

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from The Administrative Law Court
Ralph King Anderson, III, Administrative Law Judge

Court of Appeals Opinion No. 5379
Supreme Court Case Tracking No. 2016-000829

Francis Ackerman, #266928, Malik Aljalil, #219551,
Linso Allen, #269378, Michael Benninger, #264212,
Frederic Brown, #289602, Timothy Brown, #238461,
Terrell Buchanon, #277262, Christopher Buch, #200690,
Rudy Cassady, #238732, Sheldon Clark, #264772,
Zawaski Cobb, #187136, Kamathene Cooper, #145333,
Gladstone Cummings, #267450, Patrick Curtis, #175139,
Quintin Daniels, #196284, Curtis Davis, #238776,
Heyward Dempsey, #134171, Phillip Denney, #240678,
Paul Durham, #219573, Jerome Durham, #270393, Keith
Eigner, #299153, Bernard Felder, #122099, Jermaine
Garriett, #191274, Fred Gatewood, #289775, Dennis
Goff, #177506, Gregory Grant, #109656, Nelson
Hampton, #286427, James Hartman, #219770, Gary
Hayes, #263985, Michael Hood, #279987, Nikia Law,
#260855, Stephen Lease, #137016, Harry Leonard,
#249996, Herbert McFadden, #184297, Michael
McFarland, #266870, Earl Mack, #216237, John Moultri,
#276527, Matin Muntaqim, #266870, Tony Pitts,
#280597, Germaine Pringle, #250390, Gene Richardson,
#93614, Dennis Richey, #233472, Ignacio Rivera,
#300424, Vondell Sanders, #241308, James Sattler,
#235043, Joseph Schmitz, #173987, Arthur Scott,
#251957, Jerome Scott, #153381, Roosevelt Scott,
#275631, Archie Simmons, #161419, Robert Smith,
#199324, James Williams, #282929, Gary Bryant,
#258972, Harlon Edger, #261866, Johnny Holden,
#245199, Don Hughes, #256862, Michael Key, #266890,
Archie Lee, #226354, Isaac Richardson, #232574,
Larkland Richards, #281768, John Wojcik, #219463,
James Bogan, #288111, Larry Burke, #281911, Jammie
Gaymon, #208922, David Harrell, #260004, Jeff Stinson,
#260047, Ricky Libby, #274681, Alain Lareua, #128014,
Quentin Baker, #297868, Frank Corley, #292975, James

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Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears, #281697, Timothy Smith, #296539, Davis Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235864, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsen, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118, Respondents,

v.

South Carolina Department of Corrections, Petitioner.

**PETITION FOR WRIT OF CERTIORARI
BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

Lake E. Summers
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300
Fax: (803) 254-0309
E-mail: summers@mtsolvfirm.com

Counsel for SCDC

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I. PETITION FOR WRIT OF CERTIORARI

Under the authority of South Carolina Appellant Court Rule [“SCACR”] 242(a), the South Carolina Department of Corrections [“SCDC”] respectfully petitions this Court to issue a writ of certiorari to review the final decision issued by the Court of Appeals in the instant matter, styled as *Francis Ackerman, et al., Appellants, v. S.C Dep’t of Corr., Respondent*, Opinion No. 5379 (Feb. 10, 2016) (Apx. pp. 6106 – 14). 782 S.E.2d 757 (S.C. Ct. App. 2016).

II. CERTIFICATION BY COUNSEL

In accordance with SCACR 242(d)(1), SCDC’s undersigned counsel respectfully certifies that he filed a petition for rehearing on SCDC’s behalf with the Court of Appeals on February 25, 2016. (Apx. pp. 6115 – 49). The Respondents did not file a petition for rehearing.

SCDC’s undersigned counsel further certifies that the Court of Appeals denied SCDC’s petition for rehearing by an order filed March 24, 2016. (Apx. pp. 6150 – 54).

III. SUMMARY OF GROUNDS SUPPORTING SCDC’S PETITION

Under SCACR 242(a), this Court, or any two (2) of its justices, “may, in its discretion ... issue a writ of certiorari to review a final decision of the Court of Appeals.” As provided by SCACR 242(b)’s first sentence, such a writ “is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.”

Such “special and important reasons” exist in the instant matter, because the Court of Appeals’ decision guts the filing deadline from SCDC’s Inmate Grievance System Policy, designated as Policy Number GA-01.12 [“GA-01.12”]. All inmates, not just the Respondents, may now rely upon the Court of Appeals’ decision to file grievances months or even years after the events which spawned their claims, and they may avoid the filing deadline by asserting that their claims concerned SCDC “policies/procedures,” and, therefore, the deadline never applied.

IV. QUESTIONS PRESENTED FOR REVIEW

- A. DOES THE COURT OF APPEALS' DECISION, BY WHICH IT REVERSED THE ADMINISTRATIVE LAW COURT'S ORDER UPHOLDING SCDC'S CONCLUSION THAT THE RESPONDENTS' PRISON INDUSTRIES WAGE CLAIMS WERE TIME-BARRED, CONFLICT WITH A PRIOR, ALBEIT UNPUBLISHED, DECISION BY THIS COURT?
- B. DOES THE COURT OF APPEALS' DECISION, IN WHICH IT RULED THAT INMATES' PRISON INDUSTRIES WAGE CLAIMS ARE EXEMPT FROM ANY FILING DEADLINE WHATSOEVER, PRESENT NOVEL QUESTIONS OF LAW?

V. STATEMENT OF THE CASE

A. GRIEVANCES FILED WITH SCDC UNDER GA-01.12

The Respondents to SCDC's instant petition include current and former inmates who participated in a prison industries service project operated by SCDC at Lieber Correctional Institution ["Lieber"]. Williams Technologies, Inc. ["WTI"], originally participated in the project as the private industry sponsor, and WTI later gave way to Caterpillar, Inc.

This matter concerns 196 administrative grievances filed by the Respondents under GA-01.12.¹ (Apx. pp. 682 – 91). In each of their grievances, the Respondents asserted that SCDC had not paid them the correct hourly wage for their labor.

The Respondents first asserted that they were entitled to the "prevailing wage," pursuant to S.C. Code Ann. § 24-3-430(D), for their labor. In its entirety, § 24-3-430(D) provides that "[n]o inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector." The Respondents specifically asserted in their grievances

¹ The Respondents did not file their grievances until after this Court issued its opinions on August 23, 2004 in *Adkins v. S.C. Dep't of Corr.*, 602 S.E.2d 51 (S.C. 2004) and *Wicker v. S.C. Dep't of Corr.*, 602 S.E.2d 56 (S.C. 2004). At the time this Court issued *Adkins* and *Wicker*, the Respondents had a class action pending in circuit court in which they sought relief under S.C. Code Ann. § 24-3-430(D) and our state's Payment of Wages Act. The circuit court dismissed the Respondents' class action shortly after this Court issued *Adkins* and *Wicker*, and the Respondents appealed the circuit court's decision. This Court accepted the Respondents' appeal on direct review, and, by its decision in *Williams, et al., v. S.C. Dep't of Corr. and Williams Technologies, Inc.*, 641 S.E.2d 885 (S.C. 2007), it affirmed the circuit court's dismissal of the Respondents' class action.

that under § 24-3-430(D), the lawful wage for their labor ranged between \$8.40 and \$12.06 per hour, and they asserted that these wages applied from 1999 to 2001. (Apx. p. 322).

