

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

G. Thomas Cooper, Jr., Circuit Court Judge

**On Certiorari to the Court of Appeals of South Carolina
Opinion No. 2013-002306 (SC Ct App filed Dec 2, 2016)**

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, et al Respondent

v

BASIL WALI AKBAR Petitioner

BRIEF OF PETITIONER

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S.C. SUPREME COURT

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S.C. SUPREME COURT

QUESTIONS PRESENTED

Whether the Court of Appeals majority erred in ruling that Petitioner's claims, relating to Respondent's misappropriation of his 1981 Work Release Escrow Account was barred by the two-years statute of limitations; and claims arising from Respondent's failure to timely respond to Petitioner's requests and/or grievance to make his Work Release Escrow Account transparent, and denying discovery request.

STATEMENT OF THE CASE

1. Procedural History

Petitioner Basil W. Akbar was assigned to South Carolina Department of Corrections (SCDC) Work Release Program from July 1979 thru April 1981. Weekly deductions were taken for mandatory Long Term Saving Account, and Room & Board, subsequently, Petitioner was paroled April 8, 1981, Work Release Account were never release, however, instructed that funds would be upon completing 5 years supervision parole, or pardon [SC Code 24-21-950]. On April 1985 his supervised parole was revoke. At all times relevant Petitioner was in legal custody of the SCDC, See, Sanders v MacDougal, 24 SC 160, 135 SE 2d 836. On October 22, 2008; December 1, 2008, and February 8, 2009, Petitioner sought to have his Work Release Account transparent. Approximately June 18, 2009, Respondent mistakenly alleged that work center deposit funds in his account March 30, 1994. On July 23, 2009, Petitioner forward via Certified Mail, Request to Staff Member, to Respondent an attempt to correct inference, and FOIA pursuant to SC Code Sec 30-4-10, -110, no reply. After diligent inquiry and good-faith probing to ascertain the truth, the predicate fact established that a justiciable controversy dispute exist, and that a wrong was done. Petitioner did promptly filed multiple grievances, thus all returned unprocess except for grievance [GA-Lee CI 1598-10], Final Agency Decision not recieved until April 26, 2011, 120 days beyond prescribed authority of SCDC's policy then governing process, and [GA-Lee CI 1204-09], Final Agency Decision not recieved until April 12, 2010, exhausting all available remedies satisfying legal requirements, and properly exhausting Administrative Law Court Appeals. Subsequently two (2) separate complaints

were filed in the Circuit Court simultaneously, and the Clerk of Court mistakenly assigned [Case No. 2012-CP-40-1471] to instant case, that was later assigned [Case No. 2013-CP-40-0301], and Respondents was dismissed from initial pleadings under [Case No. 2012-CP-40-1471]. Summons and complaint was re-filed January 16, 2013, under [Case No. 2013-CP-40-0301]. On May 18, 2011, Notice of Verified Claim [No. 75046] filed.

However, the Petitioner made a scrivener's error in his pleadings regards to date that he first became aware that the SCDC did not have records of his 1981 account, correctly [April 28, 2010] and not [February 9, 2009], the whole record speaks for itself. Petitioner's complaint was properly filed within two years requirement, thus, Statute of Limitations does not apply, and no incident had occurred prior to April 28, 2010 that warrant filing administrative grievance.

2. The evidence presented.

On October 22, 2008, December 1, 2008, and February 8, 2009, the petitioner sought to have his Work Release Escrow Account transparent, See, Exhibits _____. After numerous phone calls via family member, on June 18, 2009 Respondent answered and mistakenly alleged Work Release funds were deposit into his SCDC E.H. Cooper Trust Account [March 30, 1994], See Exhibit _____. In fact seven (\$7.00) dollars was deposit into account relating to grievance reimbursement for lost property [GA-LCI-030-94], See Exhibit _____. On July 7, 2009 a corrective "Request to Staff Member" form via certified mail was forward to SCDC Financial Branch [No reply], See Exhibit _____. Numerous grievance resorted as a results, and return unprocess, citing agency policy GA-01.12, See Exhibit(s) _____, and subsequently advised by Grievance Clerk

to submit a Request to Lee County Institution Business Office, See, Exhibit _____. On April 28, 2010, Petitioner was then informed for the first, that said account was closed void notice or consent, thus constituting predicate to take action through available remedies. Respondents Janice Kenealy and Noel Herbert Affidavits concede that Petitioner were assigned to Work Release for two years, and that he had a Work Release Account, See Exhibit(s) _____. Pursuant to SCDC's definition of Policy Employment Account ADM-15.10 and ADM-15.12, governs Work Release Account, See Exhibits _____. On May 18, 2011, Petitioner filed Notice of Verified Claim [No. 75046] for damages with SC Budget and Control Board, See Exhibit _____. Petitioner's grievance [Lee CI No. 1598-10] filed June 7, 2010 were [300 days] unaddressed, See Exhibit _____, and Final Agency Decision received April 8, 2011, See Exhibit _____. Petitioner at all times relevant in custody of SCDC on parole, See Exhibit _____. Respondent stands in violation of SCDC's grievance policy GA-01.12, See, Exhibit _____. Petitioner initially filed instant complaint on Sept 6, 2012; Feb 18, 2013, and Sept 26, 2013 [2012-CP-40-1471 & 2013-CP-40-0301] See, Exhibits _____.

