

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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

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Court of Appeals Opinion No. 2016-UP-392  
Appellate Case No. 2016-002510

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S.C. SUPREME COURT

Joshua Cramer, #251406, ..... Respondent,

v.

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

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

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

Counsel for SCDC

In accordance with South Carolina Appellant Court Rule [“SCACR”] 242(g), the South Carolina Department of Corrections [“SCDC”] respectfully submits its instant reply to the return served by the Respondent, Joshua Cramer [“Cramer”], to SCDC’s petition for this Court to issue a writ of certiorari by which to review the final decision issued by the Court of Appeals in the instant matter, styled as *Joshua Cramer, Appellant, v. S.C. Dep’t of Corr., Respondent*, Unpublished Opinion No. 2016-UP-392 (Aug. 3, 2016). 2016 WL 4125880 (S.C. Ct.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). (Apx. pp. 139 – 42).

**I. DECISIONS BY SCDC, THE ADMINISTRATIVE LAW COURT, AND THE COURT OF APPEALS CHRONICLED BY CRAMER IN HIS RETURN**

Cramer stated as follows at the outset of his return:<sup>1</sup>

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)<sup>2</sup> to the distribution and interest of the prison industries wages escrowed “for the benefit of the prisoner”<sup>3</sup> claims asserted by Cramer in an administrative grievance filed under [SCDC’s Inmate Grievance System Policy, designated as Policy Number GA-01.12]. [footnote omitted]. The Court of Appeals reversed the decision by the [Administrative Law Court] 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] filing deadline set in Paragraph 13.1 of GA-01.12[.] The exception for “policy/procedure” [grievances] is held in Paragraph 13.9 [of GA-01.12] and the Instructions on the Step 1 Inmate Grievance form (SCDC Form 10-5). [Apx. pp. 139 – 42].

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<sup>1</sup> See Cramer’s February 7, 2017 Return, pp. 1 – 2.

<sup>2</sup> In the footnote associated with this passage, *Id.*, p. 1, n. 1, Cramer observed that SCDC petitioned this Court to issue a writ of certiorari concerning the Court of Appeals’ prior decision in *Ackerman*. As of the date of its instant reply, SCDC’s petition concerning *Ackerman* remains pending. See also SCDC’s January 9, 2017 Petition for Writ of Certiorari, p. 4, n. 1.

<sup>3</sup> In the footnote associated with this passage, *Id.*, p. 1, n. 2, Cramer referenced S.C. Code Ann. §§ 24-3-40(A)(5) and (B)(2). Cramer later described the “nexus” of his claims as follows, *Id.*, p. 2: “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.”

Cramer offered the following assessment of the decision by the Administrative Law Court [“ALC”] which affirmed SCDC’s denial of his grievance, as well as the prison industries pay claims he articulated therein (Apx. pp. 84 – 88):<sup>4</sup>

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 [Chief Administrative Law] Judge Anderson’s July 26, 2012 ruling in [*Ackerman et al., v. S.C. Dep’t of Corr.*, ALC Docket Nos. 07-ALJ-04-00444, *et seq.* (Apx. pp. 56 – 83)]. The ALC found Cramer did not file his grievance within fifteen days after receiving his first payment for work.

Turning back to the Court of Appeals’ decision in his case, Cramer stated as follows:<sup>5</sup>

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.” [Apx. p. 141]. 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.

## II. ARGUMENTS PRESENTED IN CRAMER’S RETURN AND SCDC’S REPLY

### A. CRAMER DID NOT SALVAGE HIS UNTIMELY STEP 1 BY FILING IT WHILE HE WAS STILL PARTICIPATING IN THE PRISON INDUSTRIES PROJECT SCDC OPERATED AT BROAD RIVER

#### 1. Cramer’s Argument

In his return, Cramer asserted as follows:<sup>6</sup>

Cramer’s claims are distinguishable from most of the *Ackerman* inmates because **Cramer** worked for R.M. Design at Broad River [Correctional Institution] from 2005 until the company closed their Broad River plant in 2010 and **filed his grievance during the time of employment (April 26, 2007)**.<sup>7</sup> Most of the *Ackerman* inmates filed grievances after their employment periods ended. [emphasis supplied].