However, the Respondents recognized the reality that the legislature enacted a budget proviso, effective June 27, 2001, by which it permitted SCDC to pay inmates who participated in service projects, like the project at Lieber, less than the “prevailing wage.” (Apx. p. 322). *See* H. 3687, Appropriation Bill 2001–2002, Part IB § 37.31 (Act No. 66, 2001 S.C. Acts 738).²

The Respondents also recognized that the legislature subsequently enacted provisos addressing service projects, all of which permitted SCDC to pay inmates less than the “prevailing wage” for their labor, every year until 2007.³ (Apx. p. 322).

Rather than enact another proviso in 2007, the legislature ratified Senate Bill 182 [“S. 182”], which was comprised of two (2) sections. *See* 2007 South Carolina Laws Act No. 68 (S.B. 182). Section 1 of S. 182 consisted of S.C. Code Ann. § 24-1-290, while § 2 of S. 182 consisted of § 24-1-295. Both §§ 24-1-290 and 295 addressed prison industries service projects, and § 24-1-295 again permitted SCDC to pay inmates who participate in service projects “less than the prevailing wage for work of a similar nature in the private sector.”⁴

² In its entirety, the proviso read as follows: “The Director of [SCDC] may enter into contracts with private sector entities that would allow for inmate labor to be provided for **prison industry service work**. The use of such inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Service work is defined as any work such as repair, replacement of original manufactured items, packaging, sorting, labeling, or similar work that is not original equipment manufacturing. [SCDC] **may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts, and such wages may be less than the prevailing wage for work of a similar nature in the private sector.**” [emphasis supplied].

³ *See* H. 4878, Appropriation Bill 2002–2003, Part IB § 37.25 (Act No. 289, 2002 S.C. Acts 3145); H. 3749, Appropriation Bill 2003–2004, Part IB § 37.23 (Act No. 91, 2003 S.C. Acts 1437); H. 4295, Appropriation Bill 2004–2005, Part IB § 37.23 (Act No. 248, 2004 S.C. Acts 2574); H. 3716, Appropriation Bill 2005–2006, Part IB § 37.22 (Act No. 115, 2005 S.C. Acts 1324); and H. 4810, Appropriation Bill 2006–2007, Part IB § 37.22 (2006 Act No. 397) (Act No. 68, 2007 Acts 288).

⁴ In *Gatewood v. S.C. Dep’t of Corr.*, -- S.E.2d --, 2016 WL 912672 (S.C. Ct. App. Mar. 9, 2016), the Court of Appeals examined the above-referenced provisos and § 24-1-295. *See* notes 6 and 10 below.

Therefore, the Respondents acknowledged in their grievances that they were not entitled to the “prevailing wage” after the effective date of the proviso for the 2001-2002 fiscal year. Instead, they claimed that SCDC owed them back pay attributable to a “negotiated wage” of \$4.00 per hour starting from the proviso’s effective date. (Apx. p. 322).

SCDC denied all of the Respondents’ grievances, and, in doing so, SCDC determined that the Respondents did not timely file their grievances. SCDC also denied the Respondents’ grievances on their merits. (Apx. pp. 324 – 25 and pp. 328 – 30).

B. APPEALS TO THE ADMINISTRATIVE LAW COURT

The Respondents appealed SCDC’s denial of their grievances to the South Carolina Administrative Law Court [“ALC”]. Pursuant to an order dated April 14, 2010 (Apx. pp. 27 – 28), the ALC consolidated the Respondents’ appeals into a single matter, and it instructed the parties that it would consider the issues relevant to all of the appeals in a “three level approach.”

By its order filed March 10, 2001 (Apx. pp. 35 – 45), the ALC addressed the following issues which comprised the first level of its review: (1) whether *Adkins v. S.C. Dep’t of Corr.*, 602 S.E.2d 51 (S.C. 2004) and *Wicker v. S.C. Dep’t of Corr.*, 602 S.E.2d 56 (S.C. 2004) created new substantive rights, new grievances remedies, and/or new appeal remedies, and (2) whether *Adkins* and *Wicker* applied prospectively or retrospectively. The ALC concluded (1) that *Adkins* and *Wicker* did not create new substantive rights, new grievance remedies, or new appeal remedies and (2) that *Adkins* and *Wicker* applied retrospectively. (Apx. p. 43).

The ALC then declared in its March 10, 2011 order that “the second level of review must now commence,” and it stated as follows: “The next issue to be addressed by this Court is the timeliness of each [Respondent’s] grievance under [GA-01.12].” (Apx. pp. 43 – 44).

On July 26, 2012, the ALC issued the final version of its second level order. (Apx. pp. 152 – 80). The ALC considered eight (8) arguments by the Respondents in which they asserted that they had timely filed their grievances.⁵ (Apx. p. 154). The ALC rejected all of the Respondents' arguments, and it ruled that the fifteen-day filing deadline from paragraph 13.1 applied to all but one of the 197 their grievances.⁶ (Apx. pp. 178 – 79).

C. THE COURT OF APPEALS' FEBRUARY 10, 2016 DECISION

The Respondents appealed the ALC's March 10, 2011 and July 26, 2012 orders, and they stated nine (9) issues on appeal in their brief to the Court of Appeals.⁷ (Apx. pp. 5966 – 67).

However, the Court of Appeals considered only the following issue from amongst the nine (9) issues identified by the Respondents: "Did SCDC's fifteen-day filing deadline apply to Inmates' grievances?" (Apx. p. 6110). The Court of Appeals ruled that the fifteen-day filing deadline from paragraph 13.1 of GA-01.12 did not apply to the Respondents' grievances, and, in so ruling, it declared as follows (Apx. p. 6111):

Inmates argue the fifteen-day filing deadline did not apply to them because their grievances did not concern an "incident" but rather concerned SCDC "policies/procedures," which are exempt from the filing deadline pursuant to paragraph 13.9 of [GA-01.12]. We agree.

⁵ The Respondents made the following eight (8) arguments to the ALC: "(1) [their] grievances [were] not time-barred under the fifteen-day time limit for filing grievances set forth in Paragraph 13.1 of GA-01.12 because they [concerned] policies/procedures and thus [fell] under Paragraph 13.9; (2) [they] had reasonable cause under Paragraph 13.9 of GA-01.12 not to file within Paragraph 13.1's fifteen-day time limit; (3) [SCDC's] application of Paragraph 13.1 violated the [their] due process rights because it cut off [their] claims before they accrued; (4) [SCDC] waived Paragraph 13.1 because it did not raise Paragraph 13.1 until the Step 2 appeal and it considered [their] grievances on the merits before invoking Paragraph 13.1; (5) [SCDC] was equitably estopped from raising Paragraph 13.1; (6) [they] 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 [their] class action suit in circuit court; and (8) [they] complied with Paragraph 13.1 by filing their grievances within fifteen days of a term of employment." [emphasis supplied].

⁶ The sole instance in which the ALC found that the fifteen-day deadline did not apply consisted of the grievance filed by Respondent Fred Gatewood. (Apx. p. 179). See note 4 above and note 10 below.

⁷ The Respondents identified the following as the second of their nine (9) issues on appeal: whether their grievances concerned "policies/procedures" under paragraph 13.9 because of their express language and substance, *Adkins* and *Wicker*, and notices of appeal, and whether there was a time limit to file under paragraph 13.9. (Apx. p. 5966).

