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**SC SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2016-001221

Fred Gatewood, #289775, ..... Respondent/Petitioner,

v.

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

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

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Under the authority of South Carolina Appellant Court Rule [“SCACR”] 242, 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 *Fred Gatewood, Appellant, v. S.C. Dep’t of Corr., Respondent*, Opinion No. 5389 (Mar. 9, 2016). (Apx. pp. 292 – 311). 785 S.E.2d 600 (S.C. Ct. App. 2016).

#### **I. 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 March 31, 2016. (Apx. pp. 319 – 394). The Respondent, Fred Gatewood [“Gatewood”], also filed a petition for rehearing with the Court of Appeals dated March 19, 2016. (Apx. pp. 312 – 318).

SCDC’s undersigned counsel further certifies that the Court of Appeals denied the parties’ respective petitions for rehearing by an order filed June 2, 2016. (Apx. pp. 395 – 396).

#### **II. QUESTIONS PRESENTED FOR REVIEW**

- A. DID THE COURT OF APPEALS ERR BY RULING ON THE SECOND ISSUE THAT DURING JULY 2007, SCDC SHOULD HAVE PAID GATEWOOD THE “PREVAILING WAGE” PER § 24-3-430(D) AND APPLIED § 24-3-40(A)’S DEDUCTIONS TO HIS GROSS WAGES?**
- B. DID THE COURT OF APPEALS ERR BY RULING ON THE FOURTH ISSUE THAT GATEWOOD WAS DEPRIVED OF DUE PROCESS?**

#### **III. STATEMENT OF THE CASE**

- A. *Williams, et al. v. S.C. Dep’t of Corr. and Williams Technologies, Inc.***

In 2002, current and former inmates who participated or formerly participated in a prison industries service work project operated by SCDC at Lieber Correctional Institution [“Lieber”] filed a class action lawsuit in Dorchester County styled as *Darrell Williams, Class Repr., et al. v. S.C. Dep’t of Corr. and Williams Technologies, Inc.*, Case No. 2002-CP-18-134.

Williams Technologies, Inc. [“WTI”] served as the project’s private industry sponsor, and SCDC entered into a contract with WTI on September 28, 1998 to secure WTI’s participation. (Apx. pp. 74 – 85). Under the contract, inmate labor provided by SCDC would disassemble and salvage serviceable parts from defective automotive transmissions, which constituted WTI’s stock-in-trade, at a facility located inside Lieber’s confines.

In their lawsuit, the plaintiffs asserted various causes of action against both SCDC and WTI in their suit by which they challenged the hourly rate at which they were paid for the labor they provided to the service work project operated by SCDC at Lieber.<sup>1</sup>

Shortly after this Court issued its decisions 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), SCDC and WTI moved to dismiss the class action, and the circuit court granted their motions.

The plaintiffs in *Williams* appealed the order by which the circuit court dismissed their class action to the Court of Appeals, and this Court ultimately considered their appeal on direct review. By its decision in *Williams v. S.C. Dep’t of Corr. and Williams Technologies, Inc.*, 641 S.E.2d 885 (S.C. 2007), this Court affirmed the circuit court’s order, and, in doing so, it observed that the plaintiffs could file administrative grievances with SCDC in which they articulated prison industries pay claims. 641 S.E.2d at 886, n. 1 (“In the companion case of [*Wicker*], we further held that inmates may not be deprived of this property interest without due process; accordingly, inmates were directed to file grievances if they wished to protest [SCDC’s] failure to pay a prevailing wage.”)

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<sup>1</sup> As explained below, Gatewood filed a grievance with SCDC in which he challenged the rate at which he was paid for his labor, and SCDC denied his grievance. Gatewood appealed SCDC’s decision to the Administrative Law Court [“ALC”], and the ALC affirmed SCDC’s decision. Gatewood then appealed the order by which the ALC affirmed SCDC’s decision to the Court of Appeals. Accordingly, Gatewood prepared the record considered by the Court of Appeals. In doing so, Gatewood included in the record materials associated with the litigation of *Williams* before the circuit court, and they appear in SCDC’s appendix in support of its instant petition. (Apx. pp. 181 – 185).

## B. GATEWOOD'S GRIEVANCE PROCEEDINGS BEFORE SCDC

Gatewood began participating in the service work project at Lieber on September 28, 2004 (Apx. p. 62), several weeks after this Court issued *Adkins* and *Wicker* and around the time that the circuit court granted the motions for summary judgment filed by SCDC and WTI in *Williams*. SCDC first paid Gatewood for his labor on or about October 18, 2004. (Apx. p. 62). Gatewood's participation in the service work project ended in 2009. (Apx. p. 62).

Gatewood filed a Step 1 administrative grievance ["Step 1"] with SCDC (Apx. pp. 47 – 48) under the provisions of the agency's Inmate Grievance System Policy, designated as Policy Number GA-01.12. (Apx. pp. 63 – 72). Gatewood's Step 1 was dated October 16, 2004, and it was filed with SCDC officials at Lieber on October 18, 2004. (Apx. pp. 43 and 47). In his Step 1, Gatewood asserted that he was entitled to back pay and a higher hourly rate of pay for the labor he provided to the service work project SCDC operated at Lieber. (Apx. p. 47).

Gatewood later asserted the same in the amendment to his Step 1 dated February 3, 2006, which he submitted to SCDC and which supplanted his original Step 1. (Apx. p. 51).<sup>2</sup>

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<sup>2</sup> In its March 9, 2016 decision and the June 2, 2016 order by which it denied the parties' petitions for rehearing, the Court of Appeals completely overlooked Gatewood's amended Step 1. Instead, the Court of Appeals observed in its decision that Gatewood's original Step 1 was filed with SCDC on October 18, 2004, the same date upon which SCDC first paid him for his labor. (Apx. p. 295). The Court of Appeals then provided the following incomplete procedural history associated with Gatewood's grievance (Apx. p. 296):

On October 28, 2004, Lieber's Warden denied [Gatewood's Step 1]. On November 8, 2004, [Gatewood] filed his [Step 2 appeal], challenging SCDC's denial of the requested relief. On May 14, 2007, SCDC issued a final decision on [Gatewood's Step 2], basing its denial of relief on both the merits and the fifteen-day filing deadline set forth in paragraph 13.1 of Policy GA-01.12. (footnote omitted).