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<sup>4</sup> See Cramer’s February 7, 2017 Return, p. 4.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, p. 2.

<sup>7</sup> Cramer never “worked for R.M. Design.” Instead, as the responsible SCDC official stated in the agency’s response to Cramer’s Step 1 (Apx. p. 42), Cramer “voluntarily participated in the prison industries project operated

Later in his return, Cramer chronicled the time in which he filed his Step 1 grievance, as well as the time in which he participated in the prison industries project SCDC operated at Broad River Correctional Institution:<sup>8</sup>

Cramer filed an agency Step 1 grievance, pursuant to [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.** [emphasis supplied].

In support of his argument, Cramer examined the decision issued June 29, 2009 by the ALC in *Okeru v. S.C. Dep't of Corr.*, ALC Docket No. 08-ALJ-04-00887-AP, and he did so in response to the invocation of this Court's memorandum opinion in *Okeru*, -- S.E.2d --, 2012 WL 10907962 (No. 2012-MO-042) (S.C. 2012), by SCDC in its petition.<sup>9</sup>

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by SCDC at Broad River [Correctional Institution] in which R.M. Design participate[d] as the private industry sponsor." In his response to Cramer's Step 1, the responsible SCDC official further clarified Cramer's status (Apx. p. 44):

To the extent that you claim in your Step 1 that you **worked for** or were otherwise "employed" by R.M. Design, I conclude that you never "**worked**" for nor were you ever "employed" by that entity. I also conclude that neither [*Adkins v. S.C. Dep't of Corr.*, 602 S.E.2d 51 (S.C. 2004)] nor [*Wicker v. S.C. Dep't of Corr.*, 602 S.E.2d 56 (S.C. 2004)] declared that you or inmates in your position were "employed" by SCDC, R.M. Design, [or] for that matter, any other agency or company. I make this conclusion in reliance [upon] the South Carolina Supreme Court's decision in [*Williams v. S.C. Dep't of Corr. & Williams Technologies, Inc.*, 641 S.E.2d 885 (S.C. 2007)], in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of private industry sponsors like R.M. Design.

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

[emphasis supplied].

<sup>8</sup> See Cramer's February 7, 2017 Return, p. 3.

<sup>9</sup> See SCDC's January 9, 2017 Petition for Writ of Certiorari, pp. 11 – 12.

Cramer quoted the following passages from the ALC's decision in *Oker* in his return:<sup>10</sup>

This matter was remanded to [SCDC] on July 17, 2008 to determine if [Oker] 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] was supplemented on December 29, 2008. In the record, it appears [Oker] failed to file his Step one (1) grievance [until] six years after his last day of work in the prison industries. Therefore, [Oker's] appeal was untimely.

Based on the [record] this appeal must be dismissed because [Oker] **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 by Cramer].

Cramer then specifically argued as follows:<sup>11</sup>

Therefore, by its Memorandum Opinion in *Oker*, 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.” [emphasis supplied by Cramer].

Thus, Cramer concluded that the August 3, 2016 decision issued by the Court of Appeals in the instant matter “is not in conflict” with this Court's decision in *Oker*.<sup>12</sup>

## 2. SCDC's Reply

As SCDC explained in its petition,<sup>13</sup> this Court, in its per curiam memorandum decision in *Oker*, 2012 WL 10907962 at \*1, ruled as follows:

This is a direct appeal from an order of the [ALC] dismissing the appeal from [SCDC's] denial of Appellant's inmate grievance based on his failure to comply with **the relevant statute of limitations set forth in [GA-01.12].** We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: [*Al-Shabazz v. State*, 527 S.E.2d 742 (S.C. 1999)]

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<sup>10</sup> See Cramer's February 7, 2017 Return, p. 5.

<sup>11</sup> *Id.*, p. 6.

<sup>12</sup> *Id.*

<sup>13</sup> See SCDC's January 9, 2017 Petition for Writ of Certiorari, p. 12.

(approving [SCDC's] internal procedures for discipline and grievances, **which specify a fifteen-day time limit for filing for grievances**). [emphasis supplied].

No provision of GA-01.12, which this Court specifically referenced in its above-quoted decision, makes the distinction recognized by the ALC in its decision in *Okera* and upon which Cramer relied in the analysis, argument, and conclusions he presented in his return.

