

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF GREENVILLE)
 3)
 4 ISIAH JAMES, JR.,)
 GEORGE LEE TOMLIN,)
 5 Plaintiffs,)
 6 vs.)
 7 KALENE ANN SMITH BRYANT,)
 8 Defendant.)
 9)

IN THE COMMON PLEASE COURT
 OF THE THIRTEENTH
 JUDICIAL CIRCUIT

TRANSCRIPT OF RECORD
 2013-CP-23-02057

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 SC Court of Appeals

July 24, 2015
 Greenville, South Carolina

B E F O R E:

HONORABLE DANIEL HALL, Judge.

A P P E A R A N C E S:

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 Pro se Plaintiff

GEORGE LEE TOMLIN,
 Pro se Plaintiff

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 For Defendant SCDC

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 Seventh Judicial Circuit

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EXHIBITS

MARKED

ENTERED

NO EXHIBITS PROFFERED

1 ISIAH JAMES, JR. & GEORGE TOMLIN VS. SCDC

2 THE COURT: All right. Good morning ladies and
3 gentleman. My name is Dan Hall, I'm the resident judge
4 from over in York County and I'm holding Common Pleas
5 Court here in Greenville this week and nonjury and
6 that's what we're here for.

7 If the lawyers -- what I have on the schedule in
8 the next matter is Isaiah James versus South Carolina
9 Department of Corrections. If the attorneys would
10 introduce yourselves and tell us who you represent.

11 MR. SMITH: Your Honor, I'm Emory Smith. I'm
12 from the Attorney General's office. I don't represent a
13 party to the case. I represent Roger Young, a Circuit
14 Court judge, and Chief Judge Ralph King Anderson, III,
15 as an Administrative Law Court, and retired
16 Administrative Law Court Judge Caroline Mathews. They
17 were subpoenaed to testify in this case. I've got a
18 motion to quash that subpoena or a protective order to
19 any other subpoenas.

20 THE COURT: Okay. We'll get to that in just a
21 moment.

22 And your name?

23 MR. HARTER: Judge, I'm Rusty Harter with the
24 firm of Chapman, Harter & Harter, and I represent SCDC
25 in this case.

1 THE COURT: All right.

2 MR. HARTER: And, Judge, if I could, I just
3 assimilated these are the materials pretty much that are
4 already on file, but I just kind of organized things for
5 clarity. Could I possibly hand these up to you --

6 THE COURT: Yes, that would be fine.

7 MR. HARTER: -- and to your clerk? I guess you
8 don't have him here today, but...

9 THE COURT: Yeah, I don't have a clerk today.

10 MR. HARTER: All right, sir.

11 THE COURT: So we may just be a tad slower.

12 MR. HARTER: All right. Okay. And, Judge, this
13 is, this is just a lot of this is duplicate to the stuff
14 that's already in the file, but if you need reference to
15 it...

16 THE COURT: Okay. Do you have any motions this
17 morning?

18 MR. HARTER: I do. Yes, sir, I do.

19 THE COURT: Okay. Let me --

20 MR. HARTER: I --

21 THE COURT: Let me get to these gentleman just a
22 moment.

23 MR. HARTER: I'm sorry.

24 THE COURT: And then we'll come back with you.

25 MR. HARTER: Okay.

1 THE COURT: And if you gentlemen would stand up
2 and introduce yourselves so I'll know who you are.

3 MR. JAMES: Your Honor, I'm Isaiah Lee James,
4 Jr., I'm the first plaintiff in this action.

5 THE COURT: All right. And your name, sir?

6 MR. TOMLIN: George Tomlin.

7 THE COURT: And you are also a plaintiff?

8 MR. TOMLIN: Yes, that's correct.

9 THE COURT: All right. Well, let me ask you who
10 filed the motion, the initial motions that bring us here
11 today?

12 MR. HARTER: I did.

13 THE COURT: Okay. If you gentlemen would have a
14 seat. Then, Mr. Harter, if you would tell me what
15 motions you have filed and what it is you're asking the
16 Court to do.

17 MR. HARTER: Yes, sir. In fact, Judge, we filed
18 a motion for summary judgment on June the 3rd. The
19 Attorney General filed a motion to quash the subpoenas
20 on June the 19th. And then last week Mr. Tomlin -- Mr.
21 James, I'm sorry, filed a motion for partial summary
22 judgment as to his fourth cause of action, and he filed
23 that like last week on July the 13th.

