

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson III, Administrative law Judge

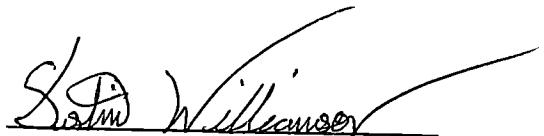
CASE No. (NONE)

South Carolina Department of Correction Respondent

v.

Dustin Williamson Appellant

INITIAL BRIEF OF
APPELLANT



Dustin Williamson
LEE County prison
990 Wisacky Hwy.
Bishopville SC 29010

LEGAL MAIL ONLY

RECEIVED

JUL 03 2017

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

ISSUE 1:

REGARDING THE UNIQUE SITUATION OF PRETRIAL DETAINEES ON SAFEKEEPER STATUS IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS (SCDC) AS STATED BY BOTH SCDC IN BARNES V SC DEPT OF CORRECTION DOCKET NO: # 15-ALJ-30-0318-IJ, AND THE ADMINISTRATIVE JUDGE, WAS THE CLERK OF COURT IN ERROR IN NOT PROCESSING THE APPELLANT STEP II GRIEVANCES ACCORDING TO BARNES V SC DEPT OF CORRECTION.

ISSUE 2:

WHETHER THE ADMINISTRATIVE LAW CLERK DENYING THE APPELLANT ACCESS TO THE COURT BY NOT PROCESSING THE STEP II GRIEVANCES PURSUANT TO BARNES V SC DEPT OF CORRECTION DOCKET No: # 15-ALJ-30-0318-IJ.

ISSUE I:

REGARDING THE UNIQUE SITUATION OF PRETRIAL DETAINEES ON SAFEKEEPER STATUS IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS (SCDC) AS STATED BY BOTH SCDC IN BARNES V SC DEPT OF CORRECTION DOCKET NO: # 15-ALJ-30-0318-IJ, AND THE ADMINISTRATIVE JUDGE, WAS THE CLERK OF COURT IN ERROR IN NOT PROCESSING THE APPELLANT STEP II GRIEVANCE ACCORDING TO BARNES V SC DEPT OF CORRECTION.

STATEMENT OF THE CASE

PROCEDURAL BACKGROUND FACTS OF BARNES V SC DEPT OF CORRECTION

On November 5, 2015, the Administrative Judge Ralph King Anderson III, issued an order denying STEVEN LOUIS BARNES (BARNES) RELIEF regarding his incarceration as a SAFEKEEPER within the South Carolina Department of Correction (SCDC) on the grounds of lack of Jurisdiction; however, regarding BARNES challenging his condition of confinement within the SCDC, the Administrative law Judge had remanded BARNES issues back to the SCDC for him to file a STEP II grievance there. The Administrative law Judge decision was based on SCDC assertion at a hearing that SAFEKEEPER inmates file STEP II grievance, and not STEP I grievance, because of their limited stay within the SCDC as pretrial detainees. (SEE EXHIBIT (A) - PAGE 6)

The Administrative law Judge 11/5/15 order regarding the BARNES Facts of the STEP II grievance process of SCDC became final, the law of the case, thirty days after the court decision; and as a result of that, SCDC did not appeal the Administrative Judge order regarding whether or not the wrongness of the STEP II grievance process as to pretrial detainees that are held as SAFEKEEPERS in the SCDC.

Facts - Appellant Exhaustion of SCDC STEP II Grievance process

On 2/28/17, EXCESSIVE USE OF Force was utilized on the Appellant unjustly. Within FIVE (5) days according to SCDC STEP II grievance process, the Appellant had filed three STEP II grievances pursuant to BARNES vs SC DEPT OF CORRECTION supra. (SEE Exhibit 1)

On March 28, 2017 K. RIVERS OF SCDC had written the Appellant a Memorandum that states in Full:

"Headquarters has returned the attached grievances to LEE IGC because the inmate grievance Branch no longer accepts grievances sent directly to IGB. In order for your grievances to be processed, you must submit a STEP 1 to the LEE Grievance Coordinator. I am attaching step 1's for you to complete and return to me. The step 2's should be deleted." (SEE Exhibit 2)

On 3/30/17, the Appellant had received K. RIVERS OF SCDC Memorandum. The Appellant prepared and sent a Notice of Appeal to the Administrative Law Court regarding the issues to the SCDC in his STEP II grievances. (SEE Exhibit 3)

In the meantime, the Appellant had sent step 1 grievances regarding the issues in his STEP II grievances to LEE County grievance coordinator official. On 4/3/17, the grievance coordinator had received the Appellant step 1 grievances. Those grievances were returned to Appellant that stated in part:

"your grievance is being processed and returned. you have exceeded the appropriate time frame to file this grievance on the above issue. According to Agency policy/procedure GA-01.12, you have eight (8) days from the date of the incident..." (SEE Exhibit 4)

Contrary to BARNES vs SC DEPT OF CORRECTION supra, on 4/28/17, the Administrative Law Clerk had sent the Appellant a letter that stated in Full:

"your step I should be submitted to the LEE GRIEVANCE Coordinator for processing, Attach all Forms to the Notice of Appeal Form and return to the clerk's Office." (SEE Exhibit 5)

On May 9, 2017, the Appellant had sent the Administrative law clerk a letter explaining to the Court of Barnes vs SC Dept of Correction supra; and as a result of that he was suppose to file a step II grievance instead of step I grievance. (SEE Exhibit 6)

On May 18, 2017, the Administrative law clerk, Jana E. Cox Shealy, wrote the petitioner a letter that states in full:

"The Administrative Law Court (ALC) received your letter dated May 9, 2017 asserting that the appeal returned to you for failure to exhaust your administrative remedies by filing a step I grievance, must be filed and processed pursuant to the decision in Barnes. The decision issued by Judge Anderson in Barnes is not precedential and does not set procedure for all pretrial detainees in custody of the Department of Corrections (DOC). The instruction in Barnes to file a step 2 grievance without filing a step I grievance, applied only to Mr. Barnes in that case. It does not apply to all pretrial detainees unless a higher court rules on that issue on appeal. This case has been appealed and is pending before the Court of Appeals. Until that issue is addressed by that court, you must file in accordance with current DOC policies. Therefore, your appeal is being returned to you to comply with filing a step I grievance as instructed." (SEE Exhibit 7).

ARGUMENT

The SCDC did not appeal the Administrative Judge 11/5/15, order regarding the exhaustion and facts of the step II grievance process. SEE ML-LEE Acquisition Fund, C.p. v. Deloitte Touche 489 S.E 2d 470, 472 (1997) (holding that an unappealed ruling is the law of the case); Douglass Ex Rel. Louthian v. Boyce 519 S.E 2d 302 (1999) (Failure to argue against trial Judges ruling rendered it law of case on appeal) The Administrative law Judge 11/5/15 order remanding Barnes supra back to the SCDC to file a step II grievance stated in pertinent part:

"The [SCDC] asserts that if Barnes issues were raised via a step 2 Grievances the specific challenges to confinement would be reviewed with much greater scrutiny..."
Id.

The key facts to the Administrative Judge order proving that SAFEKEEPER FILES STEP II grievances, Not just Barnes Supra, as the Administrative law clerk 5/18/17 letter had stated, is in Footnote 8 of the Judge order, which states:

"The [SCDC] stated at the hearing that it accelerates the procedure for the safekeepers, due to the brief nature of their housing, which is another why the process would begin with a step 2 Grievance instead of a step 1 Grievance." Id

The SCDC is Res Judicata, see *Clod Feller v. Republic of Sudan* 720 F.3d 199 (2013) FN.18 ((The term Res Judicata is often used to refer to both claim preclusion; where a previous judgment forecloses litigation the basis that it was decided in the previous case, and issue preclusion, which refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided); and Judicial Estoppel, see *Hayre Fed. Credit Union v. Baily*, 489 S.E 2d 472 (1997) (Judicial Estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation) from arguing otherwise on this appeal about the appellant utilizing the step II grievance process.

Furthermore, the Administrative law clerk is in excess of its jurisdiction in not processing the Appellant Appeal in that court according to *Barnes v. SC Dept of Correction* supra.

Regarding this claim for relief the Appellant request this court to remand this case back to Administrative law clerk pursuant to *Barnes v. SC Dept of Correction*, Supra.

ISSUE 2:

WHETHER THE ADMINISTRATOR LAW CLERK DENYING THE APPELLANT ACCESS TO THE COURT BY NOT PROCESSING THE STEP II GRIEVANCES PURSUANT TO BARNES V SC DEPT OF CORRECTION DOCKET NO: # 15-AJ-30-0318-IJ.

STATEMENT OF THE CASE

Appellate crave reference to and incorporate the facts in the ISSUE 1 in this section for relief on this appeal.

ARGUMENT

In Harbury v. Christopher 536 US 403 (2002) the supreme court had stated that a claim for deprivation of constitutional right of access to courts must allege both: (1) underlying cause of action whether anticipated or lost, and (2) official acts frustrating litigation.

The Appellant underlying cause of action is his three step II grievances that the Appellant is trying to exhaust his state administrative remedies in the administrative law court; and regarding the official action of the administrative law clerk not processing his appeal pursuant to Barnes v. SC Dept of Correction supra. in that court is frustrating the Appellant from exhausting his claim in both state and federal court.

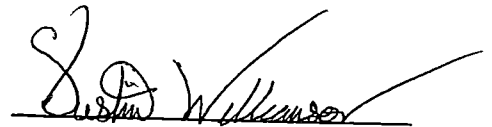
The purpose of setting forth the two elements in Christopher, supra regarding denial of access to the courts is for this court to open the door to his forward looking claims in this court. Christopher v. Harbury 536 US at 413 (In forward looking claims the opportunity has not been lost for all times. Rather it has been lost in short term)

The Appellant is asking this court to open the court house doors regarding his Administrative law claims on appeal according to BARNES vs SC DEPT OF Correction supra.

