

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

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

Court of Appeals Opinion No. 2016-UP-392

RECEIVED

FEB 13 2017

S.C. SUPREME COURT

Joshua Cramer, # 251406, RESPONDENT

v.

South Carolina Department of Corrections. PETITIONER

**RESPONDENT'S RETURN TO PETITION
FOR WRIT OF CERTIORARI BY THE
SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS**

Joshua Cramer
251406
Lieber Corr. Inst.
P.O. Box 205
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TABLE OF CONTENTS

I.	SUMMARY OF GROUNDS OPPOSING SCDC's PETITION	1
II.	QUESTION PRESENTED FOR REVIEW.	2
	A. Does the Court of Appeals' decision follow a prior decision of this court?	2
	B. Is the Court of Appeals' decision distinguished from one of its own prior decision?	3
	C. Does the Court of Appeals' decision follow settled questions of law?	3
III.	STATEMENT OF THE CASE	
	A. Cramer's Grievance	3
	B. The ALC affirmed SCDC's denial of Cramer's Grievance	4
	C. The Court of Appeals' August 3, 2016 decision	4
	D. The Court of Appeals' November 17, 2016 order.	4
IV.	ARGUMENTS OPPOSING SCDC'S PETITION.	
	A. The Court of Appeals' decision follows a prior decision by this Court.	4
	B. The Court of Appeals' decision is distinguished form one of its Own prior decisions.	6
	C. The Court of Appeals' decision follows settled question of law.	6
V.	CONCLUSION.	7

TABLE OF AUTHORITIES CASES

<i>Ackerman v. S.C. Dep’t of Corr.</i> , 782 S.E.2d 757 (s .c. App. 2016)	1,2
<i>Ackerman et al.</i> , v. <i>S.C. Dep’t of Corr.</i> , Docket Nos 07-ALJ-04-00444 et seq.	4
<i>Chevron, U.S.A, Inc. v. Nat. Res. Def. Council, Inc.</i> , 467 U.S. 837 (1984).	7
<i>Kiawah Dev. Partners, II v. S.C. Dep’t of Health & Envtl. Control</i> , 411 S.C. 16, 766 S.E.2d 707 (2012).	7
Okera v. S.C. Dep’t of Corr., ---S.E2d---, 2012 WL 10907962 (No.2012-MO-042) (2012)	4,5
Okera v. S.C. Dep’t of Corr., 08-ALJ-04-00887-AP (June 29, 2009).	5,6
Patterson v. S.C. Dep’t of Corr., ---S.E.2d---, 2010 WL 10080031 (No. 2010-UP-292) (2012).	6

STATUTES

S.C. Code Ann § 24-3-40 (A) (5) (1993) as amended	1,3,7
S.C. Code Ann § 24-3-40 (B) (2) (1993) as amended	1,3,7

OTHER AUTHORITIES

South Carolina Appellate Court Rule 242	4,6
South Carolina Appellate Court Rule 268	6
South Carolina Department of Corrections Policy Number GA-01.12 (“Inmate Grievance System”)	1,2,3,6

Pursuant to South Carolina Appellate Court Rule (“SCACR”) 242, the South Carolina Department of Corrections (“SCDC”) petitioned this Court to issue a writ of certiorari to review the decision issued by the Court of Appeals in the instant matter, *Jousha Cramer, Appellant v. S.C. Dep’t of Corr., Respondent*, Unpublished Opinion No. 2016 –UP- 392 (Aug. 3, 2016) 2016 WL 4125880 (S.C. Ct. App. 2016). Joshua Cramer (“Respondent”) respectfully enters this return to Petitioner’s January 9, 2017 petition and requests this Court affirm the August 3, 2016 decision of the Court of Appeals to remand the matter back to the Administrative Law Court (“ALC”).

I. SUMMARY OF GROUNDS OPPOSING SCDC’s PETITION

Cramer suggests that pursuant to SCACR 242(b), there exists no “special” or “important reasons” for which this Court should exercise its discretion to issue the writ to review the final decision of the Court of Appeals.

The August 3, 2016 decision of the Court of Appeals applied the holding from its decision in *Ackerman v. S.C. Dep’t of Corr.*, 782 S.E.2d 757 (S.C. Ct. App. 2016)¹ to the distribution and interest of the prison industries wages escrowed “for the benefit of the prisoner”² claims asserted by Cramer in an administrative grievance filed under GA-01.12.³ The Court of Appeals reversed the decision by the ALC which upheld SCDC’s denial of Cramer’s claims.

By its decision, the Court of Appeals in *Ackerman* held that prison industries wage claims were “policy/procedure” and qualified for an exception from the fifteen day

¹ Pending on Writ of Certiorari before this Court on the “policy/procedure question.

² S.C. Code Ann. §24-3-40 (A)(5) and (B)(2) (1993) as amended

³ S.C. Department of Corrections General Administration Inmate Grievance System

filing deadline set in Paragraph 13.1 of GA-01.12, The exception for “policy/procedure” is held in Paragraph 13.9 and the Instructions on the Step 1 Inmate Grievance form (SCDC Form 10-5).