The Court of Appeals did not, in either its decision in the instant matter or its decision in *Ackerman* (the decision upon which the Court of Appeals relied in rendering its decision in the instant matter), articulate the distinctions from the ALC's decision in *Okera* discussed by Cramer, namely that the inmate would have timely filed his grievance, or otherwise avoided the fifteen-day limitations period, so long as he filed his Step 1 "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."<sup>14</sup>

Likewise, this Court did not indicate in its decision in *Okera* that it had affirmed the ALC's dismissal of the inmate's appeal, because the inmate failed to file his grievance "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."

Instead, the actual substance of this Court's decision in *Okera* contradicts the analysis, argument, and conclusions presented by Cramer in his return on this point.

Under the passages from the ALC's decision in *Okera* offered by Cramer, the inmate would have avoided the fifteen-day limitations period simply by filing his Step 1 while he still participated in the prison industries project in question. Under the ALC's logic in *Okera*, no limitations period of any kind, let alone a fifteen-day period, would have applied if the inmate

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<sup>14</sup> See note 7 above regarding any assertion that the inmate in *Okera* was "employed" by either SCDC or the private industry sponsor while he participated in the prison industries project operated by SCDC at issue.

had filed his Step 1 while he participated in the project. In its decision in *Oker*, however, this Court explicitly recognized the inmate's "failure to comply with the relevant statute of limitations set forth in [GA-01.12.]" The only "statute of limitations set forth" in GA-01.12 is the fifteen-day filing deadline from paragraph 13.1.

Thus, Cramer's assertion that he either timely filed his Step 1 or otherwise avoided the fifteen-day limitations period by filing it while he was still participating in the project operated by SCDC at Broad River is contradicted by this Court's decision in *Oker*. Under this Court's decision in *Oker*, Cramer failed "to comply with the relevant statute of limitations" (i.e. the "fifteen-day time limit for filing grievances") when he filed his Step 1 over two (2) years after he first received notice that SCDC had applied the deductions mandated by § 24-3-40(A)(5) to his gross prison industries pay. (Apx. pp. 43 and 52). The same analysis validates the ALC's decision upholding SCDC's denial of Cramer's Step 1 as untimely. (Apx. p. 88).

Cramer's analysis, argument, and conclusions on this point are defective, because his reliance upon the ALC's decision in *Oker* is misplaced. Consequentially, SCDC asserts that the Court of Appeals' decision in the instant matter conflicts with this Court's decision in *Oker*.

**B. THE COURT OF APPEALS' DECISION IN *Cramer* CONFLICTS WITH ITS PRIOR DECISION IN *Patterson***

**1. Cramer's Argument**

Cramer disputed SCDC's assertion that the decision issued by the Court of Appeals in his case conflicts with the prior, albeit unpublished, decision issued by the Court of Appeals in *Patterson v. S.C. Dep't of Corr.*, -- S.E.2d --, 2010 WL 10080031 (No. 2010-UP-292) (S.C. Ct. App. 2010).<sup>15</sup>

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<sup>15</sup> See SCDC's January 9, 2017 Petition for Writ of Certiorari, pp. 13 – 15. As it also noted in its petition, *Id.*, p. 14, SCDC first invoked *Patterson* in the response issued by its General Counsel to Cramer's Step 2. (Apx. pp. 52 – 53).

Cramer first suggested that this Court should ignore the Court of Appeals' decision in *Patterson*, because it "is an unpublished opinion with no precedential value and should not be relied upon."<sup>16</sup> Cramer then argued as follows:<sup>17</sup>

Second, as distinguished from *Cramer*, *Patterson* complained of one *incident* where [SCDC] lost [the inmate'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. [SCDC's] policy [GA-01.12] is clear regarding the [fifteen-day] deadline to file an incident grievance. [bold emphasis supplied by Cramer].

