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JAN -9 2017

THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

Appeal from the Administrative Law Court
Carolyn C. Matthews, Administrative Law Judge

Court of Appeals Opinion No. 2016-UP-392

Joshua Cramer, #251406, ... Respondent,

v.

South Carolina Department of Corrections, ... Petitioner.

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

APPENDIX

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

Counsel for Petitioner

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Admin. Law Judge

Case No.: 14-ALJ-04-0282-AP

Grievance No: BRCI - 0594-07

SCDC Respondent,
v.
Joshua Cramer Appellant.

NOTICE OF APPEAL

Joshua Cramer appeals the decision of the Honorable Carolyn Matthews dated September 23, 2014. Appellant received a copy of this decision on September 25, 2014.

October 7, 2014
Ridgeville, SC

s/ Joshua Cramer
Joshua Cramer
#251406
Lieber C/I, SA-17
P.O. Box 205
Ridgeville, SC 29472
Appellant, Pro Se

Other Counsel of Record:
Lake Summers
339 Heyward St., Suite 200
Columbia, SC 29201

LAW OFFICES

OCT 13 2014

MALONE, THOMPSON
SUMMERS & OTT, LLC

APPLICATION TO PROCEED WITHOUT
PAYMENT OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Joshua Cramer, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- 1.) I am the applicant in this action, and I believe I am entitled to redress.
- 2.) I am not gainfully employed and because of my poverty am unable to pay the costs of said proceedings or give security thereof.
- 3.) My account (E.H. Cooper) balance is \$513.74 as of 10-7-14. Second, my average monthly expenses are around \$90.
- 4.) All current monies I receive are from family members.

October 7, 2014
Ridgville, SC

SWORN to and subscribed before me
this 8 day of October 2014.

Richard Bryant
Notary Public for South Carolina

My Commission exp: May 26, 2020

Joshua Cramer
s/ Joshua Cramer
Joshua Cramer
#251406
Lieber C/I 'SA-17
P.O. Box 205
Ridgville, SC 29472
Appellant, Pro Se

LAW OFFICES

OCT 13 2014

MALONE, THOMPSON
SUMMERS & OTT, LLC

THE STATE OF SOUTH CAROLINA

In THE COURT OF APPEALS

Case No.: 14-ALJ-04-0282-AP

SCDC, ... Respondent,
V.
Joshua Cramer, ... Appellant.

CERTIFICATE OF SERVICE

I, Joshua Cramer, certify that I have filed the within NOTICE OF APPEAL and APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF both dated Oct. 7, 2014 on the below listed addresses by depositing a copy of the same in the US mail first-class postage affixed thereto as the SCDC inter-departmental mail on this 8 day of October 2014.

Kenneth A. Richstad
Clerk, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Lake Summers
339 Heyward St., Suite 200
Columbia, SC 29201

October 7, 2014
Ridgeville, SC

LAW OFFICES

OCT 13 2014

MALONE, THOMPSON
SUMMERS & OTT, LLC

s/ Joshua Cramer
Joshua Cramer
#251406
Lieber, C/I, SA-17
P.O. Box 205
Ridgeville, SC 29472
Appellant, Pro Se

Joshua Cramer
#251406
Lieber, C/I, SA-17
P.O. Box 205
Ridgeville, SC 29472

October 7, 2014

Kenneth A. Richstad
Clerk, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Dear Mr. Richstad:

Enclosed for filing please find my NOTICE OF APPEAL
and APPLICATION TO PROCEED WITHOUT COSTS AND AFFIDAVIT
IN SUPPORT THEREOF. Thank you.

Sincerely,

Joshua Cramer

cc: Lake Summers
File

LAW OFFICES

OCT 13 2014

MALONE, THOMPSON
SUMMERS & OTT, LLC

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Carolyn C. Matthews, Admin. Law Judge

Case No.: 2014-002172
Grievance No.: BRCI-0594-07

Joshua Cramer, ... Appellant,
v.
SCDC, ... Respondent.

RECORD ON APPEAL

Other Counsel of Record:
Lake Summers
339 Heyward St., Suite 200
Columbia, SC 29201

Joshua Cramer
#251406
Lieber C/I, SA-17
P.O. Box 205
Ridgeville, SC 29472
Appellant, Pro-Se

LAW OFFICES

MAR 11 2015

MALONE, THOMPSON
SUMMERS & OTT, LLC

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Josh Cramer
#251406
BRCI Mont-A58
4460 Broad River Rd.
Columbia, SC 29210

Oct. 17, 2011

Martha Roof
Cooper Trust Financial Branch
4444 Broad River Rd. / P.O. Box 10211
Columbia, SC 29221

Re: Long-Term Savings

Dear Ma'am:

My Long-Term savings (LTS) account balance on 1/1/10 was \$3,444.58. As of 10/11/11 my balance is \$3,444.88. That's an increase of .30¢. In past years, particularly while I was working the 1099's I received at the end of each year showed I was earning significantly more interest on my LTS account than what I've earned the last two years. Also, I haven't received a 1099 for the last two years.

Can you please tell me what kind of account my LTS is in, and why my interest rate has dropped well below 10%. Also, I'd like to know who is managing my LTS and what is my current interest rate. Thank you.

Sincerely,

Josh Cramer

cc: file

next page
10-25-11 Elvie Link

RAA p.1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE CORRESPONDENCE

INMATE: Josh Cramer
SCDC# 257406
INSTITUTION: Blood River
FROM: Financial Accounting Branch
SUBJECT: INTEREST PAID ON PRISON INDUSTRIES ACCOUNT
DATE: 10/25/11

I AM IN RECEIPT OF YOUR RECENT LETTER REGARDING THE INTEREST PAID ON YOUR PRISON INDUSTRIES ACCOUNT.

INTEREST: Interest will be paid to all inmates with monthly average balances of greater than \$10.00. Upon receipt of an interest deposit from the State Treasurer's Office, interest will be distributed to individual inmate accounts in accordance with SC State Law, Section 24-3-40.

The interest rate is comparable to rates paid for similar accounts and services at local financial institutions.

Inmates are not charged service fees for excessive transactions or penalized for falling below a certain balance level. The average balance of \$10.00 is much lower than the \$500 average balance for Wachovia to earn interest. The rate of interest paid varies from period to period depending upon interest received from State Treasurer's office.

ROAp.2

Joshua Cramer

#251466

Lieber 915 SA-17

P.O. Box 205

Ridgville, SC 29472

March 31, 2014

Martha Rees

Cooper Trust Financial Branch

4444 Broad River Rd.

Columbia, SC 29221

Re: Long Term Savings Balance

Dear Ma'am:

Can you please tell me the balance of my Long-Term Savings
account? Thank you.

Sincerely,

Joshua Cramer

\$3,577.76

4-4-14

E. Link

RuAp.3

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

RECEIVED

TO: NAME: <u>M. Driskell</u>	TITLE: <u>Business Manager</u>	DATE: <u>Oct 13 2011</u>
INMATE'S NAME: <u>Josh Cramer</u>	SCDC #: <u>251406</u>	LIVING QUARTERS: <u>Mont.-258</u>
INSTITUTION: <u>BRCI</u>		

My last paycheck from Rm Design (P.I.-2) was 1/1/10 and my Long-Term Savings balance was 3,444.58. Will you please let me know how much interest I've drawn since then and what my current Long-Term Savings balance is. Thank you.

DISPOSITION BY STAFF MEMBER:

8/19/10 - Interest = 0.15 <+>
 8/19/11 - Interest = .15 <+>
 Balance as of 10/11/11 = 3444.88

DATE: <u>10/11/11</u>	SIGNATURE: <u>[Signature]</u>
-----------------------	-------------------------------

SCDC FORM 19-11 (REV. PER 2011) RoA p. 4

PAGSTMT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
PRISON INDUSTRIES ACCOUNTING
EARNINGS AND DEDUCTIONS STATEMENT
PAYROLL DATE 10/10/12

SCDC ID 00251406 CRAMER, JOSHUA KERR
LOCATION : 0211 BROAD RIVER CI
PLANT CODE : 380 STANDARD PLYWOOD-BRCI
HOURS WORKED: 40.00 HOURLY RATE: .725

ROA p. 5

TRANSACTION DESCRIPTION	PAYEE	MEMO AMOUNT	DEPOSIT AMOUNT	WITHDRAWAL AMOUNT	BALANCE
BEGINNING BALANCE					3,544.67
GROSS PAY		328.00			
FEDERAL TAX		8.02			
FICA		18.54			
STATE TAX		5.48			
OTHER CO DEDUCTIONS		.00			
NET PAY			289.05		3,840.82
PGN FEE: VICTM COMP	GOV OFFICE - VICTIM ASSISTANCE			32.81	3,807.81
VICTIM COMP-SCDC	SCDC /VICTIM ASSISTANCE WAGE R			32.81	3,775.00
PGN FEE: ROOM/BOARD	SC DEPT CORRECTIONS (RA BOARD)			82.02	3,692.88
CASH FOR INMATE	E. H. COOPER TRUST FUND			115.60	2,577.28

PACSTMT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
PRISON INDUSTRIES ACCOUNTING
EARNINGS AND DEDUCTIONS STATEMENT
PAYROLL DATE 12/14/07

SCDC ID 00251406 CRAMER, JOSHUA KERR
LOCATION : 0211 BROAD RIVER CI
PLANT CODE : 344 RM DESIGN WOOD PRODUCTS
HOURS WORKED: 66.00 HOURLY RATE: 6.15

RoA p. 6

TRANSACTION DESCRIPTION	PAYEE	MEMO AMOUNT	DEPOSIT AMOUNT	WITHDRAWAL AMOUNT	BALANCE
BEGINNING BALANCE					1,708.10
GROSS PAY		344.40			
FEDERAL TAX		.00			
FICA		28.35			
STATE TAX		2.72			
OTHER CG DEDUCTIONS		.00			
NET PAY			315.33		2,023.43
PGM FEE: VICTIM COMP	GOV OFFICE - VICTIM ASSISTANCE			66.66	1,956.77
PGM FEE: ROOM/BOARD	SC DEPT CORRECTIONS (Ra BOARD)			66.10	1,890.67
CASH FOR INMATE	E. H. COOPER TRUST FUND			126.81	1,763.86

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

2007 1099-INT FINANCIAL ACCOUNTING BRANCH DATE: 01/22/08
4444 BROAD RIVER ROAD
COLUMBIA SC 29210
57-6007591

SS: 248-68-4158 ACCOUNT: 00251406

INMATE NAME: JOSHUA K CRAMER
(0211) BROAD RIVER CI CO209A

INTEREST PAID TO YOU
IS BEING REPORTED TO THE
INTERNAL REVENUE SERVICE \$ 54.89

PACSTMT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
PRISON INDUSTRIES ACCOUNTING
EARNINGS AND DEDUCTIONS STATEMENT
PAYROLL DATE 12/18/08

SCDC ID 00251408 CRAMER, JOSHUA KERR
LOCATION : 0211 BROAD RIVER CI
PLANT CODE : 344 RM DESIGN WOOD PRODUCTS
HOURS WORKED: 32.75 HOURLY RATE: 7.08

ROA p. 7

TRANSACTION DESCRIPTION	PAYEE	MEMO AMOUNT	DEPOSIT AMOUNT	WITHDRAWAL AMOUNT	BALANCE
BEGINNING BALANCE					3,152.57
GROSS PAY		230.88			
FEDERAL TAX		.00			
FICA		17.87			
STATE TAX		.32			
OTHER CG DEDUCTIONS		.00			
NET PAY			212.00		3,365.48
PGM FEE: VICTM COMP	GOV OFFICE - VICTIM ASSISTANCE			46.18	3,319.28
PGM FEE: ROOM/BOARD	SC DEPT CORRECTIONS (RS BOARD)			57.72	3,261.56
CASH FOR INMATE	E. H. COOPER TRUST FUND			85.60	3,175.96

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

OOB 1099-INT FINANCIAL ACCOUNTING BRANCH DATE: 01/15/09
4444 BROAD RIVER ROAD
COLUMBIA SC 29210
87-6007591

SS: 245-69-4150 ACCOUNT: 00251406

INMATE NAME: JOSHUA K CRAMER
(0211) BROAD RIVER CI MLT1096B

INTEREST PAID TO YOU
IS BEING REPORTED TO THE
INTERNAL REVENUE SERVICE \$ 40.33

PACSTMT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
PRISON INDUSTRIES ACCOUNTING
EARNINGS AND DEDUCTIONS STATEMENT
PAYROLL DATE 12/16/09

SCDC ID 00251406 CRAMER, JOSHUA KERR
LOCATION : 0211 BROAD RIVER CI
PLANT CODE : 344 RM DESIGN- PIE
HOURS WORKED: 8.75 HOURLY RATE: 7.85

Roap8

TRANSACTION DESCRIPTION	PAYEE	MEMO AMOUNT	DEPOSIT AMOUNT	WITHDRAWAL AMOUNT	BALANCE
BEGINNING BALANCE					3,434.98
GROSS PAY		68.68			
FEDERAL TAX		.00			
FICA		5.28			
STATE TAX		.00			
OTHER CG DEDUCTIONS		.00			
NET PAY			63.43		3,498.39
PGN FEE: VICTM COMP	GOV OFFICE - VICTIM ASSISTANCE			13.74	3,484.65
PGN FEE: ROOM/BOARD	SC DEPT CORRECTIONS (RA BOARD)			17.17	3,467.48
CASH FOR INMATE	E. H. COOPER TRUST FUND			25.65	3,441.83

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

009 1099-INT FINANCIAL ACCOUNTING BRANCH DATE: 01/22/10

4444 BROAD RIVER ROAD

COLUMBIA SC 29210

97-6007591

SS: 248-69-4168 ACCOUNT: 00251406

INMATE NAME: JOSHUA K CRAMER
(0211) BROAD RIVER CI MD0241B

INTEREST PAID TO YOU
IS BEING REPORTED TO THE
INTERNAL REVENUE SERVICE \$ 10.47

"HISTORY"*FINM*

BIL: 384
 RTN: 114
 ACN: 68
 TYP: General Bill GB
 INB: Senate
 IND: 19990121
 PSP: Anderson
 SPO: Anderson, Washington, Matthews, Patterson, Glover, Ford, Reese
 DDN: l:\council\bill\ggs\22116cm99.doc
 DPB: 19990603
 LAD: 19990601
 GOV: S
 DGA: 19990611
 SUB: Prisoner confinement, Correction Department to consider proximity to home of convicted person, inmate wages, disposition

HST:

Body	Date	Action Description	Com	Lag Involved
-----	19990702	Act No. 468		
-----	19990611	Signed by Governor		
-----	19990609	Ratified R114		
<u>Senate</u>	19990603	Concurred in House amendment, enrolled for ratification		
<u>House</u>	19990602	Read third time, returned to Senate With amendment		
<u>House</u>	19990601	Amended, read second time		
<u>House</u>	19990526	Committee report: Favorable <i>and vision</i>	27	H3M
<u>House</u>	19990427	Introduced, read first time, <i>upended</i> referred to Committee	27	H3M
<u>Senate</u>	19990422	Read third time, sent to House		
<u>Senate</u>	19990421	Read second time		
<u>Senate</u>	19990420	Committee report: Favorable	03	SCP
<u>Senate</u>	19990121	Introduced, read first time, referred to Committee	03	SCP

*Original attached***Printed Versions of This Bill**

Ordered Printed on 19990420
 Ordered Printed on 19990526
 Ordered Printed on 19990601

TXN:

- original bill introduced 1/21/99 w/o any reference to funds
- as of 5/26 nothing added
- 6/1 B(2) added

RWA p. 9

(A68, R114, S384)

AN ACT TO AMEND SECTION 24-3-30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF PLACES OF CONFINEMENT FOR A PERSON CONVICTED OF AN OFFENSE AGAINST THE STATE, SO AS TO PROVIDE THAT THE DEPARTMENT OF CORRECTIONS SHALL CONSIDER PROXIMITY TO THE HOME OF THE CONVICTED PERSON IN DESIGNATING THE PLACE OF HIS CONFINEMENT UNDER CERTAIN CIRCUMSTANCES; AND TO AMEND SECTION 24-3-40, AS AMENDED, RELATING TO THE DISPOSITION OF WAGES OF A PRISONER ALLOWED TO WORK AT PAID EMPLOYMENT, SO AS TO REVISE THE AMOUNTS THAT THE DEPARTMENT OF CORRECTIONS DEDUCTS FROM A PRISONER'S GROSS WAGES TO SATISFY HIS RESTITUTION, CHILD SUPPORT, AND OTHER OBLIGATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

Place of confinement for a prisoner

SECTION 1. Section 24-3-30 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-30. (A) Notwithstanding the provisions of Section 24-3-10 or another provision of law, a person convicted of an offense against the State must be in the custody of the Department of Corrections, and the department shall designate the place of confinement where the sentence must be served. The department may designate as a place of confinement an available, a suitable, and an appropriate institution or facility including, but not limited to, a county jail or work camp whether maintained by the Department of Corrections, or otherwise. However, the consent of the officials in charge of the county institutions so designated must be obtained first. If imprisonment for three months or less is ordered by the court as the punishment, all persons so convicted must be placed in the custody, supervision, and control of the appropriate officials of the county in which the sentence was pronounced, if the county has facilities suitable for confinement. A county or municipality, through mutual agreement or contract, may arrange with another county or municipality or a local regional correctional facility for the detention of its prisoners. The

ROA p. 10

Department of Corrections must be notified by the county officials concerned not less than six months before the closing of a county prison facility which would result in the transfer of the prisoners of the county facility to facilities of the department.

(B) The department shall consider proximity to the home of a person convicted of an offense against the State in designating the place of his confinement if this placement does not jeopardize security as determined by the department. Proximity to a convicted person's home must not have precedence over departmental criteria for institutional assignment.

(C) Each county administrator, or the equivalent, having charge of county prison facilities, upon the department's designating the county facilities as the place of confinement of a prisoner, may use the prisoner assigned to them for the purpose of working the roads of the county or other public work. A prisoner assigned to the county must be under the custody and control of the administrator or the equivalent during the period to be specified by the director at the time of the prisoner's assignment, but the assignment must be terminated at any time the director determines that the place of confinement is unsuitable or inappropriate, or that the prisoner is employed on other than public works. If, upon termination of the assignment, the prisoner is not returned, habeas corpus lies."

Deductions from the gross wages of a prisoner

SECTION 2. Section 24-3-40 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-40. (A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections.

The Director of the Department of Corrections shall deduct the following amounts from the gross wages of the prisoner:

(1) If restitution to a particular victim or victims has been ordered by the court, then twenty percent must be used to fulfill the restitution obligation. If a restitution payment schedule has been ordered by the court pursuant to Section 17-25-322, the twenty percent must be applied to the scheduled payments. If restitution to a particular victim or victims has been ordered but a payment schedule has not been specified by the court, the director shall impose a payment schedule of

equal monthly payments and use twenty percent to meet the payment schedule so imposed.

(2) If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then the twenty percent referred to in subsection (1) must be placed on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the 'Victims of Crime Act of 1984', Public Law 98-473, Title II, Chapter XIV, Section 1404, if the prisoner is engaged in work at paid employment in the community. If the prisoner is employed in a prison industry program, then the twenty percent referred to in subsection (1) must be applied to the South Carolina Victims Compensation Fund.

(3) Thirty-five percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the guardian of the child or children or to appropriate clerks of court, in the case of court ordered child support, for application toward payment of child support obligations, whichever is appropriate. If there are no child support obligations, then twenty-five percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board. Furthermore, if there are no child support obligations, then ten percent must be made available to the inmate during his incarceration for the purchase of incidentals pursuant to subsection (4). This is in addition to the ten percent used for the same purpose in subsection (4).

(4) Ten percent must be available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate's choice.

(5) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner.

(6) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of incidentals pursuant to subsection (4).

(B) The Department of Corrections shall return a prisoner's wages held in escrow pursuant to subsection (A) as follows:

(1) A prisoner released without community supervision must be given his escrowed wages upon his release.

(2) A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice.

(3) A prisoner released to community supervision shall receive two hundred dollars or the escrow balance, whichever is less, upon his release. Any remaining balance must be disbursed to the Department of Probation, Parole and Pardon Services. The prisoner's supervising agent shall apply this balance toward payment of the prisoner's housing and basic needs and disburse any balance to the prisoner at the end of the supervision period."

Time effective

SECTION 3. This act takes effect upon approval by the Governor, and Section 2 applies to wages earned beginning with the first day of the second month after the signature of the Governor.

Ratified the 9th day of June, 1999.

Approved the 11th day of June, 1999.

1999-2000 Bill 384 Text of Previous Version (Apr. 20, 1999) - South... http://www.scsenatehouse.gov/secs113_1999-2000/prevver/384_1999...

South Carolina General Assembly
113th Session, 1999-2000

Download [This Version](#) in Microsoft Word format

Bill 384

~~Indicates Matter Stricken~~

~~Indicates New Matter~~

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

~~Indicates Matter Stricken~~

~~Indicates New Matter~~

COMMITTEE REPORT

April 20, 1999

4/22/99 sent to HSE

S. 384

Introduced by Senators Anderson, Washington, Matthews, Patterson, Glover, Ford and Reese

S. Printed 4/20/99—S.

Read the first time January 21, 1999.

THE COMMITTEE ON CORRECTIONS AND PENOLOGY

To whom was referred a Bill (S. 384), to amend Section 24-3-30, as amended, Code of Laws of South Carolina, 1976, relating to the designation of places of confinement for a person convicted of an offense against the State, etc., respectfully

REPORT:

That they have duly and carefully considered the same, and recommend that the same do pass:

DAVID L. THOMAS, for Committee.

A BILL

TO AMEND SECTION 24-3-30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF PLACES OF CONFINEMENT FOR A PERSON CONVICTED OF AN OFFENSE AGAINST THE STATE, SO AS TO PROVIDE THAT THE DEPARTMENT OF CORRECTIONS SHALL CONSIDER PROXIMITY TO THE HOME OF THE CONVICTED PERSON IN DESIGNATING THE PLACE OF HIS CONFINEMENT UNDER CERTAIN CIRCUMSTANCES.

1 of 2

RoA p. 14

4/22/2014 1:48 PM

1999-2000 Bill 384 Text of Previous Version (Apr. 20, 1999) - South... http://www.scstatehouse.gov/secs113_1999-2000/prevver/384_1999...

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 24-3-30 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-30. (A) Notwithstanding the provisions of Section 24-3-10 or another provision of law, a person convicted of an offense against the State must be in the custody of the Department of Corrections of the State, and the department shall designate the place of confinement where the sentence must be served. The department may designate as a place of confinement an available, a suitable, and an appropriate institution or facility including, but not limited to, a county jail or work camp whether maintained by the Department of Corrections or otherwise. However, the consent of the officials in charge of the county institutions so designated must be obtained first. If imprisonment for three months or less is ordered by the court as the punishment, all persons so convicted must be placed in the custody, supervision, and control of the appropriate officials of the county in which the sentence was pronounced, if the county has facilities suitable for confinement. A county or municipality, through mutual agreement or contract, may arrange with another county or municipality or a local regional correctional facility for the detention of its prisoners. The Department of Corrections must be notified by the county officials concerned not less than six months before the closing of a county prison facility which would result in the transfer of the prisoners of the county facility to facilities of the department.

(B) The department shall consider proximity to the home of a person convicted of an offense against the State in designating the place of his confinement if this placement does not jeopardize security as determined by the department. Proximity to a convicted person's home must not have precedence over departmental criteria for institutional assignment.

(C) Each county administrator, or the equivalent, having charge of county prison facilities, upon the department's designating the county facilities as the place of confinement of a prisoner, may use the prisoner assigned to them for the purpose of working the roads of the county or other public work. A prisoner so assigned to the county must be under the custody and control of the administrator or the equivalent during the period to be specified by the director at the time of the prisoner's assignment, but the assignment must be terminated at any time the director determines that the place of confinement is unsuitable or inappropriate, or that the prisoner is employed on other than public works. If, upon termination of the assignment, the prisoner is not returned, habeas corpus lies."

SECTION 2. This act takes effect upon approval by the Governor.

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This web page was last updated on Friday, June 26, 2009 at 3:02 P.M.

RoA p. 15

4/22/2014 1:48 PM

1999-2000 Bill 384 Text of Previous Version (May. 26, 1999) - Scot... http://www.scstatehouse.gov/sess113_1999-2000/prevver/384_1999...

**South Carolina General Assembly
113th Session, 1999-2000**

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Bill 384

~~Indicates Matter Stricken~~

Indicates New Matter

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~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 26, 1999

S. 384

Introduced by Senators Anderson, Washington, Matthews, Patterson, Glover, Ford and Reese

S. Printed 5/26/99--H.

Read the first time April 27, 1999.

THE COMMITTEE ON MEDICAL, MILITARY, PUBLIC, AND MUNICIPAL AFFAIRS

To whom was referred a Bill (S. 384), to amend Section 24-3-30, as amended, Code of Laws of South Carolina, 1976, relating to the designation of places of confinement for a person convicted of an offense against the State, etc., respectfully

REPORT:

That they have duly and carefully considered the same, and recommend that the same do pass:

JOE E. BROWN, for Committee.

STATEMENT OF ESTIMATED FISCAL IMPACT

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES IS:

\$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES IS:

RoA p. 16

4/22/2014 1:44 PM

1999-2000 Bill 384 Text of Previous Version (May, 26, 1999) - South Carolina - http://www.scstatehouse.gov/sess113_1999-2000/prever/384_1999..

\$0 (No additional expenditures or savings are expected)

EXPLANATION OF IMPACT:

A review of this bill by the department indicates there will be no impact to the General Fund of the State nor on federal and/or other funds.

Approved By:

Don Addy

Office of State Budget

A BILL

TO AMEND SECTION 24-3-30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF PLACES OF CONFINEMENT FOR A PERSON CONVICTED OF AN OFFENSE AGAINST THE STATE, SO AS TO PROVIDE THAT THE DEPARTMENT OF CORRECTIONS SHALL CONSIDER PROXIMITY TO THE HOME OF THE CONVICTED PERSON IN DESIGNATING THE PLACE OF HIS CONFINEMENT UNDER CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 24-3-30 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-30. (A) Notwithstanding the provisions of Section 24-3-10 or another provision of law, a person convicted of an offense against the State must be in the custody of the Department of Corrections of the State, and the department shall designate the place of confinement where the sentence must be served. The department may designate as a place of confinement an available, a suitable, and an appropriate institution or facility including, but not limited to, a county jail or work camp whether maintained by the Department of Corrections, or otherwise. However, the consent of the officials in charge of the county institutions so designated must be obtained first. If imprisonment for three months or less is ordered by the court as the punishment, all persons so convicted must be placed in the custody, supervision, and control of the appropriate officials of the county in which the sentence was pronounced, if the county has facilities suitable for confinement. A county or municipality, through mutual agreement or contract, may arrange with another county or municipality or a local regional correctional facility for the detention of its prisoners. The Department of Corrections must be notified by the county officials concerned not less than six months before the closing of a county prison facility which would result in the transfer of the prisoners of the county facility to facilities of the department.

(B) The department shall consider proximity to the home of a person convicted of an offense against the State in designating the place of his confinement if this placement does not jeopardize security as determined by the department. Proximity to a convicted person's home must not have precedence over departmental criteria for institutional assignment.

(C) Each county administrator, or the equivalent, having charge of county prison facilities, upon the department's designating the county facilities as the place of confinement of a prisoner, may use the

ROA p. 17

4/22/2014 1:44 PM

1999-2000 Bill 384 Text of Previous Version (May 26, 1999) - Sour... http://www.scstatehouse.gov/sess113_1999-2000/prevet/384_1999...

prisoner assigned to them for the purpose of working the roads of the county or other public work. A prisoner so assigned to the county must be under the custody and control of the administrator or the equivalent during the period to be specified by the director at the time of the prisoner's assignment, but the assignment must be terminated at any time the director determines that the place of confinement is unsuitable or inappropriate, or that the prisoner is employed on other than public works. If, upon termination of the assignment, the prisoner is not returned, habeas corpus lies."

SECTION 2. This act takes effect upon approval by the Governor.

—XX—

This web page was last updated on Friday, June 26, 2009 at 3:02 P.M.

1999-2000 Bill 384 Text of Previous Version (Jun. 1, 1999) - South... http://www.scsenatehouse.gov/scss113_1999-2000/prev/384_1999...

**South Carolina General Assembly
113th Session, 1999-2000**

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Bill 384

~~Indicates Matter Stricken~~
~~Indicates New Matter~~

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

June 1, 1999

S. 384

Introduced by Senators Anderson, Washington, Matthews, Patterson, Glover, Ford and Reese

S. Printed 6/1/99-HL

Read the first time April 27, 1999.

A BILL

TO AMEND SECTION 24-3-30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF PLACES OF CONFINEMENT FOR A PERSON CONVICTED OF AN OFFENSE AGAINST THE STATE, SO AS TO PROVIDE THAT THE DEPARTMENT OF CORRECTIONS SHALL CONSIDER PROXIMITY TO THE HOME OF THE CONVICTED PERSON IN DESIGNATING THE PLACE OF HIS CONFINEMENT UNDER CERTAIN CIRCUMSTANCES.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 24-3-30 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-30. (A) Notwithstanding the provisions of Section 24-3-10 or another provision of law, a person convicted of an offense against the State must be in the custody of the Department of Corrections of the State, and the department shall designate the place of confinement where the

RoA p. 19.

4/22/2014 1:23 PM

1999-2000 Bill 384 Text of Previous Version (Jun. 1, 1999) - South ... http://www.scstatehouse.gov/sess113_1999-2000/prever/384_1999...

sentence must be served. The department may designate as a place of confinement an available, a suitable, and an appropriate institution or facility including, but not limited to, a county jail or work camp whether maintained by the Department of Corrections, or otherwise. However, the consent of the officials in charge of the county institutions so designated must be obtained first. If imprisonment for three months or less is ordered by the court as the punishment, all persons so convicted must be placed in the custody, supervision, and control of the appropriate officials of the county in which the sentence was pronounced, if the county has facilities suitable for confinement. A county or municipality, through mutual agreement or contract, may arrange with another county or municipality or a local regional correctional facility for the detention of its prisoners. The Department of Corrections must be notified by the county officials concerned not less than six months before the closing of a county prison facility which would result in the transfer of the prisoners of the county facility to facilities of the department.

(B) The department shall consider proximity to the home of a person convicted of an offense against the State in designating the place of his confinement if this placement does not jeopardize security as determined by the department. Proximity to a convicted person's home must not have precedence over departmental criteria for institutional assignment.

(C) Each county administrator, or the equivalent, having charge of county prison facilities, upon the department's designating the county facilities as the place of confinement of a prisoner, may use the prisoner assigned to them for the purpose of working the roads of the county or other public work. A prisoner so assigned to the county must be under the custody and control of the administrator or the equivalent during the period to be specified by the director at the time of the prisoner's assignment, but the assignment must be terminated at any time the director determines that the place of confinement is unsuitable or inappropriate, or that the prisoner is employed on other than public works. If, upon termination of the assignment, the prisoner is not returned, habeas corpus lies."

SECTION 2. Section 24-3-40 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-40. (A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. ~~The Director of the Department of Corrections shall withhold five percent of the gross wages and promptly place these funds on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the "Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, Section 1404". The director may withhold from the wages costs incident to the prisoner's confinement as the Department of Corrections considers appropriate and reasonable. These withholdings must be deposited to the maintenance account of the Department of Corrections. The balance of the wages, in the discretion of the director and in proportions determined by the director, may be disbursed to the prisoner, the prisoner's dependents, and the victim of the crime or deposited to the credit of the prisoner.~~

The director of the Department of Corrections shall deduct the following amounts from the gross wages of the prisoner:

(1) If restitution to a particular victim or victims has been ordered by the court, then twenty percent must be used to fulfill the restitution obligation. If a restitution payment schedule has been ordered by the court pursuant to Section 17-25-322, the twenty percent must be applied to the scheduled payments. If restitution to a particular victim or victims has been ordered but a payment schedule has

1999-2000 Bill 384 Text of Previous Version (Jun. 1, 1999) - South ... http://www.scstatehouse.gov/sss113_1999-2000/prever/384_1999...

not been specified by the court, the director shall impose a payment schedule of equal monthly payments and use twenty percent to meet the payment schedule so imposed.

(2) If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then the twenty percent referred to in subsection (1) must be placed on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the 'Victims of Crime Act of 1984', Public Law 98-473, Title II, Chapter XIV, Section 1404, if the prisoner is engaged in work at paid employment in the community. If the prisoner is employed in a prison industry program, then the twenty percent referred to in subsection (1) must be applied to the South Carolina Victims Compensation Fund.

