THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY

J. Cordell Maddox, Jr., Circuit Court Judge

Trial Court Case No. 2014-CP-23-5969
Appellate Case No. 2015-000759

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SC Court of Appeals

Billy Joe Cartrette, ... Appellant,

v.

South Carolina Department of Corrections, ... Respondent.

RESPONDENT'S FINAL BRIEF

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STATEMENT OF ISSUE ON APPEAL

The Appellant, Billy Joe Cartrette ["Cartrette"], identified three (3) issues on appeal in his brief. However, the Respondent, the South Carolina Department of Corrections ["the Department"], respectfully submits that only the first issue identified by Cartrette is legitimately subject to consideration by this Court, namely whether the circuit court erred in granting the Department's motion to dismiss the his "Complaint for Declaratory Judgment(s)."

Out of an abundance of caution, however, the Department also respectfully provides analysis and argument in opposition to Cartrette's second and third issues on appeal.

STATEMENT OF THE CASE

I. BACKGROUND AND PROCEDURAL HISTORY

Cartrette, who was and remains incarcerated in the Department's custody, filed his "Complaint for Declaratory Judgment(s)" in circuit court on October 31, 2014. (R. pp. 14 – 17).

In the first three (3) paragraphs of his "Complaint for Declaratory Judgment(s)" (R. p. 15), Cartrette asserted as follows:

> [Cartrette] who is serving a long-term sentence within [the Department] and while assigned to the Ridgeland Correctional Institution was employed in prison industries from January 16, 1999 until October 23, 2003 where he was paid less than the prevailing wage for the job assignment [at] which he performed;
>
> [Cartrette] filed a step 1 grievance which was denied; he filed a step 2 grievance appeal; it was denied so he filed a Step 3 which was an appeal to the [South Carolina Administrative Law Court]; it was granted in part. See [S.C. Dep't of Corr. v. Cartrette, 694 S.E.2d 18 (S.C. Ct. App. 2010)];
>
> [Cartrette] filed an appeal to the South Carolina Supreme Court. [S.C. Dep't of Corr. v. Cartrette, 772 S.E.2d 805 (S.C. Sup. Ct. 2012)].

As he indicated in the above-quoted paragraphs, Cartrette voluntarily participated in a prison industries project operated by the Department at Ridgeland Correctional Institution

["Ridgeland"]. In accordance with our Supreme Court's decision in Wicker v. S.C. Dep't of Corr., 602 S.E.2d 56 (S.C. 2004), Cartrette filed an administrative grievance with the Department in which he articulated various challenges to the hourly rate at which the Department paid him for his prison industries labor and to the withholdings from his gross prison industries pay assessed by the Department in conformity with state law.

The Department denied the claims articulated by Cartrette in his administrative grievance, and Cartrette appealed the Department's final decision to the South Carolina Administrative Law Court ["ALC"]. Both Cartrette and the Department appealed the ALC's ruling to the circuit court, and the circuit court issued its order in late 2006.

Cartrette then appealed the circuit court's order to this Court. This Court issued its final opinion concerning Cartrette's prison industries pay dispute on May 28, 2010. See S.C. Dep't of Corr. v. Cartrette, 694 S.E.2d 18 (S.C. Ct. App. 2010). (R. pp. 7 – 10). By its decision, this Court affirmed many of the rulings issued by the circuit court in its order, and it also remanded several issues associated with the rate at which the Department paid Cartrette for his prison industries labor back to the ALC for further proceedings.

Cartrette challenged this Court's rulings by filing a petition for writ of certiorari with our Supreme Court, and our Supreme Court granted Cartrette's petition. However, by the decision it issued February 22, 2012, our Supreme Court dismissed the writ of certiorari it had previously granted to review this Court's decision as having been improvidently granted. See S.C. Dep't of Corr. v. Cartrette, 772 S.E.2d 805 (S.C. Sup. Ct. 2012). (R. pp. 11 – 12). The Clerk of our Supreme Court issued the remittitur March 12, 2012. (R. p. 13).

