

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
DANIEL D. HALL, CIRCUIT COURT JUDGE

Appellate Case No. 2015-00-2057
Trial Court Number 2013-CP-23-2017

RECEIVED

NOV 17 2016

SC Court of Appeals

ISIAH JAMES, JR ET AL; OF WHOM
GEORGE LEE TOMLIN IS APPELLANT,

VS.

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS [SCDC], RESPONDENT,

RECORD ON APPEAL

s/ *George Lee Tomlin*
GEORGE LEE TOMLIN, 166361
RCI, CA-22, POB 2039
RIDGELAND, S.C. 29936

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**OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES
LOW COUNTRY NON- METROPOLITAN STATISTICAL AREA
By Specified Year**

YEAR	OCC CODE	OCCUPATIONAL TITLE	AREA EMPLOYMENT	WAGE ESTIMATES					
				ENTRY		MEAN		EXPERIENCED	
				HOURLY	ANNUAL	HOURLY	ANNUAL	HOURLY	ANNUAL
FURNITURE ASSEMBLERS									
51-2092 Team Assemblers									
Work as part of a team having responsibility for assembling an entire product or component of a product. Team assemblers can perform all tasks conducted by the team in the assembly process and rotate through all or most of them rather than being assigned to a specific task on a permanent basis. May participate in making management decisions affecting the work. Includes team leaders who work as part of the team.									
1999	51-2092*	Team Assemblers	23,240	\$8.94	\$18,600	\$ 11.66	\$24,260	\$13.24	\$27,540
2000	51-2092*	Team Assemblers	26,670	\$9.10	\$18,930	\$ 12.69	\$26,390	\$14.43	\$30,020
2001	51-2092*	Team Assamblers	24,380	\$9.63	\$20,040	\$ 13.07	\$27,190	\$14.24	\$29,620
2002	51-2092*	Team Assemblers	25,480	\$9.82	\$20,420	\$ 13.31	\$27,680	\$14.63	\$30,430
2003	51-2092*	Team Assemblers	25,540	\$9.88	\$20,540	\$ 13.05	\$27,150	\$14.14	\$29,410
2004	51-2092*	Team Assemblers	28,620	\$10.09	\$20,990	\$ 13.24	\$ 27,530	\$15.17	\$31,540
2005	51-2092*	Team Assemblers	31,450	\$10.08	\$20,970	\$ 13.22	\$ 27,500	\$15.28	\$31,780
2006	51-2092	Team Assemblers	900	\$10.47	\$21,780	\$ 12.47	\$ 25,940	\$14.45	\$30,050
2007	51-2092	Team Assemblers	770	\$10.32	\$21,460	\$ 12.32	\$ 25,620	\$13.92	\$28,960
51-7011 Cabinetmakers and Bench Carpenters									
Cut, shape, and assemble wooden articles or set up and operate a variety of woodworking machines, such as power saws, jointers, and mortisers to surface, cut, or shape lumber or to fabricate parts for wood products.									
1999	51-7011*	Cabinetmakers and Bench Carpenters	2,400	\$7.05	\$14,670	\$ 8.96	\$18,640	\$10.37	\$21,570
2000	51-7011*	Cabinetmakers and Bench Carpenters	1,260	\$7.70	\$16,010	\$ 10.10	\$21,010	\$12.27	\$25,520
2001	51-7011*	Cabinetmakers and Bench Carpenters	1,080	\$8.26	\$17,180	\$ 10.85	\$22,570	\$13.21	\$27,480
2002	51-7011*	Cabinetmakers and Bench Carpenters	1,400	\$8.72	\$18,140	\$ 11.25	\$23,410	\$13.37	\$27,800
2003	51-7011*	Cabinetmakers and Bench Carpenters	1,300	\$9.67	\$20,120	\$ 11.80	\$24,550	\$13.33	\$27,720
2004	51-7011*	Cabinetmakers and Bench Carpenters	1,500	\$9.32	\$19,380	\$ 11.82	\$ 24,590	\$13.76	\$28,620
2005	51-7011*	Cabinetmakers and Bench Carpenters	1,290	\$9.77	\$20,320	\$ 12.24	\$ 25,460	\$14.06	\$29,250
2006	51-7011	Cabinetmakers and Bench Carpenters	1,390	N/A	N/A	N/A	N/A	N/A	N/A
2007	51-7011	Cabinetmakers and Bench Carpenters	30	\$14.10	\$29,330	\$ 16.01	\$ 33,290	\$18.67	\$38,840

SOURCE The Bureau of Labor Statistics
http://www.bls.gov/oes/current/oes_sc.htm

NOTES:

N/A - DATA NOT AVAILABLE

LOW COUNTRY NON-METROPOLITAN STATISTICAL AREA did not become a statistical area until 2006. (Includes Beaufort, Colleton, Georgetown, Hampton, Jasper, and Williamsburg counties.)

* - SOUTH CAROLINA STATEWIDE data provided for Low Country Non-Metropolitan data.

Count

PH

PACSTMT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
PRISON INDUSTRIES ACCOUNTING
EARNINGS AND DEDUCTIONS STATEMENT
PAYROLL DATE 12/16/02

SCDC ID 00166361 TONLIN, GEORGE LEE

LOCATION : 0442 RIDGELAND CORR INST

PLANT CODE : 378 KWALU FURNITURE - RIDGELA

HOURS WORKED: 62.75 HOURLY RATE: 5.15

TRANSACTION DESCRIPTION	PAYEE	MEMO AMOUNT	DEPOSIT AMOUNT	WITHDRAWAL AMOUNT	BALANCE
BEGINNING BALANCE					67.58
GROSS PAY		323.16			
FEDERAL TAX		.00			
FICA		24.72			
STATE TAX		.07			
OTHER CG DEDUCTIONS		.00			
NET PAY			298.37		365.95
PGM FEE: VICTM COMP	GOV OFFICE - VICTIM ASSISTANCE			64.63	301.32
PGM FEE: ROOM/BOARD	SC DEPT. OF CORRECTIONS (RM 8			80.79	220.53
CASH FOR INMATE	E. H. COOPER TRUST FUND			120.63	99.90

1-2

Answer: The only vaguely similar area is extruder operator- but the extruder at 146 Woodlawn is far more complicated - it is a twin screw and the extruder at the prison is a single screw. Entirely different responsibilities and job requirements.

3. Who decides when or if an "Clean-up Crew" member is hired to a permanent job?

Answer: Kwalu employee, Bob Myers.

4. What chemicals, used by inmate employees, did Kwalu employees allow to be removed from the Kwalu Inc. Plant, at Ridgeland Corr. Inst., on or about Friday October 2000, and taken by Ms. L. Malphrus to her home until the Accreditation Team has left? And then returned to the Kwalu Inc. Plant at Ridgeland Corr. Inst. Plant?

Answer: The Defendant objects to the form of this question, as a compound question which assumes propositions which the Defendant denies.

5. What benefits are given to employees of Kwalu Inc. 146 Woodlawn Street, Ridgeland, S.C. 29936 which are not also given to the inmate employees of Kwalu Inc. at the Ridgeland Corr. Inst. Plant?

Answer: See Answer to Interrogatory Number 6.

6. Do the employees of the Kwalu Inc. Plant at 146 Woodlawn Street, Ridgeland, S.C. 29936, receive any of the following benefits from Kwalu Inc.:

1. Paid Vacations
2. Paid Holidays (State & Federal)
3. Retirement Plan
4. 401K Plan
5. Any other benefit which would be an incentive for employment to the Kwalu Inc. Company, and/or which would increase in any manner increase or decrease employees yearly income or taxes.

Answer: Paid Vacations - yes; 401K plan - yes; paid holidays - yes.

7. What protective devices are supplied to employees of Kwalu Inc. Plant at

146 Woodlawn Street, Ridgeland, S.C. 29936, for each of the job areas specified within question number two (2).

Answer: N/A

8. Has there ever been "floaters" used at the Kwalu Inc. Plant at 146 Woodlawn, Ridgeland, S.C. 29936? At the Kwalu Inc. Plant at Ridgeland Corr. Inst.? What were the duties at each Plant?

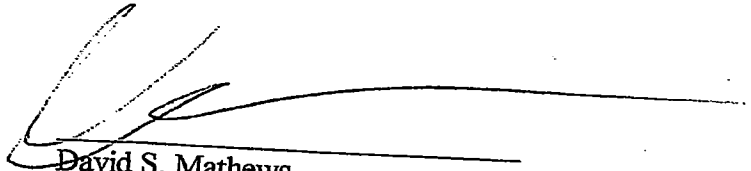
Answer: No floaters at 146 Woodlawn. But the plant at 146 Woodlawn serves a completely different purpose than the prison plant. The floaters at the prison have various duties.

9. How many of the following chemicals are used at the Kwalu Inc. Plant at 146 Woodlawn Street, Ridgeland, South Carolina 29936;

Superox 46-756
Lacquer Thinner
Xylene (xylol)

Paint Thinner (100% Mineral Spirits)
Power Lube Aerosol (CRC)
Autopour 931-2113 Isocyanate

Answer: At 146 they use lacquer thinner, paint thinner and auto pour 931-2113 isocyanate.



David S. Mathews
Attorney for Defendant, Kwalu
Post Office Box 2071
Ridgeland, South Carolina 29936
843-726-9393

Date: 1/31/03

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m. 2

91

CLINTON QUICK

-vs-

: 06-CP-27-0142

S.C. DEPARTMENT OF CORRECTIONS

JOHN BYRD

-vs-

: 06-CP-27- 146

: 06-CP-27-1293

S.C. DEPARTMENT OF CORRECTIONS

TUESDAY, SEPTEMBER 19, 2006
RIDGELAND, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JAMES C. WILLIAMS, JUDGE.

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

ALFRED SINGLETON, PRO SE
BILLIE JOE CARTRETTE, PRO SE
DANIEL GREEN, PRO SE
ERNIE T. ROSEBORO, PRO SE
GEORGE LEE TOMLIN, PRO SE
ALDONGO P. JOHNSON, PRO SE
GREGG DANTZLER, PRO SE
ISIAH JAMES, PRO SE
JOHN BYRD, PRO SE
CLINTON QUICK, PRO SE

LAKE SUMMERS, ESQUIRE
ATTORNEY FOR THE DEPARTMENT OF CORRECTIONS

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

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5. The hourly wage SCDC paid Roseboro after he completed his first approximately 320 hours of his prison industries labor;
6. The applicable federal minimum wage on the date Roseboro completed the first approximately 320 hours of his prison industries labor; and
7. The last date Roseboro participated in the prison industries project at issue if Roseboro no longer participates in the project.

The Court's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabbazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Id. at 756. S.C. Code Ann. § 1-23-380 (4) (Supp. 2005) provides that appellate review in administrative appeals "must be confined to the record."¹ Consequently, this Court can not "solicit evidence" but rather is limited to the Record presented. Therefore,

IT IS HEREBY ORDERED that this case be REMANDED to the Department to hold a hearing, allow Appellant the opportunity to present his viewpoints and determine the answers to the above seven (7) factual questions:

IT IS FURTHER ORDERED that if the Department finds a difference between the wages owed and the wages paid for Appellant's work performed in the prison industry program, that it pay Appellant the difference in accordance with S.C. Code Ann. §§ 24-3-40 (A)(3)(4) and (5).