(3) Thirty-five percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the guardian of the child or children or to appropriate clerks of court, in the case of court ordered child support, for application toward payment of child support obligations, whichever is appropriate. If there are no child support obligations, then twenty-five percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board. Furthermore, if there are no child support obligations, then ten percent must be made available to the inmate during his incarceration for the purchase of incidentals pursuant to subsection (4). This is in addition to the ten percent used for the same purpose in subsection (4).

(4) Ten percent must be available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate's choice.

(5) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner.

(6) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of incidentals pursuant to subsection (4).

(B) The Department of Corrections shall return a prisoner's wages held in escrow pursuant to subsection (A) as follows:

(1) A prisoner released without community supervision must be given his escrowed wages upon his release.

(2) A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice.

(3) A prisoner released to community supervision shall receive two hundred dollars or the escrow balance, whichever is less, upon his release. Any remaining balance must be dispensed to the Department of Probation, Parole, and Pardon Services. The prisoner's supervising agent shall apply this balance toward payment of the prisoner's housing and basic needs and dispense any balance to the prisoner at the end of the supervision period."

SECTION 3. This act takes effect upon approval by the Governor and Section 2 applies to wages earned beginning with the first day of the second month after the signature of the Governor.

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1999-2000 Bill 384 Text of Previous Version (Jun. 1, 1999) - South ... http://www.scstatehouse.gov/scss113_1999-2000/proven/384_1999...

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<http://www.sccourthouse.gov/cgi-bin/query.exe?first=DOC&querytex...>**"HISTORY"**[Home](#) > [Search Legislation](#)**Search Legislation**

Book

All Sessions 101-120 (1975-2014)[Send to Printer](#)[Back to Results](#)appropriate found 2 times. [Next](#)**Session 113 (1999-2000)****H 3216****H 3216 General Bill, By Campsen and Rodgers**

A BILL TO AMEND SECTION 24-3-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DISPOSITION OF WAGES OF A PRISONER ALLOWED TO WORK AT PAID EMPLOYMENT SO AS TO PROVIDE A DISTRIBUTION PLAN FOR THE WAGES THAT INCLUDES PAYMENTS FOR VICTIM RESTITUTION, CHILD SUPPORT, PRISONER ROOM AND BOARD, PRISONER INCIDENTALS, AND PRISONER ESCROW ACCOUNT.

01/06/99 House Profiled
 01/06/99 House Referred to Committee on Judiciary
 01/12/99 House Introduced and read first time HJ-80
 01/12/99 House Referred to Committee on Judiciary HJ-80
 04/27/99 House Committee report: Favorable with amendment Judiciary HJ-3
 04/28/99 House Debate interrupted HJ-37
 04/29/99 House Requests for debate-Rep(s). Scott, Finckney, Lloyd, Parks, Clyburn, Howard, Jennings, Moody-Lawrence, Lee, Cobb-Hunter, Phillips, McMahon, D. Smith, Campsen, Fleming, Woodrum, Altman, Whipper and Kennedy HJ-20
 05/06/99 House Requests for debate removed-Rep(s). Jennings HJ-20
 05/26/99 House Amended HJ-116
 05/26/99 House Read second time HJ-124
 05/26/99 House Roll call Yeas-93 Nays-7 HJ-124
 05/27/99 House Read third time and sent to Senate HJ-132
 06/01/99 Senate Introduced and read first time SJ-15
 06/01/99 Senate Referred to Committee on Corrections and Penology SJ-15

5584 Received for
 Senate 4/27/99

convention

VERSIONS OF THIS BILL

April 27, 1999
 May 26, 1999

upon which
 option include in state or distributed to — of his choice

Indicates Matter Stricken**Indicates New Matter****AMENDED**

May 26, 1999

H. 3216

Introduced by Reps. Campsen and Rodgers

S. Printed 5/26/99-H.

Read the first time January 12, 1999.

ROA p. 23

4/24/2014 11:21 AM

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A BILL

TO AMEND SECTION 24-3-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DISPOSITION OF WAGES OF A PRISONER ALLOWED TO WORK AT PAID EMPLOYMENT SO AS TO PROVIDE A DISTRIBUTION PLAN FOR THE WAGES THAT INCLUDES PAYMENTS FOR VICTIM RESTITUTION, CHILD SUPPORT, PRISONER ROOM AND BOARD, PRISONER INCIDENTALS, AND PRISONER ESCROW ACCOUNT.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 24-3-40 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-40. (A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. The Director of the Department of Corrections shall withhold five percent of the gross wages and promptly place these funds on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the 'Victims of Crime Act of 1984', Public Law 98-473, Title II, Chapter XIV, Section 1404. The director may withhold from the wages costs incident to the prisoner's confinement as the Department of Corrections considers appropriate and reasonable. These withholdings must be deposited to the maintenance account of the Department of Corrections. The balance of the wages, in the discretion of the director and in proportions determined by the director, may be disbursed to the prisoner, the prisoner's dependents, and the victim of the crime or deposited to the credit of the prisoner.

The Director of the Department of Corrections shall deduct the following amounts from the gross wages of the prisoner:

(1) If restitution to a particular victim or victims has been ordered by the court, then twenty percent must be used to fulfill the restitution obligation. If a restitution payment schedule has been ordered by the court pursuant to Section 17-23-322, the twenty percent must be applied to the scheduled payments. If restitution to a particular victim or victims has been ordered but a payment schedule has not been specified by the court, the director shall impose a payment schedule of equal monthly payments and use twenty percent to meet the payment schedule so imposed.

(2) If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then the twenty percent referred to in subsection (1) must be placed on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the 'Victims of Crime Act of 1984', Public Law 98-473, Title II, Chapter XIV, Section 1404, if the prisoner is engaged in work at paid employment in the community. If the prisoner is employed in a prison industry program, then the twenty percent referred to in subsection (1) must be applied to the South Carolina Victims Compensation Fund.

(3) Forty percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the previous appropriate clerks of court for application toward payment of child support obligations. If there are no child support obligations, then one-half of the forty percent referred to in this subsection must be used by the Department of Corrections to defray the cost of the prisoner's room and board. This is in addition to the fifteen percent used for the same purpose in subsection (4). Furthermore, if there are no child support obligations, then the other half of the forty percent referred to in this subsection must be made available to the inmate during his incarceration for the purchase of incidentals. This is in addition to the fifteen percent used for the same purpose in subsection (5).

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(4) Fifteen percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board.

(5) Fifteen percent must be available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate's choice.

(6) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner.

(7) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of incidentals.

(8) The Department of Corrections shall return a prisoner's wages held in escrow pursuant to subsection (A) as follows:

(1) A prisoner released without community supervision must be given his escrowed wages upon his release.

(2) A prisoner serving life in prison shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice.

(3) A prisoner released to community supervision shall receive two hundred dollars or the escrow balance, whichever is less, upon his release. Any remaining balance must be dispersed to the Department of Probation, Parole, and Pardon Services. The prisoner's supervising agent shall apply this balance toward payment of the prisoner's housing and basic needs and disburse any balance to the prisoner at the end of the supervision period."

SECTION 2. This act takes effect upon approval by the Governor and applies to wages earned beginning with the first day of the second month after the signature of the Governor.

—XX—

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South Carolina General Assembly
113th Session, 1999-2000

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Bill 3216

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Indicates New Matter

COMMITTEE REPORT

April 27, 1999

H. 3216

Introduced by Reps. Campsen and Rodgers

S. Printed 4/27/99--H.

Read the first time January 12, 1999.

THE COMMITTEE ON JUDICIARY

To whom was referred a Bill (H. 3216), to amend Section 24-3-40, as amended, Code of Laws of South Carolina, 1976, relating to the disposition of wages of a prisoner, etc., respectfully

REPORT:

That they have duly and carefully considered the same, and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Section 24-3-40 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-40. (A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. ~~The Director of the Department of Corrections shall withhold five percent~~

of the gross wages and promptly place these funds on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the "Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, Section 1404". The director may withhold from the wages costs incident to the prisoner's confinement as the Department of Corrections considers appropriate and reasonable. These withholdings must be deposited to the maintenance account of the Department of Corrections. The balance of the wages, in the discretion of the director and in proportions determined by the director, may be disbursed to the prisoner, the prisoner's dependents, and the victim of the crime or deposited to the credit of the prisoner.

The director of the Department of Corrections shall deduct the following amounts from the gross wages of the prisoner:

(1) If restitution to a particular victim or victims has been ordered by the court, then twenty percent must be used to fulfill the restitution obligation. If a restitution payment schedule has been ordered by the court pursuant to Section 17-25-322, the twenty percent must be applied to the scheduled payments. If restitution to a particular victim or victims has been ordered but a payment schedule has not been specified by the court, the director shall impose a payment schedule of equal monthly payments and use twenty percent to meet the payment schedule so imposed.

(2) If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then the twenty percent referred to in subsection (1) must be placed on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the 'Victims of Crime Act of 1984', Public Law 98-473, Title II, Chapter XIV, Section 1404, if the prisoner is engaged in work at paid employment in the community. If the prisoner is employed in a prison industry program, then the twenty percent referred to in subsection (1) must be applied to the South Carolina Victims Compensation Fund.

(3) Twenty percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the appropriate clerks of court for application toward payment of child support obligations. If there are no child support obligations, then one-half of the twenty percent referred to in this subsection must be used by the Department of Corrections to defray the cost of the prisoner's room and board. This is in addition to the fifteen percent used for the same purpose in subsection (4). Furthermore, if there are no child support obligations, then the other half of the twenty percent referred to in this subsection must be made available to the inmate during his incarceration for the purchase of incidentals. This is in addition to the ten percent used for the same purpose in subsection (5).

(4) Fifteen percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board.

(5) Ten percent must be available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate's choice.

(6) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner.

(7) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of

incidentals.

(B) The Department of Corrections shall return a prisoner's wages held in escrow pursuant to subsection (A) as follows:

(1) A prisoner released without community supervision must be given his escrowed wages upon his release.

(2) A prisoner serving life in prison shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice.

(3) A prisoner released to community supervision shall receive two hundred dollars or the escrow balance, whichever is less, upon his release. Any remaining balance must be dispersed to the Department of Probation, Parole, and Pardon Services. The prisoner's supervising agent shall apply this balance toward payment of the prisoner's housing and basic needs and dispense any balance to the prisoner at the end of the supervision period."

SECTION 2. This act takes effect upon approval by the Governor and applies to wages earned beginning with the first day of the second month after the signature of the Governor. /

Amend title to conform.

JAMES H. HARRISON, for Committee.

A BILL

TO AMEND SECTION 24-3-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DISPOSITION OF WAGES OF A PRISONER ALLOWED TO WORK AT PAID EMPLOYMENT SO AS TO PROVIDE A DISTRIBUTION PLAN FOR THE WAGES THAT INCLUDES PAYMENTS FOR VICTIM RESTITUTION, CHILD SUPPORT, PRISONER ROOM AND BOARD, PRISONER INCIDENTALS, AND PRISONER ESCROW ACCOUNT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 24-3-40 of the 1976 Code, as last amended by Act 7 of 1995, is further amended to read:

"Section 24-3-40. (A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. The Director of the Department of Corrections shall withhold five percent of the gross wages and promptly place these funds on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the "Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, Section 1404". The director may withhold from the wages costs incident to the prisoner's confinement as the Department of Corrections considers appropriate and reasonable. These withholdings must be deposited to the maintenance account of the Department of Corrections. The balance of the wages, in the discretion of the director and in proportions determined by the director, may be disbursed to the prisoner, the prisoner's dependents, and the victim of the crime or deposited to the credit of the prisoner.

The director of the Department of Corrections shall deduct those amounts, if any, required by law for federal and state tax withholdings and then shall distribute the balance as follows:

(1) If restitution to a particular victim or victims has been ordered by the court, then thirty-five percent must be used to fulfill the restitution obligation. If a restitution payment schedule has been ordered by the court pursuant to Section 17-25-322, the thirty-five percent must be applied to the scheduled payments. If restitution to a particular victim or victims has been ordered but a payment schedule has not been specified by the court, the director shall impose a payment schedule of equal monthly payments and use thirty-five percent to meet the payment schedule so imposed.

(2) If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied, then the thirty-five percent referred to in subsection (1) above must be placed on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the "Victims of Crime Act of 1984", Public Law 98-473, Title II, Chapter XIV, Section 1404.

(3) In addition to the restitution payments of subsections (1) and (2) above, five percent must be deposited with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the "Victims of Crime Act of 1984", Public Law 98-473, Title II, Chapter XIV, Section 1404.

(4) Twenty percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the appropriate clerks of court for application toward payment of child support obligations. If there are no child support obligations, then one-half of the twenty percent referred to in this subsection must be used by the Department of Corrections to defray the cost of the prisoner's room and board. This is in addition to the twenty percent used for the same purpose in subsection (5) below. Furthermore, if there are no child support obligations, then the other half of the twenty percent referred to in this subsection must be held in an escrow account for the benefit of the prisoner. This is in addition to the ten percent used for the same purpose in subsection (7) below.

(5) Twenty percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board.

(6) Ten percent must be available to the inmate during his incarceration for the purchase of incidentals.

(7) Ten percent must be held in an escrow account for the benefit of the prisoner.

(B) The Department of Corrections shall return a prisoner's wages held in escrow pursuant to (A)(4) and (A)(7) of this section as follows:

(1) A prisoner released without community supervision must be given his escrowed wages upon his release.

(2) A prisoner serving life in prison shall have his escrowed wages included in his estate upon death.

(3) A prisoner released to community supervision shall receive two hundred dollars or the escrow balance, whichever is less, upon his release. Any remaining balance must be dispersed to the Department of Probation, Parole, and Pardon Services. The prisoner's supervising agent shall apply

this balance toward payment of the prisoner's housing and basic needs and disperse any balance to the prisoner at the end of the supervision period."

SECTION 2. This act takes effect upon approval by the Governor and applies to wages earned beginning with the first day of the second month after the signature of the Governor.

—XX—

This web page was last updated on Friday, June 26, 2009 at 2:57 P.M.

266-14

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: <u>Joshua Cramer</u>	APR 26 2007 <i>GBL</i>	Office Use Only Grievance No. <u>BRCI-0594-07</u>
SCDC NUMBER: <u>251406</u>		Code: General <u>AV</u>
INSTITUTION: <u>Broad River</u>		Policy _____
HOUSING UNIT: <u>Murray 266</u>		Disc. Hear. _____
WORK ASSIGNMENT: <u>P.I.-2</u>		Class. _____
		Date Received <u>4/26/07</u>
		IGC Initials <u>ULM</u>

STATE GRIEVANCE (Include documentation, and date of incident; if SCDC Policy, indicate which policy)

*See Attachment.*ACTION REQUESTED: Correct payment of all monies.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Not Applicable.

Joshua K Cramer 4-26-07
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response

- ☒ I accept the action taken by the IGC and consider the matter closed.
☒ I do not accept the action taken and wish to appeal.

SCDC 10-5 (Rev. November 1997)

(CONTINUED ON REVERSE SIDE)

Ann Haalman 6-7-2012
IGC Signature Date
Be *YA*
Grievant Signature Date
DNA 21

WARDEN'S DECISION AND REASON:

SEE ATTACHED

- ☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

Joshua Cramer 7/13/12
Grievant Signature Date

[Signature] 7/11/12
Warden Signature Date

[Signature] 7/12/12
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

RoA p. 32

Joshua Cramer
BRC1-0594-07

APR 26 2007

Joshua Cramer #25140
I/m Grievance

Attached Issues

- 1) Section 24-3-430(D) created a liberty interest in the \$1.90 difference between the prevailing wage (\$7.35) paid by the private sector employer for grievant's "regular" hour labor and the wage (\$5.45) paid grievant by SCDC during the course of grievant's private sector employment [May 2, 2005 to current date] and grievant is entitled to said monies.
- 2) Section 24-3-430(D) created a liberty interest in the \$2.85 difference between the prevailing wage (\$11.03) paid by the private sector employer for grievant's "overtime" hour labor and the wage (\$8.18) paid grievant by SCDC during the course of grievant's private sector employment, as stated in Issue #1, above, and grievant is entitled to said monies.
- 3) Grievant has a liberty interest in the interest earned on the amounts complained of in Issues #2 and #3, above.
- 4) Section 24-3-430(A)(5) + 24-3-430(B)(2) created a liberty interest in escrowed wages where in grievant is entitled to complete and immediate access to the amount of his escrowed wages to distribute them to persons or entities of his choice at the time said wages were escrowed for grievant's benefit, but grievant is serving life without parole, and is denied access

ROA p. 33

Joshua Cramer
BRC1-0594-07

APR 26 2007

Joshua Cramer #251406
I/m Grievance

Attached Issues (cont.)

- 5) Grievant has a liberty interest in interest earned on the amount complained of in Issue #4, above, at a guaranteed investment rate comparable to Treasury Bills or Certificates of Deposit.

RoA p. 34

Step 1 Grievance Response
June 7, 2012

Name	SCDC #	Grievance #	Project
Joshua Cramer	251406	BRCI-0594-07	R.M. Design

In accordance with the unpublished opinion issued on January 25, 2012 by the South Carolina Court of Appeals and the order issued by the South Carolina Court of Appeals on March 29, 2012 which denied your petition for rehearing, I have undertaken a new review of your Step 1 grievance bearing your signature and dated April 26, 2007. The responsible SCDC official provided your Step 1 with the following designation: BRCI-0594-07.

In your Step 1, you asserted that you were entitled to the prevailing wage for your "regular" hours work as follows:

1) Section 24-3-430(D) created a liberty interest in the (\$1.90) difference between the prevailing wage (\$7.35) paid by the private sector employer for grievant's "regular" hour labor and the wage (\$5.45) paid grievant by SCDC during the course of grievant's private sector employment (May 2, 2005 to current date) and grievant is entitled to said monies.

You then asserted that you were entitled to the prevailing wage for your "overtime" labor as follows:

2) Section 24-3-430(D) created a liberty interest in the (\$2.85) difference between the prevailing wage (\$11.03) paid by the private sector employer for the grievant's "overtime" hour labor and the wage (\$8.18) paid grievant by SCDC during the course of grievant's private sector employment, as stated in Issue #1, above, and grievant is entitled to said monies.

You further claimed you were entitled to interest on your "regular" and "overtime" hours as follows:

3) Grievant has liberty interest in the interest earned on the amount complained of in Issues #2 and #3, above.

You then claimed that you were entitled to complete and immediate access to your escrowed wages as follows:

4) Section 24-3-430(A)(5) & 24-3-430(B)(2) created a liberty interest in escrowed wages where in grievant is entitled to complete and immediate access to the amount of his escrowed wages to distribute them to persons or entities of his choice at the time said wages were escrowed for grievant's benefit, but grievant is serving life without parole and is denied access.

You further claimed that you were entitled to interest associated with your escrowed wages as follows:

Step 1 Grievance Response
June 7, 2012

Name	SCDC #	Grievance #	Project
Joshua Cramer	251406	BRCI-0594-07	R.M. Design

5) Grievant has a liberty interest in interest earned on the amount complained of in Issue #4, above, at a guaranteed investment rate comparable to Treasury Bills or Certificates of Deposit.

Finally, you requested the following relief in your grievance:

Correct payment of all monies.

Your prison industries participation and pay records were reviewed by the responsible officials at SCDC Headquarters in Columbia. These records confirm that you voluntarily participated in the prison industries project operated by SCDC at Broad River CI in which R.M. Design participates as the private industry sponsor. These pay records also reflect that SCDC began paying you on or about July 15, 2005 for the labor you voluntarily provided in the project at Broad River, and they reflect that SCDC remitted its final payment to you on or about January 1, 2010.

After carefully considering the arguments you made justifying the action you request, I deny the prison industries pay claims from your Step 1 grievance designated as BRCI-0594-07.

Two (2) decisions issued by the South Carolina Supreme Court in 2004 apply to the claims you presented in your Step 1: Adkins v. S.C. Dep't of Corr. and Wicker v. S.C. Dep't of Corr. Both of these cases discussed S.C. Code Ann. Section 24-3-40, Section 24-3-310, *et seq.* and, specifically, Section 24-3-430(D). The South Carolina Supreme Court issued these decisions on August 23, 2004.

Adkins and Wicker recognized that inmates possessed a pre-existing right to file administrative grievances concerning their prison industries pay. Under Wicker, such grievances must be filed, processed, and determined in accordance with the provisions of the agency's Inmate Grievance System Policy.

In Torrence v. S.C. Dep't of Corr., the South Carolina Supreme Court issued another decision which applies to your claims. In Torrence, the South Carolina Supreme Court again acknowledged that inmates could file grievances in accordance with the agency's Inmate Grievance System, currently designated as Policy Number GA-01.12, by which they could challenge their prison industries pay.

SCDC has published editions of its Inmate Grievance System Policy for nearly 20 years if not longer. Starting in the mid-1990s, SCDC's Inmate Grievance System Policy consisted of two (2) parts: Policy Number PS-10.01 and Policy Number PS-10.01 (OP). § 14(a) of Policy Number PS-10.01 (OP) required that inmates submit their Step 1 grievance forms "within seven (7) days of the alleged incident." Exceptions to the deadline appeared in § 14(g) and § 15 of the policy.

Step 1 Grievance Response
June 7, 2012

Name	SCDC #	Grievance #	Project
Joshua Cramer	251406	BRCI-0594-07	R.M. Design

On October 1, 1997, SCDC issued new editions of Policy Numbers PS-10.01 and PS-10.01 (OP). In the October 1, 1997 edition of Policy Number PS-10.01 (OP), SCDC changed ¶ 14(a) to require that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

On January 30, 1998, SCDC issued a new edition of its Inmate Grievance System Policy, and, just as before, the policy consisted of two (2) parts. However, SCDC re-designated these two (2) parts as Policy Number GA-01.12 and Policy Number GA-01.12 (OP). ¶ 14(a) of Policy Number GA-01.12 (OP) required that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Once again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

The agency consolidated Policy Numbers GA-01.12 and GA-01.12 (OP) into a single policy when it issued a new edition of Policy Number GA-01.12 on April 1, 2000, and the 15-day filing deadline appeared in this edition of the policy as well as every edition issued since April 1, 2000.

I conclude, after reviewing your Step 1 in light of Adkins, Wicker, Torrence, the 15-day filing deadline from every edition of Policy Number GA-01.12 issued since April 1, 2000, as well as the exceptions to these deadlines from ¶ 14(g) and ¶ 15 of these editions, that you did not submit your Step 1 grievance within 15 days of the incident upon which you anchored the claims you presented in your Step 1, namely the date upon which SCDC both first began paying you for your prison industries labor and began applying statutorily mandated deductions to your pay pursuant to S.C. Code Ann. Section 24-3-40.

The grievance filing deadline established in every edition of the agency's Inmate Grievance System Policy applied and continues to apply to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the deadline applies to your grievance.

Moreover, you filed your Step 1 nearly two (2) years after SCDC first paid you for your voluntary participation in the prison industries project operated by SCDC at Broad River in which R.M. Design participated as the private industry sponsor. You also filed your Step 1 nearly two (2) years after SCDC began applying the statutorily mandated deductions to your prison industries pay pursuant to Section 24-3-40. For that matter, you filed your Step 1 nearly one (1) year after the South Carolina Supreme Court issued its decisions in Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under the agency's Inmate Grievance System Policy.

In making this determination, I rely on the following decisions from the South Carolina Administrative Law Court ("ALC"): Daughtry, #250139, v. S.C. Dep't of Corr., Docket No. 04-ALJ-00783-AP; Grimmett, Jr., #102226, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00757-AP; Larrimore, #238126, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00470-AP; Manignault, #280550, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00756-AP; McLemore, #127966, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00023-AP; Pipkin, #283616, v. S.C. Dep't of Corr.

Step I Grievance Response
June 7, 2012

Name	SCDC #	Grievance #	Project
Joshua Cramer	251406	BRCT-0594-07	R.M. Design

Docket No. 05-ALJ-04-00733-AP; Sapp, #218694, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00732-AP; Sumter, #242379, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00749-AP; Smiley, #262734, v. S.C. Dep't of Corr., Docket No. 08-ALJ-04-00571-AP; Williams, #187203, vs. S.C. Dep't of Corr., Docket No. 06-ALJ-04-622-AP; and Wright, #200123, v. S.C. Dep't of Corr., 2006 WL 1430140 (ALJD 2006).

I also rely upon the following decisions issued by the ALC since March 1, 2012: Ackerman, #266928, et al., v. S.C. Dep't of Corr., Docket Nos. 07-ALJ-04-00444-AP, et seq.; Arnold, #238375, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00200-AP; Bridgeman, #130350, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00610-AP; Gibson, #241326, v. S.C. Dep't of Corr., Docket No. 10-ALJ-04-00007-AP; Jones, #130817, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-0506-AP; Keitt, #277284, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-0519-AP; and Lamley, #97724, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00489-AP.

Additionally, in light of the chronology associated with the filing of your Step 1, I find that your claim is barred by the doctrine of laches.

To the extent that you claim in your Step 1 that you worked for or were otherwise "employed" by R.M. Design, I conclude that you never "worked" for nor were you ever "employed" by that entity. I also conclude that neither Adkins nor Wicker declared that you or inmates in your position were "employed" by SCDC, R.M. Design, for that matter, any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's decision in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of private industry sponsors like R.M. Design.

Therefore, to the extent you use the terms "worked for," "employee," "employed," or "employment" within your Step 1 grievance to describe your participation, I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Broad River.

Additionally, I deny your claim that you are entitled to any relief under Section 24-3-430(D), the so-called "prevailing wage" provision. Specifically, as the prison industries project in which you participated at Broad River was a project for which SCDC received certification under the federal government's Prison Industries Enhancement Certification Program ["PIECP"], I conclude that the provisions of Section 24-3-410(B)(7) – not Section 24-3-430(D) – applied to the rate of pay SCDC was required to remit to you under Section 24-3-40(A) for the labor you voluntarily provided to this project. In making this conclusion, I rely upon the decision issued by the circuit court in Adkins, which concluded that inmates who participated in an identically certified SCDC prison industries project did not possess a viable claim for back wages or higher wages under the provisions of Section 24-3-430(D).

Step 1 Grievance Response
June 7, 2012

Name	SCDC #	Grievance #	Project
Joshua Cramer	251406	BRCI-0594-07	R.M. Design

Even if you have a viable claim for relief under § 24-3-430(D), I conclude that SCDC paid you the proper rate of pay for the labor you voluntarily provided to the federally certified prison industries project it operates at Broad River. In making this conclusion, I rely upon the guidelines established by the federal government, specifically the United States Department of Justice's Bureau of Justice Administration [known as "BJA"]. BJA published the guidelines applicable to the PIECP in the Federal Register, specifically 64 FR 17000. Within these guidelines, BJA declared that the rate at which inmates are paid for the labor they voluntarily provide to PIECP projects, like the project in which you participated at Broad River, cannot be set below the federal minimum wage.

The federal minimum wage was \$5.15 from September 1, 1997 to July 23, 2007. The federal minimum wage increased to \$5.85 per hour on July 24, 2007 and it stayed at this rate until July 23, 2008. The federal minimum wage increased to \$6.55 per hour effective July 24, 2008 and it remained at that rate until July 23, 2009. The federal minimum wage increased again to \$7.25 per hour effective July 24, 2009 and it remains at that rate today.

Thus, with the possible exception of July 2007, August 2008, and July 2009, SCDC paid you at least the federal minimum wage for the labor you voluntarily provided to the prison industries project it operates at Broad River.

I also conclude that SCDC does not owe you \$1.90, \$2.85, or any other amount for every labor hour you voluntarily provided to the federally certified prison industries project operated by SCDC at Broad River. Under the contracts struck between SCDC and R.M. Design, SCDC legitimately charges R.M. Design an hourly rate for "overhead cost" in addition to the hourly rate SCDC pays inmates in accordance with both state and federal law.

The circuit court in Adkins concluded that SCDC's practice of invoicing private industry sponsors, like R.M. Design, such an hourly "overhead cost" was accepted by BJA, the federal agency responsible for certification of both the prison industries project at issue in Adkins and the prison industries project at issue in the instant case.

SCDC's assessment of this "overhead cost" does not violate any applicable South Carolina statute, because the assessment of this cost allows SCDC to comply with a variety of the applicable prison industries statutes, including Section 24-3-400. These statutes, including Section 24-3-400, either directly or indirectly compel SCDC to collect an hourly "overhead cost" or "administrative charge" from private industry sponsors, like R.M. Design, so that it may cover the expenses it incurs as a consequence of operating the project in which you voluntarily participated at Broad River.

Furthermore, I find that your claim of being entitled to complete and immediate access to your escrowed wages pursuant to § 24-3-40(B)(2) is without merit. Section 24-3-40(A)(5) requires SCDC to deduct 10% of an inmates wages and hold them "in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B) directs SCDC to "return a prisoner's wages held in escrow pursuant to [§ 24-3-40(A)]" only when an inmate leaves SCDC's custody. When

Step 1 Grievance Response
June 7, 2012

Name	SCDC #	Grievance #	Project
Joshua Cramer	251406	BRCI-0594-07	R.M. Design

an inmate is serving a life sentence, Section 24-3-40(B)(2) provides the inmate with "the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice." This provision directs SCDC to distribute these escrowed monies only upon the inmate's death, and not prior to that event. Nothing in any provision of Section 24-3-40(B) authorizes an inmate to have complete and immediate access to any of these monies while still lawfully held in SCDC's custody. Any other interpretation would conflict with the remaining provisions of Section 24-3-40(B).

To the extent that you claim that SCDC is denying you interest on your escrowed wages, I find this claim is also without merit. SCDC complies with Section 24-3-40(A)(5) by depositing the interest you have earned on your monies held in escrow into your account every month. Each pay period you receive an account statement showing the amount of interest deposited into your account. Nothing in any provision of Section 24-3-40 or, for that matter, any other applicable prison industries statute requires that you receive a guaranteed interest rate comparable to Treasury Bills, Certificates of Deposits, or any other set interest rate.

To the extent you claim SCDC has unconstitutionally denied you of your property or liberty interest in these wages without due process of law, I deny your claim. Under Wicker, you and other inmates in your position may exercise your due process rights and litigate your pay disputes with SCDC through SCDC's inmate grievance system. Therefore, SCDC has not denied you due process of law and the filing deadline from the editions of the agency's Inmate Grievance System Policy applies to your claim.

Finally, regarding your demand for "interest" in your grievance, no decision of the South Carolina Supreme Court or any provision of any edition of the agency's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, or for that matter, costs or attorneys' fees in connection with SCDC's review and processing of your grievance.

Therefore, for all of the above stated reasons, I deny the claims you articulated your Step 1 grievance designated as BRCI-0594-07 in their entirety.

Due by 7/18/12

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: <u>Joshua Cramer</u> SCDC NUMBER: <u>251406</u> JUL 16 2012 INSTITUTION: <u>BROAD RIVER</u> HOUSING UNIT: <u>Mont.-266</u> JUL 13 2012 WORK ASSIGNMENT: <u>Gym</u> INMATE GRIEVANCE	Office Use Only Grievance No. <u>PRC-1294-2</u> Code: General <u>P1</u> Policy _____ Disc. Hear. _____ Class. _____ Date Received <u>7-19-2012</u> IGC Initials _____
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INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

see attachment.

Joshua Cramer 7-16-12
 Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED
RESPONSE

[Signature] 2/25/14
 Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature _____ Date _____ IGC Signature _____ Date _____

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

RoA 41

Joshua Cramer
#251406
Month - 266
Grievance No.
BRCI-0594-07

STEP 2 ATTACHMENT

First, I do not wish to appeal the issues I raised regarding the prevailing wage and overtime pay, however I do wish to appeal my issues regarding my escrowed wages.

In response to the warden's decision I would initially point out that the "15-day filing deadline" is being applied incorrectly in regards to my escrowed wages. The policy uses the verbiage "within 15 days of the incident." The term "incident" is used in its singular form. In simple terms if SCDC did something wrong or unlawful, etc., then that inmate would have to file a grievance within 15 days of the thing which SCDC did. In my case my escrowed wages are being held unlawfully. This incident occurs everyday and has occurred everyday since I began working in P.I.-2 in 2005. As a result the one "incident" of denying me access to my escrowed wages has become multiple incidents and will continue to turn into more incidents. My issue revolves around whether SCDC has a right, legally, to deny me access to money that I lawfully earned. To attempt to bar a resolution of my claim by saying I did not file a grievance 15 days from the first time SCDC denied me access to my money is not in the interest of justice and makes it look like if an inmate doesn't grieve an incident within 15 days of SCDC first doing it, then SCDC has a right to keep doing it regardless of whether it is unlawful or not.

