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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

 ORIGINAL

The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

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STEVEN L. BARNES,

APPELLANT

V.

S.C. DEPARTMENT OF CORRECTIONS,

RESPONDENT

**RECEIVED**

OCT 11 2017

SG Court of Appeals

CASE NO. 15-ALJ-30-0318-AP

---

RECORD ON APPEAL

---

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April 30, 2015

David Tatarsky  
General Counsel  
S.C. Dept. of Corrections  
Post Office Box 21787  
Columbia, SC 29210

RE: Safekeeper Petition from Edgefield County - in re: Steven L. Barnes

Dear Mr. Tatarsky,

Please note that Mr. Barnes objects to the Safekeeper Petition by Edgefield County, and respectfully requests the Department to deny the request.

First, regulations require that the inmate fall within one of the following categories: the individual (1) is considered to be high escape risk; (2) exhibits extremely violent and uncontrollable behavior; or (3) must be removed from the county facility to protect the individual from the general population or from other detainees.

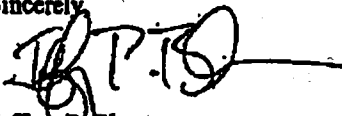
Barnes clearly is not within category 1 or 3. Thus, we are assuming that the Petitioner is alleging that he falls within category 2: "exhibits extremely violent and uncontrollable behavior." There is no evidence that Barnes has exhibited extremely violent and uncontrollable behavior. Moreover, the main disciplinary infractions complained of by Petitioner occurred over seven years ago in 2007.

The only recent disciplinary infraction - and the only infraction at all since his remand from SCDC to county custody in January 2014 - occurred on December 31, 2014, at the Aiken County jail. This was for the offense of "refusal to obey an order," in which it was alleged that he had to be told up to six times to return to his cell. This is neither an "extremely violent" offense, nor is it evidence of "uncontrollable behavior." The Petition appears based then solely of Barnes' availing himself of the grievance procedures in place at each county detention facility regarding complaints that he has filed. While this may be somewhat disconcerting to jail officials to deal with, Barnes is simply exercising his constitutional right under available procedures in place. See, e.g., *Johnson v. Avery*, 393 U.S. 483, 89 S. Ct. 747, 21 L. Ed. 2d 718 (1969).

Second, if the Petition is not denied outright, and before it is referred to the Governor's Office, then we respectfully request an administrative hearing in this matter consistent with due process protections.

We are available to meet with you and any other party to review and discuss this matter further. Please note that we reserve the right to amend or supplement this objection, including submission of any relevant documents, statements or other materials. Thank you for your attention to our submission on behalf of Mr. Barnes.

Sincerely,

A handwritten signature in black ink, appearing to read "JPB", with a long horizontal line extending to the right.

Jeffrey P. Bloom  
William S. McGuire  
Counsel for Steven Barnes

cc: Hon. Adell Doby, Sheriff, Edgefield County  
Mr. Steven L. Barnes

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June 10, 2015

David Tatarsky  
General Counsel  
S.C. Dept. of Corrections  
Post Office Box 21787  
Columbia, SC 29210

RE: Safekeeper Petition from Edgefield County - in re: Steven L. Barnes, SK #5290

Dear Mr. Tatarsky,

Please respond to the following two (2) concerns regarding the above-named pre-trial detainee as a "Safekeeper" with S.C. Dept. of Corrections ("SCDC"):

1. We request from your Department a review and re-consideration of the specific items listed below.

It appears that Mr. Barnes, as a pre-trial detainee "Safekeeper," is being denied basic privileges accorded to him in every county detention facility prior to his transfer as a Safekeeper to SCDC, and that certain restrictions are being applied to him as if he were subject to a SCDC-inmate "disciplinary" protocol:

- Denial or extreme limitation of any canteen privileges
- Denial or extreme limitation of regular showers
- Denial or extreme limitation of outdoor "rec" time
- Denial of telephone privileges
- Denial of a radio

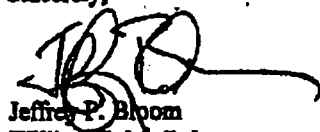
Mr. Barnes is not a SCDC "Safekeeper" because of any disciplinary action or other threats against staff or inmates by him, and is of course a pre-trial detainee and not an SCDC inmate, such that any regular policies as may be directed towards SCDC inmate Safekeepers for disciplinary purposes should have no application as to Mr. Barnes since he has committed no infraction.

2. Please also provide the basis for Mr. Barnes' classification as a Safekeeper.

It is our understanding that a pre-trial county detainee can be classified as a "Safekeeper" and transferred to the custody of SCDC, if the individual: (1) is a high escape risk; and/or (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. It does not appear from the documents provided to us that Mr. Barnes meets any of the three categories. Therefore, we object to Mr. Barnes' classification and detention as a "Safekeeper" and further object to any renewal of his status as such at the next 90-day interval on or about July 19, 2015. We plan to seek, if necessary, any appropriate remedies available to Mr. Barnes according to such objections.

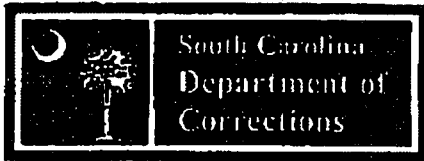
We look forward to receiving your responses by June 22, 2015.

Sincerely,



Jeffrey P. Bloom  
William S. McGuire  
Counsel for Steven Barnes

William S. McGuire  
Chief Attorney, Capital Trial Division  
SC Commission on Indigent Defense  
1330 Lady Street, Suite 401  
Columbia, SC 29201  
(803) 734-1358



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

July 2, 2015

Jeffrey P. Bloom, Esquire  
1911 Pickens Street  
Columbia, South Carolina 29201

Dear Jeff:

I am writing in response to your June 10, 2015 letter addressed to me and concerning your client Steven L. Barnes, SK #5290. Each of your concerns is addressed in turn.

As to your first concern, Safekeepers are managed pursuant to SCDC Policy SK-22.02, § 5 ("SAFEKEEPER MANAGEMENT"). That policy provides that all "Safekeepers will be housed in a Special Management Unit (SMU) and will be managed in accordance with SCDC Policy/Procedure OP-22.12, 'Special Management Unit Operations'. . . ." *Id.* § 5.1. However, there are specific rules that apply to Safekeepers in light of their unique status within the Department. For instance: (1) They are segregated from other SCDC inmates; (2) they are showered separately; (3) they receive visitation privileges separately; (4) they are recreated separately; (5) and they have limited access to the canteen (for purposes of purchasing a Walkman radio and batteries for the radio, and assuming the Safekeeper remains within his entry custody level). In addition, Safekeepers are subject to the institutional rules and agency policies governing proper behavior, and they receive orientation on these rules upon their entry into the Department's custody. *See id.* § 3.3.9 ("The classification caseworker will give each Safekeeper a written orientation that provides information about the schedule, rules, disciplinary infractions and penalties, grievances, and privileges. Each Safekeeper will sign an SCDC Form 18-69, 'Certificate of Inmate Orientation,' to indicate his/her receipt of this orientation."). For disciplinary infractions, a Safekeeper's custody level may be increased, and he may lose privileges pursuant to SCDC Policy OP-22.12. All Safekeepers are subject to the Department's policies and procedures in order to ensure their safety and the safety and good order of the institution to which they are assigned.

As to your second concern, § 2 of South Carolina Executive Order 2000-11 provides that "[a]n individual held in a county pretrial confinement facility may be transferred to the custody of the South Carolina Department of Corrections by commitment duly authorized by the Governor pursuant to § 24-3-80, if the individual: (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." Because the elements are listed in a disjunctive order, only one element need be satisfied to warrant designation as a Safekeeper. In the case of Mr. Barnes, it is clear from the hundreds of pages of documentation the Department received on him that at least the second element is satisfied in this case.

P.O. Box 21787 - 4444 Broad River Road - Columbia, SC 29221-1787 - Telephone (803) 896-8555

<http://www.doc.sc.gov> E-mail: [corrections.info@doc.sc.gov](mailto:corrections.info@doc.sc.gov)

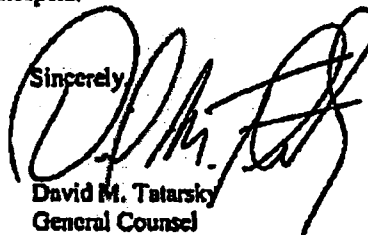
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Letter to Jeffrey P. Bloom, Esquire  
July 2, 2015  
Page 2

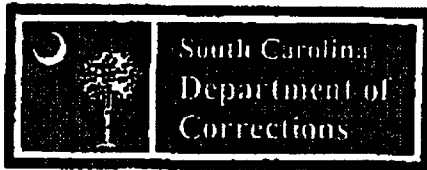
For example, an April 16, 2015 letter from Captain Tucker of the Laurens County Detention Center to Lieutenant Hall of the Edgefield County Detention Center explains that Laurens County could no longer house Mr. Barnes due in part to his violent history and his history of agitating other inmates and disrupting detention center operations. And in Sheriff Dobey's April 20, 2015 affidavit in support of a safekeeping order, the sheriff supports his plea by noting the at least 20 jail infractions, "including throwing bodily fluids at correctional officers and other inmates, possession of contraband materials and refusing to follow instructions" during the time he spent at the Edgefield County Detention Center as a pre-trial detainee. Sheriff Dobey also cites the fact that although Mr. Barnes was housed alone in the most secure cell that Edgefield County Detention Center has, he "still managed to cause disruptions" to the operations of the jail, including severely delaying food service on multiple occasions because Mr. Barnes was "throwing bodily fluids on food trays and carts." Mr. Barnes was charged several times with throwing bodily fluids on correctional officers.

Therefore, my review of the information relevant to Mr. Barnes' detention with the Department and to his designation as a Safekeeper reveals no violation either of SCDC policies or of the applicable law pertaining to Safekeepers.

Sincerely,



David M. Tatarsky  
General Counsel



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

July 2, 2015

Jeffrey P. Bloom, Esquire  
1911 Pickens Street  
Columbia, South Carolina 29201

Dear Jeff:

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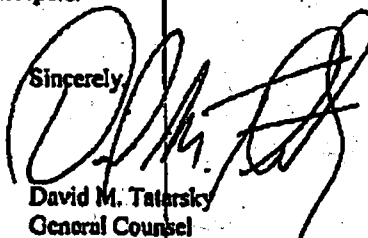
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Letter to Jeffrey P. Bloom, Esquire  
July 2, 2015  
Page 2

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Therefore, my review of the information relevant to Mr. Barnes' detention with the Department and to his designation as a Safekeeper reveals no violation either of SCDC policies or of the applicable law pertaining to Safekeepers.

Sincerely,



David M. Tatarsky  
General Counsel

RECEIVED

JUL 08 2015

GENERAL COUNSEL

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July 6, 2015

David Tatarsky  
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Columbia, SC 29210

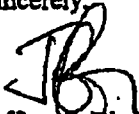
RE: Steven L. Barnes v. S.C. Dept. of Corrections, and Sheriff Adell Dobey and the  
Edgefield County Sheriff's Office and Jail.

Dear Mr. Tatarsky,

Please find enclosed a Petition filed with the S.C. Administrative Law Court as a Request  
for a Contested Case Hearing in the above-referenced matter.

Thank you for your attention to this matter.

Sincerely,



Jeffrey P. Bloom  
William S. McGuire  
Counsel for Steven Barnes

**South Carolina Administrative Law Court (S.C. LC)**  
**Request for Contested Case Hearing FORM**  
 Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201

Last Name: BARNES First: STEVEN Middle: L Docket No. (To Be Completed by ALC)                       
☐ Mr. ☐ Miss ☐ Mrs. ☐ Ms.  
 Mailing Address: 900 WISACKY HWY. City: BISHOPVILLE State and Zip: SC 29010  
#5290(SK), L.C.I., SCDC  
 Home Number:                      Work Number:                      Cell Number:                      \*E-Mail Address:                     

\*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission.

**REPRESENTATION**

Are you representing yourself? ☐ Yes ☒ No

Are you represented by an Attorney? ☒ Yes ☐ No

Attorney Mailing Address:  
 (1) 1911 PICKENS ST.  
 (2) S.C.C.I.D., 1330 LADY ST., Su. 401

Attorney Work Number and Cell Number:  
 (1) 803-256-7001 (2) 803-261-4576  
 (2) 803-734-1358 (3) 803-201-4366

Name of Attorney: (1) JEFFREY BLOOM  
 (2) WILLIAM MCGUIRE

City, State and Zip:  
 (1) COLA. SC 29201  
 (2) COLA. SC 29201

Attorney E-Mail Address:  
 (1) JPBloom803@aol.com  
 (2) bmcguire@scid.sc.gov

**CASE INFORMATION**

Name of Agency that Issued the Decision: S.C. DEPT. OF CORRECTIONS  
 (Example - Dept. of Revenue, Dept. of Insurance, DHEC)

In order to have your case processed, you must attach the agency decision. Is it attached?  
☒ Yes ☐ No If no, please explain:

Date the decision was issued:

Date the decision was received:

Please provide a brief statement regarding why the hearing is being requested and the relief sought:

PETITIONER SEEKS TO HAVE SCDC'S DECISION + CLASSIFICATION  
OF HIM AS A PRE-TRIAL DETAINEE "SAFEKEEPER" RULED  
ILLEGAL, IMPROPER, + UNCONSTITUTIONAL.

Payment via ☐ Check ☐ Money Order ☐ Cash for \$  
 submitted today to the Administrative Law Court via

(applicable filing fee pursuant to ALC Rule 71) is being  
☐ U.S. Postal Service ☐ Hand-delivery

WAIVE FILING FEE AS PETITIONER IS AN INMATE IN SCDC,

J.P.B.  
 X Your Signature or Signature of Attorney

7-6-15  
 Date

**PROOF OF SERVICE (MUST BE COMPLETED)**

Your Name: JEFFREY BLOOM

Date:

City: COLA State: SC

I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):

DAVID TATARSKY SCDC COLUMBIA  
GENERAL COUNSEL PO BOX 21787 SC 29221-1787

Name and/or Agency Name: HON. ABELL DOBEY Address: EDGERFIELD CO. SHERIFF OFFICE City, State and Zip: EDGERFIELD, SC 29824  
SHERIFF 200 RAILROAD ST.

Name and/or Agency Name:                      Address:                      City, State and Zip:                     

J.P.B.  
 X Your Signature or Signature of Attorney

**FILED**  
7-6-15  
 Date JUL 06 2015

**Attention:** All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website [www.scdlc.net](http://www.scdlc.net) or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

**SC ADMIN. LAW COURT**

|                                        |   |                                    |
|----------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                | ) | IN THE ADMINISTRATIVE LAW COURT    |
|                                        | ) |                                    |
| COUNTY OF RICHLAND                     | ) | Case No.                           |
|                                        | ) |                                    |
| STEVEN L. BARNES                       | ) |                                    |
| Petitioner                             | ) | Request for Contested Case Hearing |
|                                        | ) |                                    |
| VS.                                    | ) |                                    |
|                                        | ) |                                    |
| S.C. Dept. of Corrections, and         | ) |                                    |
| Sheriff Adell Dobey and the Edgefield) | ) |                                    |
| County Sheriff's Office and Jail       | ) |                                    |
| <u>Defendants</u>                      | ) |                                    |

Petitioner, Steven L. Barnes, SK #5290 ("Barnes"), brings this action against the S.C. Dept. of Corrections ("SCDC") and Sheriff Adell Dobey and the Edgefield County Sheriff's Office and Jail ("Sheriff Dobey" and/or "Edgefield County Jail"), pursuant to the Administrative Procedures Act ("APA"), and other applicable law, to contest his classification and incarceration as a pre-trial detainee "Safekeeper" within the SCDC, and any continued detention or classification therein, and also objects to and contests the restrictive conditions to which he is subject to as a pre-trial detainee "Safekeeper." This action is pursuant to S.C. Code Ann. §1-23-10 et.seq.; §1-23-310 et. seq.; §24-3-80 et.seq.; U.S. Const. Amend. 5, 6, 8, and 14; S.C. Const. Art. I §§3, 14 and 15; and other applicable law.

Petitioner would show the following:

1. Barnes is a pre-trial detainee who has not been convicted of any crime in South Carolina. He is awaiting trial in a capital case pending in Edgefield County General Sessions Court. The Hon. Diane S. Goodstein, Circuit Court Judge, is assigned with jurisdiction of that case.

**FILED**

JUL 06 2015

SC ADMIN. LAW COURT

2. Prior to April 20, 2015, Barnes was housed as a pre-trial detainee at the following county jails: Aiken; Laurens; and Greenwood. On information and belief, this was done at the request of Sheriff Adell Doby, Sheriff of Edgefield County, who did not want Barnes held at the Edgefield County Jail.
3. On or about April 20, 2015, Sheriff Doby petitioned SCDC to classify Barnes as a "Safekeeper" and transfer Barnes to the custody of SCDC.
4. On or about April 27, 2015, Barnes was approved by SCDC as a Safekeeper and removed from a county facility and placed within SCDC (as assigned, SK #5290).
5. In accordance with Section 5 of Executive Order 2000-11, Barnes's status as a safe-keeper must be renewed on or about July 18, 2015 (90 days after the origination). On information and belief, Sheriff Doby and SCDC intend to renew Barnes' Safekeeping status at each and every 90-day interval until the trial of his case in Edgefield General Sessions Court concludes, thus keeping Barnes incarcerated within SCDC until trial.
6. Per Executive Order No. 2000-11, Office of the Governor, dated February 16, 2000, pre-trial detainees are able to be housed at the Department of Corrections pursuant to a safekeeping order "duly authorized by the Governor under SC Code sec. 24-3-80, if the individual: (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." (See Executive Order 2000-11 Section 1).
7. In an affidavit dated April 20, 2015 (Exhibit A), Sheriff Doby requested that Barnes be housed for safekeeping at the South Carolina Department of

Corrections for a number reasons, none of which justify the initial approval of, nor extending every 90-days, Barnes's safekeeper status. The first reason Sheriff Dobey listed is the fact that Barnes has been charged murder and kidnapping in Edgefield County. This is not one of the enumerated, lawful reasons for issuing an order authorizing a pre-trial detainee to be housed as a safekeeper nor for renewal.

8. Next, Sheriff Dobey argues the 20 jail infractions by Barnes, while housed in Edgefield County Detention Center, as support of his safekeeper status. The last incident cited by Sheriff Dobey, however, occurred in November of 2007, nearly eight years before filing an affidavit for safekeeper status. Thus, all of these incidents are nearly eight years old and therefore not recent.
9. Sheriff Dobey's next reason is that Barnes was written up for assault, on February 5, 2009, and possession of a weapon, on January 22, 2009, while housed at Lieber Correctional Institution. However, criminal charges against Barnes were never filed for these incidents and, again, they occurred over five years before Sheriff Dobey filed for safekeeping status.<sup>1</sup>
10. Then, Sheriff Dobey identifies Barnes's incident reports while housed in Richmond County Detention Center in Georgia, and later in Ware State Prison in Georgia, prior to coming to Edgefield County Detention Center in 2005. But

<sup>1</sup> Barnes was initially arrested and extradited from a prison in Georgia on the charge of murder in Edgefield County, and was detained at the Edgefield County Jail from 2005-08. In 2008, he was tried on a charge of throwing bodily fluids, the incident of which occurred at the Edgefield Jail, was convicted and sentenced, and entered SCDC from 2008-2015. However, this conviction and sentence was later overturned. *State v. Barnes*, 402 S.C. 135, 739 S.E.2d 629 (2013). He was later tried on the indictment for murder, convicted and received a death sentence. But this case was also overturned on appeal and a new trial granted. *State v. Barnes*, 407 S.C. 27, 753 S.E.2d 545 (2014). He was remanded to the custody of Edgefield County sometime after January 2014, and has been assigned to various other county jails since that time.

Barnes' convictions in Georgia, and the few incidents alleged while in the state prison, are not one of the enumerated, lawful reasons for issuing an order authorizing a pre-trial detainee to be housed as a safekeeper. Although Barnes was cited for disciplinary infractions while housed in Richmond County Detention Center, neither incident resulted in criminal charges. Further, these incident reports are over ten years old and occurred before Mr. Barnes was transferred to the Edgefield County jail back in 2005.

11. Finally, Sheriff Dobey states that Barnes behavior at Aiken, Laurens, and Greenwood County Detention Centers – his most recent housing facilities – justifies keeping Barnes in the statewide safekeeping facility. Sheriff Dobey cites the written reports from authorities at Aiken and Laurens and the “one hundred plus grievances, and reports in approximately one year.” The statements from Aiken County, Laurens County, and Greenwood County about Barnes's behavior while housed in the associated facilities allege only that Barnes has filed written grievances, requested legal materials, and questioned the conditions of these facilities. This behavior is neither sufficient to justify the conditions of safekeeping status nor any disciplinary infractions and are well-within Barnes's constitutional rights to the courts. In addition, Barnes's behavior, while housed in Aiken, Laurens, and Greenwood, has not posed the slightest risk of injury to persons or property. Furthermore, beginning February 7, 2014, while housed at these three separate county facilities, there have been no disciplinary infractions or criminal charges filed against Barnes, except for one minor incident of a

disobeying an officer (for refusal to return to his cell) on December 31, 2014; and this does not qualify does the safekeeper criteria.

12. Although Sheriff Dobey alleges in his affidavit for safekeeper status that Barnes's behavior is extremely violent and uncontrollable, he provides no documentation supporting this claim within the last five years. In fact, Barnes's intake reports at Aiken, Laurens, and Greenwood County Corrections all indicate that Barnes is not a risk to other inmates or himself and is capable of conforming his behavior to the rules. Specifically, the Laurens County Sheriff's Office – which housed Barnes from January 2015 until April 17, 2015 – has indicated Barnes has not tried to escape or acted violently; has no institutional disciplinary history; and is among the lowest-risk inmates.

13. Sheriff Dobey concludes that the safekeeping order for Barnes is in the "best interest of not only the correctional officers of the Edgefield County Detention Center, but the other inmates housed in the facility, and Barnes safety as well." (See Exhibit A). Nowhere in any of the documentation provided does anyone allege a danger to the other inmates or to Barnes from any other inmate or detainee.

14. Sheriff Dobey's support of a safekeeping order on these grounds renders the Executive Order completely unnecessary and robs the statute of any meaning. None of the reasons offered to classify Barnes as a safekeeper meet with the requirements of Executive Order No. 2000-11 and Dobey's recommendation to the governor was based on an erroneous claim.

15. Furthermore, Barnes has demonstrated his ability to conform his behavior to the requirements of the rules. His disciplinary record for the past 16 months should be taken into consideration as a material change in circumstance, warranting that he be returned to the county detention center. Being placed in lockdown for 120 days is well beyond the normal disciplinary sanctions for the actions he is alleged to have committed, nor is any continued detention in segregation as a safekeeper.
16. Subsequently, on July 6, 2015, Steven Barnes, SK# 5290 ("Barnes") received notice explaining the reasons for his classification and placement within SCDC as a Safekeeper, and a final rejection to reverse SCDC's decision to place him in Safekeeping. (See Exhibit B). Thus, the agency, SCDC, has now rendered a final decision in the matter.
17. Therefore, Petitioner moves that Barnes's status as a safekeeper be declared invalid, and further that it not be renewed, and Barnes should be returned to the Edgefield County Detention Center or other county jail to await disposition of his charges.
18. Petitioner would further show that the Safekeeper statute itself is unconstitutional because it violates basic due process. At no time was Barnes afforded even minimal due process in terms of an administrative hearing or a hearing of any kind to respond to and rebut the allegations and request to classify him as a Safekeeper. The Petition by Sheriff Doby was filed with SCDC, and within less than a week – with no hearing or even an opportunity to respond in writing – Barnes was classified as a safekeeper and transferred to SCDC.

19. Petitioner would further show that the Safekeeper statute as applied is unconstitutional because it violates basic due process, as set forth above.
20. Petitioner would further show that the Safekeeper regulations and conditions under which he is housed are unconstitutional, violate due process, constitute cruel and unusual punishment, and amount to "solitary confinement," particularly where Barnes has not even been convicted of any crime but is a pre-trial detainee.<sup>2</sup>
21. Petitioner would further show that the application of the Safekeeper statute and other provisions as made against him, and the continuing conditions under which he is housed, establish a violation of Barnes' substantive rights since the SCDC's decision is: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the record; and/or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
22. Furthermore, Barnes specifically asserts that the Safekeeper statute both on-its-face and as applied to him, constitutes the following: (1) it is a violation of constitutional provisions because it provides no mechanism for challenging the decision, violates fundamental principles of fairness and due process, and has diminished Barnes's access to counsel and the courts; (2) Violates the

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<sup>2</sup> These conditions include but are not limited to: denial or extreme limitation of any canteen privileges; denial or extreme limitation of regular showers; denial or extreme limitation of outdoor "recreation" time; denial of telephone privileges; denial of a radio (all of these conditions, denied or severely restricted within SCDC, were allowed Petitioner in each and every county jail facility under their appropriate guidelines for pre-trial detainees.

Department's procedures for disciplinary hearings under the South Carolina Department of Corrections Manual for Operations Inmate Disciplinary System, No. OP-22.14 and is therefore based upon unlawful procedure; and (3) Allows an arbitrary or capricious abuse of discretion or clearly unwarranted exercise of discretion.

23. Barnes submits that he is indigent, is currently a prisoner within SCDC, and is without funds to pay filing fees or other costs associated with this action, and thus respectfully requests that he be allowed to proceed *in forma pauperis*.

24. Therefore, Barnes submits this as a Request for Contested Case Hearing with the South Carolina Administrative Law Court ("ALC"). This request is made pursuant to the South Carolina Administrative Procedures Act ("APA"), S.C. Code Ann. §1-23-10 et seq.; *Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000); *Howard v. S. Carolina Dep't of Corr.*, 399 S.C. 618, 733 S.E.2d 211 (2012); U.S. Const. Amend. 5, 6, 8, and 14; S.C. Const. Art. I §§3, 14 and 15; *See also, Kingsley v. Hendrickson*, 576 U.S. \_\_\_\_ (Opin. No. 14-6368, June 22, 2015); *Johnson v. Avery*, 393 U.S. 483, 89 S. Ct. 747, 21 L. Ed. 2d 718 (1969).

# CONCLUSION

Barnes submits a Request for Contested Case Hearing with the South Carolina Administrative Law Court (ALC) regarding SCDC's approval of, and classification of Barnes, as a "Safekeeper"; SCDC's continued classification and detention of Barnes as a Safekeeper; SCDC's denial of basic humane conditions of detention and placement of Barnes in what amounts to solitary confinement. Barnes makes this Request pursuant to S.C. Code Ann. §1-23-10 et seq.; §1-23-310 et seq.; §24-3-80 et seq.; U.S. Const. Amend. 5, 6, 8, and 14; S.C. Const. Art. I §§3, 14 and 15; and other applicable law.

Respectfully submitted,



William S. McGuire  
Counsel for Mr. Barnes  
Dated: June 24, 2015

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SC Commission on Indigent Defense  
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Dated: June 24, 2015

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STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

STEVEN L. BARNES )  
Petitioner )

VS. )

S.C. Dept. of Corrections )  
Defendant )

IN THE ADMINISTRATIVE LAW COURT

Case No.

EXHIBIT A

**PENALTY PHASE  
CONVICTIONS AND INFRACTIONS  
STEVEN LOUIS BARNES**

**PRIOR CONVICTIONS**

- |                                     |          |
|-------------------------------------|----------|
| <b>I. <u>Richmond County</u></b>    |          |
| A. Violation of Motor Vehicle       | 12/13/96 |
| B. Simple Assault                   | 09/12/98 |
| C. PWID Cocaine                     | 10/14/98 |
| D. PROBATION VIOLATIONS             |          |
| <b>II. <u>Columbia County</u></b>   |          |
| E. Armed Robbery                    | 01/24/02 |
| PWDVC                               | 01/24/02 |
| Burglary 1 <sup>st</sup>            | 01/24/02 |
| Kidnapping (2)                      | 01/24/02 |
| Terroristic Threats                 | 01/24/02 |
| Pandering Prostitution              | 01/24/02 |
| <b>III. <u>Edgefield County</u></b> |          |
| F. Throwing Bodily Fluids           | 11/03/07 |

**DISCIPLINE INFRACTIONS**

- |                                                     |          |
|-----------------------------------------------------|----------|
| <b>IV. <u>Richmond County Detention Center</u></b>  |          |
| G. Refusal to Cooperate/No Bracelet                 | 08/25/02 |
| H. Assault/Possession of Weapon                     | 11/27/03 |
| <b>V. <u>Ware State Prison (Ga.)</u></b>            |          |
| I. FFI/Insubordination                              | 09/16/04 |
| J. FFI/Insubordination                              | 04/04/05 |
| K. FFI                                              | 04/04/05 |
| L. FFI                                              | 04/07/05 |
| M. FFI/Un-kept Cell                                 | 04/15/05 |
| N. FFI/Beard                                        | 04/15/05 |
| O. FFI/Beard                                        | 04/18/05 |
| P. FFI                                              | 04/23/05 |
| Q. FFI                                              | 05/04/05 |
| <b>VI. <u>Edgefield County Detention Center</u></b> |          |
| R. Disruption                                       | 06/16/05 |
| S. Rocks from Rec. Yard                             | 07/06/05 |
| T. Throwing Food Trays/Threats                      | 08/05/05 |
| U. Throwing Fluids                                  | 08/06/05 |
| V. Disturbance                                      | 08/07/05 |
| W. Threats                                          | 08/09/05 |
| X. Flooded Toilets                                  | 08/10/05 |

**PENALTY PHASE  
CONVICTIONS AND INFRACTIONS  
STEVEN LOUIS BARNES**

|                                                   |                 |
|---------------------------------------------------|-----------------|
| <b>Y/Z. Disturbance</b>                           | <b>08/11/05</b> |
| <b>1. Throwing Food Trays</b>                     | <b>10/11/05</b> |
| <b>2. Contraband</b>                              | <b>02/09/06</b> |
| <b>3. Throwing Food Tray and Urine</b>            | <b>06/30/06</b> |
| <b>4. Throwing Food Tray and Urine</b>            | <b>07/03/06</b> |
| <b>5. FFI/Refusing to Cuff Up</b>                 | <b>02/03/07</b> |
| <b>6. Destroyed Lunch Trays</b>                   | <b>07/09/07</b> |
| <b>7. Attempt to Destroy Food Trays</b>           | <b>07/09/07</b> |
| <b>8. Throwing Bodily Fluids</b>                  | <b>08/24/07</b> |
| <b>9. Throwing Fluids</b>                         | <b>09/07/07</b> |
| <b>10. Throwing Fluids</b>                        | <b>09/10/07</b> |
| <b>11. Inmate Confrontation</b>                   | <b>10/30/07</b> |
| <b>12. Throwing Fluids</b>                        | <b>11/01/07</b> |
| <b><u>VII. Ueber Correctional Institution</u></b> |                 |
| <b>13. Possession of a Weapon</b>                 | <b>01/22/09</b> |
| <b>14. Assault</b>                                | <b>02/05/09</b> |

**SHERIFF****ADELL DOBEY****EDGEFIELD COUNTY SHERIFF'S OFFICE**

200 RAILROAD ST. EDGEFIELD, SC 29824 (803) 637-5337 OR (803) 278-1625, FAX # (803) 637-4016

STATE OF SOUTH CAROLINA )

COUNTY OF EDGEFIELD )

THE STATE )

vs. )

STEVEN LOUIS BARNES )

Defendant )

**AFFADAVIT FOR SAFEKEEPING****ADELL DOBEY-SHERIFF  
EDGEFIELD COUNTY**

April 20, 2015

Steven Louis Barnes was charged with murder and kidnapping on November 13, 2010 and housed at the Edgefield County Detention Center pre-trial. Barnes was convicted of those charges, and sentence to death which was overturned. During that time, Barnes was written up for 20 jail infractions including throwing bodily fluids at correctional officers and other inmates, possession of contraband materials and refusing to follow instructions to name a few. Barnes was housed alone in the most secure cell that the Edgefield County Detention Center has and still managed to cause disruptions. Food service to inmates was severely delayed on several occasions due to Barnes throwing bodily fluids on food trays and carts. On three occasions, Barnes was charged and convicted (once) of throwing bodily fluids on correctional officers.

Once convicted of throwing bodily fluids, Barnes was sent to Lieber Correctional Institution. While there, Barnes was written up for assault and possession of a weapon.

Prior to coming to Edgefield County Detention Center, Barnes was incarcerated at Ware State Prison in Georgia convicted of armed robbery, kidnapping, burglary, terroristic threats and pandering prostitution, and was sentenced to life plus 45 years in Georgia. While there, Barnes was cited nine times for failing to follow instructions. While being held pre-trial on these charges, Barnes was held at the Richmond County Detention Center where he was cited for refusing to cooperate with correctional officers as well as assault and possession of a weapon.

Barnes has also been housed at the county detention center in both Aiken and Laurens. Representatives from both of these agencies have written expressing their concern of housing Barnes for the same reasons listed above. Aiken logged in one hundred plus grievances, and reports in approximately one year. Laurens County after several

complaints in three months, asked us to come get him, because of his actions. Greenwood Detention Center has agreed to house him at this time for one week.

In summary, I believe that it is in the best interest of not only the correctional officers of the Edgefield County Detention Center, but the other inmates housed in the facility, and Barnes safety as well, that Steven Louis Barnes be held for safekeeping at the South Carolina Department of Corrections until his pending matters before the court are resolved.

A. Dobey  
Adell Dobey-Sheriff  
Edgefield County

4-20-15  
Date

Sworn before me this 20<sup>th</sup> day of 2015.

Polly Hale

My commission expires 4/2/2018.

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

STEVEN L. BARNES )  
Petitioner )

VS. )

S.C. Dept. of Corrections )  
Defendant )

IN THE ADMINISTRATIVE LAW COURT

Case No.

EXHIBIT B



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

July 2, 2015

Jeffrey P. Bloom, Esquire  
1911 Pickens Street  
Columbia, South Carolina 29201

Dear Jeff:

I am writing in response to your June 10, 2015 letter addressed to me and concerning your client Steven L. Barnes, SK #5290. Each of your concerns is addressed in turn.

As to your first concern, Safekeepers are managed pursuant to SCDC Policy SK-22.02, § 5 ("SAFEKEEPER MANAGEMENT"). That policy provides that all "Safekeepers will be housed in a Special Management Unit (SMU) and will be managed in accordance with SCDC Policy/Procedure OP-22.12, 'Special Management Unit Operations' . . . ." *Id.* § 5.1. However, there are specific rules that apply to Safekeepers in light of their unique status within the Department. For instance: (1) They are segregated from other SCDC inmates; (2) they are showered separately; (3) they receive visitation privileges separately; (4) they are recreated separately; (5) and they have limited access to the canteen (for purposes of purchasing a Walkman radio and batteries for the radio, and assuming the Safekeeper remains within his entry custody level). In addition, Safekeepers are subject to the institutional rules and agency policies governing proper behavior, and they receive orientation on these rules upon their entry into the Department's custody. *See id.* § 3.3.9 ("The classification caseworker will give each Safekeeper a written orientation that provides information about the schedule, rules, disciplinary infractions and penalties, grievances, and privileges. Each Safekeeper will sign an SCDC Form 18-69, 'Certificate of Inmate Orientation,' to indicate his/her receipt of this orientation."). For disciplinary infractions, a Safekeeper's custody level may be increased, and he may lose privileges pursuant to SCDC Policy OP-22.12. All Safekeepers are subject to the Department's policies and procedures in order to ensure their safety and the safety and good order of the institution to which they are assigned.

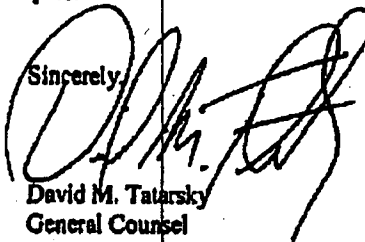
As to your second concern, § 2 of South Carolina Executive Order 2000-11 provides that "[a]n individual held in a county pretrial confinement facility may be transferred to the custody of the South Carolina Department of Corrections by commitment duly authorized by the Governor pursuant to § 24-3-80, if the individual: (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." Because the elements are listed in a disjunctive order, only one element need be satisfied to warrant designation as a Safekeeper. In the case of Mr. Barnes, it is clear from the hundreds of pages of documentation the Department received on him that at least the second element is satisfied in this case.

Letter to Jeffrey P. Bloom, Esquire  
July 2, 2015  
Page 2

For example, an April 16, 2015 letter from Captain Tucker of the Laurens County Detention Center to Lieutenant Hall of the Edgefield County Detention Center explains that Laurens County could no longer house Mr. Barnes due in part to his violent history and his history of agitating other inmates and disrupting detention center operations. And in Sheriff Dobeys April 20, 2015 affidavit in support of a safekeeping order, the sheriff supports his plea by noting the at least 20 jail infractions, "including throwing bodily fluids at correctional officers and other inmates, possession of contraband materials and refusing to follow instructions" during the time he spent at the Edgefield County Detention Center as a pre-trial detainee. Sheriff Dobeys also cites the fact that although Mr. Barnes was housed alone in the most secure cell that Edgefield County Detention Center has, he "still managed to cause disruptions" to the operations of the jail, including severely delaying food service on multiple occasions because Mr. Barnes was "throwing bodily fluids on food trays and carts." Mr. Barnes was charged several times with throwing bodily fluids on correctional officers.