As this Court recognized in its August 23, 2004 decisions in *Adkins* and *Wicker*,⁸ the Respondents were obliged to follow the procedures and rules published in GA-01.12 in order to seek SCDC's review of their prison industries wage claims. (Apx. pp. 682 – 91).

Paragraph 13 of GA-01.12 was entitled "STEPS IN THE GRIEVANCE PROCESS." (Apx. p. 687 – 89). Paragraph 13.1 required the Respondents to initiate the grievance process by filing Step 1 grievance forms in which they articulated their claims, and it also required them to file their Step 1 forms within fifteen days of the "alleged incident." (Apx. p. 687).

As they grounded their claims upon their assertion that SCDC had purportedly failed to pay them an hourly wage which conformed to the operative legislation (i.e. § 24-3-430(D) and the provisos), SCDC found that the incidents which spawned the Respondents' claims consisted of the dates upon which SCDC first paid them for their labor. SCDC logically reasoned that if their claims consisted of assertions that SCDC did not pay them an hourly wage which conformed to state law, then the Respondents knew from the date upon which SCDC first paid them that they possessed a claim for back wages attributable to the difference between the hourly wage SCDC should have paid them and the hourly wage SCDC actually paid them. (Apx. p. 329).

SCDC examined the chronologies associated with the Respondents' grievances, their claims, applicable state law, and its own policy (i.e. GA-01.12). SCDC concluded that as they

⁸ In *Adkins*, 602 S.E.2d at 55, this Court held that in accordance with the companion case of *Wicker*, inmates may file grievances to protest SCDC's "failure to pay wages in accordance with the mandatory statutory provisions." In *Wicker*, 602 S.E.2d at 56, this Court 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. For example, although inmates may not sue for civil damages on matters relating to parole, work release, or work credits, they may enforce such rights via [SCDC] grievance procedures. We find no reason such procedures should not apply when an inmate challenges the wages he or she is being paid, particularly where there is a statute mandating payment of the prevailing wage. Accordingly, we hold that although *Wicker* has no claim for civil damages, he properly filed a grievance with [SCDC]." The internal grievance process available to inmates in SCDC's custody consists exclusively of the procedures and rules in GA-01.12.

did not begin filing their Step 1s until late September 2004, the Respondents did not timely initiate their grievances. SCDC concluded that the Respondents failed to file the Step 1s in which they articulated their claims within fifteen days of the incidents which spawned their claims (i.e. the dates upon which SCDC first paid them for their labor). (Apx. p. 329).

In examining the chronologies associated with their grievances, their claims, applicable state law, and its own policy (i.e. GA-01.12), SCDC also concluded that the exceptions to the fifteen-day deadline from paragraph 13.9 did not apply to the Respondents' grievances. (Apx. p. 329). In rendering its conclusion, SCDC observed that the fifteen-day deadline from paragraph 13.1 applied to nearly every aspect of inmate activity and that no other unique or special exception applied to prison industries pay disputes. (Apx. p. 329).

In its July 26, 2012 order, the ALC rejected the Respondents' arguments that the fifteen-day filing deadline from paragraph 13.1 did not bar their claims,⁹ and it affirmed SCDC's conclusion that the Respondents failed to timely file their Step 1s. (Apx. pp. 152 – 180).

The Court of Appeals reversed the ALC, and, in doing so, it relied upon § 1-23-610(B), which permitted the Court of Appeals to reverse the ALC if the Court of Appeals determined the ALC's decision was "affected by an error of law." (Apx. p. 6110). Before announcing its decision, the Court of Appeals ended its analysis as follows (Apx. p. 6114):

Based on the foregoing, the wage set forth in the WTI contract logically falls within "policies/procedures" as contemplated in paragraphs 7.1 and 13.9 of [GA-01.12]. Therefore, SCDC's attempt to characterize [Respondents'] wage grievances as incident grievances was arbitrary and capricious. Cf. [Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 766 S.E.2d 707, 718 (S.C. 2014)] ("We defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" (quoting *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984)). [emphasis supplied].

⁹ See note 5 above.

As a consequence of reversing the ALC, the Court of Appeals remanded the Respondents' grievances back to the ALC for consideration of the merits of the wage claims they articulated within their grievances.¹⁰

D. THE COURT OF APPEALS' MARCH 24, 2016 ORDER

By a filing dated February 25, 2016, SCDC petitioned the Court of Appeals to rehear and reconsider its February 10, 2016 decision (Apx. pp. 6115 – 49), and it presented the following arguments in its petition: (1) grievances concerning “policies/procedures” are not inherently exempt from the fifteen-day filing deadline (Apx. pp. 6125 – 29); (2) instances in which SCDC purportedly failed to pay the Respondents lawful wages for their labor constituted “incidents” in which SCDC purportedly deprived them of their property, and, therefore, the fifteen-day filing deadline barred the Respondents' grievances (Apx. pp. 6129 – 36); (3) instances in which SCDC purportedly failed to pay the Respondents lawful wages for their labor impacted “conditions” of their imprisonment, and, therefore, the fifteen-day filing deadline barred their grievances (Apx. pp. 6136 – 41); and (4) the wages SCDC paid the Respondents for their labor do not constitute “policies/procedures,” and, therefore, the fifteen-day filing deadline barred their grievances (Apx. pp. 6142 – 47).

By an order filed March 24, 2016, the Court of Appeals denied SCDC's petition for rehearing (Apx. pp. 6150 – 54). In doing so, the Court of Appeals took the opportunity “to address SCDC's misapprehension of [its] February 10, 2016 opinion.” (Apx. p. 6153). However,

¹⁰ As it determined that he filed his Step 1 form within fifteen days of the date upon which SCDC first paid him for his labor, the ALC found that Respondent Fred Gatewood timely filed his grievance. Consequentially, the ALC considered the merits of the wage claims in Respondent Gatewood's Step 1. The ALC affirmed SCDC's denial of Respondent Gatewood's wage claims, and he appealed to the Court of Appeals. By its decision in *Gatewood v. S.C. Dep't of Corr.*, -- S.E.2d --, 2016 WL 912672 (S.C. Ct. App. Mar. 9, 2016), the Court of Appeals reversed in part and affirmed in part the ALC's decision. Both Respondent Gatewood and SCDC filed petitions for rehearing, as of the Advance Sheets published April 27, 2016, their petitions for rehearing remain pending. See notes 4 and 6 above.

the Court of Appeals' order only brought the misguided analysis by which it reached February 10, 2016 decision into sharper focus.

VI. ARGUMENTS IN SUPPORT OF SCDC'S PETITION

A. THE COURT OF APPEALS' DECISION, BY WHICH IT REVERSED THE ADMINISTRATIVE LAW COURT'S ORDER UPHOLDING SCDC'S CONCLUSION THAT THE RESPONDENTS' PRISON INDUSTRIES WAGE CLAIMS WERE TIME-BARRED, CONFLICTS WITH A PRIOR, ALBEIT UNPUBLISHED, DECISION BY THIS COURT

1. SCACR 242(b)(3)

SCACR 242(b) is entitled "Considerations Governing Review," and it sets forth examples of the character of reasons which this Court will consider in determining whether to grant review of a decision by the Court of Appeals. SCDC respectfully asserts that SCACR 242(b)(3) applies in the instant matter, because the decision by the Court of Appeals in *Ackerman* is in conflict with this Court's prior, albeit unpublished, decision in *Okera v. S.C. Dep't of Corr.*, -- S.E.2d --, 2012 WL 10907962 (No. 2012-MO-042) (S.C. Oct. 24, 2012).