CONCLUSION

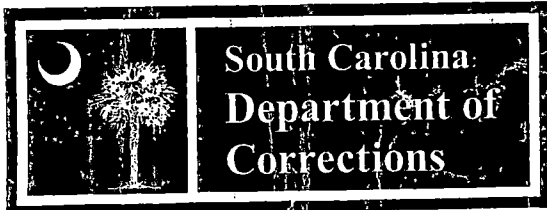
The Appellant pray For such other and Further RELIEF this court seem Just and proper.

DATE: June 18, 2017



Dustin Williamson
LEE County prison
990 Wsacky Hwy
Bishopville SC 29010

EXHIBIT A



NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

March 11, 2016

Mr. Jeffery P. Bloom, Esq.
P.O. Box 5885
Columbia, South Carolina 29250

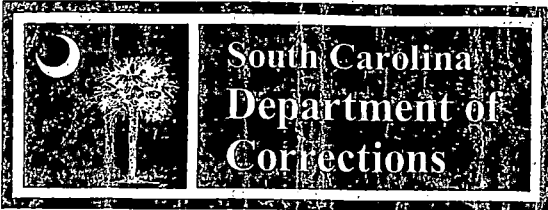
RE: Steven L. Barnes v. South Carolina Department of Corrections
ALC No. 15-ALJ-30-0318-IJ
Grievance Step 2 – Processed and Returned

Dear Mr. Bloom:

You will recall that The Honorable Ralph King Anderson, III, South Carolina Chief Administrative Law Judge, issued an Order in the above-referenced case dated November 5, 2015. In that Order, copy attached, the Court stated, "IT IS FURTHER ORDERED, that the case be **REMANDED** to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration."

South Carolina Department of Corrections (SCDC) provides forms for inmates to properly file grievances that will promote clarity in its well-established grievance process. The Step 2 Grievance (SCDC Form 10-5A) that was filed by you on behalf of your client, Steven L. Barnes, with SCDC on February 11, 2016, was inconsistent with SCDC policy for filing a Step 2 Grievance. Specifically, inmates may address only one issue per grievance and no attachments can be part of the filing. The space allocated on Step 2 SCDC Form 10-5A is the only area that can be used to express the inmate's concern. Inmate Barnes submitted to you a filing on sixteen (16) issues on sixteen (16) different Step 2 SCDC Form 10-5A with attachments. SCDC policy allows an inmate to file five (5) grievances per month, which shall include all grievances that are returned unprocessed. Consequently, his materials are being returned with these instructions:

- 1) Use the enclosed Step 2 SCDC Form 10-5A in drafting his grievance;
- 2) Use only the space allowed that reads, INMATE'S REASON FOR APPEAL (state specific dissatisfaction);
- 3) State only one issue in his grievance and that issue must be one that SCDC has the authority to provide the relief requested;
- 4) Submit only one Step 2 SCDC Form 10-5A per issue not to exceed five issues;
- 5) Sign and date Step 2 SCDC Form 10-5A at "Grievance's Signature"; and
- 6) Submit Step 2 SCDC Form 10-5A within five (5) working days of receipt of this communication.



NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

Please inform us by e-mail when you receive this letter. Our office is willing to assist you with filing the Step 2 Grievance should you find it necessary.

Best Regards,

A handwritten signature in black ink that reads "Stephen H. Lunsford". The signature is written in a cursive, flowing style.

Stephen H. Lunsford, Esquire
Staff Attorney, SCDC General Counsel

C: Ralph King Anderson, III | Chief Administrative Law Judge
Enclosures: Step 2 SCDC Form 10-5A
Order – Case No.15-ALJ-30-0318-IJ

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Steven L. Barnes,)
)
 Petitioner,)
)
 vs.)
)
South Carolina Department of Corrections,)
)
 Respondent.)
_____)

Case No. 15-ALJ-30-0318-IJ

ORDER

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to a petition filed on July 6, 2015 by Steven L. Barnes (Petitioner) challenging his classification and detention as a Safekeeper with the South Carolina Department of Corrections (SCDC or Department).

FACTS/PROCEDURAL HISTORY

Petitioner was held as a pre-trial detainee in the county of jails of Aiken, Laurens, and Greenwood between February 7, 2014 and April 28, 2015. On or about April 20, 2015, the sheriff of Edgefield County sought to have Petitioner classified as a Safekeeper and transferred to the custody of SCDC while he awaits trial.¹ The Department recommended that Petitioner be designated as a Safekeeper, and the Office of the Governor issued an Executive Order on April 28, 2015 approving that designation, which was renewed on August 12, 2015.² As a result of the Governor's Order, on April 28, 2015, Petitioner was removed from a county jail and transferred to SCDC as a Safekeeper.