Therefore, my review of the information relevant to Mr. Barnes' detention with the Department and to his designation as a Safekeeper reveals no violation either of SCDC policies or of the applicable law pertaining to Safekeepers.

Sincerely,



David M. Tatarsky  
General Counsel

STATE OF SOUTH CAROLINA )

IN THE ADMINISTRATIVE LAW COURT

COUNTY OF RICHLAND )

Case No.

STEVEN L. BARNES  
Petitioner )

CERTIFICATE OF SERVICE

VS. )

S.C. Dept. of Corrections, and  
Sheriff Adell Dobey and the Edgefield)  
County Sheriff's Office and Jail )  
Defendants )

I do hereby certify that on July 6, 2015, I served the following documents, as set forth below and herein, upon the parties as set forth below, by delivering via U.S. Mail, postage prepaid, and to the addresses as listed below, a copy of same to representatives of the State, as follows:

Document(s): Request for Contested Case Hearing

Served Upon:

David Tatarsky, Esq.  
General Counsel  
S.C. Dept. of Corrections  
PO Box 21787  
Columbia, S.C. 29221-1787

Hon. Adell Dobey  
Sheriff, Edgefield County  
200 Railroad St.  
Edgefield, SC 29824

This day of July 6, 2015.

  
Jeffrey P. Bloom  
Counsel for Mr. Barnes

**FILED**

JUL 06 2015

SC ADMIN. LAW COURT

D. Crooks

RECEIVED

SEP 03 2015

**STATE OF SOUTH CAROLINA  
IN THE ADMINISTRATIVE LAW COURT**

GENERAL COUNSEL

Steven L. Barnes, # 5290,

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

Petitioner,

[Hon. Ralph King Anderson, III]

v.

South Carolina Department of Corrections,

**RESPONDENT'S MEMORANDUM  
OF LAW IN SUPPORT OF  
DISMISSAL**

Respondent.

**MEMORANDUM OF LAW IN SUPPORT OF DISMISSAL**

**FACTUAL/PROCEDURAL HISTORY**

This matter is before the Court pursuant to the July 6, 2015 Petition of Steven L. Barnes, a Safekeeper currently in the custody of the Department and housed within Lee Correctional Institution in Bishopville. Petitioner challenges his designation as a Safekeeper and his custody status as a result of that designation. *Pet.* at 9. On July 6, 2015, Petitioner filed a "Request for Contested Case Hearing," which named as "Defendants" the Department as well as "Sheriff Adell Dobey and the Edgefield County Sheriff's Office and Jail." However, by way of the Court's July 22, 2015 "NOTICE OF ASSIGNMENT (Request for Injunctive Relief)," the caption was restyled to include only the Department as a respondent to the Petition.

To be clear, Petitioner's prayer is for injunctive and declaratory relief. See *Pet.* at 6 ("Therefore, Petitioner moves that Barnes's status as a safekeeper be declared invalid . . . and Barnes should be returned to the Edgefield County

FILED

AUG 2 2015

Detention Center or other county jail . . . ); *see also id.* ("Petitioner would further show that the Safekeeper statute itself is unconstitutional because it violates basic due process."). Accordingly, Rule 16 of the Court's Rules of Procedure would appear to apply, especially in light of the fact that the procedures thus far followed have been from Section II of the Rules.<sup>1</sup> Rule 16 provides:

Requests for preliminary or injunctive relief other than in a pending case shall be governed according to the procedures set forth in this section (II) for contested cases[.] The administrative law judge may issue remedial writs as are necessary to give effect to its jurisdiction and with respect to injunctions shall follow the procedure in Rule 65, SCRPC.

Rule 16, RPALC (eff. Apr. 27, 2014). In other words, it does not appear to be the case that this matter is subject to Section V, Special Appeals, pursuant to *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000), as none of the proper rules for that section have been followed up to this point.<sup>2</sup>

Having established that the only possible avenue through which this matter is currently before the Court is through Section II of the Rules, the only remaining two-part question is whether the Court's subject matter jurisdiction extends so far as to grant injunctive and declaratory relief against an agency of the State in a case where (A) the Code of Laws explicitly precludes any right or cause of action as a result of a safekeeping designation; and (B) where the only agency named as a respondent does not possess the authority to make a *final*

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<sup>1</sup> For example, Petitioner filed his "Request for Contested Case Hearing" pursuant to Rule 11; the Department filed the Agency Information Sheet pursuant to Rule 12; and the Clerk of Court assigned the matter and notified the parties pursuant to Rules 13 and 14.

<sup>2</sup> This issue could properly be raised through the *Al-Shabazz* process simply by the Safekeeper or his counsel completing the requisite steps in the Department's grievance process. Of course, the jurisdiction of the Court would be appellate in nature in that case, unlike the Court's role

agency determination regarding who may be declared a Safekeeper, or the authority or obligation to determine any legal rights pursuant to S.C. Code § 1-23-505(3).<sup>3</sup>

### ARGUMENT

#### THE COURT SHOULD DISMISS THE PETITION BECAUSE THE COURT LACKS SUBJECT MATTER JURISDICTION TO DECIDE THIS CASE.

This Court's subject matter jurisdiction is limited by the General Assembly. *Amisub of S.C., Inc. v. S.C. Dep't of Health & Envtl. Cntl.*, 403 S.C. 576, 585, 743 S.E.2d 786, 791 (2013). The Court has no authority to exceed its statutorily granted powers. *S.C. Dep't of Consumer Affairs v. Foreclosure Specialists*, 390 S.C. 182, 186-87, 700 S.E.2d 468, 470 (Ct. App. 2010). "The ALC has subject matter jurisdiction under the Administrative Procedures Act ('APA') to hear properly perfected *appeals* from the SCDC's final orders in administrative or non-collateral matters." *Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 625, 733 S.E.2d 211, 215 (2012) (emphasis added); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 507 (2004). "Subject matter jurisdiction refers to the [ALC]'s 'power to hear and determine cases of the general class to which the proceedings in question belong.'" *Slezak*, 361 S.C. at 331, 605 S.E.2d at 507.

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in a contested hearing. Admittedly, the Department would move for dismissal of such an appeal.

<sup>3</sup> That definitional section provides: "Contested case' means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law or by Article I, Section 22, Constitution of the State of South Carolina, 1895, to be determined by an agency or the Administrative Law Court after an opportunity for hearing." This cannot be a true contested case because there is no right to not be classified as a Safekeeper under the law of State. See S.C. Code § 24-3-80 ("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.").

In this case, the Court lacks subject matter jurisdiction for two reasons: First, because S.C. Code § 24-3-80 unambiguously and plainly expresses the General Assembly's will that a Safekeeper not possess a right or cause of action against the state by reason of having been committed and detained in the State prison system; and, second, because relief under Section II of the Court's Rules is not applicable to the Department, where the Department has no legal obligation or authority to designate Petitioner as a Safekeeper.

**A. The Court Lacks Subject-Matter Jurisdiction Because S.C. Code § 24-3-80 Unambiguously and Plainly Expresses the General Assembly's Will That a Safekeeper Not Possess a Right or Cause of Action Against the State By Reason of Having Been Committed and Detained in the State Prison System.**

Procedurally, this case is not an appeal of a final agency action by the Department, notwithstanding that such an appeal is the proper means by which this Court can obtain subject matter jurisdiction to address grievances and legal arguments raised by an inmate (including a pre-trial detainee). However, this action was not filed pursuant to *Al-Shabazz* and its progeny. *See supra*, p. 2 & n.2. None of the procedures outlined in Section V of this Court's Rules have been followed since this case's inception; therefore, Respondent disagrees with Petitioner's characterization of the nature of this case as an appeal subject to the normal procedural rules outlined by the *Al-Shabazz* process. Moreover, because Safekeepers have grievance rights, there is nothing preventing Petitioner, with or without assistance of counsel, from filing a grievance raising the issues he raised in the Petition. Only then would the Department have the benefit of rendering a

final decision that could then constitute the final agency action appealed pursuant to Section V.

Instead, this case presents an unprecedented procedural quandary whereby a Safekeeper in the Department's custody has filed a cause of action in this Court seeking injunctive and declaratory relief regarding his designation as a Safekeeper and attendant classification as a result thereof. Unlike other actions filed under this Court's Rules governing contested cases and injunctive relief to remedy or enforce a specific legal right, there is an on-point statutory provision that unambiguously precludes a cause of action *of any type* related not just to a Safekeeper's designation, but also to his commitment and detention within the Department. 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.

S.C. Code § 24-3-80. The operative phrase is "right or cause of action."

The first rule of statutory construction is to "ascertain and effectuate" the intent of the legislature. *Rainey v. Haley*, 404 S.C. 320, 323, 745 S.E.2d 81, 82 (2013). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.* There is no ambiguity whatsoever in this sentence: "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." § 24-3-80.

The phrase "[n]o person so committed and detained" unquestionably applies to Petitioner, as he is a person who has been committed to the Department by authority of the Governor. *Exhibit A.* Moreover, the words "shall have" immediately follow the previous phrase, leading to the conclusion that the prohibition is absolute. Skipping over the key phrase "right or cause of action" (to which the following four paragraphs are devoted exclusively), what remains are the phrases "against the State or any of its officers or servants" and "by reason of having been committed and detained in the state prison system." The first of these phrases, "against the State or any of its officers or servants," refers to the State and, by extension, to all agencies of the State, of which the Department is one;<sup>4</sup> since no individual officer or servant is named, it is unnecessary to expound further on that portion of the phrase. The second of these phrases, "by reason of having been committed and detained in the state prison system," qualifies the "right or cause of action" phrase and simply reiterates that the preclusion from filing a State action is limited in scope to those actions filed by a Safekeeper challenging the process leading to and culminating in his commitment and detention in the Department. The only remaining analysis of the operative language from § 24-3-80 involves the phrase "right or cause of action."

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<sup>4</sup> By filing the Petition against the Department, an agency of the State, Respondent contends that Petitioner concedes that the statutory phrase "against the State" applies also to a department within the Executive Branch.

Petitioner's argument that § 24-3-80's phrase of "right or cause of action" must be read narrowly to refer only to "civil" actions filed against the Governor or the State is incorrect. Currently, there is only one form of action in this State: a civil action. Rule 2, SCRCP. Actions for injunction under Rule 65, SCRCP, and for relief under the Uniform Declaratory Judgements Act, S.C. Code § 15-53-10 *et seq.*, are "causes of action." Injunctive relief only comes about after a party files a cause of action for injunction. *See, e.g., Allegro, Inc. v. Scully*, 409 S.C. 392, 408, 762 S.E.2d 54, 63 (Ct. App. 2014) ("An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation."); *Castine v. Castine*, 403 S.C. 259, 264, 743 S.E.2d 93, 95 (Ct. App. 2013) (noting that litigant "asserted causes of action for defamation/slander, negligence/recklessness, intentional interference with contractual rights, and a preliminary and permanent injunction"). The same holds true for declaratory relief. *See, e.g., Kinard v. Richardson*, 407 S.C. 247, 253, 754 S.E.2d 888, 891 (Ct. App. 2014) (noting that litigant asserted several causes of action, including "the following causes of action: (1) 'Declaratory Judgment—Unlawful Annexation;' [and] (2) 'Declaratory Judgment—Unlawful Zoning[]'").

Therefore, the injunctive and declaratory relief sought in the Petition are both "causes of action" under § 24-3-80 and are, as a result, explicitly precluded by the same provision. Having established that the operative language in § 24-3-80 is both plain and unambiguous, Respondent contends that the Court is bound to give

effect to it. Thus, the Court is constrained to dismiss the Petition for want of subject matter jurisdiction by operation of § 24-3-80.

If, however, the Court declines to interpret "cause of action" the way Respondent advocates, then the Court is still constrained to dismiss the Petition because no "right of action" may be sustained. To illustrate, assuming the Court holds that the phrase "cause of action" as mentioned in § 24-3-80 is to be interpreted narrowly to apply only to purely legal causes of action for damages—as opposed to suits in equity or actions of a hybrid nature—then Respondent submits that the General Assembly's inclusion of the words "*right or*" immediately preceding "*cause of action*" plainly and unambiguously precludes both a cause of action and a right to a remedy, or "right of action" as used under South Carolina case law. Dicta from the case of *Griggs v. Griggs* is helpful to illustrate the now-arcaic technical legal distinction between a "cause of action" and a "right of action." 214 S.C. 177, 51 S.E.2d 622 (1949). In *Griggs*, the South Carolina Supreme Court, quoting from one of its older cases, reiterated:

Now, it is very plain that, using the words according to their natural import and according to their technical legal import, the "cause of action" is what gives rise to the remedial right, or the right of remedy, which is evidently the same as the term "right of action," frequently used by judges and text-writers. This remedial right, or right of action, does not arise from the wrongful act or omission of the defendant, the delict alone, nor from the plaintiff's primary right, and the defendant's corresponding primary duty alone, but from these two elements taken together. The "cause of action", therefore, must always consist of two factors, (1) the plaintiff's primary right and the defendant's corresponding primary duty, whatever be the subject to which they relate—person, character, property, or contract; and (2) the delict, or wrongful act or omission of the defendant, by which the primary right and duty have been violated.

*Griggs*, 214 S.C. at 186-87, 51 S.E.2d at 627 (quoting *Whaley v. Stevens*, 24 S.C. 479, 482 (1886)<sup>6</sup> (opinion by McIver, J.)).

And in *Watson v. Jennings*, our Supreme Court addressed the arguments of counsel which were proffered "to sustain their right of action and demand for an injunction . . . ." 146 S.C. 372, 372, 144 S.E. 78, 80 (1928). Indeed, the Note to Rule 65 of the South Carolina Rules of Civil Procedure perpetuates the distinction that exists in the law between a true "cause of action" and a right to a remedy. See Rule 65, SCRPC ("This 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, to the extent the Court determines that relief pursuant to Rule 16 or another Rule of this Court is not granted by way of the initiation of a "cause of action," Respondent respectfully submits that an application for such relief is at least a "right of action" and, consequently, specifically contemplated by § 24-3-80. Even a petition praying for relief in the Court's limited equity jurisdiction (i.e., by way of a remedial writ) is precluded by the statute's plain meaning, as elucidated by our Supreme Court's understanding of the phrase "right of action." Thus, the Court is constrained to dismiss the Petition for want of subject matter jurisdiction by operation of § 24-3-80.

For the foregoing reasons, the Court does not have subject matter jurisdiction in this case because § 24-3-80 operates to specifically prohibit causes of action or rights of action. Accordingly, the Petition must be dismissed.

**B. The Court Lacks Subject-Matter Jurisdiction Because Relief Under Section II of the Rules Is Not Applicable to the Department, Where**

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<sup>6</sup> No citation available for the Southeastern Reporter.

**the Department Has No Legal Obligation or Legal Authority to Designate Petitioner As a Safekeeper.**

Under S.C. Code § 1-23-505(3), a "contested case" is a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency or this Court after notice is given. Section II of the Court's Rules instructs that actions for injunctive relief and other remedial writs are governed identically to the rules governing contested cases. Respondent has been unable to locate any affirmative legal obligation in the Code, case law, or State regulations applicable to the Department requiring the Department to initiate or to engage in any formal or informal process to designate a pre-trial detainee as a Safekeeper. In fact, the controlling statute itself, § 24-3-80, takes away the Department's discretion entirely by *mandating* that the Department "shall admit and detain . . . for safekeeping any prisoner tendered by any law enforcement officer in this State by commitment duly authorized by the Governor . . . ." In the Safekeeping process, the Department's role is purely ministerial.

In the case at bar, the Department did not designate Petitioner as a Safekeeper—the Governor did. *Exhibit A*. While § 24-3-80 is silent as to specific procedures that must be followed in the Safekeeper designation process, Executive Order 2000-11 outlines these procedures. *Exhibit B*. But even the Executive Order (Section 2) describes the Department's limited role in the process as merely ministerial and, at most, recommendatory. *See id.*, at 1 ("Upon receipt of the application, the Director of the Department of Corrections shall review the documents submitted and any other relevant facts and forward his recommendation of action to the Governor."). The document that represents the

legal authority to designate and detain Petitioner as a Safekeeper is an Order of the Governor, signed by her in her capacity as Chief Magistrate of the State of South Carolina. S.C. Const. art. IV, § 1 ("The supreme executive authority of this State shall be vested in a Chief Magistrate, who shall be styled 'The Governor of the State of South Carolina.'").

A contested case by way of an action for injunction and declaratory relief against the Department is not contemplated by Section II of this Court's Rules because, as this case illustrates, the Department has not engaged in a ratemaking, price fixing, licensing, or other proceeding "in which the legal rights, duties, or privileges of a party are required by law or by Article I, Section 22, Constitution of the State of South Carolina, 1895, to be determined by an agency or the Administrative Law Court after an opportunity for hearing." § 1-23-505(3). As noted in the discussion accompanying Respondent's first argument in Part A, *supra*, § 24-3-80 denies any right to not be designated as a Safekeeper by precluding any right or cause of action to challenge such a designation. However, even without the lens of § 24-3-80, and assuming the Court disagrees with Respondent's first argument, the Court cannot assert subject matter jurisdiction in this case, where the Department's role in the Safekeeping designation and detention process is ministerial and where there cannot exist any final agency action of the Department that decides whether Petitioner is or is not still a Safekeeper. At the very least, a contested case—even one filed in the Court's limited equity jurisdiction—has to contain something to contest and an agency

ultimately legally responsible for the final decision that prompts the contest. Such is not the case here.

That "something to contest" in this case is the Governor's April 28, 2015 Order of Safekeeping, and perhaps even Executive Order No. 2000-11. It is not, however, a simple letter (that the Department was not legally obligated to issue) to Petitioner's counsel explaining the rationale behind the Department's *recommendation* to the Office of the Governor about—not a final agency decision regarding—Petitioner's designation as a Safekeeper. Furthermore, while this Court most certainly is not the proper forum for Petitioner to air his grievances both with his designation and his Department classification as a result thereof, Petitioner is not without other possible legal avenues, including a direct challenge in the Circuit Court to the entirety of § 24-3-80, to Executive Order 2000-11, or both.

Moreover, because this case is not an *Al-Shabazz* appeal subject to the provisions of Section V of the Rules, Section II and the applicable statutes do not extend this Court's jurisdiction such that injunctive or declaratory relief can issue against a State agency that does *not* make (or have the authority to make) the final decision that led to the controversy that prompted the filing of the instant Petition. Instead, the only proper means (if there is a means at all in light of Respondent's argument in Part A, *supra*) by which Petitioner could seek relief in this Court against the department of the State responsible for issuing the final decision that authorized his designation would be to amend the Petition by replacing the Department with the appropriate designation for the Office of the

Governor. However, such a result would leave the Court in an even more unusual procedural footing, as any relief from the Court would most likely take the form of an injunction or grant of declaratory relief against the Office of the Governor or the Governor herself as the signor of the April 28, 2015 Safekeeping Order that authorized Petitioner's designation as a Safekeeper.<sup>6</sup> Although there are potentially problematic separation of powers hurdles to granting such relief, Respondent declines to expound on those arguments, as they are outside of the scope of this Memorandum.

Therefore, if the Court declines to dismiss the Petition based on Respondent's first argument in Part A, *supra*, the Court nonetheless should dismiss the Petition because relief under Section II of the Court's Rules is not applicable to the Department, where the Department has no legal obligation or authority to designate Petitioner as a Safekeeper.

#### CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court dismiss the Petition, with prejudice as to the Department.

*[signature block on following page]*

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<sup>6</sup> The April 28, 2015 Order was renewed by the Governor on August 12, 2015. *Exhibit C.*

Respectfully Submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

BY:



**DANIEL J. CROOKS III**  
Staff Attorney  
Office of General Counsel  
4444 Broad River Road  
Columbia, South Carolina 29221  
(803) 896-1355

Columbia, South Carolina

August 28, 2015



Exhibit "A" <sup>43</sup>

# State of South Carolina

## Office of the Governor

Nikki R. Haley  
Governor

Post Office Box 21398  
Columbia, SC 29221

### PURSUANT TO EXECUTIVE ORDER 2000-11

I, Nikki R. Haley, Governor of South Carolina, have this 28<sup>th</sup> day of April, 2015, approved the transfer of Steven Louis Barnes

FROM: Greenwood County Detention Center

TO: South Carolina Department of Corrections

FOR: Safekeeping

TRANSFER REQUESTED BY: Sheriff Adell Dobey, Edgefield County

Any medical expenses incurred by the South Carolina Department of Corrections in conjunction with this Safekeeping Order are to be paid by the County of Edgefield.

Any transportation of the defendant pursuant to this Safekeeping Order will be by an armed representative of Edgefield County law enforcement and the defendant shall be shackled at all times to ensure the safety and well being of the officer and general public.

This Order is effective for one hundred and twenty days.

A handwritten signature of Nikki R. Haley in black ink, written over a horizontal line.

Nikki R. Haley  
Governor

Original to: Bryan P. Stirling, Director  
S.C. Department of Corrections

## EXECUTIVE ORDER NO. 2000-11

WHEREAS, an individual held in a pretrial confinement facility may be transferred to the custody of the South Carolina Department of Corrections for safekeeping by commitment duly authorized by the Governor pursuant to § 24-3-80; and

WHEREAS, the current guidelines and procedures for approval for the admission and detention in an institution of the Department of Corrections for safekeeping of a prisoner tendered by a law enforcement officer of this State are set forth in Executive Order #76-15, issued May 17, 1976; and

WHEREAS, there is a need to establish new criteria and procedures for approval for the admission and detention in an institution of the Department of Corrections for safekeeping of a prisoner tendered by a law enforcement officer of this State and rescind the previous safekeeping procedures set forth in Executive Order #76-15.

NOW, THEREFORE, I hereby establish the following criteria and procedures for approval for the admission and detention in an institution of the Department of Corrections for safekeeping of a prisoner tendered by a law enforcement officer of this State and rescind the previous safekeeping procedures set forth in Executive Order #76-15:

Section 1. An individual held in a county pretrial confinement facility may be transferred to the custody of the South Carolina Department of Corrections by commitment duly authorized by the Governor pursuant to § 24-3-80, if the individual: (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 2. To obtain an order of safekeeping, a county must apply to the Director of the Department of Corrections, with notice to the individual's attorney. The application must include: (1) a properly issued arrest warrant for the individual; (2) an affidavit from the chief county law enforcement officer providing the reason(s) why the individual should be committed to the custody of the Department of Corrections; (3) a certificate prepared by the circuit solicitor indicating concurrence with the proposed safekeeping transfer; (4) a certificate of service indicating that notice of the application of safekeeping has been filed by the county has been given to the individual's attorney. Upon receipt of the application, the Director of the Department of Corrections shall review the documents submitted and any other relevant facts and forward his recommendation of action to the Governor. If issuance of a safekeeping order is recommended, a draft order will be forwarded with the Director's recommendation to the Governor for consideration.

Section 3. 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.

Section 4. Upon issuance of a safekeeping order, officials of the county requesting the order must deliver the individual to the Department of Corrections and provide the Department with all appropriate documentation and relevant records relating to the individual, including but not limited to any special facts, issues, or circumstances known to the appropriate county officials concerning the particular propensities, special medical or dietary needs of the individual, or any special dangers posed by the individual.

Section 5. Safekeeping orders for detention in the Department of Corrections are valid for no more than one hundred twenty (120) days from the date of issuance. A safekeeping order may be renewed for up to ninety (90) days upon a showing of good cause and/or no material change in circumstances. If the order is not renewed, the individual must be transferred back to the applicable county detention facility. The Department of Corrections must notify the proper county officials at least ten (10) days prior to the expiration of the safekeeping order.

Section 6. A safekeeping order must not be utilized as a means to acquire or provide medical services, medical attention or to hospitalize a pretrial detainee in the Department of Corrections. Mentally ill or retarded individuals are not eligible for safekeeping at the Department of Corrections.

Section 7. All medical costs associated with an individual held by the Department of Corrections for safekeeping who develops a need for hospitalization or other special medical attention while in the custody of the Department of Corrections is the responsibility of the County that requested the safekeeping of the individual.

Section 8. Transportation to court hearings and necessary appointments of an individual being held for safekeeping by the Department of Corrections is the responsibility of the County that requested the safekeeping of the individual. In emergency situations, the Department of Corrections may provide transportation.

Section 9. A safekeeping order or renewal may be issued orally by the Governor under extraordinary circumstances; provided, however, that a written order must be issued as soon thereafter as practicable.

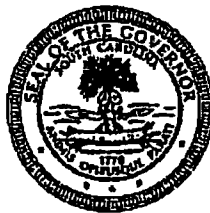
Section 10. Any and all individuals in the custody of the Department of Corrections as of the date of this Executive Order pursuant to a safekeeping order issued pursuant to the guidelines and procedures set forth in Executive Order #76-15, are now subject to the provisions of this order.

Section 11. This Executive Order supersedes Executive Order # 76-15, issued May 17, 1976, and renders it void.

**GIVEN UNDER MY HAND AND THE  
GREAT SEAL OF THE STATE OF  
SOUTH CAROLINA, THIS 16th DAY  
OF FEBRUARY, 2000.**

**JIM HODGES  
GOVERNOR**

Last Updated: Tuesday, July 7, 2009 at 10:23 A.M.



**State of South Carolina**  
**Office of the Governor**

**NIKKI R. HALEY**  
GOVERNOR

1205 PENDLETON STREET  
COLUMBIA 29201

**PURSUANT TO EXECUTIVE ORDER 2000-11**

I, Nikki R. Haley, Governor of South Carolina, have this 12<sup>th</sup> day of August, 2015, approved the request for extension of the Safekeeping Order for Steven Louis Barnes, SK #5290.

**FROM: Edgefield County Detention Center**

**TO: South Carolina Department of Corrections**

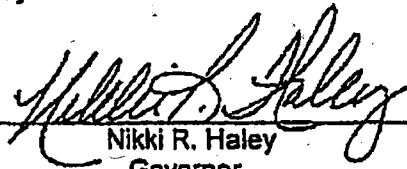
**FOR: Safekeeping**

**TRANSFER REQUESTED BY: Lt. Polly Hall, Edgefield County Detention Center**

Any medical expenses incurred by the South Carolina Department of Corrections in conjunction with this Safekeeping Order are to be paid by the County of Edgefield.

Any transportation of the Defendant pursuant to this Safekeeping Order will be by an armed representative of Edgefield County Law Enforcement and the Defendant shall be shackled at all times to ensure the safety and well-being of the officer and general public.

This Order is effective for ninety (90) days from the date of expiration of the Order currently in effect.

  
\_\_\_\_\_  
Nikki R. Haley  
Governor

Copy to: Bryan P. Stirling, Director  
S.C. Department of Corrections

**STATE OF SOUTH CAROLINA  
IN THE ADMINISTRATIVE LAW COURT**

|                                           |   |                                 |
|-------------------------------------------|---|---------------------------------|
| Steven L. Barnes, # 5290,                 | ) | Case No.: 15-ALJ-30-0318-IJ     |
|                                           | ) |                                 |
| Petitioner,                               | ) | [Hon. Ralph King Anderson, III] |
|                                           | ) |                                 |
| v.                                        | ) |                                 |
|                                           | ) |                                 |
|                                           | ) | <b>CERTIFICATE OF SERVICE</b>   |
| South Carolina Department of Corrections, | ) |                                 |
|                                           | ) |                                 |
| Respondent.                               | ) |                                 |

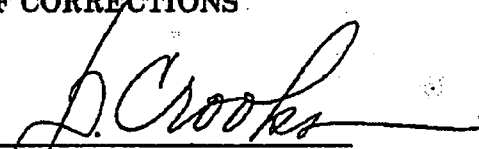
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I hereby certify that on today's date, a copy of the foregoing Memorandum of Law in Support of Dismissal was placed in the U.S. Mail, addressed to Counsel for Petitioner as follows: Jeffrey Bloom, Esq., 1911 Pickens St., Columbia, SC, 29201; and William McGuire, Esq., at 1330 Lady St., Ste. 401, Columbia, SC, 29201.

Respectfully Submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

BY: \_\_\_\_\_

  
**DANIEL J. CROOKS III**

Staff Attorney

Office of General Counsel

4444 Broad River Road

Columbia, South Carolina 29221

(803) 896-1355

**DATED: August 28, 2015**

**Columbia, South Carolina**

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

**Steven L. Barnes,**

**Case No. 15-AJ-30-0318-JJ**

**Petitioner,**

**vs.**

## ORDER

**South Carolina Department of Corrections,**

**Respondent.**

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.<sup>1</sup> 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.<sup>2</sup> 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,

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.

<sup>2</sup> 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**

**SC ADMIN. LAW COURT**

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.<sup>3</sup> 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.<sup>4</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

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 (SCRCPP) 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

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 (Cl. 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."<sup>5</sup>

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

<sup>5</sup> 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."

classification and transfer 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.<sup>6</sup> 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 (Cl. 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

<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.

<sup>7</sup> Petitioner’s letter is not in the Record.

<sup>8</sup> 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.**

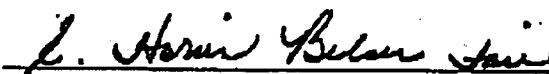


Ralph King Anderson, III  
Chief Administrative Law Judge

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

|                            |   |                                 |
|----------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA    | ) | IN THE ADMINISTRATIVE LAW COURT |
|                            | ) |                                 |
| COUNTY OF RICHLAND         | ) | Case No. 15-ALJ-30-0318-IJ      |
|                            | ) |                                 |
| STEVEN L. BARNES           | ) |                                 |
| Petitioner                 | ) |                                 |
|                            | ) |                                 |
| VS.                        | ) | MOTION FOR                      |
|                            | ) | MISCELLANEOUS RELIEF            |
|                            | ) |                                 |
| S.C. Dept. of Corrections, | ) |                                 |
| <u>Respondent</u>          | ) |                                 |

Petitioner, Steven L. Barnes, SK #5290 ("Barnes"), moves for the following relief in this case:

1. For Chief Administrative Judge Ralph Anderson III to retain jurisdiction of this matter; and to retain the case number originally assigned in this case.
2. For the Court to allow an adequate time for each party to submit a brief in these matters, and prior to any hearing on Petitioner's claims, for the benefit of the Court.
3. For the Court to schedule a hearing in this matter on Petitioner's additional claims, as set forth in the Notice of Appeal (Claims I-V, and VII-XVI).
4. For the Court to waive any filing fees on the part of Petitioner in this matter, as Petitioner is a defendant in a capital case, is currently incarcerated within the S.C. Dept. of Corrections as a "Safekeeper," and on information and belief is indigent.
5. For the Court to hold a status conference, if it deems to be necessary and appropriate, to address and/or resolve any of the above-named matters.

Furthermore, Respondent's counsel consents to this Motion.

LAW OFFICES

SEP 08 2016

MALONE, THOMPSON  
SUMMERS & OTT, LLC

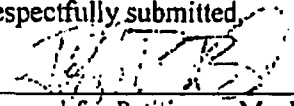
Page 1 of 2

**FILED**

SEP 07 2016

SC ADMIN LAW COURT

Respectfully submitted,

  
Counsel for Petitioner, Mr. Barnes

William S. McGuire  
Chief Attorney, Capital Trial Division  
SC Commission on Indigent Defense  
1330 Lady Street, Suite 401  
Columbia, SC 29201  
Tele. (803) 734-1358  
E-mail: [bm McGuire@sccid.sc.gov](mailto:bm McGuire@sccid.sc.gov)

Dated: September 7, 2016

Jeffrey P. Bloom  
Attorney At Law  
P.O. Box 5885  
Columbia, S.C. 29250  
Tele. (803) 256-7001  
E-mail: [Jeff@JPBloomlaw.com](mailto:Jeff@JPBloomlaw.com)

|                            |   |                                 |
|----------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA    | ) | IN THE ADMINISTRATIVE LAW COURT |
|                            | ) |                                 |
| COUNTY OF RICHLAND         | ) | Case No. 15-ALJ-30-0318-IJ      |
|                            | ) |                                 |
| STEVEN L. BARNES           | ) |                                 |
| Petitioner                 | ) | CERTIFICATE OF SERVICE          |
|                            | ) |                                 |
| VS.                        | ) |                                 |
|                            | ) |                                 |
| S.C. Dept. of Corrections, | ) |                                 |
| Respondent                 | ) |                                 |

I do hereby certify that on September 7, 2016, I served the following documents, as set forth below and herein, upon the party as set forth below, by delivering via electronic mail and also by U.S. Mail, postage prepaid, and to the addresses as listed below, a copy of same to representatives of the Respondent, as follows:

Document(s): Motion for Miscellaneous Relief

Served Upon: Via electronic mail  
summers@mtsolaflawfirm.com

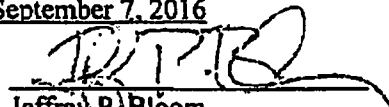
LAW OFFICES

Via U.S. Mail.  
Lake Summers, Esq.  
Malone, Thompson, Summers & Ott LLC  
339 Heyward Street – Suite 200  
Columbia, South Carolina 29201  
(803) 254-3300 – Office  
(803) 254-0309 – Fax

SEP 08 2016

MALONE, THOMPSON  
SUMMERS & OTT, LLC

This day of September 7, 2016

  
Jeffrey P. Bloom  
Attorney

**FILED**

SEP 07 2016

SC ADMIN LAW COURT

**JEFFREY P. BLOOM  
ATTORNEY AT LAW**

P.O. Box 5885  
COLUMBIA, S.C. 29250-5885  
LICENSED MEMBER OF THE  
S.C., N.C., & N.Y. BARS

OFFICE (803) 256-7001  
FAX (803) 256-7002  
CELL (803) 261-4576  
E-MAIL: JEFF@JPBLOOMLAW.COM

September 7, 2016

Lake Summers, Esq.  
Malone, Thompson, Summers & Ott LLC  
339 Heyward Street – Suite 200  
Columbia, South Carolina 29201

RE: Steven L. Barnes v. S.C. Dept. of Corrections  
ALC No. 15-ALJ-30-0318-IJ

Dear Lake,

Please find enclosed a copy of the Motion for Miscellaneous Relief in the above-captioned action.

Thank you for your attention to this matter.

Sincerely,

  
Jeffrey P. Bloom  
Counsel for Steven Barnes

LAW OFFICES

SEP 08 2016

MALONE, THOMPSON  
SUMMERS & OTT, LLC

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

|                                           |   |                              |
|-------------------------------------------|---|------------------------------|
| Steven L. Barnes,                         | ) | Docket No. 15-ALJ-30-0318-AP |
|                                           | ) |                              |
| Appellant,                                | ) |                              |
|                                           | ) |                              |
| vs.                                       | ) | <b>ORDER ON MOTION FOR</b>   |
|                                           | ) | <b>MISCELLANEOUS RELIEF</b>  |
|                                           | ) | <b>AND</b>                   |
| South Carolina Department of Corrections, | ) | <b>ORDER GOVERNING</b>       |
|                                           | ) | <b>PROCEDURE</b>             |
| Respondent.                               | ) |                              |
|                                           | ) |                              |

---

This matter is before the South Carolina Administrative Law Court on a Motion for Miscellaneous Relief (Motion) filed by Steven L. Barnes (Appellant), a defendant in a capital case who is housed with the South Carolina Department of Corrections (Department or SCDC) under "Safekeeper" status.

The Court previously held a hearing in this case that resulted in the Court issuing an order dismissing the matter as to the issues of classification and transfer of prisoners to the Department for safekeeping, and remanding the case to the Department to allow Appellant to file a Step 2 Grievance.

On August 23, 2016, Appellant filed a Notice of Appeal (Notice) with several claims attached (Claims I-V and VII-XVI). In response to a memo from the Clerk of the Court regarding the grievances appealed, Appellant filed this Motion asking the Court to:

- retain jurisdiction and original case number;
- allow time for briefing prior to any hearing;
- schedule a hearing on the claims as set forth in the Notice;
- waive filing fees, as the Appellant is indigent; and
- hold a status conference to address or resolve any of the above-captioned matters.<sup>1</sup>

It appears from the Motion that counsel for the Department consents.

This Court grants the requests in the Motion, with minor changes to the case number and caption, and sets the following times and procedures for this case:

---

<sup>1</sup> The Court will hold a status conference, if needed, after the briefs are filed or at the specific request of the parties.

**FILED**

October 17, 2016

SC ADMIN. LAW COURT

**Record on Appeal**

The Department shall file the Record on Appeal with the Court and serve a copy on all parties to the appeal within seventy (70) days from the date of this Order as set forth in Rule 59 of the South Carolina Administrative Court Rules (SCALC Rules).

**Briefs**

Appellant shall file with the Court and serve on the opposing parties a Brief of Appellant within twenty (20) days after the Record on Appeal is filed. The Department must file a Brief of Respondent within twenty (20) days after the date the Brief of Appellant is filed. The Appellant is not required to, but may, file a Reply Brief within ten (10) days after the Brief of Respondent is filed.

**Presentation of the Case by the Parties**

After the Record on Appeal and all briefs have been received, the parties will be notified if the Court will hear argument on behalf of the parties. However, oral argument will ordinarily not be ordered by the Court unless the proceeding involves a novel issue or a question of exceptional importance. *See* SCALC Rule 64.

