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In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Trial Court Case No. 14-ALJ-04-00282-AP  
Appellate Case No. 2014-002172

Joshua Cramer, #251406, ..... Appellant,

v.

South Carolina Department of Corrections, ..... Respondent.

**RESPONDENT'S FINAL BRIEF**

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## STATEMENT OF ISSUES ON APPEAL

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

- I. Is the Appellant’s First Issue on Appeal preserved for appellate review when the Administrative Law Court [“ALC”] did not rule on its merits?
- II. Is the Appellant’s Second Issue on Appeal preserved for appellate review when the ALC did not rule on its merits?
- III. Did the ALC properly affirm SCDC’s decision that the Appellant failed to file his grievance within the fifteen day filing deadline established by paragraph 13.1 of SCDC’s Inmate Grievance System Policy Number GA-01.12?

## STATEMENT OF THE CASE

### I. THE APPELLANT’S GRIEVANCE DESIGNATED AS BRCI-0594-07

The Appellant filed a Step 1 grievance on April 26, 2007, and the responsible SCDC official assigned the Appellant’s grievance the following number: BRCI-0594-07. (R. pp. 31 – 34). In his Step 1 grievance designated as BRCI-0594-07, the Appellant articulated the following five (5) issues:

- 1) Section 24-3-430(D)<sup>1</sup> 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 on or about January 1, 2010]<sup>2</sup> and grievant is entitled to said monies.
- 2) Section 24-3-430(D) created a liberty interest in the \$2.85 difference between the overtime 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

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<sup>1</sup> S C Code Ann § 24-3-430(D) provides that “[n]o inmate participating in the [prison industries] program may earn less than the **prevailing wage** for work of similar nature in the private sector ” [emphasis supplied]

<sup>2</sup> Appellant’s prison industries private sector account pay records maintained by SCDC indicate that the Appellant’s voluntary participation began on or about July 15, 2005 (R pp 36 and 45)

sector employment, as stated in issue #1, above, and grievant is entitled to said monies.<sup>3</sup>

- 3) Grievant has a liberty interest in the interest earned on the amounts complained of in issues #2 and #3, above.
- 4) Section 23-3-430(A)(5) + 24-3-430(B)(2)<sup>4</sup> 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.
- 5) Grievant has a liberty interest earned on the amount complained of in issue #4, above, at a guaranteed investment rate comparable to Treasury Bills or Certificates of Deposit. (R. pp. 33 – 34).

In his Step 1 grievance designated as BRCI-0594-07, the Appellant requested the following relief: "Correct payment of all monies." (R. p. 31).

On or about July 16, 2012, the Appellant filed his Step 2 appeal with SCDC. In his Step 2 appeal, the Appellant voluntarily abandoned issues 1 through 3 from his Step 1 grievance, which related to his claims for the purported "prevailing wage" and overtime pay. (R. pp. 41 – 43). On or about February 25, 2014, SCDC denied the Appellant's Step 2 appeal. (R. p. 41 and 44 – 48).

## **II. THE APPELLANT'S NOTICE OF APPEAL TO THE ALC**

In the Notice of Appeal he sequentially filed with the ALC on or about March 6, 2014, the Appellant requested that the ALC consider his Step 1 Grievance designated as BRCI-0594-07. (R. p. 49). On the pre-printed Notice of Appeal form he filed with the ALC, the Appellant

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<sup>3</sup> SCDC respectfully submits that the Appellant's prison industries private sector account pay records maintained by SCDC do not corroborate the figures offered by the Appellant in this paragraph of his grievance designated as BRCI-0594-07 (R p 39)

<sup>4</sup> SCDC respectfully submits that the Appellant is actually referring to S.C Code Ann § 24-3-40(A)(5) and (B)(2)

articulated the following grounds purportedly supporting his appeal of SCDC's final decision, which denied the Appellant's claim for immediate access to his escrowed wages:

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 including 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.<sup>5</sup> (R. p. 49).

The ALC provided the following designation for the Appellant's appeal: 14-ALJ-04-0282-AP. (R. p. 78).