By his "Complaint for Declaratory Judgment(s)," Cartrette attempted to litigate the prison industries pay claims which this Court had explicitly remanded back to the ALC in its 2010

opinion before the circuit court. Recognizing this reality, the Department, on December 29, 2014, filed its motion to dismiss Cartrette's "Complaint for Declaratory Judgment(s)" pursuant to South Carolina Rule of Civil Procedure ["SCRCP"] 12(b)(1). (R. pp. 18 – 21).

In its motion, the Department asserted that the circuit court did not and does not possess the requisite subject matter jurisdiction over Cartrette's claims. Instead, as the Department also asserted in its motion, the ALC possessed subject matter jurisdiction over the claims articulated by Cartrette in his "Complaint for Declaratory Judgment(s)."

By a memorandum and allied exhibits dated December 30, 2014 (R. pp. 29 – 31), Cartrette opposed the Department's motion to dismiss his "Complaint for Declaratory Judgment(s)."

The circuit court conducted a hearing regarding the Department's motion on February 13, 2015. (R. pp. 32 – 48). As it did within its motion (R. pp. 18 – 21), the Department argued during the hearing that the opinion issued in 2010 by this Court, and, for that matter, the opinion issued by our Supreme Court in 2012, completely negated any and all assertions articulated by Cartrette that the circuit court possessed subject matter jurisdiction over the claims he articulated in his "Complaint for Declaratory Judgment(s)." (R. pp. 14 – 17).

II. THE CIRCUIT COURT'S ORDER

By its order filed March 27, 2015, the circuit court granted the Department's motion (R. pp. 52 – 56), and, by doing so, it dismissed Cartrette's "Complaint for Declaratory Judgment(s)" with prejudice.[1] (R. p. 52).

In the section of its order entitled "ANALYSIS AND CONCLUSION" (R. p. 56), the circuit court held as follows:

[1] The circuit court invoked the provisions of SCRCP 12(b)(1) as well as S.C. Code Ann. §§ 15-53-10, *et seq.*, in the operative section of its March 27, 2015 order. (R. p. 56).

> Succinctly stated, the Court agrees with the position articulated by the Department in both its motion and during the February 13, 2015 hearing, namely that it does not possess subject matter jurisdiction over the instant controversy between the parties.
>
> The Court concludes that, contrary to any and all arguments he articulated in his "Opposition to Defendant's Motion to Dismiss" dated December 30, 2014 and during the February 13, 2015 hearing, all of the claims articulated by [Cartrette] in his instant "Complaint for Declaratory Judgment(s)," are, **as explicitly declared by our Court of Appeals in its 2010 opinion**, ripe for adjudication only by the ALC.
>
> The Court further concludes that [Cartrette] possesses the opportunity to avail himself of the jurisdiction of the ALC upon the dismissal of his instant action. Toward that end, the Court respectfully urges the ALC to consider and adjudicate [Cartrette's] claims, as the Court of Appeals identified them in its 2010 opinion, as expeditiously as possible. [emphasis supplied].

Rather than prosecuting this controversy before the ALC, Cartrette appealed the circuit court's March 27, 2015 order to this Court.

STANDARD OF REVIEW

In Capital City Ins. Co. v. BP Staff, Inc., 674 S.E.2d 524, 528 (S.C. Ct. App. 2009), this Court observed as follows:

> Pursuant to Rule 12(b)(1), SCRCP, the movant challenges the power of the court over the subject matter. **"The question of subject matter jurisdiction is a question of law for the court."** *Chew v. Newsome Chevrolet, Inc.,* 315 S.C. 102, 104, 431 S.E.2d 631 (Ct.App.1993) (citing *Bargesser v. Coleman Co.,* 230 S.C. 562, 96 S.E.2d 825 (1957)). We are free to decide questions of law with no deference to the trial court. *Catawba Indian Tribe of S.C. v. State of South Carolina,* 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). [emphasis supplied].