**ORDER**

**IT IS THEREFORE ORDERED** that Judge Ralph King Anderson, III shall retain jurisdiction of this case.

**IT IS FURTHER ORDERED** that the caption shall reflect that Steven L. Barnes is the "Appellant" and the Docket Number is 15-ALJ-30-0315-AP to reflect that this is an appeal.

**IT IS FURTHER ORDERED** that the filing fee is waived.

**IT IS FURTHER ORDERED** that the briefing scheduled is adopted as set forth in this Order.

**IT IS FURTHER ORDERED** that the Court will schedule a hearing after receipt of the briefs.

**AND IT IS SO ORDERED.**

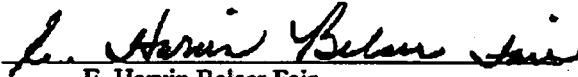


Ralph King Anderson, III  
Chief Administrative Law Judge

October 17, 2016  
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

October 17, 2016  
Columbia, South Carolina

**THE STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

---

The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

---

|                                           |   |                                          |
|-------------------------------------------|---|------------------------------------------|
| Steven Louis Barnes,                      | ) | Docket No. 15-ALJ-30-0318-LJ             |
|                                           | ) |                                          |
| Appellant,                                | ) | Grievance Nos. 9010-16 (I through V) and |
|                                           | ) | 9010-16 (VII through XVI)                |
| vs. )                                     | ) |                                          |
|                                           | ) | <b>RECORD ON APPEAL SUBMITTED</b>        |
| South Carolina Department of Corrections, | ) | <b>BY THE RESPONDENT IN</b>              |
|                                           | ) | <b>COMPLIANCE WITH THE COURT'S</b>       |
| Respondent.                               | ) | <b>OCTOBER 17, 2016 ORDER</b>            |

---

On October 17, 2016, the Court issued its "Order on Motion for Miscellaneous Relief and Order Governing Procedure" in the above-captioned matter.

By its order, the Court directed the Respondent, the South Carolina Department of Corrections ["The Department"], to file and serve the Record on Appeal within 70 days.

In compliance with the directive from the Court's October 17, 2016 order, the Department's undersigned counsel respectfully submits the Record on Appeal for the above-captioned matter.

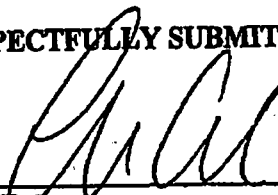
For the sake of clarity, the Record on Appeal totals 45 pages, and each page is numbered sequentially.

**FILED**

DEC 28 2016

SC ADMIN LAW COURT

**RESPECTFULLY SUBMITTED:**



**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)**

**Outside Counsel for the Department**

**Columbia, South Carolina  
December 28, 2016**

**THE STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

---

The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

---

|                                           |   |                                          |
|-------------------------------------------|---|------------------------------------------|
| Steven Louis Barnes,                      | ) | Docket No. 15-ALJ-30-0318-IJ             |
|                                           | ) |                                          |
| Appellant,                                | ) | Grievance Nos. 9010-16 (I through V) and |
|                                           | ) | 9010-16 (VII through XVI)                |
| vs.                                       | ) |                                          |
|                                           | ) | <b>RECORD ON APPEAL SUBMITTED</b>        |
| South Carolina Department of Corrections, | ) | <b>BY THE RESPONDENT IN</b>              |
|                                           | ) | <b>COMPLIANCE WITH THE COURT'S</b>       |
| Respondent.                               | ) | <b>OCTOBER 17, 2016 ORDER</b>            |

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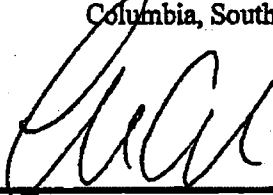
**CERTIFICATE OF SERVICE**

I certify that I have served the **RECORD ON APPEAL** on the above-named Appellant by mailing a copy of it to his counsel via the United States Postal Service, first class postage pre-paid, at the following addresses:

Jeffrey P. Bloom, Esquire  
1911 Pickens Street  
Columbia, South Carolina 29201

William S. McGuire, Esquire  
1330 Lady Street – Suite 401  
Columbia, South Carolina 29201

December 28, 2016

  
\_\_\_\_\_  
LAKE E. SUMMERS

**FILED**

DEC 28 2016

ALC Docket No. 15-ALJ-30-0318-U

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM STEP 2**

INMATE NAME: Barnes, Steven  
SCDC NUMBER: SK - 5290  
INSTITUTION: LEE CI  
HOUSING UNIT: SMU/SEGREGATION  
WORK ASSIGNMENT: None.

Office Use Only  
Grievance No. 9010-16  
Code: General: X  
Policy \_\_\_ Disc Hear. \_\_\_ Class. \_\_\_ PREA \_\_\_  
Date Received: \_\_\_ IGC Initials: \_\_\_  
Date Received: \_\_\_ IGA Initials: \_\_\_

**INMATES'S REASON FOR APPEAL (state specific dissatisfaction):**

1. Inmate Barnes objects to his Safekeeper classification and status. The classification was retaliatory in nature based upon the inmate's filing of written grievances within the county jail. The inmate had not engaged in any behavior warranting disciplinary action. The Safekeeper classification in this instance is a violation of the statute SC Code sec. 24-3-80; Executive Order 2000-11; the U.S. Const. Amend. 5, 6, 8, and 14; S.C. Const. Art. I §§3, 14 and 15. Thus, inmate Barnes is being unlawfully and unconstitutionally held as a Safekeeper within SCDC.

Steven Barnes 4/5/16  
Grievant Signature Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

See reverse side for final  
Agency response.

Stephen H. L. 7/21/16  
Signature Date

The decision rendered by the responsible official exhaust 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

SCDC 10-SA (Modified in format only)

See reverse side for instructions.

ALC Docket No. 15-ALJ-30-0318-IJ

Instructions for completing Step 2 Grievance Form

1. Complete form in its entirety writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for reasons.
3. Submit this completed form with your original Step 1 attached to Institutional Grievance Coordinator within five (5) days of your receipt of the Wardens' decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhaust the appeal process of the SCDC Inmate Grievance Procedure.

Barnes SK 5290 Lee 9010-16 JS (DT) (1 of 16)

The South Carolina Administrative Law Court (SCALC) through its ORDER dated November 5, 2015, REDIANDED Case NO. 15-ALJ-30-0318-IJ (Grievance No. Lee- 9010-16) "to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration." SCDC provided an appropriate Inmate Grievance Form Step 2 to the Petitioner's attorney. Petitioner's attorney submitted sixteen (16) Step 2 Grievances dated April 5, 2016 on behalf of Petitioner. SCDC has a well-established grievance system recognized by the SCALC. Per SCDC Policy GA-01.12, paragraph 7, only one issue or one disciplinary conviction may be addressed on each grievance form. In the case at hand, Petitioner has appealed sixteen (16) issues in one grievance. However, to effectuate the Court's ORDER, each issue will be addressed. By answering each of the sixteen (16) issues, SCDC does not waive its right now nor in the future to object to the merit of Petitioner's filings.

Your concern has been reviewed. In your grievance you stated that you object to your safekeeper classification status and that you feel that such status is unlawful. The determination of your safekeeper status has been properly addressed in the above stated case. Furthermore, SCDC Policy SK-22.2, states safekeepers will be accepted by the SCDC pursuant to applicable laws, regulations, and executive orders and will be housed separately from other inmates. Safekeepers will be expected to comply with all SCDC policies, procedures, and rules. You have not proven that SCDC Staff have performed their job duties inappropriately.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

Your concern has been reviewed.

Therefore, I consider this matter resolved.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURTSteven Louis Barnes

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

## NOTICE OF APPEAL

DOCKET NO. 15-ALJ-30-0318-IJ  
GRIEVANCE NO.: 9010-16 (I)

Notice is hereby given that Steven Louis Barnes does hereby appeal the final decision of the South Carolina Department of Corrections dated July 21, 2016 and received on July 21, 2016, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

Grievance I: The SCDC and its Co-conspirator placement of me on  
safe-keeper status for writing inmate grievances while in the County Jail  
was arbitrary and/or capricious violations of my 1st, 4, & 14 Constitutional  
rights.

STEVEN L. BARNES, SK#5290  
Appellant's Name  
ATTY. J. BLOOM, PO BOX 5885  
COLA, SC 29250  
Mailing Address

Signed

Dated

John R  
8/22/16

City, State, Zip Code

## CERTIFICATE OF SERVICE

+SEE ATTACHED

I hereby certify that I, J. Bloom (your name), on the 23 day of AUGUST 2016, in COLUMBIA, South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: STEPHEN LUNSFORD, INTERIM GEN. COUNSELAddress: SCDC, PO BOX 21787City, State, Zip Code: COLA, SC 29210

Print your name: JEFFREY BLOOM  
(See reverse side for instructions)

Sign your name:

JB

ALC Docket No. 15-ALJ-30-0318-IJ

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM STEP 2**

INMATE NAME: Barnes, Steven  
SCDC NUMBER: SK - 5290  
INSTITUTION: LEE CI  
HOUSING UNIT: SM/SEGREGATION  
WORK ASSIGNMENT: None.

Office Use Only  
Grievance No. 9010-16  
Code: General: X  
Policy \_\_\_ Disc Hear. \_\_\_ Class. \_\_\_ PREA \_\_\_  
Date Received: \_\_\_ IGC Initials: \_\_\_  
Date Received: \_\_\_ IGA Initials: \_\_\_

**INMATES'S REASON FOR APPEAL (state specific dissatisfaction):**

II. Inmate Barnes is treated as a disciplinary inmate. Barnes is denied these privileges even though he is a pre-trial detainee, and not a disciplinary detainee:  
[a] Barnes is not allowed to order from the canteen, mainly it appears because he is not issued an SCDC Identification card, so that he is denied the opportunity to purchase even basic hygiene items, or other general canteen items;  
[b] Barnes is not allowed any recreation time;  
[c] Barnes is only allowed a shower 1-2 times per week, and often no showers at all within a week;  
[d] Barnes is not allowed to receive any books or publications, including legal books or law publications, directly mailed from the publisher;  
[e] Barnes is not allowed routine telephone calls to his attorney during reasonable hours of 9am-5pm, M-F.  
All of the above are in violation of Barnes' Constitutional rights. See *Johnson v. Avery*, 393 U.S. 483 (1969); *Beard v. Banks*, 548 U.S. 521 (2006).

Steven P. Barnes  
Grievant Signature

4/5/16  
Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

See reverse side for final  
Agency response.

Stephen H. L. [Signature]  
Signature

7/2/16  
Date

The decision rendered by the responsible official exhaust 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

SCDC 10-5A (Modified in format only)

See reverse side for instructions.

Instructions for completing Step 2 Grievance Form

1. Complete form in its entirety writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for reasons.
3. Submit this completed form with your original Step 1 attached to Institutional Grievance Coordinator within five (5) days of your receipt of the Wardens' decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhaust the appeal process of the SCDC Inmate Grievance Procedure.

Barnes SK 5290 Lee 9010-16 JS (DT) (2 of 16)

The South Carolina Administrative Law Court (SCALC) through its ORDER dated November 5, 2015, REMANDED Case NO. 15-ALJ-30-0318-IJ (Grievance No. Lee- 9010-16) "to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration." SCDC provided an appropriate Inmate Grievance Form Step 2 to the Petitioner's attorney. Petitioner's attorney submitted sixteen (16) Step 2 Grievances dated April 5, 2016 on behalf of Petitioner. SCDC has a well-established grievance system recognized by the SCALC. Per SCDC Policy GA-01.12, paragraph 7, only one issue or one disciplinary conviction may be addressed on each grievance form. In the case at hand, Petitioner has appealed sixteen (16) issues in one grievance. However, to effectuate the Court's ORDER, each issue will be addressed. By answering each of the sixteen (16) issues, SCDC does not waive its right now nor in the future to object to the merit of Petitioner's filings.

Our concern has been reviewed. In your grievance you stated that you are treated as a disciplinary detainee and not a pre-trial detainee. As a result, you allege that you are denied certain privileges. You are housed at SCDC as a Safekeeper in Restrictive Housing Unit. SCDC Policy, SK-22.02, provides the following:

5.1 Safekeeper will be housed in a Restrictive Housing Unit (RHU) and will be managed in accordance with SCDC Policy/Procedure OP-22.12, "Restrictive Housing Unit," with the following exceptions: 5.1.1 Safekeeper will be segregated from other SCDC inmates in the SMU. They will be showered separately, have visitation privileges separately, and be recreated separately. 5.1.2 Safekeeper are assigned to SD Level II when they are admitted. If they commit disciplinary infractions, their SD Level may be decreased pursuant to procedures in SCDC Policy/Procedure OP-22.12. 7. *Canteen Privileges: Safekeeper in SD Level II will be allowed access to the canteen only for the purpose of purchasing a walkman radio and batteries for the walkman radio.*

SCDC is following the policy outlined above. Your allegations have not been substantiated. You have not shown that SCDC Staff have performed their job duties inappropriately.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

ALC Docket No. 15-ALJ-30-0318-IJ

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURTSteven Louis Barnes

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

## NOTICE OF APPEAL

DOCKET NO. 15-ALJ-30-0318-IJ  
GRIEVANCE NO.: 9010-16 (II)

Notice is hereby given that Steven Louis Barnes does hereby appeal the final decision of the South Carolina Department of Corrections dated July 21, 2016 and received on July 24, 2016, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

Grievance II: There's no reasonable security concerns at SCDC not allowing a pretrial detainee the following: SCDC Identification Card to purchase canteen nor canteen privileges nor recreation 5 times a week nor publication from the publishing company such as books, legal books, magazine. These deprivations are arbitrary and in violation of my state and Federal Constitutional Rights.

ALSO INCLUDING: FAILURE TO PROVIDE SHOWERS 3 TIMES PER WEEK AND FAILURE TO PROVIDE RECREATION 5 TIMES PER WEEK. THESE ACTIONS ARE CAPABLE OF RETITUTION, AND ARE ARBITRARY + CAPRICIOUS

STEVEN L. BARNES, #SK590

Appellant's Name

ATTY. J. BLOOM, PO BOX 5885  
COLA - SC 29250

Mailing Address

Signed

Dated

8/22/16

City, State, Zip Code

## CERTIFICATE OF SERVICE

I hereby certify that I, \_\_\_\_\_ (your name), on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned institution and addressed as follows:

Name of person/Agency served: SEE ATTACHED

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Print your name \_\_\_\_\_  
(See reverse side for instructions)

Sign your name: \_\_\_\_\_

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM STEP 2**

INMATE NAME: Barnes, Steven  
SCDC NUMBER: SK - 5290  
INSTITUTION: LEE CI  
HOUSING UNIT: SMU/SEGREGATION  
WORK ASSIGNMENT: None.

Office Use Only  
Grievance No. 9010-16  
Code: General: X  
Policy \_\_\_ Disc Hear. \_\_\_ Class. \_\_\_ PREA \_\_\_  
Date Received: \_\_\_ IGC Initials: \_\_\_  
Date Received: \_\_\_ IGA Initials: \_\_\_

**INMATES'S REASON FOR APPEAL (state specific dissatisfaction):**

III. Inmate Barnes objects to the constitutionality of the Safekeeper statute, SC Code sec. 24-3-80, on its face, and in this instance as applied, and as a violation of due process, U.S. Const. Amend. 5, 6, 8, and 14; S.C. Const. Art. I §§3, 14 and 15. See also, *State v. Dyke*, 744 S.E.2d 505 (SC 2013) (statute mandating lifetime satellite monitoring of convicted sex offender failed the rational-relationship test so that it violated due process).

Steven Barnes 4/5/16  
Grievant Signature Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

See reverse side for final  
Agency response.

Stephen L. Al 7/21/16  
Signature Date

The decision rendered by the responsible official exhaust 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

SCDC 10-5A (Modified in format only)

See reverse side for instructions.

Instructions for completing Step 2 Grievance Form

1. Complete form in its entirety writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for reasons.
3. Submit this completed form with your original Step 1 attached to Institutional Grievance Coordinator within five (5) days of your receipt of the Wardens' decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhaust the appeal process of the SCDC Inmate Grievance Procedure.

Barnes SK 5290 Lee 9010-16 JS (DT) (3 of 16)

The South Carolina Administrative Law Court (SCALC) through its ORDER dated November 5, 2015, REMANDED Case NO. 15-ALJ-30-0318-1J (Grievance No. Lee- 9010-16) "to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration." SCDC provided an appropriate Inmate Grievance Form Step 2 to the Petitioner's attorney. Petitioner's attorney submitted sixteen (16) Step 2 Grievances dated April 5, 2016 on behalf of Petitioner. SCDC has a well-established grievance system recognized by the SCALC. Per SCDC Policy GA-01.12, paragraph 7, only one issue or one disciplinary conviction may be addressed on each grievance form. In the case at hand, Petitioner has appealed sixteen (16) issues in one grievance. However, to effectuate the Court's ORDER, each issue will be addressed. By answering each of the sixteen (16) issues, SCDC does not waive its right now nor in the future to object to the merit of Petitioner's filings.

Your concern has been reviewed. In your grievances you stated that you object to the safekeeper statute, SC Code Sec. 24-3-80 on its face. This issue that you have raised is outside the control of SCDC. Therefore, you have stated a claim upon which SCDC cannot provide relief. SCDC Policy GA-1.12, paragraph 8.4.4, provides that, "The following items are considered non-reviewable issues: Any issue outside of the control of the Department: 8.4.1 State and federal court decisions; 8.4.2 State and federal laws and regulations; 8.4.3 Parole Board decisions; 8.4.4 Any other matters outside the control of the SCDC; 8.4.5 If the inmate is convicted of 601, Court Ordered Credit Loss."

You have failed to prove that SCDC Staff have performed their job duties inappropriately.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURTSteven Louis Barnes

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

## NOTICE OF APPEAL

DOCKET NO. 15-ALJ-30-0318-1J  
GRIEVANCE NO.: 9010-16 (III)

Notice is hereby given that Steven Louis Barnes does hereby appeal the final decision of the South Carolina Department of Corrections dated July 31, 2015 and received on July 26, 2016, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

Grievances III, SCD and its consequences are in excess of their statutory authority because the state has already argued that I'm a severe mental health inmate. See State v. Barnes, 358 S.E.2d 548 (1987). The state is not judicially collateral estoppel from arguing otherwise. Executive order No. 2000-11 section 6 doesn't allow mental health inmates to satisfactorily status. Furthermore, they violated my state and federal constitutional and statutory provisions.

STEVEN BARNES, #SK5290  
Appellant's Name  
ATTY. J. BLOOM, PO BOX 5885  
COIA, SC 29150  
Mailing Address

Signed

Dated

8/22/16

City, State, Zip Code

## CERTIFICATE OF SERVICE

I hereby certify that I, \_\_\_\_\_ (your name), on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served:

Address:

SEE ATTACHED

City, State, Zip Code

Print your name: \_\_\_\_\_  
(See reverse side for instructions)

Sign your name: \_\_\_\_\_

ALC Docket No. 15-ALJ-30-0318-U

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM STEP 2**

INMATE NAME: Barnes, Steven  
SCDC NUMBER: SK - 5290  
INSTITUTION: LEE CI  
HOUSING UNIT: SMU/SEGREGATION  
WORK ASSIGNMENT: None.

Office Use Only  
Clerance No. 9010-16  
Code: General: X  
Policy ☐ Disc Hear. ☐ Class. ☐ PREA ☐  
Date Received: ☐ IGC Initials: ☐  
Date Received: ☐ IGA Initials: ☐

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

IV. Inmate Barnes objects to the lack of adequate medical care. Barnes suffers from: chronic back and nerve pain, from degenerative joint disease and scoliosis; failure of SCDC staff to prescribe neurotin or similar prescription medication.  
See *Johnson v. Avery*, 393 U.S. 483 (1969); *Beard v. Banks*, 548 U.S. 521 (2006).

Steve Barnes 4/5/16  
Relevant Signature Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

See reverse side for final  
Agency response.

Steph H. F. J. 7/21/16  
Signature Date

The decision rendered by the responsible official exhaust 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

SCDC 10-5A (Modified in format only)

See reverse side for instructions.

Barnes SK 5290 Leo 9010-16 JS (DT) (4 of 16)

The South Carolina Administrative Law Court (SCALC) through its ORDER dated November 5, 2015, REMANDED Case NO. 15-ALJ-30-0318-IJ (Grievance No. Leo- 9010-16) "to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration." SCDC provided an appropriate Inmate Grievance Form Step 2 to the Petitioner's attorney. Petitioner's attorney submitted sixteen (16) Step 2 Grievances dated April 5, 2016 on behalf of Petitioner. SCDC has a well-established grievance system recognized by the SCALC. Per SCDC Policy GA-01.12, paragraph 7, only one issue or one disciplinary conviction may be addressed on each grievance form. In the case at hand, Petitioner has appealed sixteen (16) issues in one grievance. However, to effectuate Court's ORDER, each issue will be addressed. By answering each of the sixteen (16) issues, SCDC does not waive its right now nor in the future to object to the merit of Petitioner's filings.

Your concern has been reviewed. In your grievance you stated that you object to you not receiving adequate medical care. I have reviewed your medical encounters dating back to April 28, 2015 to present, and it is noted that you have been seen and treated appropriately on numerous occasions by the medical staff at Kirkland CI and Leo CI. You are required to request to see medical staff as you may deem necessary. SCDC Policy SK22.02, Safekeepers, paragraph 3.3.8 provides the following,

"The Safekeeper will be seen by medical staff, who will conduct a medical screen, history, and physical exam pursuant to SCDC procedures relating to health screens and exams for the Reception and Evaluation of inmates. If a referral to a community care giver is necessary, the county will be notified and will be financially responsible for those costs."

You have not shown that SCDC Staff have performed their job duties inappropriately.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

ALC Docket No. 15-ALJ-30-0318-1J

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURTSteven Louis Barnes

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

## NOTICE OF APPEAL

DOCKET NO. 15-ALJ-30-0318-1J  
GRIEVANCE NO.: 9016-16 (IV)

Notice is hereby given that Steven Louis Barnes does hereby  
appeal the final decision of the South Carolina Department of Corrections dated July 21, 2015  
and received on July 26, 2015, a copy of which is attached. A general statement of the grounds for  
appeal is (See S.C. Code Ann. § 1-23-390(A)(6)):

Grievance IV: SCDP medical staff interpretation of medical section of  
the safekeeper statute concerning who pays for my prescribed medication  
is affected by error of law, is arbitrary and capricious, and is clearly  
erroneous in view of substantial evidence on the whole record. They  
also violates my Constitutional rights.

STEVEN L. BARNES, #SK 5270  
Appellant's Name  
ATTN: J. BLOOM, PO BOX 5865  
Mailing Address  
SCA SC 29050

Signed

Dated

8/22/16

City, State, Zip Code

## CERTIFICATE OF SERVICE

I hereby certify that I, \_\_\_\_\_ (your name), on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ (city),  
South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States  
Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: SEE ATTACHED

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Print your name: \_\_\_\_\_  
(See reverse side for instructions)

Sign your name: \_\_\_\_\_

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM STEP 2**

INMATE NAME: Barnes, Steven  
SCDC NUMBER: SK - 5290  
INSTITUTION: LEE CI  
HOUSING UNIT: SMU/SEGREGATION  
WORK ASSIGNMENT: None.

Office Use Only  
Grievance No. 9010-16  
Code: General: X  
Policy ☐ Disc Hear. ☐ Class. ☐ PREA ☐  
Date Received: ☐ IGC Initials: ☐  
Date Received: ☐ IGA Initials: ☐

**INMATE'S REASON FOR APPEAL (state specific details below):**

V. Inmate Barnes objects to the lack of adequate medical care for various diagnosed medical conditions, & a failure to examine or diagnose other medical conditions, & failure to adequately treat such medical conditions, including but not limited to:

[a] Lump on leg approximately the size of a dime in radius, and potentially cancerous;  
[b] Streptococcus A;

[c] High blood pressure/Hypertension;

[d] Acute sinusitis and otitis;

[e] Joint disease and scoliosis;

[f] Failure to prescribe other medications which the inmate has received in the past, including when previously within SCDC, including potentially Paxil, Buspar, Tegretol, etc. - SB

See *Johnson v. Avery*, 393 U.S. 483 (1969); *Beard v. Banks*, 548 U.S. 521 (2006).

*Steven Barnes* 7/21/16  
Grievant Signature Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

See reverse side for final  
Agency response.

*Steph L. L. L.* 7/21/16  
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

SCDC 10-5A (Modified in format only)

See reverse side for instructions.

ALC Docket No. 15-ALJ-30-0318-U

**Barnes SK 5290 Lee 9010-16 JS (DT) (5 of 16)**

The South Carolina Administrative Law Court (SCALC) through its ORDER dated November 5, 2015, REOPENED Case NO. 15-ALJ-30-0318-U (Grievance No. Lee- 9010-16) "to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration." SCDC provided an appropriate Inmate Grievance Form Step 2 to the Petitioner's attorney. Petitioner's attorney submitted sixteen (16) Step 2 Grievances dated April 5, 2016 on behalf of Petitioner. SCDC has a well-established grievance system recognized by the SCALC. Per SCDC Policy GA-01.12, paragraph 7, only one issue or one disciplinary conviction may be addressed on each grievance form. In the case at hand, Petitioner has appealed sixteen (16) issues in one grievance. However, to effectuate the Court's ORDER, each issue will be addressed. By answering each of the sixteen (16) issues, SCDC does not waive its right now nor in the future to object to the merit of Petitioner's filings.

Your concern has been reviewed. In your grievance you stated that you object to the lack of adequate medical care for various medical conditions. A review of your medical encounters dating back to April 28, 2015 to present indicates that you have been seen and treated on numerous occasions by the medical staff at Kirkland CI and Lee CI. SCDC Policy SK22.02, Safekeeper, paragraph 3.3.8 provides, "The Safekeeper will be seen by medical staff, who will conduct a medical screen, history, and physical exam pursuant to SCDC procedures relating to health screens and exams for the Reception and Evaluation of inmates. If a referral to a community care giver is necessary, the county will be notified and will be financially responsible for those costs."

You have failed to prove that SCDC Staff failed to perform their job duties properly.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Steven Louis Barnes

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. 15-ALJ-30-0318-IJ  
GRIEVANCE NO.: 906-16 (12)

Notice is hereby given that Steven Louis Barnes does hereby appeal the final decision of the South Carolina Department of Corrections dated \_\_\_\_\_ and received on \_\_\_\_\_, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

Grievance V: Whether the SCD's medical denial of medical treatment, of delaying medical treatment, of inadequate medical treatment, and of failure to diagnosed other serious medical condition constitute an arbitrary and/or capricious act in violation of both Constitutional and statutory procedure because their decision of such treatment was clearly erroneous in view of reliable and substantial evidence on the whole record.

STEVEN BARNES, #SK 5290  
Appellant's Name  
Atty. J. Bloom, PO Box 5685  
Columbia, SC 29250  
Mailing Address

Signed

Dated

City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, \_\_\_\_\_ (your name), on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: SEE ATTACHED

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Print your name: \_\_\_\_\_  
(See reverse side for instructions)

Sign your name: \_\_\_\_\_

ALC Docket No. 15-ALJ-30-0318-IJ

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM STEP 2**

INMATE NAME: Barnes, Steven  
SCDC NUMBER: SK - 5290  
INSTITUTION: LEE CI  
HOUSING UNIT: SMU/SEGREGATION  
WORK ASSIGNMENT: None.

Office Use Only  
Grievance No. 9010-16  
Code: General: X  
Policy \_\_\_ Disc Hear. \_\_\_ Class. \_\_\_ PREA \_\_\_  
Date Received: \_\_\_ IGC Initials: \_\_\_  
Date Received: \_\_\_ IGA Initials: \_\_\_

**INMATES'S REASON FOR APPEAL (state specific dissatisfaction):**

VII. Inmate Barnes is not allowed religious items and the Institution has interfered with the inmate's First Amendment religious rights. Specifically, the inmate has not been allowed to have Muslim Praying Oil.  
See *Johnson v. Avery*, 393 U.S. 483 (1969); *Beard v. Banks*, 548 U.S. 521 (2006); U.S. Const. Amend. I.

Steven Barnes 4/5/16  
Grievant Signature Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

See reverse side for final  
Agency response.

Stephen H. [Signature] 4/21/16  
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

SCDC 10-SA (Modified in format only)

See reverse side for instructions.

Instructions for completing Step 2 Grievance Form

1. Complete form in its entirety writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for reasons.
3. Submit this completed form with your original Step 1 attached to Institutional Grievance Coordinator within five (5) days of your receipt of the Wardens' decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhaust the appeal process of the SCDC Inmate Grievance Procedure.

Barnes SK 3290 Lee 9010-16 JS (DT) (7 of 16)

The South Carolina Administrative Law Court (SCALC) through its ORDER dated November 5, 2015, REMANDED Case NO. 15-ALJ-30-0318-IJ (Grievance No. Lee- 9010-16) "to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration." SCDC provided an appropriate Inmate Grievance Form Step 2 to the Petitioner's attorney. Petitioner's attorney submitted sixteen (16) Step 2 Grievances dated April 5, 2016 on behalf of Petitioner. SCDC has a well-established grievance system recognized by the SCALC. Per SCDC Policy GA-01.12, paragraph 7, only one issue or one disciplinary conviction may be addressed on each grievance form. In the case at hand, Petitioner has appealed sixteen (16) issues in one grievance. However, to effectuate the Court's ORDER, each issue will be addressed. By answering each of the sixteen (16) issues, SCDC does not waive its right now nor in the future to object to the merits of Petitioner's filings.

Your concern has been reviewed. In your grievance you stated that you are not allowed religious items and your First Amendment religious rights have been interfered with. SCDC Policy Restrictive Housing Unit, OP-22.38, paragraphs 32.1, identifies the items that inmates may have in their possession who are housed in a Restrictive Housing Unit. Paragraph 21, Religious Programming provides that, "All inmates assigned to RHU will be allowed visitation by the Institutional or Volunteer Chaplain at least once per week. Individual inmate requests to see a Chaplain will receive a prompt response. All religious programming will be in-cell." There is no evidence that you have been denied any services and/or materials that are not prohibited by SCDC Policy OP-22.38. You have not shown that SCDC Staff have failed to perform their job duties properly. Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

ALC Docket No. 15-ALJ-30-0318-IJ

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURTSteven Louis Barnes

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

## NOTICE OF APPEAL

DOCKET NO. 15-ALJ-30-0318-IJ  
GRIEVANCE NO.: 9010-16 (VII)

Notice is hereby given that Steven Louis Barnes does hereby appeal the final decision of the South Carolina Department of Corrections dated \_\_\_\_\_ and received on \_\_\_\_\_, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

Grievance VII: SDC's decision to deny me religious items such as muslim rug  
violates statutory law: 42 U.S.C. § 2000-11-5 (The religious land use and  
Institutionalized Person Act). This also violate various of my state constitutional  
rights. Such denial is also arbitrary and clearly erroneous in view of  
substantial evidence on the whole record.

STEVEN BARNES # SK5290

Appellant's Name

ATTY. J. BLOOM PO BOX 5885  
COLA. SC 29250

Mailing Address

Signed

Dated

8/22/16

City, State, Zip Code

## CERTIFICATE OF SERVICE

I hereby certify that I, \_\_\_\_\_ (my name), on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served:

Address:

SEE ATTACHED

City, State, Zip Code:

Print your name:

(See reverse side for instructions)

Sign your name:

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM STEP 2**

INMATE NAME: Barnes, Steven  
SCDC NUMBER: SK - 5290  
INSTITUTION: LEE CI  
HOUSING UNIT: SMU/SEGREGATION  
WORK ASSIGNMENT: None.

Office Use Only  
Grievance No. 9010-16  
Code: General: X  
Policy \_\_\_ Disc Hear. \_\_\_ Class. \_\_\_ PREA \_\_\_  
Date Received: \_\_\_ IGC Initials: \_\_\_  
Date Received: \_\_\_ IGA Initials: \_\_\_

**INMATES'S REASON FOR APPEAL (state specific dissatisfaction):**

VIII. Inmate Barnes objects to the improper ventilation in his cell, and the constant and persistent blowing into his cell of brown dust. Inmate Barnes also objects to the constant and pernicious smell of human waste that is manifest throughout the area in which Barnes is detained.

See *Johnson v. Avery*, 393 U.S. 483 (1969); *Beard v. Banks*, 548 U.S. 521 (2006).

Steven Barnes 4/5/16  
Grievant Signature Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

See reverse side for final  
Agency response.

Stephen H. P. 7/2/16  
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

SCDC 10-5A (Modified in format only)

See reverse side for instructions.

ALC Docket No. 15-ALJ-30-0318-U

**Instructions for completing Step 2 Grievance Form**

1. Complete form in its entirety writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for reasons.
3. Submit this completed form with your original Step 1 attached to Institutional Grievance Coordinator within five (5) days of your receipt of the Wardens' decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhaust the appeal process of the SCDC Inmate Grievance Procedure.

Barnes SK 5290 Lee 9010-16 JS (DT) (8 of 16)

The South Carolina Administrative Law Court (SCALC) through its ORDER dated November 5, 2015, REMANDED Case NO. 15-ALJ-30-0318-U (Grievance No. Lee- 9010-16) "to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration." SCDC provided an appropriate Inmate Grievance Form Step 2 to the Petitioner's attorney. Petitioner's attorney submitted sixteen (16) Step 2 Grievances dated April 5, 2016 on behalf of Petitioner. SCDC has a well-established grievance system recognized by the SCALC. Per SCDC Policy GA-01.12, paragraph 7, only one issue or one disciplinary conviction may be addressed on each grievance form. In the case at hand, Petitioner has appealed sixteen (16) issues in one grievance. However, to effectuate the Court's ORDER, each issue will be addressed. By answering each of the sixteen (16) issues, SCDC does not waive its right now nor in the future to object to the merit of Petitioner's filings.

Your concern has been reviewed. In your grievance you stated that you object to the improper ventilation in your cell. According to Mr. Dalton, Maintenance Supervisor, there were no work orders reflecting your request to have the ventilation system checked/cleaned. You have not provided any evidence to substantiate your allegations. Without verifiable evidence, further action is unwarranted.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Steven Louis Barnes

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. 15-ALJ-30-0318-IJ  
GRIEVANCE NO.: 9010-16 (VII)

Notice is hereby given that Steven Louis Barnes does hereby appeal the final decision of the South Carolina Department of Corrections dated July 21, 2016 and received on July 26, 2016, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

Grievance VII: This ground of excessive dust and/or smell at carcassment or at  
was depending on when this facility are housing chronic/severe mental  
health inmates without cleaning out their cells everyday are capable of  
repetition and is arbitrary and capricious and is in violation of statutory  
law such as the Clean Air Act and is in violation of state and Federal  
Constitutional rights.

STEVEN BARNES, #SK 5290

Appellant's Name

ATTY J. BLOOM, PO BOX 5885  
COLA SC 29250

Mailing Address

Signed

Dated

City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, \_\_\_\_\_ (your name), on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Print your name: \_\_\_\_\_

(See reverse side for instructions)

Sign your name: \_\_\_\_\_

ALC Docket No. 15-ALJ-30-0318-U

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM STEP 2**

INMATE NAME: Barnes, Steven  
 SCDC NUMBER: SK - 5290  
 INSTITUTION: LEE CI  
 HOUSING UNIT: SMU/SEGREGATION  
 WORK ASSIGNMENT: None.

Office Use Only  
 Grievance No. 9010-16  
 Code: General: X  
 Policy \_\_\_ Disc Hear. \_\_\_ Class. \_\_\_ PREA \_\_\_  
 Date Received: \_\_\_ IGC Initials: \_\_\_  
 Date Received: \_\_\_ IGA Initials: \_\_\_

**INMATES'S REASON FOR APPEAL (state specific dissatisfaction):**

IX. Inmate Barnes is denied basic cleaning supplies or materials so that he can adequately clean and maintain his own cell. Cleaning supplies have been provided to other inmates. The lack of cleaning supplies or the ability to clean my own cell leads to persistent and noxious fumes, including that of human waste from other inmates in the detention area, and leads to a toxic, unhealthy environment and conditions.

See *Johnson v. Avery*, 393 U.S. 483 (1969); *Beard v. Banks*, 548 U.S. 521 (2006).

Steven Barnes 4/5/16  
 Grievant Signature Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

See reverse side for final  
 Agency response.

Steph N. L. [Signature] 7/21/16  
 Signature Date

The decision rendered by the responsible official exhaust 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

SCDC 10-5A (Modified in format only)

See reverse side for instructions.

Instructions for completing Step 2 Grievance Form

1. Complete form in its entirety writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for reasons.
3. Submit this completed form with your original Step 1 attached to Institutional Grievance Coordinator within five (5) days of your receipt of the Wardens' decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhaust the appeal process of the SCDC Inmate Grievance Procedure.