Cramer’s claims are distinguishable from most of the *Ackerman* inmates because Cramer worked for R.M. Design at Broad River from 2005 until the company closed their Broad River plant in 2010 and filed his grievance during the time of employment (April 26, 2007). Most of the *Ackerman* inmates filed grievances after their employment periods ended.

The nexus of Cramer’s claims are that SCDC unlawfully deprived him of access to the monies it deducted from his gross prison industries wages and held in an interest – bearing escrow account for his benefit; and, depriving him of a lawful rate of interest on those monies.

SCDC’s argument is based predominantly on the fact that Cramer did not file his grievance when he received his initial pay and recognized the deduction. The proposition put forward by SCDC is that the *Ackerman* decision nullifies the fifteen-day filing deadline of GA-01.12, paragraph 13.1 for *all* inmate grievances. In reality, the Court of Appeals succinctly held that the prison industries wage practices constituted “policy/procedure” and fell within the exception carved out by paragraph 13.9. It still remains that an inmate, in filing a grievance, must cite or demonstrate a policy/procedure being violated. If not a *recognized* exception, prisoners must appeal the matter and request the ALC to recognized the exception under “policy/procedure” as the inmates in *Ackerman* and Cramer here did.

II. QUESTION PRESENTED FOR REVIEW

- A. DOES THE COURT OF APPEALS' DECISION FOLLOW A PRIOR DECISION OF THIS COURT
- B. IS THE COURT OF APPEALS' DECISION DISTINGUISHED FROM ONE OF ITS OWN PRIOR DECISION?
- C. DOES THE COURT OF APPEALS' DECISION FOLLOW SETTLED QUESTION OF LAW?

III. STATEMENT OF THE CASE

A. Cramer's Grievance

Cramer filed an agency Step 1 grievance, pursuant to DOC policy GA-01.12, dated April 26, 2007, raising various claims regarding his participation in the private sector prison industries project at Broad River. Cramer participated in a project in which R.M. Design was the private sector sponsor. Cramer began participation on May 2, 2005 and remained until R.M. Design removed their Broad River project. Thus, Cramer's grievance was filed during the term of his participation. Cramer's Step 1 initially raised three (3) prevailing wage claims in addition to claims four(4) and five(5) challenging the distribution of his escrowed wages under S.C. Code 24-3-40 (A)(5) and (B)(2) and the rate of interest applied to the escrowed wage account.

SCDC maintains that Cramer did ^{not}~~not~~ file his grievance within fifteen days because it was not filed at the instance of his first paycheck. This position assumes this is an "incident" grievance and would require a grievance for each pay period, thus denying Cramer's grievance.

Cramer's Step 2 Appeal was filed July 16, 2012, which abandoned claims one (1) two (2) and three (3) set forth in Step 1, but pursued claims four (4) and five (5), in addition to challenging SCDC's application of the fifteen day deadline to Cramer's April

26, 2007 filing. SCDC affirmed Step 1 and denied Step 2 on February 25, 2014. Step 2 addressed the merits raised in the Step 2 Appeal.

B. THE ALC AFFIRMED SCDC'S DENIAL OF CRAMER'S GRIEVANCE

Cramer filed a Notice of Appeal in the ALC dated March 3, 2014 challenging the decision of the responsible agency official in Step 2. Cramer continued the same claims raised in his Step 2.

The ALC issued a written order dated September 23, 2014 and considered only the issue regarding the fifteen day deadline. The ALC's analysis was based on Judge Anderson's July 26, 2012 ruling in *Ackerman et al. v. SCDC*, Docket Nos. 07-ALJ-04-00444 et seq. The ALC found Cramer did not file his grievance within fifteen days after receiving his first payment for work.

C. THE COURT OF APPEALS' AUGUST 3, 2016 DECISION

Cramer appealed to the Court of Appeals on September 23, 2014. The Court of Appeals issued a written decision on August 3, 2016 and found "Cramer's grievance is a 'policy/procedure' [grievance] and SCDC's characterization of Cramer's grievance as an incident grievance was arbitrary and capricious." In that finding the Court of Appeals relied on its decision in *Ackerman* and remanded the case back to the ALC for a decision on the merits.

D. THE COURT OF APPEALS' AUGUST 3, 2016

The Department filed a petition for rehearing dated September 6, 2016. Cramer did not file a return or file his own petition for rehearing and on November 3, 2016 the Court of Appeals denied SCDC's petition for rehearing.

IV. ARGUMENTS OPPOSING SCDC'S PETITION

A. THE COURT OF APPEALS DECISION FOLLOWS A PRIOR DECISION BY THIS COURT

The Department would request consideration, under Rule 242, SCACR, of the unpublished memorandum opinion in *Okera v. S.C. Dep't of Corr.*, --S.E.2d--, 2012 WL 10907962 (No. 2012-MO-042) (S.C. Sup Ct. Oct. 24, 2012), in the instant petition.