24 Judge, in the materials that I handed up, I
25 believe I provided, what I tried to provide, is a little

1 timeline of this case, of a case that brings us here
2 today. And I represent SCDC and I'm here on our motion
3 for summary judgment for the claims that are alleged in
4 the Plaintiffs' complaint.

5 If you can look at this timeline, I hope I
6 included it in the materials, but this case was
7 initially filed in Common Pleas here in Greenville on
8 June the 12th of 2013. He alleged, or these Plaintiffs'
9 alleged, some federal claims in and amongst the
10 allegations, Judge, and I removed the case.

11 And then the district -- excuse me, the
12 Magistrate issued a report in recommendation. The
13 Magistrate sent some special interrogatories to the
14 Plaintiffs to identify whether they were really
15 asserting federal claims or waiving federal claims
16 filtered through all of that. And then the District
17 Court that the Magistrate judge recommended that the
18 3rd, 4th, 5th, 7th, 8th, 10th and 11th claims be
19 remanded to State Court. And, Judge Wooten, at District
20 Court affirmed that.

21 And then the Plaintiff, Mr. James, filed a motion
22 for judgment on the pleadings or a judgment, declaratory
23 judgment on one of his causes of action, and they filed
24 a motion to supplement or amend their complaint. Judge
25 McIntosh heard those motions on December the 4th.

1 Denied their motion for, it was a renewed motion for
2 default or declaratory judgment, and he let them amend
3 the complaint.

4 So they were allowed to amend the complaint and
5 allege two additional state law claims. Now, when we
6 were here on December the 4th, Judge McIntosh made sure
7 that the Plaintiffs' allegations and the amended actions
8 were state law claims only and not federal claims.

9 So and then -- so we are here today on the
10 motions that we mentioned. And, Judge, the second
11 sheet, which is an outline of the causes of action,
12 spells out what the causes of action that we're dealing
13 with here today. And I believe there are 12 causes of
14 action.

15 And what I did on this, on this outline, is I
16 broke them down into the subjects that they relate to.
17 For example, the third and fourth causes of action
18 relate to claims that these men have made actually in
19 another case, Judge, for wages under the work they did
20 with Prison Industries. And I will talk about that in a
21 minute. Some of that information is included as an
22 attachment to our actual motion. And that third and
23 fourth cause of action, those all relate to claims that
24 they filed in another case that went to the
25 administrative law court and then went to the Circuit

1 Court. I believe it was in Richland or Newberry or
2 somewhere.

3 MR. JAMES: Object to answer.

4 THE COURT: All right. Just hold on a minute.
5 I'll be glad to hear from you at the appropriate time.
6 Let's let Mr. Harter --

7 MR. HARTER: And then in that case both of the
8 parties -- there was a ruling in the issue in the other
9 case, dealt with whether these gentleman were entitled
10 to wages. And the issue came up of what the prevailing
11 wage, prevailing wage is. So Judge Mathews and the
12 Administrative Law Court issued an order.

13 Every -- the SCDC -- and I then didn't represent
14 SCDC at that point, but SCDC and Mr. James appealed to
15 the Circuit Court. And the Circuit Court said in its
16 order, this is one of the orders in the file, that with
17 the consent of Mr. James, they said, the finding of the
18 prevailing wage loss -- prevailing wage rate by Judge
19 Matthews was not correct. That they didn't agree,
20 Circuit Court Judge Williams did not agree that Judge
21 Matthews' determination of prevailing wage was correct.

22 So in that Circuit Court order, Judge Williams
23 said that with the consent of Mr. James the issue about
24 the prevailing wage would be remanded to the
25 Administrative Law Court. And this was in Judge

1 Williams' order.

2 Then Mr. James and SCDC appealed to the Court of
3 Appeals. And the Court of Appeals affirmed in part,
4 reversed in part and vacated in part. Now, in that
5 issue that Mr. James and Mr. Tomlin has about their
6 wages has never been reduced to any judgment. To my
7 knowledge, they've never been back to the Administrative
8 Law Court to address that. And they've included those
9 causes of actions in this case, which we think are
10 totally unrelated, but that's the nature of their claim.

11 Now, let me explain to you when we began looking
12 at it, Judge, when I got in the case and looked at it, I
13 found that there was an award by the Court of Appeals of
14 costs to Mr. Tomlin of some \$300 or something like that.
15 And when I saw and appreciated the fact that he had not
16 been compensated for that, I contacted SCDC and they had
17 put that money in his cooker account, that adjustment
18 has been made.