## 2. SCDC's Reply

As SCDC explained in its petition,<sup>18</sup> the Court of Appeals ruled as follows in *Patterson*, 2010 WL 1008003 at \*1:

*Patterson* argues the ALC erred in finding his grievance was not timely filed. We disagree. [SCDC] denied *Patterson's* grievance based on [Policy GA-01.12, ¶ 13.1], which states an inmate must file a grievance within fifteen days of the alleged incident. Here, *Patterson* filed his grievance complaining of loss of his inmate property on December 4, 2006. Even if we construed the requirements for filing liberally in *Patterson's* favor, *Patterson* should have filed his grievance within fifteen days of December 6, 2004, when he originally discovered that [SCDC] lost his inmate property. However, he did not file his grievance until almost two years later. **The ALC did not err in relying on [Policy GA-01.12] in finding *Patterson* failed to timely file his grievance because "[t]he adoption and execution of policies and practices necessary to preserve internal order and discipline, and to maintain institutional security in the prison are within the province and expertise of correctional officials."** [*State v. Blick*, 481 S.E.2d 452, 455 (S.C. Ct. App. 1997)]. Accordingly, the ALC did not err in affirming the denial of *Patterson's* grievance. See [*S.C. Dep't of Corr. v. Mitchell*, 659 S.E.2d 233, 234 (S.C. Ct. App. 2008)] ("The court of appeals may reverse or modify the decision only if substantive rights of the appellant [have] been prejudiced because the decision is clearly erroneous in light of the reliable

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<sup>16</sup> See Cramer's February 7, 2017 Return, p. 6.

<sup>17</sup> *Id.*, p. 6.

<sup>18</sup> See SCDC's January 9, 2017 Petition for Writ of Certiorari, pp. 13 – 14.

and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion, or affected by other error of law.”) (alteration in original). [emphasis supplied].

The wages SCDC remitted to Cramer for his participation in the prison industries project it operated at Broad River constituted Cramer’s property,<sup>19</sup> and SCDC may not have taken or otherwise deprived Cramer of his property without the process afforded him under GA-01.12.<sup>20</sup> The instance in which SCDC first notified Cramer that it had made deductions from his gross prison industries wages in conformity with §§ 24-3-40(A)(5) and (B)(2) constituted the “incident” in which SCDC purportedly deprived Cramer of his property, and, therefore, the fifteen-day filing deadline from paragraph 13.1 of GA-01.12 applied to his grievance.

No reading of the Court of Appeals’ decision in *Patterson* supports the contorted manner by which Cramer tried to mitigate its impact in the instant matter, particularly considering this

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<sup>19</sup> See *Wicker*, 602 S.E.2d at 57 – 58:

We are not unmindful of our opinion in [*Sullivan v. S.C. Dep’t of Corr.*, 586 S.E.2d 124 (S.C. 2003)], in which we held the [ALC] has jurisdiction to review [SCDC] grievance proceedings only if they involve the denial of “state created liberty interests.” There, we recognized that our opinion in [*Al-Shabazz v. State*, 527 S.E.2d 742, 750 (S.C. 1999)], held that administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. However, we did not limit *Al-Shabazz* to these two instances. **The *Al-Shabazz* Court explained that procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment’s protection of liberty and property.** [527 S.E.2d at 750].

**We find the state’s statutory mandate that inmates be paid the prevailing wage creates such an interest**, which may not be denied without due process. [*Piatt v. MacDougall*, 773 F.2d 1032, 1036 (9th Cir.1985)]. **Accordingly, in this very limited circumstance, we hold [SCDC’s] failure to pay in accordance with the statutes is reviewable by the [ALC].** [footnote omitted and emphasis supplied].

<sup>20</sup> See *Williams*, 641 S.E.2d at 886, n. 1:

In [*Wicker*], we further held that inmates may not be deprived of **this property interest** without due process; accordingly, inmates were directed to file grievances if they wished to protest [SCDC’s] failure to pay a prevailing wage. [emphasis supplied].

Court's prior decisions in both *Wicker v. S.C. Dep't of Corr.*, 602 S.E.2d 56 (S.C. 2004) and *Williams v. S.C. Dep't of Corr. & Williams Technologies, Inc.*, 641 S.E.2d 885 (S.C. 2007).<sup>21</sup>

Therefore, SCDC asserts that the Court of Appeals' decision in the instant matter conflicts with its prior, albeit unpublished, decision in *Patterson*.