Gatewood obviously filed his amended Step 1 in February 2006 *after* he filed his Step 2 in November 2004, but *before* SCDC issued its final decision in May 2007. The nearly three-year gap between when Gatewood filed his original Step 1 and Step 2 in 2004 and when SCDC issued its final decision concerning his grievance in 2007 resulted from action taken by the circuit court in *Williams* after it granted summary judgment to both SCDC and WTI. Counsel for the plaintiffs in *Williams*, who served and still serves as Gatewood's counsel, moved the circuit court soon after it granted summary judgment to stay SCDC's processing and adjudication of the grievances filed by the current and former inmates who had participated as plaintiffs in the class action. The circuit court granted the motion and imposed the stay sought by the plaintiffs' counsel in *Williams*. Consequentially, the stay halted SCDC's processing and adjudication of the original Step 1 and Step 2 filed by Gatewood in the fall of 2004 even though he

In both his original and amended Step 1 (Apx. pp. 47 and 51), Gatewood asserted that he was entitled to the so-called “prevailing wage” pursuant to S.C. Code Ann. § 24-3-430(D) for at least part of the time he voluntarily participated in the service work project SCDC operated at Lieber. Section 24-3-430, which the legislature enacted in 1995, is entitled “[i]nmate labor in private industry authorized; requirements and conditions,” and, in its entirety, it provides as follows: “No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector.”

However, Gatewood did not start participating in the service work project at Lieber until three (3) years after the legislature enacted the first of a series of six (6) budget provisos which specifically addressed service work projects. The first of these provisos became effective June 27, 2001. *See* H. 3687, Appropriation Bill 2001–2002, Part IB § 37.31 (Act No. 66, 2001 S.C. Acts 738). In contrast to § 24-3-430, the entirety of the first 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]. (Apx. pp. 294 – 295).

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didn't start participating in the project until at or very near the time the circuit court issued its summary judgment order in favor of SCDC and WTI in *Williams*. During the 2 ½ years between Gatewood's Step 2 in November 2004 and SCDC's final decision in May 2007, Gatewood's counsel not only prepared an amended Step 1 for Gatewood in early 2006, but Gatewood's counsel also secured an order dated April 19, 2007 from the circuit court which presided over *Williams* that required SCDC to accept and consider the amended Step 1 and allied exhibits submitted by Gatewood (Apx. pp. 51 – 56), as well as amended Step 1s and allied exhibits submitted by the plaintiffs who had participated in the class action. Gatewood referenced the circuit court's April 19, 2007 order in the Notice of Appeal he filed with the ALC. *See* page 6 and note 7 below. By issuing its April 19, 2007 order, the circuit court in *Williams* determined that it retained jurisdiction to hear matters concerning the stay order while the plaintiffs' appeal of its summary judgment order was pending with this Court. The stay ended approximately 60 days after this Court denied of the petition for rehearing filed by the plaintiffs in *Williams*.

Consequentially, the following language from Gatewood's amended grievance dated February 3, 2006 became the operative claim in the instant controversy (Apx. p. 51):

Since July 2001, WTI/Lieber were required to pay [Gatewood] the negotiated wage of \$4/hour (Stat. at Large, No. 66, § 37.31; Exh. B, C). In fact, [SCDC's] policy was to pay a maximum of about \$1/hour, and usually less. Exhibits document a \$.35 per hour base rate (Exh. B,D,E); maximum of \$1/hour (Ex. E); the 9-30-98 contract specifying a \$4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for [Gatewood] (Exh. F.)

By his claim, Gatewood asserted that under both the provisos enacted beginning in 2001 and the contract between SCDC and WTI (Apx. pp. 74 – 85), he should have been paid at the so-called “negotiated wage” of \$4.00 per hour for his labor.

Gatewood demanded back wages, less the wages SCDC previously remitted to him, the deductions purportedly applicable to his gross wages by operation of § 24-3-40, and deductions for Social Security/Medicare premiums, for all of the labor he performed after he began participating in the service work project at Lieber in late September 2004. Gatewood also demanded “interest, costs, and attorney fees” in his amended grievance.<sup>3</sup> (Apx. p. 51).

SCDC denied Gatewood's original and amended Step 1 (Apx. pp. 41 – 42), and Gatewood appealed the denial of his original and amended Step 1 by filing a Step 2 appeal with the agency.<sup>4</sup> (Apx. pp. 49 – 50). SCDC denied Gatewood's Step 2 appeal.<sup>5</sup> (Apx. pp. 43 – 45).

### **C. GATEWOOD'S APPEAL TO THE ADMINISTRATIVE LAW COURT**

Gatewood appealed SCDC's denial of his Step 2 appeal, which represented the agency's final decision, to the Administrative Law Court [“ALC”]. In his Notice of Appeal to the ALC, Gatewood listed the following eight (8) grounds (Apx. p. 46):

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<sup>3</sup> Gatewood did not claim overtime in his original Step 1 or his amended Step 1. (Apx. pp. 47 and 51).

<sup>4</sup> Gatewood did not claim overtime in his Step 2 appeal. (Apx. p. 49).

<sup>5</sup> See note 2 above for the chronology associated with SCDC's processing of Gatewood's grievance.

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under [paragraph 13.9 of Policy GA-01.12].
2. [Gatewood] had reasonable cause under [paragraph 13.9 of Policy GA-01.12] as his right to grieve did not accrue until [*Adkins /Wicker*] and filed within a reasonable time.<sup>6</sup>
3. Applying [paragraph 13.1 of Policy GA-01.12] to these facts violated due process.
4. Under [April 19, 2007 circuit court order], SCDC was required to accept filing and consider on the merits [Gatewood's] Amendment/Exhibits.<sup>7</sup>
5. Grievance proved all elements of claim for [prevailing/negotiated] wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record.<sup>8</sup> [Gatewood] is entitled to prevailing/negotiated wages.
7. To extent [Gatewood] worked [overtime] he is entitled to it under SCDC policy.<sup>9</sup>
8. Appellant claims pre/post judgment interest, costs and attorney fees.