19 So those two claims, the third and fourth cause
20 of action, relate to those wage loss issues. We have
21 submitted, and actually SCDC went back and after the
22 Court of Appeals ruling went back and did computations
23 consistent with the order of Judge Mathews, which was
24 not ever reduced to judgment, and determined that
25 actually Mr. James was not entitled to any additional

1 wages.

2 So as to the third and fourth cause of action,
3 you know, the merits of it, we believed the SCDC
4 affidavit addresses the merits of it. But as a
5 procedural matter, there's never been a judgment and
6 that matter was a separate lawsuit. And we believe that
7 the jurisdiction for those claims rests still with the
8 Administrative Law Court. And Mr. James seemingly would
9 need to find his way back before the Administrative Law
10 Court to address that and to deal with, with those two
11 claims. But they're just, they're unrelated. They were
12 separate lawsuits, Judge.

13 THE COURT: Got ya. All right.

14 MR. HARTER: Okay.

15 THE COURT: All right.

16 MR. HARTER: Now --

17 THE COURT: I'm sorry.

18 MR. HARTER: And the next bracket of causes of
19 action are the 6th and the 13th.

20 THE COURT: All right. Well, let's stop right
21 there --

22 MR. HARTER: Okay.

23 THE COURT: -- and let me just see what their
24 response is to those two causes of action.

25 MR. SMITH: Excuse me, Your Honor.

1 THE COURT: Yes, sir.

2 MR. SMITH: I certainly will follow whatever
3 procedure you would like. I've just got a simple motion
4 with a two-minute argument on a motion to quash.

5 THE COURT: All right.

6 MR. SMITH: If that could be heard and I could be
7 excused.

8 THE COURT: Let me -- okay, go ahead. Let's,
9 let's do that. What we're doing, Mr. James and Mr. --
10 I'm sorry what's your name again?

11 MR. TOMLIN: Tomlin.

12 THE COURT: Mr. Tomlin. Mr. James and Mr.
13 Tomlin, Mr. Harter is making his argument about summary
14 judgment on the causes of action, but we're gonna talk
15 about those in just a minute. But I'm gonna try to
16 accommodate Mr. Smith here. He has sort of a separate
17 issue merely on the issue of quashing some subpoenas.
18 So we're -- I'll be glad to hear that now.

19 MR. SMITH: Thank you, Your Honor. If Your Honor
20 grants summary judgment to the Department of
21 Corrections, that would eliminate any need for testimony
22 of anybody in this case. But I would still respectfully
23 request that the existing subpoena be quashed and a
24 protective order be issued for the record in the event
25 that there should at some point turn out to be a hearing

1 on this case.

2 There was a subpoena served on three judges, as I
3 said, Roger Young, a Circuit Court judge; Ralph P.
4 Anderson, is chief judge of the Administrative Law
5 Court; Caroline Matthews, who's a judge of the
6 Administrative Law Court. I believe she's retired as of
7 this date.

8 The subpoena has essentially expired because it
9 was for a term in June and the case has been continued
10 past then. But I would ask that a protective order be
11 issued as to any further issuance of the subpoena of any
12 of these judges under Rule 45 because it would be an
13 undue burden on them and it would be inconsistent with
14 the authority set forth in the Whetstone case.

15 This case is about various issues. Mr. Harter
16 touched on those, wage potential, work release, et
17 cetera. And I'll defer to Mr. Harter on the description
18 of the case. But the Supreme Court has made quite clear
19 that Circuit Court, any judge in this state, are not
20 supposed to be subpoenaed to testify about cases over
21 which they've presided.

22 In the Whetstone case it said that the modern
23 friend of courts of not allowing a judge to testify
24 regarding a case in which he previously presided is
25 followed unless the testimony is critical and could be

1 obtained by no other means. And the Supreme Court in
2 that case quashed the subpoena of former Judge Charles
3 Whetstone, finding no relevant need for his testimony
4 overcomes the assumption that judges should not be
5 called to testify regarding matters from a case over
6 which they've presided.

7 Plaintiffs could show no need for the testimony
8 of these judges here. If they've issued orders, the
9 orders would be evidence of their ruling and not
10 protected testimony. And compelling them to travel to
11 Greenville to testify would be an undue burden on them
12 because their testimony would be irrelevant, immaterial
13 and unnecessary under Rule 45 (c) (3) (4).

14 And so for these reasons, Your Honor, we
15 respectfully request that you squash the subpoena
16 against them, subpoenas against them, although they have
17 expired at this point, issue a protective order as to
18 the issuance of any other subpoenas against them.