**C. THE COURT OF APPEALS' DECISION IN THE INSTANT MATTER DOES NOT CONFORM TO A "SETTLED QUESTION OF LAW"**

**1. Cramer's Argument**

Cramer characterized the argument SCDC presented in its petition as follows:<sup>22</sup>

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. [emphasis supplied by Cramer].

Cramer later offered another assessment of SCDC's position:<sup>23</sup>

SCDC maintains that Cramer did 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.<sup>24</sup>

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<sup>21</sup> See notes 7, 19, and 20 above. In *Ackerman*, 782 S.E.2d at 759, the Court of Appeals discussed this Court's decision in *Williams*.

<sup>22</sup> See Cramer's February 7, 2017 Return, p. 2.

<sup>23</sup> *Id.*, p. 3.

<sup>24</sup> SCDC's position would not require Cramer to file a "grievance for each pay period" to preserve his right to challenge the manner in which SCDC assessed the deductions from his gross prison industries pay under §§ 24-3-40(A)(5) and (B)(2). As explained above on page 8, the instance in which SCDC first notified Cramer that it had made deductions from his gross prison industries wages in conformity with these two (2) statutes constituted the "incident" in which SCDC purportedly deprived Cramer of his property, and, therefore, the fifteen-day filing deadline from paragraph 13.1 of GA-01.12 applied to his grievance. Had he timely filed his Step 1, Cramer would have preserved his claims regarding the deductions SCDC assessed against his gross prison industries pay under §§ 24-3-40(A)(5) and (B)(2).

Cramer then offered the following rebuttal to his own characterization of the argument SCDC presented in its petition:<sup>25</sup>

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 recognize the exception under “policy/procedure” as the inmates in *Ackerman* and Cramer here did.<sup>26</sup>

Near the end of his return,<sup>27</sup> Cramer offered further argument on this point:

Cramer [suggests] 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 & Env’tl. Control*, 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 of Appeals] analyzed Cramer’s claim(s) as “[stemming] from [§§ 24-3-40(A)(5) and (B)(2)].” Clearly, our state statutes [...] succinctly describe the public “policy” of the state and its respective agencies and thus follows settled questions of law.

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<sup>25</sup> See Cramer’s February 7, 2017 Return, p. 2.

<sup>26</sup> Cramer’s position completely ignores the reality that under paragraph 13.9 of GA-01.12, the inmate must request a waiver of the fifteen-day limitations period from the responsible SCDC official(s). Moreover, Cramer’s position effectively invokes the doctrine of equitable tolling for the fifteen-day limitations period, the application of which the ALC rejected in its decision in *Ackerman*. (Apx. pp. 75 – 78). In its decision reversing the ALC in *Ackerman*, the Court of Appeals did not consider the doctrine of equitable tolling, because it focused its analysis on whether the fifteen-day limitations period applied to the inmates’ grievances in light of paragraph 13.9 of GA-01.12. 782 S.E.2d at 760, n. 5.

<sup>27</sup> See Cramer’s February 7, 2017 Return, p. 7.

## 2. SCDC's Reply

Cramer failed to consider that while the two (2) decisions he cited in the second of the above-quoted three (3) passages from his return, *Kiawah Dev. Partners, II* and *Chevron*, appeared in the Court of Appeals' decision in his case, they first appeared in the Court of Appeals' prior decision in *Ackerman*. See *Ackerman*, 782 S.E.2d at 762, and *Cramer*, 2016 WL 4125880 at \*2 (Apx. p. 141).

In reaching its decision in the instant case, 2016 WL 4125880 at \*\*2 – 3 (Apx. p. 142), the Court of Appeals explicitly relied upon its earlier decision in *Ackerman*. For the Court of Appeals' decision in the instant case to represent “a settled question of law,” as argued by Cramer, the Court of Appeals' earlier decision in *Ackerman* must also have represented a “settled question of law.” SCDC respectfully argues that nothing could be further from reality.

Both *Oker* and *Patterson* were, as discussed above, unpublished decisions issued by this Court and the Court of Appeals respectively. The Court of Appeals' decision in *Ackerman* represented the first occasion upon which either the Court of Appeals or this Court issued a published decision regarding the fifteen-day limitations period from GA-01.12.