#### 1. *Ackerman* before the ALC and Beyond

The ALC consolidated Gatewood's appeal with approximately 200 other appeals filed by current and former inmates who, like Gatewood, had asserted various claims concerning the hourly wage SCDC paid to them while they voluntarily participated in the service work project SCDC operated at Lieber. The ALC styled the consolidated matter into which it included Gatewood's appeal as *Ackerman v. S.C. Dep't of Corr.*, Docket No. 07-ALJ-04-00444.<sup>10</sup>

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<sup>6</sup> See pages 2 – 3 above.

<sup>7</sup> See note 2 above.

<sup>8</sup> Gatewood included a "note" prepared by Dr. Joseph Benich at the request of Gatewood's counsel as an exhibit in support of the amendment to his Step 1 dated February 3, 2006. (Apx. pp. 54 – 56).

<sup>9</sup> The overtime claim Gatewood articulated in his Notice of Appeal represented the first time he made such a demand. See notes 3 and 4 above.

<sup>10</sup> As discussed in note 1 above, Gatewood prepared the record considered by the Court of Appeals. In doing so, Gatewood included in the record an order issued August 5, 2011 by the ALC in *Ackerman*. Gatewood also included other materials from the litigation of *Ackerman* before the ALC in the record. Thus, these materials appear in the appendix submitted by SCDC in support of its instant petition. (Apx. pp. 4 – 25 and 90 – 93).

The ALC issued its final order in *Ackerman* on July 26, 2012. By its final order in *Ackerman*, the ALC determined that while Gatewood timely filed his grievance (i.e. filed his Step 1 in conformity with the fifteen-day deadline established by paragraph 13.1 of Policy GA-01.12),<sup>11</sup> all of the other current and former inmates did not timely file their respective Step 1s.

As an important aside, the current and former inmates in *Ackerman* appealed the ALC's order to the Court of Appeals, and the Court of Appeals issued its decision in *Ackerman* on February 10, 2016. 782 S.E.2d. 757 (S.C. Ct. App. 2016). By its decision in *Ackerman*, the Court of Appeals reversed the ALC's final order. In doing so, the Court of Appeals ruled that the fifteen-day filing deadline from paragraph 13.1 of Policy GA-01.12 did not apply to the Step 1s filed by Gatewood's cohorts. SCDC filed a petition for rehearing in *Ackerman*, which the Court of Appeals denied by an order it issued March 24, 2016. Upon the denial of its petition for rehearing by the Court of Appeals in *Ackerman*, SCDC filed a petition for writ of certiorari with this Court. As of the date of its instant petition concerning the Court of Appeals' decision in *Gatewood*, SCDC's petition for writ of certiorari concerning the Court of Appeals' decision in *Ackerman* is pending with this Court.<sup>12</sup>

## 2. *Gatewood* before the ALC

However, the ALC retained jurisdiction to determine the issues associated with the final phase of Gatewood's appeal of SCDC's denial of his grievance, namely whether Gatewood was entitled to a \$4.00 per hour wage rate for his labor based on the fiscal year 2001–02 budget proviso, the legislature's subsequent annual enactments of identical provisos for the five (5) subsequent fiscal years, the legislature's enactment of §§ 24-1-290 and 295 in 2007, and the 1998 contract between SCDC and WTI. (Apx. pp. 52 – 53).

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<sup>11</sup> The first three (3) grounds of Gatewood's Notice of Appeal addressed the timeliness of his Step 1. (Apx. p. 46).

<sup>12</sup> The appellate case number for SCDC's petition for writ of certiorari in *Ackerman* is 2016-000829.

During the course of litigating his appeal of SCDC's denial of his grievance before the ALC, Gatewood filed a "Motion to Supplement Record" dated September 17, 2013. (Apx. pp. 94 – 105). SCDC responded to Gatewood's "Motion to Supplement Record" by a filing dated October 21, 2013. (Apx. pp. 106 – 113). By its order filed November 12, 2013 (Apx. pp. 26 – 29), the ALC denied Gatewood's motion.

The parties filed their respective briefs with the ALC (Apx. pp. 114 – 170), as well as motions related to their briefs. (Apx. pp. 171 – 180). On April 29, 2014, the ALC issued its final order regarding Gatewood's appeal of SCDC's denial of his grievance. (Apx. pp. 30 – 40). In its order, the ALC identified five (5) issues on appeal (Apx. p. 31):

1. Was [Gatewood] entitled to a \$4.00-per-hour wage rate for his labor provided to [the service work project at Lieber] based on the 2001 budget proviso and succeeding enactments, and on the 1998 service work contract between SCDC and [WTI]?
2. Was [Gatewood] entitled to overtime pay for his labor?
3. Is [Gatewood] entitled to pre- and post-judgment interest on his back pay?
4. Is [Gatewood] entitled to costs and attorney's fees?
5. Should SCDC be enjoined from further wage violations?<sup>13</sup>

Regarding the first of the five (5) issues, the ALC, after reviewing the six (6) budget provisos enacted annually by the legislature beginning in fiscal year 2001–02, the legislature's 2007 enactment of § 24-1-295, the 1998 contract between SCDC and WTI, and the applicable rules of statutory construction and contract interpretation (Apx. pp. 33 – 36), agreed with Gatewood that "the gross amount of wages" WTI paid to SCDC for his labor equaled \$4.00 per hour. (Apx. p. 37). However, the ALC found that based on the terms of the contract between

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<sup>13</sup> In the footnote associated with the fifth issue, the ALC observed as follows (Apx. p. 31):

In his Appellant's Brief, [Gatewood] included an additional issue stated as follows: "Should SCDC be ordered to process grievances for workers in the program whether or not they personally filed a grievance?" However, the instant case does not involve the grievances of other workers in the program or persons in the program who never filed grievances. **Therefore, the Court does not consider this an issue and does not include it in the text above.** [emphasis supplied].

SCDC and WTI, “security costs and overhead, including costs for health safety, and welfare, constituted ‘other required deductions’ pursuant to [§ 24-1-295].” (Apx. p. 37). In so finding, the ALC disagreed with Gatewood’s assertion that § 24-3-40 and its deductions applied to the gross wages SCDC remitted to him for his labor.<sup>14</sup> (Apx. pp. 34 – 37). Thus, the ALC ruled that Gatewood “was never entitled to actually receive \$4.00 per hour for his labor, thought that is the rate by which his gross wages were to be calculated for purposes of [§ 24-1-295].” (Apx. p. 38).