2. The Court's Unpublished Decision in *Okera*

Like the Respondents, Okera participated in a prison industries project operated by SCDC. Like the Respondents, Okera filed a grievance in which he claimed that SCDC did not pay him lawful wages for his labor. As it did to the Respondents' grievances, SCDC applied the fifteen-day filing deadline to Okera's grievance, and it denied Okera's grievance.¹¹

Okera appealed to the ALC, and the ALC affirmed SCDC's decision. Okera then appealed to the Court of Appeals, but this Court accepted his appeal on direct review. In its per curiam opinion, this Court affirmed the ALC's ruling as follows:

¹¹ Okera and the Respondents participated in different types of prison industries projects, but, under *Wicker*, the procedures and rules from GA-012 applied to all of their grievances. Thus, under paragraph 13.1, Okera and the Respondents initiated their grievances by filing Step 1s in which they asserted that the wages SCDC paid them for their prison industries labor did not conform to state law.

This is a direct appeal from an order of the [ALC] dismissing the appeal from [SCDC's] denial of [Okera's] inmate grievance based on **his failure to comply with the relevant statute of limitations set forth in [Policy GA-01.12]. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: [Al-Shabazz] (approving [SCDC's] internal procedures for discipline and grievances, which specify a fifteen-day time limit for filing for grievances).** [emphasis supplied].

3. This Court's Decision in *Toth*

The following passage from this Court's decision in *Toth v. Square D Co.*, 377 S.E.2d 584, 586 – 87 (S.C. 1989), impacts SCDC's analysis and argument on this point:

Finally, we point out that this Court has already given retroactive effect to the [*Small v. Springs Industries, Inc.*, 357 S.E.2d 452 (S.C. 1987)] decision through our holding in *Francisco v. Black River Electric Cooperative*, Mem. Op. 87-MO-325 (S.C. filed July 27, 1987). ... **Although we recognize that *Francisco* is a memorandum opinion without precedential value (footnote omitted), it nonetheless indicates that we have already implicitly allowed retroactive application of *Small*.** By our holding today, we explicitly hold that *Small* is to be retroactively applied to causes of action arising prior to the date it was filed. [emphasis supplied].

By its decision in *Okera*, this Court, under *Toth*, implicitly affirmed the time-bar comprised of the fifteen-day filing deadline to a prison industries wage grievance in a posture similar to if not identical to the posture of the Respondents' prison industries wage grievances.

SCDC respectfully urges this Court to grant the instant petition so that it may resolve the tension between its prior decision in *Okera* and the Court of Appeals' decision.

B. THE COURT OF APPEALS' DECISION, IN WHICH IT RULED THAT THE RESPONDENTS' PRISON INDUSTRIES WAGE CLAIMS WERE EXEMPT FROM ANY FILING DEADLINE WHATSOEVER, PRESENTS NOVEL QUESTIONS OF LAW

1. SCACR 242(b)(3)

SCDC respectfully submits that SCACR 242(b)(3) applies in the instant matter, because the decision by the Court of Appeals, namely that the Respondents' prison industries wage

grievances were exempt from the applicable fifteen-day filing deadline, presents novel questions of law for review by this Court.

2. Applicable Standard of Review

In *City of Rock Hill v. Harris*, 705 S.E.2d 53, 54 (S.C. 2011), this Court acknowledged the following:

In a case raising a **novel question of law**, the appellate court is free to decide the question **with no particular deference to the lower court**. [citations omitted and emphasis supplied].

In *Brock v. Town of Mount Pleasant*, -- S.E.2d --, 2016 WL 1446133, *1 (S.C. Apr. 13, 2016), this Court relied upon *City of Rock Hill* when it presented what SCDC respectfully asserts is the standard applicable to its review of the Court of Appeals' decision:

"The interpretation of a statute is a question of law." [*Sparks v. Palmetto Hardwood, Inc.*, 750 S.E.2d 61, 63 (C.C. 2013)] (citing [*CFRE, L.L.C. v. Greenville Cnty. Assessor*, 716 S.E.2d 877, 881 (S.C. 2011)]). **This Court may interpret statutes, and therefore resolve this case, "without any deference to the court below."** [*CFRE*, 716 S.E.2d at 881] (citing [*City of Rock Hill*, 705 S.E.2d at 54]). [emphasis supplied].

3. Paragraphs 13.9 and 13.1 from GA-01.12

The entirety of paragraph 13.9 from GA-01.12, upon which the Court of Appeals anchored its decision to reverse the ALC, provides as follows (Apx. pp. 689 and 6111):

Exceptions to the [fifteen] 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.** [italicized emphasis supplied by the Court of Appeals in March 24, 2016 order; bold emphasis supplied by SCDC].

The "fifteen day time limit requirement" referenced in paragraph 13.9 comes from paragraph 13.1, which, in pertinent part, provides as follows (Apx. p. 687):

Inmates must make an effort to informally resolve a grievance by either submitting a Request to Staff Member Form or by discussing their complaint with the appropriate supervisor/staff. However, in certain cases, informal resolution may not be appropriate or possible (e.g., when the matter concerns staff not working at the institution, or when the matter involves allegations of criminal activity). An informal resolution is not necessary when appealing a disciplinary conviction or a custody reduction. If informal resolution is not possible, the grievant will complete Form 10-5, Step 1, ... and will submit the Form ... within 15 days of the alleged incident. An inmate will submit a grievance within the time frames established in the policy. [italicized emphasis from Policy GA-01.12; bold emphasis supplied by SCDC].

4. Novel Issues of Law Presented by the Court of Appeals' Decision

- a) **Do inmates alone determine if the claims they articulate in the grievances they file under GA-01.12 concern SCDC "policies" or "procedures" so that the grievances presenting such claims are exempt from the applicable fifteen-day filing deadline?**

The Court of Appeals denied SCDC's petition for hearing by the order it issued March 24, 2016, and, in doing so, it addressed what it characterized as "SCDC's misapprehension" of its decision. The Court of Appeals began its March 24, 2016 order as follows (Apx. p. 6153):

As stated in our [February 10, 2016 decision], the exception for "policies/procedures" in [paragraph 13.9] serves as shorthand for the language in [paragraph 7.1 of GA-01.12], which lists one of the issues considered by SCDC to be grievable as "Department policies/procedures, directives, or conditions [that] directly affect an inmate." Therefore, even if SCDC's implementation, or lack thereof, of the legislature's policies on inmate wages *also* constitutes a condition of imprisonment, such a condition is encompassed by the policies/procedures exception in [paragraph 13.9].

Paragraph 7 is entitled "GRIEVABLE ISSUES," and paragraph 7.1 provides that "Department policies/procedures, directives or conditions which directly affect an inmate" constitute issues which "will be considered grievable."¹² (Apx. p. 685).

¹² Paragraph 7 enumerates six (6) other grievable issues. See Paragraphs 7.2 – 7.7. (Apx. p. 685). "Inmate property complaints" are grievable under paragraph 7.4, and SCDC analyzed paragraph 7.4's impact within its petition for rehearing. (Apx. pp. 6129 – 33). As discussed below, the Court of Appeals addressed SCDC's argument concerning paragraph 7.4 in its March 24, 2016 order. (Apx. p. 6154).

