

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Administrative Law Judge  
Dock. No. 07-ALJ-04-00517-AP

Fred Gatewood, #289775..... Appellant,

v.

South Carolina Department of Corrections..... Respondent.

Appellate Case No. 2017-001552

**RECEIVED**

PETITION FOR REHEARING

AUG 02 2017

SC Court of Appeals

Fred Gatewood submits his Petition for Rehearing in this matter, arguing that the Court of Appeals overlooked the following points in its July 20, 2017 dismissal of the appeal, as more particularly described in the attached memorandum, affidavit and attachment(s).

(1) The possibility of distinguishing Charlotte-Mecklenburg Hosp. Auth. v. SCDHEC based on the inconsistency between the Court of Appeals and ALC remand orders.

(2) The subsidiary effects of the inconsistency.

(3) The circumstance that Gatewood is entitled to ALC review, which mode of trial would be denied under the ALC's remand to SCDC, which is immediately appealable.

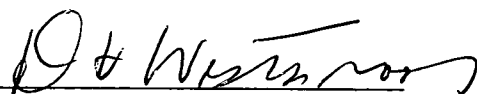
(4) The ALC remand's effect of a violation of due process, as a circumstance distinguishing Charlotte-Mecklenburg Hosp. Auth.

Respectfully submitted,

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Douglas H. Westbrook, #6039  
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Charleston, SC 29401  
(843) 853-9600  
Attorney for Fred Gatewood

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MEMORANDUM IN SUPPORT OF  
PETITION FOR REHEARING

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This appeal was filed on July 14, 2017. The parties did not brief the appeal before the Court of Appeals issued its order dismissing the appeal on July 20, 2017. The Court dismissed the appeal as interlocutory, citing Charlotte-Mecklenburg Hosp. Auth. v. SCDHEC 387 S.C. 265, 267, 692 S.E. 2d 894, 895 (S.C., 2010) ("If there is some further act which must be done by the Court prior to a determination of the rights of the parties, the order is interlocutory").

Pursuant to SCACR 221(a), Gatewood contends the Court of Appeals' order overlooked the point made in Gatewood's notice of appeal footnote, that it is possible the Court may distinguish Charlotte-Mecklenburg Hosp. Auth. based on circumstances here which were not addressed in that case. Circumstances include the inconsistency between the March 9, 2016 Court of Appeals' opinion remand of "...the issue of Inmate's entitlement to costs, attorney's fees, pre-judgment interest, and post-judgment interest to the ALC for reconsideration in light of this opinion" (Gatewood v. SCDC 785 S.E. 2d 600, 613 (S.C. App.,

2016); and the ALC's June 13, 2017 remand "...to the South Carolina Department of Corrections for processing..". See ALC remand, attached hereto.

Gatewood further contends the Court of Appeals overlooked the subsidiary effects of the inconsistency. The ALC remand does not enforce the Court of Appeals' opinion remand and June 2, 2017 remittitur (Muller v. Myrtle Beach Golf & Yacht Club 313 S.C. 412, 414-415, 438 S.E. 2d 248 (S.C., 1993); Am Jur 2d (2007), App. Rev., §§734-737, 740, 744). And, the remand was outside the ALC's jurisdiction, null and void, and the proceeding is as if the remand had not occurred (Id., §740; 20 Am Jur 2d (2015), Courts, §63). Thus, Gatewood contends the ALC retains jurisdiction to reconsider Gatewood's entitlement to costs, attorney fees, and pre and post-judgment interest.

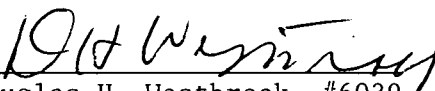
Moreover, Gatewood contends the Court of Appeals overlooked his entitlement to the ALC's reconsideration of his entitlement to costs, attorney's fees, and pre and post-judgment interest. The entitlement stems from the above quoted Court of Appeals' remand for the ALC to carry out this reconsideration. However, the ALC's remand to SCDC for processing would deprive Gatewood of the mode of trial to which he is entitled, and that is immediately appealable (J. Toal, Appellate Practice in South Carolina, 3d Ed., 2016, p. 155, citing Williford v. Downs 265 S.C. 319, 218 S.E. 2d 242 (1975)). Gatewood contends these circumstances further distinguish Charlotte-Mecklenburg Hosp. Auth.