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3. The decision of the Court of Appeals.

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A divided panel of the Court of Appeals affirmed, ~~in unpublished~~ **S.C. SUPREME COURT** Opinion No. 2016-Up-348, submitted February 1, 2016 - Filed July 6, 2016. The majority held that Summary Judgement was proper because Akbar's claims was barred by the two-years statute of limitation, despite of exercising mandatory administrative procedure requirement that the SC Supreme Court consistently emphasized that exhaustion of administrative remedies prior to judicial review, Video Gaming Consultants, Inc v South Carolina Dep't of

Revenue, 342 SC 34, 535 SE 2d 642 (2000). The majority concluded that since the Lee County Institution grievance clerk initially assume void [establishing a time line of inferred incident], date, time, place or evidence that an incident had occurred, the Circuit Courts adopted the Agency's conclusion. The Courts' threshold reasoning to deny petition were erroneously based on a misplaced two years statute of limitations due to a scrivener error.

ARGUMENT
(subsidiary arguments)

PETITIONER WAS ENTITLED TO HAVE, HIS LONG TERM SAVING ACCOUNT MADE TRANSPARENT; GIVEN NOTICE PRIOR TO CLOSURE IN LIGHT OF EVIDENCE ON THE WHOLE RECORD, THAT HE WAS STILL IN LEGAL CUSTODY OF SCDC AT ALL TIMES RELEVANT; FUNDS RELEASE PURSUANT TO SCDC POLICY ADM-15.12; LIBERTY INTEREST RIGHTS UNDER STATE AND FEDERAL CONSTITUTIONS; EQUITABLE TOLLING WHILE EXHAUSTING PRELIMINARY PROCEDURES; COMPEL DISCOVERY; RENDER RESPONDENT IN DEFAULT, AND PROCESS TOLLED APPROPRIATELY.

The Circuit Court's denial of Petitioner's request to make his Work Release Long Term Savings Account transparent was manifestly erroneous, and application of Statute of Limitation in instant case are baseless/groundless. Petitioner submits that the Circuit Courts reached decision based upon Petitioner's [scrivener error], regarding the actual time line when Petitioner First became aware [April 28, 2010, and not February 9, 2009], that the SCDC had closed his 1981 Work Release Program Account, (emphasis added). However, based upon the whole record which speaks for itself, the Petitioner properly filed, (1), Administrative Step 1, and Step

2 grievances; (2) Administrative Law Court Appeal; and (3) Circuit Courts Appeals; and Verified Claim. Now shows the Court as follows:

First, Petitioner submits that in recent pleadings he mistakenly asserted February 9, 2009 as date first became aware that Work Release Account was closed is a scrivener error. However, the record speaks for itself, see "State of South Carolina Administrative Law Court [Docket No. 10-ALJ-04-1104-IJ] Appeal, dated February 15, 2011, Argument #III, paragraph #4". Quote, "No incident existed until April 28, 2010, when Akbar was officially informed of the fraudulent seizure of his account, therefore action was properly filed." Error shown to be prejudicial constitute grounds for reversal, JKT Co. v Hardwick, 274 SC 413, 419 SE 2d 510 (1980). February 9, 2009 merely marks one of several Request to Staff for status of 1979-1981 Work Release Account.

Second, Petitioner argue that substantial rights of his was violated from the inception of complaint, and that there are no SCDC E.H. Cooper Trust Funds Account limitation/restriction to seek status or balance in his account, and has an absolute unqualified right to access...seek status...or transparence of his personal saving account manage by SCDC. General inquiry does not depend on whether an incident had occurred as alluded by Grievance Clerk. However, no incident existed to grieve until April 28, 2010, when Akbar was officially informed of fraudulent seizure of his account, action was properly taken. Respondent arbitrarily repeated actions to return grievance(s) unprocess, wrongfully impeded and subverted exhausting required remedies. Under the SCDC's Definition of Policy "Employee Account ADM-15.12: Section 17.4, "Reporting of mistake in Account, if an inmate thinks a mistake has been made with his/her account, an SCDC form 19-11 "Inmate Request to Staff Member" must be completed and turned in

to the Institutional Cooper Trust Fund designee no later than 75 calendar days following the end of the month in which the mistake was made."