In Capital City Ins. Co., 674 S.E.2d at 528 – 29, this Court further observed as follows:

> **Subject matter jurisdiction is defined as "the power to hear and determine cases of the general class to which the proceedings in question belong."** *See Skinner v. Westinghouse Elec. Corp.,* 380 S.C. 91, 93–94, 668 S.E.2d 795, 796 (2008); *Ward v. State,* 343 S.C. 14, 17 n. 5, 538 S.E.2d 245, 246 n. 5 (2000). This authority is distinct from the doctrine of exhaustion of administrative remedies, which "is generally

considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional." *Ward,* 343 S.C. at 17 n. 5, 538 S.E.2d at 246 n. 5 (internal quotation omitted). Additionally, the doctrine of exhaustion of administrative remedies is often leveraged "to avoid interference with the orderly performance of administrative functions." *Id.* at 19 n. 7, 538 S.E.2d at 247 n. 7. **Consequently, a "failure to exhaust administrative remedies goes to the prematurity of a case, not subject matter jurisdiction."** *Id.* at 17 n. 5, 538 S.E.2d at 246 n. 5. [emphasis supplied].

ARGUMENT

I. THE CIRCUIT COURT PROPERLY GRANTED THE DEPARTMENT'S MOTION TO DISMISS CARTRETTE'S "COMPLAINT FOR DECLARATORY JUDGMENT(S)"

At the outset of the argument he articulated in support of his first issue on appeal, Cartrette asserted as follows:[2]

> The circuit court erred when it granted [the Department's] motion to dismiss with prejudice on subject matter jurisdiction according to [SCRCP 12(b)(1)].

In paragraphs 4 and 5 of his "Complaint for Declaratory Judgment(s)" (R. pp. 15 – 16), Cartrette demanded the following relief:

> ... that he and other prisoners are judgment creditor(s) with reference thereto discussion set forth above and below herein as there were wage disputes and retention(s) grievance(s) filed against [the Department] in 2004 and 2005 and prior thereto which resulted in judgment(s) against [the Department] (judgment debtor) in March 2006 from the ALC, the Court of Common Pleas for Jasper County **and [the] South Carolina Court of Appeals.** [citation omitted].
>
> ... **in accordance with judgment of [the] South Carolina Court of Appeals** he is entitled to a declaratory judgment as far as the set prevailing wage(s) that this Court determines in the first cause of action herein where he worked in the capacity of furniture assemble although the furniture was not made of wood. [emphasis supplied].

[2] See Cartrette's Brief, p. 1.

In his brief, Cartrette offered the following argument in support of his effort to have this Court reverse the order by which the circuit court dismissed his "Complaint for Declaratory Judgment(s):[3]"

> ... The trial court stressed "you filed this with the wrong court". (p. 11. 21-22) A reading of [Woodward v. Westvaco, 460 S.E.2d 392 (S.C. 1995)] suggests the circuit court committed clear error "under the provision of SCRCP 12(b)(1)" (Order p. 5 of 5, R. p.) for [Woodward] is citied in Sabb v. S.C. State University, 567 SE2d 233, 234, n. 2 (2002). Woodward points to Googe v. Speaks, 9 SE2d 439, 444 (1940) ([procedural] rather than jurisdiction); Taylor v. MUSC, 362 SE2d 881, 885 (S.C. App. 1987) (The Court of Appeals articulated "MUSC advanced no good reason, certainly none raising any jurisdictional issue").
>
> Evenmore, "the failure to exhaust administrative remedies goes to the prematurity of the case, not subject matter jurisdiction" which was announced or set forth by South Carolina Supreme Court in Ward v. State,[4] 538 SE2d 245, 246 (2000) wherein, it stated, "as a general rule, if the sole issue posed in the particular case is the constitutionality of a statute, a court may decide the case without waiting for an administrative ruling," See Video Gaming Consultants, inc., v. SCDOR, 535 SE2d 642 (2000) Cartrette exhausted the administrative grievance(s) in 2004-2005. Cf. Torrence v. SCDC, 646 SE2d 866 (2007) ("plaintiff could not maintain their declaratory judgment claims because they were required to pursue their claims through DOC's internal grievance procedure").
>
> **The election of [enforcement] of the 2010 judgment(s) is procedural and the circuit court had jurisdiction to issue declaratory judgment(s) requested therein**. [In re Hover, 754 S.E.2d 875, 882 (2014).] [M]oreover, the 12-18-14 'answer of the [Department] failed to plead [exclusively] if it is applicable herein to [the Department] has surely [waived] it (see Rule 8(c) of SCRCP) Section 15-53-50; 50(i) and 60 of the Code authorizes this proceeding to enforce order.[5] [emphasis supplied].

---

[3] See Cartrette's Brief, p. 2.

