme Court held that the prevailing wage statute was not enacted for the special benefit of inmates, but rather was passed to “prevent unfair competition.” Adkins, 360 S.C. at 418, 602 S.E.2d at 54. In the present case, any unfair competition that arose as a result of the Department’s alleged failure to pay the prevailing wage years ago will not be rectified by allowing the inmates to bring a prevailing wage claim now.

Competitors who may have been previously harmed by the Department's asserted failure to pay the prevailing wage likely will not receive any type of benefit as a result of the inmates bringing such a case. The damage has already been done. Rather, the main party that stands to benefit from prevailing wage claims involving conduct that occurred long ago is the inmates—a group which our Supreme Court expressly stated was not the intended beneficiary of the prevailing wage statute.

VII. Did inmates comply with Paragraph 13.1's filing deadline because it was tolled by their class action?

Next, the Appellants argue that the fifteen-day filing deadline in Paragraph 13.1 was tolled when they filed their class action in Williams on January 29, 2002. I disagree.

In making this argument, Appellants rely upon the U.S. Supreme Court's decision in Crown, Cork & Seal Co. v. Parker, 462 U.S. 345 (1983). In that case, the Court held that the running of the ninety-day statutory period within which the plaintiff was required to commence his employment discrimination suit was tolled during the period there was pending a class action in which he was a putative class member. Id. at 353-54. The Court further held that because the plaintiff did not receive his notice of right to sue until after the class action was filed, he retained a full ninety days to bring suit after the class certification was denied. Id. at 354. In reaching these conclusions, the Court reasoned that "unless the statute of limitations was tolled by the filing of the class action, class members would not be able to rely on the existence of the suit to protect their rights." Id. at 350. The Court further reasoned:

A putative class member who fears that class certification may be denied would have every incentive to file a separate action prior to the expiration of his own period of limitations. The result would be a needless multiplicity of actions—precisely the situation that Federal Rule of Civil Procedure 23¹² and the tolling rule of American Pipe were designed to avoid.

Id. at 350-51.

The facts of the present case are notably different from those of Crown. Unlike the class action in Crown, the Appellants' class action did not fail because their certification was denied. Rather, it failed because the South Carolina Supreme Court concluded in Adkins that the inmates

¹² Federal Rule of Civil Procedure 23 sets forth the requirements regarding the filing of class actions. See Fed. R. Civ. P. 23.

did not have a private cause of action with regard to their prevailing wage claims. See Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Thus, applying tolling to the present matter would constitute a significant extension of Crown. Such an extension would also require this court to conclude that the Appellants were justified in relying upon the 2002 class action to protect their rights, despite the fact that the South Carolina Supreme Court ultimately determined that no private right of action existed.

The Appellants' reliance on Crown is also mistaken because the Crown decision was based in large part upon Federal Rule of Civil Procedure 23—a rule which does not apply to the Department's internal grievance system. Moreover, the Court is unaware of any applicable rule similar to Rule 23 that allows inmates to file grievances as a class. Therefore, the Crown Court's reasoning regarding Rule 23 and its purpose are simply inapplicable to the present case.

Finally, the court notes that, unlike in Crown, for a significant number of Appellants, their right to file a grievance regarding their prevailing wage claims arose long before the filing of the class action in 2002. The record shows that numerous Appellants began participating in the prison industries project at Lieber several months, and in some cases *years*, before the class action was filed. As discussed in more detail below, under Paragraph 13.1, these Appellants were required to file a grievance within fifteen days after being informed of the Department's decision to pay them less than the prevailing wage. Thus, by the time the 2002 class action was filed, Paragraph 13.1's fifteen-day filing deadline had already passed with regard to their prevailing wage claims. Accordingly, even if the running of the fifteen-day filing deadline were suspended by the filing of the class action, these Appellants still failed to timely file their grievances.

For these reasons, I conclude that Crown is distinguishable from the present case and that Paragraph 13.1's fifteen-day filing deadline was therefore not tolled by the filing of Appellants' class action in Williams.

VIII. Are inmates' grievances timely filed because they filed within fifteen days of a term of employment?

Finally, the Appellants argue that all Step 1s filed during or within fifteen days of completion of a term of employment should be considered timely regardless of when the Appellants began their employment. I disagree.