In rendering its February 10, 2016 decision, the Court of Appeals focused on the term “Department policies/procedures,” and it reasoned as follows (Apx. p. 6112):

Paragraph 7.1 (quoted above) includes the same reference to “policies/procedures” found in paragraph 13.9 as an exception to the fifteen-day deadline, i.e., “Exceptions to the [fifteen] day time limit requirement will be made for grievances concerning *policies/procedures*.” (emphasis added). Therefore, the words “policies/procedures” in paragraph 13.9 was meant to serve as shorthand for the language in paragraph 7.1, i.e., “Department policies/procedures, directives, or conditions [that] directly affect an inmate.” Cf. [*Travelscape, LLC v. S.C. Dep’t of Revenue*, 705 S.E.2d 28, 34 (S.C. 2011)] (“As a general rule, ‘identical words and phrases within the same statute should normally be given the same meaning.’” (quoting *Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007))); *id.* at 101, 705 S.E.2d at 34 (“[W]ords in a statute must be construed in context, and their meaning may be ascertained by reference to words associated with them in the statute.”); [*Murphy v. S.C. Dep’t of Health & Envtl. Control*, 723 S.E.2d 191, 195 (S.C. 2012)] (holding regulations are interpreted using the rules of statutory construction). [footnote omitted].

In its March 24, 2016 order, the Court of Appeals, responding to the first argument SCDC offered in its petition for rehearing (Apx. pp. 6125 – 29), parsed paragraph 13.9’s grammatical structure as follows (Apx. p. 6153):

Further, the plain language of [paragraph 13.9] states in mandatory terms, “Exceptions to the [fifteen] day time limit requirement *will* be made for grievances concerning policies/procedures.” ... The remainder of the section is permissive:

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.

... The final [sentence of paragraph 13.9] requiring the grievant to request a waiver pertains only to the exceptions permitted for incident grievances. Without such a request, SCDC would not be aware of a particular grievant’s reason for seeking a time extension. [italicized

emphasis supplied by Court of Appeals; bold emphasis supplied by SCDC].

Frankly but respectfully stated, nothing in paragraphs 13.9, 7.1, 13.1, or, for that matter, any other provision of GA-01.12 supports the Court of Appeals' interpretation of the final sentence of paragraph 13.9. The Court of Appeals immediately doubled down on its flawed interpretation of paragraph 13.9 in its March 24, 2016 order as follows (Apx. p. 6153 – 54):

In contrast, the mandatory exception for policies/procedures is automatic for every grievance complaining of an SCDC policy, procedure, directive, or condition that directly affects the grievant. **Such a complaint within the grievance form should be readily recognized by SCDC as a policy, procedure, directive, or condition that directly affects the grievant. Upon such recognition, SCDC is required by section 13.9 to accept the grievance as timely. It makes no sense to require the grievant to submit a request for an exception to the fifteen-day deadline when SCDC is already required to accept the grievance as timely.** Therefore, in the present case, [the Respondents] were not required to submit a request for a waiver from the fifteen-day deadline. *See* [State v. Sweat, 688 S.E.2d 569, 575 (S.C. 2010)] (“A statute as a whole must receive a practical, *reasonable*, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” ... (quoting [Browning v. Hartvigsen, 414 S.E.2d 115, 117 (S.C. 1992)])); *see also* [Murphy v. S.C. Dep't of Health & Env'tl. Control, 723 S.E.2d 191, 195 (S.C. 2012)] (holding regulations are interpreted using the rules of statutory construction); [Home Health Serv., Inc. v. S.C. Tax Comm'n, 440 S.E.2d 375, 378 (S.C. 1994)] (“Whether a particular agency proceeding announces a rule or a general policy statement depends upon whether the agency action establishes a binding norm.”). [italicized emphasis supplied by the Court of Appeals; bold emphasis supplied by SCDC].

In light of the above-quoted passages from the Court of Appeals' March 24, 2016 order, SCDC poses the following rhetorical question: what if, contrary to the Court of Appeals' assurance that the nature of a claim appearing in a grievance may be “readily recognized” and, thus, susceptible to a manifestly obvious interpretation, an inmate articulates a claim in a grievance that he asserts concerns a “policy, procedure, directive, or condition,” but the claim instead obviously concerns an “incident?”

SCDC presents the following hypothetical to illustrate the question it posed above: an inmate files a grievance in which he claims that a correctional officer entered his cell and took his typewriter during an inspection under a purported SCDC “policy, procedure, directive, or condition” to wrongfully deprive inmates of their personal property.

Under the above-quoted passages from the Court of Appeals’ March 24, 2016 order, the inmate filing the grievance articulating the claim described in SCDC’s hypothetical would not confront a fifteen-day deadline. For that matter, under the Court of Appeals’ decision, as clarified by the above-quoted passages from its March 24, 2016 order, the inmate would be perfectly within his rights to wait years to file his grievance, and SCDC would have to, by operation of paragraph 13.9, accept, process, and adjudicate the grievance.

The Court of Appeals, by both its decision and its order denying SCDC’s petition for rehearing, made the inmate in SCDC’s custody and control, not SCDC, the sole arbiter of whether any claim he articulates in any grievance he files constitutes a claim concerning a “policy, procedure, directive, or condition” rather than a claim involving an “incident.” Moreover, the Court of Appeals bestowed the exclusive power to determine when he may file a grievance which purportedly concerns a “policy, procedure, directive, or condition” upon the inmate, and, by doing so, the Court of Appeals has allowed the inmate to deprive SCDC of the opportunity to meaningfully investigate the facts and circumstances surrounding the inmate’s claim in the days and weeks immediately after the events which spawned the inmate’s claim. The potential impact of the Court of Appeals’ decision and order is profound, as SCDC’s inmate grievance system may well fall into disarray.

Paragraph 13.9 begins with the following words: “Exceptions to the [fifteen] day time limit requirement.” Thus, contrary to the Court of Appeals’ analysis, the presumption underlying

paragraph 13.9 is that the fifteen-day filing deadline from paragraph 13.1 applies to *all* grievances, including grievances in which the inmate articulates a claim involving an SCDC “policy, procedure, directive, or condition.” SCDC poses another rhetorical question: how are its officials supposed to meaningfully determine whether the claim articulated by the inmate in his grievance actually challenges an SCDC “policy, procedure, directive, or condition” if the inmate quite literally confronts no deadline by which to file his grievance?

The Court of Appeals’ explanation from the above-quoted passages ignores the reality that SCDC officials cannot make such a determination until the inmate actually files the grievance. The Court of Appeals’ explanation also ignores the stark reality that SCDC officials and the inmate may dispute whether the claim articulated in the grievance actually challenges an SCDC “policy, procedure, directive, or condition.”

Contrary to the Court of Appeals’ explanation, paragraph 13.9’s final sentence exists for two (2) reasons: (1) to compel the inmate seeking an exception to the fifteen-day deadline to advise SCDC of the type of claim that appears in his grievance (i.e. “incident” vs. “policy, procedure, directive, or condition”) and (2) to compel the inmate to seek an extension to the fifteen-day deadline in a timely fashion so that SCDC may not only determine whether the inmate’s claim actually challenges an agency “policy, procedure, directive, or condition” but also to promptly investigate the facts and circumstances associated with the inmate’s claim.