### **III. THE ALC'S SEPTEMBER 23, 2014 ORDER**

By an order dated and filed September 23, 2014, the ALC denied the Appellant's appeal, and, in so doing, the ALC affirmed SCDC's denial of the Appellant's Step 1 grievance and Step 2 appeal, because the Appellant failed to file his grievance within the fifteen day filing deadline established by paragraph 13.1 of SCDC's Inmate Grievance System Policy Number GA-01.12.

In its order, the ALC described the issues associated with the Appellant's appeal as follows: (1) "SCDC's denial of Appellant's Grievance based on the 'fifteen day deadline' conflicts with [its] own policy GA-01.12. ¶ 13.9;" (2) "SCDC's denial of Appellant having immediate access to [escrowed] wages is against the statutory authority of S.C. Code Ann. §§

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<sup>5</sup> The Appellant did not articulate SCDC's purportedly erroneous application of the fifteen day filing deadline as one of the grounds in his Notice of Appeal to the ALC. See ALC Rule of Procedure 59(b) ("The [Notice of Appeal] shall be on the form prescribed by the Court pursuant to Rule 57 and shall contain the following information: a brief factual basis for each expressly and specifically asserted constitutional violation") Thus, the Appellant failed to preserve this issue for consideration by the ALC. But See Gons v S C Dep't of Corr., No 2014-UP-390, 2014 WL 5840482, at \*1 (S C. Ct App Nov. 12, 2014) (citing Risher v. S C. Dep't of Health & Env'tl. Control, 393 S C 198, 208 n. 5, 712 S.E 2d 428, 433 n 5 (2011) ("[T]his Court has long enforced and relied upon issue preservation rules in administrative appeals") and Brown v S C Dep't of Health & Env'tl. Control, 348 S C. 507, 519, 560 S.E 2d 410, 417 (2002) ("[I]ssues not raised to and ruled on by the AL[C] are not preserved for appellate consideration"))

24-3-40(A)(5), 24-3-40(B)(2), and 24-3-315,” and (3) “SCDC denied Appellant a fair interest rate in wages escrowed for his benefit under S.C. Code Ann. § 24-3-40(A)(5).<sup>6</sup>” (R. p. 79).

Ultimately, the ALC concluded that the “Appellant failed to file his Grievance within the fifteen day time period as provided by Policy Number GA-01.12, and [the ALC] 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, the ALC determined that “since [the] Appellant did not timely file his Grievance, SCDC’s decision must be affirmed.” (R. p. 82).

### STANDARD OF REVIEW

ALC Rule of Procedure 65 states that “[j]udicial review of any decision of the [ALC] in a matter heard on appeal from final decisions pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) shall be as provided in S.C. Code Ann. § 1-23-610 (2005) (as amended).” See also S.C. Dep’t of Corr. v. Mitchell, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (Ct. App. 2008) (“Section 1-23-610 ... sets forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency.”).

Thus, the provisions of § 1-23-610, specifically § 1-23-610(B), establish the standard of review applicable to this Court’s consideration of the Appellant’s challenge of the ALC’s September 23, 2014 order. In its entirety, § 1-23-610(B) reads as follows:

The review of the administrative law judge’s order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact.<sup>7</sup> The court of appeals may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if substantial

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<sup>6</sup> The General Assembly amended § 24-3-40 by Act No 237, Section 4, effective June 11, 2010. These amendments did not change the provisions related to escrowed wages nor did they impact the substance of the Appellant’s claims  
<sup>7</sup> See generally, Mitchell, 377 S.C. at 258, 659 S.E.2d at 235 (The ALC must apply the standard articulated in § 1-23-380(5) when reviewing, on appeal, an administrative agency’s decision ) SCDC also respectfully submits that the standards of review set forth in §§ 1-23-380(5) and 1-23-610(B) are identical if not nearly identical.

rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

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

Pursuant to § 1-23-610(B), this Court “may reverse or modify the [ALC’s] decision **only** if [the Appellant proves his] substantive rights [have] been prejudiced because the decision is clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion, or affected by other error of law.” Mitchell, 377 S.C. at 260, 659 S.E.2d at 236 (emphasis supplied) (reversing the ALC’s order because the “order [was] devoid of any finding of evidence adduced by [the Appellant] warranting the ALC’s reversal of the Department.”). Moreover, the Appellant must “distinctly and specifically direct the court’s attention to the errors or abuses allegedly committed by the [ALC]. [The Appellant] must include all that is necessary to enable [this Court] to decide whether the [ALC] made an erroneous or unsubstantiated ruling. A mere expression of dissatisfaction with the ruling is not sufficient.”<sup>8</sup> Al-Shabazz, 338 S.C. at 379, 527 S.E.2d at 755 (citations omitted).