AND IT IS SO ORDERED.

Ralph K. Anderson, III
 Ralph King Anderson, III

Administrative Law Judge

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 hereof in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

January 12, 2007
 Columbia, South Carolina

This 12th day of January, 2007
 By: Amanda M. Scott
 Judicial Law Clerk

¹ Section 1-23-380 (4) further provides that: "In cases of alleged irregularities in procedure before the agency or the Administrative Law Court, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency or the Administrative Law Court for action as the court considers appropriate." In addition, S.C. Code Ann. § 1-23-380 (3) provides that: "If a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court." Here, however, the administrative hearing was held by the Department. Therefore, even if the Circuit Court found that there were irregularities in procedure before the agency warranting remand, the remand would be to the Department. Furthermore, no timely application was made before the ALC for leave to present additional evidence.

an inmate's right to the prevailing wage, stating "[n]o inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector." S.C.Code Ann. § 24-3-430(D) (2007). Our supreme court recognizes that a critical purpose of the prevailing wage provision is to prevent unfair competition. *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 418, 602 S.E.2d 51, 54 (2004). Nonetheless, I would distinguish between prevailing wages and any right to overtime pay for inmates participating in a prison industries program. In fact, there is no authority within the applicable state statutory scheme recognizing any right to overtime pay for inmates.⁸ See § 24-3-430(D) (2007) (stating only that no inmate participating in the program may earn less than the prevailing wage). Moreover, the inmate never specifically raised the issue of whether a particular federal program provides for the right to overtime pay.

While the Fair Labor Standards Act (FLSA) provides a right to overtime pay for certain employees, the protections of the act do not apply to inmates working within the prison setting. See *Harker v. State Use Indus.*, 990 F.2d 131, 136 (4th Cir.1993) ("For more than fifty years, Congress has operated on the assumption that the FLSA does not apply to inmate labor. If the FLSA's coverage is to extend within prison walls, Congress must say so, not the courts."). As noted by the Fourth Circuit in *Harker*, inmates participating in these types of programs perform work not to "turn profits for their supposed employer, but rather as a means of rehabilitation and job training." *Id.* at 133.

In sum, I am not convinced the current statutory scheme provides for overtime pay

8. Although not within the applicable statutory scheme, section 8-11-55 of the South Carolina Code mentions overtime in the context of state employees. That statute only applies to state employees and provides that "[a]ny state employee who is required to work overtime during any particular week may, as a result, be given compensatory time...." S.C.Code Ann. § 8-11-55 (Supp.2009). The statute further provides that any compensatory time granted must be in accordance with the FLSA. As indicated, the FLSA does not apply to inmates and the prevailing wage statute at issue specifically states that in-

to inmates. Inmates are not employees entitled to the protections of the FLSA, and I do not find it appropriate to read into the prevailing wage statute any such right to inmates voluntarily participating in a prison industries program.⁹ As Judge Posner of the Seventh Circuit has explained:

People are not imprisoned for the purpose of enabling them to earn a living. The prison pays for their keep. If it puts them to work, it is to offset some of the cost of keeping them, or to keep them out of mischief, or to ease their transition to the world outside, or to equip them with skills and habits that will make them less likely to return to crime outside. None of these goals is compatible with federal regulation of their wages and hours. The reason the FLSA contains no express exception for prisoners is probably that the idea was too outlandish to occur to anyone when the legislation was under consideration by Congress.

Bennett v. Frank, 395 F.3d 409, 410 (7th Cir.2005). Accordingly, I concur in the decision of the majority to affirm the circuit court and remand to the ALC to determine a prevailing wage; however, I respectfully dissent as to the overtime issue, and I would affirm the finding of the ALC and the circuit court that the inmate is not entitled to overtime pay.



mates participating in the prison industries program are not considered employees of the state. See S.C.Code Ann. § 24-3-430(F) (2007).

9. An inmate's participation in the prison industries program is voluntary and contingent upon consent to the conditions of the employment. S.C.Code Ann. § 24-3-430(C) (2007) ("An inmate may participate in the program established pursuant to this section only on a voluntary basis and only after he has been informed of the conditions of his employment.") (emphasis added).

2. Prisons ⇌172

Inmate was entitled to time-and-a-half pay for overtime worked in prison industries program (PIP), under prison industries statutes providing that rate of pay for inmate labor in a PIP could not be less than that paid for work of a similar nature in the private sector in the locality in which the work was performed. Code 1976, §§ 24-3-315, 24-3-430(D).

3. Prisons ⇌273

While the prevailing wage statutes for inmates working in prison industries programs (PIP) do not entitle inmates to a private right of action in tort for Department of Corrections' failure to comply with those statutes, inmates may protest through the grievance process the Department's failure to comply with these statutes. Code 1976, §§ 24-3-315, 24-3-430.

4. Prisons ⇌172

Although the federal Fair Labor Standards Act (FLSA) does not apply to inmate workers, statutes governing prison industries programs (PIP) compel the Department of Corrections to ensure inmate workers who are employed in a PIP receive the same pay rates and employment conditions as their non-inmate peers in the same locality. Fair Labor Standards Act of 1938, § 1 et seq., 29 U.S.C.A. § 201 et seq.; Code 1976, §§ 24-3-315, 24-3-430(D).

George Tomlin, pro se, for Appellant.

Lake E. Summers, of Columbia, for Respondent.

CURETON, A.J.

George Lee Tomlin filed a grievance with the South Carolina Department of Corrections concerning conditions of his participation in the Prison Industries Program (PIP). Tomlin appeals the circuit court's order remanding his case to the Administrative Law Court (ALC) for a determination of the prevailing wage for similar work, reversing the ALC's finding that Tomlin was an employee of the private sponsor, affirming the ALC's denial of overtime wages, and affirming the ALC's denial of reimbursement

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, Respondent,

v.

George Lee TOMLIN, Appellant.

No. 4671.

Court of Appeals of South Carolina.

Submitted March 1, 2010.

Decided April 5, 2010.

Withdrawn, Substituted and
Refiled May 28, 2010.

Rehearing Denied May 28, 2010.

Background: Inmate who participated in prison industries program (PIP) appealed decision of the Department of Corrections to deny his grievance that challenged the compensation he received for his work. The Administrative Law Court (ALC) reversed the Department's refusal to pay inmate the prevailing wage and affirmed the Department's denials of overtime pay and reimbursement for wage deductions. Inmate and the Department appealed. The Circuit Court, Jasper County, James C. Williams, Jr., J., remanded the prevailing wage issue and affirmed the denial of overtime wages and reimbursement. Inmate appealed.

Holding: On rehearing, the Court of Appeals, Cureton, A.J., held that inmate was entitled to time-and-a-half pay for overtime worked in PIP.

Affirmed in part, reversed in part, and remanded.

Pieper, J., filed opinion concurring in part and dissenting in part.

1. Prisons ⇌293

The Administrative Law Court (ALC) has subject matter jurisdiction under the Administrative Procedures Act (APA) to hear properly perfected appeals from the Department of Corrections' final orders in administrative or non-collateral matters. Code 1976, § 1-23-310 et seq.

The South Carolina Court of Appeals

Ernie T. Roseboro #273339,

Respondent,

v.

South Carolina Department of
Corrections,

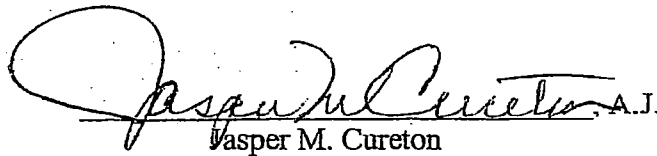
Appellant.

The Honorable Ralph K. Anderson, III
Trial Court Case No. 2005-AL-04-00776

ORDER

This court requested memoranda from the parties regarding the appealability of the order on appeal. After review of the memoranda, relevant case law, and the order on appeal, the appeal is dismissed as interlocutory and not immediately appealable.

AND IT IS SO ORDERED.


Jasper M. Cureton, A.J.
Jasper M. Cureton

Columbia, South Carolina

9/21/2007

cc: Lake Eric Summers, Esquire
Ernie T. Roseboro #273339

#6

FILED

9/24/07 dhp



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 24, 2007

Lake Eric Summers, Esquire
Malone Thompson Summers & Ott LLC
339 Heyward St.
Suite 200
Columbia, SC 29201

Re: Roseboro, Ernie T. #273339 v. SCDC

Dear Mr. Summers:

Enclosed is a copy of an Order of the Court regarding the appealability memoranda in the above case. This order renders the Motion to Dismiss moot.

The remittitur will be sent to the Clerk of Court in accordance with the South Carolina Appellate Court Rules.

Very truly yours,

Kenneth A. Richstad
CLERK

KAR/ma

cc: Ernie T. Roseboro #273339
The Honorable Jana E. Shealy

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PACSTMT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
PRISON INDUSTRIES ACCOUNTING
EARNINGS AND DEDUCTIONS STATEMENT
PAYROLL DATE 09/18/08

SCDC ID 00188381 TOMLIN, GEORGE LEE
LOCATION : 0442 RIDGELAND CORR INST
PLANT CODE : 378 KWALU FURNITURE - RIDGELA
HOURS WORKED: 7.75 HOURLY RATE: 8.55

TRANSACTION DESCRIPTION	PAYEE	MEMO AMOUNT	DEPOSIT AMOUNT	WITHDRAWAL AMOUNT	BALANCE
BEGINNING BALANCE					5,808.58
GROSS PAY		50.78			
FEDERAL TAX		.00			
FICA		3.89			
STATE TAX		.00			
OTHER CG DEDUCTIONS		.00			
NET PAY			46.87		5,853.45
PGM FEE: VICTM COMP	GOV OFFICE - VICTIM ASSISTANCE			10.15	5,843.30
PGM FEE: ROOM/BOARD	SC DEPT CORRECTIONS (R& BOARD)			12.89	5,830.81
CASH FOR INMATE	E. H. COOPER TRUST FUND			18.95	5,811.86

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SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS, Respondent,

v.

George Lee TOMLIN, Appellant.

No. 4671.

Court of Appeals of South Carolina

Submitted March 1, 2010

Decided April 5, 2010.

Withdrawn, Substituted and
Refiled May 28, 2010

Rehearing Denied May 28, 2010.

Background: Inmate who participated in prison industries program (PIP) appealed decision of the Department of Corrections to deny his grievance that challenged the compensation he received for his work. The Administrative Law Court (ALC) reversed the Department's refusal to pay inmate the prevailing wage and affirmed the Department's denials of overtime pay and reimbursement for wage deductions. Inmate and the Department appealed. The Circuit Court, Jasper County, James C. Williams, Jr., J., remanded the prevailing wage issue and affirmed the denial of overtime wages and reimbursement. Inmate appealed.