[4] The same passage from Ward appears within the second passage from Capital City Ins. Co. quoted by the Department in its instant brief. See p. 4 above. However, Cartrette did not quote, invoke, or cite any passages from this Court's decision in Capital City Ins. Co. in his brief.

[5] In the footnote associated with this paragraph, Cartrette stated as follows: "More specifically, decisions, judgments, see Rule 9(a) of SCRCP." See Cartrette's Brief, p. 2.

Cartrette, by erroneously contending that this Court issued "judgment[s]" concerning his prison industries pay claims in its 2010 decision, completely misapprehends and, frankly, ignores the rulings issued by this Court in its 2010 opinion regarding his appeal.

In Prince v. Beaufort Memorial Hospital, 709 S.E.2d 122, 125 (S.C. Ct. App. 2011), this Court held as follows:

> "[A] trial court has no authority to exceed the mandate of the appellate court on remand." *S.C. Dep't of Soc. Servs. v. Basnight,* 346 S.C. 241, 250–51, 551 S.E.2d 274, 279 (Ct.App.2001) (citing 5 Am.Jur.2d *Appellate Review* § 784, at 453 (1995)). **The mandate of the appellate court is jurisdictional.** *Id.* **The trial court has a duty to follow the appellate court's directions.** *Ackerman v. McMillan,* 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct.App.1996). [emphasis supplied].

By its order (R. p. 55), the circuit court recognized that in its 2010 opinion, 694 S.E.2d at 23, this Court "remanded the determination of the 'prevailing wage' paid by the Department for the labor [Cartrette] voluntarily provided to the prison industries project in question to the ALC." By its order (R. p. 55), the circuit court also recognized that in the section of its 2010 opinion entitled "CONCLUSION," 694 S.E.2d at 23, this Court, "reiterated its decision to remand the issues raised by [Cartrette] regarding overtime pay 'to the ALC for additional proceedings consistent with this opinion.'"

For the sake of clarity, the Department respectfully offers the following operative passages from this Court's 2010 opinion in Cartrette, 694 S.E.2d at 22 – 23:

> In addition, we observe section 24–3–430(D) requires inmates receive the "prevailing wage" paid to their non-inmate peers for comparable work. **However, the question of the prevailing wage to which Cartrette is entitled has been remanded to the ALC for further proceedings.** We nonetheless have jurisdiction to consider whether the prevailing wage language of section 24–3–430(D) entitles Cartrette to overtime pay because the issue remanded concerned the proper hourly rate, only. However, because we have found section 24–3–315 resolves Cartrette's dispute, we need not address this argument. *See Futch v. McAllister Towing of Georgetown, Inc.,* 335 S.C. 598, 613, 518 S.E.2d 591, 598

(1999) (holding appellate court need not discuss remaining issues when decision on prior issue disposes of appeal).

For the foregoing reasons, **we reverse the circuit court's decision concerning overtime pay and remand this issue to the ALC for a determination of whether the Department failed to pay Cartrette at the time-and-a-half rate for the hours he worked in excess of forty per week. In the event of such a failure, we instruct the ALC to determine the rate of compensation to which Cartrette was entitled, the number of overtime hours that were underpaid, and the amount the Department owes Cartrette for his labor.**

...

We find sections 24–3–315 and 24–3–430(D) entitle inmate workers in a PIP to pay and working conditions comparable to those enjoyed by workers in private industry, including time-and-a-half pay for overtime hours worked. Accordingly, **we reverse the circuit court's decision on this issue and remand to the ALC for additional proceedings consistent with this opinion.** For the foregoing reasons, we affirm the circuit court's decision on the remaining issues. [emphasis supplied].

By the very language of its 2010 decision, this Court explicitly declared that the ALC, and not the circuit court, possessed the "the power to hear and determine" Cartrette's prison industries pay dispute(s). See Capital City Ins. Co., 674 S.E.2d at 528 – 29. The circuit court, by its March 27, 2015 order, simply followed the explicit directives from this Court's 2010 decision when it granted the Department's motion to dismiss Cartrette's "Complaint for Declaratory Judgment(s)" pursuant to SCRCP 12(b)(1), and, accordingly, this Court should affirm the entirety of the circuit court's March 27, 2015 order. See Prince, 709 S.E.2d at 125.