On the second issue, the ALC rejected Gatewood’s argument that he was entitled back wages attributable to overtime, because Gatewood did not include the issue in his Step 1 or Step 2, and, therefore, Gatewood did not preserve the issue for appellate review.<sup>15</sup> (Apx. p. 38). On the third and fourth issues, the ALC ruled that in light of its ruling on the first and second issues, Gatewood was “not entitled to pre-judgment or post-judgment interest on any back pay,” nor was he “entitled to any costs or attorney’s fees.” (Apx. p. 39). On the fifth and final issue, the ALC declined to entertain Gatewood’s injunction request, as it found that Gatewood’s appeal involved whether SCDC properly denied the wages he sought in his grievance and that Gatewood never raised his request for injunctive relief in his Step 1, Step 2, or Notice of Appeal. (Apx. p. 39).

Therefore, in light of its rulings against Gatewood on all five (5) issues, the ALC affirmed SCDC’s denial of Gatewood’s grievance. (Apx. p. 39).

#### **D. GATEWOOD’S APPEAL OF THE TWO (2) ORDERS BY THE ALC TO THE COURT OF APPEALS**

Gatewood appealed both the ALC’s November 12, 2013 order and its April 29, 2014 order to the Court of Appeals. (Apx. pp. 186 – 188).

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<sup>14</sup> The ALC observed that Gatewood argued in both of his briefs “that ‘expenses for security, overhead, and health, safety, and welfare are not allowable deductions from an inmate’s gross wages under § 24-3-40.’” (Apx. p. 36).

<sup>15</sup> In the footnote associated with this ruling, the ALC found that Gatewood “did not raise this issue until he filed his Notice of Appeal with this Court on June 5, 2007.” (Apx. p. 38). *See* notes 3, 4, and 9 above.

The Court of Appeals issued its decision concerning Gatewood’s appeal of the ALC’s two (2) orders on March 9, 2016 (Apx. pp. 292 – 311). The Court of Appeals identified the first four (4) of the eight (8) issues on appeal from its decision as follows (Apx. p. 296):

1. Did the ALC err [by its November 12, 2013 order which denied Gatewood’s] motion to supplement the record?
2. Did the ALC err in applying [§ 24-1-295] rather than [§ 24-3-40] to determine the deductions from [Gatewood’s] gross wages?
3. Did the ALC err in holding that security and overhead constituted “other required deductions” for the purposes of [§ 24-1-295]?
4. Does [§ 24-1-295] apply retroactively to [Gatewood’s] pre-August 1, 2007 work?

In the sixth footnote of its decision, which related to the fourth issue it identified on appeal, the Court of Appeals stated the following (Apx. pp. 296 – 297):

We combine this issue with the due process issue listed in [Gatewood’s] brief. In light of our analysis of the due process issue, we need not reach the issue concerning the impairment of contractual obligations. (citation omitted).

The Court of Appeals identified the final four (4) issues as follows (Apx. p. 297):

5. Did the ALC err in holding that the issue of overtime was not preserved for review?
6. Did the ALC err in denying [Gatewood’s] request for pre-judgment interest, post-judgment interest, and attorney’s fees?
7. Did the ALC err in declining to consider whether SCDC should process grievances for all inmates participating “in the program?”
8. Did the ALC err in declining to enjoin SCDC from further wage violations?

For clarity’s sake, the following table depicts the correlation between each of the eight (8) issues identified on appeal with the issues presented by the parties in their respective briefs:

Issue from the Court of Appeals’ Decision	Issue Presented by Gatewood (Apx. pp. 197 – 198)	Issue Presented by SCDC (Apx. p. 239)
First	First	First
Second	Second	Second
Third	Sixth	Fourth
Fourth	Third, Fourth, and Fifth	Third

Issue from the Court of Appeals' Decision	Issue Presented by Gatewood (Apx. pp. 197 – 198)	Issue Presented by SCDC (Apx. p. 239)
Fifth	Seventh	Fifth
Sixth	Eighth	Sixth
Seventh	Ninth	Seventh
Eighth	Tenth	Eighth

**1. The Rulings by which the Court of Appeals Affirmed the ALC**

By its rulings on the first, third, fifth, seventh, and eighth issues, the Court of Appeals affirmed many of the ALC's rulings or otherwise ruled that the ALC committed harmless error.

Starting with the third issue, the Court of Appeals affirmed the ALC's conclusion "that security costs and overhead constituted 'other required deductions' for purposes of [§ 24-1-295]." (Apx. p. 302). In so affirming the ALC's conclusion, the Court of Appeals agreed with the ALC's conclusion that "SCDC's security costs and Prison Industries overhead constituted 'other required deduction' for purposes of [§ 24-1-295] because they were built into the \$4.00 per hour rate WTI agreed to pay to SCDC for inmate labor." (Apx. p. 302).

On the first issue, the Court of Appeals ruled that any error the ALC committed in denying Gatewood's motion to supplement the record of the grievance proceedings before SCDC was harmless. (Apx. p. 297). On the fifth issue, the Court of Appeals affirmed the ALC's ruling that Gatewood did not preserve the issue of overtime pay for review. (Apx. pp. 308 – 309). On the seventh issue, the Court of Appeals affirmed the ALC's decision not "to consider whether SCDC should be ordered to process grievance for other inmates participating 'in the program' who did not filed their own grievances.<sup>16</sup>" (Apx. pp. 309 – 310). On the eighth issue, the Court of Appeals affirmed the ALC's decision not "to entertain [Gatewood's] request for an injunction against SCDC's future wage violations." (Apx. p. 310).

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<sup>16</sup> See note 13 above.

## 2. The Rulings by which the Court of Appeals Reversed the ALC

However, by its analysis and decisions concerning the second, fourth, and sixth issues from its decision, the Court of Appeals reversed and/or modified the ALC's rulings.