Holding: On rehearing, the Court of Appeals, Cureton, A.J., held that inmate was entitled to time-and-a-half pay for overtime worked in PIP.

Affirmed, in part, reversed, in part, and remanded.

Pieper, J., filed opinion concurring in part and dissenting in part.

1. Prisons ⇨293

The Administrative Law Court (ALC) has subject matter jurisdiction under the Administrative Procedures Act (APA) to hear properly perfected appeals from the Department of Corrections' final orders in administrative or non-collateral matters. Code 1976, § 1-23-310 et seq.

2. Prisons ⇨172

Inmate was entitled to time-and-a-half pay for overtime worked in prison industries program (PIP), under prison industries statutes providing that rate of pay for inmate labor in a PIP could not be less than that paid for work of a similar nature in the private sector in the locality in which the work was performed. Code 1976, §§ 24-3-315, 24-3-430(D).

3. Prisons ⇨273

While the prevailing wage statutes for inmates working in prison industries programs (PIP) do not entitle inmates to a private right of action in tort for Department of Corrections' failure to comply with those statutes, inmates may protest through the grievance process the Department's failure to comply with these statutes. Code 1976, §§ 24-3-315, 24-3-430.

4. Prisons ⇨172

Although the federal Fair Labor Standards Act (FLSA) does not apply to inmate workers, statutes governing prison industries programs (PIP) compel the Department of Corrections to ensure inmate workers who are employed in a PIP receive the same pay rates and employment conditions as their non-inmate peers in the same locality. Fair Labor Standards Act of 1938, § 1 et seq., 29 U.S.C.A. § 201 et seq.; Code 1976, §§ 24-3-315, 24-3-430(D).

George Tomlin, pro se, for Appellant,

Lake E. Summers, of Columbia, for Respondent.

CURETON, A.J.

George Lee Tomlin filed a grievance with the South Carolina Department of Corrections concerning conditions of his participation in the Prison Industries Program (PIP). Tomlin appeals the circuit court's order remanding his case to the Administrative Law Court (ALC) for a determination of the prevailing wage for similar work, reversing the ALC's finding that Tomlin was an employee of the private sponsor, affirming the ALC's denial of overtime wages, and affirming the ALC's denial of reimbursement

1-13

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

ISIAH JAMES, JR. AND)
GEORGE LEE TOMLIN,)

Plaintiffs,)

IN THE COURT OF COMMON PLEAS

S U M M O N S

-versus-

SOUTH CAROLINA DEPARTMENT)
OF CORRECTIONS (SCDC))

Defendant.)

2013-CP-23- 02017

2013 MAR 11 P 2:20

RECEIVED
COURT OF COMMON PLEAS
GREENVILLE, SOUTH CAROLINA

TO: DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to answer the complaint for Declaratory Judgment(s), SCFOIA and etc. which is herewith served upon you; you must respond in writing to the said complaint and serve a copy of your answer on the plaintiff(s) at the address(es) below within thirty (30) days after the summons service upon the defendant if you fail to answer said complaint, judgment by default will be entered against you for the relief sought therein.

This 25 day of March 2013.

Isiah James, Jr.

Isiah James, Jr., 96883
RCI, CA-52, POB 2030
Ridgewood, S. C. 29036

George L. Tomlin

George L. Tomlin, 166301
RCI, CA-52, POB 2039
Ridgewood, S. C. 29036

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2013-CP-23- 02017

Isiah James, Jr., RCI, CA)
52, POB 2039, Ridgeland,)
S. C. 29936;)
George Lee Tomlin, RCI, GB)
22, POB 2039, Ridgeland,)
S. C. 29936,)

Plaintiffs,)

-versus-

South Carolina Department)
of Corrections (SCDC),)
1414 Broad River Road,)
POB 21787, Columbia,)
S. C. 29221-1787,)

Defendant.)

COMPLAINT FOR DECLARATORY
JUDGMENT(S), SOUTH CARO-
LINA FREEDOM OF INFORM-
ATION ACT (SCFOIA) AND
ETC.

2013 MAR 11 P 2:20
PAUL B. WICKHAM
GREENVILLE CO. S.C.
CLERK OF COURT

Plaintiff(s) Isiah James, Jr. and George Lee Tomlin complain, litigate and sue defendant and they allege;

FOR FIRST CAUSE OF ACTION

1. Defendant SCDC did authorized, gave and/or ordered the adminis-
trative transfer on or about 19 December 1997 of plaintiff Isiah Ja-
mes, Jr. from ~~Goodman Correctional Institution GCI~~ to ~~Ridgeland~~
Correctional Institution RCI which resulted in change of earned
work credit(s) (EWC's) from level 2 for 5 (2F5) to level 3 for 5
(3F5); he maintains that he can show evidence where on 1-20-1997;
he was on 2F7 EWC's as his inmate/prisoner employment of canteen op-
erator/helper - assistant;

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lize 903 to deprive James of level 2F5 EWC's that should
had been 2F7 EWC's from 10-10-2006 until present or 2F7
EWC's from 1997 to present; he requests that the Court decla-
res SCDC policy OP-21.07 Earned Work Credits unconstitutional
as applied to plaintiff James;

~~FOR SECOND CAUSE OF ACTION~~
Judy v. Martin

6. If for some reason, this Court fails to acknowledge
and rule on paragraphs 1-5 entitlement(s) to declaratory and in-
junctive relief (in form of expungement of 903 ticket); plaintiff
claims that SCDC policy OP-21.07 is an ex post facto policy -
(law) and he is entitled to declaratory and injunctive re-
lief pertinent to issue based on fact incorporated, paraphrased
and reiterated from paragraphs 1-5 herein;

FOR THIRD CAUSE OF ACTION

7. Plaintiff alleges that he and other (prisoners) are judgment
creditors with reference thereto discussion set forth below
herein as there were retention wage grievance(s) filed against de-
fendant SCDC in 2005 and prior thereto which resulted in judgments
~~against defendant SCDC (judgment debtor) in March 2006 from the~~
Administrative Law Court (ALC)

More, plaintiff (appellant-grievant) and (co-appellant(s) -
grievants) appealed the wage retention case(s) (appeals) to
South Carolina Court of Appeals and South Carolina Supreme Court
where they obtained favorable appellate court(s) judgment(s) see
SCDC v. Cartrette, 722 S.E.2d 804 (2012) and plaintiff and (other

prisoners) request that this Court declares their rights with regards to those judgment(s); he has annexed hereto to one relevant judgment(s) from the ALC of 3-24-96;

Plaintiff George L. Tomlin asserts that he was issued an 11-23-10 judgment or 'Order Granting Motion For Costs' associated with an appeal of the wage retention case from/in S. C. Court of Appeals and he is a judgment creditor with regard(s) to the appeal; he requests further herein that this Court declares his right(s) with regard(s) to the "costs in the amount of \$394.88" (see attachments) as to whether he is entitled to payment forthwith along with the associated interest;

FOR FOURTH CAUSE OF ACTION
674 SE2d 151 (2009)

8. Plaintiffs James, Tomlin and other(s) request that this Court declares their right(s) with aspect(s) of judgment(s) annexed hereto and the appeals of the relevant judgment(s) which are currently on remand to the pertinent Court(s) as to should the judgment(s) be enforced in whole and/or part;

FOR FIFTH CAUSE OF ACTION
Work Release Laws

9. Defendant amended and/or supplemented SCDC policy CP-21.04 to implement work release eligibility for violent offenders (i.e. armed robbery and/or voluntary manslaughter) in accordance with legislative enactment(s) section 24-13-125; SCDC failed to consider and apply where the General Assembly command-

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Isiah James, Jr. and George Lee Tomlin,)
)
 Plaintiffs,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Defendant.)

**DEFENDANT'S ANSWER TO
PLAINTIFFS' COMPLAINT**

Civil Action Number:
1:13-cv-01936-TLW-SVH

{Jury Trial Requested}

The defendant, by way of Answer to the plaintiffs' Complaint, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. That except as is expressly admitted, modified, or explained herein, each and every allegation of the plaintiffs' Complaint is denied and strict proof thereof is demanded.

2. That the defendant denies committing any act(s) and/or omission(s) which would provide the basis of a cognizable claim. That further, it is denied that the defendant in any way committed any act(s) and/or omission(s) which would constitute a violation of the plaintiffs' civil rights, either secured by the Federal Constitution and/or the Constitution of the State of South Carolina. That it is further denied that the defendant in any way committed any act(s) and/or omission(s) which would give rise to liability to the plaintiffs under state law. It is further denied that the defendant has violated any rights of the plaintiffs, and it is denied that there are any unlawful and/or unconstitutional policies and/or procedures in place at the South Carolina Department of Corrections [SCDC]. That it is denied the defendant has in any way violated the applicable provisions of the Freedom of Information Act [FOIA]. That the allegations of the plaintiff's Complaint are denied and strict proof thereof is demanded.

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FOR A SECOND DEFENSE

3. That it is denied the Defendant, South Carolina Department of Corrections, is an entity for purposes of suit.

FOR A THIRD DEFENSE

4. That the allegations of the plaintiffs' Complaint fail to state a claim upon which relief can be granted.

FOR A FOURTH DEFENSE

5. That the plaintiffs have suffered no constitutional deprivation as a result of any alleged act(s) and/or omission(s) by the defendant. That at all times alleged in the plaintiffs' Complaint, the defendant was performing acts and functions which were reasonably consistent with the rights of the plaintiffs. That the defendant pleads and asserts immunity as a matter of law as a defense to the plaintiffs' claim.

FOR A FIFTH DEFENSE

6. That at all times alleged in the plaintiffs' Complaint, the defendant acted within the proper bounds of its discretion, and the defendant alleges it is entitled to discretionary immunity.

FOR A SIXTH DEFENSE

7. That the defendant at all times acted in good faith and without ill will and/or malice toward the plaintiffs. That the defendant therefore pleads and asserts good faith immunity as a complete and absolute bar and/or defense to any recovery by the plaintiffs from the defendant.

FOR A SEVENTH DEFENSE

8. That the defendant at no time violated any clearly established constitutional rights of

the plaintiffs. That the defendant therefore pleads and asserts qualified immunity as a bar and/or defense to the plaintiffs' claims, and further, the defendant pleads and asserts qualified immunity as an immunity from this suit.

FOR AN EIGHTH DEFENSE

9. That the allegations of the plaintiffs' Complaint fail to state a cause of action upon which relief may be granted.

FOR A NINTH DEFENSE

10. That the defendant pleads and asserts the South Carolina Tort Claims Act as a complete and absolute defense and bar to the claim(s) set forth in the plaintiffs' Complaint. That the defendant specifically pleads and asserts all statutes of limitations, conditions of recovery, limitations of recovery, exclusions from liability, and caps on damages as are set forth in the South Carolina Tort Claims Act. That further, the defendant specifically pleads, but without limitation, the provisions of S.C. Code Ann. § 15-78-60(1)(2)(3)(4)(5)(20)(21)(23) and (25).