As noted above, Paragraph 13.1 of GA-01.12 states that inmates must submit their grievances "within 15 days of the alleged incident." The "alleged incident" in this case was not the Appellants' "completion of a term of employment," but rather the Department's decision to pay the Appellants less than the prevailing wage as required under Section 24-3-430(D). Accordingly, the fifteen-day time frame in Paragraph 13.1 began to run when the Appellants were informed of the Department's decision to pay them less than that mandated by Paragraph 24-3-430(D).

A similar conclusion was reached in Wallace v. Burbury, 305 F. Supp. 2d 801, 806 (N.D. Ohio 2003). In that case, an inmate brought an action in federal court alleging that prison officials violated his constitutional rights by denying his religious accommodation request for Passover. The prison officials argued that the inmate failed to exhaust his administrative remedies because he did not timely file a complaint under Ohio's inmate grievance procedure. The procedure required that "[w]ithin fourteen calendar days of the date of the event giving rise to the complaint, the inmate shall file an informal complaint to the direct supervisor of the staff member, or department most directly responsible for the particular subject matter of the complaint." Id. at 806. The inmate, despite learning of the denial of his religious accommodation request a week before Passover began, did not file a complaint until eleven days after the week-long holiday ended. Nevertheless, the inmate contended that his complaint was timely filed, arguing that "because his requests for religious accommodation were denied through the week of Passover," the "event giving rise to the complaint" occurred daily through the last day of the holiday. Id. The court rejected the inmate's argument, explaining:

To allow a filing deadline to toll with a continuous violation . . . would undermine the very purpose of the deadline, which is to limit the time to file a claim. The event giving rise to the complaint was the date in March, 2002, when plaintiff first learned that NCCI would not honor his request to observe Passover. All subsequent grievances stem from that initial event. The filing of plaintiff's informal grievance was therefore untimely, and failure to file a timely grievance does not constitute an exhaustion of available administrative remedies.

Id. (emphasis added); see also Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004) ("While it is true that the conditions that Johnson suffered both before and after the grievance were of the same general character, to permit the March 2001 grievance to reach back to events that transpired up to six months earlier would effectively negate the state's fifteen-day rule and

frustrate the prison system's legitimate interest in investigating complaints while they are still fresh. That a condition continues does not excuse the failure to file a grievance earlier.") (emphasis added).

Similar to the court in Wallace, this court concludes that the Appellants should have filed a grievance within fifteen days after being informed of the Department's decision to pay them less than the prevailing wage. Like the deadline at issue in that case, the purpose of the fifteen-day deadline in Paragraph 13.1 is to limit the time to file a claim. If this court were to hold that inmates may timely file grievances within fifteen days of any term of employment, the Department could be forced to defend wage decisions it made a long time ago.

The Appellants contend that ruling against them on this issue would be "absurd" because it would require an inmate asserting a prevailing wage claim to file a grievance every time he received a paycheck. However, the court's decision here does not mandate such a result. Rather, a timely filed grievance will cover all damages recoverable by an inmate as a result of the Department's decision to pay him less than the prevailing wage. Thus, as long as an inmate timely files a grievance within fifteen days of learning of the Department's decision to pay him less than that required under Section 24-3-430(D), he will not need to file any additional grievances during the period of his employment affected by that decision.

CONCLUSION AND ORDER

Based on the foregoing, I conclude the following:

1. The Appellants' grievances did not concern "policies/procedures" as that term is used in Paragraph 13.9 of GA-01.12 and thus the fifteen-day filing deadline in Paragraph 13.1 applied to their grievances.
2. The Appellants did not have reasonable cause for not filing their grievances within Paragraph 13.1's fifteen-day time limit.
3. The Department's application of Paragraph 13.1 did not violate the Appellants' due process rights.
4. The Department did not waive its right to raise Paragraph 13.1's fifteen-day filing deadline.
5. The Department was not equitably estopped from raising Paragraph 13.1.
6. The Appellants were not "effectively barred" from exercising their grievance and appeal rights before Adkins and Wicker and therefore the fifteen-day filing deadline set forth in Paragraph 13.1 was not tolled prior to the issuance of those decisions.

7. Paragraph 13.1's fifteen-day filing deadline was not tolled by the filing of the Appellants' class action suit in circuit court.