In my step 1 I stated pursuant to law that I had a right to distribute my escrowed wages to a person of my choice. At no point in section 24-3-40(2)(2) does it say the prisoner's wages can only be returned "when an inmate leaves SCDC's custody" as the warden

Page 11

stated in his decision. Rather the subsection simply states that a "prisoner serving a life sentence... shall have the option..." to distribute his escrowed wages to "... a person of his choice..."

My escrowed wages are monies that I lawfully earned. They belong to me, not anyone else. I should have a right to distribute these wages to a person of my choice for my benefit, as the Legislature intended when they stated in section 24-3-40(A)(5) that the wages were for the "benefit of the prisoner."

Lastly, in relation to the interest on the escrowed wages the percentage SCDC has become laughable at best. For example, in my last check on 1/1/10 I had \$3,444.58 in my Long Term Savings (LTS). By 10/11/11, almost two years later, my LTS grew to \$3,444.88. That is 30¢ in interest. In addition, the interest being paid to inmates differs from one inmate to the next. Some inmates are being paid a decent amount of interest while other inmates like myself are basically not being paid any interest at all.

Do A n. 43

Step 2 Grievance Response

Name	SCDC #	Grievance #	Project
Joshua Cramer	251406	BRCI-0594-07	R.M. Design

I have reviewed the Step 2 appeal you filed in your grievance designated as BRCI-0594-07. In your Step 2, you limited your appeal of the issues you raised in your original Step 1 grievance:

First, I do not wish to appeal the issues I raised regarding the prevailing wage and overtime pay, however I do wish to appeal my issues regarding my escrowed wages.

To be clear, by limiting your Step 2 appeal to cover only the issues regarding your escrowed wages, you have abandoned all of the claims you first raised in your Step 1 grievance regarding the "prevailing wage" and overtime pay.

Along with your Step 2, I have also reviewed your Step 1, and the warden's response to your Step 1. By this reply, I concur with the warden's response to all of the issues you raised in your Step 1 regarding your escrowed wages, and I deny your Step 2.

In your Step 1, you made the following claim about access to your escrowed wages:

Section 24-3-430(A)(5) & 24-3-430(B)(2) created a liberty interest in escrowed wages where in grievant is entitled to complete and immediate access to the amount of his escrowed wages to distribute them to persons or entities of his choice at the time said wages were escrowed for grievant's benefit, but grievant is serving life without parole and is denied access.

You further claimed in your Step 1 that you were entitled to interest as follows:

Grievant has a liberty interest in interest earned on the amount complained of in Issue #4, above, at a guaranteed investment rate comparable to Treasury Bills or Certificates of Deposit.

In your Step 2, you re-stated the claims you made in your Step 1 in the following manner:

In my Step 1, I stated pursuant to law that I had a right to distribute my escrowed wages to a person of my choice. At no point in section 24-3-430(B)(2) does it say the prisoner's wages can only be returned "when an inmate leaves SCDC's custody" as the warden stated in his decision. Rather the subsection simply states that a "person serving a life sentence ... shall have the option ... to distribute his escrowed wages to ... a person of his choice ..."

You then argued as follows in your Step 2:

My escrowed wages are monies that I lawfully earned, they belong to me, not anyone else. I should have a right to distribute these wages to a person of my choice for my benefit, as the Legislature intends when the stated in

Step 2 Grievance Response

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section 24-3-40(A)(5) that the wages were for the "benefit of the prisoner."

You ended your Step 2 as follows:

Lastly, in relation to the interest on the escrowed wages the percentage SCDC has become laughable at best. For example, in my last check on 1/1/10 I had \$3,444.58 in my Long Term Savings (LTS). By 10/11/11, almost two years later, my LTS grew to \$3,444.88. That is [\$0.30] in interest. In addition, the interest being paid to inmates differs from one inmate to the next. Some inmates are being paid a decent amount of interest while other inmates like myself are basically not being paid any interest at all.

As the warden observed in his response to your Step 1, your prison industries participation and pay records were reviewed by the responsible officials at SCDC Headquarters in Columbia. These records confirm that you voluntarily participated in the prison industries project operated by SCDC at Broad River CI in which R.M. Design participates as the private industry sponsor. These pay records also reflect that SCDC began paying you on or about July 15, 2005 for the labor you voluntarily provided in the project at Broad River, and they reflect that SCDC remitted its final payment to you on or about January 1, 2010.

As the warden correctly stated in his response, two (2) decisions issued by the South Carolina Supreme Court in 2004 apply to the claims you presented in your Step 1: Adkins v. S.C. Dep't of Corr. and Wicker v. S.C. Dep't of Corr. Both of these cases discussed S.C. Code Ann. Section 24-3-40, Section 24-3-310, *et seq.* and, specifically, Section 24-3-430(D). The South Carolina Supreme Court issued these decisions on August 23, 2004.

Adkins and Wicker recognized that inmates possessed a pre-existing right to file administrative grievances concerning their prison industries pay. Under Wicker, such grievances must be filed, processed, and determined in accordance with the provisions of the agency's Inmate Grievance System Policy. In Torrence v. S.C. Dep't of Corr., the South Carolina Supreme Court issued another decision which applies to your claims. In Torrence, the South Carolina Supreme Court again acknowledged that inmates could file grievances in accordance with the agency's Inmate Grievance System, currently designated as Policy Number GA-01.12, by which they could challenge their prison industries pay.

As accurately explained by the warden in his response, SCDC has published editions of its Inmate Grievance System Policy for nearly 20 years if not longer. Starting in the mid-1990s, SCDC's Inmate Grievance System Policy consisted of two (2) parts: Policy Number PS-10.01 and Policy Number PS-10.01 (OP). ¶ 14(a) of Policy Number PS-10.01 (OP) required that inmates submit their Step 1 grievance forms "within seven (7) days of the alleged incident." Exceptions to the deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

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On October 1, 1997, SCDC issued new editions of Policy Numbers PS-10.01 and PS-10.01 (OP). In the October 1, 1997 edition of Policy Number PS-10.01 (OP), SCDC changed ¶ 14(a) to require that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

As the warden further explained in his response to your Step 1, SCDC issued a new edition of its Inmate Grievance System Policy on January 30, 1998, and, just as before, the policy consisted of two (2) parts. However, SCDC re-designated these two (2) parts as Policy Number GA-01.12 and Policy Number GA-01.12 (OP). ¶ 14(a) of Policy Number GA-01.12 (OP) required that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Once again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

The agency consolidated Policy Numbers GA-01.12 and GA-01.12 (OP) into a single policy when it issued a new edition of Policy Number GA-01.12 on April 1, 2000, and the 15-day filing deadline appeared in this edition of the policy as well as every edition issued since April 1, 2000.

Like the warden, I conclude, after reviewing your Step 1 in light of Adkins, Wicker, Torrence, the 15-day filing deadline from every edition of Policy Number GA-01.12 issued since April 1, 2000, as well as the exceptions to these deadlines from ¶ 14(g) and ¶ 15 of these editions, that you did not submit your Step 1 grievance within 15 days of the incident upon which you anchored the claims you presented in your Step 1, namely the date upon which SCDC both first began paying you for your prison industries labor and began applying statutorily mandated deductions to your pay pursuant to S.C. Code Ann. Section 24-3-40.

I fully concur with the warden's determination that the grievance filing deadline established in every edition of the agency's Inmate Grievance System Policy applied and continues to apply to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the deadline applies to your grievance.

As you filed your Step 1 on or about April 26, 2007, I find that the warden correctly determined that you filed your Step 1 nearly two (2) years after SCDC first paid you for your voluntary participation in the prison industries project operated by SCDC at Broad River in which R.M. Design participated as the private industry sponsor. I also find that that warden correctly determined that you also filed your Step 1 nearly two (2) years after SCDC began applying the statutorily mandated deductions to your prison industries pay pursuant to Section 24-3-40, including Section 24-3-40(A)(5). The warden also correctly determined that you filed your Step 1 nearly one (1) year after the South Carolina Supreme Court issued its decisions in Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under the agency's Inmate Grievance System Policy.

In denying your Step 2, I concur with the warden's reliance on all of the decisions from the ALC that he cited in his response to your Step 1. Additionally, in denying your Step 2, I have considered the decision issued by the South Carolina Court of Appeals in *Patterson v. S.C. Dep't of Corr.*, 2010-UP-292 (S.C. Ct. App. May 27, 2010) ("[SCDC] denied Patterson's grievance based on [¶ 13.1], which states an inmate must file a grievance within fifteen days of the alleged

Step 2 Grievance Response

Name	SCDC #	Grievance #	Project
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incident. ... Patterson should have filed his grievance within fifteen days of December 6, 2004, when he originally discovered that [SCDC] lost his inmate property.").

Additionally, in light of the chronology associated with your filing of your Step 1, I concur with the warden's determination that your claims are barred by the doctrine of laches.

Regarding your claim of being entitled to complete and immediate access to the amount of your escrowed monies pursuant to Section 24-3-40(B)(2), I agree with the warden's denial of your claim. Section 24-3-40(A)(5) requires SCDC to deduct 10% of an inmate's wages and hold them "in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B) directs SCDC to "return a prisoner's wages held in escrow pursuant to [Section 24-3-40(A)]" only when an inmate leaves SCDC's custody. When an inmate is serving a life sentence, Section 24-3-40(B)(2) provides the inmate with "the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice." You did not completely quote Section 24-3-40(B)(2) in your Step 2. The entirety of this provision directs SCDC to distribute these escrowed monies only upon the inmate's death, and not prior to that event. Nothing in any provision of Section 24-3-40(B) authorizes an inmate to have complete and immediate access to any of these monies while still lawfully held in SCDC's custody. Any other interpretation would conflict with the remaining provisions of Section 24-3-40(B).

You further asserted in your Step 2 that, by its interpretation of Section 24-3-40(B), SCDC is denying you any benefit from their escrowed monies without access to the principal or interest. Again, I deny your claim. You do receive a benefit under the provisions of Section 24-3-40(B)(2), namely the option to designate, during your lifetime, persons or entities of your choice who will receive your escrowed monies, and you may do so without the need to prepare and execute a will.

In both your Step 1 and your Step 2, you demanded immediate access to your escrowed monies so that you could immediately distribute the monies to persons or entities of your choice. However, I conclude that you will not receive any personal benefit by immediately distributing such monies to persons or entities of your choice. Therefore, I concur with the warden's determination that no provision of Section 24-3-40 requires inmates to have complete and immediate access to any of these monies while they are still lawfully held in SCDC's custody.

You further asserted in your Step 2 that SCDC does not apply the proper rate of interest to the monies subject to Section 24-3-40(A)(5), and I again deny your claim. SCDC complies with Section 24-3-40(A)(5) by depositing interest you have earned on your monies held in escrow into your account every month. SCDC receives interest payments from the State Treasurer's Office and then SCDC deposits that interest into your escrow account. The amount of interest you receive on such monies is simply not determined by SCDC. Finally, I agree with the warden's conclusion that nothing in any provision of Section 24-3-40 or any other applicable prison industries statute requires that you receive a guaranteed interest rate comparable to Treasury Bills, Certificates of Deposits, or any other set interest rate.

Step 2 Grievance Response

Name	SCDC #	Grievance #	Project
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To the extent that you claimed in your Step 2 that SCDC has unconstitutionally denied you of your property interest in these monies without due process of law, I deny your claim. As recognized by our Supreme Court in Wicker and Torrence, SCDC's inmate grievance system complies with minimum due process requirements. As also recognized in Wicker, you and other inmates in your position may exercise your pre-existing due process rights and litigate your PI pay disputes with SCDC through SCDC's Inmate Grievance System Policy. Therefore, SCDC has not denied you due process of law, and the filing deadline from the various editions of the agency's policy applies to the PI pay claims you originally articulated in your Step 1, including your claim to the monies subject to Sections 24-3-40(A)(5) and 24-3-40(B)(2).

For all of the above stated reasons, I concur with the warden's response to your Step 1 grievance designated as BRCI-0594-07 concerning the issues you raised about your escrowed wages, and I deny your Step 2 appeal.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Joshua Cramer; #251406

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. -ALJ-04-
GRIEVANCE NO.: BACT-0594-07

Notice is hereby given that Joshua Cramer does hereby appeal the final decision of the South Carolina Department of Corrections dated 2-25-14 and received on 2-26-14, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

S.C. Code Ann. § 24-3-430(A)(6) requires SCDC to deduct 10% of an inmate's wages and hold them "in an interest bearing escrow account for the benefit of the prisoner." § 24-3-430(B)(2) provides the inmate with "the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice." SCDC is violating the provision of § 24-3-430(B)(2) by not allowing me to distribute my escrowed wages to a person of my choice and is holding my escrowed wages in an account bearing little to no interest.

Joshua Cramer

Appellant's Name

Lieber C/I 5A-17/P.O. Box 205

Mailing Address

Ridgeville, SC 29472

City, State, Zip Code

Joshua Cramer

Signed

3-3-14

Dated

CERTIFICATE OF SERVICE

I hereby certify that I, Joshua Cramer (your name), on the 5 day of March, 2014, in Ridgeville (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served:

Clerk's Office/SC Admin. Law Court

Address: 1205 Pendleton St., Suite 224

City, State, Zip Code: Columbia, SC 29201

Print your name Sign your name
(See reverse side for instructions)

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LAW OFFICES

JUL 27 2012

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURTMALONE, THOMPSON
SUMMERS & OTT, LLC

Francis Ackerman, #266928, et al.,	) Docket Nos. 07-ALJ-04-00444 through 00449-AP
	) Docket Nos. 07-ALJ-04-00500 through 00548-AP
	) 0549-U, 0550 through 07-00559-AP
Appellants,	) Docket Nos. 07-ALJ-04-00623 through 00632-AP
	) Docket Nos. 07-ALJ-04-00671 through 00677-AP
	) Docket Nos. 07-ALJ-04-00691, 0752, 0798, 0826,
	) 0856 through 0868-AP
vs.	) Docket Nos. 07-ALJ-04-00869 through 00872-AP
	) Docket Nos. 07-ALJ-04-00444, 0876, 0885
	) Docket Nos. 08-ALJ-04-00141 through 00149-AP
	) Docket Nos. 08-ALJ-04-00169 through 0171-AP
	) Docket No. 08-ALJ-04-00192-AP
South Carolina Department of Corrections,	) Docket Nos. 08-ALJ-04-00966 through 01022-U
	) Docket Nos. 08-ALJ-04-01023 through 01045-U
	) Docket No. 09-ALJ-04-00304-U
Respondent.	)
	)
	)

SECOND AMENDED ORDER¹STATEMENT OF THE CASE

In this consolidated action before the Administrative Law Court (ALC), the Appellants appeal the denial by the South Carolina Department of Corrections (Department or DOC) of 197 administrative grievances filed by them under DOC Policy Number GA-01.12 (GA-01.12). The Appellants include current and former inmates of the Department who either currently participate or at one time participated in the prison industries project operated by the Department at Lieber Correctional Institution (Lieber) in which Williams Technologies, Inc. (WTI), and now Caterpillar, Inc., act as the private industry sponsors. The Appellants argue that they are entitled to back pay and a higher hourly rate of pay for the labor they have provided or currently provide to the prison industries project operated at Lieber. Specifically, the Appellants contend that they are entitled to the "prevailing wage" under S.C. Code Ann. § 24-3-430(D) (2007).

Pursuant to an April 14, 2010 order, this court, in the interest of judicial economy, instructed the parties that it would consider the issues relevant to the Appellants' appeals in three

¹ This Order is issued pursuant to an Order of the South Carolina Court of Appeals allowing the Administrative Law Court to issue this Second Amended Order to correct a clerical error. This Order is amended to correct the caption to include the docket numbers of four (4) inmates inadvertently omitted.

FILED

July 26, 2012

SC ADMIN. LAW COURT

RoAp. 50

levels. In the first level of review, which was set forth in an order dated March 10, 2011, the court addressed the following two issues: (1) did Adkins v. S.C. Department of Corrections, 360 S.C. 413, 602 S.E.2d 51 (2004) and Wicker v. S.C. Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) create new substantive rights and/or new remedies? and (2) do Adkins and Wicker apply prospective or retrospectively? As discussed in the March 10, 2011 order, the court found that Adkins and Wicker created neither new substantive rights nor new remedies and that both decisions applied retrospectively.

The court now turns to the second level of review, which involves the timeliness of the filing of the Appellants' grievances under GA-01.12. The Appellants make the following arguments: (1) the Appellants' grievances are not time-barred under the fifteen-day time limit for filing grievances set forth in Paragraph 13.1 of GA-01.12 because they concern policies/procedures and thus fall under Paragraph 13.9; (2) the Appellants had reasonable cause under Paragraph 13.9 of GA-01.12 not to file within Paragraph 13.1's fifteen-day time limit; (3) the Department's application of Paragraph 13.1 violated the Appellants' due process rights because it cut off the Appellants' claims before they accrued; (4) the Department waived Paragraph 13.1 because it did not raise Paragraph 13.1 until the Step 2 appeal and it considered the Appellants' grievances on the merits before invoking Paragraph 13.1; (5) the Department was equitably estopped from raising Paragraph 13.1; (6) the Appellants were "effectively barred" from exercising their grievance and appeal rights before Adkins and Wicker and therefore Paragraph 13.1's fifteen-day filing deadline was tolled prior to the issuance of those decisions; (7) Paragraph 13.1's fifteen-day filing deadline was tolled by the filing of the Appellants' class action suit in circuit court; and (8) the Appellants complied with Paragraph 13.1 by filing their grievances within fifteen days of a term of employment.

BACKGROUND

In 2002, the Appellants filed a class action lawsuit in circuit court against the Department and WTI in which they sought back pay and higher current pay under the provisions of Section 24-3-430(D). In that lawsuit, which was captioned Williams v. S.C. Department of Corrections, the Appellants alleged a cause of action under South Carolina's Payment of Wages Act, claiming they were due lost wages because they were not paid the "prevailing wage" as specified in Section 24-3-430(D).

On August 23, 2004, while the Appellants' class action lawsuit was pending, the Supreme Court issued its decisions in Wicker and Adkins. In those two cases, inmates who then participated or at one time participated in a prison industries projects operated by the Department alleged that they were entitled to the "prevailing wage" pursuant to Section 24-3-430(D). As discussed in this court's March 10, 2011 order, the Supreme Court held that Section 24-3-430(D) did not give rise to a private cause of action,² but that inmates could pursue their claims under the Department's grievance policies and, if necessary, appeal the Department's decision to the ALC.³

After Adkins and Wicker were issued on August 23, 2004, the Appellants' counsel filed grievances with Department officials at Lieber on behalf of the Appellants. Although Department officials had begun processing those grievances, on November 3, 2004, the circuit court judge presiding over the class action lawsuit, which was still active, stayed the Department's efforts to process and adjudicate all administrative grievances—including the Appellants'—which it had received from or on behalf of inmates who articulated pay claims attributed to their participation in the Department's project at Lieber. After it imposed this stay on November 3, 2004, however, the circuit court granted motions for dismissal filed by both the Department and WTI, and, by an order filed on July 1, 2005, the circuit court dismissed the Appellants' class action lawsuit and decertified the class it had originally recognized. In its July 1, 2005 order, the circuit court also lifted the stay it had imposed on November 3, 2004. However, because the Appellants subsequently appealed the circuit court's order, the stay imposed by the circuit court on November 3, 2004 was reimposed.

On February 26, 2007, the South Carolina Supreme Court affirmed the circuit court's dismissal of the class action lawsuit in its opinion, Williams v. S.C. Department of Corrections, 372 S.C. 255, 641 S.E.2d 885 (2007), and, as a result, the stay imposed by the circuit court on November 3, 2004 ceased being effective on or about May 22, 2007. Thereafter, the Department resumed processing and adjudicating the Appellants' grievances. Ultimately, the Department issued final decisions denying each Appellant's respective grievance, largely finding that the grievances were not filed within the fifteen-day time period required under Paragraph 13.1 of

² Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55.

³ Wicker, 360 S.C. at 423-25, 602 S.E.2d at 57-58.

GA-01.12. The Appellants timely appealed those decisions to this court. Subsequently, during a conference call held on February 25, 2010, the parties agreed to consolidate the appeals for the purposes of briefing and filing the record.

ISSUES ON APPEAL

1. Are the Appellants' grievances not time-barred under the fifteen-day time limit for filing grievances set forth in Paragraph 13.1 of GA-01.12 because they concern "policies/procedures" and thus fall under Paragraph 13.9 of GA-01.12?
2. Did the Appellants have reasonable cause not to file within Paragraph 13.1's fifteen-day time limit?
3. Did the Department's application of Paragraph 13.1 violate the Appellants' due process rights because it cut off the Appellants' claims before they accrued?
4. Did the Department waive its right to raise Paragraph 13.1's fifteen-day time limit?
5. Was the Department equitably estopped from raising Paragraph 13.1?
6. Was the fifteen-day time limit set forth in Paragraph 13.1 tolled until after the issuance of Adkins and Wicker because, prior to that time, the Appellants were "effectively barred" from exercising their grievance and appeal rights?
7. Was the fifteen-day time limit set forth in Paragraph 13.1 tolled by the filing of the Appellants' class action suit in circuit court?
8. Did the Appellants comply with Paragraph 13.1 by filing their grievances within fifteen days of a term of employment?

STANDARD OF REVIEW

As set forth above, this case is before the ALC on appeal from consolidated final decisions of the Department pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2010) of the Administrative Procedures Act (APA). As such, the Administrative Law Judge (ALJ) sits in an appellate capacity under the APA rather than as an independent finder of fact. In South Carolina, the provisions of the APA—specifically Section 1-23-380(A)(5)—govern the circumstances in which an appellate body may reverse or modify an agency decision. That section states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2010).

DISCUSSION

- I. Did the Appellants' claims involve a DOC "policy/procedure" such that there was no time limit to file under Paragraph 13.9 of GA-01.12?

Paragraph 13.1 of GA-01.12 generally requires that Step 1 grievances be filed "within 15 days of the alleged incident." DOC Policy Number GA-01.12, ¶ 13.1. However, Paragraph 13.9 of GA-01.12 provides that "[e]xceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures." DOC Policy Number GA-01.12, ¶ 13.9. In the present case, the Appellants contend that their grievances concerned DOC "policies/procedures" and that no time limit therefore applied to the filing of their grievances. I disagree.

Before delving into the specifics of the Appellants' argument, it is necessary to briefly discuss the nature of, and the purpose behind, Paragraph 13.1's fifteen-day filing deadline. By issuing GA-01.12, the Department has unquestionably established a prescribed procedure for handling inmate grievance matters that has been approved by the South Carolina Supreme Court. See *Al-Shabazz v. State*, 338 S.C. 354, 373, 527 S.E.2d 742, 752 (2000) ("We hold that Department's disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in *Wolff v. McDonnell*, *supra*. We note that Department also prepared its grievance procedures in compliance with the Civil Rights of Institutionalized Persons Act."). The Department's prescribed procedure further sets forth a specific time frame to exercise the rights created under those provisions. Therefore, as discussed below, it appears that the Department's regulations are a "statute of creation."

Under South Carolina law, a statute that creates a new liability and affixes the time within which an action may be commenced is a "statute of creation," and commencement within the time affixed is an indispensable condition of the action. Knight Publ'g Co. v. Univ. of S.C., 295 S.C. 31, 33, 367 S.E.2d 20, 22 (1988), ~~overruled on other grounds by~~ McLendon v. S.C. Dep't of Highways and Public Transp., 313 S.C. 525, 443 S.E.2d 539 (1994). Although the failure to timely commence an action pursuant to a statute of creation is not a subject matter jurisdiction defect, such an action "cannot be maintained unless brought within the time allowed by that statute." Simpson v. Sanders, 314 S.C. 413, 415 n.1, 445 S.E.2d 93, 94 n.1 (1994). When a statute both creates a cause of action and includes a time limit for its commencement, compliance with the time limit is a condition precedent to the maintenance of the action. 54 C.J.S. Limitations of Actions § 31 (updated Dec. 2011). "Such a statutory time limit conditions the existence of the right of action, thereby creating a substantive, rather than procedural, limitation on the right. Bringing suit within the prescribed time is a condition of liability itself, not of the remedy alone." *Id.*

The rationale behind a statute of creation is similar to that of a statute of limitations. Significantly, South Carolina courts have held that "[s]tatutes of limitations are not simply technicalities," but rather are "fundamental to a well-ordered judicial system." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Cl. App. 1996). "The purpose of statutes of limitation is to ensure litigation is 'brought within a reasonable time in order that evidence be reasonably available and there be some end to litigation.'" Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (quoting Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Cl. App. 2008)). "Statutes of limitation embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690 (quoting Moates, 322 S.C. at 176, 470 S.E.2d at 404). Moreover, statutes of limitations relieve courts of the burden of trying stale claims of those who have "slept on their rights." Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690.

In the present case, the court finds that the Appellants' interpretation of the term "policies/procedures" in Paragraph 13.9 is overly expansive. The Appellants appear to argue that the term, which is not defined in GA-01.12, refers to any "act or method of proceeding in an

action." However, if the term were construed that broadly, Paragraph 13.9's exception would effectively swallow Paragraph 13.1's general rule. Because such a construction would fail to give proper effect to Paragraph 13.1's fifteen-day filing deadline, it must be rejected. *Cf. State ex rel. McLeod v. Nessler*, 273 S.C. 371, 373, 256 S.E.2d 419, 420 (1979) ("In determining the meaning of a statute, it is the duty of this Court to give force and effect to all parts of the statute, if possible."); *Hinton v. S.C. Dep't of Prob., Parole & Pardon Svcs.*, 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004) ("Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect . . .") (emphasis added).

Moreover, the Appellants' broad interpretation of the term "policies/procedures" does not comport with public policy. The Department has a legitimate interest in investigating grievances while they are still new, and thus public policy calls for the application of some limitations period to the Appellants' prevailing wage claims. See *Johnson v. Johnson*, 385 F.3d 503, 519 (5th Cir. 2004) (noting that the prison system has a legitimate interest in investigating complaints while they are still fresh); see also *Woodford v. Ngo*, 548 U.S. 81, 95 (2006) ("When a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved."). Here, the fifteen-day filing deadline from Paragraph 13.1 is the only limitations period applicable to these claims.⁴ Therefore, ruling in favor of the Appellants would mean that inmates would not be required to file prevailing wage grievances within any set time period. Due in part to public policy concerns over such a result, this court has consistently held that prevailing wage claims do not involve the Department's "policies or procedures." See, e.g., *Lawson v. S.C. Dep't of Corr.*, 06-AIJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 12, 2007); *Wright v. S.C. Dep't of Corr.*, 06-AIJ-04-00114-AP, 2006 WL 1430140 (S.C. Admin. Law Ct. Apr. 28, 2006).

The importance of filing deadlines is underscored by the facts of this case. The record demonstrates the Department did not begin receiving Step 1s from the Appellants regarding their prevailing wage claims until September 22, 2004. The record also reflects that a significant

⁴ The statutory provisions upon which Appellants base their pay claims do not create a private right of action. See *Adkins*, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Therefore, statutes of limitations derived from state law do not apply to Appellants' claims. See *Telford v. S.C. Dep't of Corr.*, 06-AIJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 14, 2007).

number of the Appellants began participating in the prison industries project at Lieber in 1999. Thus, approximately five years passed between when these Appellants began participating in the project and when they filed their Step 1s challenging their pay. Clearly, the passage of five years could significantly affect the Department's ability to defend the Appellants' claims.³

In contrast to the Appellants, the Department—the agency that drafted Paragraph 13.9—presents a very persuasive construction of the term “policies/procedures.” In its brief, the Department argues:

[T]he terms “policies” and “procedures” constitute approved guidelines for handling the agency's day-to-day operations as well as statements expressing the basic expectations of conduct for agency staff and inmates. More formally stated, the terms “policies” and “procedures” constitute agency directives deemed by the responsible agency officials as “necessary to preserve internal order and discipline, and to maintain institutional security in the prison.”

(footnote and citations omitted). This interpretation is consistent with the way in which “policies/procedures” is used throughout GA-01.12. See Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Cl. App. 2003) (holding that undefined terms “must be construed in context”). Significantly, nearly all of the references to “policy/procedure” in GA-01.12 are to the official policies and procedures set forth within that document or another similar operating document issued by the Department. See, e.g., DOC Policy Number GA-01.12, ¶ 1.3 (“Every inmate assigned to a South Carolina Department of Corrections (SCDC) institution is eligible to utilize the grievance system as set forth in this policy/procedure.”) (emphasis added); DOC Policy Number GA-01.12, Note to ¶ 10.5 (“The Warden's decision to grant restitution/monetary reimbursement will not require additional approval to have state provided like/issued items issued or deposits made to the grievant's E.H. Cooper Account so long as the amount of reimbursement is within the monetary limits of SCDC Policy/Procedure OP-22.03”) (emphasis added); DOC Policy Number GA-01.12, ¶ 13.1 (“No inmate (except the grievant, if s/he requests it) and no employee (other than those specified in this policy/procedure) will be given a copy of a grievance.”) (emphasis added); DOC Policy

³ The court notes in this regard that the statutory deadline for filing wage recovery claims under South Carolina's Payment of Wages Act is three years. See S.C. Code Ann. § 41-10-80(C) (Supp. 2010) (“Any civil action for the recovery of wages must be commenced within three years after the wages become due.”).

Number GA-01.12, ¶ 17 ("The Inmate Grievance Branch will serve as monitor to ensure compliance with this policy/procedure.") (emphasis added).

In addition to being supported by the text of GA-01.12, the Department's interpretation of the term "policies/procedures" in Paragraph 13.9 avoids the public policy problems inherent in the Appellants' construction. Under the Department's interpretation, the filing of a "policies/procedures" grievance under Paragraph 13.9 would not force the Department to defend actions it took many years ago. Rather, the Department would merely be required to determine whether the "policies/procedures" it currently has in effect should be changed.

I find that the Department's interpretation of "policies/procedures" is reasonable and should be accepted by this court. In that light, it is clear that the Appellants' prevailing wage claims do not concern "policies/procedures" as that term is used in Paragraph 13.9.

The Appellants' attempt to argue otherwise by pointing to this court's use of the term "policies" in its March 10, 2011 order is unpersuasive. Specifically, Appellants refer to the following portion of the court's order:

Paragraph 7 of DOC Policy Number GA-01.12, which has existed in some form since May 1, 1996, sets forth the issues that are considered grievable by DOC. Among other grievable issues, it includes the following: "Department policies/procedures, directives, or conditions which directly affect an inmate." DOC Policy Number GA-01.12, ¶ 7.1 (emphasis added). Unquestionably, inmates are "directly affect[ed]" by DOC policies that cause them to be paid less than that required by law. Thus, this provision, which is very broad in scope, encompasses prevailing wage claims.

(emphasis added).

Although the court employed the term "policies" in discussing the Appellants' claims, its use of that term was made in the context of determining whether the Appellants' claims were grievable under Paragraph 7.1 of GA-01.12. The court was simply describing the Appellants' claims; it was not ruling on whether the Department did in fact have policies to underpay inmates. Moreover, in utilizing the term "policies," the court was referring to its broad meaning as "course[s] of action,"⁶ not to the meaning ascribed to the term in Paragraph 13.9. The sentence highlighted above was meant to convey the court's conclusion that the Department's

⁶ See *Dictionary.com*, <http://dictionary.reference.com> (last visited Jan. 23, 2012) (defining "policy").

alleged action in the case (i.e., deciding to pay the Appellants less than the prevailing wage) would have, if true, created a "condition" that "directly affected" the Appellants.⁷

While the Appellants contend that the term "policies" should be given the same meaning in Paragraph 7.1 as it is in Paragraph 13.9, Paragraph 7.1 makes grievable not only "policies/procedures" that directly affect inmates, but also "directives" and "conditions." See DOC Policy Number GA-01.12, ¶ 7.1 ("The following issues will be considered grievable: Department policies/procedures, directives, or conditions which directly affect an inmate.") (emphasis added). Thus, ruling that the Appellants' grievances do not concern "policies/procedures" under Paragraph 13.9 is not inconsistent with ruling that the Appellants' claims were grievable under Paragraph 7.1.

For the foregoing reasons, I conclude that prevailing wage claims do not constitute grievances concerning "policies/procedures" under Paragraph 13.9 of GA-01.12. Rather, I find that prevailing wage claims are "incident" grievances and thus must be filed within the fifteen-day timeframe set forth in Paragraph 13.1.