More precisely, *Ackerman* represented the first published decision by either the Court of Appeals or this Court regarding whether the fifteen-day limitations period from GA-01.12 applied to administrative grievances filed by inmates in which the inmates articulated prison industries pay claims. Even more precisely, *Ackerman* represented the first published decision by either the Court of Appeals or this Court which addressed the argument that the fifteen-day limitations period from GA-01.12 did not apply to administrative grievances in which the inmates articulated prison industries pay claims, because the inmates' grievances consisted of “policy/procedure” grievances rather than “incident” grievances.

Under the applicable provisions of GA-01.12, “incident” grievances are subject to the fifteen-day limitations period while “policy/procedure” grievances are not subject to any limitations period. The Court of Appeals in *Ackerman*, on a case of first impression, ruled that grievances filed by inmates under GA-01.12 in which they articulated prison industries pay claims constituted “policy/procedure” grievances and, consequentially, such grievances were not subject to any limitations period. In so ruling, the Court of Appeals in *Ackerman* reversed the ALC’s decision which upheld SCDC’s application of the fifteen-day limitations period to all but one (1) of the nearly 200 inmate grievances under review.

The Court of Appeals simply extended its logic and analysis from *Ackerman* to Cramer’s case, and, by doing so, it reversed the ALC’s decision which upheld SCDC’s application of the fifteen-day limitations period to Cramer’s grievance.

In the decision by which it upheld SCDC’s application of the fifteen-day limitations period to Cramer’s grievance, the ALC brought the unsettled nature of these issues into stark relief (Apx. p. 87):

If the Court agreed with [Cramer] that the [fifteen-day] filing deadline is inapplicable **because [he] is challenging Policy and Procedure**, then there would never be a deadline to file a grievance in regards to inmates’ rights to access escrowed wages. Therefore, **the general rule** of a [fifteen-day] time limit to file a grievance **would be swallowed** by the expansive view of policy and procedure articulated by [Cramer]. [emphasis supplied].

The ALC also observed that Cramer’s argument “did not align itself with public policy,” and it continued as follows (Apx. p. 87):

As stated [by the ALC in *Ackerman*], “[SCDC] has a legitimate interest in investigating grievances while they are still new, and thus public policy calls for the application of some limitations period to the [Appellants’ claims].” [Apx. p. 62]. (citing [*Johnson v. Johnson*, 385 F.3d 503, 519 (5th Cir. 2004)]). Here, [Cramer] would have received notice that he would not have access to his escrowed wages when he received his initial pay on

or about July 15, 2005. If this Court would rule in [Cramer's favor], then any inmate could file a grievance claiming access to escrowed wages at any time. **Further, as noted [by the ALC in *Ackerman*], this Court has long held that wage claims do not involve SCDC's Policies and Procedures.** [Apx. p. 62]. (citing [*Lawson v. S.C. Dep't of Corr.*, ALC Docket No. 06-ALJ-04-0823-AP (Feb. 12, 2007)]; [*Wright v. S.C. Dep't of Corr.*, ALC Docket No. 06-ALJ-04-0114-AP, 2006 WL 1430140 (Apr. 28, 2006)]). [emphasis supplied].

Circling back to Cramer's argument that he avoided the fifteen-day limitations period from GA-01.12 by filing his grievance while he was still participating in the prison industries project SCDC operated at Broad River, the ALC observed as follows (Apx. pp. 87 – 88):

**[Cramer] also argues that the [fifteen-day filing deadline] is not applicable because [he] filed his Step 1 Grievance during the term of his employment.** This same issue was discussed [by the ALC in *Ackerman*]. In [*Ackerman*, the ALC] concluded "that the Appellants should have filed a grievance within fifteen days after being informed of [SCDC's] decision to pay them less than the prevailing wage." [The ALC in *Ackerman*] cited [*Wallace v. Burbury*, 305 F.Supp.2d 801 (N.D. Ohio 2003)] for support. [Apx. p. 80]. In [*Wallace*, 305 F.Supp.2d at 806], the [federal court for the Northern District of Ohio] stated:

**To allow a filing deadline to toll with a continuous violation, however, would undermine the very purpose of the deadline, which is to limit the time to file a claim.** The event giving rise to the complaint was the date in March, 2002, when plaintiff first learned that NCCI would not honor his request to observe Passover. **All subsequent grievances stem from that initial event.**<sup>28</sup> The filing of plaintiff's informal grievance was therefore untimely, and failure to file a timely grievance does not constitute an exhaustion of available administrative remedies.