Cramer suggest that the distinction between the facts of *Okera*, as applied by the ALC and affirmed by this Court, and the facts of the instant case, if followed, would support the Court of Appeals' decision in reversing the ALC.

The Department would suggest *Okera* and *Cramer* are identical and offers a snippet of the *Okera* memorandum as support. However, *Okera* succinctly defines Cramer's position and there exists major distinctions, which fully support the August 3, 2016 decision of the Court of Appeals.

On the first page of its June 29, 2009 order, designated as ALC Docket No. 08-ALJ-04-00887-AP, the ALC ruled against *Okera* and affirmed SCDC's denial of his grievance as follows:

This matter was remanded to [SCDC] on July 17, 2008 to determine if [Okera] filed his grievance in the instant matter **while he was employed under the prison industries program or within fifteen days of the time he was completed, terminated, or ceased employment under the prison industries program.** The record, on appeal was supplemented on December 29, 2008. In the record, **it appears [Okera] failed to file his Step one (1) grievance [until] six years after his last day of work in the prison industries. Therefore, [Okera's] appeal was untimely.**

Based on the record on Appeal this appeal must be dismissed because **[Okera] failed to file his grievance in this matter while he was employed under the prison industries program,** or within fifteen days of the time he completed, terminated, or ceased employment under the prison industries program. [emphasis supplied].

Therefore, by its Memorandum Opinion in *Okera*, this Court implicitly affirmed that a prisoner must or may file his prison industries wage grievance “**while he was employed under the prison industries program,**” or “within fifteen days of the time he completed, terminated, or ceased employment.”

The record is replete with the fact and the Department has consistently argued before the ALC, before the Court of Appeals, and continues in their instant petition, that Cramer filed his Step 1 grievance on April 26, 2007, **during his employment** at R.M. Design. Thus, based upon the ALC’s rationale in *Okera*, and this Court’s affirming that decision, Cramer’s grievance is timely filed where he filed during employment.

The Court of Appeals’ August 3, 2016 decision is not in conflict with *Okera*, as suggested by the Department, but supports the Court’s decision.

B. THE COURT OF APPEALS’ DECISION IS DISTINGUISHED FROM ONE OF ITS OWN PRIOR DECISIONS

The Department would request consideration, under Rule 242, SCARC, of the unpublished decision in *Patterson v. S.C. Dep’t of Corr.*, --S.E.2d--, 2010 WL 10080031 (No. 2010-UP-292) (S.C. Ct. App. 2010) in the instant petition.

First, Cramer suggest that under Rule 268, SCARC *Patterson* is an unpublished opinion with no precedential value and should not be relied upon.

Second, as distinguished from *Cramer*, *Patterson* complained of one *incident* where the Department lost Patterson’s’ personal property (one (1) pair of tennis shoes).

The facts of *Patterson* clearly indicate that it was one (1) incident of the loss of personal property and that no exception to the loss of personal property and that no exception to the grievance policy is applicable in that circumstance. The Department’s policy [GA-01.12] is clear regarding the fifteen day deadline to file an incident grievance.

The Court of Appeals' August 3, 2016 decision is not in conflict with *Patterson*, as suggested by the Department, and is of no precedential value here.

C. THE COURT OF APPEALS' DECISION FOLLOWS SETTLED QUESTION OF LAW

Cramer suggest that the August 3, 2016 decision of the Court of Appeals is based on settled law in distinguishing the prison industries wage claims as policy/procedure from an otherwise incident grievance.

The Court of Appeals specifically held, "we find Cramer's grievance is a "policy/procedure" and SCDC's characterization of Cramer's grievance as an incident grievance was arbitrary and capricious," citing *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 34-35, 766 S.E.2d 707, 718 (2012) ("We defer to an agency interpretation unless it is arbitrary, capricious, or manifestly contrary to the statute.") (quoting *Chevron, U.S.A., Inc., v. Nat. Res. Def. Council, Inc.*, 467 U.S.837, 844 (1984)).

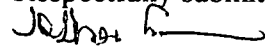
The Court analyzed Cramer's claim(s) as "[stem[ming] from section 24-3-40 (A)(5) and (B)(2) of the South Carolina Code." Clearly, our state statutes are a matter and succinctly describe the public "policy" of the state and its respective agencies and thus follows settled questions of law.

V. CONCLUSION

Cramer respectfully suggest that this Honorable Court deny the Department's petition for writ of certiorari of the August 3, and November 17, 2016 decision by the Court of Appeals in *Cramer*.

February 7, 2017

Respectfully submitted,



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South Carolina Department of Corrections., Petitioner

PROOF OF SERVICE

The undersigned *pro se* Respondent, Joshua Cramer, hereby certifies that he has served a true and correct copy of **RESPONDENTS RETURN PETITION FOR WRIT OF CERTIORARI BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS** on Counsel for Petitioner by placing same in the U.S. Mail, first-class postage prepaid this 7 day of ~~January~~ ^{February}, 2017, addressed as follows:

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