II. Did the Appellants have reasonable cause under Paragraph 13.9 not to file within Paragraph 13.1's fifteen-day time frame?

The Appellants next argue that, if this court determines that their Step 1 grievances constituted "incident" grievances and, therefore, were subject to Paragraph 13.1's fifteen-day filing deadline, they had "reasonable cause" under Paragraph 13.9 not to file their Step 1s before the South Carolina Supreme Court issued its opinions in Adkins and Wicker. Specifically, the Appellants contend that the Department's "practice of denying grievability" for prevailing wage claims, as well as the ALC's en banc order in McNeil v. South Carolina Department of Corrections, 00-AJ-04-00336-AP (S.C. Admin. Law Ct. Sept. 5, 2001), "effectively barred"

⁷ In this court's view, the Appellants' wage rates were "condition[s]" affecting their participation in the prison industries project operated at Lieber. Indeed, the Prison Industries Act specifically refers to inmates' "rates of pay" as "conditions of employment." See S.C. Code Ann. § 24-3-315 (2007) (The director must determine prior to using inmate labor in a prison industry project that it will not displace employed workers, that the locality does not have a surplus of available labor for the skills, crafts, or trades that would utilize inmate labor, and that the rates of pay and other conditions of employment are not less than those paid and provided for work of similar nature in the locality in which the work is performed.") (emphasis added).

them from exercising their grievance and appeal rights prior to the issuance of Addins and Wicker.⁸ I disagree.

Paragraph 13.9 of GA-01.12 provides in pertinent part:

Exceptions [to the 15 day time limit requirement] may . . . be made for incident grievances by the Chief/designee, Inmate Grievance Branch, provided that documented reasonable cause can be demonstrated as to why the original time frame was not met, e.g., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc. The waiver must be requested by the grievant.

DOC Policy Number GA-01.12, ¶ 13.9 (emphasis added).

Paragraph 13.9 clearly states that "documented reasonable cause" must be shown as to why the fifteen-day time limit "was not met," and that any such waiver of the time limit must be "requested by the grievant." Thus, exceptions to the fifteen-day filing deadline are not automatic or guaranteed. Instead, the grievant must affirmatively request a waiver to the fifteen-day time limit and provide documented reasonable cause in support for such a request.

As reflected by the record, no Appellant requested a waiver to the fifteen-day time limit in his Step 1 grievance by which he asserted "reasonable cause" as permitted by Paragraph 13.9. Also, no Appellant provided "documented reasonable cause" in the manner required by Paragraph 13.9. Therefore, no Appellant satisfied the procedural requirements set forth in Paragraph 13.9.

Instead, the vast majority of the Appellants first explicitly invoked such a "reasonable cause" exception in their Notices of Appeal to this court. By only invoking this exception within their Notices of Appeal, the Appellants failed to afford the Department an opportunity to consider their request. Accordingly, this issue has not been properly preserved by the Appellants. See Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 519, 360 S.E.2d 410, 417 (2002) ("[I]ssues not raised to and ruled on by the agency are not preserved for judicial consideration."); Kiawah Resort Assocs. v. S.C. Tax Comm'n, 318 S.C. 502, 503, 458 S.E.2d 542, 544 (1995) (holding that a court reviewing a decision of an administrative agency on appeal cannot consider issues that were not raised to and ruled upon by the agency).

⁸ In McNeil, the ALC held that its appellate jurisdiction in inmate appeals was limited to either: (1) cases in which an inmate contended that prison officials had erroneously calculated his sentence, sentence related credits, or custody status; or (2) cases in which the Department had taken an inmate's created liberty interest as punishment in a major disciplinary hearing.

Furthermore, even if this issue were preserved, I find that it lacks merit. In its March 10, 2011 order, this court expressly held that "Adkins and Wicker did not create new substantive rights, new grievance remedies, or new appeal remedies." In doing so, the court explained that under the broad provision of Paragraph 7.1 of GA-01.12, the Appellants' prevailing wage claims were grievable and had, in fact, been held to be so by an Administrative Law Judge in 2001.

This court also specifically rejected the Appellants' argument that the ALC's decision in McNeil made prevailing wage claims unappealable prior to the issuance of Wicker. The court explained: "Because the ALC is a lower court, its decisions do not constitute binding precedent. Given that the ALC cannot create judicial precedent, it certainly cannot answer legal questions with 'finality.'" (citations omitted).

Indeed, as the Department correctly notes, the McNeil decision was not the final word on the appealability of inmate grievances. In Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003), a decision issued a year prior to Adkins and Wicker, our Supreme Court specifically instructed the ALC to refrain from relying upon McNeil when determining its jurisdiction to hear inmate appeals. See id. at 445 n.5, 586 S.E.2d at 128 n.5 ("[B]ecause we know McNeil has been relied upon by the ALJ in other cases to deny jurisdiction, the ALJD and the circuit court are instructed to look to this opinion, not McNeil, for guidance in future cases."). Moreover, in that case, the Supreme Court reiterated its holding in Al-Shabazz that procedural due process was guaranteed whenever an inmate was deprived of an interest encompassed by "the Fourteenth Amendment's protection of liberty and property."⁹ Id. at 441-42, 586 S.E.2d at 126 (emphasis added). Notwithstanding the issuance of Sullivan in August 2003, the earliest any of the Appellants filed a grievance regarding their prevailing wage claims was September 22, 2004. Thus, in light of Sullivan, it seems disingenuous for the Appellants to suggest that they would have filed their grievances earlier had it not been for McNeil.

For these reasons, I find that the Appellants' contention that they were "effectively barred" from filing their Step 1s before the issuance of Adkins and Wicker is without merit.

⁹ In Al-Shabazz, our Supreme Court, quoting U.S. Supreme Court precedent from 1972, held that "[t]he requirements of procedural due process apply . . . to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." Al-Shabazz, 338 S.C. at 369, 527 S.E.2d at 750 (quoting Ad. of Regents of State Colleges v. Roth, 408 U.S. 564, 569 (1972)).

III. Did the Department violate the Appellants' due process rights by applying the fifteen-day filing deadline in Paragraph 13.1 to their claims?

Next, the Appellants argue that their right to file Step 1 grievances regarding their prevailing wage claims did not accrue until the issuance of Adkins and Wicker and that they could not enforce such rights until the issuance of those two decisions. Therefore, they argue that the Department denied them due process by applying Paragraph 13.1's fifteen-day filing deadline to those grievances involving prevailing wage claims that arose prior to the issuance of Adkins and Wicker. I disagree.

As discussed above, this court's March 10, 2011 order previously determined that "Adkins and Wicker did not create new substantive rights, new grievance remedies, or new appeal remedies." Thus, the court has already determined that the Appellants possessed grievance rights and appellate remedies concerning their prevailing wage claims prior to the Supreme Court's issuance of Adkins and Wicker.

Furthermore, it should be noted that, in Al-Shabazz, 338 S.C. 354, 374-75, 527 S.E.2d 742, 753 (2000), our Supreme Court held that "[DOC]'s disciplinary and grievance procedures comply with the minimal due process required in such proceedings." Al-Shabazz, 338 S.C. at 374-75, 527 S.E.2d at 753 (emphasis added). The Court also determined that "an inmate may seek review of [DOC's] final decision in an administrative matter under the APA," and that "[p]lacing review of these cases within the ambit of the APA will ensure that inmate receives due process." Id. at 369, 527 S.E.2d at 750 (emphasis added). Thus, the Court recognized that inmates received due process by filing a grievance with the Department and then appealing the Department's final decision regarding the grievance to the ALC.

The Court also recognized as much in Wicker when it rejected the notion that the ALC lacked jurisdiction to review the Department's denial of an inmate's prevailing wage grievance. See Wicker, 360 S.C. at 424-25, 602 S.E.2d at 57-58. The Court concluded that because the inmate was entitled to due process with regard to his prevailing wage claim under Al-Shabazz, the Department's denial of his grievance was reviewable by the ALC. Id. Thus, the Court implicitly acknowledged that inmates receive due process by processing their prevailing wage claims through the Department's grievance system and the review procedures of the APA.

In conclusion, this court's March 10, 2011 order and the relevant precedent from our Supreme Court clearly contradict the Appellants' claim that the Department denied them due process by invoking the fifteen-day filing deadline set forth in Paragraph 13.1. The Appellants' failure to timely avail themselves to the process available to them is exclusively attributable to their own failure to act in conformity with the provisions of this paragraph. Consequently, the Department's application of the fifteen-day filing deadline to the Appellants' prevailing wage claims that arose before the issuance of Adkins and Wicker did not violate their due process rights.

IV. Did the Department waive its right to raise Paragraph 13.1's fifteen-day time limit?

Next, the Appellants argue that the Department waived its right to apply the fifteen-day filing deadline to their Step 1 grievances for the following reasons: (1) the language in Paragraph 13.9 and the instructions on the Department's pre-printed Step 1 grievance form, which both state that policy grievances may be filed at any time, are inconsistent with an intent to raise the fifteen-day filing deadline; (2) for 153 inmates, the Department did not raise timeliness as an issue in its responses to the Appellants' Step 1 grievances; and (3) for 32 Step 1 responses, and 136 Step 2 final decisions, the Department raised the fifteen-day filing deadline and considered the merits of the Appellants' prevailing wage claims. As discussed below, I find the Appellants' arguments unpersuasive.

A

As stated above, the Appellants contend that the language in Paragraph 13.9 and the instructions appearing on the preprinted Step 1 grievance form are inconsistent with the Department's intent to assert the fifteen-day filing deadline as a basis by which to deny the prevailing wage claims articulated by the Appellants within their Step 1s. I disagree.

"Waiver is a voluntary and intentional abandonment or relinquishment of a known right." Eason v. Eason, 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009) (quoting Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994)). It may be either express or implied. Lyles v. BMI, Inc., 292 S.C. 153, 158, 355 S.E.2d 282, 285 (Cl. App. 1987). Acts that are inconsistent with the continued assertion of a right may give rise to a waiver. Provident Life and Acc. Ins.

Co. v. Driver, 317 S.C. 471, 478, 451 S.E.2d 924, 928 (Ct. App. 1994). Waiver is an affirmative defense, and the burden of proof is upon the party who asserts it. *Id.* at 478, 451 S.E.2d at 929.

Here, the Department applied the fifteen-day filing deadline set forth in Paragraph 13.1 to the Appellants' prevailing wage claims because those claims represented "incidents" by which the Appellants challenged the conditions of their participation in the prison industries project at Lieber. Importantly, the pre-printed form and Paragraph 13.1 expressly stated that inmates were required to file their Step 1s within 15 days of any alleged "incident." Thus, the Department's application of the fifteen-day filing deadline in Paragraph 13.1 was entirely consistent with the Department's grievance policy and the pre-printed Step 1 forms.

Although the Step 1 form and Paragraph 13.9 provided an exception to the fifteen-day filing deadline for grievances concerning "policies/procedures," nothing in the Department's grievance policy or in the language of the pre-printed Step 1 form suggested that prevailing wage claims constituted policies/procedures grievances under Paragraph 13.9. By merely providing an exception to the fifteen-day filing deadline, the Department did not waive its right to invoke the fifteen-day deadline for cases falling outside that exception. Accordingly, I find that the Department did not waive the fifteen-day deadline in Paragraph 13.1 for filing incident grievances by issuing the language in Paragraph 13.9 or the instructions on the pre-printed Step 1 grievance form.

B

The Appellants also argue that the Department waived the fifteen-day filing deadline in Paragraph 13.1 because it did not raise timeliness as an issue in 153 of its responses to the Appellants' Step 1 grievances. I disagree.

"Administrative agencies have an inherent authority to reconsider a prior determination which is not final . . ." 2 Am. Jur. 2d Administrative Law § 468 (updated Nov. 2011). As discussed below, the responses provided to the Appellants' Step 1s did not constitute final decisions of the Department. Accordingly, during the Step 2 review process, the Department was authorized to reverse the Step 1 decision or, alternatively, to uphold the Step 1 decision on different grounds.

Paragraph 13 of the Department's grievance policy sets forth the steps in the grievance process. Per Paragraph 13.1, an inmate must complete a Step 1 grievance form in which he must

articulate the basis of his complaint. The inmate must then submit that form to an employee designated by the Warden within fifteen days of the alleged "incident." DOC Policy Number GA-01.12, § 13.1. Paragraph 13.2 further articulates that the Step 1 must be forwarded to the Institutional Inmate Grievance Coordinator, who, if unable to resolve the matter informally, must conduct a complete investigation and make recommendations to the Warden. DOC Policy Number GA-01.12, § 13.2. The Warden must respond to the inmate "in writing . . . indicating in detail the rationale for the decision rendered and any recommended remedies." DOC Policy Number GA-01.12, § 13.3.

If the inmate is unsatisfied with the response at the institutional level, he may appeal under Paragraphs 13.4 and 13.5 by filing a "Step 2" appeal and thereby seek a final agency decision. Paragraph 13.4 provides that "[i]f the grievant is not satisfied with the decision of the Warden, the grievant may next appeal to the Division Director of Operations for final resolution of the grievance." DOC Policy Number GA-01.12, § 13.4 (emphasis added). Furthermore, Paragraph 13.5 states: "The responsible official will render the final decision on the grievance within 60 days from the date that the Institutional Inmate Grievance Coordinator received the appeal of the Warden's decision. . . . The response of the responsible official will be the Department's final response in the matter. DOC Policy Number GA-01.12, § 13.5 (emphases added).

Thus, under Paragraphs 13.4 and 13.5, the final decisions concerning the issues raised in the Appellants' grievances were rendered by the responsible official at the agency level, and this official's response to the Step 2 appeals constituted the final agency decisions. Therefore, because the Department raised the issue of the fifteen-day filing deadline in its Step 2 decisions, the failure by the Warden to raise the issue in some of his Step 1 decisions did not constitute waiver of the issue. Rather, as noted above, the Department possessed the authority to modify the Warden's Step 1 decisions because they were not final.

For instance, in Friends of Potter Marsh v. Peters, 371 F. Supp. 2d 1115 (D. Alaska 2005), the plaintiffs objected to the Secretary of Transportation's waiver, in a federal transportation legislation guidance, of a statutory requirement that Surface Transportation Program projects not be located on local roads or rural minor collectors. The defendants moved

to dismiss the matter, contending that there had been no final agency action. The court granted the defendant's motion to dismiss, explaining:

Even if Plaintiffs are correct that the waiver is invalid, an erroneous legal interpretation at one stage in the process is not a final agency action. There is still time for the Secretary to change or modify the waiver, issue an individualized waiver, or the agency may not need to rely on the waiver.

Id. at 1122 (emphasis added).

Like the legislation guidance at issue in *Peters*, the Step 1s in this case were not final agency decisions. In its Step 2 responses, the Department retained the right to come to a different conclusion than that reached in the Step 1 responses. Just as the Department could have reversed the Step 1 decisions, it also had the authority to affirm the Step 1 decisions on other grounds. Thus, because the Step 1 responses were not final agency decisions, the mere fact that the Department failed to invoke the fifteen-day filing deadline when it issued some of the Step 1 responses did not preclude it from raising the issue in its Step 2 responses.

The Appellants' reliance on *Ross v. County of Bernalillo*, 365 F.3d 1181 (10th Cir. 2004), abrogated in part by *Jones v. Bock*, 549 U.S. 199 (2007), is misplaced. In that case, the Tenth Circuit addressed whether an inmate had exhausted his administrative remedies regarding his claim that the prison shower was unreasonably dangerous where the inmate failed to file a complaint within the three-day timeframe set forth in the prison's procedures. The Tenth Circuit concluded that because prison officials had accepted his complaint and found in his favor, the inmate had exhausted his administrative remedies. Specifically, the court held:

We need not address in the abstract whether Ross' complaint was timely because in this case the prison did actually consider it. Nothing in the record suggests that MCDC treated Ross' complaint as untimely; indeed, Ross received a favorable response and a mat was placed in the shower as he requested. If a prison accepts a belated filing, and considers it on the merits, that step makes the filing proper for purposes of state law and avoids exhaustion, default, and timeliness hurdles in federal court.

Id. at 1186.

The present case is distinguishable from *Ross*. In *Ross*, the court based its decision on the fact that "[n]othing in the record suggests that MCDC treated *Ross*' complaint as untimely" and that "Ross received a favorable response" to his complaint. *Id.* Here, in contrast, the Department found against the Appellants in its responses to both the Appellants' Step 1s and

Step 2s. Moreover, in its responses to the Appellants' Step 2s, the Department made it clear that it considered the Appellants' grievances to be untimely.

Accordingly, because the Department raised the issue of the fifteen-day filing deadline in its Step 2 decisions, it did not waive its right to do so in the present appeal.

C

Finally, the Appellants note that there are 32 Step 1 responses and 136 Step 2 final decisions in which the Department both raised the fifteen-day filing deadline in Paragraph 13.1 and considered the merits of the Appellants' prevailing wage claims. The Appellants contend that with respect to those responses, waiver should apply because the Department's consideration of the merits was inconsistent with an intent to rely on Paragraph 13.1. I disagree.

In the responses at issue, the Department plainly stated that the Appellants' prevailing wage claims were time-barred under Paragraph 13.1. While the Department also addressed the merits of the Appellants' claims within those responses, that mere fact did not preclude the Department from applying the fifteen-day filing deadline from Paragraph 13.1. The Department's decisions must be read in their entirety. When done so, it is plain that there is no basis for concluding that the Department waived, either expressly or impliedly, its right to invoke the fifteen-day filing deadline. *Cf. Brooks v. Walls*, 279 F.3d 518, 523 (7th Cir. 2002) (holding that when a state court rules against a party on both procedural and substantive grounds, the court "has not abandoned the procedural ground but has instead added a substantive failing to the procedural one."¹⁰)

¹⁰ Appellants cite *Perez v. McCaughy*, 286 F.3d 1022 (7th Cir. 2002) for the proposition that courts are divided on the issue of whether a filing that is dismissed as both untimely and unmeritorious is properly filed. In that case, the Seventh Circuit considered whether a prisoner's failure to take a timely administrative appeal within the state system meant that he failed to exhaust state remedies for purposes of 42 U.S.C. § 1997e(a). Although the court answered the question in the affirmative, in dicta it stated that "[c]ases look both ways on the question whether a document that is rejected as both late and unmeritorious counts as properly filed." *Id.* at 1025.

Appellants now attempt to rely on that statement, but they neglect to discuss the U.S. Supreme Court's subsequent decision in *Pace v. DiGuglielmo*, 544 U.S. 408 (2005). In that case, the Court addressed whether a state post-conviction petition that the state court had rejected as untimely could nonetheless be considered "properly filed" for the purposes of the tolling provision of 28 U.S.C. § 2244(d)(2). After noting the division among the circuit courts on the issue, the Court held: "[T]ime limits, no matter their form, are 'filing' conditions. Because the state court rejected petitioner's PCRA petition as untimely, it was not 'properly filed' . . ." *Id.* at 417; *see also Carey v. Saffold*, 336 U.S. 214, 226 (2002) (holding that if a state court clearly ruled that a prisoner's application for collateral review was untimely, then "that would be the end of the matter" for federal purposes, "regardless of whether [the state court] also addressed the merits of the claim, or whether its timeliness ruling was 'entangled' with the merits."). In light of the U.S. Supreme Court's holding in *Pace*, this court is unwilling to rely upon any federal circuit court decision holding that a document dismissed as both untimely and unmeritorious is properly filed.

V. Was the Department equitably estopped from raising Paragraph 13.1?

Next, the Appellants contend that the Department is equitably estopped from raising the fifteen-day filing deadline in Paragraph 13.1. Specifically, the Appellants argue that Paragraph 13.9 and the pre-printed Step 1 form "lulled" them into believing that their prevailing wage claims were policy grievances and thus could be filed "at any time." I disagree.

"The essential elements of equitable estoppel are divided between the estopped party and the party claiming estoppel." Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 463, 470 (2007). The elements of equitable estoppel as related to the party being estopped are: (1) conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. *Id.* The party asserting estoppel must show: (1) lack of knowledge, and the means of knowledge, of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change of position in reliance on the conduct of the party being estopped. *Id.* at 84-85, 650 S.E.2d at 470. The party asserting equitable estoppel bears the burden of establishing all of the elements. Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 682 S.E.2d 1, 7 (Cl. App. 2009).

Under South Carolina law, a party may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute was induced by the party's conduct. Kleekley v. Nw. Nat. Cas. Co., 338 S.C. 131, 136, 526 S.E.2d 218, 220 (2000). The South Carolina Supreme Court has described the necessary "inducement" as follows:

Such inducement may consist of an express representation that the claim will be settled without litigation or conduct that suggests a lawsuit is not necessary. The defendant's conduct may also involve inducing the plaintiff either to believe that an amicable adjustment of the claim will be made without suit or to forbear exercising the right to sue.

Id. at 136-37, 526 S.E.2d at 220 (citations omitted).

Here, the only conduct of the Department that the Appellants point to in making their estoppel argument is the Department's issuance of Paragraph 13.9 and the Step 1 instructions. However, Paragraph 13.9 and the Step 1 instructions did not state that *all* grievances could be

filed outside of Section 13.1's fifteen-day deadline. Rather, they merely stated that grievances concerning "policies/procedures" could be filed outside of that deadline. Additionally, both Paragraph 13.1 and the Step 1 instructions clearly notified the Appellants that "incident" grievances had to be filed within fifteen days. Although the Appellants claim they thought that Paragraph 13.9 applied to their prevailing wage claims, there is no evidence that the Department, through its words or actions, induced the Appellants into believing that their grievances constituted "policies/procedures" grievances. Therefore, the Appellants have failed to show that the Department engaged in conduct which "amount[ed] to a false representation," or conduct which was "calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert." See Strickland, 375 S.C. at 84, 650 S.E.2d at 470.

The Appellants have also failed to establish that the Department engaged in the type of "inducement" described in Kleckley. See Kleckley, 338 S.C. at 136-37, 526 S.E.2d at 220. There is no evidence the Department did anything that would have induced the Appellants into believing that filing a grievance was unnecessary. Rather, the record merely shows that the Department issued a grievance policy that set forth, in a straightforward fashion, different time periods for filing different types of grievances. In the court's view, such evidence, on its own, is insufficient to establish an estoppel claim. A party should not be able to avoid the consequences of a filing deadline simply by claiming that it misinterpreted the deadline.¹¹ For these reasons, I find that the Department is not equitably estopped from raising the fifteen-day filing deadline in Paragraph 13.1.

VI. Was the fifteen-day time limit set forth in Paragraph 13.1 tolled until after the issuance of Adkins and Wicker?

Next, the Appellants argue that the fifteen-day filing deadline in Paragraph 13.1 was tolled until after the issuance of Adkins and Wicker because, prior to that time, Appellants were "effectively barred" from exercising any grievance and appeal rights. I disagree.

Where a statute sets forth a limitation period for commencement of an action, courts have invoked the doctrine of equitable tolling to suspend the statutory period "to ensure fundamental

¹¹ Significantly, there is no evidence that any of the Appellants ever asked the Department whether a prevailing wage claim constituted an "incident" grievance or a grievance concerning "policies/procedures."

practicality and fairness." Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009) (quoting Rodriguez v. Superior Court, 98 Cal. Rptr. 3d 728, 736 (Cal. Ct. App. 2009)). Equitable tolling is a judicially created doctrine, and it stems from the judiciary's inherent power to formulate rules of procedure "where justice demands it." Hooper, 386 S.C. at 115, 687 S.E.2d at 32. The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. *Id.*

Equitable tolling is reserved for extraordinary circumstances, and it is rarely applied in South Carolina. American Legion Post 15 v. Horry County, 381 S.C. 576, 582, 674 S.E.2d 181, 184 (Ct. App. 2009). The threshold necessary to trigger equitable tolling is very high, lest the exception swallow the rule. Ex parte Ward, 46 So. 3d 888, 897 (Ala. 2007). Our Court of Appeals has explained:

[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation.

Pelzer v. State, 378 S.C. 516, 522, 662 S.E.2d 618, 621 (Ct. App. 2008) (quoting Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir. 2000)).

Typically, equitable tolling applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control. Hooper, 386 S.C. at 116, 687 S.E.2d at 32; see also 34 C.J.S. Limitations of Actions § 133 (updated Dec. 2011) ("The statute of limitations generally will not be tolled when the plaintiff has slept on his or her rights, but only when he or she has been prevented from asserting them."). However, as the South Carolina Supreme Court has noted, courts have flexibility in applying equitable remedies such as tolling:

"The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." Equitable tolling may be applied where it is justified under all the circumstances. We agree, however, that equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use.

Hooper, 386 S.C. at 116-17, 687 S.E.2d at 33 (citations omitted).

Turning to the present case, the court notes at the onset it is questionable whether Paragraph 13.1's fifteen-day filing deadline is subject to tolling. As noted above, it appears that

the deadline is a statute of creation. Unlike statutes of limitations, statutes of creation cannot be tolled. See 54 C.J.S. Limitations of Actions § 5 (updated Dec. 2011) ("Statutes of limitations are subject to tolling, whereas statutes of creation are not.").

Even if the deadline can be tolled, the circumstances do not warrant the application of equitable tolling here. The Appellants contend that tolling should be applied because the McNeill decision prevented them from filing their grievances. However, as noted above, McNeill was an ALC decision and did not constitute binding precedent. See 21 C.J.S. Courts § 212 (updated Dec. 2011). Had the Appellants timely filed grievances and had the ALC denied their grievances based upon McNeill, the Appellants could have appealed to the Court of Appeals, which possessed the authority to reverse McNeill. In fact, as discussed above, the pertinent portions of McNeill were unmistakably superseded by the Sullivan decision in August 2003—a full year before any of the Appellants filed a grievance. See Sullivan, 355 S.C. at 445 n.5, 586 S.E.2d at 128 n.5. Thus, while McNeill may have discouraged the Appellants from filing their prevailing wage grievances, it did not bar them from doing so.

Furthermore, the "interests of justice" do not call for the application of equitable tolling in this case. There is no evidence that the Department prevented the Appellants from timely filing their grievances. Moreover, if equitable tolling were applied here, the Department would be forced to defend actions it took many years ago. As our Court of Appeals has noted, the passage of time can greatly hinder a party's ability to defend against a claim:

[W]ith the passage of time, evidence becomes more difficult to obtain and is less reliable. Physical evidence is lost or destroyed, witnesses become impossible to locate, and memories fade. With passing time, a defendant faces an increasingly difficult task in formulating and mounting an effective defense.

Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 163, 511 S.E.2d 699, 706 (Cl. App. 1999), aff'd, 341 S.C. 320, 534 S.E.2d 672 (2000).

While not tolling Paragraph 13.1 will mean the dismissal of nearly all of the Appellants' prevailing wage claims, in Adkins, our Supreme Court held that the prevailing wage statute was not enacted for the special benefit of inmates, but rather was passed to "prevent unfair competition." Adkins, 360 S.C. at 418, 602 S.E.2d at 54. In the present case, any unfair competition that arose as a result of the Department's alleged failure to pay the prevailing wage years ago will not be rectified by allowing the inmates to bring a prevailing wage claim now.

Competitors who may have been previously harmed by the Department's asserted failure to pay the prevailing wage likely will not receive any type of benefit as a result of the inmates bringing such a case. The damage has already been done. Rather, the main party that stands to benefit from prevailing wage claims involving conduct that occurred long ago is the inmates—a group which our Supreme Court expressly stated was not the intended beneficiary of the prevailing wage statute.

VII. Did inmates comply with Paragraph 13.1's filing deadline because it was tolled by their class action?

Next, the Appellants argue that the fifteen-day filing deadline in Paragraph 13.1 was tolled when they filed their class action in Williams on January 29, 2002. I disagree.

In making this argument, Appellants rely upon the U.S. Supreme Court's decision in Crown, Cork & Seal Co. v. Parker, 462 U.S. 345 (1983). In that case, the Court held that the running of the ninety-day statutory period within which the plaintiff was required to commence his employment discrimination suit was tolled during the period there was pending a class action in which he was a putative class member. Id. at 353-54. The Court further held that because the plaintiff did not receive his notice of right to sue until after the class action was filed, he retained a full ninety days to bring suit after the class certification was denied. Id. at 354. In reaching these conclusions, the Court reasoned that "unless the statute of limitations was tolled by the filing of the class action, class members would not be able to rely on the existence of the suit to protect their rights." Id. at 350. The Court further reasoned:

A putative class member who fears that class certification may be denied would have every incentive to file a separate action prior to the expiration of his own period of limitations. The result would be a needless multiplicity of actions—precisely the situation that Federal Rule of Civil Procedure 23¹² and the tolling rule of American Pipe were designed to avoid.

Id. at 350-51.

The facts of the present case are notably different from those of Crown. Unlike the class action in Crown, the Appellants' class action did not fail because their certification was denied. Rather, it failed because the South Carolina Supreme Court concluded in Adkins that the inmates

¹² Federal Rule of Civil Procedure 23 sets forth the requirements regarding the filing of class actions. See Fed. R. Civ. P. 23.

did not have a private cause of action with regard to their prevailing wage claims. See Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Thus, applying tolling to the present matter would constitute a significant extension of Crown. Such an extension would also require this court to conclude that the Appellants were justified in relying upon the 2002 class action to protect their rights, despite the fact that the South Carolina Supreme Court ultimately determined that no private right of action existed.

The Appellants' reliance on Crown is also mistaken because the Crown decision was based in large part upon Federal Rule of Civil Procedure 23—a rule which does not apply to the Department's internal grievance system. Moreover, the Court is unaware of any applicable rule similar to Rule 23 that allows inmates to file grievances as a class. Therefore, the Crown Court's reasoning regarding Rule 23 and its purpose are simply inapplicable to the present case.

Finally, the court notes that, unlike in Crown, for a significant number of Appellants, their right to file a grievance regarding their prevailing wage claims arose long before the filing of the class action in 2002. The record shows that numerous Appellants began participating in the prison industries project at Lieber several months, and in some cases years, before the class action was filed. As discussed in more detail below, under Paragraph 13.1, these Appellants were required to file a grievance within fifteen days after being informed of the Department's decision to pay them less than the prevailing wage. Thus, by the time the 2002 class action was filed, Paragraph 13.1's fifteen-day filing deadline had already passed with regard to their prevailing wage claims. Accordingly, even if the running of the fifteen-day filing deadline were suspended by the filing of the class action, these Appellants still failed to timely file their grievances.

For these reasons, I conclude that Crown is distinguishable from the present case and that Paragraph 13.1's fifteen-day filing deadline was therefore not tolled by the filing of Appellants' class action in Williams.

VIII. Are inmates' grievances timely filed because they filed within fifteen days of a term of employment?

Finally, the Appellants argue that all Step 1s filed during or within fifteen days of completion of a term of employment should be considered timely regardless of when the Appellants began their employment. I disagree.

As noted above, Paragraph 13.1 of GA-01.12 states that inmates must submit their grievances "within 15 days of the alleged incident." The "alleged incident" in this case was not the Appellants' "completion of a term of employment," but rather the Department's decision to pay the Appellants less than the prevailing wage as required under Section 24-3-430(D). Accordingly, the fifteen-day time frame in Paragraph 13.1 began to run when the Appellants were informed of the Department's decision to pay them less than that mandated by Paragraph 24-3-430(D).

A similar conclusion was reached in Wallace v. Burbury, 305 F. Supp. 2d 801, 806 (N.D. Ohio 2003). In that case, an inmate brought an action in federal court alleging that prison officials violated his constitutional rights by denying his religious accommodation request for Passover. The prison officials argued that the inmate failed to exhaust his administrative remedies because he did not timely file a complaint under Ohio's inmate grievance procedure. The procedure required that "[w]ithin fourteen calendar days of the date of the event giving rise to the complaint, the inmate shall file an informal complaint to the direct supervisor of the staff member, or department most directly responsible for the particular subject matter of the complaint." Id. at 806. The inmate, despite learning of the denial of his religious accommodation request a week before Passover began, did not file a complaint until eleven days after the week-long holiday ended. Nevertheless, the inmate contended that his complaint was timely filed, arguing that "because his requests for religious accommodation were denied through the week of Passover," the "event giving rise to the complaint" occurred daily through the last day of the holiday. Id. The court rejected the inmate's argument, explaining:

To allow a filing deadline to toll with a continuous violation . . . would undermine the very purpose of the deadline, which is to limit the time to file a claim. The event giving rise to the complaint was the date in March, 2002, when plaintiff first learned that NCCI would not honor his request to observe Passover. All subsequent grievances stem from that initial event. The filing of plaintiff's informal grievance was therefore untimely, and failure to file a timely grievance does not constitute an exhaustion of available administrative remedies.