On April 30, 2015, Petitioner filed a written objection, through his attorneys, to his Safekeeper status within SCDC on constitutional and statutory grounds. In a letter dated July 2,

¹ Petitioner alleges that his transfer from county jail to SCDC was out of retaliation for his filing of numerous grievances while in jail. However, there is no evidence in the record to substantiate these claims, and therefore the Court will not consider those contentions. More importantly, the hearing held in this matter was conducted to determine if the Court had jurisdiction to review this matter. Thus, the retaliation allegation could not be considered unless the Court could lawfully exercise jurisdiction.

² There was a question about whether this Court has jurisdiction over the Office of the Governor in this matter. However, at the hearing, the parties agreed with the Court that this question was premature, because the Office of the Governor had not been added as a party in this case.

FILED

November 5, 2015

2015, the Department denied Petitioner's objections and explained the reasons for his transfer to SCDC and classification as a Safekeeper. On July 6, 2015, Petitioner filed an action in this Court seeking injunctive relief.³ On August 28, 2015, the Department filed a Memorandum of Law in Support of Dismissal of the Petition. A hearing was held in this matter at the ALC in Columbia, SC.

DISCUSSION

Based on the memoranda submitted and the subsequent hearing held in this matter, the issues in this case can be reduced to (1) whether this Court has jurisdiction to hear Petitioner's challenge to the classification and transfer of Petitioner to SCDC as a Safekeeper pursuant to S.C. Code Ann. § 24-3-80 (Supp. 2014), and (2) whether the Court has jurisdiction to consider the conditions of Petitioner's confinement as a Safekeeper pursuant to Section 24-3-80.

Classification and Transfer of Petitioner as a Safekeeper

Petitioner argues that this Court has jurisdiction to review the decision to classify him as a Safekeeper and transfer him to SCDC. Petitioner argues that the Department made the final decision in its July 2, 2015 letter to classify Petitioner as a Safekeeper, and therefore this Court has the authority, under *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and its progeny, to hear this case.⁴ Petitioner also argues that even if it is the Office of the Governor that made the final decision, the Court still has jurisdiction to hear this case.

The Department, on the other hand, argues that Section 24-3-80 deprives this Court of subject matter jurisdiction to review the decision to classify Petitioner as a Safekeeper and transfer him to SCDC, and that the Department did not, and could not, render a final decision as to Petitioner's classification and transfer as a Safekeeper, as only the Governor, who is not a party in this case, could make that decision. The Department therefore requests that the Court dismiss the petition for lack of subject matter jurisdiction. I agree with the Department as to this issue.

³ Petitioner styled his filing as a "Request for Contested Case Hearing." However, this Court labeled this action "Request for Injunctive Relief" in its Notice of Assignment, because it involves requests for injunctive and declaratory relief, though neither term is expressly stated.

⁴ In its Memorandum, Petitioner also argued that even if the Office of the Governor made the final decision, the Court would have still have jurisdiction. However, at the hearing, Petitioner conceded and the Court concluded that the Court could not address the matter of whether it had jurisdiction over the Office of the Governor because the Governor was not a party in this case.

action is directly related to Sloan's **cause of action for a declaratory judgment** that Friends is a public body.") (emphasis added); *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 640, 699 S.E.2d 699, 708 (Ct. App. 2010) ("We reverse the circuit court's conclusion . . . that the complaint failed to allege facts supporting **causes of action for . . . injunction, and declaratory relief.**") (emphasis added). Therefore, if an injunction is interpreted as a cause of action, review of the transfer of a defendant to the Department for safekeeping is not allowed. Furthermore, even if an injunction is not a cause of action, it is certainly an "action" that is brought in the Court. The plain language of Section 24-3-80 bars the "right" to bring any action, which includes an injunction. Accordingly, regardless of whether Petitioner's action as it pertains to his classification and transfer as a Safekeeper is a right of action or a cause of action, Section 24-3-80 clearly precludes either kind of action from being brought against the State or any of its officers or agents.

Petitioner nevertheless claims that even if the Governor is the final decision-maker as to Safekeeper status, her decision would have to be reviewable by this Court or else Section 24-3-80 would be unconstitutional. Petitioner adds that "[t]his Court's authority to act and hear this case is even more necessary and constitutionally mandated where the real reason for Petitioner's removal from the county jail and transfer into state custody is not because of any current or recent infractions or behavior as envisioned by the Executive Order."⁵

As an initial matter, this Court cannot consider facial challenges to the constitutionality of a statute or regulation. See *Travelscape v. S.C. Dep't of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 38-39 (2011). However, this Court "is empowered to hear as applied challenges to statutes regulations." *Id.* at 109, 705 S.E.2d at 39. Here, the Court has been provided with no authorities indicating that a prisoner has a state-created liberty interest in his mere classification as a Safekeeper or in the location in which he is housed while he awaits trial. As the Court will discuss further below, a prisoner does have a state-created liberty interest in the conditions of confinement once he has been classified and transferred to an SCDC facility as a Safekeeper. However, as to the Governor's basis for his classification and transfer of a prisoner as a Safekeeper, Petitioner has failed to establish that Section 24-3-80 was unconstitutionality applied in this case. For this reason and because the statute plainly precludes rights of action or causes of action regarding the

⁵ The "Executive Order" that Petitioner references here is Executive Order 2000-11 (February 16, 2000), and the "infractions or behavior" that he references are set forth in Section 1 of this Order as follows: "(1) is a high escape risk; (2) exhibits extremely violent and uncontrollable behavior; and/or (3) must be removed from the county facility to protect the individual from the general population or from other detainees."