[emphasis supplied].

The ALC then affirmed SCDC's final decision applying the fifteen-day limitations period to Cramer's grievance by ruling as follows (Apx. p. 88):

This Court will follow the conclusions reached [by the ALC in *Ackerman* and the federal district court in *Wallace*]. **[Cramer] should have filed his grievance contending that he should have immediate access to escrowed funds within fifteen days of being informed that he was not**

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<sup>28</sup> See note 24 above.

**given immediate access to all of his funds.** Logically, the day he received his first payment for his work, on or about July 15, 2005, was the day he had notice that he did not have immediate access to escrowed funds. Therefore, [Cramer] had fifteen days from the date he first received payment to file a grievance contesting access to escrowed funds. **[Cramer] did not file his Step One Grievance until April 27, 2007, which is well past the [fifteen-day filing deadline from GA-01.12].** [emphasis supplied].

The stark differences between the ALC's rulings in *Ackerman* and the instant case and the decisions by the Court of Appeals which reversed the ALC's rulings in both cases, as well as the unpublished decisions issued by this Court in *Oker* and the Court of Appeals in *Patterson*, reveal the profoundly unsettled question of whether SCDC may apply the fifteen-day limitations period from GA-01.12 to inmate grievances challenging prison industries pay.

Moreover, SCDC respectfully asserts that the sweeping nature of the Court of Appeals' decisions in both *Ackerman* and the instant case legitimately raises the question of whether SCDC may still apply the fifteen-day limitations period to any grievances at all. Under the Court of Appeals' decision in both cases, inmates may avoid the fifteen-day limitations period simply by asserting in their Step 1s that the claims they present therein challenge an agency "policy" or "procedure" in some way.

Therefore, SCDC respectfully urges this Court to grant its petition and issue a writ of certiorari by which to review the Court of Appeals' decision in the instant case.

## II. CONCLUSION

Cramer asserted that no "special" or "important reasons" exist "for which this Court should exercise its discretion to issue [a writ of certiorari] to review the final decision [issued by] the Court of Appeals,"<sup>29</sup> and he urged this Court to deny SCDC's petition.<sup>30</sup>

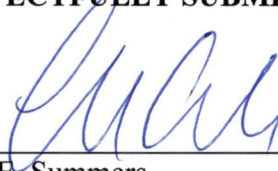
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<sup>29</sup> See Cramer's February 7, 2017 Return, p. 1.

<sup>30</sup> *Id.*, p. 7.

In reply to Cramer's return, SCDC respectfully asserts that for the foregoing reasons, as well as the reasons articulated in its January 9, 2017 petition, "special and important reasons" clearly exist, as required under SCACR 242(b), by which this Court should issue a writ of certiorari to review both the decision issued August 3, 2016 and the order issued November 17, 2016 by the Court of Appeals in the instant matter.

**RESPECTFULLY SUBMITTED:**



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Lake E. Summers

**Malone, Thompson, Summers & Ott LLC**

339 Heyward Street, Suite 200

Columbia, South Carolina 29201

Office: (803) 254-3300

Fax: (803) 254-0309

E-mail: [summers@mtsollawfirm.com](mailto:summers@mtsollawfirm.com)

Counsel for SCDC

Columbia, South Carolina  
February 27, 2017

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**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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

Court of Appeals Opinion No. 2016-UP-392  
Appellate Case No. 2016-002510

Joshua Cramer, #251406, ..... Respondent,

v.

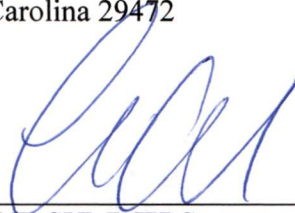
South Carolina Department of Corrections, ..... Petitioner.

**PROOF OF SERVICE**

I certify that I have served the **REPLY TO THE RESPONDENT'S RETURN TO THE PETITION FOR WRIT OF CERTIORARI BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS** on the above-named *pro se* Respondent by mailing a copy of the same to him, first class postage pre-paid, at the following address:

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

February 27, 2017

  
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LAKE E. SUMMERS