Id. (emphasis added); see also Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004) ("While it is true that the conditions that Johnson suffered both before and after the grievance were of the same general character, to permit the March 2001 grievance to reach back to events that transpired up to six months earlier would effectively negate the state's fifteen-day rule and

frustrate the prison system's legitimate interest in investigating complaints while they are still fresh. That a condition continues does not excuse the failure to file a grievance earlier.") (emphasis added).

Similar to the court in Wallace, this court concludes that the Appellants should have filed a grievance within fifteen days after being informed of the Department's decision to pay them less than the prevailing wage. Like the deadline at issue in that case, the purpose of the fifteen-day deadline in Paragraph 13.1 is to limit the time to file a claim. If this court were to hold that inmates may timely file grievances within fifteen days of any term of employment, the Department could be forced to defend wage decisions it made a long time ago.

The Appellants contend that ruling against them on this issue would be "absurd" because it would require an inmate asserting a prevailing wage claim to file a grievance every time he received a paycheck. However, the court's decision here does not mandate such a result. Rather, a timely filed grievance will cover all damages recoverable by an inmate as a result of the Department's decision to pay him less than the prevailing wage. Thus, as long as an inmate timely files a grievance within fifteen days of learning of the Department's decision to pay him less than that required under Section 24-3-430(D), he will not need to file any additional grievances during the period of his employment affected by that decision.

CONCLUSION AND ORDER

Based on the foregoing, I conclude the following:

1. The Appellants' grievances did not concern "policies/procedures" as that term is used in Paragraph 13.9 of GA-01.12 and thus the fifteen-day filing deadline in Paragraph 13.1 applied to their grievances.
2. The Appellants did not have reasonable cause for not filing their grievances within Paragraph 13.1's fifteen-day time limit.
3. The Department's application of Paragraph 13.1 did not violate the Appellants' due process rights.
4. The Department did not waive its right to raise Paragraph 13.1's fifteen-day filing deadline.
5. The Department was not equitably estopped from raising Paragraph 13.1.
6. The Appellants were not "effectively barred" from exercising their grievance and appeal rights before Adkins and Wicker and therefore the fifteen-day filing deadline set forth in Paragraph 13.1 was not tolled prior to the issuance of those decisions.

7. Paragraph 13.1's fifteen-day filing deadline was not tolled by the filing of the Appellants' class action suit in circuit court.

8. The Appellants did not comply with Paragraph 13.1 by filing their grievances within fifteen days of a term of employment.

Applying these conclusions to this case, a review of the record reveals that, with the lone exception of Fred Gatewood, #289775, none of the Appellants timely filed their Step 1 grievances. Other than Gatewood, each Appellant filed his Step 1 grievance more than fifteen days after his initial pay date. Certainly, by his initial pay date, each Appellant should have known of the Department's decision to pay him less than the prevailing wage. Accordingly,

IT IS HEREBY ORDERED that, for every Appellant other than Gatewood, the Department's final decisions in this matter are **AFFIRMED**.

IT IS FURTHER ORDERED that, as to Gatewood's appeal, within twenty (20) days from the date of this Order, the Department shall supplement, to the extent necessary, the Record on Appeal to include all content required under ALC Rule 36(B).

IT IS FURTHER ORDERED that the parties prepare briefs on the merits of Gatewood's appeal, taking into account the court's rulings in this Order.

IT IS FURTHER ORDERED that the Appellants' Brief shall be filed thirty (30) days from the date of receipt of the supplemented Record on Appeal and shall be limited to no more than thirty (30) pages. The Respondent's Brief shall be filed thirty (30) days from the date of receipt of the Appellants' Brief and shall be limited to no more than thirty (30) pages. If the Appellants wish to file a Reply to Respondent's Brief, that Reply shall be due fifteen (15) days from the date of receipt of the Respondent's Brief and shall be limited to no more than fifteen (15) pages.

AND IT IS SO ORDERED.



Ralph K. Anderson, III
Chief Administrative Law Judge

July 26, 2012
Columbia, South Carolina

LAW OFFICES

JUL 27 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

LAW OFFICES

JUL 27 2012

CERTIFICATE OF SERVICE

MALONE, THOMPSON
SUMMERS & OTT, LLC

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

July 26, 2012
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Joshua Cramer, #251406,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 14-ALJ-04-0282-AP
Grievance No. BRCI 594-07

ORDER

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed March 6, 2014 by Joshua Cramer ("Appellant"), who is incarcerated with the South Carolina Department of Corrections ("SCDC"). The case was assigned on March 27, 2014. The Record on Appeal was filed on May 6, 2014. Appellant filed his Brief on May 27, 2014. SCDC filed Respondent's Brief on August 29, 2014.

BACKGROUND

Appellant participated in the prison industries project operated by SCDC at the Broad River Correctional Institution, in which R.M. Design participates as the private industry sponsor. SCDC began to pay Appellant on or about July 15, 2005 for the labor Appellant provided. SCDC remitted its final payment to Appellant on or about January 1, 2010.

Appellant filed his Step One Grievance on April 26, 2007. Appellant claimed that S.C. Code Ann. § 24-3-430(D) created a liberty interest in the difference between the prevailing wage paid by the private sector employer and the wage paid by SCDC during the course of Appellant's private sector employment. Appellant further claimed a liberty interest in the difference between the prevailing overtime wage paid by the private sector employer and the wage paid by SCDC during the course of Appellant's employment. Appellant also claimed a liberty interest in the interest earned on the amounts complained of the difference in wages. Appellant next claimed a liberty interest in escrowed wages under S.C. Code Ann. §§ 24-3-430(A)(5) and 24-3-430(B)(2), in that Appellant "is entitled to complete and immediate access to the amount of his escrowed wages to distribute them to persons or entities of his choice." Finally, Appellant claims a liberty interest on the interest earned on the amount of escrowed wages. This Grievance was denied on June 7, 2012. SCDC determined that Appellant did not submit his Step One Grievance within fifteen (15) "days of the incident upon which you anchored the claims you presented." SCDC

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also stated that "no special exception applies to prison industries pay disputes. Consequentially, the deadline applies to your grievance."

Appellant filed his Step Two Grievance on July 16, 2012. Appellant stated that he did not want to pursue the issues regarding prevailing wage and overtime pay, but did wish to pursue the issue regarding escrowed wages. SCDC again denied Appellant's Grievance, stating Appellant "did not submit [his Step One Grievance] within 15 days of the incident upon which [Appellant] anchored the claims..."

Appellant filed his appeal before the ALC on March 6, 2014. Appellant argues that "SCDC's denial of Appellant's Grievance based on the 'fifteen day deadline' conflicts with it's own policy GA-01.12 ¶ 13.9." Appellant further contends that SCDC's denial of Appellant having immediate access to escrow wages is against the statutory authority of S.C. Code Ann. §§ 24-3-40(A)(5), 24-3-40(B)(2), and 24-3-315. Finally, Appellant contends that SCDC denied Appellant a fair interest rate in wages escrowed for his benefit under S.C. Code Ann. § 24-3-40(A)(5).

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The standard used by appellate bodies to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5) (Supp. 2013). Section 1-23-380(5) reads:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2013).

DISCUSSION

Appellant, an inmate serving a life sentence, claims that he is entitled to immediate access to wages escrowed under S.C. Code Ann. §§ 24-3-40(A)(5), 24-3-40(B)(2), and 24-3-315. S.C. Code Ann. § 24-3-40(A)(5) determines that SCDC must deduct ten percent from the gross wages of the inmate and hold "in an interest bearing escrow account for the benefit of the prisoner." S.C. Code Ann. § 24-3-40(B) states:

The Department of Corrections, or the local detention or correctional facility, if applicable, shall return a prisoner's wages held in escrow pursuant to subsection (A) as follows:

* * *

(2) A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice.

Inmates possess a right to file grievances concerning their prison industries pay. See Wicker v. S.C. Dep't of Corr., 360 S.C. 421, 602 S.E.2d 56 (2004); see also Torrence v. S.C. Dep't of Corr., 373 S.C. 586, 646 S.E.2d 866 (2007). In Torrence, the inmates claimed that they are entitled to immediate access to wages put in escrow. The Court determined that the inmates can present this claim via the inmate grievance procedure. Torrence at 595, 646 S.E.2d at 870.

Appellant filed his Step One Grievance on April 27, 2007. In response to the Step One Grievance, SCDC concluded that Appellant did not file his grievance within the fifteen day deadline under the Inmate Grievance System Policy.

According to GA-01.12, "Inmate Grievance System" Jan. 1, 2006 ¶13.1, "[i]f informal resolution is not possible, the grievant will complete Form 10-5, Step 1, which is located in common areas, i.e., living areas, libraries, etc. and will submit the Form to an employee designated by the Warden (not the Inmate Grievance Coordinator) within 15 days of the alleged incident." However, ¶13.10¹ of the "Inmate Grievance System" states "[e]xceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures."

Appellant claims that he is not grieving an incident, but is grieving SCDC's policy and procedure which prohibits Appellant access to his escrowed wages. Appellant therefore argues that the fifteen day period to file a grievance is not applicable to him. However, this argument has been previously rejected by this Court. See Ackerman v. S.C. Dep't of Corr., ALC Docket No. 07-ALJ-04-0444 (July 26, 2012). In Ackerman, the ALC determined that "prevailing wage

¹ In GA-01.12, "Inmate Grievance Systems" Oct. 1, 2010, ¶13.10 exception is under ¶13.9.

claims do not constitute grievances concerning 'policies/procedures' under Paragraph 13.9 of GA-01.12. Rather, I find that prevailing wage claims are 'incident' grievances and thus must be filed within the fifteen-day timeframe set forth in Paragraph 13.1." *Id.* Here, Appellant is not arguing about prevailing wages, but rather whether he is entitled to immediate access to escrowed wages. However, the same logic is present. If the Court agreed with Appellant that the fifteen day deadline is inapplicable because Appellant is challenging Policy and Procedure, then there would never be a deadline to file a grievance in regards to inmates' right to access escrowed wages. Therefore, the general rule of a fifteen day time limit to file a grievance would be swallowed by the expansive view of policy and procedure articulated by Appellant. The claim that SCDC denies Appellant access to escrowed wages is an incident grievance, and therefore the Paragraph 13.10 exception is not applicable to this case, as it was not applicable in *Ackerman*.

The argument supplied by Appellant also does not align itself with public policy. As stated in *Ackerman*, "The Department has a legitimate interest in investigating grievances while they are still new, and thus public policy calls for the application of some limitations period to the Appellants' prevailing wage claims." *Id.* (citing *Johnson v. Johnson*, 385 F.3d 503, 519 (5th Cir. 2004)). Here, Appellant would have received notice that he would not have access to his escrowed wages when he received his initial pay on or around July 15, 2005. If this Court would rule in favor of Appellant, then any inmate could file a grievance claiming access to escrowed wages at any time. Further, as noted in *Ackerman*, this Court has long held that wage claims do not involve SCDC's Policies and Procedures. *Id.* (citing *Lawson v. S.C. Dep't of Corr.*, ALC Docket No. 06-ALJ-04-0823-AP (Feb. 12, 2007); *Wright v. S.C. Dep't of Corr.*, ALC Docket No. 06-ALJ-04-0114-AP, 2006 WL 1430140 (Apr. 28, 2006)).

Appellant also argues that the fifteen day limit is not applicable because Appellant filed his Step One Grievance during the term of his employment. This same issue was discussed in *Ackerman*. In *Ackerman*, the Court concluded "that the Appellants should have filed a grievance within fifteen days after being informed of the Department's decision to pay them less than the prevailing wage." The Court in *Ackerman* cited *Wallace v. Burbury*, 305 F. Supp. 2d 801 (N.D. Ohio 2003) for support. In *Wallace*, the court stated:

To allow a filing deadline to toll with a continuous violation, however, would undermine the very purpose of the deadline, which is to limit the time to file a claim. The event giving rise to the complaint was the date in March, 2002, when plaintiff first learned that NCCI would not honor his request to observe Passover. All subsequent grievances stem from that initial event. The filing of plaintiff's informal grievance was therefore

untimely, and failure to file a timely grievance does not constitute an exhaustion of available administrative remedies.

Wallace at 806.

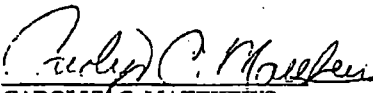
This Court will follow the conclusions reached in Ackerman and Wallace. Appellant should have filed his grievance contending that he should have immediate access to escrowed funds within fifteen days of being informed that he was not given immediate access to all of his funds. Logically, the day he received his first payment for his work, on or about July 15, 2005, was the day he had notice that he did not have immediate access to escrowed funds. Therefore, Appellant had fifteen days from the date he first received payment to file a grievance contesting access to escrowed funds. Appellant did not file his Step One Grievance until April 27, 2007, which is well past the fifteen day deadline.

Appellant failed to file his Grievance within the fifteen day time period as provide by Policy Number GA-01.12, and this Court has no authority to expand the time in which the request for review must be filed. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).

Accordingly, since Appellant did not timely file his Grievance, SCDC's decision must be affirmed.

ORDER

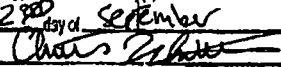
IT IS HEREBY ORDERED that SCDC's decision in this matter is **AFFIRMED**.
AND IT IS SO ORDERED.


CAROLYN C. MATTHEWS
Administrative Law Judge

September 23 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy herewith, postage paid, in the United States mail addressed to the party(ies) or their attorney(s).

This 23rd day of September
BY 
Judicial Law Clerk

CERTIFICATE OF APPELLANT

The undersigned hereby certifies that the RECORD ON APPEAL contains all matter proposed to be included by any ~~and~~ of the parties and not any other material.

march 6, 2015

s/ Joshua Cramer
Joshua Cramer
#251406
Lieber C/I, SA-17
P.O. Box 205
Ridgeville, SC 29472
Appellant, Pro Se

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STATE OF SOUTH CAROLINA
In The Court of Appeals

Case No.: 2014-002172
Grievance No.: BRCI-0594-07

Joshua Cramer, ... Appellant,
v.
SCDC, ... Respondent.

CERTIFICATE OF SERVICE

I, Joshua Cramer, certify that I have filed the within
RECORD ON APPEAL dated March 6, 2015 on the below
listed Addresses by depositing a copy of the same in the SCDC
interdepartmental mail and/or the US mail first-class
postage affixed thereto on this 9 day of March 2015.

Kenneth A. Richstad, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Lake Summers
339 Hayward St., Suite 200
Columbia, SC 29201

March 6, 2015
Ridgeville, SC

s/ Joshua Cramer
Joshua Cramer
#251406
Lieber C/I, SA-17
P.O. Box 265
Ridgeville, SC 29472
Appellant, Pro Se

LAW OFFICES

MAR 11 2015

MALONE, THOMPSON
SUMMERS & OTT, LLC

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Admin. Law Judge

Case No.: 2014-002172

Grievance No.: BRCI-0594-07

Joshua Cramer, #251406, ... Appellant,

v.

South Carolina Department of Corrections, ... Respondent.

APPELLANT'S FINAL BRIEF

Joshua Cramer
#251406
Lieber C/I, 5A-17
P.O. Box 205
Ridgeville, SC 29472
Appellant, Pro Se.

Other Counsel of Record:

Lake Summers
339 Heyward St., Suite 200
Columbia, SC 29201

LAW OFFICES

JUL 10 2015

MALONE THOMPSON
SUMMERS & OTT, LLC

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Ackerman v. SCDC Docket No. 07-AJ-04-00444

Hooper v. Ebenezer, 386 SC 108, 687 S.E. 2d 29 S.C. (2009)

STATEMENT OF ISSUES ON APPEAL

- I. SCDC DENIED APPELLANT IMMEDIATE ACCESS TO WAGES ESCROWED FOR HIS BENEFIT AGAINST STATUTORY AUTHORITY OF S.C. CODE ANN. Section 24-3-40 (A)(5); (B)(2); AND 24-3-315.
- II. SCDC DENIES APPELLANT A FAIR INTEREST RATE ON WAGES ESCROWED FOR HIS BENEFIT UNDER Section 24-3-40 (A)(5).
- III. SCDC'S DENIAL OF APPELLANT'S GRIEVANCE BASED ON THE "FIFTEEN DAY DEADLINE" CONFLICTS WITH ITS OWN POLICY GA-01.12 Section 13.9.
- IV. THE ALC'S RULING DENYING APPELLANT ACCESS TO HIS ESCROWED WAGES BASED ON THE "FIFTEEN DAY DEADLINE" ROBS APPELLANT OF THE RIGHT TO HAVE THE ISSUES IN HIS GRIEVANCE ADJUDICATED.

STATEMENT OF THE CASE

This matter is before the Court of Appeals pursuant to the appeal of Joshua Cramer, an inmate in the South Carolina Department of Corrections ("SCDC"). Appellant was employed in the Private Sector Prison Industries ("PI") program under RM Designs at Broad River C/I ("BRCI") from 2005-2010. Appellant learned after he began working that due to his sentence, Life without Parole, he would never obtain his Long Term Savings ("LTS") / Escrowed Wages. As a result he filed a grievance requesting access to his LTS on April 26, 2007. SCDC rendered its Final Agency Decision on February 25, 2014, seven years later. Subsequently, Appellant filed an appeal in the ALC on March 3, 2014. The ALC denied Appellant's appeal on September 23, 2014.

FACTS

Appellant worked in PI at BRCI from 2005-2010, producing hand sculpted hardwood flooring for RM Designs. Also, Appellant worked in BRCI's PI program for an additional Private company in September and October of 2012. A portion of the wages paid to the Appellant is retained by SCDC in escrow. SCDC refuses Appellant access to his escrowed wages during his lifetime because Appellant is not going to be released from prison. SCDC bases its denial of access on Section 24-3-40 (B) (2) which states in relevant part.

"A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice."

Appellant has sought through the SCDC grievance system to access his escrowed wages, but SCDC has denied him access by maintaining a policy that says the funds can only be released when the

Appellant is released from prison, and since Appellant has life without parole SCDC must hold Appellant's escrowed wages until his death.

STANDARD OF REVIEW

Review of the ALC's decision on SCDC's Final Agency Decision is in violation of constitutional and statutory provisions. The Final Agency Decision is in excess of statutory authority of the agency; conflicts with their own grievance policy, and is clearly erroneous in view of the reliable probative and substantial evidence on the whole record. Pursuant to S.C. Code Ann. Section 1-23-380 (A) (5), this Court may reverse the ALC's decision where the substantial rights of the Appellant have been prejudiced by SCDC's conclusions.

ARGUMENTS

I. SCDC DENIED APPELLANT IMMEDIATE ACCESS TO WAGES
ESCROWED FOR HIS BENEFIT AGAINST THE STATUTORY
AUTHORITY OF S.C. CODE ANN.
Section 24-3-40 (A)(5); (B)(2) and 24-3-315.

Appellant asserts the 10% of his wages deducted pursuant to Section 24-3-40 (A)(5) is to be for the "benefit of the prisoner." If the prisoner cannot or is never allowed to access the principal or interest, the prisoner is systematically deprived, via the unconstitutional interpretation of his property interest therein.

SCDC denies Appellant access to the wages escrowed under (A)(5) in their interpretation of (B)(2), which is that inmates serving a life sentence receive their escrowed wages "only upon the inmate's death". Appellant asserts this is an unconstitutional interpretation.

Senate Bill 384 ("S.384") became Act No. A68 to amend Section 24-3-30 and 24-3-40. S. 384 was introduced without any language regarding prisoner wage disbursement. (See ROA p. 14-15). House Bill 3216 ("H. 3216") was introduced with language regarding prisoner wage disbursement, particularly escrowed wages. (See ROA p. 23-30). Each Bill was read by both legislative bodies (See ROA p. 9, 23, 9-30). The end result was H. 3216's language was added to S.384 and passed into law. H. 3216 (B)(2) originally read a "prisoner serving life shall have his escrowed wages included in his estate upon death." (See ROA p. 29). The final language that became law dropped "upon death" and added an option of distributing the escrowed wages to the person (s) of the prisoner's choice. However SCDC chooses to employ an interpretation of legislation that did not become law, was not the legislative intent, and deprives Appellant of any benefit, for whom it was enacted and earned through his labor.

Our Supreme Court held in Torrence v. SCDC, 373 S.C. 586, 646 S.E. 2d. 866 (2007) rehearing denied (C/A 2001-CP-40-3409) that "clearly, Torrance and Ward can present this claim via the inmate grievance procedure." See Wicker v. SCDC, 360 S.C. 421, 602 S.E.2d. 56 (2004).

Appellant asserts SCDC may not interpret Section 24-3-40 (B)(2) in the manner currently in practice. Our Supreme Court has held the Court "generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation." Nonetheless, where, as here, "the plain language of the statute is contrary to the agency's interpretation, the court will reject the agency's interpretation," Brown v. Bi-Lo, Inc., 354 S.C.436, 581 S.E.2d. 836, 838 (2003)(internal citations omitted.) This very proposition is mirrored by the U.S. Supreme Court in Medtronic Inc. v. Lohr, 518 U.S. 470 (1996)(where the language of the statute is clear, resort to the agency's interpretation is improper.) However, if the statute is silent or ambiguous with respect to the specific issue, the question for the Court is whether the agency's answer is based on a permissible construction of the statute, see Chevron USA v. National Resources Defense Council, Inc., 467 U.S. 837,843 (1984).

The Prison Industries Enhancement Certification Program (PIECP) in South Carolina is a creature of statute. As such, this Court is bound to construe the terms of the applicable statute and to rely on the General Assembly to amend the statute when necessary. See, Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 110, 580 S.E. 2d. 100, 105 (2003).

Appellant, serving a life sentence, is entitled to immediate access to funds escrowed for his benefit Section 24-3-40 (A)(5) under Section 24-3-40 (B)(2).

Appellant suggests an analysis and contrast of Section 24-3-40 (B)(2) with the SC House and Senate Bills (H.3216 and S.384) to ascertain the true legislative intent in regards to if "the interest bearing account" in question is "for the benefit of the prisoner" and how a prisoner sentenced to life may actually "benefit" from the escrowed account if, according to the agency interpretation by SCDC, the prisoner serving life may not have access to the funds in that account until after his death.

The primary purpose in construing a statute is to ascertain legislative intent. Gordon v. Phillips Utils., Inc., 362 S.C. 403, 406, 608 S.E. 2d. 425, 427 (2005). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute, McClanahan v. Richland County Council, 350 S.C. 433, 438, 567 S.E. 2d. 240, 242 (2002).

Appellant submits that the language of the statute [section 24-3-40 (B)(2)] does not indicate, imply, or infer in any language that Appellant must wait until after he is dead to have any control or benefit. Appellant suggests that the language used is the intended purpose of the statute and this purpose is demonstrated clearly in the SC legislature declining to utilize the "upon death" language of H.3216 [intending to create Section 24-3-40 (B)(2)].

If this Court construes the statute's terms as clear and unambiguous on their face, then there is no room for statutory construction and the Court must apply the statute according to its literal meaning, see, e.g., Miller v. Alken, 364 S.C. 303, 307, 613 S.E. 2d. 364, 366 (2005).

In the matter of Respondent's interpretation, considering the difference in the House and Senate Bills considered in 1999 Act No. 68 Section 2 [H.3216 and S.384]. "Where the language of the statute is clear and explicit, the Court cannot rewrite the statute and inject matters into it which are not

in the legislature's language" see, City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E. 2d. 492, 495 (Ct. App 1997). If the language of an Act gives rise to doubt or uncertainty as to legislative intent, the construing Court may search for that intent beyond the borders of the Act itself, see Wade v. Berkeley County, 348 S.C. 224, 229, 559 S.E. 2d. 586, 588 (2002).

1A. "FOR THE BENEFIT OF THE PRISONER"

Appellant suggests that an analysis of the term and implication of the language "for the benefit of the prisoner" is necessary to determine if the Appellant himself is required to and actually "benefits" under the interpretation of Section 24-3-40 (B)(2) employed by SCDC.

Section 24-3-40 (A)(5) states in clear language the account is for the "benefit of the prisoner." Black's Law Dictionary 8th ed. p.166 defines the term "benefit" as: 1) Advantage; privilege <the benefit of owning a car >. 2.) Profit or gain: esp. the consideration that moves to the promise <a benefit received from the sale.> The logic in these illustrative examples relates directly to Appellant's escrowed wages. If he cannot receive or access his account then he cannot benefit from it.

Courts must presume that the legislature did not intend a statute to be futile. Johnson v. Collins Entertainment Co. Inc., 88 F. Supp. 2d. 499.

Ultimately, the escrowed wages belong to the Appellant not SCDC or anyone else. The Appellant earned this money and is entitled to receive it during his lifetime or at a minimum be able to distribute it to the "persons of his choice" during his lifetime. However plain the ordinary meaning of the words used in a statute may be, courts will reject a certain meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the legislature; if possible, the court will construe the statute so as to escape such absurdity and carry the intention into effect. Neal v. Brown, 649 S.E. 2d. 164, 374 SC 641. Buff v. Dept of Transportation, 505 S.E. 2d. 360, 322 SC 472, US v. Pipetoe, 178 F. 2d. 735. The Appellant appeals to the common sense of this court. Certainly in passing Section 24-3-40 (A)(5) and (B)(2) our legislature did not intend for the Appellant, to be allowed to work and earn money while in prison, have 10% of that money put into an interest bearing account for his benefit by SCDC, but then have SCDC hold that money until the Appellant dies and give his money to someone else. If this was the case, as SCDC argues it is, then why would our legislature create a statute, namely Section 24-3-40 (A)(5), to benefit a prisoner; but then in the next subsection of the statute, (B)(2) make it where the prisoner can never have the money he has worked for and was supposed to benefit from? This would be a contradiction in and of itself, and certainly would be the absurd result the courts were talking about in the above-mentioned cases.

II. SCDC DENIES APPELLANT A FAIR INTEREST RATE ON WAGES ESCROWED FOR HIS BENEFIT UNDER SECTION 24-3-40 (A)(5)

Per Appellant's 1099 he earned \$54.89 interest in 2007 on \$1,742.54. (See ROA p.6). The 2008 1099 recorded \$40.33 interest on \$3,175.66 (See ROA p.7). The 2009 1099 recorded \$10.47 interest

on \$3,441.83 (See ROA p.8). Appellant did not receive a 1099 for the years 2010-2014. Thru a Request to Staff Appellant learned he earned \$0.30 interest on \$3,444.58 for 2020 and 2011. (See ROA p.4).

During September and October 2012 Appellant worked in BRCI's PI and deposited \$132.00 in escrowed wages into his LTS account bringing his balance up to \$3,577.38. (See ROA p.5).

In a 2014 letter to SCDC's Financial Branch Appellant learned he was paid \$0.36 in interest on \$3,577.58 for the years 2012 and 2013. (See ROA p.3).

On October 17, 2011 through a letter to SCDC's Financial Branch Appellant attempted to learn where, what type of account, and what interest rate was applied to his escrowed wages. Instead of a direct answer Appellant was told the interest rate is comparable with similar account at local financial institutions and the rate varies from period to period. (See ROA p. 1-2). From 2010-2014 Appellant received an interest payment on average of \$0.15 a year which on \$3,500 is not comparable to anything any bank would offer as SCDC has suggested. Based on the \$0.15 interest payment, and \$3500 principle Appellant's interest rate is basically zero percent. Appellant would argue here that when the legislature directed SCDC to place Appellant's escrowed wages in an interest bearing account they did not intend for the rate to be non-existent.

Appellant is entitled to a fair interest rate on his escrowed wages and this amount should be fairly applied each year. SCDC acts in a fiduciary capacity in the administration of this trust in management of the LTS Account and thus has a duty to Appellant to pay a comparable interest rate, as they claim they do, on Appellant's funds held in escrow. SCDC is in violation of SC Code of Laws Title 34, governing banking and financial institutions. Appellant relies upon the theory interest follows principal.

III. SCDC'S DENIAL OF APPELLANT'S GRIEVANCE BASED ON THE
"FIFTEEN DAY DEADLINE" CONFLICTS WITH ITS
OWN POLICY GA-01 PARAGRAPH 13.9

SCDC stated Appellant did not file his grievance within "fifteen days of the incident". However, Appellant is not grieving a singular incident rather Appellant is challenging SCDC's policy/procedure which prohibits Appellant access to his escrowed wages. Said policy creates a continuous cause of action.

GA-01.12, "Inmate Grievance System" Oct. 1, 2010 Paragraph 7.1 names a grievable issue as "Department policies/procedures, directives, or conditions which directly affect the inmate. "Paragraph 13.9 further states Exceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures."

SCDC's determination conflicts with its own policy and should be disregarded by this Court. Appellant's grievance falls within the conditions set forth in Paragraph 7.1 and 13.9, therefore the "15 day deadline" does not apply to Appellant's grievance.

III.B. RESPONDENT'S POLICY GA-01.12 PARAGRAPH 13.1 IS
INAPPLICABLE IN APPELLANT'S CASE

Respondent's defense based on the "fifteen day time limit" of GA-01.12 Paragraph 13.1 is rendered moot where Respondent's own record (ROA in the ALC) indicating the date Appellant filed his Step 1 Grievance (4-26-07) substantiate Appellant filed his grievance during his employment period and during the violations complained of.

IV. THE ALC'S RULING DENYING APPELLANT ACCESS TO HIS ESCROWED
WAGES BASED ON THE "FIFTEEN DAY DEADLINE" ROBS
APPELLANT OF THE RIGHT TO HAVE THE ISSUES IN HIS
GRIEVANCE ADJUDICATED

First, the ALC erroneously applied the Ackerman case to Appellant's case. Appellant's grievance is not an incident grievance, rather it is a grievance against SCDC's interpretation of Section 24-3-40 (B)(2) wherein the department maintains a policy that prohibits Appellant from receiving his escrowed wages during his lifetime. Their policy has created a continuous cause of action.

On page four of the ALC's order the court stated "If this Court would rule in favor of Appellant then any inmate could file a grievance claiming access to escrowed wages at anytime. Further, as noted in Ackerman, this Court has long held that wage claims do not involve SCDC's Policies and Procedures."

Both points quoted from the ALC's order are incorrect when applied to Appellant's grievance. Namely, a ruling in favor of the Appellant would negate any need for an inmate to file a grievance requesting access to his escrowed wages because the ruling would strike down SCDC's policy, forcing SCDC to enact a policy in accordance with Section 24-3-40 (B)(2). Hence an inmate's escrowed wages could be distributed to a "person of his choice" at each pay period in the same manner as an inmate's child support payment. SCDC distributes inmate child support payment at each pay period to a person designated by the inmate or the child's guardian.

Next, the issue in Appellant's grievance is not a prevailing wage claim like those in the Ackerman case, and should not be treated the same. Appellant's grievance should not be labeled a wage claim because the grievance deals solely with SCDC's policy to exceed its statutory authority; in its interpretation of Section 24-3-40 (A)(5) and (B)(2).

Any time statute of limitations and tolling are involved the interest of justice require that a case by case analysis of the facts of the case are required especially where the facts of the instant case are significantly distinct from the Ackerman inmates. For example, Appellant is not challenging a particular hourly wage; rather, Appellant is challenging SCDC's policy denying him from enacting the clause in Section 24-3-40 (B)(2) to have his LTS distributed to a person of his choice during his lifetime.

The ALC did not rule on the question of Law presented by Appellant; rather they forbore settling the question and instead prohibited Appellant an opportunity to have his issue settled by using the "fifteen day deadline" to deny Appellant's claims.

The court in Hooper v. Ebenezer, 386 SC 108, 687 S.E. 2d 29 S.C. 2009 held that "The equitable power of a court is not bound by cast-iron rules but exist to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." Certainly, taking money from Appellant's pay check, depositing it into an escrow account, and then telling him he has to die before the money can be released could be a gross wrong the court identified in Hooper.

CONCLUSION

WHEREFORE, Appellant respectfully prays this Honorable Court reverse and remand the SCDC ruling and Final Agency Decision of SCDC with an appropriate order to structure the proposed relief.

1. Reverse the Department's February 25, 2014 decision to deny Appellant's grievance;
2. SCDC shall determine the dates the Inmate in the instant matter started and completed his participation in SCDC's P.I.;
3. Shall determine the correct or fair rate of interest on the Appellant's LTS account for each year the Inmate had a portion of his wages deducted pursuant to Section 24-3-40 (A)(5) and every subsequent year those funds remained in that account;
4. SCDC shall grant the Appellant, serving a life without parole sentence immediate access to the option of having his escrowed wages distributed to the persons or entities of his choice pursuant to Section 24-3-40 (B)(2) and
5. SCDC shall determine and pay pre- and -post -- judgment interest on the funds held in Appellant's LTS account.