II. BY HIS SECOND ISSUE ON APPEAL, CARTRETTE ASKED THIS COURT TO SET ASIDE THE LAW OF CASE IT ESTABLISHED IN ITS 2010 OPINION

Cartrette identified his second issue on appeal as follows: [6]

> The circuit court erred [by dismissing] the complaint for declaratory judgment(s) **on the prevailing wage and overtime back pay claim(s).** [emphasis supplied].

[6] See Cartrette's Brief, p. 2.

After recounting the allegations from his "Complaint for Declaratory Judgment(s)" in which he asserted that the Department presently owes him back pay and other money damages, Cartrette concluded his argument in support of his second issue on appeal as follows:[7]

> Therefore, regular pay 67,735.14 plus leadman pay with overtime pay equal $88,116.14. **This Court should grant the award herein this appeal.** [emphasis supplied].

Again, this Court did not issue any "judgment(s)" in Cartrette's favor concerning his "prevailing wage and overtime back pay claim(s)" in its 2010 decision. Instead, as illustrated above, this Court explicitly remanded both Cartrette's prevailing wage claim(s) and his overtime claim(s) back to the ALC for further proceedings. 694 S.E.2d at 22 and 23. ("However, the question of the prevailing wage to which Cartrette is entitled has been remanded to the ALC for further proceedings;" "Accordingly, we reverse the circuit court's decision on [the overtime issue] and remand to the ALC for additional proceedings consistent with this opinion.").

The decisions of this Court in its 2010 opinion represent the law of Cartrette's case. Notwithstanding this reality, Cartrette, by the argument he offered in support of his second issue on appeal, asked this Court to rehear, reconsider, and/or relitigate its decision to remand the determination of his overtime claim back to the ALC and, for that matter, its decision to affirm the circuit court's action in remanding his prevailing wage claim back to the ALC. However, the relief sought by Cartrette is simply not available to him.

This Court's recent decision in Flexon v. PHC-Jasper, Inc., 776 S.E.2d 397, 403 – 04 (S.C. Ct. App. 2015), demonstrates this reality:

> "**Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.**" *Judy v. Martin,* 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) (citing 5 C.J.S. *Appeal & Error* § 991 (2007)). In

[7] See Cartrette's Brief, p. 3.

other words, "[t]he doctrine of the law of the case prohibits issues [that] have been decided in a prior appeal from being relitigated in the trial court in the same case." *Ross v. Med. Univ. of S.C.,* 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997); *see In re Grossinger's Assocs.,* 184 B.R. 429, 434 (Bankr.S.D.N.Y.1995) ("Closely related to the doctrines of claim and issue preclusion is the doctrine of law of the case, which holds that a decision on an issue of law made at one stage of a case becomes binding precedent to be followed in subsequent stages of the same litigation." (quotation marks omitted)). **While the doctrine has been referenced as discretionary,[8] it is recognized that principles "of authority ... do inhere in the 'mandate rule' that binds a lower court on remand to the law of the case established on appeal."** 18B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 4478 (2d ed.2002).

...

The policy behind the law of the case is to "promote[ ] the finality and efficiency of the judicial process by protecting against the agitation of settled issues." *Christianson v. Colt Indus. Operating Corp.,* 486 U.S. 800, 816, 108 S.Ct. 2166, 100 L.Ed.2d 811 (1988) (quotation marks omitted). "The rule of the law of the case is a rule of practice, based upon sound policy that when an issue is once litigated and decided, that should be the end of the matter." *United States v. U.S. Smelting Ref. & Mining Co.,* 339 U.S. 186, 198, 70 S.Ct. 537, 94 L.Ed. 750 (1950). **"Law of the case rules have developed to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit.** These rules do not involve preclusion by final judgment; instead, they regulate judicial affairs before final judgment." *In re Grossinger's Assocs.,* 184 B.R. at 434. [emphasis supplied].