Critically, the Appellant has the burden of proving convincingly that the ALC’s decision to uphold SCDC’s decision is unsupported by substantial evidence. Mitchell, 377 S.C. at 260, 659 S.E.2d at 235. Substantial evidence is relevant evidence “when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the ALC arrived at in justifying its decision.” S.C. Coastal Conservation League v. S.C. Dep’t of Health & Envtl.

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<sup>8</sup> In 2006, the General Assembly amended the Administrative Procedures Act so that a party must appeal a decision of the ALC, in which the ALC considered an appeal of an administrative agency’s decision, to this Court rather than the circuit court

Control, 380 S.C. 349, 362, 669 S.E.2d 899, 905 (Ct. App. 2008), *reversed on other grounds*, 390 S.C. 418, 702 S.E.2d 246 (2010).

The Appellant also has the burden of proving the ALC's decision is arbitrary and otherwise characterized by an abuse of discretion. Mitchell, 377 S.C. at 260, 659 S.E.2d at 234. A decision is arbitrary if no rational basis for the conclusion exists, or when it is based on one's will and not upon any course of reasoning and exercise of judgment. A decision may also be arbitrary if it is made at pleasure without adequate determining principles or is governed by no fixed rules or standards. Converse Power Corp. v. S.C. Dep't of Health & Envtl. Control, 350 S.C. 39, 47, 564 S.E.2d 341, 345 (Ct. App. 2002). An "abuse of discretion occurs when the judge's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the judge is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case." Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 5, 630 S.E.2d 464, 467 (S.C. 2006).

## ARGUMENT

### I. THE ALC DID NOT RULE ON THE MERITS OF THE APPELLANT'S FIRST ISSUE ON APPEAL AND, THEREFORE, IT IS NOT PRESERVED FOR JUDICIAL REVIEW.

This Court recently reiterated that issues raised to, but not ruled upon by the ALC are not preserved for appellate review. Goins v. S. C. Dep't of Corr., No. 2014-UP-390, 2014 WL 5840482, at \*1 (S.C. Ct. App. Nov. 12, 2014) (citing Risher v. S.C. Dep't of Health & Envtl. Control, 393 S.C. 198, 208 n. 5, 712 S.E.2d 428, 433 n. 5 (2011) ("[T]his Court has long enforced and relied upon issue preservation rules in administrative appeals.") and Brown v. S.C.

Dep't of Health & Env'tl. Control, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002) (“[I]ssues not raised to and ruled on by the AL[C] are not preserved for appellate consideration.”)).

The ALC concluded in its September 23, 2014 Order that the “Appellant failed to file his Grievance within the fifteen day time period as provided by Policy Number GA-01.12,” and therefore, “SCDC’s decision must be affirmed.” (R. p. 82).

By affirming SCDC’s denial of the Appellant’s grievance on timeliness grounds, the ALC did not rule on the merits of the Appellant’s claim that he is entitled to “immediate access to wages escrowed for his benefit against statutory authority of S.C. Code Ann. Section 24-3-40(a)(5); (b)(5); and 24-3-315.<sup>9</sup>”

Accordingly, the Appellant’s first issue on appeal is not preserved for judicial review.

**II. THE ALC DID NOT RULE ON THE MERITS OF THE APPELLANT’S SECOND ISSUE ON APPEAL AND, THEREFORE, IT IS NOT PRESERVED FOR JUDICIAL REVIEW.**

As explained above, this Court recently explained that issues raised before the ALC, but not ruled upon by the ALC are not preserved for appellate review. See Goins, 2014 WL 5840482, at \*1.

Again, the ALC affirmed SCDC’s denial of the Appellant’s grievance solely on timeliness grounds. (R. p. 82). By affirming SCDC’s denial of the Appellant’s grievance on timeliness grounds, the ALC did not rule on the merits of the Appellant’s claim that “SCDC denies Appellant a fair interest rate on wages escrowed for his benefit under Section 24-3-40(A)(5).<sup>10</sup>”

Thus, just as his first issue on appeal is not preserved for judicial review, the Appellant’s second issue on appeal is likewise not preserved for judicial review.