8. The Appellants did not comply with Paragraph 13.1 by filing their grievances within fifteen days of a term of employment.

Applying these conclusions to this case, a review of the record reveals that, with the lone exception of Fred Gatewood, #289775, none of the Appellants timely filed their Step 1 grievances. Other than Gatewood, each Appellant filed his Step 1 grievance more than fifteen days after his initial pay date. Certainly, by his initial pay date, each Appellant should have known of the Department's decision to pay him less than the prevailing wage. Accordingly,

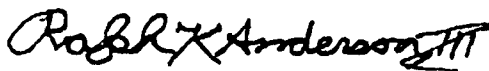
IT IS HEREBY ORDERED that, for every Appellant other than Gatewood, the Department's final decisions in this matter are **AFFIRMED**.

IT IS FURTHER ORDERED that, as to Gatewood's appeal, within twenty (20) days from the date of this Order, the Department shall supplement, to the extent necessary, the Record on Appeal to include all content required under ALC Rule 36(B).

IT IS FURTHER ORDERED that the parties prepare briefs on the merits of Gatewood's appeal, taking into account the court's rulings in this Order.

IT IS FURTHER ORDERED that the Appellants' Brief shall be filed thirty (30) days from the date of receipt of the supplemented Record on Appeal and shall be limited to no more than thirty (30) pages. The Respondent's Brief shall be filed thirty (30) days from the date of receipt of the Appellants' Brief and shall be limited to no more than thirty (30) pages. If the Appellants wish to file a Reply to Respondent's Brief, that Reply shall be due fifteen (15) days from the date of receipt of the Respondent's Brief and shall be limited to no more than fifteen (15) pages.

AND IT IS SO ORDERED.



Ralph K. Anderson, III
Chief Administrative Law Judge

July 26, 2012
Columbia, South Carolina

LAW OFFICES

JUL 27 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

LAW OFFICES

JUL 27 2012

CERTIFICATE OF SERVICE

MALONE, THOMPSON
SUMMERS & OTT, LLC

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

July 26, 2012
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Joshua Cramer, #251406,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 14-ALJ-04-0282-AP
Grievance No. BRCI 594-07

ORDER

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed March 6, 2014 by Joshua Cramer ("Appellant"), who is incarcerated with the South Carolina Department of Corrections ("SCDC"). The case was assigned on March 27, 2014. The Record on Appeal was filed on May 6, 2014. Appellant filed his Brief on May 27, 2014. SCDC filed Respondent's Brief on August 29, 2014.

BACKGROUND

Appellant participated in the prison industries project operated by SCDC at the Broad River Correctional Institution, in which R.M. Design participates as the private industry sponsor. SCDC began to pay Appellant on or about July 15, 2005 for the labor Appellant provided. SCDC remitted its final payment to Appellant on or about January 1, 2010.

Appellant filed his Step One Grievance on April 26, 2007. Appellant claimed that S.C. Code Ann. § 24-3-430(D) created a liberty interest in the difference between the prevailing wage paid by the private sector employer and the wage paid by SCDC during the course of Appellant's private sector employment. Appellant further claimed a liberty interest in the difference between the prevailing overtime wage paid by the private sector employer and the wage paid by SCDC during the course of Appellant's employment. Appellant also claimed a liberty interest in the interest earned on the amounts complained of the difference in wages. Appellant next claimed a liberty interest in escrowed wages under S.C. Code Ann. §§ 24-3-430(A)(5) and 24-3-430(B)(2), in that Appellant "is entitled to complete and immediate access to the amount of his escrowed wages to distribute them to persons or entities of his choice." Finally, Appellant claims a liberty interest on the interest earned on the amount of escrowed wages. This Grievance was denied on June 7, 2012. SCDC determined that Appellant did not submit his Step One Grievance within fifteen (15) "days of the incident upon which you anchored the claims you presented." SCDC

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also stated that “no special exception applies to prison industries pay disputes. Consequentially, the deadline applies to your grievance.”

Appellant filed his Step Two Grievance on July 16, 2012. Appellant stated that he did not want to pursue the issues regarding prevailing wage and overtime pay, but did wish to pursue the issue regarding escrowed wages. SCDC again denied Appellant’s Grievance, stating Appellant “did not submit [his Step One Grievance] within 15 days of the incident upon which [Appellant] anchored the claims...”