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[8] In the footnote associated with this specific passage in Flexon, 776 S.E.2d at 403, n. 6, this Court offered the following additional authority:

> *See S. Ry. Co. v. Clift,* 260 U.S. 316, 319, 43 S.Ct. 126, 67 L.Ed. 283 (1922) ("The prior ruling may have been followed as the law of the case, but there is a difference between such adherence and res adjudicata. One directs discretion: the other supersedes it and compels judgment. In other words, in one it is a question of power, in the other of submission."); *Slowinski v. Valley Nat'l Bank,* 264 N.J.Super. 172, 624 A.2d 85, 89 (App.Div.1993) ("Law of the case ... operates as a discretionary rule of practice and not one of law." (quotation marks omitted)); 18B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 4478 (2d ed. 2002) ("So long as the same case remains alive, there is power to alter or revoke earlier rulings."); 5 C.J.S. *Appeal and Error* § 991 (2007) **("The doctrine is discretionary rather than mandatory. Nonetheless, it should be disregarded only upon a showing of good cause for failure timely to request reconsideration of the original appellate decision, and only as a matter of grace rather than right." (footnotes omitted)).** [emphasis supplied].

The analysis and rulings from this Court's opinion in Prince, 709 S.E.2d at 126, further demonstrate the defective nature of Cartrette's argument in support of this issue:

> Furthermore, Prince's arguments to the contrary are unpersuasive. A court may not, as he argues, exceed its authority and assume the role of a second jury. **Rather, the appellate court's instructions circumscribe the trial court's authority on remand.** *Basnight,* 346 S.C. at 250–51, 551 S.E.2d at 279. **The trial court's duty is to follow the instructions it received from the appellate court.** *Ackerman,* 324 S.C. at 443, 477 S.E.2d at 268.
>
> The trial court's third factor, Hospital's apparent use of documents from the QAC file in answering discovery, was not properly before the trial court on remand. **"Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form."** *Id.* In essence, the trial court found Hospital waived any statutory confidentiality by utilizing these documents to prepare discovery responses. However, in Hospital's First Appeal, this court found no issue regarding waiver had been preserved and appealed. *Prince,* Op. No. 2008–UP–139 (S.C. Ct. App. filed Mar. 3, 2008). Specifically, our opinion expressly disagreed with the trial court's holding that the issue of waiver was necessarily so intertwined with the issue of confidentiality as to require concurrent consideration. Instead, we held that "the remand instructions did not authorize the trial court to consider whether Hospital had waived its right to assert the file was confidential." Prince did not seek review of this finding by our supreme court, and the boundaries of the trial court's authority on remand did not permit it to contemplate waiver arguments. *See Ables v. Gladden,* 378 S.C. 558, 569, 664 S.E.2d 442, 448 (2008) (holding an unappealed ruling is the law of the case).[9] Accordingly, the trial court erred in considering Prince's waiver argument. [emphasis supplied].

Setting aside the reality that the circuit court never considered the prison industries pay claims Cartrette articulated in his "Complaint for Declaratory Judgment(s)," Cartrette cannot, under both Flexon and Price, seek from this Court much less receive, the back pay and other relief he demands in his second issue on appeal.

[9] As discussed above, Cartrette challenged this Court's 2010 rulings by filing a petition of writ of certiorari with our Supreme Court, which our Supreme Court granted. However, as further discussed above, our Supreme Court dismissed Cartrette's appeal of this Court's 2010 opinion by declaring that it had improvidently granted Cartrette's petition. See S.C. Dep't of Corr. v. Cartrette, 772 S.E.2d 805 (S.C. 2012).

Accordingly, this Court should reject Cartrette's second issue on appeal, and it should affirm the entirety of the circuit court's March 27, 2015 order.

III. BY HIS THIRD ISSUE ON APPEAL, CARTRETTE AGAIN ASKED THIS COURT TO SET ASIDE THE LAW OF THE CASE IT ESTABLISHED IN ITS 2010 OPINION

Cartrette identified his third issue on appeal as follows: [10]

> There was no subject matter and/or appellate jurisdiction when the appellate **Court of Common Pleas for Jasper County** was authorized or had power to grant [the Department's] appeal in 2006. [emphasis supplied].

Cartrette began his argument in support of his third issue on appeal as follows:[11]

> The **Court of Common Pleas for [Jasper County] (which was the 2006 appellate circuit court)** did not have jurisdiction to grant [the Department's] appeal from the "Order of Clarification" (R. p.) **SCDC v. James, Unpublished Opinion No. 2010-UP-251 (filed 4-26-10)** at the 2-13-15 [hearing] Cartrette presented:
>
> > I've got one more thing. I have the subject matter jurisdiction issue on employee status from that administrative law court 3-2-2004 order of Judge Matthews. (R. p. 11. 1-4)
>
> [emphasis supplied].