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<sup>9</sup> See Appellant’s Brief, pp 2 – 3

<sup>10</sup> Id., pp 4 – 5

**III. THE ALC PROPERLY AFFIRMED SCDC'S DECISION THAT THE APPELLANT FAILED TO FILE HIS STEP 1 GRIEVANCE WITHIN THE FIFTEEN DAY FILING DEADLINE ESTABLISHED BY PARAGRAPH 13.1 OF SCDC'S INMATE GRIEVANCE SYSTEM POLICY NUMBER GA-01.12.**

**A. The ALC correctly ruled that the Appellant's grievance did not concern "policies/procedures" under ¶13.9 from Policy GA-01.12.**

The Appellant contends that his request for immediate access to his escrowed wages<sup>11</sup> constituted a grievance challenging SCDC's policies/procedures and not an incident grievance.<sup>12</sup>

Paragraph 13.1 requires inmates to file grievances within fifteen days of an alleged "incident," but ¶13.9 provides exceptions to the fifteen day deadline from ¶13.1 (R. p. 60):<sup>13</sup>

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

The ALC, after recognizing the long-standing legitimacy of Policy GA-01.12, relied upon the ALC's prior decision in Ackerman v. S.C. Dep't of Corr., ALC Docket No. 07-ALJ-04-0444 (July 26, 2012). (R. pp. 50 – 77).

In Ackerman, the ALC concluded that the inmates' grievances, asserting various issues related to the wages they received while voluntarily participating in the prison industries project, did not contest SCDC's "policies/procedures" under paragraph 13.9 of GA-01.12. The ALC in Ackerman (R. pp. 54 – 59), reached its decision after it determined that SCDC's interpretation of

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<sup>11</sup> SCDC deducted a portion of the wages it paid to the Appellant while he voluntarily participated in the prison industries program, and it deposited those monies into an interest bearing escrow account as required by S C Code § 24-3-40

<sup>12</sup> See Appellant's Brief, pp 5 – 6

<sup>13</sup> The pre-printed Step 1 grievance form includes the following instructions to inmates "STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)." (Emphasis added)

“policies/procedures” is reasonable, consistent with SCDC’s use of the term throughout Policy GA-01.12, and avoids the public policy problems inherent in the Appellants’ construction of the term:

[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.” (R. p. 8).

In his argument to this Court, the Appellant argues that his grievance challenged SCDC’s policies/procedures, and, therefore, “created a continuous cause of action.”<sup>14</sup> As demonstrated above, however, the Appellant originally identified five (5) issues in the Step 1 grievance he filed with SCDC. In each of those five (5) issues,<sup>15</sup> the Appellant claimed he possessed a “liberty interest” in various wages SCDC remitted to him as a result of his voluntary participation in the prison industries project. The Appellant sought the exact same relief to resolve all five (5) of the issues he articulated in his Step 1 grievance: “Correct payment of all monies.” (R. pp. 31 and 33 – 34).

Thus, the Appellant’s Step 1 grievance, which requested the “prevailing wage” and overtime pay for his voluntary participation in the prison industries project, as well as immediate access to the “escrowed wages” that were deducted from his pay for his voluntary participation in the prison industries project, all sought the “[c]orrect payment of all monies,” and,

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<sup>14</sup> See Appellant’s Brief, p. 5

<sup>15</sup> The first three (3) issues the Appellant identified in his Step 1 grievance were substantially similar to the issues alleged by the inmates and their counsel in Ackerman. Even though the Appellant choose not to challenge SCDC’s determination on those issues in his appeal, they still frame the scope of the Appellant’s Step 1 grievance and SCDC’s denial of his Step 1 grievance

accordingly, the Appellant did not challenge SCDC's policies and/or procedures within his Step 1 grievance. (R. pp. 31 and 33 – 34).

Moreover, the Appellant, for the very first time, requests that this Court “strike down SCDC's policy” in his instant appeal.<sup>16</sup> Goins, 2014 WL 5840482, at \*1 (citing Risher, 393 S.C. at 208 n. 5, 712 S.E.2d at 433 n. 5 (“[T]his Court has long enforced and relied upon issue preservation rules in administrative appeals.”) and Brown, 348 S.C. at 519, 560 S.E.2d at 417 (“[I]ssues not raised to and ruled on by the AL[C] are not preserved for appellate consideration.”)).