19 THE COURT: All right. Yeah, it seems like the
20 motion to quash is now moot. I assume y'all issued
21 subpoenas for these judges for a hearing in June. Is
22 that correct, Mr. Harter -- I mean, Mr. James and
23 Mr. Tomlin?

24 MR. JAMES: Yes, sir.

25 THE COURT: All right. Do you have a position on

1 what he has said about -- and so I'm not here really to
2 quash any indictments in the past because those -- I
3 mean, quashing the subpoenas because those, those are no
4 longer valid. What is your position, or Mr. Tomlin your
5 position on the argument that they should not be
6 subpoenaed for any future hearings, these three judges?

7 MR. JAMES: Well, sir --

8 THE COURT: Is there anything you want to put on
9 the record about that?

10 MR. JAMES: I think currently we are scheduled
11 for a trial in ten days, August 3rd term of court. And
12 if my motion for summary judgment were denied, I think
13 it would be material witnesses concerning that case.
14 And as far as SCDC's position that jurisdiction lies in
15 the Administrative Law Court I strongly disagree with
16 that.

17 THE COURT: All right. We're gonna talk about
18 that again in a minute. Just on the issue of these
19 three judges being subpoenaed in the future for any
20 hearing, do you have anything else you want to say about
21 that?

22 MR. JAMES: No, sir, other than what I have
23 already said.

24 THE COURT: All right. Mr. Tomlin, anything you
25 want to say?

1 MR. TOMLIN: (Shakes head back and forth.)

2 THE COURT: All right. I'm gonna grant the
3 motion for the protective order. It's clear under our
4 rules that these three judges cannot be required or
5 cannot be required to be at a trial that involves issues
6 that were previously heard before them. And so,
7 Mr. Emory (sic), if you would provide me, the Court with
8 an order, a protective order.

9 MR. SMITH: Within ten days?

10 THE COURT: Yeah.

11 MR. SMITH: Would that be all right, Your Honor?

12 THE COURT: Yes. Right, that would be great.

13 MR. SMITH: Thank you. May I be excused, Your
14 Honor?

15 THE COURT: Yes, you may.

16 (Whereupon, Mr. Smith leaves courtroom.)

17 THE COURT: All right. That puts us back to --
18 do you have anything else you wanted to say, Mr. Harter,
19 on the issue -- on these first, on the third and fourth
20 cause of action?

21 MR. HARTER: No, sir, Judge. I just think that
22 -- and we, what we did is we turned up an index of the
23 affidavits that address each of those cause of action.
24 But there's never been anything reduced to a judgment
25 and we believe the Administrative Law Court is somebody

1 who could decided those issues that goes back to them.

2 And I will tell you, Judge, the case is not, to
3 my understanding, to be called the week of August
4 the 3rd. I'm selecting a jury in Federal District Court
5 that day and are under protection for that week. So it
6 is not set specifically for that week.

7 THE COURT: All right. So let me get into
8 this --

9 MR. HARTER: And it was continued, continued
10 before they did this motion.

11 THE COURT: All right. So on the -- when you
12 list your causes of action, the third and fourth cause
13 of action, what is your motion today as far as those two
14 causes of action? It's a motion for summary judgment
15 based on the fact that they are not the proper venue, is
16 back in Administrative Law Court and not in Circuit
17 Court; is that correct?

18 MR. HARTER: Yeah, it's based on that, Judge, and
19 that there has never been any in that other proceeding
20 that, that's referenced there has never been anything
21 reduced to a judgment or a court order. And there has
22 been -- and, actually, their affidavit of SCDC in the
23 file says notwithstanding that, that they've gone back
24 and looked at the, at the wage history and the work
25 history and that there's no additional monies owed to

1 Mr. James.

2 THE COURT: Okay.

3 MR. HARTER: But it's kind of three pronged, but
4 there's no judgment and it belongs to the Administrative
5 Law Court and we don't have any additional money owed.

6 THE COURT: All right. Do you want to -- do you
7 want to be heard on that, Mr. James? Do you have a
8 position that you want to tell the Court on that?

9 MR. JAMES: Sir, I have this document here saying
10 that this, this case is scheduled for trial the week of
11 the third of August. I haven't been notified of
12 anything other than that.

13 And as far as my unpublished opinion from the
14 Court of Appeals, the opinion from the Court of Appeals
15 it indicated that the Administrative Law Court issued a
16 final order. That order was overturned when we went
17 before Judge Williams in Jasper County where he said the
18 prevailing wage wasn't 5.25 and it should be based on
19 this wage estimate that we, we secured from a state
20 agency that issued statistics in dealing with wages for
21 furniture assembly, which is basically what our job was,
22 so we could learn the pay.