March 17, 2015
Ridgeville, SC

LAW OFFICES

JUL 10 2015

MALONE, THOMPSON
SUMMERS & OTT, LLC

Respectfully Submitted,

Joshua Cramer
Joshua Cramer
#251406
Lieber C/I, SA-17
PO Box 205
Ridgeville, SC 29472
Appellant, Pro Se

CERTIFICATE OF PRO SE APPELLANT

Pro se appellant certifies that this FINAL BRIEF contains all relevant issues/matters to be included in this brief on appeal, and not any non-relevant issues/matters.

s/ Joshua Cramer
Joshua Cramer
#251406
Lieber C/I, SA-17
P.O. Box 205
Ridgeville, SC 29472
Appellant, Pro Se

March 17, 2015
Ridgeville, SC

LAW OFFICES

JUL 10 2015

MALONE, THOMPSON
SUMMERS & OTT, LLC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Carolyn C. Matthews, Admin. Law Judge

Case No.: 2014-002172
Grievance No.: BREI-0594-07

Joshua Cramer, #251406, ... Appellant,
v.
South Carolina Department of Corrections, . . . Respondent.

CERTIFICATE OF SERVICE

I, Joshua Cramer, certify that I have filed the within corrected FINAL BRIEF and FINAL REPLY dated March 17, 2015 and June 22, 2015, respectively, and the MOTION TO FILE OUT-OF-TIME dated July 6, 2015 on the below listed addresses by depositing a copy of the same in the SCDC interdepartmental mail and/or the US mail first-class postage affixed thereto on this 8th day of July 2015.

V. Claire Allen, Deputy Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29201

Lake Summers
339 Heyward St., Suite 200
Columbia, SC 29201

LAW OFFICES

JUL 10 2015

MALONE, THOMPSON
SUMMERS & OTT, LLC

July 6, 2015
Ridgeville, SC

S/ Joshua C
Joshua Cramer
#251406
Lieber C/I, SA-17
P.O. Box 205
Ridgeville, SC 29472
Appellant, Pro Se

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APR 13 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Trial Court Case No. 14-ALJ-04-00282-AP
Appellate Case No. 2014-002172

Joshua Cramer, #251406, ... Appellant,

v.

South Carolina Department of Corrections, ... Respondent.

RESPONDENT'S FINAL BRIEF

Lake E. Summers (SC Bar No. 64146)
Katherine Phillips (SC Bar No. 77840)
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300
Fax: (803) 254-0309
E-mail: summers@mtsollawfirm.com
phillips@mtsollawfirm.com

Counsel for Respondent

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entitled "INMATE GRIEVANCE SYSTEM" (November 1, 2004) *passim*

STATEMENT OF ISSUES ON APPEAL

The Respondent, the South Carolina Department of Corrections ["SCDC"], respectfully submits the following Statement of Issues on Appeal:

- I. Is the Appellant's First Issue on Appeal preserved for appellate review when the Administrative Law Court ["ALC"] did not rule on its merits?
- II. Is the Appellant's Second Issue on Appeal preserved for appellate review when the ALC did not rule on its merits?
- III. Did the ALC properly affirm SCDC's decision that the Appellant failed to file his grievance within the fifteen day filing deadline established by paragraph 13.1 of SCDC's Inmate Grievance System Policy Number GA-01.12?

STATEMENT OF THE CASE

I. THE APPELLANT'S GRIEVANCE DESIGNATED AS BRCI-0594-07

The Appellant filed a Step 1 grievance on April 26, 2007, and the responsible SCDC official assigned the Appellant's grievance the following number: BRCI-0594-07. (R. pp. 31 – 34). In his Step 1 grievance designated as BRCI-0594-07, the Appellant articulated the following five (5) issues:

- 1) Section 24-3-430(D)¹ created a liberty interest in the \$1.90 difference between the prevailing wage (\$7.35) paid by the private sector employer for grievant's "regular" hour labor and the wage \$5.45 paid grievant by SCDC during the course of grievant's private sector employment [May 2, 2005 to on or about January 1, 2010]² and grievant is entitled to said monies.
- 2) Section 24-3-430(D) created a liberty interest in the \$2.85 difference between the overtime prevailing wage (\$11.03) paid by the private sector employer for grievant's "overtime" hour labor and the wage (\$8.18) paid grievant by SCDC during the course of grievant's private

¹ S.C. Code Ann. § 24-3-430(D) provides that "[n]o inmate participating in the [prison industries] program may earn less than the prevailing wage for work of similar nature in the private sector." [emphasis supplied].

² Appellant's prison industries private sector account pay records maintained by SCDC indicate that the Appellant's voluntary participation began on or about July 15, 2005. (R. pp. 36 and 45).

sector employment, as stated in issue #1, above, and grievant is entitled to said monies.³

- 3) Grievant has a liberty interest in the interest earned on the amounts complained of in issues #2 and #3, above.
- 4) Section 23-3-430(A)(5) + 24-3-430(B)(2)⁴ created a liberty interest in escrowed wages where in grievant is entitled to complete and immediate access to the amount of his escrowed wages to distribute them to persons or entities of his choice at the time said wages were escrowed for grievant's benefit, but grievant is serving life without parole, and is denied access.
- 5) Grievant has a liberty interest earned on the amount complained of in issue #4, above, at a guaranteed investment rate comparable to Treasury Bills or Certificates of Deposit. (R. pp. 33 – 34).

In his Step 1 grievance designated as BRCI-0594-07, the Appellant requested the following relief: "Correct payment of all monies." (R. p. 31).

On or about July 16, 2012, the Appellant filed his Step 2 appeal with SCDC. In his Step 2 appeal, the Appellant voluntarily abandoned issues 1 through 3 from his Step 1 grievance, which related to his claims for the purported "prevailing wage" and overtime pay. (R. pp. 41 – 43). On or about February 25, 2014, SCDC denied the Appellant's Step 2 appeal. (R. p. 41 and 44 – 48).

II. THE APPELLANT'S NOTICE OF APPEAL TO THE ALC

In the Notice of Appeal he sequentially filed with the ALC on or about March 6, 2014, the Appellant requested that the ALC consider his Step 1 Grievance designated as BRCI-0594-07. (R. p. 49). On the pre-printed Notice of Appeal form he filed with the ALC, the Appellant

³ SCDC respectfully submits that the Appellant's prison industries private sector account pay records maintained by SCDC do not corroborate the figures offered by the Appellant in this paragraph of his grievance designated as BRCI-0594-07. (R. p. 39).

⁴ SCDC respectfully submits that the Appellant is actually referring to S.C. Code Ann. § 24-3-40(A)(5) and (B)(2).

articulated the following grounds purportedly supporting his appeal of SCDC's final decision, which denied the Appellant's claim for immediate access to his escrowed wages:

S.C. Code Ann. § 24-3-430(A)(5) requires SCDC to deduct 10% of an inmate's wages and hold them "in an interest bearing escrow account for the benefit of the prisoner." § 24-3-430(B)(2) provides the inmate with the "option of having his escrowed wages including in his estate or distributed to the persons or entities of his choice." SCDC is violating the provision of § 24-3-430(B)(2) by not allowing me to distribute my escrowed wages to a person of my choice and is holding my escrowed wages in an account bearing little to no interest.⁵ (R. p. 49).

The ALC provided the following designation for the Appellant's appeal: 14-ALJ-04-0282-AP. (R. p. 78).

III THE ALC'S SEPTEMBER 23, 2014 ORDER

By an order dated and filed September 23, 2014, the ALC denied the Appellant's appeal, and, in so doing, the ALC affirmed SCDC's denial of the Appellant's Step 1 grievance and Step 2 appeal, because the Appellant failed to file his grievance within the fifteen day filing deadline established by paragraph 13.1 of SCDC's Inmate Grievance System Policy Number GA-01.12.

In its order, the ALC described the issues associated with the Appellant's appeal as follows: (1) "SCDC's denial of Appellant's Grievance based on the 'fifteen day deadline' conflicts with [its] own policy GA-01.12. ¶ 13.9;" (2) "SCDC's denial of Appellant having immediate access to [escrowed] wages is against the statutory authority of S.C. Code Ann. §§

⁵ The Appellant did not articulate SCDC's purportedly erroneous application of the fifteen day filing deadline as one of the grounds in his Notice of Appeal to the ALC. See ALC Rule of Procedure 59(b) ("The [Notice of Appeal] shall be on the form prescribed by the Court pursuant to Rule 57 and shall contain the following information: a brief factual basis for each expressly and specifically asserted constitutional violation."). Thus, the Appellant failed to preserve this issue for consideration by the ALC. But see *Goins v. S.C. Dep't of Corr.*, No. 2014-UP-390, 2014 WL 5840482, at *1 (S.C. Ct. App. Nov. 12, 2014) (citing *Risher v. S.C. Dep't of Health & Envtl. Control*, 393 S.C. 198, 208 n. 5, 712 S.E.2d 428, 433 n. 5 (2011)) ("[T]his Court has long enforced and relied upon issue preservation rules in administrative appeals.") and *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002) ("[I]ssues not raised to and ruled on by the AL[C] are not preserved for appellate consideration.").

24-3-40(A)(5), 24-3-40(B)(2), and 24-3-315," and (3) "SCDC denied Appellant a fair interest rate in wages escrowed for his benefit under S.C. Code Ann. § 24-3-40(A)(5)."⁶ (R. p. 79).

Ultimately, the ALC concluded that the "Appellant failed to file his Grievance within the fifteen day time period as provided by Policy Number GA-01.12, and [the ALC] has no authority to expand the time in which the request for review must be filed. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985)." Accordingly, the ALC determined that "since [the] Appellant did not timely file his Grievance, SCDC's decision must be affirmed." (R. p. 82).

STANDARD OF REVIEW

ALC Rule of Procedure 65 states that "[j]udicial review of any decision of the [ALC] in a matter heard on appeal from final decisions pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) shall be as provided in S.C. Code Ann. § 1-23-610 (2005) (as amended)." See also S.C. Dep't of Corr. v. Mitchell, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (Ct. App. 2008) ("Section 1-23-610 ... sets forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency.").

Thus, the provisions of § 1-23-610, specifically § 1-23-610(B), establish the standard of review applicable to this Court's consideration of the Appellant's challenge of the ALC's September 23, 2014 order. In its entirety, § 1-23-610(B) reads as follows:

The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact.⁷ The court of appeals may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if substantial

⁶ The General Assembly amended § 24-3-40 by Act No. 237, Section 4, effective June 11, 2010. These amendments did not change the provisions related to escrowed wages nor did they impact the substance of the Appellant's claims.

⁷ See generally, Mitchell, 377 S.C. at 258, 659 S.E.2d at 235 (The ALC must apply the standard articulated in § 1-23-380(5) when reviewing, on appeal, an administrative agency's decision.). SCDC also respectfully submits that the standards of review set forth in §§ 1-23-380(5) and 1-23-610(B) are identical if not nearly identical.

rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Pursuant to § 1-23-610(B), this Court “may reverse or modify the [ALC’s] decision only if [the Appellant proves his] substantive rights [have] been prejudiced because the decision is clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion, or affected by other error of law.” Mitchell, 377 S.C. at 260, 659 S.E.2d at 236 (emphasis supplied) (reversing the ALC’s order because the “order [was] devoid of any finding of evidence adduced by [the Appellant] warranting the ALC’s reversal of the Department.”). Moreover, the Appellant must “distinctly and specifically direct the court’s attention to the errors or abuses allegedly committed by the [ALC]. [The Appellant] must include all that is necessary to enable [this Court] to decide whether the [ALC] made an erroneous or unsubstantiated ruling. A mere expression of dissatisfaction with the ruling is not sufficient.”⁸ Al-Shabazz, 338 S.C. at 379, 527 S.E.2d at 755 (citations omitted).

Critically, the Appellant has the burden of proving convincingly that the ALC’s decision to uphold SCDC’s decision is unsupported by substantial evidence. Mitchell, 377 S.C. at 260, 659 S.E.2d at 235. Substantial evidence is relevant evidence “when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the ALC arrived at in justifying its decision.” S.C. Coastal Conservation League v. S.C. Dep’t of Health & Envtl.

⁸ In 2006, the General Assembly amended the Administrative Procedures Act so that a party must appeal a decision of the ALC, in which the ALC considered an appeal of an administrative agency’s decision, to this Court rather than the circuit court.

Control, 380 S.C. 349, 362, 669 S.E.2d 899, 905 (Ct. App. 2008), *reversed on other grounds*, 390 S.C. 418, 702 S.E.2d 246 (2010).

The Appellant also has the burden of proving the ALC's decision is arbitrary and otherwise characterized by an abuse of discretion. Mitchell, 377 S.C. at 260, 659 S.E.2d at 234. A decision is arbitrary if no rational basis for the conclusion exists, or when it is based on one's will and not upon any course of reasoning and exercise of judgment. A decision may also be arbitrary if it is made at pleasure without adequate determining principles or is governed by no fixed rules or standards. Converse Power Corp. v. S.C. Dep't of Health & Envtl. Control, 350 S.C. 39, 47, 564 S.E.2d 341, 345 (Ct. App. 2002). An "abuse of discretion occurs when the judge's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the judge is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 5, 630 S.E.2d 464, 467 (S.C. 2006).

ARGUMENT

I. THE ALC DID NOT RULE ON THE MERITS OF THE APPELLANT'S FIRST ISSUE ON APPEAL AND, THEREFORE, IT IS NOT PRESERVED FOR JUDICIAL REVIEW.

This Court recently reiterated that issues raised to, but not ruled upon by the ALC are not preserved for appellate review. Goins v. S. C. Dep't of Corr., No. 2014-UP-390, 2014 WL 5840482, at *1 (S.C. Ct. App. Nov. 12, 2014) (citing Risher v. S.C. Dep't of Health & Envtl. Control, 393 S.C. 198, 208 n. 5, 712 S.E.2d 428, 433 n. 5 (2011) ("[T]his Court has long enforced and relied upon issue preservation rules in administrative appeals.") and Brown v. S.C.

Dep't of Health & Envtl. Control, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002) (“[I]ssues not raised to and ruled on by the AL[C] are not preserved for appellate consideration.”)).

The ALC concluded in its September 23, 2014 Order that the “Appellant failed to file his Grievance within the fifteen day time period as provided by Policy Number GA-01.12,” and therefore, “SCDC’s decision must be affirmed.” (R. p. 82).

By affirming SCDC’s denial of the Appellant’s grievance on timeliness grounds, the ALC did not rule on the merits of the Appellant’s claim that he is entitled to “immediate access to wages escrowed for his benefit against statutory authority of S.C. Code Ann. Section 24-3-40(a)(5); (b)(5); and 24-3-315.”⁹

Accordingly, the Appellant’s first issue on appeal is not preserved for judicial review.

II. THE ALC DID NOT RULE ON THE MERITS OF THE APPELLANT’S SECOND ISSUE ON APPEAL AND, THEREFORE, IT IS NOT PRESERVED FOR JUDICIAL REVIEW.

As explained above, this Court recently explained that issues raised before the ALC, but not ruled upon by the ALC are not preserved for appellate review. See Goins, 2014 WL 5840482, at *1.

Again, the ALC affirmed SCDC’s denial of the Appellant’s grievance solely on timeliness grounds. (R. p. 82). By affirming SCDC’s denial of the Appellant’s grievance on timeliness grounds, the ALC did not rule on the merits of the Appellant’s claim that “SCDC denies Appellant a fair interest rate on wages escrowed for his benefit under Section 24-3-40(A)(5).”¹⁰

Thus, just as his first issue on appeal is not preserved for judicial review, the Appellant’s second issue on appeal is likewise not preserved for judicial review.

⁹ See Appellant’s Brief, pp. 2 – 3.

¹⁰ Id., pp. 4 – 5.

III. THE ALC PROPERLY AFFIRMED SCDC'S DECISION THAT THE APPELLANT FAILED TO FILE HIS STEP 1 GRIEVANCE WITHIN THE FIFTEEN DAY FILING DEADLINE ESTABLISHED BY PARAGRAPH 13.1 OF SCDC'S INMATE GRIEVANCE SYSTEM POLICY NUMBER GA-01.12.

A. The ALC correctly ruled that the Appellant's grievance did not concern "policies/procedures" under ¶13.9 from Policy GA-01.12.

The Appellant contends that his request for immediate access to his escrowed wages¹¹ constituted a grievance challenging SCDC's policies/procedures and not an incident grievance.¹²

Paragraph 13.1 requires inmates to file grievances within fifteen days of an alleged "incident;" but ¶13.9 provides exceptions to the fifteen day deadline from ¶13.1 (R. p. 60):¹³

Exceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures. Exceptions may also be made for incident grievances by the Chief/designee, Inmate Grievance Branch, provided that documented reasonable cause can be demonstrated as to why the original time frame was not met, e.g., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc. The waiver must be requested by the grievant. [emphasis supplied].

The ALC, after recognizing the long-standing legitimacy of Policy GA-01.12, relied upon the ALC's prior decision in Ackerman v. S.C. Dep't of Corr., ALC Docket No. 07-ALJ-04-0444 (July 26, 2012). (R. pp. 50 – 77).

In Ackerman, the ALC concluded that the inmates' grievances, asserting various issues related to the wages they received while voluntarily participating in the prison industries project, did not contest SCDC's "policies/procedures" under paragraph 13.9 of GA-01.12. The ALC in Ackerman (R. pp. 54 – 59), reached its decision after it determined that SCDC's interpretation of

¹¹ SCDC deducted a portion of the wages it paid to the Appellant while he voluntarily participated in the prison industries program, and it deposited those monies into an interest bearing escrow account as required by S.C. Code § 24-3-40.

¹² See Appellant's Brief, pp. 5 – 6.

¹³ The pre-printed Step 1 grievance form includes the following instructions to inmates: "STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)." (Emphasis added).

"policies/procedures" is reasonable, consistent with SCDC's use of the term throughout Policy GA-01.12, and avoids the public policy problems inherent in the Appellants' construction of the term:

[T]he terms "policies" and "procedures" constitute approved guidelines for handling the agency's day-to-day operations as well as statements expressing the basic expectations of conduct for agency staff and inmates. More formally stated, the terms "policies" and "procedures" constitute agency directives deemed by the responsible agency officials as "necessary to preserve internal order and discipline, and to maintain institutional security in the prison." (R. p. 8).

In his argument to this Court, the Appellant argues that his grievance challenged SCDC's policies/procedures, and, therefore, "created a continuous cause of action."¹⁴ As demonstrated above, however, the Appellant originally identified five (5) issues in the Step 1 grievance he filed with SCDC. In each of those five (5) issues,¹⁵ the Appellant claimed he possessed a "liberty interest" in various wages SCDC remitted to him as a result of his voluntary participation in the prison industries project. The Appellant sought the exact same relief to resolve all five (5) of the issues he articulated in his Step 1 grievance: "Correct payment of all monies." (R. pp. 31 and 33 – 34).

Thus, the Appellant's Step 1 grievance, which requested the "prevailing wage" and overtime pay for his voluntary participation in the prison industries project, as well as immediate access to the "escrowed wages" that were deducted from his pay for his voluntary participation in the prison industries project, all sought the "[c]orrect payment of all monies," and,

¹⁴ See Appellant's Brief, p. 5.

¹⁵ The first three (3) issues the Appellant identified in his Step 1 grievance were substantially similar to the issues alleged by the inmates and their counsel in *Ackerman*. Even though the Appellant choose not to challenge SCDC's determination on those issues in his appeal, they still frame the scope of the Appellant's Step 1 grievance and SCDC's denial of his Step 1 grievance.

accordingly, the Appellant did not challenge SCDC's policies and/or procedures within his Step 1 grievance. (R. pp. 31 and 33 – 34).

Moreover, the Appellant, for the very first time, requests that this Court “strike down SCDC’s policy” in his instant appeal.¹⁶ Goins, 2014 WL 5840482, at *1 (citing Risher, 393 S.C. at 208 n. 5, 712 S.E.2d at 433 n. 5 (“[T]his Court has long enforced and relied upon issue preservation rules in administrative appeals.”) and Brown, 348 S.C. at 519, 560 S.E.2d at 417 (“[I]ssues not raised to and ruled on by the AL[C] are not preserved for appellate consideration.”)).

For this reason alone, this Court should deny the Appellant’s appeal and affirm the ALC’s holding that the Appellant’s grievance for immediate access to his escrowed wages did not constitute a “policy/procedure” grievance, and, as such, his grievance was subject to the fifteen day filing deadline from ¶13.1 (R. pp 80 – 82). Al-Shabazz, 338 S.C. at 379, 527 S.E.2d at 755 (observing that under the APA, inmates must direct the court’s attention to errors or abuses allegedly committed by the ALC. “A mere expression of dissatisfaction with the ALC’s ruling is not sufficient.”).

The Appellant also failed to address in his instant appeal the ALC’s ruling that public policy calls for the application of some limitations period to the Appellant’s claims, because SCDC has a legitimate interest in investigating grievances while they are still new. (R. p. 81). Instead, the Appellant argued in his instant appeal, again for the very first time, that if the Court rules in his favor, it “would negate any need for [any] inmate to [ever] file a grievance requesting access to his escrowed wages.”¹⁷

¹⁶ See Appellant’s Brief, p. 6.

¹⁷ Id.

Nonetheless, the ALC correctly determined that fifteen day filing limit is the only limitation found within Policy GA-01.12, and, accordingly, it serves as the time period applicable to the Appellant's claims. (R. p. 81).

The Record reveals that SCDC began paying the Appellant for his participation in the prison industries service project at Broad River CI on or about July 15, 2005 and, at that time, SCDC began assessing various required deductions from those wages. The Appellant, however, did not file his Step 1 grievance until April 7, 2007, nearly two (2) years after the Appellant received notice that SCDC deducted escrowed wages from his pay, and the Appellant did not have immediate access to those escrowed wages. (R. pp. 31 – 34).

Furthermore, a fifteen day filing period is consistent with other filing periods in this state.¹⁸ Thus, the ALC correctly ruled that applying the fifteen day filing deadline from ¶13.1 to the Appellants' wage claims avoids the public policy problems of requiring SCDC to defend stale claims.

For the reasons articulated above, therefore, SCDC respectfully submits that the ALC correctly concluded that the Appellants' claim for immediate access to his escrowed wages does not constitute a grievance concerning "policies/procedures" under ¶13.9. (R. pp. 80 – 82).

¹⁸ See e.g. § 40-11-100 ("An entity or individual assessed administrative penalties may appeal those penalties to the board within fifteen days of receipt of the citation."); § 11-35-3220(3) ("The date for submission of information from interested persons or firms in response to an invitation must not be less than fifteen days after publication of the invitation."); § 59-25-470 ("Within fifteen days after receipt of notice of suspension or dismissal, a teacher may serve upon the chairman of the board or the superintendent a written request for a hearing before the board.").

- B. The ALC correctly ruled that the language from ¶13.1, ¶13.9, and the Step 1 grievance form is not inconsistent with SCDC's intent to apply the fifteen day filing deadline.¹⁹**

As explained above, ¶13.1 requires inmates to file grievances within fifteen days of an alleged "incident," but ¶13.9 provides exceptions to the fifteen day deadline from ¶13.1:

Exceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures. Exceptions may also be made for incident grievances by the Chief/designee, Inmate Grievance Branch, provided that documented reasonable cause can be demonstrated as to why the original time frame was not met, e.g., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc. The waiver must be requested by the grievant. [emphasis supplied]. (R. pp. 60).

The above provisions of the operative policy and the Step 1 form are clear and unambiguous. See generally, Ward v. West Oil Co., Inc., 387 S.C. 268, 273 – 74, 692 S.E.2d 516, 519 (2010). Per the pre-printed form and ¶13.1,²⁰ inmates must file their Step 1 grievances within fifteen days of any alleged "incident." The only exceptions to this deadline arise under "policy" grievances per the Step 1 form and ¶13.9 or when an inmate requests, and receives, a "reasonable cause" exception per ¶13.9.²¹

Nothing about the interplay between the form's instructions, ¶ 13.1, and ¶ 13.9 was or is confusing, misleading, or contradictory. SCDC exercised no control or influence over the Appellant's understanding of these provisions. Absolutely nothing in the operative policy or in

¹⁹ SCDC respectfully asserts that the Appellant's argument on this point only makes sense if his wage claims constituted "policy/procedure" grievances and then SCDC improperly applied the fifteen day filing deadline to his grievance. Should this Court affirm the ALC's decision on this point and determine that the Appellant's grievance did not concern "policies/procedures," SCDC respectfully submits that it should dismiss the Appellant's instant issue on appeal.

²⁰ Again, the instructions on the preprinted Step 1 form provided as follows: "State Grievance (include documentation, and date of incident; if SCDC Policy, indicate which policy)." (R. p. 31). Further instructions on the form provided as follows: "Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time." (R. p. 32).

²¹ The Appellant did not request, or receive, an exception to the fifteen day filing deadline for this or any other reason.

the language from the pre-printed Step 1 form suggested that an inmate's claims for immediate access to monies constitute "policy" issues and that a Step 1 grievance presenting such "policy" issues would be exempt from any filing deadline. The Appellant cannot now blame his defective interpretation of these provisions of Policy GA-01.12 on anyone other than himself.

- C. The ALC correctly ruled that the Appellant was required, under ¶13.1, to file his grievances for immediate access to his escrowed wages within fifteen days of his initial pay date.**

The ALC correctly determined that pursuant to ¶13.1, the Appellants must submit their grievance within fifteen days of the alleged "incident," and the fifteen day time frame from ¶13.1 began to run when SCDC informed the Appellant of his wage and deductions. (R. pp. 80 – 82). The ALC cited Wallace v. Burbury, 305 F. Supp. 2d 801 (N.D. Ohio 2003), to support its decision. The Appellant makes no attempt to distinguish or even acknowledge Wallace. See generally State v. Fripp, 396 S.C. 434, 441, 721 S.E.2d 465, 468 (Ct. App. 2012) (noting that the appellant's failure to challenge the lower court's ruling in the appellate brief renders the unchallenged ruling the law of the case); Spriggs Grp., P.C. v. Slivka, 402 S.C. 42, 54, 738 S.E.2d 495, 502 (Ct. App. 2013), reh'g denied (Mar. 22, 2013) (finding that appellant abandoned his arguments on appeal because he failed to cite legal precedent to support his arguments); Bennett v. Investors Title Ins. Co., 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct.App.2006) (noting when an appellant fails to cite any supporting authority for his position and makes conclusory arguments, the appellant abandons the issue on appeal); State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) (citing State v. Howard, 384 S.C. 212, 217, 682 S.E.2d 42, 45 (Ct.App.2009); and State v. Jones, 344 S.C. 48, 58 – 59, 543 S.E.2d 541, 546 (2001) (stating an argument is deemed abandoned on appeal when conclusory and without

supporting authority)); Al-Shabazz, 338 S.C. at 379, 527 S.E.2d at 755) (Appellant's "mere expression of dissatisfaction with the ruling is not sufficient.").

In Wallace, 305 F. Supp. 2d at 806, the federal court considered the timeliness of a grievance that the inmate filed more than fourteen days after the inmate learned of the prison's decision to deny his religious accommodation. Specifically, the inmate argued that even though he learned the prison denied his religious accommodation request a week before the week-long Passover holiday, his grievance, which he filed eleven days after the last day of Passover, was timely because his rights were continuously violated each day of the Passover event. The Wallace Court rejected the inmate's argument because "[t]o allow a filing deadline to toll with a continuous violation ... would undermine the very purpose of the deadline, which is to limit the time to file a claim." *Id.* The Wallace Court also determined that the event giving rise to the grievance arose on the date the inmate learned that prison would not honor his request for a religious accommodation.

Like the inmate in Wallace, the Appellant should have, under ¶13.1, filed his grievance within fifteen days after SCDC informed him of its decision to pay him a specific wage and assess specific deductions from those wages. Similar to the operative deadline in Wallace, the purpose of ¶13.1's fifteen day deadline is to limit the time to file a claim. (R. pp. 81 – 82).

In addition, unlike traditional employment and wage laws, our Supreme Court held in Adkins v. S.C. Dep't of Corr., 360 S.C. 413, 418, 602 S.E.2d 51, 54 (2004), that § 24-3-430 was not enacted for the special benefit of inmates, like the Appellants. As explained below, Policy GA-01.12 has been approved by our Supreme Court in Al-Shabazz, 338 S.C. at 373, 527 S.E.2d at 752 ("We hold that [SCDC's] disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in [Wolff v. McDonnell], 418 U.S. 539 (1974)). We

note that [SCDC] also prepared its grievance procedures in compliance with the Civil Rights of Institutionalized Persons Act.”).

Thus, the ALC correctly ruled that the Appellant was required, under ¶13.1 of Policy GA-01.12 (R. p. 82), to file his grievance requesting immediate access to his escrowed wages within fifteen days of his initial pay date. Accordingly, under the applicable legal standard articulated above,²² this Court should affirm the ALC’s ruling on this issue.

D. The ALC correctly ruled that the Appellant did not comply with the fifteen day filing deadline established by ¶13.1.

As demonstrated above, the ALC correctly ruled that the Appellant failed to comply with the fifteen day filing deadline established by ¶13.1 of Policy GA-01.12 (R. pp. 80 – 82).

Again, the Record reveals that SCDC began paying the Appellant for his participation in the prison industries service project at Broad River CI on or about July 15, 2005 and SCDC began assessing deductions for escrowed wages from the Appellant’s wages at that time. Thus, the ALC correctly determined that “[l]ogically, the day [the Appellant] received his first payment for his work, on or about July 15, 2005, was the day he had notice that he did not have immediate access to escrowed funds.” (R. p. 82). “The Appellant had fifteen days from the date he first received payment to file a grievance contesting access to escrowed funds.” *Id.* The “Appellant did not file his Step One Grievance until April 27, 2007, which is well past the fifteen day deadline.” *Id.*

Accordingly, under the applicable legal standard articulated above, this Court should affirm the ALC’s ruling on this issue.

²² See pp. 4 – 6 above.

- E. The ALC's decision is consistent with judicial precedent establishing that an inmate's prison industries back pay claims fall under the fifteen day filing deadline provided in Policy Number GA-01.12.

Our Supreme Court's decisions in Al-Shabazz and Wicker v. S.C. Dep't of Corr., 360 S.C. 421, 602 S.E.2d 56 (2004), establish that the prison industries back pay claims, similar to the Appellant's claims for immediate access to the monies SCDC deducted from the his pay, fall under the fifteen day filing deadline provided in paragraph 13.1 of the November 1, 2004 edition of Policy Number GA-01.12. Paragraph 13.1 of the November 1, 2004 edition of Policy Number GA-0.12 required that inmates file Step 1 grievances "within 15 days of the alleged incident." (emphasis supplied).

In Wicker, our Supreme Court considered the proper method by which an inmate may litigate a prison industries back pay claim. In Wicker's companion case, Adkins, our Supreme Court held that inmates do not possess a private right of action in circuit court under the applicable prison industries statutes by which to litigate prison industries back pay claims. Instead, the Wicker Court, 602 S.E.2d at 57, held as follows:

However, simply because Wicker may not file a civil claim for damages in circuit court does not mean he is without any remedy. There are numerous issues relating to inmates which, although not giving rise to a private, civil cause of action, are nonetheless grievable through [SCDC's] internal grievance processes. ... Accordingly, we hold that although Wicker has no claim for civil damages, he properly filed a grievance with [SCDC]. [emphasis supplied].

Thus, the Wicker Court directed inmates to pursue their prison industries back pay claims through SCDC Policy Number GA-01.12. Furthermore, the Wicker Court, 602 S.E.2d at 57, after examining Al-Shabazz, held that SCDC's adjudication of an inmate's grievance articulating a prison industries back pay claim is reviewable by the ALC.