FOR A TENTH DEFENSE

11. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-30 as a complete and absolute bar and/or defense to the claims set forth in the plaintiffs' Complaint.

FOR AN ELEVENTH DEFENSE

12. That the defendants plead and assert the provisions of S.C. Code Ann. § 15-78-100 as a bar and/or defense to the allegations set forth in the plaintiffs' Complaint.

FOR A TWELFTH DEFENSE

13. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-110 as a bar and/or defense to the allegations set forth in the plaintiffs' Complaint.

FOR A THIRTEENTH DEFENSE

14. That the defendant pleads and asserts the provisions of S.C. Code Ann. § 15-78-120 as a bar and/or defense to the allegations set forth in the plaintiffs' Complaint.

FOR A FOURTEENTH DEFENSE

15. That to the extent the injuries and/or damages alleged by the plaintiffs were caused by the plaintiffs' own negligence, the defendant pleads and asserts the comparative fault of the plaintiffs as a bar to any recovery by the plaintiffs from the defendant. That the defendant pleads and asserts the comparative fault of the plaintiffs as a complete and absolute bar to any recovery by the plaintiffs from the defendant. That alternatively, the defendant pleads and asserts the comparative fault of the plaintiffs in mitigation of any alleged damages sought to be recovered by the plaintiffs from the defendant.

FOR A FIFTEENTH DEFENSE

16. That to the extent the damages and/or injuries alleged by the plaintiffs were due to, occasioned by, and/or caused by intervening act(s) and/or omission(s) on the part of some individual(s) and/or entity(ies) not under the control of the defendant, the defendant pleads and asserts same as a bar to any recovery by the plaintiffs from the defendant.

FOR A SIXTEENTH DEFENSE

17. That to the extent the plaintiffs' Complaint may be interpreted to allege that they were not properly and/or lawfully detained, the defendant pleads and asserts probable cause as a bar and/or defense to the allegations of the plaintiffs' Complaint.

FOR A SEVENTEENTH DEFENSE

18. That to the extent the allegations and/or damages in the plaintiffs' Complaint were

caused by the conduct of other persons and/or entities not under the control of the defendant, such intervening acts and/or actions are asserted as a complete and absolute bar to any recovery by the plaintiffs from the defendant.

FOR AN EIGHTEENTH DEFENSE

19. That to the extent the plaintiffs failed to timely institute this action in accordance with the applicable statute of limitations, the defendant pleads and asserts the statute of limitations as a bar to any recovery by the plaintiffs from the defendant.

FOR A NINETEENTH DEFENSE

20. That to the extent the plaintiffs failed to exhaust any and all available administrative remedies, the defendant pleads and asserts same as a complete and absolute defense and/or bar to this action.

FOR A TWENTIETH DEFENSE

21. That to the extent the plaintiffs seek injunctive relief, the defendant pleads and asserts that the plaintiffs are not entitled to any such relief.

FOR A TWENTY-FIRST DEFENSE

22. That the defendant pleads and asserts the Public Duty Doctrine and/or Public Duty Rule as a bar and/or defense to the claims set forth in the plaintiffs' Complaint.

Wherefore, the defendant prays as follows:

1. That the Complaint of the plaintiffs be dismissed.
2. That the defendant be granted such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ Russell W. Harter, Jr.

Russell W. Harter, Jr., Fed ID# 1753

Chapman, Harter & Harter, PA

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Post Office Box 10224

Greenville, South Carolina 29603

864/233-4500 *Phone*

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ATTORNEY FOR DEFENDANTS

July 17, 2013
Greenville, SC

(2) mail

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Isiah James, Jr., and)
George L. Tomlin,)
)
Plaintiff,)
)
-vs-)
)
South Carolina Department)
of Corrections,)
)
Defendant.)

1:13-CV-01936-TLW-SVH

DEFENDANT'S NOTICE OF
OBJECTIONS AND
ANSWERS TO PLAINTIFF'S
INTERROGATORIES

B 11

TO: PLAINTIFF, GEORGE L. TOMLIN:

The defendant, in response to Plaintiff Tomlin's First Set of Interrogatories, submits the following in response thereto:

Objections

1. Defendants object to responding to any Interrogatory and/or Request for Production that seeks information not reasonably calculated to lead to the discovery of admissible evidence or to the production of relevant information as required by Federal Rules of Civil Procedure.

2. Defendants object to responding to any Interrogatory and/or Request for Production which is overly broad, unduly burdensome, cumulative or duplicative under Federal Rules of Civil Procedure.

3. Defendants object to responding to any Interrogatory and/or Request for Production that exceeds the scope and limit of discovery set forth in Federal Rules of Civil

Procedure:

4. Defendants object to any Interrogatory and/or Requests for Production to the extent same seeks documents or other tangible things prepared in anticipation of litigation or trial by or for defendants or defendants' representatives.

5. Defendants object to responding to any request for discovery as to any matters that are not relevant to the claim or defense of the claim.

6. Defendants object to Interrogatories and/or Requests for Production of Documents to the extent they seek information covered by an attorney/client privilege or other privilege as provided by law.

7. Defendants object to Interrogatories and/or Requests for Production to the extent they seek disclosure of mental impressions, conclusions, opinions, and legal theories of Defendants's attorneys or other representatives concerning this litigation.

8. Defendants object to any Interrogatory and/or Request for Production of Documents which is non-specific, unclear, ambiguous and/or incomprehensible.

9. Defendants object to any Interrogatory and/or Request for Production of Documents to the extent same does not include and/or identify a document, i.e. the term "document" is defined in the plaintiffs' Request for Production of Documents and if the specific request is not for a document as defined, defendants object to same.

10. Defendants object to any Interrogatory and/or Request for Production to the extent said Interrogatory or Production Request seeks disclosure and/or discovery of information that is protected from disclosure by any applicable state or federal statute.

Answers to Interrogatories

1. Was SCDC and/or SCDC's attorney of record [Lake E. Summers or whoever] forwarded given and/or supplied with a true and correct copy of the Honorable Carolyn C. Matthew's order of 3 June 2009 which showed Tomlin's case No. 05-AJL-04-0070-AP?

Inquiry is being made into Plaintiff's Interrogatory No. 1 and this response will be supplemented.

2. What kind of cahoot(s) is SCDC and/or their attorney in with Administrative Judge of Jasper County Court of Common Pleas (14th Judicial Circuit) where defendant(s) has not satisfied the \$304.88 cost judgment from South Carolina Court of Appeals?

Defendant objects to Interrogatory No. 2 on the grounds set forth in Objections 1 through 10 above.

3. What kind of cahoot(s) is SCDC and defendant's agent(s) and/or servant (to include attorneys) in with the Administrative Law Judge (Court) where the Administrative Law Court (ALC) refuse, will not acknowledge the 6-9-2009 notice of appeal?

Defendant objects to Interrogatory No. 2 on the grounds set forth in Objections 1 through 10 above.

4. What kind of cahoot(s) is SCDC and its attorney in with X-Clerk

Jeanette Barber of South Carolina Court of Appeals as the staff refused to acknowledge and process spring 2009 appeal which is discuss[sic] in part as set forth above herein?

Defendant objects to Interrogatory No. 2 on the grounds set forth in Objections 1 through 10 above.

5. Does the inaction and/or action of ALJ Carolyn Matthew(s) Clerk of ALC and other(s) infer, indicate and/or reference collusion and/or conspiracy between SCDC and their attorney and AIC?

No, upon information and belief.

6. Does the action or inaction of Administrative Judge Mullen of 14th Judicial Circuit infer, indicate and/or reference collusion and/or conspiracy between the Court of Common Pleas of Jasper County and SCDC and their attorney(s)?

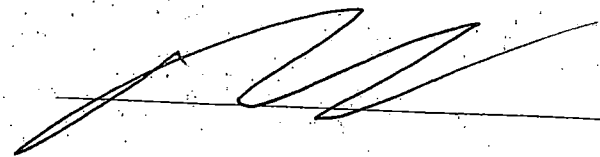
No, upon information and belief.

7. Does the action or inaction of Jeanette Barber X-Clerk of S.C. Court of Appeals, Clerk's office infer, indicate and/or reference collusion and/or conspiracy among SCDC and their attorney and S. C. Court of Appeal's Staff?

No, upon information and belief.

Respectfully submitted,

CHAPMAN, HARTER & HARTER, P.A.



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ATTORNEY FOR DEFENDANT

September 9, 2013

Greenville, South Carolina

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

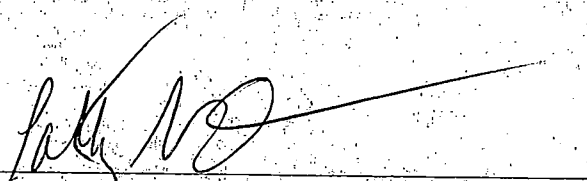
Isiah James, Jr., and)
George L. Tomlin,)
)
Plaintiff,)
)
-vs-)
)
South Carolina Department)
of Corrections,)
)
Defendant.)

1:13-CV-01936-TLW-SVH

CERTIFICATE OF SERVICE

I hereby certify that the undersigned paralegal to Russell W. Harter, Jr., attorney for defendant in the within action, on this the 10th day of September, 2013, served the party listed hereinbelow in the above-captioned matter with copy of **Defendant's Notice of Objections and Answers to Interrogatories** by placing copies of same in multiple envelopes addressed as below, proper postage affixed thereto.

George Tomlin, #166361
P. O. Box 2039
RCI G13-13
Ridgeland, SC 29936


Chapman, Harter & Harter, P.A.
14 Lavinia Avenue
Post Office Box 10224
Greenville, SC 29603
864/233-4500
864/232-1710 (fax)

1m

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Isiah James Jr.; and George Lee Tomlin,)	C/A No.: 1:13-1936-TLW-SVH
)	
Plaintiffs,)	
)	
vs.)	
)	REPORT AND RECOMMENDATION
South Carolina Department of)	
Corrections, SCDC,)	
)	
Defendant.)	
)	

Isiah James Jr. and George Lee Tomlin (“Plaintiffs”), two state prisoners proceeding pro se, originally filed this matter in the Court of Common Pleas for Greenville County, South Carolina. [Entry #1-1]. The South Carolina Department of Corrections (“Defendant”) removed the action to this court on July 15, 2013. [Entry #1]. On July 26, 2013 and August 22, 2013, James moved to remand the case to state court [Entry #11, #17]. Defendant did not file a response in opposition to the motions to remand.

The undersigned issued a report and recommendation (“R&R”) on this case on September 25, 2013, recommending that this action be remanded to state court. [Entry #23]. After the R&R issued, Tomlin filed an objection, but it did not address federal jurisdiction. [Entry #25]. Defendant filed objections arguing that “The defendant, upon information and belief, neither waived federal court jurisdiction, nor consented to remand in light of Tomlin’s continued assertion of some type of federal claims.” [Entry #29]. This case returns to the undersigned pursuant to the order filed January 13, 2014, by the

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Honorable Terry L. Wooten directing the undersigned to reconsider the issues in light of the objections filed by Tomlin and Defendant after the R&R issued. [Entry #45]. For the reasons that follow, the undersigned again recommends that the court grant the motions to remand to the Court of Common Pleas for Greenville County, South Carolina.