23 THE COURT: All right. Anything else you want to
24 say on that issue?

25 MR. JAMES: As far as SCDC's position that this

1 Court don't have jurisdiction, Supreme Court has dealt
2 with similar issues with the Workman's Compensation
3 Commission and declaratory judgment. And in cases like
4 that, they said the court has indicated that when they
5 raise jurisdiction issues like that it's not
6 jurisdiction, it's procedure. In SCDC's answer in
7 Federal Court, which was 71713, said SCDC answer to this
8 court. In 12, 12-1915, they didn't raise a procedural
9 defense, so any assertion by SCDC that this court don't
10 have jurisdiction is wrong.

11 THE COURT: All right. All right, thank you.
12 Anything else you want to say, Mr. Tomlin?

13 MR. TOMLIN: I just want to add this figure that
14 I am just asking mainly because I've been employed
15 quarterly in 2002 and 2007. I was not paid the minimum
16 wage and, you know, for that job description, which was
17 team assembly. And I should have been paid -- I was
18 paid 5.75 between 2002 and 2007 up to 6.35. And I
19 should have been paid at least 13 to \$14 per hour,
20 according to the wages, according to the estimate low
21 wages he just mentioned.

22 And I'm just asking that I be granted, you know,
23 this motion be granted for summary judgment in part and
24 they be allowed us. And like he said before, regarding
25 his third and fourth causes of actions has been

1 satisfied, they did granted me the \$304.88. And
2 moreover, the judge, Judge Young, Judge Matthews and
3 Judge Anderson, their attorney stressed that the orders
4 that they speak for themselves on the ground for us not
5 to appear before the August 25th jury trial because this
6 is SCDC moving it. And we would just ask that this be
7 granted.

8 THE COURT: All right, sir.

9 MR. TOMLIN: And I would like to --

10 THE COURT: Well, yeah, if y'all would hand up
11 those cases I'll, the case if you need to appear. What
12 I'm gonna do is I'm not gonna rule on anything today.

13 MR. HARTER: Your Honor?

14 THE COURT: I'll listen to your arguments.

15 MR. HARTER: All right.

16 THE COURT: I'll listen to everybody's arguments
17 and I'll take it under advisement and I'll issue my
18 ruling later. So the purpose of today is I want to hear
19 the arguments and then I'll issue a ruling at a later
20 date. All right?

21 All right. We're back to you, Mr. Harter.

22 What's next?

23 MR. HARTER: Judge, can I just address the order
24 of Judge Williams? And, I mean, I think I agree with
25 what Mr. James said. The order of Judge Williams says

1 on page eight, the court's order. (Reading.) The Court
2 remands the determination of the applicable prevailing
3 ^{waive}waives for James's Prison Industry labor back to the
4 ALC. And the Court further directs the ALC to solicit
5 evidence from the parties regarding the seven factual
6 questions so that the ALC may properly analyze the
7 merits of the claim. (Ends Reading.)

8 And in that order, Judge Williams recites those
9 seven factors. And I don't have the rest of Mr.
10 Tomlin's order here, but I believe -- well, I do. This
11 is, this is the case, if I'm not mistaken, Mr. Tomlin,
12 that the costs were ordered in; is that correct?

13 MR. TOMLIN: (Nods head up and down.)

14 MR. HARTER: Sir?

15 MR. TOMLIN: Yes, sir.

16 MR. HARTER: And this is the case he's handed up
17 on Tomlin versus SCDC -- SCDC versus Tomlin is the case
18 that, that resulted in the order of cost, order of cost
19 only that was taken. Correct, Mr. Tomlin?

20 THE COURT: (Nods head up and down.)

21 MR. HARTER: Sir?

22 THE COURT: Yeah, I think he's already stated
23 that for the record.

24 MR. HARTER: All right. Thank you, Judge, I'm
25 sorry.

1 THE COURT: I understood that.

2 MR. HARTER: To move on to the second series of
3 claims, the claim, the second batch of claims, Judge, of
4 a 6th and 13th causes of action, and these causes of
5 action relate to just claims related to a prison
6 lockdown. And we have supplied the affidavit of Warden
7 Cohen. And in the affidavit of Warden Cohen, he
8 addresses the reasons for these two lockdowns.