The Court of Appeals opened and closed the section of its decision concerning the second issue with the following paragraphs (Apx. pp. 298 and 301):

[Gatewood] asserts the ALC erred in applying [§ 24-1-295] to determine the deductions from his gross wages earned prior to August 1, 2007 because (1) the parties did not raise this issue in their briefs and (2) [§ 24-3-40] rather than [§ 24-1-295] applies to determine deductions from his gross wages earned prior to August 1, 2007. **We agree with [Gatewood] that [§ 24-3-40] governs deductions from his gross wages earned prior to August 1, 2007, but only as to the month of July 2007.**

...

In sum, the [provisos enacted by the legislature] for fiscal years 2004-05, 2005-06, and 2006-07 governed deductions from [Gatewood's] gross earnings **until the month of July 2007; during July 2007, [§ 24-3-40]** governed deductions from the prevailing wage that should have comprised [Gatewood's] gross earnings for that month. Therefore, **SCDC was not entitled to deduct security costs and overhead for July 2007.** Finally, [§ 24-1-295] governed the deductions from [Gatewood's] gross earnings from August 1, 2007 through April 13, 2009, the date Inmate received his last paycheck. [emphasis supplied].

The two (2) essential findings by the Court of Appeals which served as the foundation for its rulings on the second issue, as exemplified by the two (2) above-quoted paragraphs, consisted of (1) the budget proviso for fiscal year 2006–07 expired June 30, 2007 and (2) § 24-1-295 did not become effective until August 1, 2007. (Apx. pp. 299 – 300). Thus, the Court of Appeals concluded that a one-month “gap in the authorization” of the prison industries service work projects by the legislature would be created between the expiration of the 2006–07 proviso and the effective date of § 24-1-295. (Apx. p. 300).

These same two (2) findings and the conclusion derived from them likewise served as the foundation for the Court of Appeals' ruling on the fourth issue, the discussion of which opened with the following paragraph (Apx. pp. 303 – 304):

[Gatewood] maintains **the ALC's retroactive application of [§ 24-1-295] to his wages earned prior to the effective date of [§ 24-1-295], August 1, 2007, violates his right to due process of law.** [Gatewood] argues the statute's addition of "other required deductions" to the deductions previously required by [§ 24-3-40] reduced his net wages beginning on August 1, 2007, and applying this result retroactively would divest him of his right to certain wages that vested when they were earned prior to August 1, 2007. We agree. [emphasis supplied]

After rejecting SCDC's assertions that Gatewood did not preserve retroactivity or his due process argument for review by the ALC (Apx. pp. 304 – 305), the Court of Appeals analyzed the merits of both Gatewood's retroactivity and due process arguments. (Apx. pp. 305 – 07).

The Court of Appeals stated that the necessary question it confronted in evaluating the ALC's retroactive application of § 24-1-295 to the gross wages SCDC paid Gatewood before August 1, 2007 was whether § 24-1-295 was remedial or procedural. (Apx. p. 306). After reciting the standards for remedial and procedural statutes, the Court of Appeals determined that the same standards dovetailed with Gatewood's argument that retroactive application of § 24-1-295 violated due process by divesting Gatewood's "vested right to earn a certain net wage prior to" August 1, 2007, the effective date of § 24-1-295. (Apx. p. 306). To evaluate Gatewood's argument, the Court of Appeals first examined Gatewood's right to wages and then it determined how § 24-1-295's implementation should have affected his net wages. (Apx. pp. 306 – 307).

The Court of Appeals determined as follows (Apx. p. 307):

Prior to [§ 24-1-295's effective date of August 1, 2007], the [budget provisos] fiscal years 2004-05, 2005-06, and 2006-07 governed deductions from [Gatewood's] gross earnings until the month of July 2007; **during July 2007, [§ 24-3-40] governed deductions from [Gatewood's] gross earnings.** When [§ 24-1-295 became effective on August 1, 2007], the

“other required deductions” language supplemented those deductions already required by [§ 24-3-40]. In other words, [§ 24-3-40] does not accommodate “any other required deductions.” **Unlike [§ 24-1-295], [§ 24-3-40] does not add such a catch-all phrase to the specifically enumerated deductions.** Further, [§ 24-3-40] requires SCDC to use the balance remaining after all other listed deductions are taken to pay federal and state taxes, which reduces the participating inmate’s tax debts. Therefore, the increase in deductions authorized by [§ 24-1-295 beginning on its effective date of August 1, 2007], theoretically resulted in less net income to [Gatewood]. [footnote omitted and emphasis supplied].

The Court of Appeals’ determination yielded the following conclusions (Apx. p. 307):

**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.** [citations omitted and emphasis supplied].

In the footnote associated with the above-quoted paragraph, the Court of Appeals also concluded that “**applying [§ 24-1-295] retroactively to [Gatewood’s] gross wages earned prior to July 2007, when the provisos for fiscal years 2004-05, 2005-06, and 2006-07 would otherwise govern deductions, would violate due process** to the extent that imposing the deductions authorized by [§ 24-1-295] would reduce [Gatewood’s] net wages from what they would have been as a result of taking the deductions allowed by the provisos.” (Apx. p. 307).

Finally, on the sixth issue, the Court of Appeals, as it reversed the ALC’s conclusion that § 24-1-295 applied to the gross wages SCDC remitted to him before August 1, 2007 (i.e. the second and fourth issues it identified in its decision, remanded Gatewood’s demand for costs, attorney’s fees, pre-judgment interest, and post-judgment interest back to the ALC for reconsideration. (Apx. p. 309).

### 3. The Parties' Petitions for Rehearing

Both Gatewood and SCDC filed petitions for rehearing with the Court of Appeals. (Apx. pp. 312 – 394). The following table illustrates the scope of the parties' respective petitions for rehearing concerning the eight (8) issues identified by the Court of Appeals in its decision:

Issue Identified by Court of Appeals	Challenged by Gatewood's Petition for Rehearing	Challenged by SCDC's Petition for Rehearing
First	Yes	No
Second	Yes	Yes
Third	Yes	No
Fourth	No	Yes
Fifth	Yes	No
Sixth	No	Yes
Seventh	Yes	No
Eighth	Yes	No

By the order it issued June 2, 2016 (Apx. pp. 395 – 396), the Court of Appeals denied the parties' respective petitions for rehearing.

#### IV. APPLICABLE RULES AND LEGAL STANDARD

##### A. "SPECIAL AND IMPORTANT REASONS" UNDER SCACR 242(b)

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."