Section 24-3-80 states:

The director of the prison system shall admit and detain in the Department of Corrections for safekeeping any prisoner tendered by any law enforcement officer in this State by commitment duly authorized by the Governor, provided, a warrant in due form for the arrest of the person so committed shall be issued within forty-eight hours after such commitment and detention. **No person so committed and detained shall have a right or cause of action against the State or any of its officers or servants by reason of having been committed and detained in the state prison system.**

(Emphasis added).

First, it is clear from the plain language of the statute, that only the Governor can “duly authorize[.]” the commitment of a prisoner to SCDC for safekeeping. Therefore, even if the Department’s decision had been stylized as a final decision, the Department did not have the authority to make the decision. As noted above, only the Governor possesses the authority to render a final decision with respect to Petitioner’s classification and transfer as a Safekeeper. This fact is also reflected in Section 3 the Governor’s Executive Order 2000-11 (February 16, 2000), which states, “Upon receipt of the recommendation of the Director of the Department of Corrections, **the Governor shall make a determination as to whether a safekeeping order should be granted and, if appropriate, issue the requested order.**” (emphasis added). But regardless of whether the Office of the Governor or the Department rendered the final decision, Section 24-3-80 precludes a right of action or cause of action against any of the State’s officers or servants, which would include both the Governor and the Department.

This Court thus must determine whether the injunctive and declaratory relief that Petitioner seeks constitutes a “right of action” or a “cause of action.” The Notes to Rule 65 of the South Carolina Rules of Civil Procedure (SCRCP) appears to draw a distinction between causes action and remedial writs, including injunctions. The Notes set forth that “Rule 65 makes it clear that the various remedial writs are not causes of action but remedies or relief, the right to which must be supported by the law and the facts. Therefore, the injunction or other writ granted does not become permanent or final until final judgment in the action. . . .” However, the appellate courts in South Carolina have referred to an action for injunctive or declaratory relief as a “cause of action.” See, e.g., *Knohl v. Duke Power Co.*, 260 S.C. 374, 376, 196 S.E.2d 115, 116 (“We have held that a complaint fails to state a **cause of action for injunctive relief** unless facts are alleged which show that the plaintiff has no adequate and complete remedy at law.”) (emphasis added); *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 29, 630 S.E.2d 474, 479 (2006) (“The alter ego cause of

classification and transferal of prisoners for safekeeping, the Court grants the Department's request to dismiss for lack of subject matter jurisdiction as to this issue.

Conditions of Confinement

Petitioner next argues that this Court has jurisdiction to consider the conditions of his confinement as a Safekeeper pursuant to Section 24-3-80. He argues that he was treated like SCDC inmates who had committed disciplinary infractions, even though he had not committed any violations. For example, Petitioner asserts that he was denied publications from publishers, postage, and was limited in his access to legal counsel.⁶ The Department requested the Court to dismiss the petition based on a lack of subject matter jurisdiction to consider this issue. Because I agree with Petitioner that the Court has subject matter jurisdiction to consider the conditions of his confinement, the Department's request to dismiss as to this issue is denied.

Though Petitioner is a pretrial detainee Safekeeper, not an inmate who is being incarcerated based on a conviction and sentencing, the Court nevertheless finds that based on *Al-Shabazz, supra*, this Court's jurisdiction likely extends to pre-trial detainee Safekeepers with respect to their conditions of confinement. Therefore, the Court concludes that it has subject matter jurisdiction to consider the conditions of Petitioner's confinement.

However, the Court must also consider whether it has procedural jurisdiction. Normally, an inmate who fails to exhaust his administrative remedies by availing himself of the Department's established grievance process deprives the Court of procedural jurisdiction to hear an appeal. *See Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010) ("The doctrine of exhaustion of administrative remedies requires that where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will act."); *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 583 (1994) ("The general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule."); *Storm M.H. ex rel. McSwain v. Charleston Cnty. Bd. of Trustees*, 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012) (quoting *Brown*, 389 S.C. at 54, 697 S.E.2d at 611 ("A commonly recognized exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of administrative remedies

⁶ Petitioner also mentioned in his Memorandum that he had been denied access to Dove soap, which SCDC's medical unit had approved for a skin condition. However, the Department asserted at the hearing that this particular matter had been resolved.

would be a vain or futile act.”). “Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review.” *See Video Gaming Consultants, Inc. v. S.C. Dep’t of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000). The administrative remedies provided for inmates pursuant to the Department’s Inmate Grievance Policy are Step 1 and Step 2 grievances.