In the above-quoted passages from its March 24, 2016 order, as well as the relevant passages from its February 10, 2016 decision, the Court of Appeals relied upon precedent concerning statutory interpretation to support its interpretation of paragraphs 13.9, 7.1, and 13.1. Under its decisions in both *City of Rock Hill* and *Brock v. Town of Mount Pleasant*, however, this Court may interpret not only paragraphs 13.9, 7.1, and 13.1, but the entirety of GA-01.12 without

any deference to the interpretation reflected in both the Court of Appeals' decision and order. Therefore, SCDC respectfully urges this Court to grant its instant petition so that this Court may interpret GA-01.12 in a manner that embraces, rather than forsakes, common sense and reality.

- b) **Do “Inmate property complaints,” under paragraph 7.4 of GA-01.12, cover only complaints about “chattels” or do they also cover complaints about the wages SCDC paid inmates for their prison industries labor, which must conform to state law?**

The Court of Appeals stated as follows in its February 10, 2016 decision (Apx. p. 6113):

It logically follows that the remaining items in paragraph 7, i.e., 7.2 through 7.7, **were meant to serve as “incidents”** for purposes of paragraphs 13.1 and 13.9. [emphasis supplied].

Obviously, paragraph 7.4, which provided that “Inmate property complaints” are grievable issues, is one of the remaining items from paragraph 7 deemed as an “incident” in the above-quoted passage from the Court of Appeals' decision. (Apx. p. 685).

In its petition for rehearing, SCDC focused upon paragraph 7.4 (Apx. pp. 6130 – 31), and its analysis relied upon this Court's decision in *Wicker*, 602 S.E.2d at 57 – 58:

We find that where, as here, the state has created a **statutory right to the payment of a prevailing wage**, it cannot thereafter deny that **right** without affording due process of law. *Cf. Piatt v. MacDougall*, 773 F.2d 1032, 1036 (9th Cir. 1985) (**where state has established, by statute, a right of inmates to compensation for work performed for private parties**, it cannot deny that **right** after they earned the wages, without affording due process of the law); *Borrer v. White*, 377 F.Supp. 181 (W.D.Va. 1974) (although there was no federal constitutional **right to payment**, inmate might be entitled to such compensation under state statute). [emphasis supplied].

We are not unmindful of our opinion in [*Sullivan v. S.C. Dep't of Corr.*, 586 S.E.2d 124 (S.C. 2003)], in which we held the [ALC] has jurisdiction to review [SCDC] grievance proceedings only if they involve the denial of “state created liberty interests.” There, we recognized that our opinion in [*Al-Shabazz v. State*, 527 S.E.2d 742, 750 (S.C. 1999)], held that administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related

credits, or custody status. However, we did not limit *Al-Shabazz* to these two instances. The *Al-Shabazz* Court explained that procedural due process is guaranteed **when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of ... property.** [527 S.E.2d at 750].

We find the state's statutory mandate that inmates be paid the prevailing wage creates such [a property interest], which may not be denied without due process. *Piatt v. MacDougall*, *supra*. Accordingly, in this very limited circumstance,¹³ we hold [SCDC's] failure to pay in accordance with the statutes is reviewable by the [ALC]. [emphasis supplied].

In light of this Court's rulings in *Wicker*, which included an analysis of its rulings in *Al-Shabazz*, SCDC argued as follows in its petition for rehearing (Apx. pp. 6132 – 33):

Thus, under the Court's own reasoning, "Inmate property complaints" under paragraph 7.4, like the grievances in which the [Respondents] claimed that SCDC failed to pay them lawful wages and, by doing so, deprived them of their property, constitute "incidents" under paragraph 13.1. Consequentially, the [Respondents'] grievances, as "Inmate property complaints," were not exempt from paragraph 13.1's fifteen-day filing deadline under paragraph 13.9. *See Broadhurst v. City of Myrtle Beach Election Comm'n*, 537 S.E.2d 543, 548 (S.C. 2000) ("In construing a statute, its words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.").

In the final paragraph of its March 24, 2006 order denying SCDC's petition for rehearing, the Court of Appeals responded to SCDC's argument as follows (Apx. p. 6154):

Finally, the word "property" in section 7.4, which lists one of the issues considered by SCDC to be grievable as "Inmate property complaints," contemplates any chattels belonging to the grievant, rather than an intangible *right* to the payment of wages for work in the Prison Industries program. [italicized emphasis supplied by the Court of Appeals].

The Court of Appeals offered no precedent, nor did it reference any provision of GA-01.12, to support its conclusion on this point. As reflected by a review of this Court's holding in

¹³ In the associated footnote, this Court noted that its holding in *Wicker* "is extremely limited and is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance." 602 S.E.2d at 58, n.1. If for no other reason than to limit the Court of Appeals' February 10, 2016 decision to grievances in which inmates articulate prison industries wage claim, this Court should grant SCDC's instant petition.

Williams,¹⁴ in which it relied upon its prior holding from *Wicker*, as well as a review of the Court of Appeals' own holdings in *Gatewood*,¹⁵ the above-quoted response to SCDC's argument concerning paragraph 7.4 from the Court of Appeals' March 24, 2016 order begs, like the Court of Appeals' February 10, 2016 decision, for review by this Court.

In *Williams*, 641 S.E.2d at 886, the Respondents' class action which the circuit court dismissed soon after the release of *Adkins* and *Wicker*, this Court began its recitation of the facts by reflecting on its decision in *Adkins*:

In *Adkins*, we considered a suit by [the Respondents against SCDC] as the sole defendant. The suit alleged a violation of [§ 24-3-430(D)] which provides that "no inmate participating in [a prison industries] program may earn less than the prevailing wage for work of similar nature in the private sector." We held there is no private cause of action for a violation of this statute.

In the footnote associated with this paragraph from *Williams*, 641 S.E.2d at 886, n. 1, this Court offered the following observation of its ruling in *Wicker*:

In the companion case of [*Wicker*], **we further held that the [Respondents] may not be deprived of this property interest** without due process; accordingly, [the Respondents] were directed to file grievances if they wished to protest [SCDC's] failure to pay a prevailing wage. [emphasis supplied].

In *Gatewood*, 2016 WL 912672, at *8, which is effectively the companion case to *Ackerman*, the Court of Appeals invoked the identical holding from *Wicker*:

Prior to August 1, 2007, [Gatewood] had a right to wages pursuant to (1) the budget provisos for fiscal years 2004-05, 2005-06, and 2006-07 and (2) as to July 2007, [§ 24-3-430(D)] and [§ 24-3-315] of the South Carolina Code (2007). ... [*Wicker*, 602 S.E.2d at 57] ("**[W]here ... the state has created a statutory right to the payment of a prevailing wage**, it cannot thereafter deny that right without affording due process of law."). [other citations omitted and emphasis supplied].

¹⁴ See note 1 above.

¹⁵ See notes 4, 6, and 10 above.

Later in *Gatewood, Id.*, at *9, the Court of Appeals again invoked the identical holding from *Wicker*:

Applying this increase in deductions retroactively to gross wages earned during July 2007 would divest **[Gatewood's] vested right to a higher net wage for that month**, i.e., his gross wages less only those deductions authorized by [§ 24-3-40], and, therefore, would violate his due process rights. [See *Dunham v. Davis*, 91 S.E.2d 716, 718 (S.C. 1956)] (holding retroactive application of a statute relaxing the stringency of a tax sale procedure to respondents, **whose rights in certain real property vested** prior to the statute's enactment “would be clearly unconstitutional as depriving them of property without due process of law”); cf. [*Wicker*, 602 S.E.2d at 57] (“[W]here ... **the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right** without affording due process of law.”). [emphasis supplied].