The Department respectfully observes that the above-quoted argument is difficult to understand. However, it appears that Cartrette invoked rulings issued by this Court in its unpublished opinion styled as S.C. Dep't of Corr. v. James, 2010 WL 10079906 (S.C. Ct. App. Apr. 26, 2010) to support his argument that the circuit court did not possess the requisite subject matter jurisdiction by which to reverse the ALC's order concerning his appeal of the Department's denial of the prison industries back pay claim(s) he originally presented in his administrative grievance.

---

[10] See Cartrette's Brief, p. 3.

[11] Id.

In the above-quoted language from his brief, it also appears that Cartrette referenced a passage from the transcript of the February 13, 2015 hearing conducted by the circuit court in which he contended that an order issued by Administrative Law Judge ["ALJ"] Matthews on March 2, 2004 determined "the subject matter jurisdiction issue on employee status." Cartrette then argued that the Department "had [procedurally] defaulted when it failed to timely appeal" the order issued by ALJ Matthews on March 2, 2004.[12]

Cartrette then transitioned back to this Court's unpublished opinion in James,[13] and he argued that "this Court should recognize what fringe benefit(s) exist where Cartrette is granted [K]walu employee status. Kwalu's employees don't pay room and board and/or victim witness payment(s)."

By this third issue on appeal, Cartrette again directly challenged the law of the case established by this Court in its 2010 opinion, 694 S.E.2d at 23, in which this Court acknowledged our Supreme Court's holding in Williams v. S.C. Dep't of Corr., 641 S.E.2d 885, 887 (S.C. 2007), that "a prison industries program sponsor is not an employer of inmates because the sponsor does not exclusively control the payment of inmate wages and finding agreement among other jurisdictions that examined this issue.[14]"

Cartrette then demanded that since he was actually an employee of Kwalu, the private industry sponsor that participated in the prison industries project at Ridgeland, this Court should issue an order by which "the room & board and victim witness payment(s)" withheld by the

[12] See Cartrette's Brief, p. 3.

[13] Id., p. 4.

[14] Id.

Department pursuant to S.C. Code Ann. §§ 24-3-40(A)(2) and (3) should be returned to him immediately.[15]

By his third issue on appeal, Cartrette has asked this Court to reverse the decision it issued in its 2010 opinion by which it affirmed the circuit court's determination that he was not an employee of the private sponsor which participated in the prison industries project at Ridgeland. 694 S.E.2d at 23.

The circuit court never considered this issue, because it followed the explicit directives from this Court's 2010 opinion and determined that only the ALC possessed subject matter jurisdiction over Cartrette's claims. Setting aside this reality, the relief sought by Cartrette concerning this issue is, under the analysis and rulings issued by this Court in both Flexon and Prince discussed above, simply not available to him.

Accordingly, this Court should reject Cartrette's third issue on appeal, and it should affirm the entirety of the circuit court's March 27, 2015 order.

IV. SOUTH CAROLINA APPELLATE COURT RULES 208(b)(2) AND 220(c)

Finally, as provided by South Carolina Appellate Court Rules ["SCACR"] 208(b)(2) and 220(c), the Department respectfully reminds this Court that it may affirm the circuit court's order "upon any ground(s) appearing in the Record on Appeal."

CONCLUSION

For the foregoing reasons, the Department respectfully urges this Court to affirm the circuit court's order filed March 27, 2015.

[15] See Cartrette's Brief, p. 4.

RESPECTFULLY SUBMITTED,

BY: _____

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South Carolina Department of Corrections, ... Respondent.

CERTIFICATE OF COUNSEL

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

April 5, 2016

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY

J. Cordell Maddox, Jr., Circuit Court Judge

Trial Court Case No. 2014-CP-23-5969
Appellate Case No. 2015-000759

Billy Joe Cartrette, ... Appellant,

v.

South Carolina Department of Corrections, ... Respondent.

PROOF OF SERVICE

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

Mr. Billy Joe Cartrette
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April 5, 2016

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