Here, Petitioner submitted a letter through his counsel to the Department objecting to his classification and treatment as a Safekeeper, to which the Department responded with a letter rejecting his objections and explaining the reasons for his classification and transfer.⁷ The Department asserts that the letter was not its final decision as to Petitioner’s conditions of confinement but rather a response to the issues raised regarding the placement of Petitioner in the Department’s custody as a Safekeeper. In fact, the July 2, 2015 letter is not designated as a “final” order and does not indicate that a final determination is being made regarding specifically challenged custody issues. Therefore, I find that Petitioner did not establish that this letter was the final department decision.

Moreover, Petitioner’s letter failed to follow the appropriate procedure for filing a grievance. The Department asserts that if Petitioner’s issues were raised via a Step 2 Grievance, the specific challenges to confinement would be reviewed with much greater scrutiny than the response given in the July 2 letter.⁸ Thus, since a Step 2 review may provide an “adequate remedy,” I find Petitioner failed to exhaust his administrative remedies and has not demonstrated any circumstances supporting an exception. *See S.C. Code Ann. § 1-23-380 (Supp. 2014); see also Storm M.H. ex rel McSwain, supra; Ward v. State*, 343 S.C. 14, 19, 538 S.E.2d 245, 247 (2000); *Brown v. James, supra*. Therefore, the Court cannot consider the conditions of Petitioner’s confinement at this time. Accordingly, I find it appropriate for this matter to be remanded to the Department so that Petitioner can have the opportunity to file a Step 2 Grievance for the Department’s consideration in order to create a record for review in this matter, and to give the Department an opportunity to perhaps remedy, if warranted, Petitioner’s grievances.

⁷ Petitioner’s letter is not in the Record.

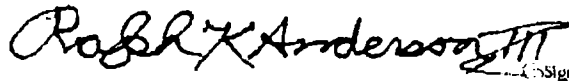
⁸ The Department stated at the hearing that it accelerates the procedure for the Safekeepers, due to the brief nature of their housing, which is another why the process would begin with a Step 2 Grievance instead of a Step 1 Grievance.

ORDER

IT IS THEREFORE ORDERED that the Department's request for dismissal as to the issue of Petitioner's classification and transferal to SCDC as a Safekeeper is **GRANTED**.

IT IS FURTHER ORDERED that the case be **REMANDED** to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration.

AND IT IS SO ORDERED.

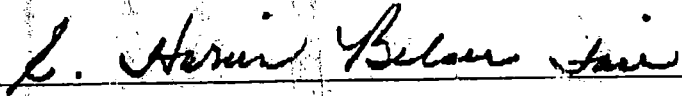
A handwritten signature in black ink that reads "Ralph King Anderson, III". The signature is written in a cursive style. To the right of the signature, there is a small, faint "Sign" watermark.

Ralph King Anderson, III
Chief Administrative Law Judge

November 5, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

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



E. Harvin Belser Fair
Judicial Law Clerk

November 5, 2015
Columbia, South Carolina

EXHIBIT 1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Dustin Robert Williamson
SCDC NUMBER: 5K5283
INSTITUTION: LEE Correctional Institution
HOUSING UNIT: Restrictive Housing Unit
WORK ASSIGNMENT: _____

MAR 21 2017

Office Use Only
Grievance No. _____
Code: General _____
Policy _____
Disc. Hear. _____
Class. _____
Date Received _____
IGC Initials _____

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

I am having ongoing problems with Restrictive Housing Unit (RHU) officers interfering with my medical treatment concerning both my snackbags for my mental health medication and double portion food trays for the excessive amount of weight loss. Contrary to SCDC policy, RHU officers allow inmates to pass out food trays. This has caused me problems for not getting what I'm entitled to regarding either my double portion tray or medical bag. This, along with other mental health problems that I am going through, had caused the unjust excessive force allegation in RHU.

Dustin Williamson 3/7/17
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Signature Date

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

Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Dustin Robert Williamson
SCDC NUMBER: 565223
INSTITUTION: LEE Correctional Institution
HOUSING UNIT: Restrictive Housing Unit
WORK ASSIGNMENT: _____

MAR 21 2017

Office Use Only

Grievance No. _____
Code: General _____
Policy _____
Disc. Hear. _____
Class. _____
Date Received _____
IGC Initials _____

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

On 2/28/17, Excessive Force was used on me by Restrictive Housing Unit (RHU) officers without them following TR v. SCDC 2005-cp-40-02125 because of the altercation I had with a SCDC inmate, who doesn't suppose to not only pass out food trays to inmates but also interfering with my double portion medical tray and my mental health snackbags, This triggered my mental health disease. Instead of RHU officers contacting mental health counselor and ordering the RHU officers to have a camera presence, two RHU officers shot me one a piece with the big canister of gas.