For this reason alone, this Court should deny the Appellant's appeal and affirm the ALC's holding that the Appellant's grievance for immediate access to his escrowed wages did not constitute a “policy/procedure” grievance, and, as such, his grievance was subject to the fifteen day filing deadline from ¶13.1 (R. pp 80 – 82). Al-Shabazz, 338 S.C. at 379, 527 S.E.2d at 755 (observing that under the APA, inmates must direct the court's attention to errors or abuses allegedly committed by the ALC. “A mere expression of dissatisfaction with the ALC's ruling is not sufficient.”).

The Appellant also failed to address in his instant appeal the ALC's ruling that public policy calls for the application of some limitations period to the Appellant' claims, because SCDC has a legitimate interest in investigating grievances while they are still new. (R. p. 81). Instead, the Appellant argued in his instant appeal, again for the very first time, that if the Court rules in his favor, it “would negate any need for [any] inmate to [ever] file a grievance requesting access to his escrowed wages.<sup>17</sup>”

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<sup>16</sup> See Appellant's Brief, p 6.

<sup>17</sup> Id

Nonetheless, the ALC correctly determined that fifteen day filing limit is the only limitation found within Policy GA-01.12, and, accordingly, it serves as the time period applicable to the Appellant's claims. (R. p. 81).

The Record reveals that SCDC began paying the Appellant for his participation in the prison industries service project at Broad River CI on or about July 15, 2005 and, at that time, SCDC began assessing various required deductions from those wages. The Appellant, however, did not file his Step 1 grievance until April 7, 2007, nearly two (2) years after the Appellant received notice that SCDC deducted escrowed wages from his pay, and the Appellant did not have immediate access to those escrowed wages. (R. pp. 31 – 34).

Furthermore, a fifteen day filing period is consistent with other filing periods in this state.<sup>18</sup> Thus, the ALC correctly ruled that applying the fifteen day filing deadline from ¶13.1 to the Appellants' wage claims avoids the public policy problems of requiring SCDC to defend stale claims.

For the reasons articulated above, therefore, SCDC respectfully submits that the ALC correctly concluded that the Appellants' claim for immediate access to his escrowed wages does not constitute a grievance concerning "policies/procedures" under ¶13.9. (R. pp. 80 – 82).

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<sup>18</sup> See e.g. § 40-11-100 ("An entity or individual assessed administrative penalties may appeal those penalties to the board within fifteen days of receipt of the citation"), § 11-35-3220(3) ("The date for submission of information from interested persons or firms in response to an invitation must not be less than fifteen days after publication of the invitation"), § 59-25-470 ("Within fifteen days after receipt of notice of suspension or dismissal, a teacher may serve upon the chairman of the board or the superintendent a written request for a hearing before the board")

**B. The ALC correctly ruled that the language from ¶13.1, ¶13.9, and the Step 1 grievance form is not inconsistent with SCDC’s intent to apply the fifteen day filing deadline.<sup>19</sup>**

As explained above, ¶13.1 requires inmates to file grievances within fifteen days of an alleged “incident,” but ¶13.9 provides exceptions to the fifteen day deadline from ¶13.1:

Exceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures. **Exceptions may also be made for incident grievances by the Chief/designee, Inmate Grievance Branch, provided that documented reasonable cause can be demonstrated as to why the original time frame was not met, e.g., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc. The waiver must be requested by the grievant.** [emphasis supplied]. (R. pp. 60).

The above provisions of the operative policy and the Step 1 form are clear and unambiguous. See generally, Ward v. West Oil Co., Inc., 387 S.C. 268, 273 – 74, 692 S.E.2d 516, 519 (2010). Per the pre-printed form and ¶13.1,<sup>20</sup> inmates must file their Step 1 grievances within fifteen days of any alleged “incident.” The only exceptions to this deadline arise under “policy” grievances per the Step 1 form and ¶13.9 or when an inmate requests, and receives, a “reasonable cause” exception per ¶13.9.<sup>21</sup>

Nothing about the interplay between the form’s instructions, ¶ 13.1, and ¶ 13.9 was or is confusing, misleading, or contradictory. SCDC exercised no control or influence over the Appellant’s understanding of these provisions. Absolutely nothing in the operative policy or in

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<sup>19</sup> SCDC respectfully asserts that the Appellant’s argument on this point only makes sense if his wage claims constituted “policy/procedure” grievances and then SCDC improperly applied the fifteen day filing deadline to his grievance. Should this Court affirm the ALC’s decision on this point and determine that the Appellant’s grievance did not concern “policies/procedures,” SCDC respectfully submits that it should dismiss the Appellant’s instant issue on appeal.