I. Factual and Procedural Background

Plaintiffs set forth the following numbered causes of action in their complaint:¹ (1) Defendant's allegedly unconstitutional failure to correctly transfer James' earned work credits; (2) Defendant's alleged violation of the ex post facto clause regarding the policy referenced in the first cause of action; (3) injunctive relief related to James' and Tomlin's collection of a state court judgment; (4) declaratory relief related to James' and Tomlin's collection of a state court judgment; (5) Defendant's alleged failure to apply state statutory law to James' work release eligibility; (6) alleged unconstitutional conditions of confinement while James was in lockdown status; (7) wrongful loss of James' good time credit; (8) alleged failure to comply with a request by James pursuant to the South Carolina Freedom of Information Act (SCFOIA); (9) alleged violations of due process based on Defendant's denying James' and Tomlin's physical presence during their respective parole hearings; (10) alleged failure to comply with James' request pursuant to SCFOIA; and (11) alleged failure to comply with another request by James pursuant to SCFOIA. [Entry #1-1]. Liberally construed, of the 11 causes of action, Plaintiffs

¹ The only complaint attached to the removal notice is entitled "amended complaint." [Entry #1-1]. The undersigned refers to it herein as "complaint" for ease of reference.

arguably state federal claims in the first, second, sixth, and ninth causes of action. The remaining seven causes of action contain only state law claims.

Defendant removed the case to this court on July 15, 2013. [Entry #1]. On July 26, 2013, James filed a motion to remand this case to state court. [Entry #11]. The motion appeared to indicate that James intended to pursue only state law causes of action in this case. *Id.* Because Tomlin did not also sign the motion to remand, the court issued an order directing both Plaintiffs to indicate whether they intended to raise any federal claims in this case, and whether they desire remand of this case to state court. [Entry #15]. On August 22, 2013, James filed a second motion for remand stating that his causes of action are pursued under the laws and constitution of South Carolina. [Entry #17]. James' answers to the court's interrogatories also indicate that he intends to rely solely on state law in asserting his claims in the present action, and that he desires remand of the case to state court. [Entry #18].² Tomlin's answers to the court's special interrogatories indicate that he intends to assert federal claims in this case and does not seek remand of the action to state court. [Entry #20]. Defendant did not file a response opposing either of James' motions to remand the case to state court.

On September 25, 2013, the undersigned issued an R&R recommending the case be remanded because (1) Defendant did not file any opposition to the motions to remand;

² In James' answer to the special interrogatories, he indicated "No" when asked whether he intended to assert federal claims, but added "Other than what is set forth in the complaint; there is right to appeal claim in other state court associated with action!" [Entry #18]. However, James clarified in his second motion to remand that he did not intend to assert federal claims. [Entry #17 at 2].

and (2) although Tomlin indicated in his interrogatories that he wished to assert federal causes of action, he chose to bring his claims in state court when he filed the complaint. [Entry #23].³ Tomlin objected to the R&R on October 7, 2013, but did not substantively address the court's recommendation to remand. [Entry #25]. On October 25, 2013, Defendant filed objections to the R&R arguing that it had not waived federal jurisdiction, but it failed to include any citation to authority or explanation for its failure to file a response to the motions to remand. [Entry #29].

II. Discussion

A. Authority to Remand

This case has been referred to the undersigned pursuant to 28 U.S.C. § 636 and Local Civil Rule 73.02(B)(2)(e) (D.S.C.). There is a split of authority as to whether a magistrate judge has the authority to remand a matter to state court. At least one court in this district has addressed the issue in a published opinion and held that a magistrate judge did not have such authority. *See Long v. Lockheed Missiles & Space Co., Inc.*, 783 F. Supp. 249, 250 (D.S.C. 1992). Many federal circuit courts, addressing this matter in published opinions, have reached a similar result, holding that an order to remand is dispositive. *See Williams v. Beemiller, Inc.*, 527 F.3d 259, 264–66 (2d Cir. 2008); *Vogel v. U.S. Office Prods. Co.*, 258 F.3d 509, 514–17 (6th Cir. 2001); *In re U.S. Healthcare*, 159 F.3d 142, 145–46 (3d Cir. 1998). In light of the unsettled state of the law within this district as to whether remands are considered dispositive, a report and recommendation

³ The R&R did not find that removal was improper, but recommended remand based on the filings of Plaintiffs' filings and on Defendant's failure to oppose the motions.

has been prepared in this case. *See Jonas v. Unisun Ins. Co.*, No. 00-1217, 2000 WL 1350648, at *1 (4th Cir. Sept. 20, 2000) (noting that the Fourth Circuit “has not addressed whether a magistrate judge may issue an order of remand”).

B. Analysis

1. To the extent it alleges a denial of due process under the Fourteenth Amendment, Plaintiffs’ ninth cause of action should be summarily dismissed.

Plaintiffs’ ninth cause of action, to the extent it alleges a violation of Plaintiffs’ Fourteenth Amendment rights, should be summarily dismissed because: (1) Plaintiffs have already had an opportunity to litigate this issue in federal court, and (2) there is no federal liberty interest in parole hearings. Plaintiffs’ ninth cause of action alleges that their state and federal due process rights have been violated by Defendants’ failure to allow them to be physically present at their parole hearings. [Entry #1-1 at ¶¶ 13–14]. James has previously litigated in this court his alleged due process deficiencies related to his parole hearings. *See James v. Ozmint*, C/A No. 1:08-2256-TLW-SVH. Tomlin is currently litigating the alleged violation of his constitutional rights for being prohibited from personally appearing before the board during his parole hearings. *See Tomlin v. Cohen*, C/A No. 9:12-3258-MGL. Because the ninth cause of action has previously been and/or is currently being addressed by this court in previously-filed cases, these duplicate claims should be summarily dismissed in the interests of judicial economy and efficiency. *See Aloe Creme Labs., Inc. v. Francine Co.*, 425 F.2d 1295, 1296 (5th Cir.1970) (“The District Court clearly had the right to take notice of its own files and records and it had no duty to grind the same corn a second time.”).

Even if the court were to ignore Plaintiffs' previously-filed cases, it is clear that prisoners have no constitutional right to parole. *See Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 7 (1979); *Cooper v. S.C. Dep't of Probation, Parole and Pardon Services*, 661 S.E.2d 106, 110 (S.C. 2008) ("Parole is a privilege, not a right") (citation omitted). As discussed at length in the report and recommendation issued in Tomlin's pending case [C/A No. 9:12-3258-MGL at Entry #30], Plaintiffs' claim regarding their parole hearings does not set forth a violation of their federal constitutional rights. Therefore, to the extent it alleges violations of their federal constitutional rights, Plaintiffs' ninth cause of action should be summarily dismissed.

2. Claims that do not form part of the same case or controversy as those in the courts' original jurisdiction must be remanded.

Claims that do not form part of the same case or controversy as those over which the court has original jurisdiction must be remanded. "[T]he district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C.A § 1367(a). Therefore, the court must determine whether supplemental jurisdiction exists by evaluating whether Plaintiffs' claims are so related to the claims within the court's original jurisdiction to form part of the same case or controversy. It appears that the first, second, sixth, and ninth causes of action of the complaint contained potential federal claims over which the court had original jurisdiction. [Entry #1-1] However, none of these causes of action appear to form part of the same case or controversy as the third, fourth, fifth, seventh, eighth, tenth, or

eleventh causes of action. *Id.* In such a case, the district court is now⁴ required to sever from the action all claims that are not within the court's original or supplemental jurisdiction. *See* 28 U.S.C. § 1441(c)(2) ("Upon removal of an action [pursuant to federal question jurisdiction], the district court shall sever from the action all claims [that are not within the district court's original or supplemental jurisdiction] and shall remand the severed claims to the State court from which the action was removed"); *see also*, 16 Moore's Federal Practice § 107.14(6)(a) (3rd ed. 2013) (noting that after the amendments to 28 U.S.C. § 1441, the district court is now required to remand the claims over which it does not have original or supplemental jurisdiction). Therefore, the undersigned recommends the district judge remand the third, fourth, fifth, seventh, eighth, tenth, and eleventh causes of action, as required under § 1441(c)(2).

3. The only remaining claims relate only to James, who swore to rely solely on state law, and the court should decline to retain supplemental jurisdiction of such claims.

If the district judge accepts the undersigned's recommendation regarding summarily dismissing the federal due process claim in the ninth cause of action and remanding the third, fourth, fifth, seventh, eighth, tenth, and eleventh causes of action, no further federal claims remain in the case. The remaining claims (first, second, and sixth) involve only James, who has signed a statement under penalty of perjury indicating that he intends to rely solely on state law. [Entry #17, #18]. Therefore, James has clarified that he intended to assert only state claims. It is permissible for a plaintiff to dismiss his

⁴ The statute authorizing removal of civil actions, 28 U.S.C. § 1441, was revised effective January 6, 2012.

federal claims or amend the complaint to remove federal claims and seek remand. *See* 16 Moore's Federal Practice § 107.14(3)(b)(ii) (3rd ed. 2013). James has made clear that his intention is to pursue only state law claims. Therefore, the court interprets his filings as dismissing any federal claims that could be read as contained in his complaint. In *Harless v. CSX Hotels, Inc.*, 389 F.3d 444 (4th Cir. 2004), the Fourth Circuit upheld a district court's order granting a plaintiff's motion to amend the complaint to remove federal issues and to remand the remaining claims to state court. The Fourth Circuit affirmed the district court's finding that the plaintiff acted in good faith because "[w]hile [the plaintiff] clearly wanted to avoid federal jurisdiction, she also had substantive reasons for amending the pleadings." *Harless*, 389 F.3d at 448.

Although the court retains supplemental jurisdiction of state law claims that form part of the same case or controversy as the federal claims, "[a]s a practical matter . . . many district judges will exercise their discretion under the supplemental jurisdiction statute and dismiss the remaining claims." 16 Moore's Federal Practice § 107.14(3)(b)(ii) (3rd ed. 2013); *see also* 28 U.S.C. § 1367(c). Pursuant to 28 U.S.C. § 1367(c)(3), the district court may decline to exercise supplemental jurisdiction "if the district court has dismissed all claims over which it has original jurisdiction." *See also United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966) ("Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well."); *United States ex rel. Scott v. Metropolitan Health Corp.*, 375 F.Supp.2d 626, 647 (W.D.Mich. 2005) ("[T]he strong federal custom . . . has

been to dismiss those claims in order to permit state courts to decide their own law, as is their prerogative.”); *see also AJP Group, Inc. v. Holmes*, C/A No. 4:13-611-RBH, 2013 WL 3148416, at *2 (D.S.C. June 18, 2013) (“Given that Plaintiff’s Complaint states no federal cause of action, the Court finds that the case should be remanded.”); *Morris v. Joe Gibson Automotive, Inc.*, Civ. A. No. 7:08-1739-HMH, 2008 WL 2705000 (D.S.C. July 9, 2008) (granting the plaintiff’s motion to amend to remove the sole federal claim, and granting the plaintiff’s motion to remand).