Dustin Williamson 3/7/17
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Signature Date

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

Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM**

STEP 2

INMATE NAME: Dustin Robert Williamson
 SCDC NUMBER: 5K5243
 INSTITUTION: LEE Correctional Institution
 HOUSING UNIT: Restrictive Housing Unit MAR 21 2017
 WORK ASSIGNMENT: _____

Office Use Only

Grievance No. _____
 Code: General _____
 Policy _____
 Disc. Hear. _____
 Class. _____
 Date Received _____
 IGC Initials _____

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

I am challenging Restrictive Housing Unit (RHU) official using riot shotgun with pellets on mental health inmate who does not pose a threat on RHU officer or another inmate. On 3/4/17, I had witnessed a mental health inmate who is a SATEKEEPER GET shot in the left hand with a riot shotgun. I also witnessed that it took FIVE hours for RHU officers to take the inmate to medical as a mental health inmate the current SCDC custom is inconsistent with TR v. SCDC 2005-CP-40-02925 and needs to stop immediately. This current SCDC policy in RHU is placing me in imminent danger of life and limb.

Dustin Williamson 3/7/17
 Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

 Signature Date

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

 Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

EXHIBIT - 2

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
LEE CORRECTIONAL INSTITUTION**

M E M O R A N D U M

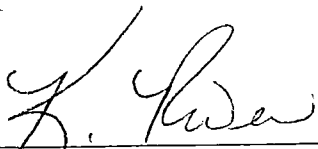
INMATE: Dustin Williamson / SCDC #005283
Lee Correctional Institution
SK-71

FROM: K. Rivers

SUBJECT: Improperly Filed Grievances

DATE: March 28, 2017

Headquarters has returned the attached grievances to Lee IGC because the Inmate Grievance Branch no longer accepts grievances sent directly to IGB. In order for your grievances to be processed, you must submit a Step 1 to the Lee Grievance Coordinator. I am attaching Step 1's for you to complete and return to me. The Step 2s should be deleted.

 3/28/17

K. Rivers

EXHIBIT - 3

EXHIBIT - 4

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

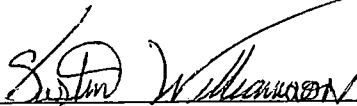
INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: <u>Dustin Williamson</u>	OFFICE USE ONLY
SCDC NUMBER: <u>SK5283</u>	Grievance No. <u>LECT 0279-17</u>
INSTITUTION: <u>LEE Correctional Institution</u>	Code: General <u>me / 12/16</u>
HOUSING UNIT: <u>Restrictive Housing Unit</u>	Policy _____
WORK ASSIGNMENT: _____	Disc. Hear. _____
<u>MAR 30 2017</u> <u>DP</u>	Class. _____
	PREA _____
	Date Received <u>4/3/17</u>
	IGC Initials <u>TCW</u>

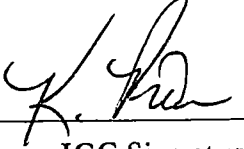
STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

I am having ongoing problems with Restrictive Housing Unit (RHU) officers interfering with my medical treatment concerning both my snackbags for my mental health medication and double portion food trays for the excessive amount of weight loss. Contrary to SCDC policy, RHU officers allow inmates to pass out food trays. This has caused me problems for not getting what I'm entitled to regarding either my double portion tray or medical bag. This along with other mental health problems that I am going through, had caused the unjust excessive force alteration in RHU.


Dustin Williamson 3/30/17
 Grievant Signature Date

ACTION REQUESTED:

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER


K. P. [unclear] 4/3/17
 IGC Signature Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

LEECI-279-17

This grievance is processed and returned to you because you have failed to give a date, you failed to request your action and you failed to attach an answered Request to Staff Form regarding your informal resolution attempt on this issue as is required in GA-01.12 Inmate Grievance Procedures. You may refile on a new grievance form within 5 days (due by 4/10/17) providing the date, the action requested and the required answered Request to Staff Form or within 8 days of receiving a response to the Request to Staff Form which you should have submitted within 8 days of the incident as your informal resolution attempt to the appropriate supervisor. I would suggest you write a RTS to AW Sharp. Return this grievance with any refile for date verification purposes.
REMINDER: Inmates will be allowed to file five (5) grievances per month, which shall include all grievances that are returned. After the 5 grievances have been accepted, all other grievances will be returned, except disciplinary and classification hearings. This does not include refiles if the 5 grievance limit has been reached.

K. Sharp 4/3/17

[Signature]
Warden Signature Date

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

[Signature] Grievant Signature Date *[Signature]* IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM**

STEP 1

INMATE NAME: Dustin Williamson
 SCDC NUMBER: SK5283
 INSTITUTION: LEE Correctional Institution
 HOUSING UNIT: Restrictive Housing Unit
 WORK ASSIGNMENT: _____

OFFICE USE ONLY
 Grievance No. LECT 0281-17
 Code: General IP/US
 Policy _____
 Disc. Hear. _____
 Class. _____
 PREA _____
 Date Received 4/3/17
 IGC Initials [Signature]

MAR 30 2017
 DP

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

I am challenging Restrictive Housing Unit (RHU) officers using riot shotgun with pellets on mental health inmate who does not pose a threat on RHU officer or another inmate. On 3/4/17, I had witnessed a mental health inmate who is a safekeeper get shot in the left hand with a riot shotgun. I also witnessed that it took five hours for RHU officers to take the inmate to medical as a mental health inmate the current SCDC custom is inconsistent with TR v. SCDC 2005-Cp-40-02925 and needs to stop immediately. This current SCDC policy in RHU is placing me in imminent danger of life and limb.