Appellant filed his appeal before the ALC on March 6, 2014. Appellant argues that “SCDC’s denial of Appellant’s Grievance based on the ‘fifteen day deadline’ conflicts with it’s own policy GA-01.12 ¶ 13.9.” Appellant further contends that SCDC’s denial of Appellant having immediate access to escrow wages is against the statutory authority of S.C. Code Ann. §§ 24-3-40(A)(5), 24-3-40(B)(2), and 24-3-315. Finally, Appellant contends that SCDC denied Appellant a fair interest rate in wages escrowed for his benefit under S.C. Code Ann. § 24-3-40(A)(5).

STANDARD OF REVIEW

The ALC’s jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The standard used by appellate bodies to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5) (Supp. 2013). Section 1-23-380(5) reads:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (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.

S.C. Code Ann. § 1-23-380(5) (Supp. 2013).

DISCUSSION

Appellant, an inmate serving a life sentence, claims that he is entitled to immediate access to wages escrowed under S.C. Code Ann. §§ 24-3-40(A)(5), 24-3-40(B)(2), and 24-3-315. S.C. Code Ann. § 24-3-40(A)(5) determines that SCDC must deduct ten percent from the gross wages of the inmate and hold “in an interest bearing escrow account for the benefit of the prisoner.” S.C. Code Ann. § 24-3-40(B) states:

The Department of Corrections, or the local detention or correctional facility, if applicable, shall return a prisoner's wages held in escrow pursuant to subsection (A) as follows:

* * *

(2) A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice.

Inmates possess a right to file grievances concerning their prison industries pay. See Wicker v. S.C. Dep't of Corr., 360 S.C. 421, 602 S.E.2d 56 (2004); see also Torrence v. S.C. Dep't of Corr., 373 S.C. 586, 646 S.E.2d 866 (2007). In Torrence, the inmates claimed that they are entitled to immediate access to wages put in escrow. The Court determined that the inmates can present this claim via the inmate grievance procedure. Torrence at 595, 646 S.E.2d at 870.

Appellant filed his Step One Grievance on April 27, 2007. In response to the Step One Grievance, SCDC concluded that Appellant did not file his grievance within the fifteen day deadline under the Inmate Grievance System Policy.

According to GA-01.12, “Inmate Grievance System” Jan. 1, 2006 ¶13.1, “[i]f informal resolution is not possible, the grievant will complete Form 10-5, Step 1, which is located in common areas, i.e., living areas, libraries, etc. and will submit the Form to an employee designated by the Warden (not the Inmate Grievance Coordinator) within 15 days of the alleged incident.” However, ¶13.10¹ of the “Inmate Grievance System” states “[e]xceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures.”

Appellant claims that he is not grieving an incident, but is grieving SCDC's policy and procedure which prohibits Appellant access to his escrowed wages. Appellant therefore argues that the fifteen day period to file a grievance is not applicable to him. However, this argument has been previously rejected by this Court. See Ackerman v. S.C. Dep't of Corr., ALC Docket No. 07-ALJ-04-0444 (July 26, 2012). In Ackerman, the ALC determined that “prevailing wage

¹ In GA-01.12, “Inmate Grievance Systems” Oct. 1, 2010, ¶13.10 exception is under ¶13.9.

claims do not constitute grievances concerning 'policies/procedures' under Paragraph 13.9 of GA-01.12. Rather, I find that prevailing wage claims are 'incident' grievances and thus must be filed within the fifteen-day timeframe set forth in Paragraph 13.1." Id. Here, Appellant is not arguing about prevailing wages, but rather whether he is entitled to immediate access to escrowed wages. However, the same logic is present. If the Court agreed with Appellant that the fifteen day deadline is inapplicable because Appellant is challenging Policy and Procedure, then there would never be a deadline to file a grievance in regards to inmates' right to access escrowed wages. Therefore, the general rule of a fifteen day time limit to file a grievance would be swallowed by the expansive view of policy and procedure articulated by Appellant. The claim that SCDC denies Appellant access to escrowed wages is an incident grievance, and therefore the Paragraph 13.10 exception is not applicable to this case, as it was not applicable in Ackerman.