Barnes SK 5290 Lee 9010-16 JS (DT) (9 of 16)

The South Carolina Administrative Law Court (SCALC) through its ORDER dated November 5, 2015, REMANDED Case NO. 15-ALJ-30-0318-IJ (Grievance No. Lee- 9010-16) "to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration." SCDC provided an appropriate Inmate Grievance Form Step 2 to the Petitioner's attorney. Petitioner's attorney submitted sixteen (16) Step 2 Grievances dated April 5, 2016 on behalf of Petitioner. SCDC has a well-established grievance system recognized by the SCALC. Per SCDC Policy GA-01.12, paragraph 7, only one issue or one disciplinary conviction may be addressed on each grievance form. In the case at hand, Petitioner has appealed sixteen (16) issues in one grievance. However, to effectuate the Court's ORDER, each issue will be addressed. By answering each of the sixteen (16) issues, SCDC does not waive its right now nor in the future to object to the merit of Petitioner's filings.

Your concern has been reviewed. In your grievance you stated that you do not have basic cleaning supplies to keep your cell clean. According to Ms. Johnson, IOC, cell cleanings are done every weekend on Saturday and Sunday. The security staff affords each inmate adequate cleaning supplies to clean their cells. You have not provided any evidence to substantiate your allegations that you are being denied the opportunity to clean your cell. Without verifiable evidence, further action is unwarranted.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

ALC Docket No. 15-ALI-30-0318-II

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURTSteven Louis Barnes

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

## NOTICE OF APPEAL

DOCKET NO. 15-ALI-30-0318-II  
GRIEVANCE NO.: 9010-16(TX)

Notice is hereby given that Steven Louis Barnes does hereby appeal the final decision of the South Carolina Department of Corrections dated July 21, 2016 and received on July 26, 2016, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

Grievance IX: Regarding room cleaning, the SCDL is in violation of  
constitutional and statutory provision and is arbitrary and capricious and is  
clearly erroneous in view of substantial evidence on the whole record  
because room cleaning is supposed to be done everyday instead of on  
every weekend.

STEVEN BARNES #SK 5290

Appellant's Name

ATTY. J. BLOOM, PO BOX 5885  
COLA ST 29280

Mailing Address

Signed

Dated

8/22/16

City, State, Zip Code

## CERTIFICATE OF SERVICE

I hereby certify that I, \_\_\_\_\_ (your name), on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served:

Address:

SEE ATTACHED

City, State, Zip Code:

Print your name:  
(See reverse side for instructions)

Sign your name:

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM STEP 2**

INMATE NAME: Barnes, Steven  
SCDC NUMBER: SK - 5290  
INSTITUTION: LEE CI  
HOUSING UNIT: SMU/SEGREGATION  
WORK ASSIGNMENT: None.

Office Use Only  
Grievance No. 9010-16  
Code: General: X  
Policy \_\_\_ Disc Hear. \_\_\_ Class. \_\_\_ PREA \_\_\_  
Date Received: \_\_\_ IOC Initials: \_\_\_  
Date Received: \_\_\_ IGA Initials: \_\_\_

**INMATES'S REASON FOR APPEAL (state specific dissatisfaction):**

X. Inmate Barnes objects to the unconstitutional limitation of only one (1) box of legal materials in his cell at a time. Barnes' case involves voluminous materials. Barnes' request would involve no more than 3 legal boxes of materials in his cell so that the request is not burdensome. This situation impairs and interferes with Barnes' right to assist his attorneys in his own defense.

See *Johnson v. Avery*, 393 U.S. 483 (1969); *Beard v. Banks*, 548 U.S. 521 (2006); U.S. Const. Amend. 5 and 6.

Steve Barnes 4/5/16  
Grievant Signature Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

See reverse side for final  
Agency response.

Steph N. I. RD 7/21/16  
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

IOC Signature

Date

SCDC 10-5A (Modified in format only)

See reverse side for instructions.

## ALC Docket No. 15-ALJ-30-0318-IJ

Barnes SK 5290 Lee 9010-16 JS (DT) (10 of 16)

The South Carolina Administrative Law Court (SCALC) through its ORDER dated November 3, 2015, REINSTATED Case NO. 15-ALJ-30-0318-IJ (Grievance No. Lee-9010-16) "to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration." SCDC provided an appropriate inmate Grievance Form Step 2 to the Petitioner's attorney. Petitioner's attorney submitted sixteen (16) Step 2 Grievances dated April 3, 2016 on behalf of Petitioner. SCDC has a well-established grievance system recognized by the SCALC. Per SCDC Policy GA-01.12, paragraph 7, only one issue or one disciplinary conviction may be addressed on each grievance form. In the case at hand, Petitioner has appealed sixteen (16) issues in one grievance. However, to facilitate the Court's ORDER, each issue will be addressed. By answering each of the sixteen (16) issues, SCDC does not waive its right now nor in the future to object to the merit of Petitioner's filings.

I have reviewed your concern. In your grievance you stated that you object to the institutional limitation of only one (1) box of legal materials in your cell at a time. SCDC Policy OP-22.38 Restrictive Housing Unit at paragraph 24. Legal Materials provides,

**LEGAL MATERIALS:** Law Library Privileges/Legal Materials: Inmates will have access to legal materials and to available legal reference material. Refer to SCDC Policy GA-01.03, "Inmate Access to the Courts," for additional information. Each RHU inmate will be allowed to retain the amount of legal material that would fit into an 15" x 12" x 10" box. Any excess legal materials beyond an 15" x 12" x 10" box will be put into another box(es) (any size box may be used). NOTE: Legal material is only the materials dealing with an inmate's court cases, not personal mail, papers, pictures, etc. If an inmate mis-uses this box in any way, it will be removed, as outlined in OP-22.36, "Damage, Destruction & Abuse of Property." The inmate's name, inmate identification number, and the number of the box (es) (e.g., 1,2,3, etc.,) will be written on the box that contains the excess legal materials and the box(es) will be sealed in the presence of the inmate. The box(es) containing the excess legal materials will be stored in the property room. No legal materials will be disposed of. When the inmate needs to use the legal materials stored in the excess legal materials box, he/she will complete on SCDC Form 19-11, "Request to Staff Member." The inmate must identify the number of the box he requires and the amount of time that he will need the box. In general, the inmate may be allowed to keep the box for five calendar days, however the box may be removed from the cell sooner if security or safety needs dictate. The box will be provided to the inmate in a timely manner upon receipt of his/her SCDC Form 19-11. The inmate is allowed to remove material from the box stored in his/her cell and exchange it with materials stored in the excess legal materials box. When the inmate is finished with the excess legal materials box, it will be re-sealed in the inmate's presence and returned to the property room.

There is no evidence of you requesting an additional box and/or you complaining about the legal box interfering with assisting your attorney.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURTSteven Louis Barnes

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

## NOTICE OF APPEAL

DOCKET NO. 15-ALJ-30-0318-IJ  
GRIEVANCE NO.: 9010-16 (X)

Notice is hereby given that Steven Louis Barnes does hereby appeal the final decision of the South Carolina Department of Corrections dated July 21, 2016 and received on July 26, 2016, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

Grievance 2: The state is Res judicata / collateral estoppel from arguing this point regarding their interpretation of the one legal box rule, set in the United States District Court of South Carolina, Barnes v. SCDCC, civil action No. 4:13-cv-0187-MRS-TEB; and as a result of this, their decision is arbitrary and capricious and is in violation of State and Federal Constitutional principles.

STEVEN BARNES, #SK5840

Appellant's Name

ATTN: J.B. Loom, PO BOX 5885  
COLA, SC 29250

Mailing Address

Signed

Dated

8/22/16

City, State, Zip Code

## CERTIFICATE OF SERVICE

I hereby certify that I, \_\_\_\_\_ (your name), on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: \_\_\_\_\_

Address: \_\_\_\_\_

SEE ATTACHED

City, State, Zip Code: \_\_\_\_\_

Enter your name: \_\_\_\_\_

(See reverse side for instructions)

Sign your name: \_\_\_\_\_

ALC Docket No. 15-ALJ-30-0318-IJ

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM STEP 2**

INMATE NAME: Barnes, Steven  
SCDC NUMBER: SK - 5290  
INSTITUTION: LEB CI  
HOUSING UNIT: 8MU/SEGREGATION  
WORK ASSIGNMENT: None.

Office Use Only  
Grievance No. 9010-16  
Code: General: X  
Policy \_\_\_ Disc Hear. \_\_\_ Class. \_\_\_ PREA \_\_\_  
Date Received: \_\_\_ IGC Initials: \_\_\_  
Date Received: \_\_\_ IGA Initials: \_\_\_

**INMATES'S REASON FOR APPEAL (state specific dissatisfaction):**

XI. Inmate Barnes objects to the Institution's failure to allow him to make phone calls to his attorneys, during reasonable hours, 9am-5pm, M-F. Presently, Barnes gets NO phone calls to his attorneys. Most often, Barnes is offered the opportunity to make a telephone call when it is after 7pm so that his attorneys are no longer at their office, making the offer of a phone call meaningless. In almost one year at this Institution, Barnes has been allowed about 3 phone calls to his attorneys, despite numerous requests by Barnes to make such phone calls once a week, or even every two weeks. Barnes also requests that such phone calls be unmonitored by SCDC so that the phone calls are confidential.  
See *Johnson v. Avery*, 393 U.S. 483 (1969); *Beard v. Banks*, 548 U.S. 521 (2006); U.S. Const. Amend. 6.

Steven Barnes 4/5/16  
Grievant Signature Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

See reverse side for final  
Agency response.

Stephen L. [Signature] 7/2/16  
Signature Date

The decision rendered by the responsible official exhaust 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

SCDC 16-5A (Modified in format only)

See reverse side for instructions.

**Instructions for completing Step 2 Grievance Form**

1. Complete form in its entirety writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for reasons.
3. Submit this completed form with your original Step 1 attached to Institutional Grievance Coordinator within five (5) days of your receipt of the Wardens' decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhaust the appeal process of the SCDC Inmate Grievance Procedure.

Barnes SK 5290-16 JS (DT) (11 of 16)

The South Carolina Administrative Law Court (SCALC) through its ORDER dated November 3, 2015, REMANDED Case NO. 15-ALJ-30-0318-II (Grievance No. LSC- 1010-16) "to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration." SCDC provided an appropriate inmate Grievance Form Step 2 to the Petitioner's attorney. Petitioner's attorney submitted sixteen (16) Step 2 Grievances dated April 3, 2016 on behalf of Petitioner. SCDC has a well-established grievance system recognized by the SCALC. For SCDC Policy QA-01.12, paragraph 7, only one issue or one disciplinary conviction may be addressed on each grievance form. In this case at hand, Petitioner has appealed sixteen (16) issues in one grievance. However, to effectuate his Court's ORDER, each issue will be addressed. By answering each of the sixteen (16) issues, SCDC does not waive its right now nor in the future to object to the merit of Petitioner's filings.

I have reviewed your concern. In your grievance you stated that you object to the SCDC's failure to allow you make phone calls to your attorney during 9:00 am - 3:00 pm, Monday through Friday. SCDC Policy, OP-22.38, Restorative Hearing Unit, Section 38: Telephone Calls, Subsection 28.3 Legal Telephone Calls states:

All inmates will be allowed to place verified telephone calls to their legal counsel. For purposes of these procedures, "legal counsel" may consist of the inmate's attorney of record and/or paralegal(s). Inmate requests for attorney calls require 24 hours advance notice to allow for staff verification. Telephone calls will be scheduled and approved by the Captain, Lieutenant, or KNU Supervisor. Inmates must be able to communicate, and KNU staff will be responsible for verifying that communication with the attorney by correspondence or visiting is not adequate, i.e., court deadline or other legal deadline. Attorney calls will be dialed by an Officer. Once verified, the call will not be monitored. NOTE: All telephone calls will be collect. Any deviation from this procedure will be documented in the inmate's record. Inmates may not be denied use of a telephone to make a star 22 call, however, such calls must be verified by staff.

If you submit a proper Request to Staff form, you will be permitted to contact your attorney, subject to limitations of staffing and security concerns.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

ALC Docket No. 15-ALJ-30-0318-IJ

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURTSteven Louis Barnes

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

## NOTICE OF APPEAL

DOCKET NO. 15-ALI-30-0318-IJ  
GRIEVANCE NO.: 9010-16 (XI)

Notice is hereby given that Steven Louis Barnes does hereby appeal the final decision of the South Carolina Department of Corrections dated July 21, 2016 and received on July 21, 2016, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

Grievance XI: This issue of phone access for personal and/or legal calls is  
capable of repetition, is in violation of state and Federal constitutional  
principles as well as is arbitrary and capricious because it could be  
used for retaliatory purposes.

STEVEN BARNES, #SK590 date  
Appellant's Name ATTY. J. BLOOM, PO BOX 5885 Signed  
Mailing Address COLA SC 29260 Dated 8/22/16

City, State, Zip Code

## CERTIFICATE OF SERVICE

I hereby certify that I, \_\_\_\_\_ (your name), on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ in \_\_\_\_\_ (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served:

Address:

SEE ATTACHED

City, State, Zip Code: \_\_\_\_\_

Print your name: \_\_\_\_\_  
(See reverse side for instructions)

Sign your name: \_\_\_\_\_

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM STEP 2**

INMATE NAME: Barnes, Steven  
SCDC NUMBER: SK - 5290  
INSTITUTION: LEE CI  
HOUSING UNIT: SMU/SEGREGATION  
WORK ASSIGNMENT: None.

Office Use Only.  
Grievance No. 9010-16  
Code: General: X  
Policy \_\_\_ Disc Hear. \_\_\_ Class. \_\_\_ PREA \_\_\_  
Date Received: \_\_\_ IGC Initials: \_\_\_  
Date Received: \_\_\_ IGA Initials: \_\_\_

**INMATES'S REASON FOR APPEAL (state specific dissatisfaction):**

XII. Inmate Barnes objects to the Institution's failure to allow him, and in interfering with, the inmate's ability and legal right to send and receive legal mail. The mail-room regularly interrupts Barnes' legal mail, sometimes returning it to the attorney. This has happened for example where Barnes' attorney attempted to have mailed to Barnes a legal publication, and as mailed from the publisher. On other occasions, Barnes' outgoing mail to his attorney was denied because with the reason stated "an improper stamp," even though Barnes had used a "forever stamp envelope" that he had previously purchased from the SCDC canteen and had in his storage.

See *Johnson v. Avery*, 393 U.S. 483 (1969); *Beard v. Banks*, 548 U.S. 521 (2006); U.S. Const. Amend. 6.

Steven Barnes 4/5/16  
Grievant Signature Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

See reverse side for final  
Agency response.

Stephen H. L. L. L. 7/21/16  
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

SCDC 10-5A (Modified in format only)

See reverse side for instructions.

ALC Docket No. 15-ALJ-30-0318-U

**Instructions for completing Step 2 Grievance Form**

1. Complete form in its entirety writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for reasons.
3. Submit this completed form with your original Step 1 attached to Institutional Grievance Coordinator within five (5) days of your receipt of the Wardens' decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhaust the appeal process of the SCDC Inmate Grievance Procedure.

Barnes SK 5290 Lee 9010-16 JS (DT) (12 of 16)

The South Carolina Administrative Law Court (SCALC) through its ORDER dated November 5, 2015, REMANDED Case NO. 15-ALJ-30-0318-U (Grievance No. Lee- 9010-16) "to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration." SCDC provided an appropriate Inmate Grievance Form Step 2 to the Petitioner's attorney. Petitioner's attorney submitted sixteen (16) Step 2 Grievances dated April 5, 2016 on behalf of Petitioner. SCDC has a well-established grievance system recognized by the SCALC. Per SCDC Policy GA-01.12, paragraph 7, only one issue or one disciplinary conviction may be addressed on each grievance form. In the case at hand, Petitioner has appealed sixteen (16) issues in one grievance. However, to effectuate the Court's ORDER, each issue will be addressed. By answering each of the sixteen (16) issues, SCDC does not waive its right now nor in the future to object to the merit of Petitioner's filings.

Your concern has been reviewed. In your grievance you stated that you object to SCDC failure to allow you to send and receive legal mail. There has been a review of SCDC Form 10-12, Legal/Privileged/Certified Mail Delivery Log (Log). Based upon that review of the Log, you have received legal/privileged/certified mail. You have not provided any evidence of staff negligence. Without verifiable evidence, further action is unwarranted.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

ALC Docket No. 15-ALJ-30-0318-II

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Steven Louis Barnes )  
 )  
Appellant, )  
 )  
vs. )  
 )  
South Carolina Department of Corrections, )  
 )  
Respondent. )

## NOTICE OF APPEAL

DOCKET NO. 15-ALJ-30-0318-II  
GRIEVANCE NO.: 9010-16 (XII)

Notice is hereby given that Steven Louis Barnes does hereby appeal the final decision of the South Carolina Department of Corrections dated July 21, 2016 and received on July 26, 2016, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

Grievance XII: Regarding interference with Attorney-Client relationship, the SDC is in violation of state and Federal statutory and Constitutional provision as well as their decision are arbitrary and capricious because SDC's current policy of publication of legal books from publisher frustrated or burden his 1st, 4, 6, 14 Amendment Right to Counsel.

STEVEN BARNES [Signature]  
Appellant's Name Signed  
ATTY. J. BLOOM, PO BOX 5885  
COLUMBIA SC 29250 Dated 8/22/16  
Mailing Address

City, State, Zip Code

## CERTIFICATE OF SERVICE

I hereby certify that I, \_\_\_\_\_ (your name), on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: SEE ATTACHED  
Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Print your name: \_\_\_\_\_  
(See reverse side for instructions)

Sign your name: \_\_\_\_\_

ALC Docket No. 15-ALI-30-0318-II

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM STEP 2**

INMATE NAME: Barnes, Steven  
SCDC NUMBER: SK - 5290  
INSTITUTION: LEE CI  
HOUSING UNIT: SMU/SEGREGATION  
WORK ASSIGNMENT: None.

Office Use Only  
Grievance No. 9010-16  
Code: General: X  
Policy \_\_\_ Disc Hear. \_\_\_ Class. \_\_\_ PREA \_\_\_  
Date Received: \_\_\_ IGC Initials: \_\_\_  
Date Received: \_\_\_ IGA Initials: \_\_\_

**INMATES'S REASON FOR APPEAL (state specific dissatisfaction):**

XIII. Inmate Barnes objects to the Institution's failure to allow him to make copies of legal petitions, motions, and filings in his case. Barnes has a pending appeal in the Courts of the State of Georgia and represents himself in that matter. SCDC's interference with Barnes' rights in this regard impair his Constitutional rights and ability to represent himself. See *Johnson v. Avery*, 393 U.S. 483 (1969); *Beard v. Banks*, 548 U.S. 521 (2006); U.S. Const. Amend. 6.

Steven Barnes 4/5/16  
Grievant Signature Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

See reverse side for final  
Agency response.

Stephen L. L... 4/21/16  
Signature Date

The decision rendered by the responsible official exhaust 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

SCDC 10-SA (Modified in format only)

See reverse side for instructions.

**Instructions for completing Step 2 Grievance Form**

1. Complete form in its entirety writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for reasons.
3. Submit this completed form with your original Step 1 attached to Institutional Grievance Coordinator within five (5) days of your receipt of the Wardens' decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhaust the appeal process of the SCDC Inmate Grievance Procedure.

Barnes SX 3290 Lev 9010-16 JS (DT) (13 of 16)

The South Carolina Administrative Law Court (SCALC) through its ORDER dated November 5, 2015, REMANDED Case NO. 15-ALJ-30-0318-JJ (Grievance No. Lev- 9010-16) "to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration." SCDC provided an appropriate inmate Grievance Form Step 2 to the Petitioner's attorney. Petitioner's attorney submitted sixteen (16) Step 2 Grievances dated April 5, 2016 on behalf of Petitioner. SCDC has a well-established grievance system recognized by the SCALC. Per SCDC Policy GA-01.12, paragraph 7, only one issue or one disciplinary conviction may be addressed on each grievance form. In the case at hand, Petitioner has appealed sixteen (16) issues in one grievance. However, to effectuate the Court's ORDER, each issue will be addressed. By answering each of the sixteen (16) issues, SCDC does not waive its right now nor in the future to object to the merit of Petitioner's filings.

I have reviewed your concern. In your grievance you stated that have not been allowed to make copies of legal petitions, motions, and filings in your case. There is no evidence that you have been denied access to making appropriate copies of permissible documents. SCDC Policy GA-01.03, Inmate Access to the Courts, Section 12, Photocopies states,

12.1 Inmates may request photocopies of their legal materials and documents to support a pleading. All photocopying must relate to challenging or appealing the inmate's sentence or to challenging the conditions of his/her confinement. Legal materials and documents that may be copied to support a pleading include:  
Disciplinary reports/forms; Inmate and/or State Classification Committee reports/forms; and Letters, forms, reports, and other documents received from SCDC or other outside officials, or that have answers or other information from personnel within SCDC that have to do with the subject of the pleading, including forms, letters, or documents that have been notarized.  
12.2 Materials and documents that will NOT be copied include:  
Inmates may not purchase photocopies of any reference materials contained in the law library regardless of his/her ability to pay. Drawings, pictures, or photographs;  
Documents that have been solely original, generated, written, typed, or created by an inmate (the inmate may copy this information by hand.) NOTE: The fact that a document solely generated by an inmate has been notarized does not mandate that photocopies be provided. Transcripts of school, college, or vocational training; Magazine or newspaper clippings (unless they specifically relate to the pleading); Personal correspondence that is not related to the pleading; Copies of SCDC policies; and Copies of case law.

You have not shown that SCDC Staff have performed their job duties inappropriately.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

ALC Docket No. 15-ALJ-30-0318-IJ

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURTSteven Louis Barnes

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

## NOTICE OF APPEAL

DOCKET NO. 15-ALJ-30-0318-IJ  
GRIEVANCE NO.: 9010-16 (XIII)

Notice is hereby given that Steven Louis Barnes does hereby appeal the final decision of the South Carolina Department of Corrections dated July 21, 2016 and received on July 25, 2016, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

Grievance XIII: Regarding legal photo copying, the SCDC is in error of law because, in Hendricks v. S.C. Dept. of Corrections, 586 S.E.2d 141 (S.C. 1998), the court had warned SCDC that "its policy not allowing inmates to make photocopying when he or she is willing and able to pay is not reasonable". This policy burdens my 1st, 4th, 8th, 14th Constitutional rights and is arbitrary and not reasonable related to security, discipline and order and its excessive in relation to their security concerns.

STEVEN BARNES, #SK5290 J.R.  
Appellant's Name Signed  
ATTY. J. BLUM, PO BOX 5885  
COA. SC 29250 Dated 8/22/16  
Mailing Address

City, State, Zip Code

## CERTIFICATE OF SERVICE

I hereby certify that I, \_\_\_\_\_ (your name), on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served:

Address:

SEE ATTACHED

City, State, Zip Code

Print your name: \_\_\_\_\_  
(See reverse side for instructions)

Sign your name: \_\_\_\_\_

ALC Docket No. 15-ALJ-30-0318-IJ

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM STEP 2**

INMATE NAME: Barnes, Steven  
SCDC NUMBER: SK - 5290  
INSTITUTION: LEE CI  
HOUSING UNIT: SMU/SEGREGATION  
WORK ASSIGNMENT: None.

Office Use Only  
Grievance No. 9010-16  
Code: General: X  
Policy \_\_\_ Disc Hear. \_\_\_ Class. \_\_\_ PREA \_\_\_  
Date Received: \_\_\_ IGC Initials: \_\_\_  
Date Received: \_\_\_ IGA Initials: \_\_\_

**INMATES'S REASON FOR APPEAL (state specific dissatisfaction):**

XIV. Inmate Barnes objects to the Institution's failure to allow him access to a law library. Barnes has a pending appeal in the Courts of the State of Georgia and represents himself in that matter. SCDC's interference with Barnes' rights in this regard impair his Constitutional rights and ability to represent himself.

See *Johnson v. Avery*, 393 U.S. 483 (1969); *Beard v. Banks*, 548 U.S. 521 (2006); U.S. Const. Amend. 6.

Steven Barnes 4/5/16  
Grievant Signature Date

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

See reverse side for final  
Agency response.

Stephen H. [Signature] 7/21/16  
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

SCDC 10-SA (Modified in format only)

See reverse side for instructions.

Instructions for completing Step 2 Grievance Form

1. Complete form in its entirety writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for reasons.
3. Submit this completed form with your original Step 1 attached to Institutional Grievance Coordinator within five (5) days of your receipt of the Wardens' decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhaust the appeal process of the SCDC Inmate Grievance Procedure.

Barnes SK 5290 Lee 9010-16 JS (DT) (14 of 16)

The South Carolina Administrative Law Court (SCALC) through its ORDER dated November 5, 2015, REINSTATED Case NO. 15-ALJ-30-0318-IJ (Grievance No. Lee-9010-16) "to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration." SCDC provided an appropriate Inmate Grievance Form Step 2 to the Petitioner's attorney. Petitioner's attorney submitted sixteen (16) Step 2 Grievances dated April 5, 2016 on behalf of Petitioner. SCDC has a well-established grievance system recognized by the SCALC. Per SCDC Policy GA-01.12, paragraph 7, only one issue or one disciplinary conviction may be addressed on each grievance form. In the case at hand, Petitioner has appealed sixteen (16) issues in one grievance. However, to effectuate the Court's ORDER, each issue will be addressed. By answering each of the sixteen (16) issues, SCDC does not waive its right now nor in the future to object to the merit of Petitioner's filings.

Your concern has been reviewed. In your grievance you stated that you object to SCDC's failure to allow you to have access to a law library. SCDC Policy Access to the Courts, GA-1.03, GENERAL PROVISIONS and paragraph 9 states:

Inmates housed within the South Carolina Department of Corrections (SCDC) will have access to law materials through established law libraries, to include the automated law library computer located within SCDC institutions. Inmates will not be subjected to reprisals, harassment, mistreatment, nor penalties because of their decision to seek judicial relief; their request to utilize any law library; or their request for any legal materials. In compliance with *Levy v. Casey*, all inmates will be provided access to law tools to: 1) challenge or appeal their sentence, directly and collaterally; and 2) challenge the conditions of their confinement.

Furthermore, paragraph 9. Provides, Substantiated Security Risk (SSR), Restrictive Housing Unit (RHU) Inmate Access To The Law Library:

To ensure equal access to the courts, inmates in the Restrictive Housing Unit (Pre-Reading Detention, Security Custody, Safekeeper) and the Substantiated Security Risk Unit must request to access the automated law library computer or non-restricted SCDC Policies by RTSM, to the SSR/RHU Supervisor/Designee. Wardens may allow the RHU or SSR to maintain current copies of commonly requested non-restricted SCDC policies for use by inmates.

A review of the Law Library logs reflect that you have used the same more than sixteen (16) separate times. You also have access to the Law Library by requesting books.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

ALC Docket No. 15-ALI-30-0318-IJ

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURTSteven Louis Barnes

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

## NOTICE OF APPEAL

DOCKET NO. 15-ALI-30-0318-IJ  
GRIEVANCE NO.: 9010-16 (XIV)

Notice is hereby given that Steven Louis Barnes does hereby appeal the final decision of the South Carolina Department of Corrections dated July 21, 2016 and received on July 26, 2016, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 14-23-380(A)(6)):

Grievance XIX: Regarding deprivation of legal material dealing with Georgia case law from Lee County law library is capable of repletion and is in violation of Constitutional principles, is made upon unlawful procedures, is affected by other error of law, is clear erroneous in view of substantial evidence, and is arbitrary and capricious.

STEVEN BARNES, #SK590  
Appellant's Name  
ATTY. J. BLOOM, PO BOX 5885  
Columbia SC 29250  
Mailing Address

Signed

Dated

8/22/16

City, State, Zip Code

## CERTIFICATE OF SERVICE

I hereby certify that I, \_\_\_\_\_ (your name), on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served:

Address:

SEE ATTACHED

City, State, Zip Code

Print your name:

(See reverse side for instructions)

Sign your name:

ALC Docket No. 15-ALJ-30-0318-IJ

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM STEP 2**

INMATE NAME: Barnes, Steven  
SCDC NUMBER: SK - 5290  
INSTITUTION: LEE CI  
HOUSING UNIT: SMU/SEGREGATION  
WORK ASSIGNMENT: None.

Office Use Only  
Grievance No. 9010-16  
Code: General: X  
Policy ☐ Disc Hear. ☐ Class. ☐ PREA ☐  
Date Received: ☐ IGC Initials: ☐  
Date Received: ☐ IGA Initials: ☐

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

XV. Inmate Barnes objects to the Institution's excessive delay in having the inmate's legal mail sent out to his attorney. On average, it takes more than ten (10) days for Barnes' outgoing legal mail to be processed and approved at the Institution's mail room before going out to the U.S. Post Office for regular delivery to Barnes' attorney. This impairs Barnes' access to his attorney.

See *Johnson v. Avery*, 393 U.S. 483 (1969); *Beard v. Banks*, 548 U.S. 521 (2006); U.S. Const. Amend. 6.

Steven Barnes 4/5/16  
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

See reverse side for final  
Agency response.

Stephen L. [Signature] 7/2/16  
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

SCDC 10-SA (Modified in format only)

See reverse side for instructions.

Instructions for completing Step 2 Grievance Form

1. Complete form in its entirety writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for reasons.
3. Submit this completed form with your original Step 1 attached to Institutional Grievance Coordinator within five (5) days of your receipt of the Wardens' decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhaust the appeal process of the SCDC Inmate Grievance Procedure.

Barnes SK 5290 Lee 9010-16 JS (DT) (15 of 16)

The South Carolina Administrative Law Court (SCALC) through its ORDER dated November 5, 2015, REMANDED Case NO. 15-ALJ-30-0318-IJ (Grievance No. Lee- 9010-16) "to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration." SCDC provided an appropriate Inmate Grievance Form Step 2 to the Petitioner's attorney. Petitioner's attorney submitted sixteen (16) Step 2 Grievances dated April 5, 2016 on behalf of Petitioner. SCDC has a well-established grievance system recognized by the SCALC. Per SCDC Policy GA-01.12, paragraph 7, only one issue or one disciplinary conviction may be addressed on each grievance form. In the case at hand, Petitioner has appealed sixteen (16) issues in one grievance. However, to effectuate the Court's ORDER, each issue will be addressed. By answering each of the sixteen (16) issues, SCDC does not waive its right now nor in the future to object to the merit of Petitioner's filings.

our concern has been reviewed. In your grievance you stated that you object to the excessive delay in having inmate's legal mail sent out to your attorney. According to Ms. Whitney, Mailroom Director, mail is picked up at least once every other day. Usually, the mail is picked up every day from the roll around cart in F7 Unit. If the mail was in the box, it would go out on the same day or the day after it is picked up. It does not take 10 days to process the mail at the institution as you have alleged. You have not provided any evidence of staff negligence. Without verifiable evidence, further action is unwarranted.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

ALC Docket No. 15-ALJ-30-0318-IJ

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURTSteven Louis Barnes

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

## NOTICE OF APPEAL

DOCKET NO. 15-ALJ-30-0318-IJ  
GRIEVANCE NO.: 9010-16 (82)

Notice is hereby given that Steven Louis Barnes does hereby appeal the final decision of the South Carolina Department of Corrections dated July 21, 2016 and received on July 21, 2016, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

Grievance IV: The excessive delay in this facility mailing my legal mail to my attorney at record violates my 1st, 4th, 14th constitutional and statutory right such as the Federal law of non interference with mail provisions, and SCDCC policy is made upon unlawful procedures and its in excess of the statutory authority of the agency and its arbitrary and capricious as it's applied to me.

STEVEN BARNES

Appellant's Name

ATTY. J. BLOOM, PO BOX 5865  
COLA ST 29250

Mailing Address

Signed

Dated

8/22/16

City, State, Zip Code

## CERTIFICATE OF SERVICE

I hereby certify that I, \_\_\_\_\_ (your name), on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served:

Address:

SEE ATTACHED

City, State, Zip Code:

Print your name:

(See reverse side for instructions)

Sign your name:

ALC Docket No. 15-ALJ-30-0318-IJ

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM STEP 2**

INMATE NAME: Barnes, Steven  
SCDC NUMBER: SK - 5290  
INSTITUTION: LEE CI  
HOUSING UNIT: SM/SEGREGATION  
WORK ASSIGNMENT: None.

Office Use Only  
Grievance No. 9010-16  
Code: General: X  
Policy \_\_\_ Disc Hear. \_\_\_ Class. \_\_\_ PREA \_\_\_  
Date Received: \_\_\_ IGC Initials: \_\_\_  
Date Received: \_\_\_ IGA Initials: \_\_\_

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

XVI. Inmate Barnes objects to the Institution's rejection and denial of Barnes' legitimate request for legal supplies, including paper, pens, and envelopes. Further, the Institution denies Barnes canteen access so that Barnes is unable to purchase these items for himself. Barnes is representing himself on legal matters in Georgia, so that this denial impairs his ability to represent himself.

See *Johnson v. Avery*, 393 U.S. 483 (1969); *Beard v. Banks*, 548 U.S. 521 (2006); U.S. Const. Amend. 6.

Steven L. Barnes 4/5/16  
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

See reverse side for final  
Agency response.

Steph L. [Signature] 7/2/16  
Signature Date

The decision rendered by the responsible official exhaust 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

SCDC 10-5A (Modified in format only)

See reverse side for instructions.

Instructions for completing Step 2 Grievance Form

1. Complete form in its entirety writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for reasons.
3. Submit this completed form with your original Step 1 attached to Institutional Grievance Coordinator within five (5) days of your receipt of the Wardens' decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhaust the appeal process of the SCDC Inmate Grievance Procedure.

Barnes SK 5290-16 JS (DT) (16 of 16)

The South Carolina Administrative Law Court (SCALC) through its ORDER dated November 5, 2015, REMANDED Case NO. 15-ALJ-30-0318-1J (Grievance No. Lee- 9010-16) "to the Department to allow Petitioner the opportunity to file a Step 2 Grievance for the Department's consideration." SCDC provided an appropriate Inmate Grievance Form Step 2 to the Petitioner's attorney. Petitioner's attorney submitted sixteen (16) Step 2 Grievances dated April 5, 2016 on behalf of Petitioner. SCDC has a well-established grievance system recognized by the SCALC. Per SCDC Policy GA-01.12, paragraph 7, only one issue or one disciplinary conviction may be addressed on each grievance form. In the case at hand, Petitioner has appealed sixteen (16) issues in one grievance. However, to effectuate the Court's ORDER, each issue will be addressed. By answering each of the sixteen (16) issues, SCDC does not waive its right now nor in the future to object to the merit of Petitioner's filings.

Your concern has been reviewed. In your grievance you stated that you object to being denied requests for legal supplies. I have reviewed SCDC Form 10-14, Agreement to Debit E.H. Cooper Account dated September 29, 2015. It reveals that on September 30, 2016, you were issued 5 envelopes and 20 sheets of paper. Furthermore, SCDC Policy PS-10.08, paragraph 4.2.1 and 4.2.2 state:

4.2.1 All indigent inmates, regardless of custody status, will be provided with one (1) pencil (which will be exchanged for a new pencil when it wears out), eight (8) sheets of paper, and two (2) date-stamped envelopes on a monthly basis to be used for sending mail not weighing more than one (1) ounce per envelope. Indigent inmates will be allowed to exchange a current date-stamped envelope for postage to be placed on another envelope (i.e., a greeting card provided by the Chaplain). The inmate's account will not be debited for these supplies.

4.2.2 The materials will be a part of a hygiene pack that will be issued to authorized indigent inmates on a monthly basis. An indigent inmate's account will not be debited for the postage affixed to the date-stamped envelope.

You have failed to prove that SCDC Staff have performed their job duties inappropriately.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

ALC Docket No. 15-ALJ-30-0318-U

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURTSteven Louis Barnes

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

## NOTICE OF APPEAL

DOCKET NO. 15-ALJ-30-0318-IT  
GRIEVANCE NO.: 9010-16 (XVI)

Notice is hereby given that Steven Louis Barnes does hereby appeal the final decision of the South Carolina Department of Corrections dated Jul. 21, 2015 and received on July 21, 2016, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

Grievance XVI: SCDCC legal supplies policy for indigent inmates violates  
Constitutional and is arbitrary and capricious and is clearly erroneous in  
view of the reliable and substantial evidence on the whole record because  
it can only order 20 sheets of paper, 4 envelopes, 2 letter manila folders,  
strict security test must be applied because that policy can cause  
the future damage to my access to the courts.

STEVEN BARNES, #SK5290  
Appellant's Name  
ATTY. J.B. WOOD, 70 BOX 5885  
C/OA SC 29250  
Meeting Address

Signed

Dated

[Signature]  
8/22/16

City, State, Zip Code

## CERTIFICATE OF SERVICE

I hereby certify that I, \_\_\_\_\_ (your name), on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Print your name: \_\_\_\_\_

(See reverse side for instructions)

Sign your name: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
STEVEN L. BARNES )  
Appellant )  
VS. )  
S.C. Dept. of Corrections )  
Respondent )

IN THE ADMINISTRATIVE LAW COURT

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

LAW OFFICES

APPELLANT'S INITIAL BRIEF

JAN 17 2017

MALONE, THOMPSON  
SUMMERS & OTT, LLC

Appellant, Steven L. Barnes, SK #5290 ("Barnes" or "Petitioner"), by and through undersigned counsel, submits this Appellate Brief in support of his Step-2 Grievance petitions and other related matters.