If the rulings by the Court of Appeals on the second, third, and fourth issues from its decision stand, SCDC would owe back wages to Gatewood for the labor he provided from October 18, 2004 to July 31, 2007 to the service work project SCDC operated at Lieber. If the ruling by the Court of Appeals on the sixth issue from its decision stands, SCDC faces the prospect that it would also owe Gatewood, as the prevailing party on the second, third, and fourth issues, monies attributable to interest, costs, and attorney's fees.

As SCDC explained above and as the Court of Appeals acknowledged in its decision,<sup>17</sup> Gatewood is one of nearly 200 appellants in *Ackerman*. As Gatewood and his fellow appellants in *Ackerman* asserted identical or nearly identical wage claims in the grievances they filed with SCDC, the rulings by the Court of Appeals on the second, third, fourth, and sixth issues from its March 9, 2016 decision animate the prospect that SCDC also owes back wages, as well as interest, costs, and attorney's fees, to many if not all of Gatewood's nearly 200 fellow appellants in *Ackerman*. Accordingly, SCDC respectfully asserts that sufficient "special and important reasons" exist as contemplated by the first sentence of SCACR 242(b) by which this Court should issue a writ of certiorari to review the Court of Appeals' decision in this matter.

#### **B. STANDARD OF REVIEW**

In *City of Rock Hill v. Harris*, 705 S.E.2d 53, 54 (S.C. 2011), this Court acknowledged that "[i]n 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*, 785 S.E.2d 198, 200 (S.C. 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].

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<sup>17</sup> See pages 7 – 8 above. See also Apx. pp. 292 – 293.

V. SUPPORTING ARGUMENT FOR QUESTIONS PRESENTED BY SCDC

A. THE COURT OF APPEALS ERRED BY RULING ON THE SECOND ISSUE THAT DURING JULY 2007, SCDC SHOULD HAVE PAID GATEWOOD THE “PREVAILING WAGE” PER § 24-3-430(D) AND APPLIED § 24-3-40(A)’S DEDUCTIONS TO HIS GROSS WAGES

The Court of Appeals’ ruling(s) on the second issue from its March 9, 2016 decision raises novel questions of law under SCACR 242(b)(1). Should this Court grant SCDC’s petition on this issue, it may afford no particular deference to the ruling(s) by the Court of Appeals under *City of Rock Hill* and *Brock*.

On the second issue, the Court of Appeals agreed with Gatewood “that [§ 24-3-40] governs deductions from his gross wages earned prior to August 1, 2007, **but only as to the month of July 2007.**” [emphasis supplied]. (Apx. p. 298). As it began its analysis (Apx. p. 298), the Court of Appeals recognized that SCDC argued in its brief “that deductions for overhead and security costs were authorized by” its September 30, 1998 contract with WTI. (Apx. p. 53). The Court also recognized that Gatewood argued in reply “that SCDC’s overhead and other expenses were ‘not allowable deductions from [Gatewood’s] gross wages under [§ 24-3-40].’” However, the Court of Appeals recognized that “the ALC concluded that [§ 24-3-40] does not apply “because the [WTI contract] was a service work contract, and deductions from wages resulting from service work provided to private industries by inmates is governed by [§ 24-1-295], not [§ 24-3-40].” The Court of Appeals then evaluated the ALC’s conclusion, and it began its evaluation of the ALC’s conclusion by reviewing the chronology associated with “the legislation concerning deductions from an inmate’s ‘gross wages,’ a/k/a ‘gross earnings.’” (Apx. p. 298).

The Court of Appeals began its chronological review of the applicable legislation in 2004 at time Gatewood began participating in the service work project at Lieber, and, by starting its review in 2004, it recognized that “two separate legislative enactments concerning deductions

were in place: (1) [§ 24-3-40] and (2) the budget proviso concerning “Prison Industry service work” accompanying the appropriation bill for fiscal year 2004–05.” (Apx. p. 298).

After conducting its review, which included an analysis of the message by which the Governor vetoed the proviso for the 2007–08 fiscal year and the legislature’s action in sustaining the Governor’s veto, the Court of Appeals concluded that the Governor, by his veto message, was unaware that a one-month gap existed between the expiration of the proviso for the 2006–07 proviso and the August 1, 2007 effective date of the enactment of § 24-1-295. (Apx. pp. 299 – 300). Thus, the Court of Appeals determined that the provisions of § 24-1-295 could not have been effective during July 2007, and it filled the July 2007 “gap” between the legislative enactments with the provisions of § 24-3-40. (Apx. pp. 300 – 301).

As it did in its petition for rehearing to the Court of Appeals, SCDC again respectfully asserts that the Court of Appeals misapprehended § 24-3-40(A) by applying it to Gatewood’s gross wages during July 2007, because SCDC still possessed the authority to pay Gatewood “less than the prevailing wage” during July 2007, and, consequentially, § 24-3-40(A) could not have applied to Gatewood’s gross earnings during July 2007. Specifically, SCDC asserts that § 24-3-40(A) applied only to gross wages due inmates in project authorized under Article 3, Chapter 3 for Title 24 for which SCDC must have paid the inmates no less than § 24-3-430(D)’s “prevailing wage.” (Apx. pp. 330 – 332).

SCDC also respectfully asserts, as it did in its petition for rehearing, that it was permitted to pay Gatewood “less than the prevailing wage” during July 2007, because the legislature did not intend to create any gap between the expiration of the proviso for fiscal year 2006–07 and its enactment of all three (3) sections of Senate Bill 182 [“S. Bill 182”]. 2007 South Carolina Laws Act No. 68 (S.B. 182). In so asserting, SCDC respectfully submits that the Court overlooked the

reality that the legislature enacted § S. 182, §§ 1 and 2 (a/k/a §§ 24-1-290 and 295) in order to codify the six (6) provisos that it had enacted to address service work projects since 2001. (Apx. pp. 333 – 340). More specifically, SCDC respectfully submits that the Court of Appeals overlooked the legislative history associated with all three (3) sections S. 182, which stands apart from the legislative history of the proviso of 2007-08, which was not enacted upon the Governor's veto. (Apx. pp. 340 – 348). Therefore, SCDC respectfully argues that the Court of Appeals incorrectly ruled that SCDC was not able to deduct security costs and overhead from Gatewood's gross earnings in July 2007.