<sup>20</sup> Again, the instructions on the preprinted Step 1 form provided as follows “State Grievance (include documentation, and date of incident, if SCDC Policy, indicate which policy)” (R p 31) Further instructions on the form provided as follows “Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident, policy grievances at any time.” (R p 32)

<sup>21</sup> The Appellant did not request, or receive, an exception to the fifteen day filing deadline for this or any other reason.

the language from the pre-printed Step 1 form suggested that an inmate's claims for immediate access to monies constitute "policy" issues and that a Step 1 grievance presenting such "policy" issues would be exempt from any filing deadline. The Appellant cannot now blame his defective interpretation of these provisions of Policy GA-01.12 on anyone other than himself.

**C. The ALC correctly ruled that the Appellant was required, under ¶13.1, to file his grievances for immediate access to his escrowed wages within fifteen days of his initial pay date.**

The ALC correctly determined that pursuant to ¶13.1, the Appellants must submit their grievance within fifteen days of the alleged "incident," and the fifteen day time frame from ¶13.1 began to run when SCDC informed the Appellant of his wage and deductions. (R. pp. 80 – 82). The ALC cited Wallace v. Burbury, 305 F. Supp. 2d 801 (N.D. Ohio 2003), to support its decision. The Appellant makes no attempt to distinguish or even acknowledge Wallace. See generally State v. Fripp, 396 S.C. 434, 441, 721 S.E.2d 465, 468 (Ct. App. 2012) (noting that the appellant's failure to challenge the lower court's ruling in the appellate brief renders the unchallenged ruling the law of the case); Spriggs Grp., P.C. v. Slivka, 402 S.C. 42, 54, 738 S.E.2d 495, 502 (Ct. App. 2013), reh'g denied (Mar. 22, 2013) (finding that appellant abandoned his arguments on appeal because he failed to cite legal precedent to support his arguments); Bennett v. Investors Title Ins. Co., 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct.App.2006) (noting when an appellant fails to cite any supporting authority for his position and makes conclusory arguments, the appellant abandons the issue on appeal); State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) (citing State v. Howard, 384 S.C. 212, 217, 682 S.E.2d 42, 45 (Ct.App.2009); and State v. Jones, 344 S.C. 48, 58 – 59, 543 S.E.2d 541, 546 (2001) (stating an argument is deemed abandoned on appeal when conclusory and without

supporting authority)); Al-Shabazz, 338 S.C. at 379, 527 S.E.2d at 755) (Appellant’s “mere expression of dissatisfaction with the ruling is not sufficient.”).

In Wallace, 305 F. Supp. 2d at 806, the federal court considered the timeliness of a grievance that the inmate filed more than fourteen days after the inmate learned of the prison’s decision to deny his religious accommodation. Specifically, the inmate argued that even though he learned the prison denied his religious accommodation request a week before the week-long Passover holiday, his grievance, which he filed eleven days after the last day of Passover, was timely because his rights were continuously violated each day of the Passover event. The Wallace Court rejected the inmate’s argument because “[t]o 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.” Id. The Wallace Court also determined that the event giving rise to the grievance arose on the date the inmate learned that prison would not honor his request for a religious accommodation.

Like the inmate in Wallace, the Appellant should have, under ¶13.1, filed his grievance within fifteen days after SCDC informed him of its decision to pay him a specific wage and assess specific deductions from those wages. Similar to the operative deadline in Wallace, the purpose of ¶13.1’s fifteen day deadline is to limit the time to file a claim. (R. pp. 81 – 82).