Here, the undersigned recommends that the court remand the remaining state claims. First, after failing to file an opposition to James’ motions to remand, Defendant filed an objection to the R&R that did not provide any authority as to why the court should retain federal jurisdiction and failed to identify which of Tomlin’s claims provided federal jurisdiction. Therefore, Defendant has not demonstrated that it has a strong interest in having the state law claims heard in federal court. On the other hand, James has filed two motions for remand, demonstrating his strong interest in having his claims heard in state court. Defendant’s failure to act or otherwise provide authority for its contention that the court retain jurisdiction should not be rewarded. *See* Local Civil Rule 7.06 (D.S.C.) (“ . . . If no memorandum in opposition is filed within fourteen (14) days of the date of service, the Court will decide the matter on the record. . . .”)

Second, if the district judge accepts any of the recommendations contained herein, and most particularly the application of the revised removal statute, 28 U.S.C. § 1441(c)(2), that compels district courts to sever and remand claims that do not form part of the same case or controversy as those in its original jurisdiction, judicial efficiency

weighs strongly in favor of remand of the remaining state claims. If the court were to not remand, James would be forced to litigate claims simultaneously in state and federal courts, despite an absence of federal claims in his federal case. Given that this case is in its infancy, such a result does not promote judicial efficiency or protect federalism concerns. *See Dixon v. Coburg Dairy, Inc.*, 369 F.3d 811, 816 (4th Cir. 2004) (en banc) (citing *Mulcahey v. Columbia Organic Chems. Co., Inc.*, 29 F.3d 148, 151 (4th Cir. 1994) (a district court is “obliged to construe removal jurisdiction strictly because of the ‘significant federalism concerns’ implicated.”).

Therefore, for the foregoing reasons, the undersigned recommends the district judge decline to retain jurisdiction over the remaining state law claims.

III. Conclusion and Recommendation

For the foregoing reasons, the undersigned recommends the district judge: (1) summarily dismiss Plaintiffs’ ninth cause of action to the extent it asserts violations of their federal due process rights; (2) remand the third, fourth, fifth, seventh, eighth, tenth, and eleventh causes of action pursuant to 28 U.S.C. § 1441(c)(2), as these claims do not form part of the same case or controversy as the claims in the court’s original jurisdiction; and (3) decline to exercise supplemental jurisdiction over the state-law claims that remain in light of James’ clarification that he intends to rely solely on state law. If the district judge accepts this recommendation, James’ motions to remand [Entry #11, #17] will be granted. All remaining motions shall remain in the record for consideration by the state court.

IT IS SO RECOMMENDED.

Shiva V. Hodges

January 30, 2014
Columbia, South Carolina

Shiva V. Hodges
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Isaiah James, Jr., and George Lee Tomlin,)	
)	
Plaintiffs,)	
)	C/A No.: 1:13-cv-1936-TLW
vs.)	
)	
South Carolina Department of Corrections,)	
)	
Defendant.)	
_____)	

ORDER

Plaintiffs Isiah James, Jr. and George Lee Tomlin (“Plaintiffs”), two state prisoners proceeding *pro se*, originally filed this action in the Court of Common Pleas for Greenville County, South Carolina. (Doc. #1). The South Carolina Department of Corrections (“Defendant”) filed a notice of removal on July 15, 2013, that purports to remove the action. (Doc. #1). Thereafter, Plaintiff James filed two motions to remand the case to state court, asserting that he intended to bring only state causes of action. (Docs. #11, 17, 18). Magistrate Judge Shiva V. Hodges filed a Report and Recommendation on September 25, 2013, recommending that this action be remanded to state court. (Doc. #23). After the Report and Recommendation issued, Plaintiff Tomlin filed an objection but did not address federal jurisdiction. (Doc. #25). Defendant filed objections arguing that “[t]he defendant, upon information and belief, neither waived federal court jurisdiction, nor consented to remand in light of Tomlin’s continued assertion of some type of federal claims.” (Doc. #29). In light of the objections to the Report and Recommendation, this Court remanded the action to the Magistrate Judge for reconsideration. (Doc. #45).

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The Magistrate Judge filed a second Report and Recommendation (“the Report”) on January 30, 2014. In the Report, the Magistrate Judge recommends the District Court (1) summarily dismiss Plaintiffs’ ninth cause of action to the extent it asserts violations of their federal due process rights; (2) remand the third, fourth, fifth, seventh, eighth, tenth, and eleventh causes of action pursuant to 28 U.S.C. § 1441(c)(2), and (3) decline to exercise supplemental jurisdiction over the remaining state-law claims in light of James’ clarification that he intends to rely solely on state law. Plaintiff James filed a document captioned as objections to the Report on February 28, 2014. However, this objection does not raise any specific issues that impact this Court’s accepting the Report. Notably, James has filed motions asking that his case be remanded to state court. He asserts his claims are based only in state law. Neither the Defendant nor Plaintiff Tomlin filed objections to the January 30, 2014 Report.

The Court has reviewed the objections. In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections.... The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court’s review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge’s findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in Wallace, the Court has reviewed, de novo, the Report and the objections. After careful review, the Court hereby **ACCEPTS** the Report. (Doc. # 47).

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Plaintiff James' document, characterized as an objection, (Doc. #53), is **OVERRULED**. For the reasons articulated by the Magistrate Judge, the Plaintiffs' ninth cause of action is **DISMISSED** to the extent it asserts due process violations. The Plaintiffs' third, fourth, fifth, seventh, eighth, tenth, and eleventh causes of action are **REMANDED** to state court pursuant to 28 U.S.C. § 1441(c)(2). The Court declines to exercise supplemental jurisdiction of the remaining claims, and thus the remaining claims are also **REMANDED** to state court. In light of the Court's ruling, Plaintiff James' July 26, 2013 Motion to Remand, (Doc. #11), and August 22, 2013 Motion to Remand, (Doc. #17), are **GRANTED**. Plaintiff Tomlin's Motion to Compel and Motion for Extension of Time, (Docs. #19, 22), Defendant's Motion for Summary Judgment (Doc. #32), and Plaintiff James' Motion for Extension of Time, Motion to Appoint Counsel, and Motion for Recusal (Doc. #38), are terminated as moot in light of the Court's ruling.

IT IS SO ORDERED.

____s/Terry L. Wooten____
Chief United States District Judge

March 18, 2014
Columbia, South Carolina

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(2)

1 STATE OF SOUTH CAROLINA) IN THE COMMON PLEAS COURT
2 COUNTY OF GREENVILLE) OF THE THIRTEENTH
3) JUDICIAL CIRCUIT
4)
4 ISIAH JAMES, JR.,)
GEORGE LEE TOMLIN,)
5)
Plaintiffs,) TRANSCRIPT OF RECORD
6) 2013-CP-23-02057
7 vs.)
7)
KALENE ANN SMITH BRYANT,)
8)
Defendant.)
9)

10
11
12 July 24, 2015
Greenville, South Carolina

13
14 B E F O R E:

15 HONORABLE DANIEL HALL, Judge.
16

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

18 ISIAH JAMES, JR.,
Pro se Plaintiff

19 GEORGE LEE TOMLIN,
Pro se Plaintiff

20 RUSSELL HARTER, JR., ESQUIRE
21 For Defendant SCDC

22 J. EMORY SMITH, ESQUIRE
23 Attorney General's Office

24 Julie A. Ashbrook,
25 Circuit Court Reporter
Seventh Judicial Circuit

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EXHIBITS

MARKED ENTERED

NO EXHIBITS PROFFERED

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ISIAH JAMES, JR. & GEORGE TOMLIN VS. SCDC

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

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

MR. SMITH: Your Honor, I'm Emory Smith. I'm from the Attorney General's office. I don't represent a party to the case. I represent Roger Young, a Circuit Court judge, and Chief Judge Ralph King Anderson, III, as an Administrative Law Court, and retired Administrative Law Court Judge Caroline Mathews. They

were subpoenaed to testify in this case. I've got a motion to quash that subpoena or a protective order to any other subpoenas.

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

And your name?

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

1 THE COURT: All right.

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

6 THE COURT: Yes, that would be fine.

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

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

10 MR. HARTER: All right, sir.

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

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

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

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

19 THE COURT: Okay. Let me --

20 MR. HARTER: I --

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

23 MR. HARTER: I'm sorry.

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

25 MR. HARTER: Okay.

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

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

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

6 MR. TOMLIN: George Tomlin.

7 THE COURT: And you are also a plaintiff?

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

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

12 MR. HARTER: I did.

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

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

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

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

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

11 And then the district -- excuse me, the
12 Magistrate issued a report in recommendation. The
13 Magistrate sent some special interrogatories to the
14 Plaintiffs to identify whether they were really
15 asserting federal claims or waiving federal claims
16 filtered through all of that. And then the District

17 Court that the Magistrate judge recommended that the
18 3rd, 4th, 5th, 7th, 8th, 10th and 11th claims be
19 remanded to State Court. And, Judge Wooten, at District
20 Court affirmed that.

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

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

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

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

15 And what I did on this, on this outline, is I
16 broke them down into the subjects that they relate to.

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

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

3 MR. JAMES: Object to answer.

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

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

13 Every -- the SCDC -- and I then didn't represent
14 SCDC at that point, but SCDC and Mr. James appealed to
15 the Circuit Court. And the Circuit Court said in its
16 order, this is one of the orders in the file, that with

17 the consent of Mr. James, they said, the finding of the
18 prevailing wage loss -- prevailing wage rate by Judge
19 Matthews was not correct. That they didn't agree,
20 Circuit Court Judge Williams did not agree that Judge
21 Matthews' determination of prevailing wage was correct.

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

25 Administrative Law Court. And this was in Judge

1 Williams' order.

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

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

17 put that money in his cooker account, that adjustment
18 has been made.

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

25 ~~actually Mr. James was not entitled to any additional~~

1 wages.

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

13 THE COURT: Got ya. All right.

14 MR. HARTER: Okay.

15 THE COURT: All right.

16 MR. HARTER: Now --

17 THE COURT: I'm sorry.

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

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

22 MR. HARTER: Okay.

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

25 MR. SMITH: Excuse me, Your Honor.

1 THE COURT: Yes, sir.

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

5 THE COURT: All right.

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

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

11 MR. TOMLIN: Tomlin.

12 THE COURT: Mr. Tomlin. Mr. James and Mr.
13 Tomlin, Mr. Harter is making his argument about summary
14 judgment on the causes of action, but we're gonna talk
15 about those in just a minute. But I'm gonna try to
16 accommodate Mr. Smith here. He has sort of a separate

17 issue merely on the issue of quashing some subpoenas.
18 So we're -- I'll be glad to hear that now.

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

1 on this case.