The argument supplied by Appellant also does not align itself with public policy. As stated in Ackerman, "The Department has a legitimate interest in investigating grievances while they are still new, and thus public policy calls for the application of some limitations period to the Appellants' prevailing wage claims." Id. (citing Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004)). Here, Appellant would have received notice that he would not have access to his escrowed wages when he received his initial pay on or around July 15, 2005. If this Court would rule in favor of Appellant, then any inmate could file a grievance claiming access to escrowed wages at any time. Further, as noted in Ackerman, this Court has long held that wage claims do not involve SCDC's Policies and Procedures. Id. (citing Lawson v. S.C. Dep't of Corr., ALC Docket No. 06-ALJ-04-0823-AP (Feb. 12, 2007); Wright v. S.C. Dep't of Corr., ALC Docket No. 06-ALJ-04-0114-AP, 2006 WL 1430140 (Apr. 28, 2006)).

Appellant also argues that the fifteen day limit is not applicable because Appellant filed his Step One Grievance during the term of his employment. This same issue was discussed in Ackerman. In Ackerman, the Court concluded "that the Appellants should have filed a grievance within fifteen days after being informed of the Department's decision to pay them less than the prevailing wage." The Court in Ackerman cited Wallace v. Burbury, 305 F. Supp. 2d 801 (N.D. Ohio 2003) for support. In Wallace, the court stated:

To allow a filing deadline to toll with a continuous violation, however, would undermine the very purpose of the deadline, which is to limit the time to file a claim. The event giving rise to the complaint was the date in March, 2002, when plaintiff first learned that NCCI would not honor his request to observe Passover. All subsequent grievances stem from that initial event. The filing of plaintiff's informal grievance was therefore

untimely, and failure to file a timely grievance does not constitute an exhaustion of available administrative remedies.

Wallace at 806.

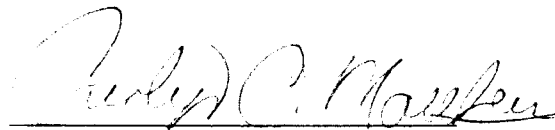
This Court will follow the conclusions reached in Ackerman and Wallace. Appellant should have filed his grievance contending that he should have immediate access to escrowed funds within fifteen days of being informed that he was not given immediate access to all of his funds. Logically, the day he received his first payment for his work, on or about July 15, 2005, was the day he had notice that he did not have immediate access to escrowed funds. Therefore, Appellant had fifteen days from the date he first received payment to file a grievance contesting access to escrowed funds. Appellant did not file his Step One Grievance until April 27, 2007, which is well past the fifteen day deadline.

Appellant failed to file his Grievance within the fifteen day time period as provide by Policy Number GA-01.12, and this Court has no authority to expand the time in which the request for review must be filed. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).

Accordingly, since Appellant did not timely file his Grievance, SCDC's decision must be affirmed.

ORDER

IT IS HEREBY ORDERED that SCDC's decision in this matter is **AFFIRMED**.
AND IT IS SO ORDERED.



CAROLYN C. MATTHEWS
Administrative Law Judge

September 23, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the party(ies) or their attorney(s).

On 23rd day of September
by Charles Z. [Signature]
Clerk of Court

CERTIFICATE OF APPELLANT

The undersigned hereby certifies that the RECORD ON APPEAL contains all matter proposed to be included by any of the parties and not any other material.

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MAR 12 2015

SC Court of Appeals

March 6, 2015

s/ Joshua Cramer
Joshua Cramer
#251406
Lieber C/I, SA-17
P.O. Box 205
Ridgerville, SC 29472
Appellant, Pro Se

STATE OF SOUTH CAROLINA

In The Court of Appeals

Case No.: 2014-002172

Grievance No.: BRCI-0594-07

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MAR 12 2015

SC Court of Appeals

Joshua Cramer, ... Appellant,

v.

SEDC, ... Respondent.

CERTIFICATE OF SERVICE

I, Joshua Cramer, certify that I have filed the within RECORD ON APPEAL dated March 6, 2015 on the below listed addresses by depositing a copy of the same in the SEDC interdepartmental mail and/or the US mail first-class postage affixed thereto on this 9 day of March 2015

Kenneth A. Richstad, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Lake Summers
339 Heyward St., Suite 200
Columbia, SC 29201

March 6, 2015
Ridgeville, SC

s/ Joshua Cramer
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