In addition, unlike traditional employment and wage laws, our Supreme Court held in Adkins v. S.C. Dep’t of Corr., 360 S.C. 413, 418, 602 S.E.2d 51, 54 (2004), that § 24-3-430 was not enacted for the special benefit of inmates, like the Appellants. As explained below, Policy GA-01.12 has been approved by our Supreme Court in Al-Shabazz, 338 S.C. at 373, 527 S.E.2d at 752 (“We hold that [SCDC’s] disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in [Wolff v. McDonnell, 418 U.S. 539 (1974)]. We

note that [SCDC] also prepared its grievance procedures in compliance with the Civil Rights of Institutionalized Persons Act.”).

Thus, the ALC correctly ruled that the Appellant was required, under ¶13.1 of Policy GA-01.12 (R. p. 82), to file his grievance requesting immediate access to his escrowed wages within fifteen days of his initial pay date. Accordingly, under the applicable legal standard articulated above,<sup>22</sup> this Court should affirm the ALC’s ruling on this issue.

**D. The ALC correctly ruled that the Appellant did not comply with the fifteen day filing deadline established by ¶13.1.**

As demonstrated above, the ALC correctly ruled that the Appellant failed to comply with the fifteen day filing deadline established by ¶13.1 of Policy GA-01.12 (R. pp. 80 – 82).

Again, the Record reveals that SCDC began paying the Appellant for his participation in the prison industries service project at Broad River CI on or about July 15, 2005 and SCDC began assessing deductions for escrowed wages from the Appellant’s wages at that time. Thus, the ALC correctly determined that “[l]ogically, the day [the Appellant] 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.” (R. p. 82). “The Appellant had fifteen days from the date he first received payment to file a grievance contesting access to escrowed funds.” *Id.* The “Appellant did not file his Step One Grievance until April 27, 2007, which is well past the fifteen day deadline.” *Id.*

Accordingly, under the applicable legal standard articulated above, this Court should affirm the ALC’s ruling on this issue.

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<sup>22</sup> See pp 4 – 6 above

**E. The ALC's decision is consistent with judicial precedent establishing that an inmate's prison industries back pay claims fall under the fifteen day filing deadline provided in Policy Number GA-01.12.**

Our Supreme Court's decisions in Al-Shabazz and Wicker v. S.C. Dep't of Corr., 360 S.C. 421, 602 S.E.2d 56 (2004), establish that the prison industries back pay claims, similar to the Appellant's claims for immediate access to the monies SCDC deducted from the his pay, fall under the fifteen day filing deadline provided in paragraph 13.1 of the November 1, 2004 edition of Policy Number GA-01.12. Paragraph 13.1 of the November 1, 2004 edition of Policy Number GA-0.12 required that inmates file Step 1 grievances "**within 15 days of the alleged incident.**" (emphasis supplied).

In Wicker, our Supreme Court considered the proper method by which an inmate may litigate a prison industries back pay claim. In Wicker's companion case, Adkins, our Supreme Court held that inmates do not possess a private right of action in circuit court under the applicable prison industries statutes by which to litigate prison industries back pay claims. Instead, the Wicker Court, 602 S.E.2d at 57, held as follows:

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

Thus, the Wicker Court directed inmates to pursue their prison industries back pay claims through SCDC Policy Number GA-01.12. Furthermore, the Wicker Court, 602 S.E.2d at 57, after examining Al-Shabazz, held that SCDC's adjudication of an inmate's grievance articulating a prison industries back pay claim is reviewable by the ALC.

In Al-Shabazz, our Supreme Court considered whether an inmate may challenge an internal disciplinary action through a post-conviction relief action. The Al-Shabazz Court, 338 S.C. at 376, 527 S.E.2d at 754, held that SCDC's decisions concerning non-collateral or administrative matters, such as inmate disciplinary matters, are reviewable by the ALC. In reaching this holding, the Al-Shabazz Court, 338 S.C. at 371 – 73, 527 S.E.2d at 751 – 52, reviewed the internal process by which SCDC adjudicated inmate disciplinary infractions. As recognized by the Al-Shabazz Court, 338 S.C. at 371 – 73, 527 S.E.2d at 751, SCDC's Manual for Operations, Inmate Disciplinary System, No. OP-22.14 established the procedures by which SCDC may impose disciplinary action on inmates. In its review of the provisions encompassed by SCDC's Inmate Disciplinary System, the Al-Shabazz Court, 338 S.C. at 373, 527 S.E.2d at 752, recognized the following:

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

After concluding its review of the provisions encompassed by SCDC's Inmate Disciplinary System, the Al-Shabazz Court, 338 S.C. at 373 – 74, 527 S.E.2d at 752, then recognized that an inmate may appeal a decision rendered by SCDC under its Inmate Disciplinary System by initiating an administrative grievance under the provisions of SCDC's Inmate Grievance System Policy Number GA-01.12, the same policy under review in the ALC's March 4, 2009 order:

An inmate appeals the decision by initiating a grievance. [Policy Number GA-01.12]. The matter is reviewed by the institutional inmate grievance coordinator, who recommends a course of action to the prison warden after interviewing affected employees and inmates. The warden must

respond to the inmate in writing within a specified period. The inmate may appeal the warden's decision to the appropriate deputy director, inspector general, or general counsel of [SCDC]. That person's response is [SCDC's] final decision in the matter.

The Al-Shabazz Court, 338 S.C. at 373, 527 S.E.2d at 752, then provided the following holding:

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

In Torrence v. S.C. Dept. of Corrections, 373 S.C. 586, 646 S.E.2d 866, 870 (2007), our Supreme Court held that “**like inmates**, the victim and dependent beneficiaries shall be able to maintain their own claims through [SCDC's] internal grievance procedure.” [emphasis supplied]. Furthermore, in Williams v. S.C. Dept. of Corrections and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007), our Supreme Court held that inmates did not possess private rights of action against either SCDC or prison industries private industry sponsors under our state's Payment of Wages Act. The Williams Court, 641 S.E.2d at n. 1, also recognized that, pursuant to Wicker, inmates were directed to litigate prison industries back wage claims within the forum established by Policy Number GA-01.12.

Following this precedent, the ALC has long held that an inmate wage claims do not involve SCDC's policies and procedures and therefore, the fifteen day deadline applies to those claims. (ALC Order 9/23/14, p. 4) (citing Ackerman, ALC Docket No. 07-ALJ-04-0444; Lawson v. S.C. Dep't of Corr., ALC Docket No. 06-ALJ-04-0823-AP (Feb. 12, 2007); and Wright v. S.C. Dep't of Corr., ALC Docket No. 06-ALJ-04-0114-AP, 2006 WL 1430140 (Apr. 28, 2006)).

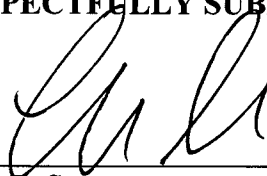
Accordingly, the ALC correctly concluded, in light of Al-Shabazz, Wicker, Adkins, Torrence, and Williams, as well as Ackerman, Lawson, and Wright, that the Appellant failed to file his administrative grievance designated as BRCI-0594-07 within the fifteen day filing deadline established by paragraph 13.1 of Policy Number GA-01.12, and this Court should, under the standard provided by § 1-23-610(B), affirm the ALC's September 23, 2014 order in its entirety and deny the Appellant's instant appeal.

### CONCLUSION

For the foregoing reasons, SCDC respectfully urges this Court to affirm the ALC's September 23, 2014 Order.

RESPECTFULLY SUBMITTED,

BY:



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Columbia, South Carolina  
April 13, 2015

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APR 13 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Trial Court Case No. 14-ALJ-04-00282-AP  
Appellate Case No. 2014-002172

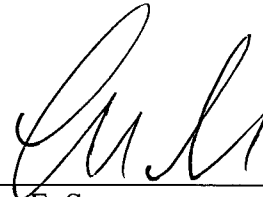
Joshua Cramer, #251406, ..... Appellant,

v.

South Carolina Department of Corrections, ..... Respondent.

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Respondent's Final Brief complies with Rule 211(b), SCACR.



April 13, 2015

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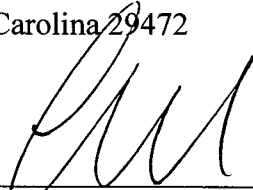
South Carolina Department of Corrections, ..... Respondent.

PROOF OF SERVICE

I certify that I have served the Respondent's **FINAL BRIEF** on the above named *pro se* Appellant by mailing a copy to him, first class postage pre-paid, at the following address:

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April 13, 2015

  
\_\_\_\_\_  
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