In light of this Court's reliance upon *Wicker* in its analysis in *Williams*, as well as the Court of Appeals' reliance upon *Wicker* in the above-quoted passages from *Gatewood*, SCDC respectfully asserts that the Respondents, under *Wicker*, unquestionably possessed a property right to the wages it paid them for their prison industries labor. Stated more plainly, the Respondents' prison industries wages unquestionably constituted their property.

As their prison industries wages unquestionably constituted their property, the prison industries wage claims they articulated in the Step 1s they filed under the auspices of GA-01.12 unquestionably constituted “Inmate property complaints” as explicitly contemplated by paragraph 7.4. Thus, under the reasoning and analysis conducted by the Court of Appeals itself in its February 10, 2016 decision, the Respondents' grievances constituted “incident” grievances, and, accordingly, the fifteen-day filing deadline from paragraph 13.1 barred their claims.

With all due deference to the Court of Appeals, SCDC respectfully asserts that the logic and analysis the Court of Appeals employed to negate the above-stated reality is bereft of any legitimacy. The Court of Appeals, in refuting SCDC's argument on this point, conjured up a baseless distinction between “chattels,” tangible property belonging to the Respondents. Again,

the Court of Appeals provided no authority whatsoever in its March 24, 2016 order refuting SCDC's argument concerning the interpretation and impact of paragraph 7.4.

The term "chattel" does not appear anywhere in GA-01.12. Moreover and by way of stating the obvious, the Respondents have undoubtedly used the wages SCDC paid to them for their prison industries labor to purchase "chattels" at some point during their incarceration. Thus, SCDC respectfully submits that, under paragraph 7.4 and the entirety of GA-01.12, no legitimate distinction exists between the types of property belonging to the Respondents, whether the property consists of their "chattels" or their prison industries wages which they used to purchase such "chattels."

Perhaps most critically, this Court, in *Adkins*, *Wicker*, and *Williams*, never ruled, held, observed, or even off-handedly noted that the property right possessed by inmates to the prison industries wages paid to them by SCDC, a right conferred upon them by operation of state law, is somehow distinct from the other items to which inmates possess property rights. SCDC respectfully submits that this Court rejected the very notion of such a distinction by its holdings in *Adkins* and *Wicker*, as it clearly held that inmates' property rights, which in the factual context of these two (2) decisions consisted of their property rights to their prison industries wages, were subject to adjudication by SCDC under its internal inmate grievance process (a/k/a GA-01.12). The internal grievance process available to inmates in SCDC's custody consists exclusively of the procedures and rules in GA-01.12.

Thus, the Court of Appeals' distinction between the types of property attributable to the Respondents – their "chattels" versus their "intangible rights" to their prison industries wages – may well represent a departure from this Court's rulings in *Adkins*, *Wicker*, and *Williams*. At the very least, the Court of Appeals' distinction clearly represents a novel issue of law subject to

review by this Court. Accordingly, SCDC respectfully urges this Court, under its decisions in both *City of Rock Hill* and *Brock v. Town of Mount Pleasant*, to grant the instant petition and review the Court of Appeals' decision in order to examine the grounds, or lack thereof, upon which the Court of Appeals made such a distinction.

5. Review of the ALC's June 24, 2012 Order

Should it grant SCDC's instant petition and ultimately reverse the Court of Appeals' decision, this Court would presumably reinstate the ALC's June 26, 2012 order by which the ALC affirmed SCDC's application of GA-01.12's fifteen-day filing deadline to the Respondents' grievances. The comprehensive analysis conducted by the ALC, which resulted in the rulings published in its June 26, 2012 order, affirms that the ALC acted deliberately and thoughtfully.

By a directive issued December 16, 2011, the ALC ordered the parties to submit supplemental briefs in which they described, in specific terms, the meaning of the term "policies/procedures" from paragraph 13.9 (Apx. p. 5116). The parties complied by their respective filings dated December 21 and 22, 2011. (Apx. pp. 5110 – 14 and 5115 – 31).

The ALC considered the definitions offered by the Respondents (Apx. p. 5110 – 11) and by SCDC (Apx. p. 5118). In its June 26, 2012 order (Apx. p. 160), the ALC adopted SCDC's construction of the term "policies/procedures:"

[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."

In adopting the above-quoted language provided by SCDC, the ALC determined that SCDC's interpretation was reasonable, consistent with SCDC's use of the term throughout GA-

01.12, and avoided the public policy problems inherent in the Respondents' construction of the term. (Apx. pp. 160 – 61).

The ALC also fully realized the perils of too broad an interpretation of the “policies/procedures” exception to the fifteen-day filing deadline (Apx. pp. 158 – 60):

In the present case, the court finds that the [Respondents'] interpretation of the term “policies/procedures” in Paragraph 13.9 is overly expansive. The [Respondents] 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. [citing *State ex rel. McLeod v. Nessler*, 256 S.E.2d 419, 420 (S.C. 1979) and *Hinton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 592 S.E. 2d 335, 338 (S.C. Ct. App. 2004)].

Moreover, the [Respondents'] broad interpretation of the term “policies/procedures” does not comport with public policy. **[SCDC] 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 [Respondents'] prevailing wage claims.** [citing *Johnson v. Johnson*, 385 F.3d 503, 519 (5th Cir. 2004) and *Woodford v. Ngo*, 548 U.S. 81, 95 (2006)]. Here, the fifteen-day filing deadline from Paragraph 13.1 is the only limitations period applicable to these claims.¹⁶ Therefore, **ruling in favor of the [Respondents] would mean that [they] 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 [SCDC's] “policies or procedures.” [citing *Lawson v. S.C. Dep't of Corr.*, 06-ALJ-04-00823-AP (S.C. A.L.J.D. Feb. 12, 2007) and *Wright v. S.C. Dep't of Corr.*, 2006 WL 1430140 (S.C. A.L.J.D. Apr. 28, 2006)].

The importance of filing deadlines is underscored by the facts of this case. The record demonstrates [SCDC] did not begin receiving Step 1s from the [Respondents] regarding their prevailing wage claims until September 22, 2004.¹⁷ The record also reflects that a significant number

¹⁶ In the footnote associated with this finding, the ALC observed as follows: “The statutory provisions upon which [Respondents] base their pay claims do not create a private right of action. [See *Adkins*, 602 S.E.2d at 53 – 55]. Therefore, statutes of limitations derived from state law do not apply to [Respondents'] claims. [See *Talford v. S.C. Dep't of Corr.*, 06-ALJ-04-00823-AP (S.C. A.L.J.D. Feb. 14, 2007)].”

¹⁷ See note 1 above.

of the [Respondents] began participating in the prison industries project at Lieber in 1999. Thus, approximately five years passed between when these [Respondents] began participating in the project and when they filed their Step 1s challenging their pay. **Clearly, the passage of five years could significantly affect [SCDC's] ability to defend the [Respondents'] claims.**¹⁸ [emphasis supplied].