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

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

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

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

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

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

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

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

24 MR. JAMES: Yes, sir.

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

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

7 MR. JAMES: Well, sir --

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

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

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

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

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

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

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

9 MR. SMITH: Within ten days?

10 THE COURT: Yeah.

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

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

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

15 THE COURT: Yes, you may.

16 (Whereupon, Mr. Smith leaves courtroom.)

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

21 MR. HARTER: No, sir, Judge. I just think that

22 -- and we, what we did is we turned up an index of the
23 affidavits that address each of those cause of action.

24 But there's never been anything reduced to a judgment

25 and we believe the Administrative Law Court is somebody

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

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

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

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

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

17 Court; is that correct?

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

1 Mr. James.

2 THE COURT: Okay.

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

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

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

13 And as far as my unpublished opinion from the
14 Court of Appeals, the opinion from the Court of Appeals
15 it indicated that the Administrative Law Court issued a
16 final order. That order was overturned when we went

17 before Judge Williams in Jasper County where he said the
18 prevailing wage wasn't 5.25 and it should be based on
19 this wage estimate that we, we secured from a state
20 agency that issued statistics in dealing with wages for
21 furniture assembly, which is basically what our job was,
22 so we could learn the pay.

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

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

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

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

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

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

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

8 THE COURT: All right, sir.

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

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

13 MR. HARTER: Your Honor?

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

15 MR. HARTER: All right.

16 THE COURT: I'll listen to everybody's arguments

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

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

22 What's next?

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

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

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

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

14 MR. HARTER: Sir?

15 MR. TOMLIN: Yes, sir.

16 MR. HARTER: And this is the case he's handed up

17 on Tomlin versus SCDC -- SCDC versus Tomlin is the case
18 that, that resulted in the order of cost, order of cost
19 only that was taken. Correct, Mr. Tomlin?

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

21 MR. HARTER: Sir?

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

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

25 sorry.

1 THE COURT: I understood that.

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

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

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

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

5 THE COURT: I'll read his affidavit.

6 MR. HARTER: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

17 THE COURT: All right.

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

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

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

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

3 THE COURT: If you'll pass --

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

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

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

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

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

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

1 anything else on that issue?

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

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

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

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

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

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

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

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

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

12 THE COURT: But you have it now.

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

15 THE COURT: Okay.

16 MR. JAMES: And, like I said, any declaratory

17 judgment action I beg to seek an injunction relief.

18 THE COURT: Okay.

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

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

22 MR. TOMLIN: No, sir.

23 THE COURT: All right. Mr. Harter?

24 MR. HARTER: Yes, sir. And the next FOIA request

25 related to a request that was dated April 25, 2013. And

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

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

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

15 MR. HARTER: Okay.

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

18 MR. HARTER: No.

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

22 MR. HARTER: Correct.

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

24 MR. HARTER: Correct.

25 THE COURT: All right.

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

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

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

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

17 MR. JAMES: Yes, sir.

18 THE COURT: Here's what the --

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

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

1 MR. JAMES: Yes, sir.

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

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

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

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

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

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

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

6 THE COURT: All right, thank you.

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

8 MR. TOMLIN: No, he covered everything.

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

12 MR. HARTER: Right. And, Judge, this first cause
13 of action that we want to allege and/or have SCDC policy
14 21.07 declared unconstitutional. He wants to have the
15 second cause of action policy 21.07 declared ex post
16 facto law. He wants to have -- contend that he's

17 eligible for work release under policy 2107. He is not
18 eligible for work release as a violent offender. And he
19 makes a complaint of allegation about a grievance
20 related to policy OP 2109.

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

1 judgment under those foundations.

2 THE COURT: All right, thank you.

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

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

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

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

20 MR. JAMES: Okay.

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

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

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

1 of next week I'll consider.

2 Is that everything on these motions?

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

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

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

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

10 MR. TOMLIN: No, sir.

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

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

16 THE COURT: Thank you all.

17 MR. HARTER: Thank you, Judge.

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

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--- THIS ENDS REQUESTED TRANSCRIPT ---

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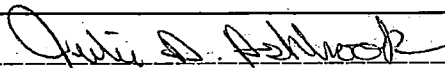
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COURT REPORTER CERTIFICATE

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

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.


Julie A. Ashbrook
Circuit Court Reporter
Seventh Judicial Circuit

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15

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
)
 Isiah James, Jr. and George Lee Tomlin,)
)
 Plaintiffs,)
)
 vs.)
)
 The South Carolina Department of)
 Corrections,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

C/A No.: 2013-CP-23-02017

ORDER

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2015 AUG 31 PM 4 46

This matter came before the Court on July 24, 2015. The plaintiffs appeared *pro se* and the defendant appeared through its counsel, Russell W. Harter, Jr., of the firm Chapman, Harter & Harter. The matter before me at this time involves a Motion for Summary Judgment filed on behalf of the defendant on June 3, 2015 and the Plaintiffs' Motion for Partial Summary Judgment as to the plaintiffs' Fourth Cause of Action filed on July 13, 2015.

NATURE OF CLAIMS

The plaintiffs in this action allege numerous claims arising out of different subjects and circumstances. Plaintiff James asserts in his Amended and Supplemental Complaint thirteen (13) different Causes of Action. Plaintiff Tomlin appears to assert two (2) Causes of Action, which are included in the Third and Fourth Causes of Action referred to in the Amended Complaint.

In Plaintiff James's First Cause of Action, he requests that the Court declare SCDC's earned work credit policy OP-21.07 unconstitutional, and in plaintiff's Second Cause of Action he requests that said policy be declared an ex post facto law. Plaintiff James's Third and Fourth Causes of Action relate to James's claim for wages in connection with a previously filed grievance, which was appealed. James's Fifth Cause of Action relates to his claim for eligibility

for work release. James's Sixth and Thirteenth Causes of Action relate to institutional lockdowns at SCDC. James's Seventh Cause of Action relates to allegations concerning the actions of an adjustment committee on or about April 21, 1980 and March 24, 1982, which he alleges regarding an unprocessed grievance. James's Eighth, Tenth, Eleventh, and Twelfth Causes of Action relate to FOIA requests, and James's Ninth Cause of Action relates to a claim related to SCDC's use of videoconference in determining parole eligibility. Plaintiff Tomlin's claims relate to the Third and Fourth Causes of Action wherein Tomlin alleges entitlement to wages and to costs related to the issuance of an Order of the South Carolina Department of Appeals dated November 23, 2010.

At the time of the hearing, counsel for the defendant presented an outline to the court to summarize the allegations of the various Causes of Action of the Plaintiffs. The various Causes of Action will be discussed and addressed to the extent they are related by subject matter.

In support of the Defendant's Motion for Summary Judgment, numerous affidavits have been filed by SCDC, addressing the plaintiffs' various claims. The plaintiffs have not submitted any affidavits, either in support of their motion or in opposition to the defendant's motion.

SUMMARY JUDGMENT STANDARD

Defendant moves for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Rule 56(c) of the South Carolina Rules of Civil Procedure provides in pertinent part:

The judgment sought shall be rendered forthwith in the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

A party opposing a properly supported motion for Summary Judgment may not rest on mere allegations or denials of his pleadings, but must set forth or point to specific facts showing that there is a genuine issue of material fact. *See, e.g. Baughman v. A.T.&T. Co.*, 306 S.C. 101, 117, 410 S.E.2d 537, 547 (1991) (bald allegations deemed insufficient to create a genuine issue of fact.) When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

JAMES'S FIRST, SECOND, AND FIFTH CAUSES OF ACTION.

James, in his Complaint, in his First, Second, and Fifth Causes of Action complains of SCDC policies that relate to earned work credits and eligibility for work release. Nowhere does James come forward with any valid arguments to support his claim that SCDC's policies that relate to earned work credits and/or work release are unconstitutional or that they have been misapplied to him. SCDC is necessarily vested with the authority to implement and apply policies that relate to earned work credits for inmates and their eligibility for work release. James has failed to point to specific facts and/or law to support these Causes of Action. James has further failed to make a showing sufficient to create a genuine issue of material fact, as to these various claims to defeat summary judgment.

JAMES'S THIRD AND FOURTH CAUSES OF ACTION

In the Third and Fourth Causes of Action, James alleges that he is entitled to wages in connection with participation in the Prison Industries Program. James bases his claims on an Order issued by the Administrative Law Court on February 7, 2006 [Docket No. 05-ALJ-04-

00739-AP]. In that Order, Administrative Law Judge Carolyn Mathews heard the plaintiff's grievance and issued an Order stating as follows:

IT IS THEREFORE ORDERED that the Department determine from its records the number of hours Appellant was paid a training wage for hours worked in the Prison Industries System.

IT IS FURTHER ORDERED that the Department calculate the wages owed to Inmate at the prevailing wage (\$5.25 per hour) and pay Appellant the difference between the wages owed and the wages paid within thirty (30) days of the date of this Order.

This ALC Order was not filed until March 6, 2006. Thereafter, SCDC and James both ~~appealed the Administrative Law Court's decision to the Circuit Court for the Fourteenth~~ Judicial Circuit. In connection with that appeal, Circuit Judge James C. Williams, Jr. issued an Order dated November 3, 2006 granting SCDC's appeal and denying James's appeal. On page two of its Order, the Court stated:

With James' consent and agreement, this Court REMANDS the determination of the applicable "prevailing wage" for James' prison industries labor back to the ALC.

The circuit court went on to say in its Order:

This Court concludes, contrary to the ALC's analysis and ruling, that the hourly rate of \$5.25 does not represent the "prevailing wage" for the labor James provided to the prison industries project operated by SCDC's, DOI at RCI.

The court further said:

In its analysis of James' "prevailing wage" claim, the ALC ignored the opinion of our Supreme Court in *Atkins* and the companion case to *Wicker*.

Thereafter, James appealed to the South Carolina Court of Appeals, and in an unpublished opinion number 2010-UP-251 filed April 26, 2010, the Court of Appeals reversed in part, affirmed in part, and vacated in part the Order of Judge Williams. In the Court of Appeals'

Opinion the history of James's claim is discussed and the Court makes clear reference to the fact that in the Circuit Court, with the consent of James, the prevailing wage issue was remanded to the ALC. Importantly, there is no part of the opinion that directs SCDC to pay James at any prevailing wage rate and there is no ruling that establishes a "prevailing wage" rate.

The fact is that James's claims set forth in the Third and Fourth Causes of Action relate to matters that were the subject of a grievance filed by James over wages. That grievance resulted in an appeal to the Administrative Law Court, an appeal to the Circuit Court in civil action 06-CP-27-130 and 176, and a further appeal to the South Carolina Court of Appeals, as discussed above.

James's recourse and/or remedy as to his wage claim, if any, is to return to those tribunals, not to file this separate suit. In light of the other proceedings in the Administrative Law Court, the Circuit Court of Jasper County, and the Court of Appeals related to this very same issue, this Court would lack subject matter jurisdiction of James's wage issue dispute. Again, James cannot file this new action to ask this Court to address those claims he raised and litigated in other courts and in other proceedings.