In Al-Shabazz, our Supreme Court considered whether an inmate may challenge an internal disciplinary action through a post-conviction relief action. The Al-Shabazz Court, 338 S.C. at 376, 527 S.E.2d at 754, held that SCDC's decisions concerning non-collateral or administrative matters, such as inmate disciplinary matters, are reviewable by the ALC. In reaching this holding, the Al-Shabazz Court, 338 S.C. at 371 – 73, 527 S.E.2d at 751 – 52, reviewed the internal process by which SCDC adjudicated inmate disciplinary infractions. As recognized by the Al-Shabazz Court, 338 S.C. at 371 – 73, 527 S.E.2d at 751, SCDC's Manual for Operations Inmate Disciplinary System, No. OP-22.14 established the procedures by which SCDC may impose disciplinary action on inmates. In its review of the provisions encompassed by SCDC's Inmate Disciplinary System, the Al-Shabazz Court, 338 S.C. at 373, 527 S.E.2d at 752, recognized the following:

The warden reviews the disciplinary hearing officer's decision, and may approve, modify or reverse it. Manual for Operations, Inmate Disciplinary System, No. OP-22.14. If an inmate is dissatisfied with the decision, he must file an appeal within fifteen days of receiving the written decision of the disciplinary hearing officer. Id. Department requires the disciplinary hearing officer to inform an inmate of the right to appeal a finding of guilt and the penalty imposed. Id. [emphasis supplied].

After concluding its review of the provisions encompassed by SCDC's Inmate Disciplinary System, the Al-Shabazz Court, 338 S.C. at 373 – 74, 527 S.E.2d at 752, then recognized that an inmate may appeal a decision rendered by SCDC under its Inmate Disciplinary System by initiating an administrative grievance under the provisions of SCDC's Inmate Grievance System Policy Number GA-01.12, the same policy under review in the ALC's March 4, 2009 order:

An inmate appeals the decision by initiating a grievance. [Policy Number GA-01.12]. The matter is reviewed by the institutional inmate grievance coordinator, who recommends a course of action to the prison warden after interviewing affected employees and inmates. The warden must

respond to the inmate in writing within a specified period. The inmate may appeal the warden's decision to the appropriate deputy director, inspector general, or general counsel of [SCDC]. That person's response is [SCDC's] final decision in the matter.

The Al-Shabazz Court, 338 S.C. at 373, 527 S.E.2d at 752, then provided the following holding:

We hold that [SCDC's] disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in [*Wolff v. McDonnell*, 418 U.S. 539 (1974)]. [SCDC] also prepared its grievance procedures in compliance with the Civil Rights of Institutionalized Persons Act, 42 U.S.C.A. §§ 1997-1997j (1994 & Supp.1999); see also 28 C.F.R. §§ 40.1 to 40.22 (1998) (standards for inmate grievance procedures). [emphasis supplied].

In Torrence v. S.C. Dept. of Corrections, 373 S.C. 586, 646 S.E.2d 866, 870 (2007), our Supreme Court held that "like inmates, the victim and dependent beneficiaries shall be able to maintain their own claims through [SCDC's] internal grievance procedure." [emphasis supplied]. Furthermore, in Williams v. S.C. Dept. of Corrections and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007), our Supreme Court held that inmates did not possess private rights of action against either SCDC or prison industries private industry sponsors under our state's Payment of Wages Act. The Williams Court, 641 S.E.2d at n. 1, also recognized that, pursuant to Wicker, inmates were directed to litigate prison industries back wage claims within the forum established by Policy Number GA-01.12.

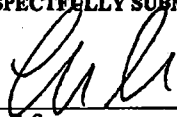
Following this precedent, the ALC has long held that an inmate wage claims do not involve SCDC's policies and procedures and therefore, the fifteen day deadline applies to those claims. (ALC Order 9/23/14, p. 4) (citing Ackerman, ALC Docket No. 07-ALJ-04-0444; Lawson v. S.C. Dep't of Corr., ALC Docket No. 06-ALJ-04-0823-AP (Feb. 12, 2007); and Wright v. S.C. Dep't of Corr., ALC Docket No. 06-ALJ-04-0114-AP, 2006 WL 1430140 (Apr. 28, 2006)).

Accordingly, the ALC correctly concluded, in light of Al-Shabazz, Wicker, Adkins, Torrence, and Williams, as well as Ackerman, Lawson, and Wright, that the Appellant failed to file his administrative grievance designated as BRCI-0594-07 within the fifteen day filing deadline established by paragraph 13.1 of Policy Number GA-01.12, and this Court should, under the standard provided by § 1-23-610(B), affirm the ALC's September 23, 2014 order in its entirety and deny the Appellant's instant appeal.

CONCLUSION

For the foregoing reasons, SCDC respectfully urges this Court to affirm the ALC's September 23, 2014 Order.

RESPECTFULLY SUBMITTED,

BY: 

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

Counsel for Respondent

Columbia, South Carolina
April 13, 2015

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Trial Court Case No. 14-ALJ-04-00282-AP
Appellate Case No. 2014-002172

Joshua Cramer, #251406, ... Appellant,

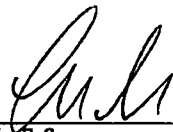
v.

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 13, 2015



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

Counsel for Respondent

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Trial Court Case No. 14-ALJ-04-00282-AP
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Joshua Cramer, #251406, ... Appellant,

v.

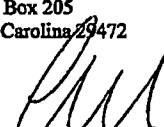
South Carolina Department of Corrections, ... Respondent.

PROOF OF SERVICE

I certify that I have served the 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:

Joshua Cramer, #251406
Lieber Correctional Institution
SA-17
Post Office Box 205
Ridgeville, South Carolina 29472

April 13, 2015



Lake R. Summers

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Carolyn C. Matthews, Admin. Law Judge

Case No.: 2014-002172
Grievance No.: BRCI-0594-07

Joshua Cramer, #251406, ... Appellant,
v.
South Carolina Department of Corrections, . . . Respondent.

APPELLANT'S FINAL REPLY BRIEF

Joshua Cramer
#251406
Lieber C/I; SA-17
P.O. Box 205
Ridgeville, SC 29472
Appellant, Pro Se

Other Counsel of Record:

Lake Summers
339 Heyward St., Suite 200
Columbia, SC 29201

LAW OFFICES

JUL 10 2015

MALONE, THOMPSON
SUMMERS & OTT, LLC

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ARGUMENT

Respondent relied upon Goins v. SCDC, No. 2014-UP-390, 2014 WL 584048 citing Risher v. SC Dept of Health & Envtl. Control, 393 S.C. 198, 712 S.E. 2d 428 (2011) to support their assertion that Appellant failed to preserve issues one and two of his appeal when the ALC did not rule on the issues raised.

Appellant submits that Respondent's argument fails on three points:

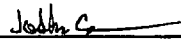
- 1.) Goins is an unpublished opinion with no precedential value,
- 2.) Although Risher was an ALC case, it was not predicated upon the S.C. Administrative Law Court Rules, Section V Special Appeals, the pertains exclusively to appeals by Inmates in the S.C DOC and
- 3.) Rule 65 of the above stated Rules of Court does not allow an Inmate to file a Rule 59(e) (SCRCP) Motion to alter or amend the order: thus an Inmate cannot move the ALC to include findings {which are required by all S.C. Court Rules, e.g. Rule 52, SCRCP} upon which an Inmate may pursue in the Court of Appeals pursuant to S.C. Code Section 1-23-610.

CONCLUSION

Appellant properly raised to the ALC the issues of the statutory violation SCDC committed as it relates to denying appellant immediate access to his escrowed wages and paying a fair interest rate on said monies. Subsequently, Appellant properly raised said issues to this Court. Therefore, pursuant to S.D. Administrative Law Court Rules. Rule 65 Respondents argument concerning Appellant's issues not being preserved should be rejected. Appellant asks this Court to rule on all issues presented by Appellant and reverse and remand the SLC's decision.

June 22, 2015
Ridgeville, SC

Respectfully Submitted,


Joshua Cramer
#251406
Lieber C/I, SA-17
P.O. Box 205
Ridgeville, SC 29472
Appellant, Pro Se

LAW OFFICES

JUL 10 2015

**MALONE, THOMPSON
SUMMERS & OTT, LLC**

CERTIFICATE OF PRO SE APPELLANT

Pro se Appellant certifies that this FINAL REPL BRIEF contains all relevant issues/matters to be included in this brief on appeal, and not any non-relevant issues/matters.

s/ Joshua Cramer
Joshua Cramer
#251406
Lieber C/I, SA-17
P.O. Box 205
Ridgeville, SC 29472
Appellant, Pro se

June 22, 2015
Ridgeville, SC

LAW OFFICES

JUL 10 2015

MALONE, THOMPSON
SUMMERS & OTT, LLC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Carolyn C. Matthews, Admin. Law Judge

Case No.: 2014-002172
Grievance No.: BRCI-0594-07

Joshua Cramer, #251406, ... Appellant,
v.
South Carolina Department of Corrections, . . . Respondent.

CERTIFICATE OF SERVICE

I, Joshua Cramer, certify that I have filed the within corrected FINAL BRIEF and FINAL REPLY dated March 17, 2015 and June 22, 2015, respectively, and the MOTION TO FILE OUT-OF-TIME dated July 6, 2015 on the below listed addresses by depositing a copy of the same in the SCDC interdepartmental mail and/or the US mail first-class postage affixed thereto on this 8th day of July 2015.

V. Claire Allen, Deputy Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29201

Lake Summers
339 Heyward St., Suite 200
Columbia, SC 29201

LAW OFFICES

JUL 10 2015

MALONE, THOMPSON
SUMMERS & OTT, LLC

July 6, 2015
Ridgeville, SC

S/ Josh C
Joshua Cramer
#251406
Lieber C/I, SA-17
P.O. Box 205
Ridgeville, SC 29472
Appellant, Pro Se

LAW OFFICES

AUG 03 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

MALONE, THOMPSON
SUMMERS & OTT, LLC

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Carolyn C. Matthews, Admin Law Judge

Case No.: 2014-002172
Grievance No.: BRCJ-0544-07

Joshua Cramer, #251406 . . . Appellant,
v.
South Carolina Department of Corrections . . . Respondent.

CERTIFICATE OF COUNSEL

The undersigned appellant certifies that Appellant's Final Brief complies with Rule 211(b), SCACR.

July 28, 2015
Ridgeville, SC

s/ Joshua Cramer
Joshua Cramer
#251406
Heber C/I, SA-17
P.O. Box 205
Ridgeville, SC 29472
Appellant, Pro Se

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Carolyn C. Matthews, Admin. Law Judge

Case No.: 2014-002172

Grievance No.: BREI-0594-07

Joshua Cramer, #251406 Appellant,

V.

South Carolina Department of Corrections . . . Respondent.

PROOF OF SERVICE

I certify that I have served my amended FINAL BRIEF CERTIFICATE OF COUNSEL on the below listed addresses by depositing a copy of the same in the US mail first-class postage affixed thereto and/or the SCDC interdepartmental mail on this 30th day of July 2015.

V. Claire Allen, Deputy Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Lake Summers
339 Heyward St., Suite 200
Columbia, SC 29201

July 28, 2015
Ridgeville, SC

s/ Joshua C
Joshua Cramer
#251406
Lieber C/I, SA-17
P.O. Box 205
Ridgeville, SC 29472
Appellant, Pro Se

LAW OFFICES

AUG 03 2015

MALONE, THOMPSON
SUMMERS & OTT, LLC



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK
V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11628
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 3, 2016

Joshua Cramer, 251406
Lieber C/I, SA-17
P.O. Box 205
Ridgeville SC 29472

LAW OFFICES

Mr. Lake Eric Summers, Esquire
339 Heyward St.
Ste. 200
Columbia SC 29201

AUG 04 2016

MALONE, THOMPSON
SUMMERS & OTT, LLC

Re: Joshua Cramer v. SCDC (2)
Appellate Case No. 2014-002172

Dear Counsel and Mr. Cramer:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

A handwritten signature in black ink, reading "Jenny Abbott Kitchings", with a stylized flourish at the end.

CLERK

cc:

The Honorable Carolyn C. Matthews

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Joshua Cramer, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2014-002172

Appeal From The Administrative Law Court
Carolyn C. Matthews, Administrative Law Court Judge

Unpublished Opinion No. 2016-UP-392
Submitted April 1, 2016 – Filed August 3, 2016

REVERSED AND REMANDED

Joshua Cramer, pro se.

Lake Eric Summers, of Malone Thompson Summers &
Ott, LLC, of Columbia, for Respondent.

PER CURIAM: Joshua Cramer appeals an order from the Administrative Law Court (ALC) arguing (1) the ALC erred in affirming the South Carolina Department of Corrections' (SCDC) denial of Cramer's grievances for failure to file his Step 1 Grievance within the Inmate Grievance System Policy's fifteen-day deadline provided by SCDC Policy GA-01.12 paragraph 13.1, (2) SCDC's denial of Cramer's grievance based on the fifteen-day deadline conflicts with SCDC

Policy GA-01.12 section 13.9, (3) SCDC erred in denying him immediate access to wages escrowed for his benefit pursuant to section 24-3-40(A)(5) and (B)(2) of the South Carolina Code (Supp. 2015) and section 24-3-315 of the South Carolina Code (2007), and (4) SCDC denied him a fair interest rate on wages escrowed for his benefit under section 24-3-40(A)(5). We reverse and remand.¹

Cramer is currently serving a life sentence without the possibility of parole at the Broad River Correctional Institution. Between July 2005 and January 2010, Cramer participated in the prison industries service project operated by SCDC. On April 26, 2007, Cramer filed a Step 1 Grievance alleging (1) he should be allowed immediate access to the portion of his wages from the prison industries service project that were placed in escrow as required by section 24-3-40(A)(5) because he was never going to be released from prison and keeping the money in escrow to be distributed at his death deprived him of a liberty interest and (2) he had a liberty interest in the amount of interest earned on the money in escrow and the interest rate had declined. In its response, SCDC denied Cramer's claims, finding Cramer "exceeded any reasonable time frame associated with filing a grievance under the agency's Inmate Grievance System Policy" because he "filed [his] Step 1 [Grievance] nearly two (2) years after SCDC first paid [him] for [his] voluntary participation in the prison industries [service] project," which was also "nearly two (2) years after SCDC began applying the statutorily mandated deductions to [his] prison industries [service project] pay pursuant to [s]ection 24-3-40." Additionally, SCDC found Cramer's allegations were without merit. Cramer appealed SCDC's decision in a Step 2 Grievance. He argued he was entitled to a distribution of the wages in his escrow account, asserted concerns about the interest rate on his escrow account, and contended SCDC erred in construing the fifteen-day deadline because his escrowed wages were wrongfully withheld daily, and therefore, the incident was ongoing. SCDC reiterated its response to Cramer's Step 1 Grievance and denied his appeal.

In March 2014, Cramer appealed to the ALC arguing (1) SCDC erred in denying him immediate access to his escrowed wages, (2) SCDC erred in denying him a fair interest rate on his escrowed wages, and (3) SCDC's denial of his grievance "based on the 'fifteen[-]day deadline' [found in policy number GA-0.12 paragraph 13.1] conflicts with [SCDC] policy number GA-01.12 [paragraph] 13.[9]." Cramer also argued his grievance was not an incident grievance but a policy and procedure grievance that was not limited to the fifteen-day deadline. The ALC affirmed SCDC's decision, finding Cramer's wage claims were "incident" grievances and

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

subject to the Inmate Grievance System Policy fifteen-day deadline. The ALC did not address the merits of Cramer's appeal.

"Section 1-23-610 of the South Carolina Code (Supp. 20[15]) sets forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency." *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (Ct. App. 2008). This court's "review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-610(B). Under section 1-23-610(B)(d), the court of appeals "may reverse or modify the [ALC's] decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is . . . affected by other error of law."

The Inmate Grievance System, found in SCDC Policy GA-01.12, allows inmates to seek formal review of complaints. Guidance on how and when to submit a formal grievance is provided under SCDC Policy GA-01.12 paragraph 13 titled "Steps in the Grievance Process." Grievances are broken into two categories: "incident" grievances and "policies/procedures" grievances. Paragraph 13.1 addresses the timeframe for submitting an incident grievance; this section provides, "If informal resolution [of a grievance] is not possible, the grievant will complete Form 10-5, Step 1, which is located in common areas, . . . and will submit the Form to an employee designated by the Warden . . . within 15 days of the alleged incident." (italics omitted). Paragraph 13.9 addresses the timeframe for submitting a "policy/procedure" grievance; this section provides, "Exceptions to the 15 day time limit requirement *will* be made for grievances concerning policies/procedures." (emphasis added).

We find Cramer's grievance is a "policy/procedure" and SCDC's characterization of Cramer's grievance as an incident grievance was arbitrary and capricious. *Cf. Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 34-35, 766 S.E.2d 707, 718 (2014) ("We defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" (quoting *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984))). Cramer's grievance stems from section 24-3-40(A)(5) and (B)(2) of the South Carolina Code. Section 24-3-40(A)(5) states the director of SCDC, or the local detention or correctional facility manager, shall deduct ten percent of an inmate's wages to "be held in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B)(2) provides "[a] prisoner serving life in prison or sentenced to death

shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice."

This court recently decided *Ackerman v. South Carolina Department of Corrections*, 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016), holding an inmate grievance challenging the specific pay rate in a contract with a prison industries sponsor was a policy/procedure grievance rather than an incident grievance. As in *Ackerman*, the substance of Cramer's grievance, which involves the distribution of his wages, is "a topic governed by statute and, thus, an expression of the legislature's policy," and "SCDC is mandated to carry out these legislative policies." *Id.* at 420, 782 S.E.2d at 761-62. "SCDC, in turn, expresses its own, more specific policies" regarding inmate wage distribution. *Id.* at 420, 782 S.E.2d at 762. Furthermore, Cramer's grievance "naturally fall[s] within [SCDC's] definition [of the terms 'policies' and 'procedures'] because SCDC has operated the prison industries service project as one of its day-to-day operations." *Id.* at 419, 782 S.E.2d at 761.

Additionally, Cramer's grievance cannot "realistically be characterized as [an] 'incident[,],' which [is] temporally limited and rarely affect[s] more than a few inmates" because many inmates are serving life sentences and any of those inmates who participate in the prison industries service project will be in the same situation as Cramer. *See id.* at 421, 782 S.E.2d at 762 (finding the provisions of the inmates contracts were enduring and had the same effect on numerous inmates and therefore, could not "realistically be characterized as 'incidents,' which are temporally limited and rarely affect more than a few inmates").

Accordingly, the decision of the ALC is reversed and this case is remanded for the ALC's consideration of Cramer's grievance on the merits.²

REVERSED AND REMANDED.

HUFF, KONDUROS, and GEATHERS, JJ., concur.

² We do not address Cramer's remaining issues because we are remanding these issues to the ALC.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Appellate Case No. 2014-002172
Unpublished Opinion No. 2016-UP-392

Joshua Cramer, #251406, ... Appellant,

v.

South Carolina Department of Corrections, ... Respondent.

RESPONDENT'S PETITION FOR REHEARING

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

Counsel for Respondent

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The Respondent, the South Carolina Department of Corrections ["SCDC"] respectfully petitions the Court, under South Carolina Appellate Court Rule ["SCACR"] 221(a), to rehear and, obviously, reconsider its decision in this matter. See Opinion No. 2016-UP-392, 2016 WL 4125880 (S.C. Ct. App. Aug. 3, 2016).

I. SUGGESTION FOR THE COURT TO REHEAR ITS DECISION EN BANC UNDER SCACR 219

A. SCACR 219 AND 221(a)

SCDC respectfully suggests, in accordance with the provisions of SCACR 219(b), that this Court rehear its instant decision en banc.

SCACR 219(a) provides that six (6) members of this Court must affirmatively vote to rehear an appeal en banc, and it further provides as follows:

A ... rehearing en banc is not favored and ordinarily will not be ordered except ... (2) when the proceeding involves a question of exceptional importance. [emphasis supplied].

SCACR 221(a) provides that a petition for rehearing "shall state with particularity the points supposed to have been overlooked or misapprehended by the court."

B. THE ISSUES ADDRESSED BY THE COURT'S DECISION INVOLVE QUESTIONS OF EXCEPTIONAL IMPORTANCE

By its decision in the instant matter, this Court applied the logic and reasoning from its recent decision in *Ackerman v. S.C. Dep't of Corr.*, 782 S.E.2d 757 (S.C. Ct. App. 2016) to the prison industries pay claims asserted by Cramer in the administrative grievance he filed with SCDC under its Inmate Grievance Policy System, designated as Policy GA-01.12. In so relying upon *Ackerman*, this Court reversed the decision issued by the South Carolina Administrative Law Court ["ALC"] which upheld SCDC's denial of Cramer's grievance.

In *Ackerman*, the Court reversed a decision issued by the ALC concerning nearly 200 appeals filed by current and former inmates who participated in a prison industries service project operated by SCDC. The ALC in *Ackerman* upheld SCDC's determination that the current and former inmates did not, under Policy GA-01.12, timely file administrative grievances in which they asserted various claims concerning the pay SCDC remitted to them for their labor.

The claims articulated by the current and former inmates in *Ackerman* concerned the hourly rate at which SCDC paid them for their labor and whether SCDC applied the proper percentages of deductions to the gross pay it remitted to them under the provisions of S.C. Code Ann. § 24-3-40, budget provisos enacted by the legislature beginning in 2001 which specifically addressed prison industries service work projects, and the provisions of S.C. Code Ann. §§ 24-1-290 and 295 (Supp. 2007).

The ALC in *Ackerman* upheld SCDC's determination that the fifteen-day filing deadline from paragraph 13.1 of Policy GA-01.12 applied to the pay claims articulated by the current and former inmates in their grievances. By so affirming, the ALC also upheld SCDC's determination that the grievances in which the current and former inmates asserted their pay claims constituted "incident" grievances rather than "policy/procedure" grievances.

By its decision in *Ackerman*, however, this Court ruled that under paragraph 13.9 of Policy GA-012, the grievances in which the current and former inmates asserted their pay claims constituted "policy/procedure" grievances, not "incident" grievances, and, as a result, the fifteen-day filing deadline from paragraph 13.1 did not apply to their grievances. More precisely, this Court ruled that no filing deadline applied to the grievances subject to review in *Ackerman*.

In the instant matter, Cramer, like the current and former inmates in *Ackerman*, filed a grievance in which he articulated claims concerning his prison industries pay. Unlike the current

and former inmates in *Ackerman*, Cramer did not challenge the hourly rate at which SCDC paid him for his labor or whether SCDC applied the proper percentages of deductions to the gross pay it remitted to him under the applicable statutes.

Instead, Cramer asserted in his grievance that SCDC ran afoul of the provisions of §§ 24-3-40(A)(5) and (B)(2) by unlawfully depriving him both of access to the monies it deducted from his gross prison industries wages and then held in an interest bearing escrow account for his benefit, as well as a lawful rate of interest attributable to these monies.

As it did with the grievances in *Ackerman*, SCDC found that the grievance in which Cramer asserted the aforementioned prison industries pay claims constituted an "incident" grievance subject to the fifteen-day filing deadline from paragraph 13.1. SCDC further found that Cramer failed to timely file his grievance, because he filed it nearly two (2) years after SCDC first began deducting ten percent from his gross prison industries pay and holding it in an interest bearing escrow account for his benefit under §§ 24-3-40(A)(5) and (B)(2).

Accordingly, SCDC denied Cramer's grievance, and, as it did in *Ackerman*, the ALC affirmed SCDC's denial of Cramer's grievance and the grounds upon which SCDC determined that Cramer did not timely file his grievance.

As stated above, this Court, as it did in *Ackerman*, reversed the ALC's decision which upheld SCDC's denial of Cramer's grievance. In so reversing the ALC's decision concerning Cramer's grievance, SCDC respectfully asserts that this Court has again allowed the exception to the fifteen-day filing deadline it crafted in *Ackerman*, an exception anchored to its mistaken interpretation of the applicable provisions of Policy GA-01.12, to completely swallow the legitimate fifteen-day filing deadline established by paragraph 13.1.

As illustrated below in the conclusion to SCDC's instant petition, the ALC recognized the perils of such an interpretation in the order by which it upheld SCDC's denial of Cramer's grievance.

Just as it did in *Ackerman*, this Court's instant decision regarding Cramer's grievance further encourages other inmates to fashion creative arguments as to how the exception from paragraph 13.9 trumps the fifteen-day filing deadline established by paragraph 13.1 for a myriad of other instances separate and apart from prison industries pay disputes.

SCDC, therefore, respectfully argues that the rehearing of this appeal "involves a question of exceptional importance" under SCACR 219(a)(2), and, accordingly, SCDC respectfully urges this Court to rehear its August 3, 2016 decision en banc.

II. CRAMER DID NOT IDENTIFY SCDC'S PURPORTEDLY ERRONEOUS APPLICATION OF THE FIFTEEN-DAY FILING DEADLINE TO HIS STEP 1 GRIEVANCE AS AN ISSUE IN HIS NOTICE OF APPEAL TO THE ALC

A. THE COURT'S OPERATIVE OBSERVATIONS

At the outset of its August 3, 2016 decision, the Court identified the four (4) issues associated with Cramer's appeal of the ALC's decision which upheld SCDC's denial of the grievance in which he articulated his prison industries pay claims. (*Opinion*, pp. 1 – 2).

Of the four (4) issues identified by the Court, only the first two (2) are relevant to SCDC's instant petition.¹ The Court first observed that Cramer had argued the ALC "erred in affirming [SCDC's] denial of [his] grievances for failure to file his Step 1 Grievance within the Inmate Grievance System Policy's fifteen-day deadline provided by SCDC Policy GA-01.12

¹ Regarding the third issue, the Court observed that Cramer argued SCDC had "erred in denying him immediate access to wages escrowed for his benefit pursuant to [§§ 24-3-40(A)(5) and (B)(2)] and [§ 24-3-315]." (*Opinion*, p. 2). Regarding the fourth issue, the Court observed that Cramer argued SCDC had "denied him a fair interest rate on wages escrowed for his benefit under [§ 24-3-40(A)(5)]." (*Id.*, p. 2). The Court declined to review the third and fourth issues identified by Cramer, as they concerned the merits of Cramer's prison industries pay claims. Instead, the Court, after reversing the ALC's decision on the first and second issues, remanded the third and fourth issues back to the ALC for consideration of their merits. (*Id.*, p. 4, n. 2).

paragraph 13.1." (*Opinion*, p. 1). The Court next observed that Cramer had argued "SCDC's denial of Cramer's grievance based on the fifteen-day deadline conflicts with SCDC Policy GA-01.12 section 13.9." (*Id.*, pp. 1 - 2).

The Court then summarized the prison industries pay claims articulated by Cramer in the Step 1 grievance he filed with SCDC under the provisions of Policy GA-01.12 (*Id.* p. 2):

Cramer is currently serving a life sentence without the possibility of parole at the Broad River Correctional Institution. Between July 2005 and January 2010, Cramer participated in the prison industries service project operated by SCDC.² On April 26, 2007, Cramer filed a Step 1 Grievance alleging (1) he should be allowed immediate access to the portion of his wages from the prison industries service project that were placed in escrow as required by [§ 24-3-40(A)(5)] because he was never going to be released from prison and keeping the money in escrow to be distributed at his death deprived him of a liberty interest and (2) he had a liberty interest in the amount of interest earned on the money in escrow and the interest rate had declined.

In its review of the chronology associated with Cramer's appeal of SCDC's denial of his grievance, the Court observed as follows (*Id.*, p. 2):

In March 2014, Cramer appealed to the ALC arguing (1) SCDC erred in denying him immediate access to his escrowed wages, (2) SCDC erred in denying him a fair interest rate on his escrowed wages, and (3) SCDC's denial of his grievance "based on the 'fifteen[-]day deadline' [found in policy number GA-0.12 paragraph 13.1] conflicts with [SCDC] policy number GA-01.12 [paragraph] 13.[9]" Cramer also argued his grievance was not an incident grievance but a policy and procedure grievance that was not limited to the fifteen-day deadline.

² For the sake of clarity, Cramer did not participate in a prison industries service project operated by SCDC. Instead, as reflected by SCDC's response to Cramer's Step 1 grievance (R. p. 38), Cramer participated in a prison industries project operated by SCDC at Broad River in which R.M. Design participated as the private industry sponsor and for which SCDC received certification from the United States Department of Justice's Bureau of Justice Administration ["BJA"] under BJA's Prison Industries Enhancement Certification Program ["PIECP"]. In the brief it submitted to the Court, SCDC mistakenly stated that Cramer had participated in a prison industries service work project. See SCDC's Final Brief filed April 13, 2015, pp. 11 and 15. Had he participated in a prison industries service project operated by SCDC between 2005 and 2010, the provisions of budget provisos enacted by our legislature beginning in 2001, as well as the provisions of §§ 24-1-290 and 295 enacted by the legislature in 2007, would have applied to the pay SCDC remitted to Cramer for his labor. Instead, as SCDC had received certification to operate the project in which Cramer participated under BJA's PIECP, the provisions of §§ 24-3-40, 315, 410, and 430, as well as various federal statutes and regulations (i.e. 18 U.S.C.A § 1761(a) and 64 FR 17000, *et seq.*), applied to Cramer's pay.

B. CRAMER DID NOT PRESERVE THE ISSUE OF WHETHER SCDC PROPERLY APPLIED THE FIFTEEN-DAY FILING DEADLINE FROM PARAGRAPH 13.1 OF POLICY GA-01.12 TO HIS GRIEVANCE

SCDC respectfully submits, however, that the Court overlooked the reality that Cramer failed to present any challenge to SCDC's imposition of the fifteen-day filing deadline from Policy GA-01.12 to his grievance within the Notice of Appeal he filed with the ALC.

On the pre-printed Notice of Appeal form he submitted to the ALC dated March 5, 2014 (R. p. 49), Cramer articulated only the following grounds upon which he appealed the final decision by SCDC which denied his claim for immediate access to his escrowed wages:

[Section § 24-3-40(A)(5)] requires SCDC to deduct 10% of an inmate's wages and hold them "in an interest bearing escrow account for the benefit of the prisoner." [Section 24-3-40(B)(2)] provides the inmate with the "option of having his escrowed wages including in his estate or distributed to the persons or entities of his choice." SCDC is violating the provision of [§ 24-3-40(B)(2)] by not allowing me to distribute my escrowed wages to a person of my choice and is holding my escrowed wages in an account bearing little to no interest.

Cramer's appeal of SCDC's denial of his grievance was governed by Section V of the ALC Rules of Procedure, which is entitled "Special Appeals." ALC Rule 51, which is the first rule in Section V, declares that the rules of Section V "shall apply "exclusively in matters heard on appeal from final decisions pursuant to [*Al-Shabazz v. State*, 527 S.E.2d 742 (S.C. 2000)]." The first paragraph of ALC Rule 59, which is entitled "Notice of Appeal," provides that the "notice of appeal from the final decision to be heard by the [ALC] shall be filed with the Court and a copy served on each party, including the agency, within thirty (30) days of receipt of the decision from which the appeal is taken." The next sentence of ALC Rule 59 provides as follows:

The notice shall be on the form prescribed by the Court pursuant to Rule 57 and shall contain the following information:

- A. the name, address, SCDC number, and telephone number of the party requesting the appeal, and the name, address, and telephone number of the attorney or other authorized representative, if any, representing that party;
- B. a brief factual basis for each expressly and specifically asserted constitutional violation;
- C. a copy of the final decision which is the subject of the appeal and the date received;
- D. proof of service of the notice of appeal on all parties.
[emphasis supplied].

Rather obviously, Cramer did not articulate SCDC's purportedly erroneous application of the fifteen-day filing deadline to his grievance as one of the grounds in his Notice of Appeal to the ALC as required by the above-quoted provisions from ALC Rule 59(B).

Accordingly, SCDC respectfully asserts that Cramer failed to preserve this issue for consideration by the ALC, and, by extension, this Court. *See Goins v. S. C. Dep't of Corr.*, Opinion No. 2014-UP-390, 2014 WL 5840482, at *1 (S.C. Ct. App. Nov. 12, 2014) (citing *Risher v. S.C. Dep't of Health & Envtl. Control*, 712 S.E.2d 428, 433, n. 5 (S.C. 2011) ("[T]his Court has long enforced and relied upon issue preservation rules in administrative appeals.") and *Brown v. S.C. Dep't of Health & Envtl. Control*, 560 S.E.2d 410, 417 (S.C. 2002) ("[I]ssues not raised to and ruled on by the [ALC] are not preserved for appellate consideration.")).

III. SCDC PROPERLY DENIED CRAMER'S STEP 1 GRIEVANCE, BECAUSE HE DID NOT FILE IT IN A TIMELY FASHION

A. THE COURT'S OPERATIVE FINDINGS AND RULINGS

In reversing the decision by the ALC which upheld SCDC's denial of Cramer's prison industries pay claim, the Court found as follows (*Opinion*, p. 3):

We find Cramer's grievance is a "policy/procedure" and SCDC's characterization of Cramer's grievance as an incident grievance was arbitrary and capricious. *Cf. [Klawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 766 S.E.2d 707, 718 (S.C. 2014)] ("We defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" (quoting *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984))).