Finally, Gatewood contends the Court of Appeals overlooked the point that the apparent authorization in the ALC remand for SCDC to determine the "beneficial results obtained" may involve calculating Gatewood's back wages. If so,

SCDC would be calculating its own damages, an obvious conflict of interest. It would also violate due process, since SCDC is not an impartial decision-maker as S.C. Constitution Art. I, §22 and case law require (Ross v. MUSC 492 S.E. 2d 62, 72 (S.C., 1997); Al Shabazz v. State 527 S.E. 2d 742, 750, 753 (S.C., 2000); J. Toal, Appellate Practice in South Carolina, 3d Ed., 2016, pp. 66-67). In contrast, Charlotte-Mecklenburg Hosp. Auth. involved no illegal effect of the ALC remand to DHEC. Again, this circumstance also distinguishes Charlotte-Mecklenburg Hosp. Auth.

In conclusion, Gatewood requests the Court to grant his petition for a rehearing, and if appropriate, allow the parties to brief these issues.

Respectfully submitted,

  
Douglas H. Westbrook, #6039  
23 Broad St.  
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(843) 853-9600  
Attorney for Fred Gatewood

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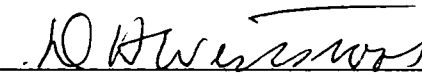
Appellate Case No. 2017-001552

AFFIDAVIT


I, Douglas H. Westbrook, depose and state as follows:

1. I represent Fred Gatewood in the within matter.
2. Between the time of filing Gatewood's notice of appeal on July 14, 2017 and receipt of the Court of Appeals' July 20, 2017 order dismissing the appeal, I did not file Gatewood's initial brief, and to my knowledge, neither did the Department of Corrections file its initial brief.

Further Deponent Sayeth Not.

  
Douglas H. Westbrook, #6039  
23 Broad St.  
Charleston, SC 29401  
(843) 853-9600  
Attorney for Fred Gatewood

Signed and Sworn  
To Before Me This  
31 Day Of July,  
2017.

  
Notary Public for S.C.  
My Commission Expires:  
3/12/2023

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SC Court of Appeals

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Fred Gatewood, #289775, )  
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 Appellant, )  
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 vs. )  
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 South Carolina Department of Corrections, )  
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 Respondent. )

Docket No. 07-ALJ-04-0517-A-AP

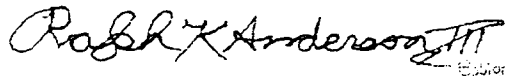
**ORDER OF REMAND**

This matter is before the South Carolina Administrative Law Court (Court or ALC) on remand from the South Carolina Court of Appeals (Court of Appeals). Fred Gatewood (Appellant) participated in prison industries, and his case was one of 197 consolidated cases regarding wages. The Court of Appeals reversed the ALC's conclusion that S.C. Code § 24-1-295 (2007) applied retroactively to inmate gross wages earned prior to August 1, 2007. In addition, the Court of Appeals remanded the issue of Appellant's entitlement to costs, attorney's fees, prejudgment interest, and post-judgement interest.

Because the determination of attorney's fees encompasses several factors, including the beneficial results obtained,<sup>1</sup> this matter shall be held in abeyance pending the outcome of the grievance hearings on the wage cases arising from both this case and *Ackerman, et al. v. S.C. Dep't of Corr.*, 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016), *cert. denied* (May 30 2017). Accordingly,

**IT IS THEREFORE ORDERED** that the grievance is remanded to the South Carolina Department of Corrections for processing as set forth in *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 785 S.E. 2d 60 (2016), *cert. denied* (May 30, 2017).

**AND IT IS SO ORDERED.**



Ralph King Anderson, III  
Chief Administrative Law Judge

June 13, 2017  
Columbia, South Carolina

<sup>1</sup> See S.C. Code Ann. § 15-77-300 (B) (2016).

**FILED**

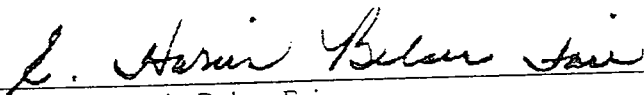
June 13, 2017

SC ADMIN. LAW COURT

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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

June 13, 2017  
Columbia, South Carolina

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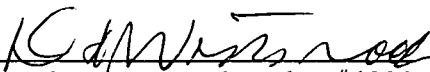
AUG 02 2017

**SC Court of Appeals**

PROOF OF SERVICE

I certify that I have served Appellant's Petition for Rehearing, Memorandum, Affidavit and attachment(s) on the S.C. Department of Corrections by depositing a copy of these documents in the U.S. Mail, postage prepaid, on July 31, 2017, addressed to Lake Summers, Esquire, Malone, Thompson, Summers & Ott, LLC, 339 Heyward St., Suite 200, Columbia, SC 29201, attorney of record for Respondent S.C. Department of Corrections.

July 31, 2017.

  
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Attorney for Fred Gatewood