Brief Procedural Background and History.<sup>1</sup>

Beginning February 7, 2014 through April 28, 2015,<sup>2</sup> Appellant was housed as a pre-trial detainee at the following county jails: Aiken; Laurens; and Greenwood. On or about April 20, 2015, Edgefield County Sheriff Adell Doby petitioned the General Counsel's Office of the S.C. Department of Corrections (hereinafter, "SCDC" or "Department") to classify Appellant as a "Safekeeper" and transfer him to the custody of SCDC. On or about April 28, 2015, Appellant was approved by SCDC as a Safekeeper. The Governor then issued an Executive Order on April 28, 2015, also approving Appellant's designation as a Safekeeper. On the same day, April 28, Appellant was

<sup>1</sup> All of the documents referred to in these introductory Paragraphs are already a part of the record in this case, and so all are not being re-submitted for inclusion in the record. They are incorporated herein by reference.

<sup>2</sup> Barnes had previously been incarcerated within SCDC pursuant to a murder conviction and death sentence; however, his case was reversed in January 2014, *State v. Barnes*, 407 S.C. 27, 753 S.E.2d 545 (2014), and he was remanded on February 7, 2014, by SCDC to the custody of the Edgefield County jail for re-trial. The Edgefield Sheriff then asked other county jails to house Barnes.

**FILED**

JAN 17 2017

SC ADMIN LAW COURT

removed from a county jail and transferred to the custody of SCDC as a Safekeeper (assigned SK #5290).

On April 30, 2015, Appellant filed a written objection, through his attorneys, to his Safekeeper status within SCDC on constitutional and statutory grounds. ROA 46-47. On June 10, 2015, Appellant's attorneys submitted a second letter regarding the Department's denial of Appellant basic canteen-privileges and for a clarification of Appellant's Safekeeper status. ROA 48-49. Subsequently, on July 6, 2015, Appellant received notice in the form of a letter from SCDC, dated July 2, 2015, explaining SCDC's decision, the reasons for said decision for his placement within SCDC as a Safekeeper, and a final rejection by SCDC to Appellant's objections. ROA 50-51. On July 6, 2015, Appellant filed an action in the Administrative Law Court (hereinafter, "Court"), objecting to his classification as a Safekeeper and also challenging certain conditions of confinement. On August 28, 2015, the Department filed a Memorandum of Law in Support of Dismissal of the Petition.

On November 5, 2015, the Court issued a written Order. The Order granted the Department's motion for dismissal as to the issue of Appellant's classification as a Safekeeper and transfer to SCDC. The Order further remanded the case to the Department to allow Appellant to file Step-2 Grievances for the Department's consideration.

On February 11, 2016, Appellant filed 16 (sixteen) separate Step-2 Grievance forms. On March 11, 2016, the Department responded in a letter denying all of Appellant's grievances because he had used attachments to the forms; thus, the letter instructed Appellant to re-file his grievances and to use only the space allocated in the

Step-2 form to write his complaint. On April 5, 2016, Appellant re-submitted his 16 listed Grievances, complying with the instructions to use only the space on the Step-2 forms. ROA 1-45. On July 21, 2016, the Department filed its response to each grievance.<sup>3</sup> ROA 1-45. On August 22, 2016, Appellant filed a timely appeal to this Court. ROA 1-45.

On September 7, 2016, Appellant filed a Motion for Miscellaneous Relief. On October 17, 2016, the Court issued an Order On Motion For Miscellaneous Relief And Order Governing Procedure. The Order set forth a timetable and filing deadlines for the parties in this matter. This Appellate Brief on behalf of Appellant Barnes now follows.

#### Appellant's Step-2 Grievances.

Appellant Barnes filed 16 separate Step-2 grievances. The Department remedied one, and denied 15; hence, Appellant filed a notice of appeal as to 15 separate claims.<sup>4</sup> Instead of listing all 15 separately, Appellant's counsel groups them according to their similarity and relationship in factual and legal foundations, into five groups (A thru E. below), as follows:

#### A. Routine Privileges, and Certain Constitutional Rights, Afforded to All Other Prisoners But Denied to Appellant.

##### Appellant's Claims II, VII, XII.

Appellant is denied routine privileges afforded to all other general population,

<sup>3</sup> On July 22 (Friday), 2016, Appellant's counsel filed a Motion to Compel the Department to respond as it had been 100 days since the filing of Appellant's Step-2 grievance forms. The Department filed its responses on July 21, 2016, but Appellant's counsel did not receive them in the U.S. Mail until the following week, on or after Monday, July 25.

<sup>4</sup> Appellant did not appeal Claim VI, a grievance concerning no lighting in Barnes' cell, because SCDC fixed the lighting sometime after the Step-2 form was filed on this matter.

non-disciplinary inmates.<sup>5</sup> Appellant is denied any access whatsoever to the prison "canteen" so that he is not allowed to purchase toiletries, necessities, and other permissible amenities. *See* Claim II: ROA p. 4. Appellant is routinely denied regular access to recreation time. *Id.* Appellant is routinely denied regular access to showers. *Id.* Appellant is not allowed to receive via U.S. Mail any books, magazines, or other publications from legitimate publishers.<sup>6</sup> *Id.* Appellant is denied religious materials and items. *See* Claim VII; ROA p. 16.

The Department's Response.

The Department responded to the Appellant's claims regarding access to the canteen, recreation time, shower time, and denial of any books or magazines, as follows: SCDC Policy SK.22.02 for Safekeepers states that Safekeepers will be housed in the Restrictive Housing Unit (RHU) and are assigned to "SD Level II." ROA p. 5. As such, canteen privileges are limited to a walkman radio and batteries (for the radio). The policy states Safekeepers are to be showered and provided recreation separately from other inmates. *Id.* There appears to be no policy stated as to restrictions for Safekeepers on the receipt of books or magazines from the publisher via U.S. Mail. *Id.* On information and belief, disciplinary inmates have restrictions placed on them as part of the disciplinary process as to receipt of magazines or books via U.S. Mail from any publisher.

<sup>5</sup> Appellant's counsel refers to "non-disciplinary inmates" to mean those inmates who are not currently subject to disciplinary procedures, restrictions, or cell-segregation due to the inmate's own conduct in violating prison rules within SCDC.

<sup>6</sup> Appellant's counsel throughout this brief will reference books and materials received by an inmate "via U.S. Mail from the publisher" because on information and belief, other SCDC policies allow inmates to receive books, magazines, and other published materials, *only from an outside publisher* – like West-Law, or Time Magazine, U.S. Today newspaper, and the like. Such materials cannot be mailed in from a non-publisher, such as a family member, friend, or even the inmate's lawyer. Thus, as long as such materials are mailed by the publisher, using the regular U.S. Mail, and are not otherwise contraband (such as pornographic materials), then the materials are allowed.

Legal Argument.

Appellant is denied numerous routine privileges, as well as specific constitutional rights, which are afforded to other general population, non-disciplinary inmates.<sup>7</sup> Appellant is a non-disciplinary inmate – he has had zero disciplinary incidents while at Lee Correctional Institute – though he is housed separately from other general population inmates solely because he has no conviction or sentence, per the Department's policy on housing Safekeepers. There is no rational basis for this rule for security reasons, separate housing requirements, disciplinary purposes (since Appellant is not a disciplinary inmate), or for the regular management and order of the institution. In other words, Appellant is denied these rights and privileges simply because of *where* he is housed as a Safekeeper, and not because of his conduct or anything attributable to him at all.

All of these denials and restrictions as imposed by the Department are in violation of regular Department rules afforded to other general population, non-disciplinary inmates, violate due process, and further violate Appellant's First, Fifth and Sixth Amendment<sup>8</sup> rights under the U.S. Constitution, and S.C. Const. Art. I §§2, 3, and 14; *Johnson v. Avery*, 393 U.S. 483 (1969); *Beard v. Banks*, 548 U.S. 521 (2006).

Specifically, Appellant is denied any access whatsoever to the prison "canteen."<sup>9</sup> This means he cannot buy soap, toothpaste, socks, underwear, and other toiletries and necessities, nor any other "amenities" (like soup packets) which are afforded to non-

<sup>7</sup> It is noted that certain constitutional rights are afforded even to inmates subject to disciplinary action, including the rights at issue with Appellant's grievances herein. See *Beard v. Banks*, *supra*.

<sup>8</sup> These Amendments are applied to the States pursuant to the Fourteenth Amendment, such that Appellant will not recite Amend. 14, throughout this brief but it is incorporated herein by reference.

<sup>9</sup> Barnes is not even issued an SCDC ID card because he is not a regular inmate. Without such a card, he cannot have an inmate account. Without such account, he cannot purchase any items from the canteen.

disciplinary inmates in the general population. Despite repeated requests by Appellant to purchase basic toiletries and other items, he has been denied canteen access. ROA 214 (Summary of Canteen Sales for an Inmate; reflects zero purchases by Appellant). Appellant has been approved by SCDC's own medical unit for Dove brand soap because it is non-allergenic and he has a skin condition which the soap would alleviate. If left untreated, the skin condition becomes aggravated and painful. This brand soap is available for purchase from the canteen. But because Appellant is subject to the same punitive restrictions as the disciplinary inmates, he is not allowed to purchase any soap from the canteen. This is a Kafkaesque twist that can only occur within the compartmentalized bureaucracy of the Department.

Appellant's recreation and shower times are restricted, when granted during the week, if at all. The Cell Check Logs confirm this. ROA 52-213, 332-337 (Cell-Check Log; odd-numbered pages). To interpret the recreation and shower times, first go to the Cell Check Log for a specific week. For example, at the beginning of the Cell Check Logs, the first page show the week as the week of April 26, 2015. ROA 52. The next page shows for that same week (of April 26, 2015),<sup>10</sup> the number of days that recreation and shower times were provided to Appellant, listing the days Monday-thru-Sunday. ROA 53. The recreation and shower days are labelled either "Y" for "Yes" – that Appellant was provided recreation or shower on a specific week-day; or "N" for "No" – that he was not.

For the first week of April 26, 2015, Appellant was provided no recreation or showers. ROA 53. For the second week of May 4, 2015, Appellant was provided no

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<sup>10</sup> The recreation and shower days are not separately dated, but go with the preceding Cell Check Log weekly day.

shower or recreation on Thursday of that week (hence the entry of "N" for that day), and provided one shower for the week on Saturday (hence the "Y"). ROA 55. The following week of May 11, 2015, Appellant was again provided one shower for the week, and no recreation, on Saturday. ROA 57. The following week of May 18, 2015, he was again provided no shower or recreation time. ROA 59. This pattern continues, right through the present, where Appellant is provided no recreation time each week; and sometimes is allowed one shower per week though other weeks no shower at all.

Furthermore, he is not allowed to receive books or magazines from a regular publisher, as other inmates are allowed. In August 2015, SCDC did not allow Appellant to receive a legal book directly from the publisher Prisoner Legal News which was titled, "Prisoners Self-Help Litigation Manual." ROA 215-271. This was not because the law book is contraband, but because SCDC has determined that Appellant can receive NO magazines or books from any publisher.<sup>11</sup> Thus, Appellant has specifically been denied a legal book delivered by U.S. Mail from the publisher. While the U.S. Supreme Court has held that a prison may institute some punitive measures for inmates subject to *disciplinary* procedures, even such inmates are still entitled to religious and law-related books and materials. *Beard v. Banks*, 548 U.S. 521, 126 S.Ct. 2572, 165 L.Ed.2d 697 (2006). Mere imprisonment does not automatically deprive a prisoner of all constitutional protection. *Id.* 548 U.S. at 529, 126 S.Ct. at 2577-78, 165 L.Ed.2d at 704-05. Additionally, other general population inmates are allowed to receive books and magazines. In fact, even disciplinary inmates *should be* allowed, under the Constitution, to receive legal books and magazines to assist them with their case, since such a denial

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<sup>11</sup> At no time has Appellant attempted to receive publications which are deemed by the Department to be contraband, such as pornographic or other such publications.

would constitute a Constitutional violation even as to them. *See Beard v. Banks, supra*.<sup>12</sup>

All general population inmates are allowed to receive books directly from a publisher. Here, Appellant should not be subject to any of the disciplinary measures that are imposed on the other inmates for their conduct because Appellant has not committed any disciplinary infraction. Furthermore, the Department cannot deny Appellant access to magazines and books that are otherwise permissible within the prison, both on First and Sixth Amendment grounds, especially when such books are of a legal nature essential to Appellant's legal cases and self-representation.

Appellant represents himself *pro se* in pending criminal actions in Georgia; and reserves the right under the Sixth Amendment to determine at an appropriate juncture whether to represent himself in the pending criminal action in South Carolina – a right which the S.C. Supreme Court has vigorously upheld in his particular case. *See State v. Barnes*, 407 S.C. 27, 753 S.E.2d 545 (2014)(*Barnes I*)(denial of right of self-representation is a structural error requiring reversal); and *State v. Barnes*, 413 S.C. 1, 774 S.E.2d 454 (2015)(*Barnes II*)(Defendant entitled to his Sixth Amendment right to appointment of counsel at retrial even where at first trial he asserted his right to self-representation, because a structural error voids the first trial, though defendant still reserves the right prior to trial to represent himself).

He has been denied religious items, which are allowed to general population inmates. He has specifically requested Muslim Prayer Oil, a sacrament relevant to his religious affiliation. This has been refused. Instead, the Department responds that he can request a visit with the prison Chaplain. ROA p. 17. Accessibility to the Prison Chaplain,

<sup>12</sup> If the Department's policy is that even disciplinary inmates cannot receive law books via U.S. Mail from publishers, then such a policy is unconstitutional under *Beard*.

a Christian, does not meet the Appellant's request for a Muslim item which is allowed for other general population, non-disciplinary inmates.

Appellant – as a pretrial detainee under the Safekeeper statute – is housed by SCDC on the "segregation unit" wing at Lee Correctional Institute. Presumably, this is so that Appellant – who has no conviction or sentence – is placed in a single cell and is not in the general population with SCDC inmates. However, this has resulted in Appellant being treated *the same as* disciplinary inmates – those inmates who are housed on the same wing for disciplinary purposes due to their individual negative conduct.

Thus, the Department has determined that Appellant is treated under the same rules and regulations as disciplinary inmates, even though no disciplinary action has been taken against Appellant, and his conduct in SCDC has not warranted any disciplinary action.<sup>13</sup> The above actions by the Department constitute a violation of due process, equal protection, and Appellant's First, Fifth, and Sixth Amendment rights. *See also*, S.C. Const. Art. I §§2, 3, 14; *Johnson v. Avery, supra*; *Beard v. Banks, supra*.

Therefore, Appellant seeks from this Court the following relief:

1. Order that Appellant be allowed the same privileges afforded to other general population, non-disciplinary and inmates.
2. Order that Appellant be allowed regular canteen privileges and be issued an inmate canteen account card or similar card to establish an inmate account, and that he be allowed to purchase items from the institution's canteen specifically including but not limited to Dove soap and other

<sup>13</sup> Appellant's last disciplinary conduct within SCDC was 2010 under a previous sentence which has since been vacated. His last disciplinary conduct within any county jail was as follows: 12-31-2014 in the Aiken County Jail for "refusal to obey an order" (given 10-days disciplinary detention); and 04-24-2015 in the Greenwood County Jail for "failure to stand during roll call" (given loss of 1-day recreation time).

toiletries, socks, underwear, t-shirts, and other items of clothing listed in the prison canteen.

3. Order that Appellant be afforded adequate recreational time, including but not limited to one-hour per day.
4. Order that Appellant be afforded adequate shower time, including but not limited to one-shower per day.
5. Order that Appellant be allowed to receive books and/or magazines and/or publications from any outside publisher the same as other general population, non-disciplinary inmates, specifically including but not limited to the book, "Prisoners Self-Help Litigation Manual" published by the Prisoner Legal News.
6. Order that Appellant be allowed to receive, possess, and use certain religious items, including but not limited to Muslim Prayer Oil.

**B. Denial of Appellant's Ability to Conduct Constitutionally Protected Legal Work.**  
**Appellant's Claims X, XI, XIII, XIV, XV, XVI.**

Appellant is denied the ability to standard legal materials and requests, which on information and belief, are afforded to all other general population, non-disciplinary inmates. Appellant is not allowed to have his box of legal materials in his cell, in that he is limited to a "one box at a time" rule. *See* Claim X; ROA p. 25. Appellant is not provided access to make telephone calls to his attorneys on a regular basis. *See* Claim XI; ROA p. 28. Appellant is denied the ability to be provided copies of his *pro se* legal materials. *See* Claim XIII; ROA p. 34. Appellant is denied adequate access to a prison

law library. *See* Claim XIV; ROA p. 37. Appellant's legal mail is improperly delayed both outgoing and incoming. *See* Claim XV; ROA p. 40. Appellant is denied adequate access to supplies including paper, pens, and other materials in which to prepare his pro se legal pleadings and communicate with his attorneys. *See* Claim XVI; ROA p. 43.

The Department's Response.

As for Appellant's request for his legal materials, the Department restricts RHU inmates to one box, per SCDC Policy GA-01.03. For Appellant's request to make telephone calls to his attorney, the Department restricts RHU inmates to 24-hour advance notice, and must be approved in advance by a senior staff member, per SCDC Policy OP 22.38. subsec. 28.5. For requests for photocopies, the Department cites its policy allowing inmates to make copies of outgoing legal papers. For Appellant's request for access to the law library, the Department responds that inmates are allowed access to library materials upon request, and that in one (1) year Appellant has made such request 16 times. For the assertion that Appellant's mail is delayed, the Department responds that it has found no delay in its processing of the mail. For Appellant's request for legal supplies such as pen and paper, the Department responds that every inmate is supplied 8 sheets of paper, 2 stamped envelopes, and 1 pencil (replaced when it wears out).

Legal Argument.

The record contravenes the Department's response. ROA 218-277, 316-331, 338-339. (Mail Logs, Telephone Logs, Computer-Room/Law Library Logs, etc.). Appellant asserts that he only gets to make phone calls to his attorney once or twice per month. Appellant asserts that he needs more than one box of legal materials in his cell at a time. This is not an overly burdensome request. To deny this request substantially impairs

Appellant's Sixth Amendment rights. Appellant further asserts that he is regularly denied access to the law library (and when he is granted access the library computer for research is inoperable), denied access to adequate writing materials such as pen and paper, denied access to envelopes to mail his pleadings, denied access to copying his pleadings, and that his mail within SCDC is delayed.

All of these impediments and restrictions as imposed by the Department are in violation of regular Department rules afforded to other general population, non-disciplinary inmates, and further violate Appellant's constitutional rights. Appellant incorporates the argument and legal foundation for this claim as set forth above and herein. U.S. Constitution, Amend. 1, 5, 6, and 14; S.C. Const. Art. I §§2, 3, and 14; *Johnson v. Avery, supra*; *Beard v. Banks, supra*.

Therefore, Appellant seeks from this Court the following relief:

1. Order that Appellant be allowed to make telephone calls to his attorneys when requested, during regular office hours of 9:00a.m. - 5:00p.m. on Monday through Friday, including but not limited to one per week.
2. Order that Appellant be allowed to have more than one (1) box of legal materials in his cell at a time, including at least two (2) boxes.
3. Order that Appellant be allowed to have adequate access to the law library, writing materials (including pen and paper), adequate access to photocopying, and that his legal mailings be mailed and received within a reasonable time of delivery, within one (1) business day.

C. Inadequate Medical Care.

Appellant's Claims IV, V.

Appellant states that he has been denied adequate medical care and treatment. *See* Claims IV and V; ROA p. 10, 13. Appellant suffers from several medical conditions which have not been adequately diagnosed or sufficiently treated, including: chronic back and nerve pain; degenerative joint disease; scoliosis; a lump on his leg; streptococcus A; hypertension/high blood pressure; acute sinusitis and otitis; and a failure to prescribe medically necessary and appropriate medication.

The Department's Response.

The Department states it has provided adequate medical care and treatment.

Legal Argument.

The record contravenes the Department's response. ROA 278-315, 340-345.<sup>14</sup> Appellant asserts that he has been denied adequate and timely medical care and treatment. Despite Appellant's legitimate medical concerns and providing the SCDC examining physician with documented medical complaints, there have been no medical orders issued for follow-up exams, laboratory tests, or other standard of care procedures. Appellant is seriously concerned that he has cancer or some other debilitating and potentially terminal condition, but no follow-up standard of care procedures or tests have been ordered.

Appellant incorporates the argument and legal foundation for this claim as set forth above and herein. U.S. Constitution, Amend. 1, 5, 6, and 14; S.C. Const. Art. 1 §§2, 3, and 14; *Johnson v. Avery, supra.*; *Beard v. Banks, supra.*

<sup>14</sup> Appellant makes a contemporaneous Motion to place this portion of the record under seal because the Appellant's medical records and information should not be open to public inspection.

Therefore, Appellant seeks from this Court the following relief:

1. Order that standard of care examinations and medically necessary follow-up tests and procedures be administered in a timely manner.
2. Order that approved prescription medications be issued for Appellant to treat his legitimate medical conditions.

D. Day-To-Day Conditions in Appellant's Cell.

Appellant's Claims VIII, IX.

Appellant states that in his cell he is subjected to improper ventilation, constant and persistent blowing of dust, pernicious and noxious smell of human waste. *See* Claim VIII; ROA p. 19. Appellant has requested adequate cleaning supplies with which to clean his own cell due to the unsanitary and unhealthy forced living environment, but has been denied. *See* Claim IX; ROA p. 22.

The Department's Response.

The Department responded that there were no work orders from a request to have the cell ventilation system checked. The Department also responded that cleaning supplies are provided upon request every weekend on Saturday and Sunday.

Legal Argument.

The record contravenes the Department's response. In his Step-2 complaint, Appellant states that despite repeated requests, the ventilation system in his cell has not been checked and his requests have gone ignored by SCDC. Further, Appellant asserts that no cleaning supplies have ever been provided to Appellant despite his requests. Appellant understands that he is in prison within SCDC. Even prisoners, however, should

not be subjected to unsanitary and unhealthy conditions which make them sick, including but not limited to the constant smell of human waste.

Appellant incorporates the argument and legal foundation for this claim as set forth above and herein. U.S. Constitution, Amend. 1, 5, 6, and 14; S.C. Const. Art. I §§2, 3, and 14; *Johnson v. Avery, supra.*; *Beard v. Banks, supra.*

Therefore, Appellant seeks from this Court the following relief:

1. Order that a work order be issued to check and examine the ventilation in Appellant's cell.
2. Order that Appellant be provided regular and approved cleaning supplies with which he can clean his own cell.

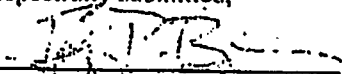
E. Safekeeper Statute: Claims I and III.

Appellant objects to the constitutionality in the Safekeeper statute itself, how it has been applied to Appellant specifically, and as a violation of due process. See Claims I and III. ROA pp. 1, 7. Obviously, this Court has issued an Order denying this Claim. Order of Nov. 15, 2015. Therefore, for preservation purposes, Appellant relies on his previously submitted arguments to the Court, as well as the citations in his Step-2 grievance form and notice of appeal on these issues. Appellant further incorporates the argument and legal foundation for this claim as set forth above and herein, as well as in prior written submissions to this Court. See U.S. Constitution, Amend. 1, 5, 6, and 14; S.C. Const. Art. I §§2, 3, and 14; *Johnson v. Avery, supra.*; *Beard v. Banks, supra.*

CONCLUSION.

Appellant respectfully requests the Court grant the relief as set forth herein and above. Appellant submits these claims and makes this argument pursuant to the First, Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution; the S.C. Const. Art. I, §§2, 3, and 14; *Johnson v. Avery*, 393 U.S. 483 (1969); *Beard v. Banks*, 548 U.S. 521 (2006); and other applicable law.

Respectfully submitted,

  
 Counsel for Mr. Barnes  
 January 17, 2017

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
OFFICE OF GENERAL COUNSEL  
NOTICE OF REJECTED INCOMING/OUTGOING CORRESPONDENCE

|                                     |                       |                        |
|-------------------------------------|-----------------------|------------------------|
| INMATE NAME<br><u>Steven Barnes</u> | SCDC #<br><u>5290</u> | DATE:<br><u>8/4/15</u> |
|-------------------------------------|-----------------------|------------------------|

This notice is to advise you that:

- ☒ Correspondence was received at the institutional mailroom addressed to you from PRISON LEAD NEWS. This correspondence contained "media mail" publication which is unauthorized per SCDC Policy PS-10.08.

\_\_\_\_\_ The Correspondence is being returned to sender at your expense by using Form 10-1A, "Agreement to Debit E.H. Cooper Account."

\_\_\_\_\_ There are insufficient funds in your E.H. Cooper Trust Account to cover the cost of returning this correspondence. You have 45 days to advise the Mailroom of available funds or provide a pre-paid envelope. If not provided, the correspondence will be disposed of pursuant to SCDC Policy OP-22.03.

\_\_\_\_\_ By my signature below I choose to have this correspondence disposed of pursuant to SCDC Policy 22.03. (This form must be returned to the Mailroom within 10 days of receipt.)

- ☐ Correspondence was received at the institutional mailroom addressed to you from \_\_\_\_\_ This correspondence contained \_\_\_\_\_ which is unauthorized/contraband as per SCDC Policy PS-10.08, and will be processed pursuant to SCDC Policy OP-22.03, and OP-22.35.

- ☐ Correspondence you attempted to send out contained unauthorized property/contraband as per SCDC Policy PS-10.08, and will, therefore, be processed pursuant to SCDC Policy OP-22.03, and OP-22.35. You may be disciplined for violating these procedures in accordance with SCDC Policy OP-22.14.

- ☐ other Returned to sender - no publications  
allowed in RHU

Inmate Signature

Date

\_\_\_\_\_ for prop. contr.  
Postal Director/Staff Designee

Institution

White-Inmate  
Canary-Mailroom  
Pink-Sender/Property Control

SCDC Form 10-7 (August 2013)

To: Mail Room / from: Steven Louis Jones  
 SCD # 5290 / living quarters: north (smu-RHU) cell 72  
 Institution: Lee County Prison

Can I order extra paper and postage since I'm  
 on sargekeeper status and a pre trial detainee  
 who can not be punished. I would like to  
 write family members and friends and pay  
 for my extra postage when I need it.

Thank you kindly for reading this request.

Date: 7/31/15

Since you are housed in RHU, we must  
 follow RHU policy. RHU inmates can not  
 access their EH loop accounts. Please contact  
 A/W Nolan for further assistance.

8/3/15

D Eastredg

## RE: Prisoner Steven Barnes

From: Lance Weber [mailto:lweber@humanrightsdefensecenter.org]  
 Sent: Friday, August 14, 2015 3:29 PM  
 To: Jeffrey Bloom  
 Cc: Rachel Stevens  
 Subject: RE: Prisoner Steven Barnes

resending

Lance Weber, General Counsel  
 Human Rights Defense Center  
 PO Box 1151, Lake Worth, FL 33460  
 561.360.2523 Office; 561.428.2974 Direct Dial

*This communication may be confidential, privileged and/or attorney work product. If you received it in error, please notify me and delete it from your system. Any unauthorized use is prohibited and may be unlawful.*

From: Lance Weber  
 Sent: Friday, August 14, 2015 3:23 PM  
 To: 'Jeff@JPBloomLaw.com'  
 Cc: Rachel Stevens  
 Subject: Prisoner Steven Barnes

Hi Jeff,

I represent Prison Legal News. I'm writing to you because PLN just got a returned mail item addressed to Mr. Barnes. Evidently his copy of Prisoners Self Help Litigation Manual has been returned to us because they do not allow prisoners to have books while in segregation. The US Supreme Court case on point is *Beard v Banks* but note that in that case the PA DOC policy allowed legal reference books and religious books. PSHLM is definitely a legal reference book.

Typically we will try to re-send the book when the prisoner is released from segregation but my paralegal Rachel says that it appears that Mr. Barnes may have a more urgent need for this info. If you would like to discuss this please let me know and we can set up a time to discuss.

Lance

Lance Weber, General Counsel  
 Human Rights Defense Center  
 PO Box 1151, Lake Worth, FL 33460  
 561.360.2523 Office; 561.428.2974 Direct Dial

*This communication may be confidential, privileged and/or attorney work product. If you received it in error, please notify me and delete it from your system. Any unauthorized use is prohibited and may be unlawful.*

**THE STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

|                                           |   |                                          |
|-------------------------------------------|---|------------------------------------------|
| Steven Louis Barnes,                      | ) | Docket No. 15-ALJ-30-0318-II             |
|                                           | ) |                                          |
| Appellant,                                | ) | Grievance Nos. 9010-16 (I through V) and |
|                                           | ) | 9010-16 (VII through XVI)                |
| vs.                                       | ) |                                          |
|                                           | ) | <b>THE DEPARTMENT'S BRIEF</b>            |
| South Carolina Department of Corrections, | ) |                                          |
|                                           | ) |                                          |
| Respondent.                               | ) |                                          |

In satisfaction of the orders issued by the Court on October 17, 2016 and February 3, 2017 and in response to the initial brief served by the Appellant, Steven L. Barnes ["Barnes"], the Respondent in the instant matter, the South Carolina Department of Corrections ["the Department"], by and through its undersigned counsel, respectfully submits its brief.

**I. BACKGROUND**

**A. BARNES' ENTRY INTO CUSTODY FOR SAFEKEEPING**

Barnes provided the following accounting of the events by which he entered into the Department's custody for safekeeping in the first section of his initial brief:<sup>1</sup>

Beginning February 7, 2014 through April 28, 2015, [Barnes] was housed as a pre-trial detainee at the following county jails: Aiken; Laurens; and Greenwood. On or about April 20, 2015, Edgefield County Sheriff Adell Doby petitioned the [Department's Office of General Counsel] to classify [Barnes] as a "Safekeeper" and transfer him [into the Department's custody]. On or about April 28, 2015, [Barnes] was approved by [the Department] as a "Safekeeper." The Governor then issued an Executive Order on April 28, 2015, also approving [Barnes'] designation as a "Safekeeper." On the same day, [April 28, 2015], [Barnes] was removed from a county jail and transferred to the [Department's custody] as a Safekeeper (assigned SK #5290). [footnote omitted].

<sup>1</sup> See Barnes' Initial Brief, p. 1.

**FILED**

**FEB 24 2017**

**SC ADMIN LAW COURT**

Barnes devoted the remainder of the first section of his initial brief towards summarizing the correspondence between his counsel and the Department's Office of General Counsel, initial filings by the parties with the Court, the Court's November 5, 2015 order, and the parties' activities regarding the claims Barnes subsequently filed with the Department in 2016.<sup>2</sup>

Critically, however, Barnes did not detail his criminal and disciplinary histories in the first section of his initial brief or, for that matter, anywhere else in his initial brief.

A full accounting of Barnes' criminal and disciplinary histories provides the foundation for the Department's opposition to the analysis and argument he offered in his initial brief, as well as the grounds by which this Court should affirm the Department's denial of his claims.<sup>3</sup>

#### B. BARNES' CRIMINAL AND DISCIPLINARY HISTORIES

Barnes' criminal histories in Georgia and South Carolina reveal the following:<sup>4</sup>

| <i>Charge</i>                                      | <i>Conviction Date</i> | <i>State</i>      | <i>Classification</i> |
|----------------------------------------------------|------------------------|-------------------|-----------------------|
| Manufacture/Sell/Dispense/<br>Distribute Drug      | May 7, 1999            | Georgia           | Felony                |
| Armed Robbery                                      | December 15, 2003      | Georgia           | Felony                |
| Throwing Bodily Fluids on<br>Employee by Prisoners | March 14, 2008         | South<br>Carolina | Felony                |

Barnes ignored the first two (2) of the above-cataloged convictions in his initial brief.<sup>5</sup>

<sup>2</sup> See Barnes' Initial Brief, pp. 2 – 3.

<sup>3</sup> *Id.*, p. 3, n. 4.

<sup>4</sup> The Department respectfully submits copies of Barnes' criminal histories in Georgia and South Carolina, secured from the websites maintained by the Georgia Bureau of Investigation and the South Carolina Law Enforcement Division respectively, as Exhibit A in support of its instant brief.

<sup>5</sup> Although not reflected in his criminal history maintained by SLED, our Supreme Court reversed Barnes' conviction on the third charge. In note 1 on page 3 of the "Request for Contested Case Hearing" he filed with the Court on July 6, 2015, Barnes explained as follows:

Barnes was initially arrested and extradited from a prison in Georgia on the charge of murder in Edgefield County, and was detained at the Edgefield County Jail from 2005-08. In 2008, he was tried on a charge of throwing bodily fluids, the incident of which occurred at the Edgefield Jail, was convicted and sentenced, and entered [the

Instead, Barnes acknowledged the following:<sup>5</sup>

Barnes had previously been incarcerated within [the Department] pursuant to a murder conviction and death sentence; however, his [conviction] was reversed in January 2014, [*State v. Barnes*, 753 S.E.2d 545 (S.C. 2014)],<sup>7</sup> and he was remanded on February 7, 2014, by [the Department] to the custody of the Edgefield County jail for re-trial.<sup>8</sup> The [Edgefield County Sheriff] then asked other county jails to house Barnes.<sup>9</sup>

The Edgefield County Sheriff's "Affidavit for Safekeeping," dated April 20, 2015, provided a fulsome accounting of Barnes' criminal and disciplinary histories:<sup>10</sup>

[Barnes] was charged with murder and kidnapping on November 13, 2010 and housed at the Edgefield County Detention Center pre-trial. Barnes was convicted of those charges, and [sentenced] to death which was overturned. During that time, Barnes was written up for 20 jail infractions including throwing bodily fluids at correctional officers and other inmates, possession of contraband materials and refusing to follow instructions to name a few. Barnes was housed alone in the most secure cell that the Edgefield County Detention Center has and still managed to cause disruptions. Food service to inmates was severely delayed on several occasions due to Barnes throwing bodily fluids on food trays and carts. On three occasions, Barnes was charged and convicted (once) of throwing bodily fluids on correctional officers.<sup>11</sup>

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Department] from 2008-2015. However, this conviction and sentence was later overturned. [*State v. Barnes*, 739 S.E.2d 629 (S.C. 2013)]. [emphasis supplied].

<sup>6</sup> See Barnes' Initial Brief, p. 1, note 2.

<sup>7</sup> The first paragraph of our Supreme Court's decision reflects the following, 753 S.E.2d at 546 - 47:

[Barnes] was convicted of kidnapping and murdering Samuel Sturup (victim). The jury found two aggravating circumstances, kidnapping and physical torture, and recommended a death sentence. The judge sentenced appellant to death for the murder, and imposed no sentence for the kidnapping. [footnotes omitted and emphasis supplied].

<sup>8</sup> Barnes also "represents himself *pro se* in pending criminal actions in Georgia." See Barnes' Initial Brief, p. 8. Barnes did not describe the nature or number of offenses he confronts in Georgia.

<sup>9</sup> See note 1 above.

<sup>10</sup> Although it may already appear in the Record (see Barnes' Initial Brief, p. 1, n. 1), the Department, out of an abundance of caution, respectfully submits a copy of the Sheriff's affidavit as Exhibit B in support of its brief.

<sup>11</sup> See note 5 above.

Once convicted of throwing bodily fluids, Barnes was sent to Lieber Correctional Institution. While [at Lieber], Barnes was written up for assault and possession of a weapon.

Prior to coming to [the] Edgefield County Detention Center, Barnes was incarcerated at Ware State Prison in Georgia convicted of armed robbery, kidnapping, burglary, terroristic threats and pandering prostitution, and was sentenced to life plus 45 years in Georgia. While there, Barnes was cited nine times for failing to follow instructions. While being held pre-trial on these charges, Barnes was held at the Richmond County Detention Center where he was cited for refusing to cooperate with correctional officers as well as assault and possession of a weapon.

Barnes has also been housed at the county detention center in both Aiken and Laurens. Representatives from both of these agencies have written expressing their concern of housing Barnes for the same reasons listed above. Aiken [County] logged in one hundred plus grievances, and reports in approximately one year. Laurens County after several complaints in three months, asked us to come get him, because of his actions. Greenwood [County] Detention Center has agreed to house him at this time for one week. [emphasis supplied].

Barnes repeatedly asserted throughout his initial brief that he is a "non-disciplinary inmate." Barnes also repeatedly uttered the phrase "other general population, non-disciplinary inmates" throughout his initial brief. Barnes did so to persuade the Court that his classification as a Safekeeper under the policies promulgated by the Department and, for that matter, his detention as a Safekeeper in the Department's custody is unwarranted and/or unlawful.

The Court, however, should reject all such assertions, because, as reflected by the authorities discussed below, Barnes' above-chronicled behavior completely justifies his entry into the Department's custody for safekeeping and his classification by the Department as a Safekeeper.

## II. APPLICABLE AUTHORITIES

### A. S.C. CODE SECTION 24-3-80

In its entirety, S.C. Code Ann. § 24-3-80 (Supp. 2010), which is entitled "Detention of prisoner when authorized by Governor," provides as follows:

The director of the prison system shall admit and detain in [the Department] 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 supplied].