By reversing the ALC's deliberately crafted and carefully considered conclusions, the Court of Appeals' decision sweeps away any limitations period applicable to the wage claims articulated by the Respondents in their grievances, and it gives no consideration whatsoever to the challenges SCDC would confront in defending the merits of the Respondents' claims on remand back to the ALC.¹⁹

Finally, the broadly tailored holdings from the Court of Appeals' decision, particularly when viewed through the lens of the even more broadly tailored explanation it provided in its March 24, 2016 order, gives all inmates a "green light" to fashion arguments as to how the exception from paragraph 13.9 trumps the fifteen-day filing deadline for all claims inmates may file in grievances under GA-01.12, not just prison industries wage claims.

¹⁸ In the footnote associated with this finding, the ALC observed as follows: "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.')." In *Williams*, this Court ruled that the Respondents could not maintain an action under the Payment of Wages Act against either SCDC or the private industry sponsor. 641 S.E.2d at 886, n. 3 and 888. *See also* notes 1 and 17 above.

¹⁹ The Respondents disputed much of the key data associated with their participation in the service work project at Lieber. For example, in their Motion to Supplement Record and Extend Filing Date of their brief dated May 23, 2011 (Apx. pp. 4277 – 4519), the Respondents asserted as follows: "Exhibit 1 also differs with the spreadsheet on the last pay dates. Spreadsheet dates are based on 'Exhibit F' records. When Exhibit F was produced during the class action litigation, client information indicated it may contain missing pay dates. In fact, for many inmates Exhibit F has occasional gaps, or apparent time lapses, between certain pay periods. These gaps appear to indicate separate periods of work in some cases. Obviously, this would not be true if the gaps were inadvertent or deliberate deletions of pay dates." (Apx. p. 4279).

VII. CONCLUSION

For the foregoing reasons, this Court should grant, under the provisions of SCACR 242(b), SCDC's instant petition for writ of certiorari and review the both the Court of Appeals' February 10, 2016 decision and it March 24, 2016 order.

RESPECTFULLY SUBMITTED:



Lake E. Summers

Malone, Thompson, Summers & Ott LLC

339 Heyward Street, Suite 200

Columbia, South Carolina 29201

Office: (803) 254-3300

Fax: (803) 254-0309

E-mail: summers@mtsolawfirm.com

Counsel for SCDC

Columbia, South Carolina
May 2, 2016

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from The Administrative Law Court
Ralph King Anderson, III, Administrative Law Judge

Court of Appeals Opinion No. 5379
Supreme Court Case Tracking No. 2016-000829

Francis Ackerman, #266928, Malik Aljalil, #219551,
Linso Allen, #269378, Michael Benninger, #264212,
Frederic Brown, #289602, Timothy Brown, #238461,
Terrell Buchanon, #277262, Christopher Buch, #200690,
Rudy Cassady, #238732, Sheldon Clark, #264772,
Zawaski Cobb, #187136, Kamathene Cooper, #145333,
Gladstone Cummings, #267450, Patrick Curtis, #175139,
Quintin Daniels, #196284, Curtis Davis, #238776,
Heyward Dempsey, #134171, Phillip Denney, #240678,
Paul Durham, #219573, Jerome Durham, #270393, Keith
Eigner, #299153, Bernard Felder, #122099, Jermaine
Garriett, #191274, Fred Gatewood, #289775, Dennis
Goff, #177506, Gregory Grant, #109656, Nelson
Hampton, #286427, James Hartman, #219770, Gary
Hayes, #263985, Michael Hood, #279987, Nikia Law,
#260855, Stephen Lease, #137016, Harry Leonard,
#249996, Herbert McFadden, #184297, Michael
McFarland, #266870, Earl Mack, #216237, John Moultri,
#276527, Matin Muntaqim, #266870, Tony Pitts,
#280597, Germaine Pringle, #250390, Gene Richardson,
#93614, Dennis Richey, #233472, Ignacio Rivera,
#300424, Vondell Sanders, #241308, James Sattler,
#235043, Joseph Schmitz, #173987, Arthur Scott,
#251957, Jerome Scott, #153381, Roosevelt Scott,
#275631, Archie Simmons, #161419, Robert Smith,
#199324, James Williams, #282929, Gary Bryant,
#258972, Harlon Edger, #261866, Johnny Holden,
#245199, Don Hughes, #256862, Michael Key, #266890,
Archie Lee, #226354, Isaac Richardson, #232574,
Larkland Richards, #281768, John Wojcik, #219463,
James Bogan, #288111, Larry Burke, #281911, Jammie
Gaymon, #208922, David Harrell, #260004, Jeff Stinson,
#260047, Ricky Libby, #274681, Alain Lareua, #128014,
Quentin Baker, #297868, Frank Corley, #292975, James

Jackson, #267718, Quintin Linen, #238553, Thomas Miles, #246763, Chauncy Orr, #177069, Isaiah Scott, #228008, Eric Youmous, #281091, Derek Carter, #275938, Willie Hare, #256641, Ernest Miller, #235474, Robert Norris, #266101, Ronald Simmons, #267937, Samuel Simmons, #302393, William Thomas, #272501, Anthony Murphy, #295893, Anthony Murray, #237867, Johnny Hayes, #267910, Roy Morris, #288777, Daniel Dewey, #276678, Nehemiah Greene, #243339, Leroy Choice, #113990, James McFadden, #235419, Francis Prioleau, #268813, Darrell Rochester, #146731, Wilbur Jordan, #292264, Alvin Stewart, #278595, Kevin Poston, #266083, Kevin Smith, #272440, Donald Robinson, #277520, Douglas Bude, #263537, Willie Elder, #246208, Rogelio Zavala, #245106, Dennis Knight, #286981, Jacob Beach, #301270, Francis Ackerman, #266928, Darrin Miller, #259593, Edward Bryant, #255998, Sherman Austin, #20028, Michael Baylor, #265682, Taurus Bowman, #252745, Kenneth Carter, #243538, Calvin Drummond, #236322, David Feggins, #287157, Terry Ferguson, #299080, Willie House, #257820, Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487, Stephone Simmons, #300422, Larry McClam, #282972, Tyrone Aiken, #244428, Tyrone Aiken, #248367, Frank Anderson, #282800, Ronald Brewer, #285756, Keith Brown, #295762, Pete Bryant, #242370, Michael Busques, #191961, Richard Butler, #162467, Gary Davis, #106144, Anthony English, #238474, Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores, #240563, Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham, #228235, Gary Grooms, #283860, Wayne Harlan, #245705, Johnny Hayes, #267910, Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135, Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552, Bobby Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947, Keith Kelly, #257556, Maxie Gamble, #254413, James Enriquez, #215539, Perry Deveaux, #109601, James Wells, #180458, Cedric Martino, #291396, Donald McAteer, #292961, Robert Wydman, #260331, Anthony Wright, #214007, Derrick

Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears, #281697, Timothy Smith, #296539, Davis Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235864, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsen, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118, Respondents,

v.

South Carolina Department of Corrections, Petitioner.

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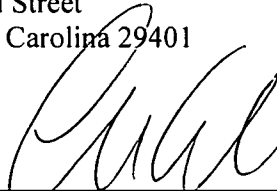
SC SUPREME COURT

PROOF OF SERVICE

I certify that I have served the **PETITION FOR WRIT OF CERTIORARI BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS AND ITS ALLIED APPENDIX** on the above named Respondents by mailing a copy of the same to their counsel of record at the following address:

Douglas H. Westbrook, Esquire
Attorney at Law
23 Broad Street
Charleston, South Carolina 29401

May 2, 2016



LAKE E. SUMMERS