Section 17.4.3, "SCDC investigation of Account Mistake, the Institutional Cooper Trust Fund designee will give the inmate the result of its review or correct the error within ten working days...the Financial Account Branch will notify the inmate in writing within ten working days that the investigation is continuing within 90 calendar days. The Financial Branch will either correct the mistake or explain why the account is correct and record the necessary adjustment of the account."

Section 13.2.5, "Inmates release from SCDC custody who did not request their funds prior to release must mail a written request to the Financial Account Branch to receive his/her funds..."

Section 15, Account Statement.

Section 20, "Work Release Program inmate, unclaimed Accounts...letter will be sent to the last known address of the account holder whose balance is \$50.00, or more."

The petitioner submits that he never closed-out his Work Release Mandatory Long Term Saving Account..nor given notice prior, or after closure of said account. Petitioner further submits that he were paroled and released on the same day and reported to parole agent on monthly basis, See, Cooks v State, 326 SC 171, 485 SE 2d 374 (1997); Sanders v MacDougal, 244 SC 160, 135 SE 2d 836; Wilson v Flaherty, 689 F 3d 332 (4th Cir 2013). Moreover, the Petitioner's position is that SCDC's Financial Account Branch is charged with fiduciary duty and obligation to him, the beneficiary of Work Release Mandatory Long Term Escrow Saving Account. Based on the SCDC's defined regulations governing Work Release savings account, it is unambiguous that

SCDC's officials violated duty owed, procedural and substantive due process rights. See, Davenport v Cotton Hope Plantation, 330 SC 71, 508 SE 2d 565 (1998).

Third, the Respondent's conduct constituted "Default and Reprisal", where SCDC's officials failed to discharge ministerial duty, and failed to request/serve notice for enlargement of time pursuant to processing of grievance(s) within fixed time at each stage, and safeguard against reprisal. Pursuant to Prison Reform Act (PLRA), exhaustion of Administrative Remedies, the Respondent failure to perform legal duty or failure to file timely answer, required by definition of SCDC Policy GA-01.12, See, Underwood v Wilson, 151 F 3d 292 (5th Cir), held, "Prison must process grievance within fixed time...and safeguard against reprisal; See Also, Harrah v Levertte, 271 SE 2d 222, held, "Administrators must follow their own regulations to comply with due process. The Petitioner's grievance [Lee CI-1598-10], filed June 7, 2010 went [300 days] unaddress passed fixed time limit, and loss wages as reprisal. Wherefore, the Respondent's defaulting is a complete bar of their affirmative defense..or inability to assert defense, or petition for dismissal and/or summary judgement while in default, because it cut short the rights to legal dispute, _____ v _____, 303 A 2d 139. The Petitioner respectfully seeks Order for Default Judgement.

Fourth, Petitioner respectfully appeals the Circuit Court's summary dismissal of his complaint for allegedly failure to file complaint within the applicable statute of limitations. The record is clear that Petitioner attempted to initially file complaint [October 1, 2012], however affected by Richland County Clerk of Court clerical error [signing wrong case number [2012-CP-40-1471] to instant case, subsequently corrected and refiled January 16, 2013 under case number [2013-CP-40-0301], within 90 days.

However, the Appellate Court erred and abused its discretion in ruling that the Circuit Court properly applied the two-year statute of limitations, and summary judgement was proper because Akbar's claims were barred by the two-year-statute of limitations in Tort Claims Act; and that Akbar did not submit evidence showing he filed a verified claim. For said reasons the Appellate Court did not consider remaining arguments, Petitioner objects. A Statute of Limitations establishes a time limit for suing in a civil case based on the date when the claim accrued as when the injury or incident occurred, or was discovered after exercising due diligence. However, the Circuit Court's erred and duly prejudice Petitioner when decisions was unsupported by substantial evidence...Agency's findings are clearly erroneous in view of the reliable probative and substantial evidence on the whole record, Rodney v Michelin Tire Corp, 320 SC 515, 466 SE 2d 357 (1996); and ruling Akbar were barred by the Statute of Limitation for failing to file complaint when he first became aware, or put on notice that Respondent had closed Work Release Account void consent or notice. The Petitioner adamantly submits that the record speaks for itself...and that he first became aware/notice given were [April 28, 2010], as reflected...and not [February 9, 2009]. The Lower Court's decisions lie on two separate erroneous conclusions:

(1) That Petitioner fail to file grievance within 15 days of incident. Petitioner objects, and submits that Respondent fail to mention, or describe a time inferred incident allegedly occurred. Respondent's Final Agency Decision does not conform to reason; the only incident that occurred on record is April 28, 2010. Respondent's inference are unsound, not guided by reason, irrational/capricious, and wrong.