9 There was a lockdown in January, January 21,
10 2014, where weapons and ammunition were found in the
11 unit and every cell had to be searched. There was
12 another lockdown on May the 22nd, 2011, when an inmate
13 was stabbed in the neck in a gang related incident. And
14 the facility was locked down in order to allow
15 investigation and in order to determine who was involved
16 and that type of stuff.

17 And our point on this, Judge, and the affidavit
18 of Warden Cohen, specifically addresses the reason for
19 the lockdown. And Warden Cohen also explains that
20 during the lockdown that accommodations were made to
21 these inmates that, that the institutional lockdown was
22 for safety and security of inmates and staff and it was
23 necessary to limit the movement of inmates and to keep
24 them secured in their cell. Inmates were afforded an
25 opportunity for exercise with an in-cell exercise

1 program. They had -- they were given inmate mail by
2 hand delivery. Inmates still had access to the courts
3 and to legal material even during the lockdown. Inmates
4 shower times were limited.

5 THE COURT: I'll read his affidavit.

6 MR. HARTER: Okay.

7 THE COURT: You won't need to put all those forms
8 on the record.

9 MR. HARTER: I'm sorry. But that's what it
10 involved. There were reasons for the, for the lockdown.
11 And, you know, that's part of prison life,
12 unfortunately, Judge, is that administrators and jail
13 officials, prison officials have to secure the
14 facilities at times. And the fact that they do that, I
15 don't believe gives rise to any claims for damages by
16 these gentlemen.

17 I would assume if there are, there are claimed
18 damages, if the court claims that case, they have to
19 prove the elements of gross negligence and that kind of
20 stuff. And so we submit that there's no basis for any
21 claim on that.

22 THE COURT: I'd be glad to hear from you,
23 Mr. James.

24 MR. JAMES: Judge, I meant to file a memorandum
25 in our position to this motion for summary judgment, but

1 because of these lockdowns I wasn't able to complete it.
2 And I request permission before you rule in this case
3 that I be allowed to submit a written memorandum to you
4 prior to you making a decision. Is there any way --

5 THE COURT: Do you have the ability to mail me
6 your memorandum?

7 MR. JAMES: Yes, sir, once I get back to prison,
8 corrections, yes, sir.

9 THE COURT: When can you get that to me?

10 MR. JAMES: If you can give me ten days to get
11 it, sir, I'll have it to you.

12 THE COURT: I'm not gonna sit on it for ten days.
13 You get it to me by the middle of next week.

14 MR. JAMES: Well, I almost finished it, so I
15 probably could have it by the middle of next week once I
16 get back to Ridgeland.

17 THE COURT: All right.

18 MR. JAMES: But currently we'd --

19 THE COURT: I'll consider what's in the file.
20 And if you'll send me a memo by the middle of next week,
21 I'll consider that as well. All right?

22 MR. JAMES: Currently we are at Perry Correction
23 Institute and we probably won't get back until Monday.
24 My position was I wasn't suing for negligence, I'm suing
25 for declaratory judgment about this prison condition and

1 certain FOIA's requested. I'd like to enter these two
2 documents.

3 THE COURT: If you'll pass --

4 MR. JAMES: Particularly about this drug testing
5 procedures.

6 THE COURT: Yeah. If you'll pass those up I'll,
7 I'll consider those.

8 MR. JAMES: About these drug testing procedures
9 where SCDC claimed they never requested my FOIA request.
10 But that was this particular one dealt with a 2006
11 action I brought about in Federal Court for a South
12 Carolina FOIA. So that would show that they got that
13 one because they did respond to that FOA -- FOIA about
14 that drug testing procedure. And, like I said, Warden
15 Cohen's affidavit about condition of confinements,
16 community lockdown period is completely inaccurate.

17 THE COURT: Well, I'll consider what's in the
18 file. I'll consider your -- I assume you certainly
19 included that as an allegation in your complaint on
20 those causes of action, so I'll consider that. And if
21 you send me a memo by the middle of next week, I'll
22 consider that as well. Anything else on that issue?

23 MR. JAMES: Well, that's basically it except
24 for --

25 THE COURT: All right. Mr. Tomlin, do you have

1 anything else on that issue?

2 MR. TOMLIN: (Shakes head back and forth.)

3 THE COURT: All right. Then let's move to the
4 next two causes of action.

5 MR. HARTER: Okay. Judge, the next grouping of
6 causes of action include four causes of action related
7 to the FOIA requests. And those would include the 8th,
8 the 10th, the 11th and the 12th causes of action.