However, with respect to the actual merits of James's wage loss claim and in further support of its Motion for Summary Judgment, SCDC submitted an affidavit dated December 3, 2014 from Debra Long, Fiscal Analyst II. In her affidavit, Ms. Long states that she has reviewed SCDC's financial records and work assignment records related to Isiah James, and based on those records it appears that James was hired on a cleanup crew as a custodial worker under the prison industries program on or about January 13, 2000 and that he remained in that position until approximately June of 2000. The affidavit of Debra Long goes on to explain that SCDC discontinued the practice of paying inmates a training wage on July 1, 1999, which was before

James began working in the prison industry program at Ridgeland Correctional Institution. Based on that information, her affidavit recites that James does not appear to be due any compensation based on the wording of Judge Matthew's Administrative Law Court Order. Notwithstanding the issue of subject matter jurisdiction, it therefore appears from the Affidavit of Debra Long that James is not entitled to any additional compensation, from SCDC.

Further, as to James's Third and Fourth Causes of Action, there is no Order and/or ruling that James is entitled to any compensation or payments for wages. Therefore, to the extent the Third and/or Fourth Causes of Action asks the Court to declare that James is entitled to any payment of a judgment, or as a judgment creditor, James has failed to provide evidence to support any such claim.

JAMES'S SIXTH AND THIRTEENTH CAUSES OF ACTION.

In James's Sixth and Thirteenth Causes of Action he alleges that he was subjected to an institutional lockdown beginning May 22, 2011 and another institutional lockdown on January 21, 2014. He complains about the conditions of his confinement during those lockdowns.

In support of its Motion for Summary Judgment, SCDC submitted the Affidavit of Warden Leverne Cohen. The Affidavit of Warden Cohen provides the surrounding circumstances of the lockdowns. The institutional lockdown on May 22, 2011 resulted after an inmate was stabbed in the neck in a gang-related incident. That inmate had to be airlifted to a hospital. The Affidavit of Warden Cohen states that the institution was placed on lockdown so that the gang-related stabbing could be investigated and so that gang members could be identified, removed, and separated.

Warden Cohen also states in his Affidavit that an institutional lockdown was initiated on January 21, 2014 in response to weapons and ammunition found in the unit where inmate James was being housed. The entire unit had to be searched and secured.

The Affidavit of Warden Cohen further details that pursuant to SCDC policies and procedures during institutional lockdowns precautions are taken to secure the facility and as a result, inmate showers were delayed; however, inmates had access to water in their cells. The Affidavit of Warden Cohen further points out that all inmates are afforded an opportunity to exercise through the in-cell exercise program, that mail is hand-delivered to inmates, that inmates have access to legal materials that are delivered to their cell, and that institutional lockdowns are necessary from time to time to secure safety for inmates and staff.

It appears that the institutional lockdowns on May 22, 2011 and January 21, 2014 were reasonable and appropriate under the circumstances as are outlined in Warden Cohen's Affidavit.

It is necessarily incumbent upon SCDC administrators and staff to take measures to maintain and restore order in prison facilities, and inmate James has failed to provide any evidence that the institutional lockdowns in question were not necessary for security reasons.

I find that as to James's claim in his Sixth and Thirteenth Causes of Action there is no genuine issue of any material fact to support James's claim.

JAMES'S EIGHTH, TENTH, ELEVENTH, AND TWELFTH CAUSES OF ACTION INVOLVING FOIA REQUESTS.

James asserted separate Causes of Action related to FOIA Requests dated March 20, 2013; April 25, 2013; May 4, 2013; and May 27, 2014.

As to James's asserted claim related to the Eighth Cause of Action under FOIA, the South Carolina Department of Corrections submitted in support of its motion the Affidavit of Janice Kenealy, a supervisor of the inmate records management system. From the Affidavit of

Janice Kenealy it appears that she received a request for information from the plaintiff on March 27, 2013, and she then contacted the Office of General Counsel for permission and/or clarification as to James's request. Ms. Kenealy was advised that James was requesting SCDC Form 19-69 and she received approval to produce that form to him. Ms. Kenealy's Affidavit shows that on March 29, 2013, she checked with central records and it appears that she could not locate the paperwork at that time. Ms. Kenealy then contacted Ridgeland Correctional Institution and directed that the requested paperwork be provided to inmate James. It does not appear from the record that SCDC was able to find documentation to confirm that the requested information was provided to the plaintiff at that time; however, the record is clear that the requested information was provided to James on July 10, 2015 and James acknowledges receipt of that information at this hearing.

As to James's Tenth Cause of Action he makes reference to a FOIA request dated April 25, 2013 requesting information concerning the random selection drug test list for dates July 27, 2006 and September 7, 2006. In response to this claim, SCDC has provided Affidavits from Angela Harden of the Office of Inspector General and Alice Mascio, the Division Director of Visitation and Inmate Drug Testing. It appears from these affidavits that no such request was ever received, but in any event the Affidavit of Alice Mascio confirms that the random list is only maintained for a short period of time. Alice Mascio's affidavit further confirms that the plaintiff's request for the random drug information list back in 2006 would not have been available at the time of his request, if made, in 2013.

As to James's Eleventh Cause of Action concerning a FOIA request dated May 3, 2013 regarding SCDC's disruptive lockdown policy, the defendant provided the Affidavit of N. Dayne Haile, Administrative Coordinator of the South Carolina Department of Corrections. The

Affidavit of Dayne Haile and the attachment to her affidavit confirms that on May 16, 2013 SCDC responded to inmate James and informed him that inmates are not allowed to view Restricted policies. James was further informed that Non-Restricted and/or Limited policies could be viewed at the institution law library at RCI. It is clear that SCDC responded to James's request dated May 4, 2013.

James's Twelfth Cause of Action relates to an alleged FOIA Request dated May 7, 2014. In response to this claim, SCDC provided the Affidavit of Dayne Haile which indicates that no request for such information was received by the Office of General Counsel or the Director's Office. The alleged request of May 7, 2014 by James apparently requests a list of inmates subject to random drug tests on December 13, 2013. Even if that request were submitted it would appear that based on the Affidavit of Alice Mascio that SCDC would not likely have that information given the time frame involved.

Inmate James has presented no arguments and/or affidavits to specifically contradict the affidavits and documentation presented by SCDC concerning James's claims for FOIA requests in his Eighth, Tenth, Eleventh, and Twelfth Causes of Action and SCDC's responses. I find that James is not entitled to any additional documents and/or relief in connection with any alleged FOIA claims.

TOMLIN'S THIRD AND FOURTH CAUSES OF ACTION.

Tomlin has come forward with no evidence to support any assertion that he is entitled to any wages from SCDC. Tomlin does, however, assert the position that he was awarded costs of \$304.88 by Order of the South Carolina Court of Appeals dated November 23, 2010. The Affidavit of Debra Long confirms that upon a review of Tomlin's Cooper account, payment of costs of \$304.88 was not previously credited to Tomlin's account. It appears from the Affidavit

of Debra Long that on November 13, 2014, during the pendency of this action, a payment was processed for that amount into the Cooper Account of George Lee Tomlin. Further, based on the Affidavit of Debra Long there are no additional monies and/or payments due to George Lee Tomlin by and/or from the South Carolina Department of Corrections. Inmate Tomlin has not come forward with any evidence to refute that position and/or conclusion.

**OTHER CLAIMS REFERENCED IN THE AMENDED AND/OR
SUPPLEMENTAL COMPLAINT.**

The Amended and/or Supplemental Complaint makes reference to alleged federal claims; however, in prior proceedings in the United States District Court and in the Court of Common Pleas of Greenville County, any such federal claims have been disposed of and/or dismissed and/or waived.

Specifically, as to the Plaintiffs' Ninth Cause of Action, the United States District Court dismissed that claim to the extent it asserted any due process violations. James has failed to create any genuine issue of material fact to support that claim based on state law.

**PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
FILED JULY 13, 2015.**

The plaintiffs filed a Motion for Partial Summary Judgment on July 13, 2015 which I have considered. The Plaintiffs' Motion for Partial Summary Judgment relates specifically to the Fourth Cause of Action in the Amended Complaint, and I find as a matter of law that the Plaintiffs' Motion for Partial Summary Judgment should be denied for the reasons stated above and specifically for the reasons stated in granting summary judgment to the defendant as to the Plaintiffs' Fourth Cause of Action.

CONCLUSION

To the extent the plaintiffs' claims are based on any prior Order of Court, or on common or statutory law, their alleged claims cannot survive summary judgment based on the record before me.

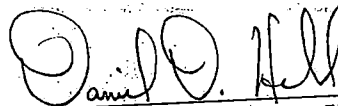
Also, if and to the extent the Plaintiffs' Complaint can be interpreted as to attempt to allege any claims that are subject to the South Carolina Tort Claims Act, the provisions of the South Carolina Tort Claims Act provide for immunity and limitations of liability which would bar and/or preclude James and Tomlin from any recovery for any tort claim. S.C. Code Ann. § 15-78-60 (2) provides for immunity of administrative action or inaction; (3) provides immunity for the execution, enforcement, or implementation of court Orders; (4) provides immunity for the adoption, enforcement, and/or compliance of written policies; (5) provides immunity for the exercise of an employee's exercise of discretion or judgment; (21) provides immunity related to the decision, implementation, release, and/or discharge of a prisoner; and (25) provides for immunity related to the supervision, protection, control, or confinement of a prisoner except upon a showing of gross negligence. There is absolutely no evidence in this record that would support a showing of gross negligence and/or any actions by SCDC to obviate the immunity granted under S.C. Code Ann. § 15-78-60 for any tort claim.

After giving due and careful consideration to the claims set forth in the Plaintiffs' Complaint, and after considering all of the evidence properly before me, I find that there is no genuine issue of any material fact, and SCDC is entitled to Judgment as a matter of law as to all of the claims and causes of action outlined above.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendant's Motion for Summary Judgment is granted as to all causes of action and the Plaintiffs' Amended and Supplemental Complaints are dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiffs' Motion for Partial Summary Judgment is denied.

IT IS SO ORDERED THIS 21st DAY OF August, 2015.



The Honorable Daniel D. Hall
Circuit Court Judge

CERTIFICATE OF APPELLANT

The undersigned hereby certifies that this Record on Appeal contains all the material(s) proposed to be included by any of the parties and not any other material(s).

November 14, 2016

s/ George Lee Tomlin
George Lee Tomlin,

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SC Court of Appeals

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the "Record on Appeal" and attachment to be mailed, postage prepaid, to SCDC'S attorney:

RUSSELL W. HARTER, JR.
POB 10224 (29603)
GREENVILLE, S.C. 29601

This 14 Day of November 2016

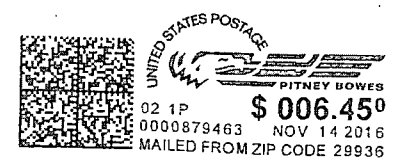
s/ George Lee Tomlin
George Lee Tomlin 166361
RCI CA-22, POB 2034
Ridgeland, S.C. 29936

George Lee TOMLIN 700361

P.O. BOX 2039

Rt. CA-22

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