### B. EXECUTIVE ORDER NO. 2000-11

On February 16, 2000, South Carolina's Governor issued Executive Order No. 2000-11, the introductory provisions of which read as follows:

WHEREAS, an individual held in a pretrial confinement facility may be transferred to the custody of the [Department] for safekeeping by commitment duly authorized by the Governor pursuant to § 24-3-80; and

...  
NOW, THEREFORE, I hereby establish the following criteria and procedures for approval for the admission and detention in an institution of the [Department] for safekeeping of a prisoner tendered by a law enforcement officer of this State and rescind the previous safekeeping procedures set forth in Executive Order #76-15:

Section 1 of Executive Order No. 2000-11 provides as follows:

An individual held in a county pretrial confinement facility may be transferred to the custody of the [Department] by commitment duly authorized by the Governor pursuant to § 24-3-80, if the individual: (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.<sup>12</sup> [emphasis supplied].

<sup>12</sup> The Court quoted this standard in note 5 on page 4 of the order it issued November 5, 2015 in the instant matter.

The second part of the above-quoted three-part standard from Section 1 of Executive Order No. 2000-11 only requires that the individual *exhibit* extremely violent and uncontrollable behavior for entry into the Department's custody as a Safekeeper. The individual need not have been criminally convicted of offenses involving extreme violence and uncontrollable behavior. Likewise, the individual need not have been cited and/or administratively adjudicated of having committing acts involving extreme violence and uncontrollable behavior.

As chronicled above in Section I(B), Barnes *exhibited* sufficient "extremely violent and uncontrollable behavior" by which his entry into the Department's custody as a Safekeeper, under an order duly issued by our state's Governor, was warranted. Likewise, the litany of instances in which Barnes *exhibited* "extremely violent and uncontrollable behavior" warrants his continued detention as a Safekeeper.

#### C. POLICIES PROMULGATED BY THE DEPARTMENT

##### 1. SK-22.02

The policies and procedures concerning such prisoners detained in and by the Department for safekeeping are reflected by Policy Number SK-22.02. According to the paragraph entitled "Purpose," SK-22.02 addresses the Department's management of "unsentenced individuals who are awaiting trial and detained by [the Department] at the request of a county and when ordered by the Governor, pursuant to [§ 24-3-80], and [Executive Order No. 2000-11]."

Paragraph 1 of SK-22.02 incorporates the three (3) part standard articulated in Executive Order No. 2000-11, and Paragraph 5.1 of SK-22.02 provides as follows:

Safekeepers will be housed in a Special Management Unit (SMU) and will be managed in accordance [Policy Number OP-22.12], "Special Management Unit Operations," with the following exceptions:

5.1.1 Safekeepers will be segregated from other SCDC inmates in the SMU. They will be showered separately, have visitation privileges separately, and be recreated separately.

5.1.2 Safekeepers are assigned to SD Level II when they are admitted. If they commit disciplinary infractions, their SD Level may be decreased pursuant to procedures in [Policy OP-22.12].

## 2. OP-22.12

The first sentence of the paragraph entitled "Policy Statement," which appears at the outset of Policy Number OP-22.12, provides as follows:

In order to maintain the safety and security of the general population, the staff, and the Agency, the [Department] will house those inmates requiring more intense levels of supervision and monitoring in separated areas herein referred to as Special Management Units (SMU) apart from the general population.

The term "Levels" is defined in paragraph 30 of OP-22.12, and it refers "to a series of two (2) degrees of control applied to the management of inmates housed in the SMU." Two (2) "Levels" are defined in paragraph 30: Level I and Level II.

Level I encompasses "the strictest degree of custody and control," and, "[w]hile in this status, inmates will be managed with extreme caution and afforded only essential accommodations." Level II, the level at which Barnes is classified as a Safekeeper, "refers to a broadened status in security detention intended for inmates who have demonstrated cooperative behavior and gained a broader range of privileges.

By orders duly issued by our state's Governor, under § 24-3-80 and Executive Order No. 2000-11, Barnes legitimately and lawfully entered into the Department's custody in late April 2015 for safekeeping. As such, Barnes is legitimately and lawfully classified as a Safekeeper, and the Department's management of him falls under both SK-22.02 and OP-22.12.

As a Safekeeper, Barnes is treated as a Level II inmate, and, consequentially, he inherently enjoys a "broader range of privileges" than those inmates classified as Level I inmates by the Department. Barnes did not assert in his initial brief and the record does not reflect that the Department has classified him as a Level I inmate since he entered its custody in April 2015.

### III. BARNES' FIVE (5) GROUPS OF CLAIMS

Barnes organized his 15 claims into five (5) groups,<sup>13</sup> and the Department addresses each group immediately below in the order in the order in which Barnes presented them.

#### A. ROUTINE PRIVILEGES, AND CERTAIN CONSTITUTIONAL RIGHTS, AFFORDED TO ALL OTHER PRISONERS BUT DENIED TO BARNES

At the outset of his argument for his first group of claims,<sup>14</sup> Barnes asserted that he "is denied numerous routine privileges, as well as specific constitutional rights, which are afforded to other general population, non-disciplinary inmates."<sup>15</sup> Barnes then asserted as follows:<sup>16</sup>

[Barnes] is a non-disciplinary inmate – he has had zero disciplinary incidents while at Lee Correctional [Institution] – though he is housed separately from other general population inmates solely because he has no conviction or sentence, per the Department's policy on housing Safekeepers. There is no rational basis for this rule for security reasons, separate housing requirements, disciplinary purposes (since [Barnes] is not a disciplinary inmate), or for the regular management and order of the institution. In other words, [Barnes] is denied these rights and privileges simply because of *where* he is housed as a Safekeeper, and not because of his conduct or anything attributable to him at all.

All of these denials and restrictions as imposed by the Department are in violation of regular Department rules afforded to other general population, non-disciplinary inmates, violate due process, and further violate [Barnes']

<sup>13</sup> See Barnes' Initial Brief, p. 3.

<sup>14</sup> *Id.*, pp. 3 – 10. Claims II, VII, and XII comprised Barnes' first group of claims. (R. pp. 4 – 6, 16 – 18, and 31 – 33).

<sup>15</sup> *Id.*, p. 5. In the note associated with this assertion, *Id.*, p. 5, n. 7, Barnes observed "that certain constitutional rights are afforded even to inmates subject to disciplinary action, including the rights at issue with [Barnes'] grievances herein. See *Beard v. Banks*, *supra*."

<sup>16</sup> See Barnes' Initial Brief, p. 5.

First, Fifth and Sixth Amendment rights under the U.S. Constitution, and S.C. Const. Art. I §§ 2, 3, and 14; *Johnson v. Avery*, 393 U.S. 483 (1969); *Beard v. Banks*, 548 U.S. 521 (2006). [*italicized emphasis in brief*].

### 1. Denial of Routine Privileges

Barnes asserted that he “is denied routine privileges afforded to all other general population, non-disciplinary inmates.”<sup>17</sup>

By the term “non-disciplinary inmates,” Barnes referred to “those inmates who are not currently subject to disciplinary procedures, restrictions, or cell-segregation due to the inmate’s own conduct in violating prison rules within [the Department].”<sup>18</sup>

As relief for the purported denial of routine privileges, Barnes sought an order allowing him “the same privileges afforded to other general population, non-disciplinary inmates.”<sup>19</sup>

### 2. Denial of Canteen Privileges

Barnes asserted that he “is denied any access whatsoever to the prison ‘canteen’ so that he is not allowed to purchase toiletries, necessities, and other permissible amenities,”<sup>20</sup> and he contended as follows:<sup>21</sup>

... he cannot buy soap, toothpaste, socks, underwear, and other toiletries and necessities, nor any other “amenities” (like soup packets) which are afforded to non-disciplinary inmates in the general population. Despite repeated requests by [Barnes] to purchase basic toiletries and other items, he has been denied canteen access. [R. p. 214] (Summary of Canteen Sales for an Inmate; reflects zero purchases by [Barnes]). [Barnes] has been approved by [the Department’s] own medical unit for Dove brand soap because it is non-allergenic and he has a skin condition which the soap would alleviate. If left untreated, the skin condition becomes aggravated and painful. This brand soap is available for purchase from the canteen.

<sup>17</sup> See Barnes’ Initial Brief, pp. 3 – 4.

<sup>18</sup> *Id.*, p. 4, n. 5.

<sup>19</sup> *Id.*, p. 9.

<sup>20</sup> *Id.*, p. 4. Barnes referenced Claim II. (R. p. 4).

<sup>21</sup> *Id.*, pp. 5 – 6.

But because [Barnes] is subject to the same punitive restrictions as the disciplinary inmates, he is not allowed to purchase any soap from the canteen.<sup>22</sup> This is a Kafkaesque twist that can only occur within the compartmentalized bureaucracy of the Department.<sup>23</sup>

As relief for this claim, Barnes sought an order allowing him "regular canteen privileges," compelling the Department to issue him "an inmate canteen account card or similar card to establish an inmate account," and allowing him "to purchase items from the institution's canteen specifically but not limited to Dove soap and other toiletries, socks, underwear, t-shirts, and other items of clothing listed in the prison canteen."<sup>24</sup>

### 3. Denial of Recreation and Showers

Barnes asserted that he is both "routinely denied regular access to recreation time" and that he is "routinely denied access to showers."<sup>25</sup> Regarding these claims, Barnes contended that his "recreation and shower times are restricted, when granted during the week, if at all," and he contended that the "Cell Check Logs confirm" the purported restrictions on his recreation and access to showers.<sup>26</sup>

<sup>22</sup> Only one (1) reference to Barnes' claim regarding Dove soap appears in the Record, and it appears in an entry from his medical file dated May 26, 2015 (R. pp. 285 and 309): "Spoke with [Barnes] at his cell door. He stated that he had a list of personal hygiene items that he needed and that Captain Williams was aware of this. He listed such things as Dove soap, some type of moisture cream etc. We asked him to write out a list so that there was a record of everything." [emphasis supplied]. However, the Court observed as follows in note 6 on page 5 of its November 5, 2015 order in the instant matter: "[Barnes] also mentioned in his Memorandum that he had been denied access to Dove soap, which [the Department's] medical unit had approved for a skin condition. However, the Department asserted at the hearing that this particular matter had been resolved." [emphasis supplied]. As the May 26, 2015 entry from his medical file obviously pre-dates the Court's November 5, 2015 order, the Department is at a loss as to why Barnes reiterated this claim in his initial brief.

<sup>23</sup> Barnes uttered the final sentence from the above-quoted paragraph verbatim in note 5 on page 4 of his August 27, 2015 filing with the Court entitled "Petitioner's Memorandum in Support of this Court's Jurisdiction." As discussed immediately above in note 22, the Department does not know why Barnes articulated this sentence in his initial brief when the Court observed in its November 5, 2015 order that Barnes' claim regarding Dove soap had been resolved.

<sup>24</sup> See Barnes' Initial Brief, pp. 9 – 10.

<sup>25</sup> *Id.*, p. 4. Barnes referenced Claim II. (R. p. 4).

<sup>26</sup> *Id.*, p. 6. Barnes then referenced significant portions of the Record in support of his claims.

As relief for this claim, Barnes sought an order affording him both "adequate recreational time, including but not limited to one-hour per day" and "adequate shower time, including but not limited to one-shower per day."<sup>27</sup>

#### 4. Denial of Books, Magazines, or other Publications

Barnes asserted that he "is not allowed to receive via U.S. Mail any books, magazines, or other publications from legitimate publishers,"<sup>28</sup> and he specifically asserted as follows:<sup>29</sup>

... In August 2015, [the Department] did not allow [Barnes] to receive a legal book directly from the publisher Prisoner Legal News which was titled, "Prisoners Self-Help Litigation Manual." [R. pp. 215 – 71]. This was not because the law book is contraband, but because [the Department] has determined that [Barnes] can receive NO magazines or books from any publisher.<sup>30</sup> Thus, [Barnes] has specifically been denied a legal book delivered by U.S. Mail from the publisher.

In support of his claim, Barnes offered the following argument:<sup>31</sup>

While the U.S. Supreme Court has held that a prison may institute some punitive measures for inmates subject to *disciplinary* procedures, even such inmates are still entitled to religious and law-related books and materials. [*Beard v. Banks*, 548 U.S. 521 (2006)]. Mere imprisonment does not automatically deprive a prisoner of all constitutional protection. [*Id.*, 548 U.S. at 529]. Additionally, other general population inmates are allowed to receive books and magazines. In fact, even disciplinary inmates *should be* allowed, under the Constitution, to receive legal books and magazines to assist them with their case, since such a denial would constitute a Constitutional violation even as to them. *See Beard v. Banks, supra*. [footnote omitted].

All general population inmates are allowed to receive books directly from a publisher. Here, [Barnes] should not be subject to any of the

<sup>27</sup> See Barnes' Initial Brief, p. 10.

<sup>28</sup> *Id.*, p. 4. Barnes referenced Claim II (R. p. 4).

<sup>29</sup> *Id.*, p. 7.

<sup>30</sup> In the note associated with this sentence, Barnes asserted that he has, at no time, "attempted to receive publications which are deemed by the Department to be contraband, such as pornographic or other such publications." See Barnes' Initial Brief, p. 7, n. 11.

<sup>31</sup> See Barnes' Initial Brief, pp. 7 – 8.

disciplinary measures that are imposed on the other inmates for their conduct because [Barnes] has not committed any disciplinary infraction. Furthermore, the Department cannot deny [Barnes] access to magazines and books that are otherwise permissible within the prison, both on First and Sixth Amendment grounds, especially when such books are of a legal nature essential to [Barnes'] legal cases and self-representation.

As relief for this claim, Barnes sought an order allowing him "to receive books and/or magazines and/or publications from any outside publisher the same as other general population, non-disciplinary inmates, specifically including but not limited to the book, 'Prisoners Self-Help Litigation Manual,' published by Prisoner Legal News."<sup>32</sup>

##### 5. Denial of Religious Materials and Items

Barnes asserted that he "is denied religious materials and items,"<sup>33</sup> specifically the following:<sup>34</sup>

... He has specifically requested Muslim Prayer Oil, a sacrament relevant to his religious affiliation. This has been refused. Instead, the Department responds that he can request a visit with the prison Chaplain. [R. p. 17]. Accessibility to the Prison Chaplain, a Christian, does not meet [Barnes'] request for a Muslim item which is allowed for other general population, non-disciplinary inmates.

As relief for this claim, Barnes sought an order allowing him "to receive, possess, and use certain religious items, including but not limited to Muslim Prayer Oil."<sup>35</sup>

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<sup>32</sup> See Barnes' Initial Brief, p. 10.

<sup>33</sup> *Id.*, p. 4. Barnes referenced Claim VII. (R. p. 16).

<sup>34</sup> *Id.*, pp. 8-9.

<sup>35</sup> *Id.*, p. 10.

## B. DENIAL OF ABILITY TO CONDUCT CONSTITUTIONALLY PROTECTED LEGAL WORK

Concerning his second group of claims,<sup>36</sup> Barnes asserted that he "is denied [access] to standard legal materials and requests, which on information and belief, [is] afforded to all other general population, non-disciplinary inmates."<sup>37</sup> Barnes argued as follows:<sup>38</sup>

This is not an overly burdensome request. To deny this request substantially impairs [Barnes'] Sixth Amendment rights. [Barnes] further asserts that he is regularly denied access to the law library (and when he is granted access the library computer for research is inoperable) denied access to adequate writing materials such as pen and paper, denied access to envelopes to mail his pleadings, denied access to copying his pleadings, and that his mail within [the Department] is delayed.

As relief for this group of claims, Barnes sought an order allowing him "to make telephone calls to his attorneys when requested, during regular office hours of 9:00 a.m. – 5:00 p.m. on Monday through Friday, including but not limited to one per week;" allowing him "to have more than one (1) box of legal materials in his cell at a time, including at least two (2) boxes;" and allowing him "to have adequate access to the law library, writing materials (including pen and paper), adequate access to photocopying, and that his legal mailings be mailed and received within a reasonable time of delivery, within one (1) business day."

## C. INADEQUATE MEDICAL CARE

Concerning his third group of claims,<sup>39</sup> Barnes asserted that the Department has denied him "adequate medical care and treatment. *See* Claims IV and V; [R. p. 10, 13]."

<sup>36</sup> *See* Barnes' Initial Brief, pp. 10 – 12. Claims X, XI, XIII, XIV, XV, and XVI comprised Barnes' second group of claims. (R. pp. 25 – 30 and 34 – 45).

<sup>37</sup> *Id.*, p. 10.

<sup>38</sup> *Id.*, pp. 11 – 12.

<sup>39</sup> *Id.*, pp. 13 – 14. Claims IV and V comprised Barnes' third group of claims. (R. pp. 10 – 15).

Barnes then described his medical conditions that have not been "adequately diagnosed or sufficiently treated."<sup>40</sup>

... chronic back and nerve pain; degenerative joint disease; scoliosis; a lump on his leg; streptococcus A; hypertension/high blood pressure; acute [sinusitis] and [otitis]; and a failure to prescribe medically necessary and appropriate medication.

As relief for this group of claims,<sup>41</sup> Barnes sought an order directing the Department to timely administer "standard of care examinations and medically necessary follow-up tests and procedures" and to issue him "approved prescription medications ... to treat his legitimate medical conditions."

#### D. DAY-TO-DAY CONDITIONS IN CELL ARE IMPERMISSIBLE

Concerning his fourth group of claims,<sup>42</sup> Barnes asserted that, "in his cell he is subjected to improper ventilation, constant and persistent blowing of dust, pernicious and noxious smell of human waste. *See* Claim VIII; [R. p. 19]," and he also asserted that he "has requested adequate cleaning supplies with which to clean his own cell due to the unsanitary and unhealthy forced living environment, but has been denied. *See* Claim IX; [R. p. 22]."<sup>43</sup>

In his legal argument regarding this claim, Barnes further asserted that "despite repeated requests, the ventilation system in his cell has not been checked and his requests have gone

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<sup>40</sup> *See* Barnes' Initial Brief, p. 13.

<sup>41</sup> *Id.*, p. 14.

<sup>42</sup> *Id.*, pp. 14 – 15. Claims VIII and IX comprised Barnes' fourth group of claims. (R. pp. 19 – 24). In Claim VI, Barnes asserted as follows:

[Barnes] has no lighting or lights within his cell. This situation has persisted for the almost one year in which [he] has been at this institution. This makes it nearly impossible for [him] to review his legal paperwork and meaningfully assist his attorneys. It is also not healthy and a denial of a basis right. [citations omitted].

However, as he explained in note 4 on page 3 of his initial brief, Barnes "did not appeal Claim VI, ... , because [the Department] fixed the lighting sometime after the [Step 2] form was filed on this matter." *See also* note 3 above.

<sup>43</sup> *See* Barnes' Initial Brief, p. 14.

ignored by [the Department]" and that "no cleaning supplies have ever been provided to [him] despite his requests."<sup>44</sup>

As relief for this group of claims, Barnes sought an order directing the Department to issue a work order "to check and examine the ventilation in [his] cell" and that he "be provided regular and approved cleaning supplies with which he can clean his own cell."<sup>45</sup>

#### **E. SAFEKEEPER STATUTE IS UNCONSTITUTIONAL**

Concerning his fifth and final group of claims,<sup>46</sup> Barnes objected "to the constitutionality in the Safekeeper statute itself, how it has been applied to [him] specifically, and as a violation of due process. *See* Claims I and III. [R. p. 1, 7]."

### **IV. BARNES' CLAIMS AND SUPPORTING ARGUMENTS ARE DEFECTIVE**

#### **A. BARNES IS NOT UNLAWFULLY DEPRIVED OF ANY PRIVILEGES OR CONSTITUTIONAL RIGHTS**

##### **1. Lawful Restrictions of Barnes' Privileges**

Barnes asserted that no rational basis supports the Department's denial of numerous routine privileges to him. In his initial brief, Barnes argued as follows:<sup>47</sup>

[Barnes] – as a pretrial detainee under the Safekeeper statute – is housed by [the Department] on the "segregation unit" wing at Lee Correctional [Institution]. Presumably, this is so that [Barnes] – who has no conviction or sentence – is placed in a single cell and is not in the general population with [other] inmates. However, this has resulted in [Barnes] being treated *the same as* disciplinary inmates – those inmates who are housed on the same wing for disciplinary purposes due to their individual negative conduct.

Thus, the Department has determined that [Barnes] is treated under the same rules and regulations as disciplinary inmates, even though no

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<sup>44</sup> *See* Barnes' Initial Brief, p. 14.

<sup>45</sup> *Id.*, p. 15.

<sup>46</sup> *Id.* Claims I and III comprised the final group of claims. (R. pp. 1 – 3 and 7 – 9).

<sup>47</sup> *Id.*, p. 9.

disciplinary action has been taken against [him], and his conduct in SCDC has not warranted any disciplinary action. The above actions by the Department constitute a violation of due process, equal protection, and [Barnes'] First, Fifth, and Sixth Amendment rights. *See also*, S.C. Const. Art. I, §§ 2, 3, 14; *Johnson v. Avery, supra*; *Beard v. Banks, supra*. [italicized emphasis in brief].

An examination of relevant decisions issued by federal district courts sitting both outside South Carolina and, critically, in South Carolina defeats Barnes' assertions on this claim.

In *Laster v. Duckworth*, 554 F. Supp. 1184 (N.D. Ind. 1983), the federal district court for the Northern District of Indiana considered an action filed by a pre-trial detainee who had entered an Indiana penitentiary for safekeeping.

The *Laster* court, 554 F.Supp. at 1186, acknowledged that upon his arrival at the prison, the pre-trial detainee had been "assigned to the I Cellhouse Detention Unit (IDU), where conditions were and are admittedly more restrictive than those imposed on the prison's general population." [emphasis supplied]. The *Laster* court, *Id.*, then observed as follows:

The Supreme Court of the United States has established and that the appropriate test, under the Fourteenth Amendment, is whether the "conditions amount to punishment of the detainee." [*Bell v. Wolfish*, 441 U.S. 520, 535 (1979)].

[T]he determination whether these restrictions and practices constitute punishment in the constitutional sense depends on whether they are rationally related to a legitimate nonpunitive governmental purpose and whether they appear excessive in relation to that purpose. [*Wolfish*, 441 U.S. at 561].

[emphasis supplied].

*See also Hoover v. Watson*, 886 F.Supp. 410, 418 (D. Del. 1995) (quoting *Wolfish*, 441 U.S. at 538 and 561).

Like the courts in *Hoover* and *Laster*, a federal district court in our states addressed claims by a pre-trial detainee placed into the Department's custody for safekeeping. In *Wiles v.*

*Ozmint*, 2006 WL 2260136, \*1 (D.S.C. 2006), a federal district court for our state considered an action by a plaintiff, "who at the time this action was filed was a Jasper County pretrial detainee being housed with the [Department] for "safekeeping" purposes,"<sup>48</sup> in which he asserted various violations of his constitutional rights.

Ultimately, the *Wiles* court rejected the plaintiff's various claims,<sup>49</sup> and it offered the following relevant standard, 2006 WL 2260136 at \*2:

As noted in the evidence, the [Maximum Security Unit] is where the worst inmates in the prison system are housed. In such an environment, restraints on an inmate's liberty and freedom of movement should be expected, as should other restrictions on the inmate's activities and privileges. [citation omitted]. As long as restrictions or regulations placed on [Maximum Security Unit] inmates are reasonably related to a legitimate penological objective, they should be upheld by the courts. *Turner v. Safley*, 482 U.S. 78, 89 (1987) ["... when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests"]. In order to determine if a regulation is "reasonably related to legitimate penological interests", courts look to whether the regulation is rationally related to a legitimate and neutral government objective, whether there are alternative avenues that remain open to the inmates to exercise the right, the impact that accommodating the asserted right would have on other guards and prisoners and on the allocation of prison resources, and whether the existence of easy and obvious alternatives indicates that the regulation is an exaggerated response by prison officials. *Turner*, 482 U.S. at 89-90. Significantly, the burden is on the prisoner to disprove the validity of the prison regulations at issue. *Overton v. Bazzetta*, 539 U.S. 126, 132 (2003). Here, Plaintiff has failed to show that the regulations and policies at issue in this case are not reasonably related to legitimate penological interests under the standard of *Turner* and its progeny. [emphasis supplied].

As explained above in Section II(B), the second part of the three-part standard from Executive Order No. 2000-11 requires only that a pre-trial detainee *exhibit* sufficient extremely

<sup>48</sup> The *Wiles* court, 2006 WL 2260136 at \*4, remarked that "at the request of the Jasper County Sheriff and the Fourteenth Circuit Solicitor, the Governor approved the Plaintiff's transfer to the [Department] as a Safekeeper inmate, and that the Plaintiff was transferred on April 20, 2005 and was assigned to the [Maximum Security Unit]."

<sup>49</sup> As observed below, the plaintiff in *Wiles* articulated many claims identical to or nearly identical to the claims articulated by Barnes in the instant matter.

violent and uncontrollable behavior for entry into the Department's custody for safekeeping. The pre-trial detainee need not have been criminally convicted of offenses involving extreme violence and uncontrollable behavior.

Thus, our Supreme Court's decision in 2014 to reverse Barnes' convictions for murder and kidnapping, and to vacate the death sentence associated therewith, does not alter the reality that he had previously *exhibited* sufficient extremely violent and uncontrollable behavior to justify his entry into the Department's custody as a Safekeeper in late April 2015.<sup>50</sup>

As explained above in Section II(C), the Level II restrictions to which Barnes is subjected under OP-22.12 stem from his legitimate and lawful entry into the Department's custody as a Safekeeper in late April 2015. Thus, while his infraction-free conduct since his arrival in late April 2015 is laudable,<sup>51</sup> the Department's classification of Barnes at Level II was and remains lawful and legitimate.

The restrictions imposed upon Barnes' privileges due to his entry into the Department's custody as a Safekeeper are, under *Wiles*, "reasonable related to" legitimate penalogical objectives. Moreover, the *Wiles* court approved many if not all of the same restrictions imposed upon a Safekeeper that Barnes' challenged in the instant matter. Of equal importance, these restrictions do not, under *Laster* and *Hoover*, amount to conditions which punish Barnes. As shown above, both *Laster* and *Hoover* quoted the standard articulated by the United States Supreme Court in *Wolfish*.

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<sup>50</sup> See notes 6–9 above.

<sup>51</sup> Barnes asserted as follows in his initial brief, p. 9, n. 13:

[Barnes'] last disciplinary conduct within SCDC was 2010 under a previous sentence which has since been vacated. His last disciplinary conduct within any county jail was as follows: 12-31-2014 in the Aiken County Jail for "refusal to obey an order" (given 10-days disciplinary detention); and 04-24-2015 in the Greenwood County Jail for "failure to stand during roll call" (given loss of 1-day recreation time).

Accordingly, the Court should uphold the restrictions imposed by the Department upon Barnes' privileges by affirming the Department's denial of his claim and denying the relief sought by Barnes in his initial brief.

## 2. Lawful Restrictions of Barnes' Canteen Privileges

Paragraph 7 of SK-22.02 provides that "Safekeepers in SD Level II will be allowed access to the canteen only for the purpose of purchasing a [Walkman] radio and batteries for the [Walkman] radio." [underlined emphasis in policy].

While the restricted canteen privileges in paragraph 22.1 of OP-22.12 are identical or nearly identical to paragraph 7 of SK-22.02, paragraph 22.1 of OP-22.12 also makes clear that Level I inmates do not have any canteen privileges.

As his restricted canteen privileges are identical to the restricted "canteen" privileges afforded other inmates classified as Level II and housed in the SMU, Barnes is not being punished. *See Laster, Hoover, and Wolfish, supra*. Instead, the Department treats Barnes just as it treats all other individuals it houses in its SMU. Moreover, unlike Level I inmates it houses in the SMU, the Department affords Barnes limited canteen privileges.

Moreover, under the decision issued by the federal district court for the District of Delaware in *Hoover*, 886 F.Supp. at 416, in which it considered various claims asserted by pre-trial detainees, the restrictions imposed upon Barnes' canteen privileges have not and do not deprive him of any "identifiable human needs" (*citing and quoting Sellers v. Henman*, 41 F.3d 1100, 1102 (7th Cir. 1994)).<sup>52</sup> [emphasis supplied].

<sup>52</sup> The note that appears at the beginning of paragraph 22 of OP-22.12, entitled "Canteen Purchases," provides that "the commissary will issue essential and other authorized clothing, hygiene items, and writing supplies to indigent inmates in SMU according to guidelines established in [Policy ADM-16.08], 'Commissary Operations.'"

Finally, the *Wiles* court, 2006 WL 2260136 at \*10, quoted the following applicable guidance from *In re Long Term Administrative Segregation of Inmates Designated as Five Percenters*, 174 F.3d 464, 469 (4th Cir. 1999):

Prison officials "should be accorded wide-ranging deference in adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." (quoting *Wolfish*, 441 U.S. at 547).

As it is not punishing Barnes nor is it depriving Barnes of any "identifiable human needs" by imposing upon him restricted canteen privileges, the Department respectfully urges to the Court to accord "wide-ranging deference" to the Department's imposition of restricted canteen privileges upon Barnes.

Accordingly, the Court should uphold the restricted canteen privileges imposed by the Department upon Barnes by affirming the Department's denial of his claim and denying the relief sought by Barnes in his initial brief.

### 3. Barnes is not Unlawfully Denied Recreation or Showers

Barnes described the following specific instances in which the Department impermissibly denied him access to both recreation time and showers.<sup>53</sup>

For the first week of April 26, 2015, [Barnes] was provided no recreation or showers. [R. p. 53]. For the second week of May 4, 2015, [Barnes] was provided no shower or recreation on Thursday of that week ..., and provided one shower for the week on Saturday .... [R. p. 55]. The following week of May 11, 2015, [Barnes] was again provided one shower for the week, and no recreation, on Saturday.<sup>54</sup> [R. p. 57]. The following week of May 18, 2015, he was again provided no shower or recreation time. [R. p. 59]. This pattern continues, right through the present, where [Barnes] is provided no recreation time each week; and sometimes, is allowed one shower per week though other weeks no shower at all.

<sup>53</sup> See Barnes' Initial Brief, pp. 6 – 7.

<sup>54</sup> Barnes showered on Sunday, not Saturday, of the week beginning May 11, 2015. (R. p. 57).

Barnes failed to mention, however, that he refused recreation no less than 11 times:<sup>55</sup> Wednesday, December 16, 2015; Thursday, May 5, 2016; Tuesday, May 17, 2016; Thursday, July 22, 2016; Tuesday, August 9, 2016; Thursday, September 1, 2016; Thursday, September 15, 2016; Tuesday, September 20, 2016; Thursday, September 22, 2016; Tuesday, October 4, 2016; and Thursday, December 8, 2016. (R. pp. 116 – 17, 152 – 53, 158 – 59, 174 – 75, 178 – 79, 184 – 85, 188 – 91, 194 – 95, and 212 – 13).

Like Barnes, the plaintiff in *Wiles*, 2006 WL 2260136 at \*3, complained about restrictions on his access to recreation, namely that he was “stripped searched and put in belly chain restraints, leg restraints, and a ‘blackbox’ restraint” when he went out for recreation.

In considering the plaintiff’s claim regarding the restrictions on his access to recreation, the *Wiles* court, 2006 WL 2260136 at \*9, quoted the following passage from the Seventh Circuit Court of Appeals’ decision in *Chavis v. Fairman*, 1995 WL 156599, \*\*5 – 6 (7th Cir. Apr. 6, 1995): “Generally, even dramatic restrictions on outdoor exercise do not violate [the due process clause] so long as prisoners have ample opportunity to enjoy indoor activity.”<sup>56</sup>

As stated immediately above in Section IV(A)(2), the *Hoover* court, 886 F.Supp. at 416, quoted the Seventh Circuit Court of Appeals’ decision in *Sellers* when it ruled as follows:

While plaintiffs may not be as comfortable in their cells at the [Sussex Correctional Institution] pre-trial detention building as they would like, they have not alleged facts from which a reasonable fact-finder could

<sup>55</sup> See the handwritten letter “R” noted in the appropriate blanks on Barnes’ cell check logs.

<sup>56</sup> Toward that end, Attachment A to OP-22.12 concerns physical fitness, and, specifically, an in-cell exercise program. The first paragraph of Attachment A provides as follows:

The [Department] has endorsed the following exercise program for those inmates who are, for whatever reason, required to remain in their cells most of the time. .... The program is called Physical Fitness: An In-Cell Exercise Program for Inmates. In this program, the benefits of physical fitness are discussed, along with setting a schedule and staying on it, and, most importantly, the listing and explanation of those exercises that are appropriate for both men and women. This Attachment should be disseminated to inmates whenever they are confined to their cells or housing areas and are not authorized recreation.

conclude that they have been deprived of "identifiable human needs." [See *Sellers*, 41 F.3d at 1102] (finding that an inmate's challenge to his conditions of confinement based on a small cell, too little exercise, and lack of an extra mattress "plainly have no merit in light of the realities of prison administration and previous decisions"). [emphasis supplied].

In *Garland v. Catoe*, 2001 WL 34681751 at \*2 (D.S.C. 2001), the federal district court for the District of South Carolina considered an action filed by an inmate incarcerated within the Department. Although the plaintiff in *Garland* was not, like the plaintiff in *Wiles*, a pre-trial detainee held by the Department as a Safekeeper, the *Garland* court, 2001 WL 34681751 at \*\*4 – 5, offered the following instructive if not determinative guidance by quoting the Fourth Circuit's decision in *Shakka v. Smith*, 71 F.3d 162, 166 (4th Cir. 1995):

... the constitutional prohibition against the infliction of cruel and unusual punishment "does not mandate comfortable prisons, and only those deprivations denying the minimal civilized measure of life's necessities are sufficiently grave to form the basis of an Eighth Amendment violation." Indeed, the ordinary discomfort accompanying prison life is part and parcel of the punishment those individuals convicted of criminal offenses endure as recompense for their criminal activity. Accordingly, only extreme deprivations are adequate to satisfy the objective component of an Eighth Amendment claim. [emphasis supplied].

As demonstrated by the Record, Barnes' claims that the Department deprives him of access to recreation ring hollow in light of the number of occasions upon which he refused recreation time. Moreover, under *Wiles*, *Chavis*, *Hoover*, *Sellers*, *Garland*, and *Shakka*, Barnes' claims regarding access to recreation and showers do not animate such "extreme deprivations" or denials of "identifiable human needs" by which the Court should rule in Barnes' favor. Accordingly, the Court should affirm the Department's denial of Barnes' claims and denying the relief sought by Barnes in his initial brief.

4. Lawful Restrictions on Barnes' Receipt of Books, Magazines, or other Publications

Barnes specifically claimed that in August 2015, the Department did not allow him to receive a legal book directly from Prisoner Legal News which was entitled, "Prisoners Self-Help Litigation Manual." Barnes asserted that he could not receive the book not because it was contraband, but because the Department had purportedly determined that he can receive no magazines or books from any publisher.<sup>57</sup>

In denying the Step 2 he filed on this claim, the Department asserted that Barnes' allegations had "not been substantiated." (R. p. 5).

In support of his claim concerning this law book, Barnes referenced several documents which introduced into the Record. Specifically, Barnes included a document dated August 4, 2015 and entitled "Notice of Rejected Incoming/Outgoing Correspondence," which reflected that the Department had, under Policy Number PS-10.08,<sup>58</sup> returned an item mailed to him from Prison Legal News. (R. p. 215). A handwritten note at the bottom of the document read as follows: "Returned to Sender (unopened) – No Publications Allowed in [SMU]." (R. p. 215). [emphasis supplied].

Barnes also included a hard copy of e-mails sent to his counsel on August 15, 2015 from an attorney who represented Prison Legal News and who stated as follows (R. p. 217):

I represent Prison Legal News. I'm writing to you because PLN just got a returned mail item addressed to [Barnes]. Evidently his copy of Prisoners Self Help Litigation Manual has been returned to us because they do not allow prisoners to have books while in segregation. The US Supreme Court case on point is [Beard v. Banks] but note that in that case the PA DOC policy allowed legal reference books and religious books. PSHLM is definitely a legal reference book. [emphasis supplied].

<sup>57</sup> See notes 29 and 30 above.

<sup>58</sup> Paragraph 20 of OP-22.12 provides that "[a]ll inmates assigned to the SMU will be allowed to send and receive mail in accordance with [Policy Number PS-10.08]," which is entitled "Inmate Correspondence Privileges."

In a note concerning this claim,<sup>59</sup> Barnes asserted that "if the Department's policy is that even disciplinary inmates cannot receive law books via U.S. Mail from publishers, then such a policy is unconstitutional under [*Beard v. Banks*, 548 U.S. 521 (2006)]."

Just like Barnes, the plaintiff in *Wiles*, 2006 WL 2260136 at \*2, who was a Safekeeper in the Department's custody, complained that he had "not been able to receive religious, educational, or recreational publications in the mail from publishers since he [had] been in the MSU." [emphasis supplied].

The plaintiff in *Wiles* attested in an affidavit "that before being placed in the MSU he knew nothing of MSU policies, and did not know that inmates in the MSU ... couldn't order publications from publishers." [emphasis supplied]. 2006 WL 2260136 at \*7.