(2) The Lower Courts erred and abused their discretion, in summary dismissal of Petitioner's complaint solely on a [scrivener error], more specific an oversight by Petitioner's inadvertent use of wrong

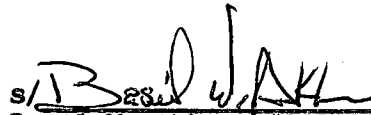
date [February 9, 2009], which Petitioner first [April 28, 2010] became aware of wrong, or put on notice. Court's Order clearly demonstrates it relied on that one date, instead of the whole record.

An abuse of discretion arises when the trial Court was controlled by a error of law, or when the Order is without evidentiary support on the whole record, Hillman v Pinion, 347 SC 253, 554 SE 2d 427 (Ct App 2001). Summary judgement is not appropriate where further inquiry into the facts to clarify the application of the law. Middleborough... v Montedison, 320 SC 470, 465 SE 2d 765; See also, MacFarlane v Manly, 274 SC 392, 264 SE 2d 838. The statute of limitations on a negligence claim accrues at the time of the negligence, or when facts and circumstances would put a person of common knowledge on notice that he might have a claim against another party, Kreutner v David, 320 SC 283, 465 SE 2d 88. The Appellate Court findings may not be based upon surprise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it, Tiller v Nat'l Health Care Ctr. of Sumter, 334 SC 333, 513 SE 2d 843; Sharpe v Case Produce Co, 329 SC 534, 495 SE 2d 790. Respondent's policies does not restrict inmates from seeking status/balance in their personal account, but has an absolute unqualified right to access saving account managed by SCDC, nor does such inquiry depend on whether an incident had occurred as alluded in grievance(s). Therefore, the Petitioner submits it is only proper for this Honorable Court to consider his complaint in the correct context. The Court may relieve a party from a Final Judgement for mistake, inadvertence, surprise, or excuseable neglect, [Rule 60(b)(1), SCRCF, vacate the judgement on excuseable neglect. Petitioner submits he had a meritorious defense, and that the judgement was rendered against him by mistake/excuseable neglect,

CONCLUSION

For the foregoing reasons, as well as it is common knowledge that a person's personal account should be made transparent, and due process requires adequate notice; right to introduce evidence, etc., Petitioner respectfully submits that the Court should reverse the judgement of the Court of Appeals and grant appropriate relief.

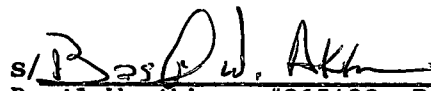
Date: December 29, 2016


s/ Basil W. Akbar
Basil W. Akbar, #065498, Pro Se
Lee County Institution
990 Wisacky Hwy, F6B
Bishopville, SC 29010

CERTIFICATE OF SERVICE

I, Basil W. Akbar, hereby certify that copy of Brief of Petitioner, Petitioner's Affidavit in Support, and Exhibits, was served on Respondent, postage prepaid at: Daniel R. Settana, Attorney, Post Office Drawer 7212, Columbia, SC 29202, Attorney for Respondent(s).

Date: December 29, 2016


s/ Basil W. Akbar
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Respondent

v

BASIL WALI AKBAR

Petitioner.

PETITIONER'S AFFIDAVIT IN SUPPORT


I, Basil Wali Akbar, do solemnly swear that the account given by me delivered into this court does contain a true, and correct account, and I understand that I will be subject to civil and/or criminal penalties if I knowingly furnish false information.

1. I, Basil Wali Akbar, the undersigned is currently incarcerated at the Lee County Institution.
2. The Petitioner [Akbar], was approved and assigned to the SCDC's Work Release Program from July 1979-April 8, 1981, and employed at Owens Electric & Steel Co., and recieved weekly pay checks in hand, and
3. Checks was delivered by Akbar to Center Supervisor, and weekly deductions for mandatory Long Term Escrow Savings Account, and Room & Board.
4. On April 8, 1981, Akbar was paroled, and release on same date, and

advised funds in Work Release Escrow Account would be release upon completion of 5 years on conditional parole, or pardon, however parole was revoked prior to said time.

5. On April 28, 2010, Akbar was First made aware/given notice that Work Release Escrow Savings Account was closed, void notice and/or consent. See also Request to Staff Member dated April 23, 2010, disposition April 28, 2010; and Step 1 grievance dated April 29, 2010 return unprocess.
6. On February 8, 2009, Request to Staff Member was forward to Ms. Melton, Lee County Institution Finance Department, and disposition return February 9, 2009.
7. The Petitioner submits he filed numerous grievance that was return unprocess, for unsound reason, impeded his access to the court.

Date: December 29, 2016



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