SCDC also respectfully asserts that its analysis of the Court of Appeals' error concerning the second issue impacts the Court of Appeals' ruling on the third issue. On the third issue, the Court of Appeals ruled that SCDC lawfully assessed deductions for security costs and overhead, as provided by SCDC's contract with WTI, from August 1, 2007 until SCDC remitted its final amount of net wages to Gatewood in April 2009. The Court of Appeals anchored its ruling upon its conclusions that the "in addition to any other required deductions" language from the first unnumbered paragraph of § 24-1-295 permitted such deductions and that the effective date of § 24-1-295 was August 1, 2007. (Apx. pp. 300 – 303). While it does not challenge the Court of Appeals' ruling on the third issue, SCDC respectfully asserts, as it did in its petition for rehearing, that the legislature intended for the entirety of S. 182 to cover service work projects in July 2007 upon the expiration of the budget proviso for the 2006–07 fiscal year. (Apx. p. 336).

Stated another way, SCDC respectfully submits that the legislature, as evidenced by the legislative history associated with enactment of all three (3) sections of S. 182, the mechanism by which both §§ 24-1-290 and 295 became law, the context within which the Governor vetoed the proviso for the 2007–08 fiscal, and the context within which the legislature sustained the

Governor's veto, simply did not intend to inflict a one-month interruption in the laws applicable to prison industries work projects upon SCDC or, for that matter, upon the private industry sponsors, like WTI, who participated as the private sponsors of such projects.

**B. THE COURT OF APPEALS ERRED BY RULING ON THE FOURTH ISSUE THAT GATEWOOD WAS DEPRIVED OF DUE PROCESS**

Like its ruling(s) on the second issue, the Court of Appeals' ruling(s) on the fourth issue from its March 9, 2016 decision also raises novel questions of law under SCACR 242(b)(1). Should this Court grant SCDC's petition on this issue, it may again afford no particular deference to the ruling by the Court of Appeals under *City of Rock Hill* and *Brock*.

In its petition for rehearing (Apx. pp. 348 – 358), SCDC asserted that because his wage claims inherently sought lawful net wages from SCDC, Gatewood's claims predated any retroactive application of § 24-1-295 by the ALC and Gatewood simply failed to preserve his due process claim for review by the ALC. Accordingly, SCDC asserted that the Court of Appeals should have rejected both Gatewood's retroactivity and due process claims.

Gatewood's February 3, 2006 amendment to his Step 1, which the Court of Appeals completely overlooked in its decision,<sup>18</sup> was central to SCDC's assertions on this point in its petition for rehearing. (Apx. pp. 351 – 354). SCDC asserted that from the beginning, Gatewood demanded that it pay him lawful net wages for his labor, and SCDC further asserted that the Gatewood's demand for lawful net wages did not originate with the ALC's decision. Likewise, SCDC asserted that the record, most precisely his May 20, 2007 Notice of Appeal to the ALC (Apx. p. 46), clearly contradicted the notion that Gatewood had articulated any claim that SCDC had deprived him of due process remitting unlawful amounts of net wages to him and by continuing to remit to him unlawful amounts of net wages. SCDC also asserted that the Court of

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<sup>18</sup> See note 2 above.

Appeals had created an inconsistency in its decision by ruling on the one hand in the fifth issue that Gatewood failed to preserve his overtime claim while on the other ruling that Gatewood did not fail to preserve a due process claim associated with his net wages. (Apx. pp. 355 – 358).

In its June 2, 2006 order denying the parties' petitions for rehearing, the Court of Appeals addressed SCDC's assertions that Gatewood failed to preserve his retroactivity and due process claims. (Apx. pp. 395 – 396).

After reviewing its key rulings on retroactivity and due process from its decision, the Court of Appeals reiterated its conclusion that Gatewood had "adequately preserved" the questions of whether § 24-1-295 operates retroactively and the ALC's retroactive application of § 24-1-295 violated his right to due process.<sup>19</sup> (Apx. p. 395). The Court of Appeals then invoked this Court's decision in *Atl. Coast Builders & Contractors, LLC v. Lewis*, 730 S.E.2d 282, 287 (S.C. 2012) for the proposition that "where the question of preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation." (Apx. pp. 395 – 396).

Finally, the Court of Appeals addressed SCDC's assertion of the inconsistency between its ruling that Gatewood had not preserved his overtime claim and its ruling that Gatewood had preserved the issues of whether § 24-1-295 operates retroactively and whether the ALC's retroactive application of it violated Gatewood's right to due process. In addressing SCDC's assertion, the ALC stated "that the question of [Gatewood's] entitlement to any overtime wages is a separate question and is not encompassed by the evaluation of the proper amount of [Gatewood's] regular wages." (Apx. p. 396).

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<sup>19</sup> SCDC also asserted in its petition for rehearing that Gatewood cannot sustain a viable substantive due process claim associated with the net wages SCDC remitted to him during the entirety of the time he was engaged in the service work project at Lieber, because SCDC remitted lawful amounts of net wages to Gatewood while he was so engaged. (Apx. pp. 358 – 362). The Court of Appeals did not address SCDC's assertion in its June 2, 2006 order.

With all due deference to the Court of Appeals, SCDC respectfully submits that the Court of Appeals' June 2, 2006 order simply failed to resolve its inconsistent rulings that Gatewood preserved his retroactivity and due process claims while he failed to preserve his overtime claim.

The Court of Appeals stated that the parties "addressed deductions from gross wages in their briefs before the ALC, and the ALC's conclusion that [§ 24-1-295] governed deductions directly addressed these arguments." (Apx. p. 395). However, a review of Gatewood's first brief to the ALC reveals that he referenced deductions applicable to his gross pay only when he demanded that the ALC calculate his back wages at \$4.00 per hour, less any deductions applicable by operation of § 24-3-40(A), at the end of his brief. (Apx. p. 125). A review of Gatewood's reply brief again reveals that he referenced deductions applicable to his gross pay only in the context of demanding that the ALC calculate his back wages at \$4.00 per hour, less any deductions applicable by operation of § 24-3-40(A). (Apx. p. 164).