The warden of the institution at which the plaintiff in *Wiles* was housed submitted an affidavit in which he stated that the plaintiff had been "able to continue to receive any periodical subscriptions paid for prior to his admission to the MSU until the subscription expired, but that he [had] not been allowed to renew any subscription while in the MSU." 2006 WL 2260136 at \*4. The warden also provided a reason for the restrictions upon the plaintiff's receipt of books and publications, 2006 WL 2260136 at \*4:

... one reason for the limitations on books and publications is that inmates in the MSU have limited places to hide weapons and contraband, and that by limiting the opportunity for inmates to hide weapons and contraband, the [Department] can provide a more secure and safe environment for other inmates and staff. Further, books and publications represent a fire hazard in a prison environment, especially in a lock up unit like an MSU.

The *Wiles* court, 2006 WL 2260136 at \*10, observed the following:

With respect to Plaintiff's complaints about the receipt of publications through the mail ..., the Defendants' evidence reflects the motivations and rationale behind these policies, and Defendants again point out that

<sup>59</sup> See Barnes' Initial Brief, p. 8, n. 12.

these specific policies have already been upheld by the courts of this District and Circuit. [See *Corey v. Reich*, 2004 WL 3090234, aff'd, 2004 WL 1730327 (4th Cir. 2004), cert. denied, 544 U.S. 924 (2005)]; *Incumaa v. Ozmint*, C/A No. 0:03-2776-22BD; *Strong v. Ozmint*, C/A No. 2:03-2256-24AJ, 106 Fed.Appx. 836 (4th Cir. Aug. 11, 2004). [other citations omitted and emphasis supplied].

The *Wiles* court, 2006 WL 2260136 at \*1, n. 2, also specifically discussed *Beard*:

The Magistrate Judge's Report thoroughly examines the applicable and controlling case law in this matter. As additional controlling precedent, the court notes the recent decision of the United States Supreme Court, [*Beard v. Banks*]. In *Beard*, inmates not unlike Plaintiff (housed in a highly restrictive prison unit) sued the Secretary of the Pennsylvania Department of Corrections for allegedly violating the inmates' First Amendment rights relating to access to newspapers, magazines, and photographs. In finding the inmates had not adequately met the Secretary's motion for summary judgment, the Court reiterated that at the summary judgment stage, courts must distinguish between evidence of disputed facts and disputed matters of professional judgment. In respect to the latter, [courts'] inferences must accord deference to the views of prison authorities. Unless a prisoner can point to sufficient evidence regarding such issues of judgment to allow him to prevail on the merits, he cannot prevail at the summary judgment stage. [*Beard*, 548 U.S. at 530] (citation omitted).

Contrary to his assertions, the prohibition against Barnes receiving materials via mail directly from the publisher is not, under the above-quoted passages from the decision issued by the *Wiles* court, unconstitutional under *Beard*. Assuming the information provided to Barnes' counsel in the e-mail sent to him by the attorney representing the publisher is accurate, the applicable policy issued by Pennsylvania correctional officials and considered in *Beard* allowed inmates to receive "legal reference books" directly from the publisher. Quite obviously, the Department's applicable policy does not, and earlier editions of the policy(ies) in question have been, per the *Wiles* court, upheld by courts in our federal district and the Fourth Circuit.<sup>60</sup>

Moreover, as shown below, the Department does not deny or otherwise impermissibly restrict Barnes' ability to conduct his legal work. Therefore, Barnes assertions represent nothing

<sup>60</sup> The note in paragraph 9.1 of PS-10.08 provides that inmates, like Barnes, "may not receive any publications, to include newspapers and magazines, while they are housed in ... SMU, per [OP-22.12]." See note 58 above.

more than his disagreement with the operative policy, and, as such, this Court should affirm the Department's denial of this claim and deny the relief sought by Barnes in his initial brief.

5. Lawful Restrictions of Barnes' Religious Materials and Items

Barnes asserted that the Department denied his specific request for "Muslim Prayer Oil, a sacrament relevant to his religious affiliation,<sup>61</sup>" and, in his Step 2, he asserted that the Department's denial interfered with his "First Amendment religious rights." (R. p. 17).

While the Department did not grant his request for "Muslim Prayer Oil," Barnes is still permitted to possess other items associated with the practice of his religion under paragraph 24 of OP-22.12. Under paragraph 24.1, all individuals may possess a copy of the primary source book for their religion (i.e. Qur'an) while housed in the SMU, and those individuals housed in the SMU, who have been officially recognized as Muslim, may possess a kufi and a prayer rug in their cell. Barnes has not claimed at any point in instant litigation that the Department has denied him a Qur'an, kufi, or prayer rug.

Moreover, as the Department noted in its denial of his Step 2 concerning this claim (R. p. 17), paragraph 14 of OP-22.12, entitled "Religious Programming," provides as follows:

All inmates assigned to SMU will be allowed visitation by the institutional or Volunteer Chaplain at least once per week. Individual inmate requests to see a Chaplain will receive a prompt response. All religious programming will be in-cell.

In *Wiles*, 2006 WL 2260136 at \*2, the plaintiff, a pre-trial detainee in the Department's custody for safekeeping, claimed that he had not been able to receive religious publications from publishers via the U.S. Mail after he entered the Department. The *Wiles* court, 2006 WL 2260136 at \*10, n. 6, observed as follows:

The undersigned also notes that the evidence specifically shows that, notwithstanding these restrictions, Plaintiff has literature made available to

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<sup>61</sup> See note 34 above.

him on a regular basis, as well as religious materials and access to legal materials. [emphasis supplied].

Moreover, the *Wiles* court, in considering purported violations of inmates' First Amendment rights, stated that courts "must accord deference to the views of prison authorities" in resolving such disputes. 2006 WL 2260136 at \*1, n. 2.

Consequently, while he disagrees with its denial of his "Muslim Prayer Oil" request, the Department's denial is consistent with its applicable policy, and the *Wiles* court endorsed the Department's applicable policy. In light of such realities, the Court should affirm the Department's denial of this claim and deny the relief sought by Barnes in his initial brief.

#### **B. THE DEPARTMENT DOES NOT UNLAWFULLY RESTRICT BARNES' ABILITY TO PERFORM LEGAL WORK**

Barnes described the following specific instances in which the Department impermissibly denied him the ability to conduct his legal work:<sup>62</sup>

[Barnes] is not allowed to have his box of legal materials in his cell, in that he is limited to a "one box at a time" rule.<sup>63</sup> See Claim X; [R. p. 25].

<sup>62</sup> See Barnes' Initial Brief, pp. 10 – 11.

<sup>63</sup> Paragraph 17 of OP-22.12, entitled "Legal Materials," provides as follows:

Each SMU inmate will be allowed to retain the amount of legal material that would fit into [a] 15" x 12" x 10" box. Any excess legal materials beyond [a] 15" x 12" x 10" box will be put into another box(es) (any size box may be used). NOTE: Legal material is only the materials dealing with an inmate's court cases, not personal mail, papers, pictures, etc. If an inmate [misuses] this box in any way, it will be removed, as outlined in OP-22.36, "Damage, Destruction & Abuse of Property." The inmate's name, inmate identification number, and the number of the box(es) (e.g., 1, 2, 3, etc.,) will be written on the box that contains the excess legal materials and the box(es) will be sealed in the presence of the inmate. The box(es) containing the excess legal materials will be stored in the property room. No legal materials will be disposed of. When the inmate needs to use the legal materials stored in the excess legal materials box, he will complete an SCDC Form 19-11, "Request to Staff Member." The inmate must identify the number of the box he requires and the amount of time that he will need the box. In general, the inmate may be allowed to keep the box for five calendar days, however the box may be removed from the cell sooner if security or safety needs dictate. The box will be provided to the inmate in a timely manner upon receipt of his SCDC Form 19-11. The inmate is allowed to remove material from the box stored in his cell and exchange it with materials stored in the excess legal materials box. When the inmate is finished with the

[Barnes] is not provided access to make telephone calls to his attorneys on a regular basis.<sup>64</sup> See Claim XI; [R. p. 28]. [Barnes] is denied the ability to be provided copies of his *pro se* legal materials. See Claim XIII; [R. p. 34]. [Barnes] is denied adequate access to a prison law library. See Claim XIV; [R. p. 37]. [Barnes'] legal mail is improperly delayed both outgoing and incoming. See Claim XV; [R. p. 40]. [Barnes] is denied adequate access to supplies including paper, pens, and other materials in which to prepare his *pro se* legal pleadings and communicate with his attorneys. See Claim XVI; [R. p. 43].

Barnes specifically asserted that he "only gets to make phone calls to his attorney once or twice per month" and "that he needs more than one box of legal materials in his cell at a time."<sup>65</sup>

Although the plaintiff in *Garland* was not a pre-trial detainee held by the Department for safekeeping, the *Garland* court, 2001 WL 34681751 at \*8, offered the following guidance:

Moreover, states must affirmatively provide prisoners with either law libraries or persons trained in law to prosecute both post-conviction proceedings and civil rights actions. [*Bounds v. Smith*, 430 U.S. 817 (1977)]; *Carter v. Mandel*, 573 F.2d 172 (4th Cir. 1978). Meaningful access to the courts is the touchstone. *Bounds*, 430 U.S. at 823. *Bounds* did not create an abstract, free-standing right to a law library or legal assistance. An inmate must demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim. [emphasis supplied].

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excess legal materials box, it will be re-sealed in the inmate's presence and returned to the property room. [bold and italicized emphasis in policy].

<sup>64</sup> Paragraph 21.2 of OP-22.12, entitled "Legal Telephone Calls," provides as follows:

All inmates will be allowed to place verified telephone calls to their legal counsel. For purposes of these procedures, "legal counsel" may consist of the inmate's attorney of record and/or paralegal(s). Inmate requests for attorney calls require 24 hours advance notice to allow for staff verification. Telephone calls will be scheduled and approved by the Captain, Lieutenant, or SMU Supervisor. Inmates must be able to demonstrate, and SMU staff will be responsible for verifying, that communication with the attorney by correspondence or visiting is not adequate, i.e., court deadline or other legal deadline. Attorney calls will be dialed by an Officer. Once verified, the call will not be monitored. Any deviation from this procedure will be documented in the inmate's record. [final sentence omitted].

<sup>65</sup> See Barnes' Initial Brief, p. 11.

However, the *Hoover* court, 886 F.Supp. at 420 – 21, confronted claims by pre-trial detainees concerning their purported lack of access to the courts, and, like the *Garland* court, it cited the United States Supreme Court's decision in *Bounds* in its analysis:

Finally, in claim two, plaintiffs argue that the limitations placed on their use of the prison law library violate their right of access to the courts. Plaintiffs assert they are only scheduled to have one hour per day in the library, and that they usually are given only two to three hours per week of that time.

While the Constitution guarantees prisoners access to an adequate law library, [see *Bounds*, 430 U.S. at 821], that access is not unqualified. Courts have recognized that "[p]rison officials of necessity must regulate the time, manner, and place in which library facilities are used." *Lindquist v. Idaho State Bd. of Corrections*, 776 F.2d 851, 858 (9th Cir. 1985). The key is that "such access cannot become so attenuated as to become meaningless." *Cepulonis v. Fair*, 732 F.2d 1, 4 (1st Cir. 1984). Plaintiffs clearly have not demonstrated that the two to three hours per week of library time they are afforded is access which can [be] called "meaningless." [emphasis supplied].

In *United States v. Folse*, 2016 WL 3996386 (D.N.M. Jun. 15, 2016), the federal district court for the District of New Mexico recently addressed complaints by an unsentenced federal detainee held in a New Mexico state prison that the conditions of his confinement violated his rights to effective assistance of counsel and access to the courts.

The *Folse* court, 2016 WL 3996386 at \*19, quoted *Benjamin v. Fraser*, 264 F.3d 175, 186 (2nd Cir. 2001), as follows:

By contrast, here we are concerned with the Sixth Amendment right of a pretrial detainee, in a case brought against him by the state, to utilize counsel in his defense.... The reason pretrial detainees need access to the courts and counsel is ... to defend against the charges brought against them. [emphasis supplied].

The *Folse* court, 2016 WL 3996386 at \*20, held as follows:

38. "[E]ven when an institutional restriction infringes a specific constitutional guarantee, such as the First Amendment, the practice must

be evaluated in the light of the central objective of prison administration, safeguarding institutional security." [*Wolfish*, 441 U.S. at 547].

39. Folsie contends that [the Penitentiary of New Mexico] prevents him from calling his attorney "without going through a laborious process that can take weeks to complete — that means weeks between the request and the phone call." Motion at 2. He adds that, "[w]hen counsel attempts to set up phone calls by contacting [the Penitentiary of New Mexico], it can take days or weeks to get a call back." Motion at 2. ...

41. ... The Court concludes that it may take up to fourteen days to set up a legal telephone call. Folsie's account is correct, but his conditions of confinement do not unconstitutionally impair his right of access to counsel. [emphasis supplied].

In its decision, 2016 WL 3996386 at \*23, the *Folsie* court determined as follows:

51. ... Again, the record is not robust. Folsie has the burden of showing the real possibility of interference, not just inconvenience. [See *United States v. Wade*, 2009 WL 3837151, at \*1]; [*Arney v. Simmons*, 26 F. Supp. 2d 1288, 1294 (D. Kan. 1998)] (Saffels, J.) ("[T]he court finds that the burden is on plaintiffs to prove that prison officials have exaggerated their response to legitimate security concerns. In the absence of substantial evidence to that effect in the record, courts should ordinarily defer to the expert judgment of prison officials."). [emphasis supplied].

The *Folsie* court, 2016 WL 3996386 at \*24, later observed as follows:

56. Numerous courts have declined to impose tight restrictions on prison officials' judgment regarding pretrial detainees' communications with their attorneys. [See *O'Mara v. Dionne*, 2009 WL 2170986, at \*5 (D.N.H. July 20, 2009)] (McAuliffe, J.) ("Obviously, pre-trial detainees such as plaintiff have a constitutional right to counsel, but jail officials are not required to facilitate communication between inmates and counsel at any time or in any manner that a detainee might desire.");<sup>66</sup> [*Porter v. Bodlovich*, No. 3; 1996 WL 535436, at \*12 (N.D. Ind. Sept. 17, 1996)] (Sharp, J.) (upholding prison requirement that offender present a letter from his attorney requesting a telephone call before placing a call). [emphasis supplied].

The *Folsie* court, 2016 WL 3996386 at \*25, then offered the following instructive commentary in denying the unsentenced detainee's claim:

<sup>66</sup> The ruling by the federal court in *O'Mara* negates Barnes demand for an order from the Court allowing him to make telephone calls to his attorneys when requested, during regular office hours of 9:00 a.m. – 5:00 p.m. on Monday through Friday, including but not limited to one per week."

59. ... While prison officials or the [United States Marshall Service] cannot do anything they want in the name of internal security, the defendant must show that the security restrictions are actually — not threatening — interference with effective counsel representation. Folse does not — without more of a showing — need to talk to his attorney every day, every few days, or even every week. He does need to show more actual interference, or the possibility of interference, with effective communications with his counsel, which he has not done. The interference must be real world, not theoretical or a mere inconvenience. Folse is, after all, convicted of federal carjacking. He cannot expect representation at a maximum-security prison to be like walking into his attorney's office in downtown Albuquerque. [emphasis supplied].

Barnes' legitimate pre-trial detention as a Safekeeper in the Department's custody undeniably impacts Barnes' access to the courts and to his counsel. Barnes is simply unable to communicate at will with his counsel, to travel at will to meet with his counsel, or, for that matter, travel at will to locations in Georgia at which he may engage in activities associated with defending the charges he faces in that jurisdiction.

However, Barnes does not, under the United States Supreme Court's decision in *Bounds*, *supra*, possess "an abstract, free standing right" to either a law library or legal assistance. Instead, the entirety of the Record reflects the realities that Barnes has been adequately permitted access to the law computer room,<sup>67</sup> that he has been able to adequately communicate with his counsel via the United States Mail,<sup>68</sup> and that he has been able to adequately communicate with his counsel via telephone.<sup>69</sup>

<sup>67</sup> Barnes introduced the relevant "Law Computer Room Logs" into the Record. (R. pp. 338 – 39). Barnes' access to the law computer room is also reflected on the "Cell Check Logs" he introduced into the Record. (R. pp. 79, 83, 105, 173, 175, 179, 181, 199, 201, 203, 211, 213, 333, and 335). The same "Cell Check Logs" also reflect at least one (1) visit Barnes received from an attorney. (R. p. 183).

<sup>68</sup> Barnes introduced redacted versions of the relevant "Legal/Privileged/Certified Mail Logs" into the Record. (R. pp. 218 – 77).

<sup>69</sup> Barnes introduced redacted versions of the relevant "Call Logs," as well as a computer-generated ledger reflecting calls he made, into the Record. (R. pp. 316 – 31).

More problematically for Barnes, he did not, at any point in either his relevant Step 2s or in his initial brief, demonstrate, as required under *Folse* and the authorities cited therein, that his custody with the Department as a Safekeeper, with the attendant restrictions imposed upon his privileges while classified as a Level II inmate, actually has interfered with his ability to effectively communicate with his counsel or the restrictions have otherwise presented the real possibility of interference with such communication. Barnes also failed to demonstrate that such restrictions have actually interfered with his ability to defend himself in the criminal matters pending against him in Georgia and/or South Carolina or that they have otherwise presented the real possibility of interfering with his ability to defend himself in those matters.

By way of example, Barnes did not assert that the restrictions he confronts as a Safekeeper have resulted in his counsel missing any deadlines established in any scheduling orders. Likewise, Barnes did not include into the Record or otherwise submit as exhibits supporting his initial brief any correspondence between himself and/or his counsel to court officials demonstrating that such restrictions have interfered with their activities to defend his pending criminal matters in either Georgia or South Carolina.

In light of such realities, the Court should affirm the Department's denial of all claims Barnes included in his second group of claims, and the Court should also deny all relief sought by Barnes concerning his second group of claims.

### **C. BARNES RECEIVES ADEQUATE AND TIMELY MEDICAL CARE**

In his legal argument regarding his third group of claims, Barnes asserted that "he has been denied adequate and timely medical care and treatment."<sup>70</sup>

In *McCall v. Bodiford*, 2016 WL 4498462, \*1 (D.S.C. Jun. 15, 2016), the federal district court for the District of South Carolina considered various claims asserted by a plaintiff who was

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<sup>70</sup> See Barnes' Initial Brief, p. 13.

a pre-trial detainee housed at the Greenville County Detention Center. Among various claims, *Id.* at \*2, the plaintiff in *McCall* claimed that he was denied proper medical treatment while in custody as a pre-trial detainee for injuries he sustained in an automobile collision.

In considering the plaintiff's claim for the purported denial of proper medical treatment, the *McCall* court, *Id.* at \*9, articulated the following applicable standard:

As a pretrial detainee, the protections given by the Due Process Clause of the Fourteenth Amendment, not the Eighth Amendment, apply to the Plaintiff's case. *Slade v. Hampton Roads Reg'l Jail*, 407 F.3d 243, 250 (4th Cir. 2005). Deliberate indifference towards a pretrial detainee's serious medical need violates the Due Process clause of the Fourteenth Amendment. *Young v. City of Mount Ranier*, 238 F.3d 567, 575 (4th Cir. 2001); *Grayson v. Peed*, 195 F.3d 692, 695 (4th Cir. 1999) (applying deliberate indifference standard to pretrial detainee's claim that he was denied needed medical treatment), *cert. denied*, 529 U.S. 1067 (2000). "The Fourteenth Amendment right of pretrial detainees, like the Eighth Amendment right of convicted prisoners, requires that government officials not be deliberately indifferent to any serious medical needs of the detainee." *Belcher v. Oliver*, 898 F.2d 32, 34 (4th Cir. 1990) (citations omitted).<sup>71</sup> [footnote omitted and emphasis supplied].

While he introduced his medical records and treatment notes into the Record, Barnes failed to cite any of his medical records and treatment notes anywhere in his initial brief regarding his third group of claims. (R. pp. 278 – 315 and 340 – 45). Barnes likewise failed to indicate with any specificity any instances reflected in the Record upon which a physician or any member of the Department's Division of Health Services ignored or misdiagnosed an illness, malady, ailment, or condition from which he purportedly suffers.

<sup>71</sup> The *Wiles* court, 2006 WL 2260136 at \*8, n. 5, also cited *Belcher*:

Since Plaintiff was apparently a pretrial detainee during at least some of the time period at issue, his claims with respect to that period of time would be governed by the Fourteenth Amendment, not the Eighth Amendment. [See *Belcher*, 898 F.2d at 34]. This distinction does not save Plaintiff's claim, however, as "[t]he Fourteenth Amendment right of pretrial detainees, like the Eighth Amendment right of convicted prisoners, [both] require[ ] that government officials not be deliberately indifferent to any serious ... needs of the detainee." [*Id.*] (emphasis supplied).

Instead, the thrust of Barnes' third group of claims is apparently his contention that no member of the Department's Division of Health Services has directed that he undergo "follow-up exams, laboratory tests," or other so-called "standard of care procedures."<sup>72</sup>

Barnes' treatment notes reflect that he reported, early in his detention with the Department and more recently, no complaints:

| Record   | Date             | Report                                                                                                                                                                   |
|----------|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 287      | April 29, 2015   | "[Barnes] has no complaints at this time."                                                                                                                               |
| 281 – 82 | August 10, 2015  | "[Barnes] reported 'no sleep problems and no problem with appetite.'"                                                                                                    |
| 279      | October 27, 2015 | "[Barnes] ... reported 'eating food daily, sleeping eight hours daily, and doing okay.'"                                                                                 |
| 340      | December 5, 2016 | "[Barnes] ... reported 'eating food, not taking mental health medications, and sleeping about seven hours daily.' [Barnes] reporting 'doing okay.'" [emphasis supplied]. |

Contrary to his contentions, the Record actually reflects that such exams and tests have been performed. For example, an entry in his medical records from April 11, 2016 reflects a "Lab Report" returned from the "Lab Clinic" for analysis of what appears to be blood drawn from Barnes. (R. pp. 278 and 302 – 303).

As a predicate issue, the Department, based upon the materials he introduced into the Record, respectfully asserts that Barnes has identified no injury, let alone a serious medical need, for which any member of its Division of Health Services or, for that matter, anyone it employs has deprived him of medical care. To the extent that Barnes has somehow identified such an injury or serious medical need, the Department respectfully asserts that no member of its Division of Health Services or, for that matter, no one it employs has evidenced deliberate indifference toward the same.

<sup>72</sup> See Barnes' Initial Brief, p. 13.

In light of such realities, the Court should affirm the Department's denial of all claims Barnes included in his third group of claims, and the Court should also deny all relief sought by Barnes concerning his third group of claims.

**D. BARNES DOES NOT EXPERIENCE CONSTITUTIONALLY IMPERMISSIBLE CONDITIONS IN HIS CELL**

Concerning his fourth group of claims, Barnes summarized his position as follows:<sup>73</sup>

[Barnes] understands that he is in prison within [the Department]. Even prisoners, however, should not be subjected to unsanitary and unhealthy conditions which make them sick, including but not limited to the constant smell of human waste.

Like Barnes, the plaintiff in *Garland*, 2001 WL 34681751 at \*4 complained of conditions to which he was subjected in his cell, specifically "unsanitary shower conditions, denial of hygiene products, and exposure to environmental tobacco smoke." In considering the plaintiff's complaints, the *Garland* court, *Id.*, observed as follows:

In order to establish an Eighth Amendment violation of cruel and unusual punishment, a plaintiff must show that he has suffered a serious deprivation of a basic human need and that the prison officials showed a deliberate indifference with regard to the cited prison conditions. [*Strickler v. Waters*, 989 F.2d 1375, 1379 (4th Cir. 1993), *cert. denied*, 510 U.S. 949 (1993)]; see [*Wilson v. Seiter*, 501 U.S. 294 (1991)].

The *Hoover* court, 886 F.Supp. at 412, considered a civil rights action filed by pre-trial detainees against prison officials in which the pre-trial detainees challenged the conditions of their confinement,<sup>74</sup> and the *Hoover* court, *Id.* at 416, recited the following standard:

<sup>73</sup> See Barnes' Initial Brief, pp. 14 - 15.

<sup>74</sup> Although the plaintiff in *Garland* was not a pre-trial detainee, the *Garland* court, 2001 WL 34681751 at \*5, cited *Hoover*, 886 F.Supp. at 416, in support of the following conclusion:

The plaintiff does not present any evidence that he suffered any injury resulting from the defendants' actions, conduct, and/or omissions. The plaintiff also fails to show that the conditions complained of amount to cruel and unusual punishment under the Eighth Amendment, or that the defendants were deliberately indifferent to an objectively serious condition or risk of harm.

Plaintiffs first challenge the conditions of their confinement in the [Sussex Correctional Institution] pre-trial building, claiming they are unsafe and unhealthy. Because plaintiffs are pretrial detainees, their claims are governed by the Due Process Clause, rather than the Eighth Amendment. [*Boring v. Kozakiewicz*, 833 F.2d 468, 471 (3d Cir. 1987) ("Pretrial detainees are not within the ambit of the Eighth Amendment, but are entitled to the protections of the Due Process clause."), *cert. denied*, 485 U.S. 991 (1988)]. However, the Third Circuit has held that the standard set out by the Supreme Court in [*Wilson v. Seiter*, 501 U.S. 294 (1991)], for analyzing violations of the Eighth Amendment based on conditions of confinement also applies to pre-trial detainees through the Due Process Clause. *Kost v. Kozakiewicz*, 1 F.3d 176, 188 (3d Cir. 1993); *see also Whitnack v. Douglas County*, 16 F.3d 954, 957 (8th Cir. 1994) (applying the *Wilson* standard to pretrial detainees).

The *Hoover* court, 886 F.Supp. at 416 – 17, further addressed their claims:

As to plaintiffs' other claims concerning such issues as broken bathroom facilities, ventilation and odor problems, the noise level from too many television sets, and the lack of chairs, tables, and ladders for their beds, the court finds these problems constitute "amorphous conditions" which do not indicate the deprivation of a particular human need. *See Wilson v. Schomig*, 863 F.Supp. 789, 795 (N.D. Ill. 1994) (finding the conditions of inmate's confinement "not sufficiently serious to violate" the Constitution); *Veteto v. Miller*, 829 F.Supp. 1486, 1495–96 (M.D.Pa. 1992) (finding that the "admittedly uncomfortable conditions nebulously outlined" by the plaintiff did not rise to the level of an Eighth Amendment violation); *Payton v. Vaughn*, 798 F.Supp. 258, 260–61 (E.D.Pa. 1992) (holding that the conditions alleged by the plaintiff did not "amount to any[thing] more than unpleasantness," which is not sufficient to state a cognizable constitutional claim). Consequently, the court will grant defendants' motion for summary judgment as to all the issues in claim one of plaintiffs' complaint. [emphasis supplied].

The Department respectfully asserts that the conditions identified by Barnes in his fourth group of claims constitute "amorphous conditions, which do not indicate the deprivation of a particular human need," as recognized under the above-quoted passage from *Hoover*. Likewise, the conditions identified by Barnes constitute "the ordinary discomfort accompanying prison life, [which] is part and parcel of the punishment those individuals convicted of criminal offenses endure as recompense for their criminal activity." *See Garland* at \*\*4 – 5 (quoting *Skakka*, 71

F.3d at 166). Consequentially, such conditions do not animate Eighth Amendment violations of cruel and unusual punishment sustained by Barnes.

In light of such realities, the Court should affirm the Department's denial of all claims Barnes included in his fourth group of claims, and the Court should also deny all relief sought by Barnes concerning his fourth group of claims.

#### E. SECTION 24-3-80 IS NOT UNCONSTITUTIONAL

In his fifth and final group of claims, Barnes objected to the constitutionality of § 24-3-80, the Safekeeper statute, and he stated as follows:<sup>75</sup>

Obviously, this Court has issued an Order denying this Claim. Order of [November 5, 2015]. Therefore, for preservation purposes, [Barnes] relies on his previously submitted arguments to the Court, as well as the citations in his Step-2 grievance form and notice of appeal on these issues. [Barnes] further incorporates the argument and legal foundation for this claim as set forth above and herein, as well as in prior written submissions to this Court. See U.S. Constitution, Amend. 1, 5, 6, and 14; S.C. Const. Art. I §§ 2, 3, and 14; *Johnson v. Avery, supra*; *Beard v. Banks, supra*.

In its November 5, 2015 order, the Court recounted Barnes' claim regarding § 24-3-80:

[Barnes] 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 [§] 24-3-80 would be unconstitutional. [Barnes] 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 [his] removal from the county jail and transfer into state custody is not because of any current or recent infractions or behavior as envisioned by [Executive Order No. 2000-11]."<sup>76</sup>

The Court then held as follows:<sup>77</sup>

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*

<sup>75</sup> See Barnes' Initial Brief, p. 15.

<sup>76</sup> See the Court's November 5, 2015 Order, p. 4. In the footnote associated with the above-quoted passage, the Court quoted the operative three-part standard from Section 1 of Executive Order No. 2000-11. *Id.*, p. 4, n. 5. See also note 12 above.

<sup>77</sup> See the Court's November 5, 2015 Order, p. 4.

of Revenue, 705 S.E.2d 28, 38 – 39 (S.C. 2011)]. However, this Court “is empowered to hear as applied challenges to statutes regulations.” [*Id.*, 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 a [Department] facility as a Safekeeper. However, as to the Governor’s basis for his classification and transfer of a prisoner as a Safekeeper, [Barnes] has failed to establish that [§] 24-3-80 was unconstitutionality applied in this case. [emphasis supplied].

As to whether Barnes possesses a liberty interest in his classification as a Safekeeper or in the location at which he is housed under such as classification, the *Wiles* court, 2006 WL 2260136 at \*8, offered the following crucial guidance:

It is known from other cases previously decided in this judicial district that South Carolina law confers no protected liberty interest upon inmates of the [Department] from being placed in administrative segregation or any particular prison. See e.g., *Keeler v. Pea*, 782 F.Supp. 42, 43-44 (D.S.C. 1992), (citing *Meachum v. Fano*, 427 U.S. 215 (1976)). See also *Vice v. Harvey*, 458 F.Supp. 1031, 1034 (D.S.C. 1978). In fact, it is well settled that the placement of inmates into administrative segregation units or similar units is a valid means of minimizing a “threat to security of the institution, threat to the safety of other residents or Jail staff, etc.” *Jackson v. Bostick*, 760 F.Supp. 524, 528 (D.Md. 1991). [other citations omitted].

In considering the entry of a pre-trial detainee into an Indiana state prison for safekeeping, the *Laster* court, 554 F. Supp. at 1188, ruled as follows:

The Seventh Circuit has held that individual safekeepers may be kept in restrictive conditions where there has been a determination made upon the facts about the individual safekeeper provided by the committing court or discovered by the prison staff. It is only the additional severity of treatment in the absence of knowledge of their individual characteristics that “is clearly excessive and thus amounts to punishment ...” [*Lock v. Jenkins*, 641 F.2d 488, 494 (7th Cir. 1981)]. Here facts concerning the past behavior and individual characteristics of Laster were available and these facts fully justify the steps taken by the prison administration. [emphasis supplied].

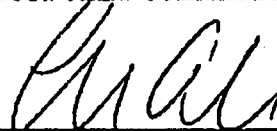
As developed above in Sections I(B) and II(B), the facts associated with Barnes' past exhibitions of "extremely violent and uncontrollable behavior," as contemplated by the operative three-part standard from Executive Order No. 2000-11, were well documented by the Edgefield County Sheriff in his request to the Governor for Barnes' entry into the Department's custody for safekeeping. Thus, under the parameters of *Laster*, Barnes' entry was legitimate and lawful. Moreover, as established in *Wiles*, Barnes does not possess a protected liberty interest regarding either his placement in administrative segregation or his assignment to any particular prison.

In light of such realities, the Court should affirm the Department's denial of all claims Barnes included in his fifth and final group of claims, and the Court should also deny all relief sought by Barnes concerning his fifth and final group of claims.

#### V. CONCLUSION

For the foregoing reasons, the Department respectfully urges this Court to affirm the decisions by which it denied all 15 of Barnes' claims, and, by doing so, the Department respectfully urges this Court to deny the entirety of the relief sought by Barnes in his initial brief.

RESPECTFULLY SUBMITTED:




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Counsel for the Department

Columbia, South Carolina  
 February 24, 2017

**THE STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

**The Honorable Ralph King Anderson, III, Chief Administrative Law Judge**

Steven Louis Barnes,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 15-ALJ-30-0318-II

Grievance Nos. 9010-16 (I through V) and  
9010-16 (VII through XVI)

**THE DEPARTMENT'S BRIEF**

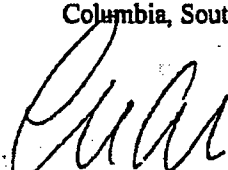
**CERTIFICATE OF SERVICE**

I certify that I have served **THE DEPARTMENT'S BRIEF** on the above-named Appellant by mailing a copy of it to his counsel via the United States Postal Service, first class postage pre-paid, at the following addresses:

Jeffrey P. Bloom, Esquire  
Post Office Box 5885  
Columbia, South Carolina 29250-5885

William S. McGuire, Esquire  
1330 Lady Street - Suite 401  
Columbia, South Carolina 29201

February 24, 2017

  
\_\_\_\_\_  
**LAKE E. SUMMERS**

**FILED**

**FEB 24 2017**

**SC ADMIN LAW COURT**

Georgia Felony Search

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# Georgia Technology Authority

Georgia Felony Search  
Tuesday, February 07, 2017

Rap Sheet



## GEORGIA BUREAU OF INVESTIGATION

Georgia Crime Information Center  
3121 Peachtree Road  
Decatur, GA 30037  
(404) 244-2839

# Criminal History Record

### Introduction

This rap sheet was produced in response to the following request (Produced on):

FBI Number  
247440EB1

State ID Number  
GA2388346E

Purpose Code  
P

Attention  
247440EB1

The information in this rap sheet is provided subject to the following caveats:

\*\*THIS RESPONSE IS BEING PRODUCED FOR YOUR REQUEST SENT: 2017-02-07(GA; 2007-08-11)

Important! Criminal history record information is obtained one of two ways: 1) by conducting an inquiry using personal identifiers such as name and date of birth (name search), or 2) by submitting fingerprint cards to the Georgia Crime Information Center (GCIC). When conducting a name search for criminal history record information, there is a possibility that the information returned belongs to a different person with the same, or similar, identifiers. In this case, a positive match of the person whose criminal history record is sought requires submission of fingerprint cards to GCIC. When conducting a fingerprint search for criminal history record information, the information returned does, in fact, belong to the individual. In this case, conducting a name search using the individual's personal identifiers would be the same information. (GA; 2007-08-11)

<https://services.georgia.gov/gta/gafs/rapSheet.do>

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## Georgia Felony Search

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When the information contained in a criminal history report causes an adverse employment or licensing decision the individual, business or agency making the decision must inform the applicant of all information pertinent to the decision. The disclosure must include information that a criminal history record check was conducted, the specific contents of the record and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision is a misdemeanor offense under Georgia law. Additionally, any unauthorized dissemination of this record or information herein also violates Georgia law. The plea of nolo contendere may be considered a conviction for some purposes; however, except as otherwise provided by law, it shall not be used against the defendant in any other court as a conviction or admission of guilt or for the purpose of effecting any civil disqualification of the defendant to hold public office, to vote, to serve upon any jury, or any other civil disqualification imposed upon a person convicted of any offense under the laws of this state. (GA; 2007-08-11)

In the event that identifiers are not clearly associated to a specific cycle, the information is most likely non-fingerprint based information received from the Department of Corrections at the time of release from incarceration. (GA; 2007-08-11)

---

 Identification
 

---

## Subject Name(s)

BARNES, STEVENL  
 BARNES, STEVENLOUIS  
 BARNES, STEVELQUIS  
 BARNES, STEVENLOUIS

## Subject Description

FBI Number  
 247440EB1  
 State Id Number  
 GA2388346E  
 Sex Offender Number  
 DOC Number  
 Social Security Number  
 Driver's License Number  
 Miscellaneous Numbers  
 Sex  
 Male  
 Race  
 Black  
 Height  
 601  
 602  
 Weight  
 250  
 Year of Birth 1978  
 Hair Color  
 Black  
 Eye Color  
 Brown  
 Scars, Marks, and Tattoos  
 Place of Birth  
 GEORGIA  
 Citizenship

<https://services.georgia.gov/gta/gafs/rapSheet.do>

2/7/2017

## Georgia Felony Search

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Employment  
Residence  
DNA Data  
Miscellaneous Information  
CONVICTED FELON

---

**Criminal History**

---

OTN 00071184083 (Cycle 1 of 2)

Offender Tracking Number (OTN)  
00071184083

Earliest Event Date  
1998-10-14

Arrest  
(Cycle 1)

Arrest Date

Case Number

Arresting Agency

Arrest Type

**Charge**

Charge Tracking Number

Charge Literal

Statute

<https://services.georgia.gov/gta/gafs/rapSheet.do>

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State Offense Code

Severity

Prosecutor Disposition

Court Disposition  
(Cycle 1)Case Number  
00071184083002Court Agency  
GA1210530 ; RICHMOND COUNTY STATE COURTSubject Name(s)  
BARNES, STEVEN LOUIS

## Charge

Charge Tracking Number  
00071184083002 -Charge Literal  
MANUFACTURE/SELL/DISPENSE/DISTRIBUTE - DRUG NAME MUST BE ENTERED IN CHARGE COMMENT  
FIELD

Charge Description

Statute  
16-13-30(b) ; GA<https://services.georgia.gov/gta/gafs/rapSheet.do>

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State Offense Code  
3513

Severity  
Felony

Disposition  
GUILTY (CONVICTED / ADJUDICATED) (1999-05-07; )

Sentencing  
(Cycle 1)

Case Number  
00071164083002

Sentencing Agency  
GA1210533; RICHMOND COUNTY STATE COURT

## Charge

Charge Tracking Number  
00071164083

Sentence  
PROBATION 10 YEARS  
OTHER SENTENCE TYPE  
FINE \$2500

Corrections

OTN 00103971641 (Cycle 2 of 2)

Offender Tracking Number (OTN)  
00103971641

Earliest Event Date  
2002-01-24

<https://services.georgia.gov/gta/gafs/rapSheet.do>

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**Arrest**  
(Cycle 2)**Arrest Date**  
2002-01-24**Case Number**  
2002-0188**Arresting Agency**  
GA0360000;COLUMBIA COUNTY SHERIFF OFFICE**Arrest Type**  
Adult**Charge****Charge Tracking Number**  
00103971641001**Charge Literal**  
ARMED ROBBERY**Statute**  
16-8-41 ; GA**State Offense Code**  
1216**Severity**  
Felony**Prosecutor Disposition**<https://services.georgia.gov/gts/gafs/rapSheet.do>

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Court Disposition  
(Cycle 2)

Case Number  
00103971641001

Court Agency  
GA036015J ; COLUMBIA COUNTY SUPERIOR COURT

Subject Name(s)  
BARNES, STEVEN LOUIS

Charge  
Charge Tracking Number  
00103971641001 -

Charge Literal  
ARMED ROBBERY

Charge Description

Statute  
16-8-41 ; GA

State Offense Code  
1216

Severity  
Felony

Disposition  
GUILTY (CONVICTED / ADJUDICATED) (2003-12-15; )

Sentencing  
(Cycle 2)

<https://services.georgia.gov/ga/gaifs/rapSheet.do>

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## Case Number

00103971641001

## Sentencing Agency

GA0360157; COLUMBIA COUNTY SUPERIOR COURT

## Charge

## Charge Tracking Number

00103971641

## Sentence

LIFE

OTHER SENTENCE TYPE

CONFINEMENT 5 YEARS

OTHER SENTENCE TYPE

CONFINEMENT 20 YEARS

OTHER SENTENCE TYPE

CONFINEMENT 20 YEARS

OTHER SENTENCE TYPE

CONFINEMENT 5 YEARS

OTHER SENTENCE TYPE

CONFINEMENT 5 YEARS

## Corrections

---

Index of Agencies

---

## Agency

GA0360000 ; COLUMBIA COUNTY SHERIFF OFFICE

## Contact

SHERIFF

## Agency Telephone

(706) 541-2800

## Address

PO BOX 310

APPLING, GA 308020310 USA

<https://services.georgia.gov/gta/gafs/rapSheet.do>

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## Agency

GA036015J ; COLUMBIA COUNTY SUPERIOR COURT

## Contact

JUDGE

## Agency Telephone

(706) 312-7139

## Address

PO BOX 2930  
EVANS, GA 308090000 USA

## Agency

GA121053J ; RICHMOND COUNTY STATE COURT

## Contact

JUDGE

## Agency Telephone

(706) 821-1219

## Address

PO BOX 2046  
AUGUSTA, GA 309030000 USA<https://services.georgia.gov/gta/gafs/rapSheet.do>

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South Carolina Law Enforcement Division

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**SLED CATCH**  
Citizens Access to Criminal Histories

## Results

Name STEVEN BARNES  
DOB 1978  
Gender Male  
Maiden Name  
SSN  
Transaction 27142038DN  
Date of Check February 07, 2017 at 14:20

**ARREST RECORD**  
S.C. Law Enforcement Division  
WWW

The record is based on a search using Last Name, First Initial, Gender, and Date of Birth Only. Compare all identifying data given for record subject with screening subject. Fingerprint comparison is recommended as the most reliable means to identify a record subject.