9 And, Judge, as you can tell from the affidavits
10 that we submitted, there were some FOIA requests. And
11 specifically there is one that is dated, or alleged to
12 be dated, March 20th, 2013. And we have provided the
13 affidavit of inmate records, staff person Janice
14 McNealey. And what she says in that affidavit is that
15 this information was requested.

16 And according to Ms. McNealey's affidavit, entry
17 was made to comply with that request and somebody at
18 SCDC had to check and see if the information can be
19 provided. Can this inmate have this information and ask
20 for clarification as to what the inmate actually wanted.

21 And then at Ridgeland a staff person found the
22 paperwork and was told provide that to the inmate. We
23 don't know. And this dates back to 2013. I don't have
24 proof that that information was given to Mr. James then.
25 We hope it was. We expected it to be, but I don't have

1 proof that it was given to him then. But since then we
2 have provided that information to him on July the 10th
3 of 2015. So the subject of that FOIA request, if it
4 wasn't complied with back at the time, Judge, that's
5 been rectified.

6 THE COURT: All right. Any -- is that -- any of
7 you got any question about that, Mr. James?

8 MR. JAMES: No, sir. The only thing I'd like to
9 say is I had asked for that information about the return
10 of my good time and they wouldn't give it to me. That's
11 what I am dealing with.

12 THE COURT: But you have it now.

13 MR. JAMES: Yes, sir. I have it as of this time
14 last week.

15 THE COURT: Okay.

16 MR. JAMES: And, like I said, any declaratory
17 judgment action I beg to seek an injunction relief.

18 THE COURT: Okay.

19 MR. JAMES: If I could get declaratory judgment.

20 THE COURT: All right. Mr. Tomlin, do you have
21 anything on that?

22 MR. TOMLIN: No, sir.

23 THE COURT: All right. Mr. Harter?

24 MR. HARTER: Yes, sir. And the next FOIA request
25 related to a request that was dated April 25, 2013. And

1 it was a request for a random selection list. And this
2 is a random drug selection list, Judge, from July 26th,
3 2006 to September 7, 2006. This request was submitted
4 April of '13 and it asked for random drug selection list
5 dating back to 2006.

6 You will see from the affidavits that we filed
7 that there was no record from the Inspector General's
8 office that they received that request, but as an
9 adjunct to that, the affidavit points out that generally
10 that information was retained for only two to
11 three weeks. And those documents are --

12 THE COURT: Well, let me ask you, I don't -- if
13 you've given me affidavits on all those, I have not read
14 them, I will read them.

15 MR. HARTER: Okay.

16 THE COURT: Is there anything else in addition to
17 those that would be --

18 MR. HARTER: No.

19 THE COURT: All right. So they speak for
20 themselves. And that would be the same thing on these
21 next two FOIA requests?

22 MR. HARTER: Correct.

23 THE COURT: For May 4th and May the 7th.

24 MR. HARTER: Correct.

25 THE COURT: All right.

1 MR. HARTER: And I didn't mean to over go with
2 it.

3 THE COURT: Oh, no, I'll read those. Do you have
4 any position, Mr. James, that you want to state as far
5 as those last three FOIA requests?

6 MR. JAMES: I wanted to enter this exhibit, if I
7 can find it, about this drug testing procedure, which
8 basically said that they have to generate that list.
9 And as far as I know, the general rule in South Carolina
10 is any record should be kept for ten years. Are you
11 familiar with that ten-year policy?

12 THE COURT: I will read the law and try to
13 familiarize myself with it before I will issue a ruling.
14 Well, let me ask you this: Do you have any -- you have
15 some document you want, when you find it, you want to
16 present to the Court on this issue?

17 MR. JAMES: Yes, sir.

18 THE COURT: Here's what the --

19 MR. JAMES: An insert from the policy, sir.

20 THE COURT: All right, that's fine. Here's what
21 you do: You go through your paperwork while we go
22 through the rest of this hearing. Whatever you want me
23 to consider on any of these matters, you put them in a
24 stack and hand them up and I'll go over them. Does that
25 make sense?

1 MR. JAMES: Yes, sir.

2 THE COURT: All right. Anything else on the FOIA
3 requests?

4 MR. JAMES: (Shakes head back and forth.)

5 All right. Let's move on now to the ninth cause
6 of action.

7 MR. HARTER: Ninth cause of action, Judge, was a
8 claim that Mr. James and Mr. Tomlin were not allowed, I
9 believe, to personally appear at their parole hearing.
10 They've alleged this in Federal Court and have alleged
11 it in State Court. The district judge, I believe, in
12 the order, Judge, said that the report and the
13 recommendation of the District Court and the ruling by
14 Judge Wooten addressed this. That ninth cause of action
15 was dismissed in its entirety by the U.S. District
16 Court, and so we don't believe there's any basis for any
17 claim on the ninth cause of action.