Dustin Williamson 3/30/17
 Grievant Signature Date

ACTION REQUESTED:

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

[Signature]
 IGC Signature Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

LeeCI-0281-17

Your grievance is being returned unprocessed. You have exceeded the appropriate time frame to file this grievance on the above issue. According to Agency Policy/Procedure GA-01-12, you have five (5) days from the date of the incident or eight (8) days from the date of the answered RTSM to file a grievance on this issue. Your grievance is being returned to you with no action taken.

L. Han
4/7/17

Warden Signature

Date

I accept the Warden's decision and consider the matter closed.

I do not accept the Warden's decision and wish to appeal.

[Signature]

Grievant Signature

[Signature]

IGC Signature

Date

INSTRUCTIONS

STEP 1 GRIEVANCE FORM

1. An informal resolution may be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

EXHIBIT-5

Memorandum

To: Appellant
From: Clerk's Office, Administrative Law Court
Date: 4-28-17
Re: Compliance with ALC Special Appeals Rule

The Administrative Law Court received your information on 4-20-17.
According to ALC Rule 59:

Any notice of appeal which is incomplete or not in compliance with this rule or Rule 71 will not be assigned to an administrative law judge until all required information is received and any applicable filing fee is processed.

Accordingly, your case will not be assigned until the following information is received:



~~Your Step 1 should be submitted to the Lee Grievance Coordinator for processing. Attach all forms to the Notice of Appeal form and return to the Clerk's Office.~~

_____ A copy of the final decision which is the subject of the appeal (i.e., Step 2 Grievance Form from the DOC or the final decision from PPS) pursuant to ALC Rule 59(C).

_____ A brief factual basis for each expressly and specifically asserted constitutional violation in accordance with ALC Rule 59(B).

_____ The Notice of Appeal form you submitted must be signed and dated.

_____ Filing Fee of \$25 in accordance with ALC Rule 71 for your 4th and subsequent appeal this calendar year.

_____ Other:

Please return the appropriate information within 10 days of the date of this Memorandum or your case will be returned to you unprocessed.

EXHIBIT 6

To: Administrative Law Court, clerk

From: Dustin Williamson

RE: Appeals of Grievance

Date: May 9, 2017

Dear Clerk of Court,

This letter is concerning the memorandum response to my appeals within this court. On April 11, 2017, I filed appeals within the court, prior to this filing I tried to exhaust my administrative remedies by way of step 2 grievance pursuant to Barnes v. SC Dept of Correction ALC-No # 15-ALJ-30-0318-IJ (see Exhibit A attached) which is the law of the case pretrial detainees can file via step 2 grievances to exhaust their administrative remedies instead of step 1.

However, the court sent back the appeals and the attachments. I am sending these back to this court pursuant to Barnes v. SC Dept of Correction ALC-No # 15-ALJ-30-0318 so these documents will be filed immediately (see Exhibit B attachments).

Respectful Submitted,

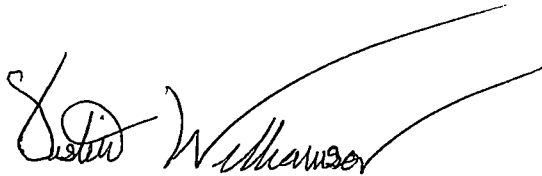

Dustin Williamson

EXHIBIT - 7

Administrative Law Court

Ralph K. Anderson, III
Chief Judge

Jana E. Cox Shealy
Clerk



PHONE: (803) 734-0550
FAX: (803) 734-6400
WEB: WWW.SCALC.NET

May 18, 2017

Dustin Williamson, #SK5283
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

In Re: Application of Barnes v. SC Department of Corrections, Docket No. 15-ALJ-30-0318-IJ

Dear Mr. Williamson:

The Administrative Law Court (ALC) received your letter dated May 9, 2017 asserting that the appeal returned to you for failure to exhaust your administrative remedies by filing a Step 1 Grievance, must be filed and processed pursuant to the decision in Barnes. The decision issued by Judge Anderson in Barnes is not precedential and does not set procedure for all pretrial detainees in custody of the Department of Corrections (DOC). The instruction in Barnes to file a Step 2 Grievance without filing a Step 1 Grievance, applied only to Mr. Barnes in that case. It does not apply to all pretrial detainees unless a higher court rules on that issue on appeal. This case has been appealed and is pending before the Court of Appeals. Until that issue is addressed by that Court, you must file in accordance with current DOC policies. Therefore, your appeal is being returned to you to comply with filing a Step 1 Grievance as instructed.

Please let me know if you have any other questions.

Sincerely,

Jana E. Cox Shealy
Clerk of Court

JES/

cc: Nancy Riley, General Counsel, ALC
Office of General Counsel, DOC
Lee Grievance Coordinator