In his reply brief, Gatewood repeatedly linked the deductions from § 24-3-40, (i.e. § 24-3-40(A)(1) – (A)(6)) to this Court's decision in *Torrence v. S.C. Dep't of Corr.*, 646 S.E.2d 866 (S.C. 2007). (Apx. pp. 159 – 160 and 163 – 164). SCDC moved the ALC to strike all such argument offered by Gatewood in his reply brief in which he invoked *Torrence*. (Apx. pp. 171 – 180), but the ALC denied SCDC's motion in a footnote to its April 29, 2014 order. (Apx. p. 36).

Nowhere in either of his briefs to the ALC did Gatewood assert that SCDC should have applied the deductions from the budget provisos for fiscal years 2004–05, 2005–06, and 2006–07 to his gross wages rather than the deductions from § 24-3-40. Gatewood never claimed, argued, or off-handedly stated in his original Step 1, amended Step 1, or Step 2 that SCDC should have applied the deductions from the three (3) applicable provisos to his gross wages rather than the deductions from § 24-3-40. Gatewood never even mentioned the deductions articulated in the

three (3) applicable provisos or, for that matter, § 24-1-295's deductions (i.e. § 24-1-295(1) – (6) or the “other required deductions” language from § 24-1-295's unnumbered first paragraph) in any of the filings he submitted to SCDC or to the ALC.

By all appearances, Gatewood was ignorant of the deductions from the three (3) applicable provisos, as well as § 24-1-295's deductions. Therefore, SCDC respectfully asserts that the Court of Appeals misapprehended the record when it stated in its June 2, 2016 order that “both parties addressed deductions from gross wages in their briefs before the ALC, and the ALC's conclusion that [§ 24-1-295] governed deductions directly addressed these arguments.”

Contrary to the Court of Appeals' conclusion in its June 2, 2006 order, the ALC never addressed any retroactivity or due process argument from Gatewood regarding the deductions assessed by SCDC against his gross wages by operation of the three (3) applicable provisos or § 24-1-295 because, as reflected by the record, Gatewood never made such an argument to either SCDC or the ALC. *See Dunes West Golf Club, LLC v. Town of Mount Pleasant*, 737 S.E.2d at 612, n. 11 (S.C. 2013) (“Further, Appellant argues for the first time to this Court that its title to the Golf Course Property, rather than its specific right to use and develop the property, forms the requisite property interest upon which a substantive due process challenge may be based. Appellant cannot present this argument for the first time on appeal. *See [Atlantic Coast Builders*, 730 S.E.2d at 287] (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”)

**C. SUBSIDIARY QUESTIONS FAIRLY COMPRISED BY THE COURT OF APPEALS' RULINGS ON THE SECOND AND FOURTH ISSUES**

SCDC's challenges to the second and fourth issues impacts the Court of Appeals' ruling on the sixth issue by which it remanded Gatewood's demands for costs, pre-judgment interest, post-judgment interest, and attorney's fees back to the ALC. The Court of Appeals remanded

Gatewood's demands back to the ALC, because the Court of Appeals declared Gatewood as the prevailing party after reversing the ALC's rulings on the second and fourth issues.

Should this Court grant SCDC's instant petition, review the Court of Appeals' rulings on these issues, and then reverse or otherwise modify the Court of Appeals' rulings, Gatewood would obviously no longer be the prevailing party. As such, Gatewood's demands for costs, pre-judgment interest, post-judgment interest, and attorney's fees, which the Court of Appeals re-animated by its ruling on the sixth issue, would be defeated.

**VI. RETURN TO GATEWOOD'S PETITION FOR WRIT OF CERTIORARI**

Gatewood submitted a petition for writ of certiorari dated June 30, 2006 by which he moved this Court to review the Court of Appeals' rulings on six (6) of the issues on appeal identified in its March 9, 2016 decision.

In light of SCDC's above-provided argument, the following table depicts the issues from the Court of Appeals' March 9, 2016 decision which are subject to the parties' respective petitions for writ of certiorari to this Court:

Issue from the Court of Appeals' Decision	Subject to Gatewood's Petition for Writ of Certiorari <sup>20</sup>	Subject to SCDC's Petition for Writ of Certiorari
First	Yes	No
Second	Yes	Yes
Third	Yes	No
Fourth	No	Yes
Fifth	Yes	No
Sixth	No	Yes
Seventh	Yes	No
Eighth	Yes	No

<sup>20</sup> See Gatewood's June 30, 2016 Petition for Writ of Certiorari, pp. 1 – 2. Gatewood also identified the rulings from the Court of Appeals' decision for which he did not seek this Court's review. *Id.*, p. 2.

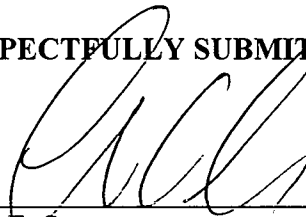
SCDC directly addressed the Court of Appeals' rulings on the third and fifth issues,<sup>21</sup> and its analysis and arguments in support of its petition concerning the second issue on appeal from the Court of Appeals' decision serve as its return to Gatewood's petition on the same.

SCDC respectfully asserts that contrary to the analysis and argument offered by Gatewood in his petition, neither the first issue, nor the seventh issue, nor the eighth issue presents a novel question of law under SCACR 242(b)(3) or otherwise presents "special and important reasons" under the first sentence of SCACR 242(b) by which this Court should review the Court of Appeals' decisions on these issues.

## 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 second, fourth, sixth issues from the Court of Appeals' March 9, 2016 decision, as well as the Court of Appeals' June 2, 2016 order addressing the fourth issue from its March 9, 2016 decision.

**RESPECTFULLY SUBMITTED:**



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July 25, 2016

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<sup>21</sup> See page 19 and notes 3, 4, 9, and 15 above.

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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2016-001221

Fred Gatewood, #289775, ..... Respondent/Petitioner,

v.

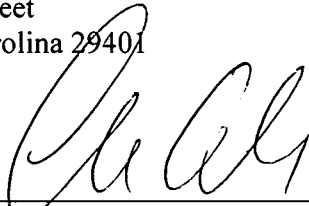
South Carolina Department of Corrections, ..... Petitioner/Respondent.

**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

July 25, 2016



LAKE E. SUMMERS