The Court supported its finding by reasoning as follows (*Opinion*, pp. 3 – 4):

Cramer's grievance stems from [§§ 24-3-40(A)(5) and (B)(2)]. Section 24-3-40(A)(5) states the director of SCDC, or the local detention or correctional facility manager, shall deduct ten percent of an inmate's wages to "be held in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B)(2) provides "[a] prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice."

The Court then relied upon its aforementioned recent decision in *Ackerman*, a decision for which SCDC is currently seeking a writ of certiorari from our Supreme Court,³ and it ruled as follows (*Id.*, p. 4):

This court recently decided [*Ackerman*], holding an inmate grievance challenging the specific pay rate in a contract with a prison industries sponsor was a policy/procedure grievance rather than an incident grievance. As in *Ackerman*, the substance of Cramer's grievance, which involves the distribution of his wages, is "a topic governed by statute and, thus, an expression of the legislature's policy," and "SCDC is mandated to carry out these legislative policies." [*Id.*, 782 S.E.2d at 761 – 62]. "SCDC, in turn, expresses its own, more specific policies" regarding inmate wage distribution. [*Id.*, 782 S.E.2d at 762]. Furthermore, Cramer's grievance "naturally fall[s] within [SCDC's] definition [of the terms "policies" and "procedures"] because SCDC has operated the prison industries service project as one of its day-to-day operations." [*Id.*, 782 S.E.2d at 761]. [emphasis supplied].

The Court further relied upon its recent decision in *Ackerman* by continuing as follows (*Id.*, p. 4):

Additionally, Cramer's grievance cannot "realistically be characterized as [an] "incident[]," which [is] temporally limited and rarely affect[s] more than a few inmates" because many inmates are serving life sentences and any of those inmates who participate in the prison industries service project will be in the same situation as Cramer. [See *Ackerman*, 782

³ The Court issued its decision in *Ackerman* on February 10, 2016, and SCDC petitioned the Court to rehear its decision on February 25, 2016. The appellants in *Ackerman* did not petition the Court to rehear any component of its decision. By an order it issued March 24, 2016, the Court denied SCDC's petition for rehearing. On May 2, 2016, SCDC petitioned our Supreme Court to issue a writ of certiorari concerning the Court's decision in *Ackerman*. As of June 14, 2016, our Supreme Court has received all necessary materials concerning SCDC's petition for writ of certiorari in *Ackerman*, and SCDC's petition remains pending as of the date of its instant petition for rehearing.

S.E.2d at 762 (finding the provisions of the inmates contracts were enduring and had the same effect on numerous inmates and therefore, could not "realistically be characterized as 'incidents,' which are temporally limited and rarely affect more than a few inmates").

B. SCDC PROPERLY FOUND THAT THE GRIEVANCE IN WHICH CRAMER ARTICULATED HIS PRISON INDUSTRIES PAY CLAIMS CONSTITUTED AN "INCIDENT" GRIEVANCE, AND, THEREFORE, IT PROPERLY APPLIED THE FIFTEEN-DAY FILING DEADLINE FROM PARAGRAPH 13.1 OF POLICY GA-01.12 TO HIS GRIEVANCE

As recognized by the Court in its decision (*Opinton*, pp. 3 – 4), § 24-3-40(A)(5) provides that SCDC, through its Executive Director, shall deduct ten percent from the gross wages it pays a prisoner who participates in a prison industries project of the type in which Cramer participated, and it further provides that SCDC must hold the ten percent it deducts "in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B)(2) provides that a "prisoner serving life in prison or sentenced to death shall be given the option of having [the escrowed wages held for his benefit pursuant to § 24-3-40(A)(5)] included in his estate or distributed to the persons or entities of his choice."

Thus, by its decision in the instant matter, the Court expanded its holdings from *Ackerman* to cover the percentage of Cramer's prison industries pay which our legislature mandated, by its enactment of §§ 24-3-40(A)(5) and (B)(2), SCDC to deduct and then maintain in an interest bearing account for Cramer's benefit.

However, SCDC respectfully asserts that the monies it deducted from the gross wages it remitted to Cramer and then held in an interest bearing escrow account for his benefit pursuant to § 24-3-40(A)(5), as well as the interest attributable to these monies, clearly constitutes Cramer's property. Thus, by asserting in his Step 1 that SCDC had failed to comply with the provisions of § 24-3-40(B)(2) by unlawfully depriving him access to his property (i.e. the monies SCDC deducted from his gross wages and held in an interest bearing escrow account for his benefit in

accordance with § 24-3-40(A)(5) and the interest attributable to these monies), Cramer asserted that SCDC was depriving him of his property.

SCDC may not take or otherwise deprive inmates of their property without the process afforded them under Policy GA-01.12. Therefore, SCDC respectfully asserts that the claims Cramer articulated in his Step 1 concerning the percentage of his prison industries wages to which SCDC purportedly deprived of access, as well as the interest attributable thereto, constitute "incidents" under Policy GA-01.12, and, therefore, the fifteen-day filing deadline from paragraph 13.1 of Policy applied to his grievance.

1. Precedent from our Supreme Court establishes that all of Cramer's prison industries wages, including the ten percent deducted by SCDC and held in an interest bearing escrow account for his benefit and the interest attributable thereto, constitute his property.

In *Wicker v. S.C. Dep't of Corr.*, 602 S.E.2d 56 (S.C. 2004), our Supreme Court acknowledged that inmates could challenge the hourly wage at which SCDC paid them for the labor they voluntarily provided to prison industries projects by filing administrative grievances in conformity with the provisions of Policy GA-01.12.

In *Wicker*, 602 S.E.2d at 57, our Supreme Court declared as follows:

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

The *Wicker* Court, 602 S.E.2d at 57 – 58, then reconciled its holding with the opinion from *Sullivan v. S.C. Dep't of Corr.*, 586 S.E.2d 124 (S.C. 2003):

We are not unmindful of our opinion in *[Sullivan]*, in which we held the [ALC] has jurisdiction to review [SCDC] grievance proceedings only if they involve the denial of "state created liberty interests." There, we recognized that our opinion in *[Al-Shabazz, 527 S.E.2d at 750]*, held that administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. However, we did not limit *Al-Shabazz* to these two instances. The *Al-Shabazz* Court explained that procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of ... property. [527 S.E.2d at 750].

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

The *Al-Shabazz* Court, 527 S.E.2d at 750, explained the following:

The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *[Board of Regents of State Colleges v. Roth, 408 U.S. 564, 569 (1972)]*. [emphasis supplied].

The *Sullivan* Court, 586 S.E.2d at 126, acknowledged *Al-Shabazz*:

In *Al-Shabazz*, the Court recognized that the administrative matters entitled to review by the [ALC] "typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status." [527 S.E.2d at 750]. The Court explained further that procedural due process was guaranteed only when an inmate was deprived of an interest encompassed by the Fourteenth Amendment's protection of ... property. *Id.* [emphasis supplied].

Our Supreme Court, in its decision in *Williams v. S.C. Dep't of Corr. & Williams Technologies, Inc.*, 641 S.E.2d 885, 886, n. 1, explicitly recognized *Wicker's* holding that a prison industries pay claim articulated in an administrative grievance filed by an inmate under Policy GA-01.12 animates a property interest attributable to the inmate by declaring as follows:

In *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. [emphasis supplied].

By its decision here (*Opinion*, p. 4), the Court, relying upon *Ackerman*, 782 S.E.2d at 761 – 62, determined that “the substance of Cramer’s grievance, which involves the distribution of his wages, is a ‘topic governed by statute and, thus, an expression of the legislature’s policy’ and that “SCDC is mandated to carry out these legislative policies.”

However, the Court overlooked the reality that by claiming SCDC deprived him access to the portion of his gross prison industries wages it deducted and held for his benefit in accordance with §§ 24-3-40(A)(5) and (B)(2), as well as a lawful rate of interest attributable thereto, Cramer actually claimed that, as contemplated under *Al-Shabazz*, *Sullivan*, *Wicker*, and *Williams*, SCDC deprived him of access to his property and to his property itself.

2. The prison industries pay claims Cramer articulated in his Step 1 grievance constituted “Inmate property complaints” under paragraph 7.4 of Policy GA-01.12.

Paragraph 7 of Policy GA-01.12 is entitled “Grievable Issues,” and it specifies seven (7) types of grievable issues. Paragraph 7.4 explicitly provides that “Inmate property complaints” will be considered grievable issues.

In *Ackerman*, 782 S.E.2d at 761, the Court reasoned as follows:

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

Cramer’s claim that SCDC unlawfully deprived him of both access to the percentage of his gross prison industries wages SCDC deducted and held for his benefit in an interest bearing account in conformity with §§ 24-3-40(A)(5) and (B)(2) (i.e. access to his property) constituted an “Inmate property complaint” as contemplated under paragraph 7.4. Likewise, Cramer’s claim

that SCDC deprived him of the lawful amount of interest attributable to his property (i.e. ten percent of his gross prison industries pay) held in the aforementioned escrow account constituted an "Inmate property complaint" as contemplated under paragraph 7.4.

Therefore, under paragraph 7.4, SCDC properly considered the Step 1 grievance in which Cramer asserted these claims as an "incident" grievance subject to paragraph 13.1's fifteen-day filing deadline.⁴ See *Broadhurst v. City of Myrtle Beach Election Comm'n*, 537 S.E.2d 543, 548 (S.C. 2000) ("In construing a statute, its words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.")

3. **SCDC's deduction of ten percent of Cramer's gross prison industries wages and its maintenance of these monies in an interest bearing escrow account for his benefit in accordance with §§ 24-3-40(A)(5) and (B)(2) did not constitute SCDC "policies" or "procedures."**

As discussed above, the *Ackerman* Court, 782 S.E.2d at 761, reasoned as follows:

It logically follows that the remaining items in paragraph 7, i.e., 7.2 through 7.7, were meant to serve as "incidents" for purposes of paragraphs 13.1 and 13.9.

Immediately after this sentence in its decision in *Ackerman*, 782 S.E.2d at 761, the Court continued as follows:

This is consistent with SCDC's proposed definition of "policies/procedures," which was adopted by the ALC:

[T]he terms "policies" and "procedures" constitute approved guidelines for handling the agency's day-to-day operations as well as statements expressing the basic expectations of conduct for agency staff and inmates. More formally stated, the terms "policies" and "procedures" constitute agency directives deemed by the responsible agency officials as "necessary to preserve internal order

⁴ SCDC acknowledges that the Court did not accept a similar if not identical argument SCDC offered in the petition for rehearing it filed in response to *Ackerman*. As stated above, however, SCDC's petition for writ of certiorari in *Ackerman* remains pending with our Supreme Court. Moreover, as the Court did not withdraw its original opinion and substitute a new opinion in when it denied its petition for rehearing, SCDC respectfully observes that the above-quoted language from *Ackerman* remains standing.

and discipline, and to maintain institutional security in the prison.⁵

Inmates' grievances naturally fall within this definition because SCDC has operated the prison industries service project as one of its day-to-day operations pursuant to guidelines and statements expressed in its contracts with prison industries sponsors, such as those in the WTI contract that (1) set the pay rate at \$4.00 per hour per inmate, to be paid directly to SCDC and from which SCDC is to make certain deductions, (2) prohibit WTI from exposing inmates to environmental hazards, (3) establish the duties of the parties regarding screening, training, supervision, scheduling, removal and replacement of inmate workers, (4) require WTI to provide adequate security, (5) provide for future renegotiation of the pay rate to reflect SCDC's increased overhead costs, (6) allow for the parties to create a bonus plan for inmates based on productivity and quality control, and (7) prohibit discrimination. [emphasis supplied].

In its instant decision (*Opinion*, p. 4), the Court relied upon the above-quoted passage from *Ackerman* by concluding as follows:

Furthermore, Cramer's grievance "naturally fall[s] within [SCDC's] definition [of the terms 'policies' and 'procedures'] because SCDC has operated the prison industries service project as one of its day-to-day operations." [*Ackerman*, 782 S.E.2d at 761]. [emphasis supplied].

- a. The Court overlooked its prior, albeit unpublished, decision in *Patterson*, as well as its prior decision in *Blick*.

In its unpublished decision in *Patterson v. S.C. Dep't of Corr.*, — S.E.2d —, 2010 WL 10080031 (No. 2010-UP-292) (S.C. Ct. App. 2010), this Court relied upon its earlier opinion in *State v. Blick*, 481 S.E.2d 452, 455 (S.C. Ct. App. 1997), and the definition of "policies and procedures" reflected therein, when it affirmed a decision by the ALC which upheld SCDC's application of the fifteen-day filing deadline from paragraph 13.1 to a grievance filed by an inmate in which the inmate alleged that SCDC had deprived him of his property (i.e. an "Inmate property complaint" under paragraph 7.4).

⁵ As illustrated immediately below, the basis of the emphasized language from the above-quoted paragraph comes from this Court's opinion in *State v. Blick*, 481 S.E.2d 452, 455 (S.C. Ct. App. 1997).

In affirming SCDC's denial of the inmate's grievance, the *Patterson* Court, 2010 WL 10080031, *1, relied upon *Blick* when it ruled as follows:

Patterson argues the ALC erred in finding his grievance was not timely filed. We disagree. [SCDC] denied Patterson's grievance based on [paragraph 13.1], which states an inmate must file a grievance within fifteen days of the alleged incident. Here, Patterson filed his grievance complaining of loss of his inmate property on December 4, 2006. Even if we construed the requirements for filing liberally in Patterson's favor, Patterson should have filed his grievance within fifteen days of December 6, 2004, when he originally discovered that the Department lost his inmate property. However, he did not file his grievance until almost two years later. The ALC did not err in relying on [SCDC's] internal policy in finding Patterson failed to timely file his grievance because "[t]he adoption and execution of policies and practices necessary to preserve internal order and discipline, and to maintain institutional security in the prison are within the province and expertise of correctional officials." [*Blick*, 481 S.E.2d at 455]. Accordingly, the ALC did not err in affirming the denial of Patterson's grievance. [emphasis supplied].

In *Blick*, this Court reversed a trial judge's ruling that the criminal prosecution of an inmate, who had been indicted for the crime of escape, subjected the inmate to double jeopardy, because SCDC had already imposed a sanction upon the inmate for his escape after an administrative hearing. In the course of its analysis, the *Blick* Court, 481 S.E.2d at 455 – 56, observed as follows:

The purpose of a prison disciplinary proceeding is to maintain institutional order rather than to prosecute criminal conduct. [*United States v. Newby*, 11 F.3d 1143 (3d Cir. 1993)]. The adoption and execution of policies and practices necessary to preserve internal order and discipline, and to maintain institutional security in the prison are within the province and expertise of correctional officials. *Id.* at 1146. If a prison disciplinary sanction were to bar subsequent criminal prosecution, prison authorities would be forced to choose between instituting a disciplinary proceeding or awaiting a criminal prosecution. The difficulties and delay that may be entailed in a criminal prosecution would hinder prison administration and discipline. *Id.* at 1146. Thus, as a general rule, a prison disciplinary sanction will not bar subsequent criminal prosecution. *Id.* at 1146. Looking at the particular facts of this case, we find the loss of 60 days of good time credit and the imposition of 120 days of administrative

segregation is not so divorced from the remedial goal of the government to encourage good conduct and maintain order in the prison as to constitute punishment for double jeopardy purposes. [emphasis supplied].

- b. SCDC's deduction of ten percent of Cramer's gross prison industries wages and its maintenance of these monies in an interest bearing escrow account for his benefit in accordance with §§ 24-3-40(A)(5) and (B)(2) were not "necessary to preserve internal order and discipline, and to maintain institution security in the prison."

The gross wages paid by SCDC to inmates, like Cramer, who participate in the prison industries projects it operates are not "necessary to preserve internal order and discipline, and to maintain institutional security in the prison," the final component of the definition of "policies and procedures" from *Blick*. Moreover, the projects themselves, while they undoubtedly enhance "internal order and discipline" and assist SCDC officials "to maintain institutional security" in the prisons at which the projects are operated, are not "necessary to preserve internal order and discipline, and to maintain institutional security in the prison."

The first sentence of § 24-3-430(A), first enacted in 1995, provides that SCDC's Executive Director "may establish a program involving the use of inmate labor by a nonprofit organization or in private industry for the manufacturing and processing of goods, wares, or merchandise or the provision of services or another business or commercial enterprise considered by the director to enhance the general welfare of South Carolina." [emphasis supplied].

Toward that end, § 24-3-430(A) further provides that provides that SCDC's Executive Director "may enter into contracts with private sector entities that allow inmate labor to be provided for prison industry service work and export work that involves exportation of products." [emphasis supplied].

SCDC is under no mandate by which it must operate the types of prison industries projects which fall under the provisions of § 24-3-430, including the project in which Cramer

participated. If SCDC halted operations of such projects or otherwise discontinued engaging in such projects, SCDC would still have to promulgate and follow "policies/procedures" which would be "necessary to preserve internal order and discipline, and to maintain institutional security in the prison" as contemplated under *Blick* and, more significantly, *Patterson*. Again, the gross wages paid by SCDC to inmates who participate in the prison industries projects it operates, like the projects themselves, are not "necessary to preserve internal order and discipline, and to maintain institutional security in the prison," as contemplated by this Court in *Blick* and *Patterson*.

SCDC respectfully asserts that the manner by which this Court applied the definition of "policies and procedures" from *Blick* in its opinion in *Patterson*, albeit unpublished, supports SCDC's assertion the prison industries pay claims articulated by Cramer in his Step 1 grievance, in which he asserted that SCDC deprived him both of access to his property and to his property itself (i.e. the ten percent of his gross prison industries wages deducted by SCDC and held in an interest bearing escrow account for his benefit and the interest attributable thereto), did not constituted an "incident" grievance rather than a "policy/procedure" grievance.

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

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

Under the Court's previous decisions in *Blick* and *Patterson*, as well as our Supreme Court's decisions in *Wicker* and *Williams and Toth*, SCDC respectfully asserts that the Court should have affirmed SCDC's application of the fifteen-day filing deadline from paragraph 13.1 to Cramer's grievance, because SCDC properly found that Cramer's Step 1 grievance constituted an "incident" grievance. By properly determining that the prison industries pay claims Cramer articulated in his Step 1 grievance rendered Cramer's Step 1 grievance an "incident grievance" rather than a "policy/procedure" grievance, SCDC did not act in an arbitrary and capricious fashion as determined by the Court in its instant decision. (*Opinion*, p. 3).

c. This Court overlooked our Supreme Court's decision in *Okera*.

Along with overlooking its own prior decisions in *Patterson* and *Blick*, SCDC respectfully submits that the Court also overlooked a compelling, albeit unpublished, memorandum opinion issued by our Supreme Court in *Okera v. S.C. Dep't of Corr.*, — S.E.2d —, 2012 WL 10907962 (No. 2012-MO-042) (S.C. 2012).

Like Cramer, Okera participated in a prison industries project operated by SCDC which had been certified by BJA under its PIECP.⁶ Like Cramer, Okera also filed a grievance with SCDC in which he asserted claims regarding his prison industries pay. As it did to Cramer's grievance, SCDC applied the fifteen-day filing deadline to Okera's grievance, and it denied Okera's grievance.

Like Cramer, Okera appealed to the ALC, and the ALC affirmed SCDC's denial of Okera's grievance. Like Cramer, Okera then appealed to this Court, but our Supreme Court accepted his appeal on direct review.

In the per curiam decision it issued in *Okera*, our Supreme Court affirmed the ALC's ruling as follows:

⁶ See note 2 above.

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

By its decision in *Okera*, our Supreme Court has implicitly affirmed the application of the fifteen-day filing deadline to a grievance in a posture identical to that of Cramer's grievance. See *Toth, supra*.

SCDC, therefore, respectfully urges this Court to rehear and reconsider its opinion, and, in doing so, this Court should, under *Kiawah Dev. Partners, II* and *Blick*, defer to SCDC's proper interpretation of the definition of "policies/procedures" under Policy GA-01.12.

IV. BY NOT REQUESTING AN EXTENSION OR WAIVER OF THE FIFTEEN-DAY FILING DEADLINE IN HIS STEP 1 GRIEVANCE OR OTHERWISE INDICATING IN HIS STEP 1 GRIEVANCE THAT HIS PRISON INDUSTRIES PAY CLAIMS CHALLENGED AN SCDC "POLICY" OR "PROCEDURE," CRAMER DID NOT COMPLY WITH PARAGRAPH 13.9 OF POLICY GA-01.12

A. THE COURT'S OPERATIVE FINDINGS AND RULINGS

Before finding that the prison industries pay claim articulated by Cramer in his Step 1 grievance constituted a challenge to an SCDC "policy/procedure" and that SCDC arbitrarily and capriciously determined that Cramer's grievance constituted an "incident" grievance, the Court provided the following overview of Policy GA-01.12 (*Opinion*, p. 3):

[Policy GA-01.12] allows inmates to seek formal review of complaints. Guidance on how and when to submit a formal grievance is provided under [Policy GA-01.12] paragraph 13 titled "Steps in the Grievance Process." Grievances are broken into two categories: "incident" grievances and "policies/procedures" grievances. Paragraph 13.1 addresses the timeframe for submitting an incident grievance; this section provides, "If informal resolution [of a grievance] is not possible, the grievant will complete Form 10-5, Step 1, which is located in common areas, . . . and will submit the Form to an employee designated by the Warden . . . within 15 days of the alleged incident." (italics omitted).

Paragraph 13.9 addresses the timeframe for submitting a "policy/procedure" grievance; this section provides, "Exceptions to the 15 day time limit requirement *will* be made for grievances concerning policies/procedures." [italicized emphasis supplied by this Court].

B. THE COURT MISAPPREHENDED PARAGRAPH 13.9

In pertinent part, paragraph 13.1 of Policy GA-01.12 provides as follows:

Inmates must make an effort to informally resolve a grievance by either submitting a Request to Staff Member Form or by discussing their complaint with the appropriate supervisor/staff. However, in certain cases, informal resolution may not be appropriate or possible (e.g., when the matter concerns staff not working at the institution, or when the matter involves allegations of criminal activity). An informal resolution is not necessary when appealing a disciplinary conviction or a custody reduction. If informal resolution is not possible, the grievant will complete Form 10-5, Step 1, which is located in common areas, i.e., living areas, libraries, etc. and will submit the Form to an employee designated by the Warden (not the Inmate Grievance Coordinator) within 15 days of the alleged incident. An inmate will submit a grievance within the time frames established in the policy. [emphasis supplied].

In its entirety, paragraph 13.9 provides as follows:

Exceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures. Exceptions may also be made for incident grievances by the Chief/designee, Inmate Grievance Branch, provided that documented reasonable cause can be demonstrated as to why the original time frame was not met, e.g., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc. The waiver must be requested by the grievant. [emphasis supplied].

SCDC respectfully argues that the Court overlooked the final sentence of paragraph 13.9 in its analysis of both the ALC's decision and, more specifically, Cramer's Step 1 and Step 2.

The following directions appear in parenthesis on the Step 1 form submitted by Cramer after the words "STATE GRIEVANCE" (R. p. 31): "include documentation, and date of incident; if SCDC Policy, indicate which policy." [emphasis supplied]. In the section of the Step 1 form labeled "STATE GRIEVANCE," Cramer wrote "See Attachment," and he then

articulated his various prison industries pay claims on two (2) pages he attached to his Step 1 form. (R. pp. 31 and 33 – 34).

At the top of the first of the two (2) pages he attached to his Step 1 form, Cramer provided an incident date range of between May 2, 2005 and April 26, 2007, the date he wrote next to his signature on the Step 1 form. (R. pp. 31 and 33).⁷

Concerning his prison industries pay claims at issue in the instant appeal, Cramer wrote the following (R. pp. 33 – 34):

[Section 24-3-40(A)(5) and 24-3-40(B)(2)] created a liberty interest in escrowed wages wherein [Cramer] is entitled to complete and immediate access to the amount of his escrowed wages to distribute them to persons or entities of his choice at the time said wages were escrowed for [Cramer's] benefit, but [Cramer] is serving life without parole, and is denied access.

[Cramer] has a liberty interest earned on the amount complained of [above] at a guaranteed investment rate comparable to Treasury Bills or Certificates of Deposit.

In the section of the form labeled "ACTION REQUESTED," Cramer wrote only the following (R. p. 31): "Correct payment of all monies."

In the section labeled "SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT," wrote only the following: "Not Applicable." (R. p. 31):

In the section of the Step 2 form labeled "INMATE'S REASON FOR APPEAL (state specific dissatisfaction)," Cramer again wrote "See Attachment," and he then articulated his challenges to SCDC's denial of the claims he articulated in his Step 1 on two (2) pages he attached to his Step 2 form. (R. pp. 41 – 43).

⁷ As reflected by its response to his Step 1, SCDC first paid Cramer for his prison industries labor on or about July 15, 2005, and it last paid him on or about January 1, 2010. (R. p. 36). The date stamp appearing on the top of his Step 1 form, as well as the top of the two (2) pages he attached to his Step 1 form, reflects that SCDC officials received Cramer's Step 1 on April 26, 2007. (R. p. 31 and 33 – 34). Thus, Cramer filed his grievance nearly two (2) years after SCDC first paid him for his prison industries labor, and, in accordance with §§ 24-3-40(A)(5) and (B)(2), nearly two (2) years after SCDC first deducted ten percent of his gross prison industries wages and placed these monies in an interest bearing escrow account for his benefit.

As discussed above, Cramer appealed SCDC's denial of his Step 2 to the ALC, and he wrote only the following on the pre-printed Notice of Appeal form he submitted to the ALC on March 5, 2014 (R. p. 49):

[Section 24-3-40(A)(5)] requires SCDC to deduct 10% of an inmate's wages and hold them "in an interest bearing escrow account for the benefit of the prisoner." [Section 24-3-40(B)(2)] provides the inmate with the "option of having his escrowed wages including in his estate or distributed to the persons or entities of his choice." SCDC is violating the provision of [§ 24-3-40(B)(2)] by not allowing me to distribute my escrowed wages to a person of my choice and is holding my escrowed wages in an account bearing little to no interest.

In none of the above-examined filings, including his Notice of Appeal to the ALC, did Cramer ever assert, contend, or otherwise state that he intended the claims he articulated in his Step 1 to constitute a challenge to SCDC "policies/procedures," nor did Cramer indicate any specific SCDC policy challenged by the claims he articulated in his Step 1.

Moreover, to the extent that he actually indicated or otherwise identified a particular SCDC policy he intended to challenge, Cramer simply did not ask SCDC to provide him an exception or waiver for the fifteen-day filing deadline as required by the final sentence of paragraph 13.9.

SCDC respectfully submits that the Court overlooked the impact of the final sentence of paragraph 13.9 on its analysis, and, as exemplified by his filings, SCDC also respectfully submits that nothing in the record demonstrates or otherwise confirms that Cramer ever sought such an exemption.

Consequently, by applying the final sentence of paragraph 13.9 to Cramer's grievance, SCDC did not act in an arbitrary and capricious fashion as determined by the Court. SCDC respectfully urges this Court to rehear and reconsider its opinion, and, in doing so, this Court

should, under *Klawah Dev. Partners, II* and *Blick*, defer to SCDC's interpretation of paragraph 13.9 of Policy GA-01.12.

V. CONCLUSION

SCDC respectfully submits that by its opinion in the instant matter, this Court has eliminated any filing deadline associated with nearly every if not every conceivable type of prison industries pay claim capable of being asserted by current and former inmates who still participate or at one time participated in any type of prison industries project operated by SCDC. The ALC, however, recognized the significance and efficacy a limitations period upon the prison industries pay claims presented in his Step 1 grievance as follows (R. pp. 80 – 81):

[Cramer] claims that he is not grieving an incident, but is grieving SCDC's policy and procedure which prohibits [him] access to his escrowed wages. [Cramer] therefore argues that the fifteen day period to file a grievance is not applicable to him.

...
If the Court agreed with [Cramer] that the fifteen day deadline is inapplicable because [Cramer] is challenging Policy and Procedure, then there would never be a deadline to file a grievance in regards to inmates' right to access escrowed wages. Therefore, the general rule of a fifteen day time limit to file a grievance would be swallowed by the expansive view of policy and procedure articulated by [Cramer].

In *Stokes-Craven Holding Corp. v. Robinson*, 787 S.E.2d 485, 490 (S.C. May 25, 2016),

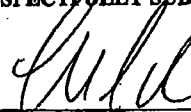
our Supreme Court, relying upon an opinion issued by this Court, articulated the following principles concerning statutes of limitations:

"Statutes of limitations are not simply technicalities." [*Kelly v. Logan, Jolley & Smith, L.L.P.*, 682 S.E.2d 1, 4 (S.C. Ct. App. 2009)]. "On the contrary, they have long been respected as fundamental to a well-ordered judicial system." *Id.* "Statutes of limitations embody important public policy concerns as they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Id.* "One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his or her rights." *Id.* (citations omitted). "Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation." *Id.* "Statutes of limitations are, indeed, fundamental to our judicial system." *Id.* (citation omitted).

As illustrated above, our Supreme Court, in *Olera*, has already implicitly affirmed SCDC's application of a limitations period, i.e. the fifteen-day filing deadline from paragraph 13.1, to a grievance in which the inmate claimed that SCDC deprived him of his property by purportedly failing to pay him the lawful hourly wage for his prison industries labor.

For these broader considerations as well as the foregoing analysis of the points it overlooked and/or misapprehended in its instant decision, SCDC respectfully urges this Court to rehear and, obviously, reconsider its August 3, 2016 decision in this matter.

RESPECTFULLY SUBMITTED,



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

Counsel for Respondent

Columbia, South Carolina
September 6, 2016

RECEIVED

SEP 06 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Appellate Case No. 2014-002172
Unpublished Opinion No. 2016-UP-392

Joshua Cramer, #251406, ... Appellant,

v.

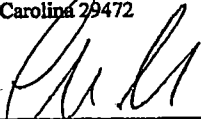
South Carolina Department of Corrections, ... Respondent.

PROOF OF SERVICE

I certify that I have served the Respondent's **PETITION FOR REHEARING** on the above named *pro se* Appellant by mailing a copy to him, first class postage pre-paid, at the following address:

Joshua Cramer, #251406
Lieber Correctional Institution
SA-17
Post Office Box 205
Ridgeville, South Carolina 29472

September 6, 2016


LAKE E. SUMMERS



The South Carolina Court of Appeals

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COLUMBIA, SOUTH CAROLINA 29211
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COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1850
FAX: (803) 734-1839
www.sccourts.org

October 03, 2016

Mr. Lake Eric Summers, Esquire
339 Heyward St.
Ste. 200
Columbia SC 29201

Re: Joshua Cramer v. SCDC (2)
Appellate Case No. 2014-002172

Dear Counsel:

This will acknowledge receipt of your petition for rehearing.

By copy of this letter, the appellant is requested to serve and file a return to this motion no later than October 12, 2016. The time limits for perfecting the appeal will be held in abeyance pending the Court's decision.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Joshua Cramer, 251406

LAW OFFICES

OCT 06 2016

MALONE THOMPSON
SUMMERS & OTT, LLC

The South Carolina Court of Appeals

Joshua Cramer, Appellant,

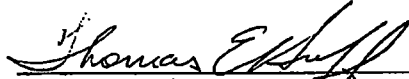
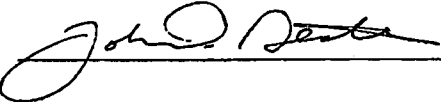
v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2014-002172

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

cc:
Joshua Cramer, 251406
Lake Eric Summers, Esquire

FILED
November 17, 2016

LAW OFFICES

NOV 18 2016

MALONE, THOMPSON
SUMMERS & OTT, LLC

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from the Administrative Law Court
Carolyn C. Matthews, Administrative Law Judge

Court of Appeals Opinion No. 2016-UP-392

Joshua Cramer, #251406, ... Respondent,

v.

South Carolina Department of Corrections, ... Petitioner.

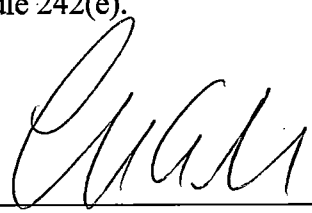
**PETITION FOR WRIT OF CERTIORARI
BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

APPENDIX

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appendix contains material in conformity with the provisions of South Carolina Appellate Court Rule 242(e).

January 9, 2017


Lake E. Summers

Malone, Thompson, Summers & Ott LLC

339 Heyward Street, Suite 200

Columbia, South Carolina 29201

Office: (803) 254-3300

Fax: (803) 254-0309

E-mail: summers@mtsolvlawfirm.com

Counsel for Petitioner