18 THE COURT: All right. Mr. James, have you got a
19 position on your due process violation and that the
20 Federal Court has already ruled on that issue?

21 MR. JAMES: As far as personal appearance before
22 the parole board, the lawyer in effect at the time I was
23 arrested, charged and convicted required that be. As a
24 matter of fact, on several occasions I appeared before
25 the parole board in person. Then they came out with

1 this law in the '90's, mid-'90's, saying video
2 conference. I just believe I have a statutory right to
3 appear before the parole board in person and consider
4 whether this ranked on them denied (sic) me parole, as
5 well as counsel or lack of counsel.

6 THE COURT: All right, thank you.

7 Mr. Wooten -- Mr. Tomlin, anything on that issue?

8 MR. TOMLIN: No, he covered everything.

9 THE COURT: All right. And then lastly, for
10 these last -- the first, second, fifth and seventh cause
11 of action.

12 MR. HARTER: Right. And, Judge, this first cause
13 of action that we want to allege and/or have SCDC policy
14 21.07 declared unconstitutional. He wants to have the
15 second cause of action policy 21.07 declared ex post
16 facto law. He wants to have -- contend that he's
17 eligible for work release under policy 2107. He is not
18 eligible for work release as a violent offender. And he
19 makes a complaint of allegation about a grievance
20 related to policy OP 2109.

21 Judge, I do not believe that I've seen any
22 affidavits from Mr. James that would provide a basis for
23 the relief that he's asking for in the first, second
24 fifth or seventh cause of action. And so we would
25 respectfully request and submit that you deny a summary

1 judgment under those foundations.

2 THE COURT: All right, thank you.

3 All right, Mr. James, do you want to be heard on
4 that issue?

5 MR. JAMES: Basically on those causes of action
6 back in the '80's when I was transferred from lead
7 custody back to Kirkland medium max security custody
8 under the federal case, I fought against a law
9 enforcement official about my arrest, prosecution, et
10 cetera. My work credits were decreased relegated. In
11 other words, my back time went up. I feel I'm entitled
12 to those credits because I was deprived of them because
13 basically I was exercising my legal right to challenge
14 basically my criminal intention and conviction.

15 Other than that, I'd like to put something in a
16 memorandum specifically pointing that out and any
17 exhibits I got to point out that that's true.

18 THE COURT: All right. And I'll do this, give
19 them to me by the end of next week.

20 MR. JAMES: Okay.

21 THE COURT: I'll give y'all a week.

22 MR. JAMES: That would be sufficient. I would
23 like to enter this.

24 THE COURT: Okay. If you'd pass that up and I'll
25 consider that. And anything else you send me by the end

1 of next week I'll consider.

2 Is that everything on these motions?

3 MR. HARTER: Yes, that's all of our motions, Your
4 Honor.

5 THE COURT: All right. Anything else you want to
6 say Mr. -- I keep forgetting your name -- Mr. James?

7 MR. JAMES: No, sir. Thank you for hearing me.

8 THE COURT: All right. Mr. Tomlin, anything else
9 you want to say?

10 MR. TOMLIN: No, sir.

11 THE COURT: All right. Thank y'all for being
12 here. We'll give it due attention. Get your material
13 in next week and then I'll issue my ruling sometime the
14 week after next. All right?

15 MR. JAMES: Yes, sir, thank you.

16 THE COURT: Thank you all.

17 MR. HARTER: Thank you, Judge.

18 (Whereupon, hearing concluded at 10:14 a.m.)

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21 --- THIS ENDS REQUESTED TRANSCRIPT ---

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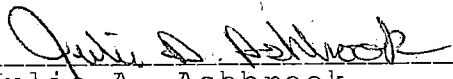
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1 COURT REPORTER CERTIFICATE
2

3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record of all the proceedings and evidence introduced
8 in the hearing and/or trial of the captioned case,
9 relative to appeal, in the Family Court for Greenville
10 County, South Carolina, on the 24th day of July, 2015.

11 I do further certify that I am neither of kin,
12 counsel, nor interest to any party hereto.
13
14
15
16

17 
18 _____
19 Julie A. Ashbrook
20 Circuit Court Reporter
21 Seventh Judicial Circuit
22
23
24
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