INTERNET RAR SHEET REQUEST  
ORI-SCLED0000 SID-SC01635820 FBI-\*\*\*\*\* PUR-E  
ATH-WEB, ACCOUNT

AUTHORIZED USE ONLY. \*\*\*\*\* CONTACT CONTRIBUTING  
AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.  
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY  
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-02/07/2017 TIME-14:21:27  
REQ ORI-SCLED0000 S C LAW ENF DIV  
SID-SC01635820 FBI-  
NAME-BARNES, STEVEN LOUIS SEX-M RACE-B  
HEIGHT-602 WEIGHT-250 EYES-BRO HAIR-BLK SKIN- BORN-SC  
FPC- HENRY-  
PHOTOGRAPH AVAILABLE AUTHORIZED USE ONLY  
PALM PRINTS AVAILABLE AUTHORIZED USE ONLY  
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAPIS

DATE RECORD ENTERED--N/A DATE OF LAST UPDATE--02/20/2014

| ADDITIONAL IDENTIFIERS | BIRTH |       |         |          |
|------------------------|-------|-------|---------|----------|
| NAME                   | DATES | MARKS | SOC SEC | MISC NUM |
| BARNES, STEVE LOUIS    | 1978  |       |         |          |
| TAT NECK               |       |       |         |          |

| CONTRIBUTOR/SUBJECT          | DOA/RCVD CHARGE/DISPOSITION/ETC |
|------------------------------|---------------------------------|
| BARNES, STEVEN LOUIS         | 05/18/2005                      |
| SC01900000 EDGEFIELD CNTY SO |                                 |
| CASE-16065                   |                                 |
| ATH-990000064791             |                                 |
| WARR-G679755                 |                                 |
| CIT-16-3-10-FELONY           |                                 |

BARNES, STEVEN LOUIS  
SC01900000 EDGEFIELD CNTY SO  
CASE-16065  
ATH-990000064791  
WARR-G679755  
CIT-16-3-10-FELONY

ARREST CHARGE -MURDER  
OFFENSE DATE-09/03/2001  
PHOTOGRAPH AVAILABLE  
PALM PRINTS AVAILABLE

CIT-16-3-10-FELONY  
WARR-G679755

COURT CHARGE 01-MURDER  
COURT DISP-NON-CONVICTION;  
SENTENCED ON 11-17-2010  
TO DEATH PENALTY  
ATH-990000064791

<https://catch.sled.sc.gov/SCBackground.aspx?token=MjcxNDJwMzhETkRBMTM3MjhCL...> 2/7/2017

## South Carolina Law Enforcement Division

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BARNES, STEVEN LOUIS  
SC0190000 EDGEFIELD CNTY SO  
CASE-16065  
ATH-990000259995  
WARR-K095822  
CIT-24-13-470 FELONY

A05/18/2005

ARREST CHARGE -THROW BODILY  
FLUIDS ON EMPLOYEE BY  
PRISONERS  
OFFENSE DATE-05/18/2005  
PHOTOGRAPH AVAILABLE  
PALM PRINTS AVAILABLE

CIT-24-13-470-FELONY  
DOC-07691900033  
WARR-K095822

COURT CHARGE 01-THROW BODILY  
FLUIDS ON EMPLOYEE BY  
PRISONERS  
COURT DISP-NON-CONVICTION;  
DISM/VOL PROS/PROS ENDED  
COURT DATE-03/13/2008  
ATH-990000259995

SC040015C SC DEPT CORRECTIONS  
CASE-031420  
CIT-24-13-470-FELONY

03/14/2008 CUSTODY STATUS-RECEIVED  
START DATE-03/14/2008

COURT CHARGE 01-THROW BODILY  
FLUIDS ON EMPLOYEE BY  
PRISONERS  
COURT DISP-CONVICTED;15 YRS  
COURT DATE-03/14/2008  
ATH-990200057078

BARNES, STEVEN LOUIS  
SC0190000 EDGEFIELD CNTY SO  
CASE-16065  
ATH-990000624377  
WARR-G679753  
CIT-16-3-10-FELONY

02/07/2014

ARREST CHARGE -MURDER  
OFFENSE DATE-02/07/2014  
PALM PRINTS AVAILABLE

WARR-H870420  
CIT-16-3-910-FELONY

ARREST CHARGE -KIDNAPPING  
OFFENSE DATE-02/07/2014

\* - WARRANT OCCURS IN MORE THAN ONE ARREST CYCLE UNDER THIS SID NUMBER

BASED ON SEARCH OF SCLED CJIS CCH FILE USING SID/SC01639620  
THIS CRIMINAL HISTORY RECORD IS FOR SOUTH CAROLINA ARRESTS AND  
CONVICTIONS ONLY AND IS BASED ON THE INFORMATION PROVIDED. SINCE  
CHANGES MAY OCCUR DAILY A NEW INQUIRY SHOULD BE MADE AND NO SUBSEQUENT  
USE OF THIS RECORD IS ALLOWED.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION  
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN  
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.  
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY  
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS  
DEFINED BY THE GUN CONTROL ACT OF 1968 (18 USC 922(G)).

\*\* S C CJIS END OF RECORD \*\*

<https://catch.sled.sc.gov/SCBackground.aspx?token=MjcwNDIwMzhETkRBMTM3MjhlCL...> 2/7/2017

Barnes v. S.C. Dep't of Corr.

ALC Docket # 15-ALJ-30-0318-IJ

South Carolina Law Enforcement Division

Page 3 of 3

<https://catch.sled.sc.gov/SCBackground.aspx?token=MjcaNDIwMzhETkRBMTM3MjhCL...> 2/7/2017

The Department's Brief

Exhibit A - Page 12

**SHERIFF****ADELL DOBEY****EDGEFIELD COUNTY SHERIFF'S OFFICE**

200 RAILROAD ST. EDGEFIELD, SC 29824 (803) 637-5337 OR (803) 278-1625, FAX # (803) 637-4016

STATE OF SOUTH CAROLINA )

COUNTY OF EDGEFIELD )

THE STATE )

vs. )

STEVEN LOUIS BARNES )

Defendant )

**AFFADAVIT FOR SAFEKEEPING****ADELL DOBEY-SHERIFF  
EDGEFIELD COUNTY****April 20, 2015**

Steven Louis Barnes was charged with murder and kidnapping on November 13, 2010 and housed at the Edgefield County Detention Center pre-trial. Barnes was convicted of those charges, and sentence to death which was overturned. During that time, Barnes was written up for 20 jail infractions including throwing bodily fluids at correctional officers and other inmates, possession of contraband materials and refusing to follow instructions to name a few. Barnes was housed alone in the most secure cell that the Edgefield County Detention Center has and still managed to cause disruptions. Food service to inmates was severely delayed on several occasions due to Barnes throwing bodily fluids on food trays and carts. On three occasions, Barnes was charged and convicted (once) of throwing bodily fluids on correctional officers.

Once convicted of throwing bodily fluids, Barnes was sent to Lieber Correctional Institution. While there, Barnes was written up for assault and possession of a weapon.

Prior to coming to Edgefield County Detention Center, Barnes was incarcerated at Ware State Prison in Georgia convicted of armed robbery, kidnapping, burglary, terroristic threats and pandering prostitution, and was sentenced to life plus 45 years in Georgia. While there, Barnes was cited nine times for failing to follow instructions. While being held pre-trial on these charges, Barnes was held at the Richmond County Detention Center where he was cited for refusing to cooperate with correctional officers as well as assault and possession of a weapon.

Barnes has also been housed at the county detention center in both Aiken and Laurens. Representatives from both of these agencies have written expressing their concern of housing Barnes for the same reasons listed above. Aiken logged in one hundred plus grievances, and reports in approximately one year. Laurens County after several

complaints in three months, asked us to come get him, because of his actions. Greenwood Detention Center has agreed to house him at this time for one week.

In summary, I believe that it is in the best interest of not only the correctional officers of the Edgefield County Detention Center, but the other inmates housed in the facility, and Barnes safety as well, that Steven Louis Barnes be held for safekeeping at the South Carolina Department of Corrections until his pending matters before the court are resolved.

A. Dobey 4-20-15  
Adell Dobey-Sheriff V Bala  
Edgefield County

Sworn before me this 20<sup>th</sup> day of 2015.

Polly Hall

My commission expires 4/2/2016

**PENALTY PHASE  
CONVICTIONS AND INFRACTIONS  
STEVEN LOUIS BARNES**

**PRIOR CONVICTIONS**

- |                                     |          |
|-------------------------------------|----------|
| <b><u>I. Richmond County</u></b>    |          |
| A. Violation of Motor Vehicle       | 12/13/96 |
| B. Simple Assault                   | 09/12/98 |
| C. FWD Cocaine                      | 10/14/98 |
| D. PROBATION VIOLATIONS             |          |
| <b><u>II. Columbia County</u></b>   |          |
| E. Armed Robbery                    | 01/24/02 |
| FWDVC                               | 01/24/02 |
| Burglary 1 <sup>st</sup>            | 01/24/02 |
| Kidnapping (2)                      | 01/24/02 |
| Terroristic Threats                 | 01/24/02 |
| Pandering Prostitution              | 01/24/02 |
| <b><u>III. Edgefield County</u></b> |          |
| F. Throwing Bodily Fluids           | 11/03/07 |

**DISCIPLINE INFRACTIONS**

- |                                                     |          |
|-----------------------------------------------------|----------|
| <b><u>IV. Richmond County Detention Center</u></b>  |          |
| G. Refusal to Cooperate/No Bracelet                 | 08/25/02 |
| H. Assault/Possession of Weapon                     | 11/27/03 |
| <b><u>V. Ware State Prison (Ga.)</u></b>            |          |
| I. FFI/Insubordination                              | 09/16/04 |
| J. FFI/Insubordination                              | 04/04/05 |
| K. FFI                                              | 04/04/05 |
| L. FFI                                              | 04/07/05 |
| M. FFI/Un-kept Cell                                 | 04/15/05 |
| N. FFI/Beard                                        | 04/15/05 |
| O. FFI/Beard                                        | 04/18/05 |
| P. FFI                                              | 04/23/05 |
| Q. FFI                                              | 05/04/05 |
| <b><u>VI. Edgefield County Detention Center</u></b> |          |
| R. Disruption                                       | 06/16/05 |
| S. Rocks from Rec. Yard                             | 07/06/05 |
| T. Throwing Food Trays/Threats                      | 08/05/05 |
| U. Throwing Fluids                                  | 08/06/05 |
| V. Disturbance                                      | 08/07/05 |
| W. Threats                                          | 08/09/05 |
| X. Flooded Toilets                                  | 08/10/05 |

**PENALTY PHASE  
CONVICTIONS AND INFRACTIONS  
STEVEN LOUIS BARNES**

|                                                   |                 |
|---------------------------------------------------|-----------------|
| <b>Y/Z Disturbance</b>                            | <b>08/11/05</b> |
| <b>1. Throwing Food Trays</b>                     | <b>10/11/05</b> |
| <b>2. Contraband</b>                              | <b>02/09/06</b> |
| <b>3. Throwing Food Tray and Urine</b>            | <b>06/30/06</b> |
| <b>4. Throwing Food Tray and Urine</b>            | <b>07/03/06</b> |
| <b>5. FFI/Refusing to Cuff Up</b>                 | <b>02/03/07</b> |
| <b>6. Destroyed Lunch Trays</b>                   | <b>07/09/07</b> |
| <b>7. Attempt to Destroy Food Trays</b>           | <b>07/09/07</b> |
| <b>8. Throwing Bodily Fluids</b>                  | <b>08/24/07</b> |
| <b>9. Throwing Fluids</b>                         | <b>09/07/07</b> |
| <b>10. Throwing Fluids</b>                        | <b>09/10/07</b> |
| <b>11. Inmate Confrontation</b>                   | <b>10/30/07</b> |
| <b>12. Throwing Fluids</b>                        | <b>11/01/07</b> |
| <b><u>VII. Usher Correctional Institution</u></b> |                 |
| <b>13. Possession of a Weapon</b>                 | <b>01/22/09</b> |
| <b>14. Assault</b>                                | <b>02/05/09</b> |

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

|                                           |   |                            |
|-------------------------------------------|---|----------------------------|
| Steven L. Barnes,                         | ) | Case No. 15-ALJ-30-0318-AP |
|                                           | ) |                            |
| Appellant,                                | ) |                            |
|                                           | ) |                            |
| vs.                                       | ) | <b>ORDER</b>               |
|                                           | ) |                            |
| South Carolina Department of Corrections, | ) |                            |
|                                           | ) |                            |
| Respondent.                               | ) |                            |
| <hr style="width: 40%; margin-left: 0;"/> |   |                            |

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Steven L. Barnes (Appellant), a pretrial detainee housed with the South Carolina Department of Corrections (SCDC or Department). Appellant appeals the Department's denial of fifteen (15) of the sixteen (16) Step-2 Grievances that he separately filed in this matter.<sup>1</sup>

**FACTS/PROCEDURAL HISTORY**

Appellant was held as a pre-trial detainee in the county jails of Aiken, Laurens, and Greenwood between February 7, 2014 and April 28, 2015. On or about April 20, 2015, the Edgefield County Sheriff sought to have Appellant classified as a Safekeeper and transferred to the custody of SCDC while he awaits trial. The Department recommended that Appellant be designated as a Safekeeper, and the Governor issued an Executive Order on April 28, 2015 approving that designation, which was renewed on August 12, 2015.<sup>2</sup> As a result of the Governor's Order, Appellant was removed from a county jail and transferred to SCDC as a Safekeeper on April 28, 2015.

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

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<sup>1</sup> As Appellant notes in his Initial Brief, he did not appeal one of his claims (regarding lighting in his cell) because the Department remedied that grievance by repairing the lighting after Appellant filed the Step-2 Grievance.

<sup>2</sup> There was a question about whether this Court has jurisdiction over 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**

March 29, 2017

SC ADMIN. LAW COURT

2015, the Department denied Appellant's objections and explained the reasons for his transfer to SCDC and classification as a Safekeeper. On July 6, 2015, Appellant filed an action in this Court seeking injunctive relief.<sup>3</sup> On August 28, 2015, the Department filed a Memorandum of Law in Support of Dismissal of the Petition.

On November 5, 2015, the Court issued an order granting the Department's motion for dismissal as to Appellant's classification as a Safekeeper and transfer to SCDC, and remanding the case to the Department to allow Appellant to file Step-2 Grievances for the Department's consideration.<sup>4</sup> On April 5, 2016, Appellant filed sixteen (16) separate Step-2 Grievances. The Department filed a response to each grievance on July 21, 2016, and remedied one of the grievances. On August 22, 2016, Appellant filed this appeal as to the remaining fifteen (15) claims.

On September 7, 2016, Appellant filed a Motion for Miscellaneous Relief. On October 17, 2016, the Court issued an Order On Motion For Miscellaneous Relief and Order Governing Procedure setting forth a timetable and filing deadlines for the parties in this case. On January 17, 2017, Appellant filed his Initial Brief. The Court granted the Department's two motions to extend the filing deadline for its brief, filed February 2, 2017 and February 15, 2017, respectively. On February 24, 2017, the Department filed its brief. Appellant declined to file a Reply Brief.

#### STANDARD OF REVIEW

Though this case does not involve an inmate who is being incarcerated based on a conviction and sentencing, this Court, in its Order dated November 5, 2015, nevertheless concluded that it had subject matter jurisdiction, pursuant to *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000), to consider the conditions of Appellant's confinement as a Safekeeper. Appellant appears to believe that the Court's jurisdiction to consider the condition of confinement are much broader than the Court intended. However, the Court's determination of jurisdiction was made in the limited context of the facts of that decision, and the Court's jurisdiction is much narrower than asserted by Appellant. The Court hereby clarifies that its jurisdiction is limited to

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<sup>3</sup> Appellant 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.

<sup>4</sup> The Department stated at the hearing that it accelerates the review procedure for Safekeepers due to their brief incarceration with the Department, which is why the process began with a Step 2 Grievance instead of a Step 1 Grievance. Thus, since there was no Step 1 hearing, there is no testimonial record.

whether the conditions of confinement impose an “atypical or significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 484, 115 S. Ct. 2293, 2300, 132 L. Ed. 2d 418 (1995); *Sullivan v. S.C. Dep’t of Corr.*, 355 S.C. 437, 445 n.5, 586 S.E.2d 124, 128 n.5 (2003). Moreover, that determination would be made only in the context of reviewing the Department’s determination of whether an inmate’s custody status implicates state-created liberty interest. *Sullivan*, 55 S.C. at 445 n.5, 586 S.E.2d at 128 n.5.

Furthermore, when reviewing the Department’s decisions, the ALC sits in an appellate capacity. *Al-Shabazz*, 338 S.C. at 377; 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2016) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(A)(5) states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2016).

Consequently, an Administrative Law Judge may not substitute his judgment for that of an agency “as to the weight of the evidence on questions of fact.” *Id.* Furthermore, an Administrative Law Judge may not reverse or modify an agency’s decision unless the Record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence, arbitrary, or affected by an error of law. *Id.*; *see also Marietta Garage, Inc. v. S.C. Dep’t of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep’t of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). “‘Substantial evidence’ is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole,

would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.” *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting *Law v. Richland Cty. Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

Additionally, in *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 455-456, 105 S.Ct. 2768 (1985), the U.S. Supreme Court held that “the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.”

### DISCUSSION

As an initial matter, since Appellant has divided his fifteen (15) claims/grievances into five (5) groups and the Department addressed his claims/grievances in the same order, the Court will likewise address each of Appellant’s claims/grievances in the manner in which Appellant has presented them in his Initial Brief.

#### **A. Routine Privileges, and Certain Constitutional Rights, Afforded to All Other Prisoners But denied to Appellant (Claims II, VII, and XII)**

Appellant argues, as a preface to his individual arguments addressing Claims II, VII, and XII, that he is being denied routine privileges and certain constitutional rights that “are afforded to other general population, non-disciplinary inmates.” Appellant is currently housed at Lee Correctional Institution (Lee). He contends that he is a “non-disciplinary inmate” and that he is being denied his “rights and privileges simply because of *where* he is housed as a Safekeeper, and not because of anything attributable to him at all.” Appellant further argues that “[t]here is no rational basis for this rule for security reasons, separate housing requirements, disciplinary purposes (since Appellant is not a disciplinary inmate), or for the regular management and order of the institution.”

Before addressing Appellant’s individual claims/grievances, the Court will first address Appellant’s prefatory arguments. As explained above, this Court has limited jurisdiction to review whether there is a state-created liberty interest concerning the conditions of confinement in custody status. However, even if the condition of Appellant’s confinement gives rise to a state created liberty interest, the United States Supreme Court has held that “[i]n evaluating the constitutionality

of conditions or restrictions of pretrial detention that implicate only the protection against deprivation of liberty without due process of law, . . . the proper inquiry is whether those conditions amount to punishment of the detainee." *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979). The Court added that "the determination [of] whether these restrictions and practices constitute punishment in the constitutional sense depends on whether they are rationally related to a legitimate nonpunitive governmental purpose and whether they appear excessive in relation to that purpose." *Id.* at 561. The Court also noted that "[r]estraints that are reasonably related to the institution's interest in maintaining jail security do not, without more, constitute unconstitutional punishment, even if they are discomforting and are restrictions that the detainee would not have experienced had he been released while awaiting trial." *Id.* at 540.

The United States Supreme Court has subsequently stated very plainly that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987). In determining whether a prison's regulation is reasonably related to legitimate penological interests, a court must consider: (1) "whether there is a valid, rational connection between the prison regulation and the legitimate interest put forth to justify it"; (2) "whether inmates have an alternative means of exercising the right"; (3) "the burden on prison resources that would be imposed by accommodating the right"; and (4) "whether there are alternatives to the regulation that fully accommodate the inmate's rights at de minimis cost to valid penological objectives." *Fontroy v. Beard*, 559 F.3d 173, 177-78 (3d Cir. 2009) (internal quotation marks omitted). Throughout the analysis, "[the Court must] afford substantial deference to the DOC's professional judgment." *Id.* (internal quotation marks omitted). Indeed, the burden is on the detainee to disprove the validity of the prison regulations at issue. *Overton v. Bazzetta*, 539 U.S. 126, 132 (2003).

The standards set forth in *Bell* and *Turner* have been applied to Safekeepers in other jurisdictions as well as in South Carolina. *See, e.g., Laster v. Duckworth*, 554 F. Supp. 1184 (N.D. Ind. 1983) (applying *Bell* and affirming a Safekeeper's assignment to a unit "where conditions were and are admittedly more restrictive than those imposed on the prison's general population" because the assignment was rationally justified based on the prison officials' knowledge of the Safekeeper's past behavior that was the basis for his transfer); *Hoover v. Watson*, 886 F. Supp.

410, 418 (D. Del. 1995) (applying *Bell* and affirming the assignment of pretrial detainees to a segregated detention area of the prison due to violations of prison rules, noting that "in addition to the essential objective of insuring the detainee's presence at trial, the government has legitimate interests which stem from its need to maintain institutional security and order and to manage the facility in which the individual is detained") (internal citation and quotation marks omitted); and *Wiles v. Ozmint*, 2006 WL 2260136, \*8 (D.S.C. 2006) (applying *Turner* and affirming the assignment of a pretrial detainee to a maximum security unit based on his escape history notwithstanding his inability to receive pictures of his family and friends, visits from family members under the age of eighteen (18), and religious, educational, or recreational publications in the mail from publishers).

On February 16, 2000, the Governor issued Executive Order No. 2000-11, Section 1 of which provides the following:

An individual held in a county pretrial confinement facility may be transferred to the custody of the [Department] by commitment duly authorized by the Governor pursuant to § 24-3-80, if the individual: (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.

(Emphasis added). A pretrial detainee in South Carolina thus need only satisfy one of the three categories to qualify for Safekeeper status. Therefore, since the detainee need only to "exhibit" extremely violent and uncontrollable behavior, he/she need not have been criminally convicted of, cited, and/or administratively adjudicated for such behavior to qualify for Safekeeper status.

In this case, the Governor of South Carolina approved the assignment of Safekeeper status to Appellant. This assignment was based on an "Affidavit for Safekeeping" dated April 20, 2015 from the sheriff of Edgefield County, which included the grounds for which he was seeking Appellant's Safekeeper classification. These grounds are set forth in pertinent part as follows:

[Barnes] was charged with murder and kidnapping on November 13, 2010 and housed at the Edgefield County Detention Center pre-trial. Barnes was convicted of those charges, and [sentenced] to death which was overturned. During that time, Barnes was written up for 20 jail infractions including throwing bodily fluids at correctional officers and other inmates, possession of contraband materials and refusing to follow instructions to name a few. Barnes was housed alone in the most secure cell that the Edgefield County Detention Center has and still managed to cause disruptions. Food service to inmates

was severely delayed on several occasions due to Barnes throwing bodily fluids on food trays and carts.

\*

\*

\*

Barnes was [later] sent to Liber Correctional Institution. While [at Lieber], Barnes was written up for assault and possession of a weapon.

Prior to coming to [the] Edgefield County Detention Center, Barnes was . . . held pre-trial on . . . charges [in Georgia] . . . at the Richmond County Detention Center[,] where he was cited for refusing to cooperate with correctional officers as well as assault and possession of a weapon.[ Following his conviction and sentencing on these charges, Barnes was incarcerated at Ware State Prison in Georgia, where he was cited nine times for failing to follow instructions.]

Barnes has also been housed at the county detention center in both Aiken and Laurens. Representatives from both of these agencies have written expressing their concern of housing Barnes for the same reasons listed above. Aiken [County] logged in one hundred plus grievances, and reports in approximately one year. Laurens County after several complaints in three months, asked us to come get him, because of his actions. Greenwood [County] Detention Center has agreed to house him at this time for one week.

(Emphasis added). Once Appellant was assigned Safekeeper status, he became subject to the Department's Safekeeper policies. One such policy is SK-2202. Paragraph 1 of SK-22.02 incorporates the three (3) part standard articulated in Executive Order No. 2000-11, and Paragraph 5.1 of SK-22.02 provides as follows:

Safekeepers will be housed in a Special Management Unit (SMU) and will be managed in accordance with SCDC Policy/Procedure OP-22.12, 'Special Management Unit Operations,' with the following exceptions:

5.1.1 Safekeepers will be segregated from other SCDC inmates in the SMU. They will be showered separately, have visitation privileges separately, and be recreated separately.

5.1.2 Safekeepers are assigned to SD Level II when they are admitted. If they commit disciplinary infractions, their SD Level may be decreased pursuant to procedures in [Policy OP-22.12].

SCDC Policy/Procedure OP-22.12 begins with the following Policy Statement:

In order to maintain the safety and security of the general population, the staff, and the Agency, the [Department] will house those inmates requiring more intense levels of supervision and monitoring in separated areas herein referred to as Special Management Units (SMU) apart from the general population.

The term “Levels” is defined in paragraph 30 of OP-22.12, and it refers “to a series of two (2) degrees of control applied to the management of inmates housed in the SMU.” The two degrees of control are defined in paragraph 30 as Level I and Level II. Level I encompasses “the strictest degree of custody and control,” and, “[w]hile in this status, inmates will be managed with extreme caution and afforded only essential accommodations.” Level II “refers to a broadened status in security detention intended for inmates who have demonstrated cooperative behavior and gained a broader range of privileges.” Therefore, as a Safekeeper being treated as a Level II inmate, Appellant enjoys a “broader range of privileges” than those inmates classified as Level I inmates.<sup>5</sup>

Turning to Appellant’s prefatory arguments, he first asserts that he is denied routine privileges and certain constitutional rights that “are afforded to other general population, non-disciplinary inmates.” (emphasis added). Appellant thus implies that he is included amongst the non-disciplinary inmates; he even refers to himself as a “non-disciplinary inmate.” Following that premise, Appellant points out that he has not had a disciplinary infraction while at the facility currently housing him and that the restrictions imposed on him are “not because of anything attributable to him.” However, Appellant is not a “non-disciplinary inmate,” nor is he being confined in the SMU based on whether he has committed any infractions in the facility currently housing him. Rather, he is a pretrial detainee who is being held in safekeeping with SCDC for his prior behavior in several detention centers that purportedly included recurring instances of throwing bodily fluids at correctional officers and other inmates; refusal to cooperate with correctional officers; possession of contraband; and assault and possession of a weapon. It was these very actions that landed Appellant in the custody of SCDC with Safekeeper status.<sup>6</sup> Thus,

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<sup>5</sup> According to the Record, the entry custody level of Safekeepers is Level II, though this level can be changed based on a detainee’s behavior. Because there is nothing in the Record to indicate that Appellant was moved to Level I, Appellant is presumably still at the Level II level of custody.

<sup>6</sup> As the Court concluded in its November 5, 2015 Order, the Court has no subject matter jurisdiction to consider the validity of Appellant’s classification and transfer as a Safekeeper. The reasons for this is that the Court cannot consider facial challenges to the constitutionality of the Safekeeper statute (*Travelscape v. S.C. Dep’t of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 38-39 (2011)); and Appellant failed to establish how the statute was unconstitutionally applied, i.e. that he had 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. There was also a question as to whether this Court has jurisdiction over the Governor in this matter, a question which both parties, at the hearing held in 2015 in this matter, agreed was premature because the Governor had not been added as a party in this case. Therefore, the Court must assume the validity of the reasons for Appellant’s classification set forth in the Edgefield County Sheriff’s affidavit. The Court will address this issue again in the final section above, *infra*.

the restrictions imposed on Appellant have nothing to do with where he is housed, but instead are based on why he is housed in SMU as a Safekeeper.

As to Appellant's argument that "[t]here is no rational basis for this rule for security reasons, separate housing requirements, disciplinary purposes (since Appellant is not a disciplinary inmate), or for the regular management and order of the institution," this assertion is contradicted by Appellant's prior actions leading to his designation as Safekeeper. According to the Edgefield County Sheriff's affidavit, Appellant's actions (cited above) caused numerous "disruptions" to the regular management and order of the detention centers at which they occurred. They also threatened the health of other inmates. Furthermore, on multiple occasions, Appellant was cited for assault, for possession of a weapon, and for refusal to cooperate with correctional officers. Because Lee and other SCDC prison have a "legitimate nonpunitive governmental purpose" in managing and/or preventing the type of dangerous and disruptive behavior that had previously threatened the order and security of the detention centers that had previously housed Appellant, it was wholly reasonable to segregate Appellant and to restrict his privileges and rights. *See Hoover*, 886 F. Supp. at 418 (the government has legitimate interests which stem from its need to maintain institutional security and order and 'to manage the facility in which the individual is detained') (quoting *Bell*, 441 U.S. at 540); *see also Union Cty. Jail Inmates v. Di Buono*, 713 F.2d 984, 993 (3d Cir. 1983) ("It is plain that there is a legitimate governmental interest in effective management of a detention facility."), *cert. denied*, 465 U.S. 1102 (1984).

The Court now turns to the specific claims/grievances that Appellant filed under Group A. First, the Court notes that before discussing his specific grievances under Group A, Appellant alleges due process violations and violations of his First, Fifth, and Sixth Amendment rights through the Fourteenth Amendment to the United States Constitution, and violations of S.C. Const. art. I §§ 2, 3, and 14. Appellant also cites to two cases: *Johnson v. Avery*, 393 U.S. 483 (1969) and *Beard v. Banks*, 548 U.S. 521 (2006). However, Appellant does not explain how these authorities apply to his claims except with respect to his alleged deprivation of books, magazines, and publications from any publishers. Given that these claims involve constitutional rights arising from conditions of confinement, which are not static but involve very fact-specific analysis to make a determination, a mere citation to cases without discussing them or applying them to the facts of the instant case deprive them of instructive value. *See generally Rhodes v. Chapman*, 452

U.S. 337, 346 (1981) (“No static ‘test’ can exist by which courts determine whether conditions of confinement are cruel and unusual, for the Eighth Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.”) (quotation marks and citation omitted).<sup>7</sup> On this ground alone, the Court can dismiss the unsupported arguments as abandoned on appeal. See *D.R. Horton, Inc. v. Wescott Land Co., LLC*, 398 S.C. 528, 549, 730 S.E.2d 340, 351 (Ct. App. 2012) (noting that while the appellants cited a case to support a claim, the argument was nevertheless considered “largely conclusory” and still considered abandoned on appeal); see also *State v. Hill*, 394 S.C. 280, 297, 715 S.E.2d 368, 377 (Ct. App. 2011) (considering a citation to a case “without any analysis whatsoever as to how or why [it] applies” insufficient to preserve an issue on appeal, and thus rendering that issue abandoned on appeal).

1. Restrictions on Canteen Privileges, Recreation and Shower Times, and Books or Magazines (Claim II)

Appellant argues that he is being “denied any access whatsoever to the prison ‘canteen.’” Accordingly, Appellant argues that he cannot “buy soap, toothpaste, socks, underwear, and other toiletries and necessities, nor any other ‘amenities (like soup packets) which are afforded to non-disciplinary inmates in the general population.” Appellant also points to p. 214 of the Record on Appeal (Record or ROA) to support his argument that he was not afforded these necessities because he did not make any purchases of such items from the canteen between 04/28/15 and 01/03/17.

Pursuant to SCDC Policy/Procedure SK-22.02(7), “Safekeepers in SD Level II will be allowed access to the canteen only for the purpose of purchasing a walkman radio and batteries for the walkman radio.” It also appears that Appellant did not purchase any items from the canteen during the time mentioned above. However, because the Department does not allow anyone in Level II of SMU to purchase anything other than a walkman radio and batteries, the State has not created a liberty interest in access to the canteen for any other types of purchases. Therefore, this Court has no jurisdiction to consider a challenge to the policy of disallowing Level II SMU prisoners access to the canteen for purchases of toiletries and other necessities, and would therefore

<sup>7</sup> As will be discussed *infra*, because this case involves a pretrial detainee, the Eighth Amendment does not apply. However, the same standards applied in Eighth Amendment cases do apply to cases involving pretrial detainees through the Due Process Clause of the Fourteenth Amendment.

still have to dismiss this issue.<sup>8</sup> See *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004) (explaining that while the ALC has jurisdiction over properly filed inmate grievance appeals, summary dismissal is appropriate "where the inmate's grievance does not implicate a state-created liberty or property interest."), *cert. denied*, 544 U.S. 1033, 125 S.Ct. 2266, 161 L.E.2d 1060 (2005). See also *Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006) (finding dismissal of inmate's appeal appropriate because his grievance did not implicate a state-created liberty interest).

Appellant also argues that since he has been at Lee, some weeks he was provided no recreation or showers and other weeks only received one shower and no recreation. In response, the Department cites several authorities to support its argument that the Department can place restrictions on a pretrial detainee's outdoor recreation. The Department also cites, in footnote 56 of its brief, to the first paragraph of Attachment A to OP-22.12 regarding the Department's "In-Cell Exercise Program" for "inmates who are required to stay in their cell most of the time." The Department further points out that Appellant, on at least eleven (11) different occasions, refused recreation. Curiously, the Department mentions, but does not discuss, Appellant's argument with respect to showers.

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<sup>8</sup> Even if the Court had jurisdiction, the Court finds no unconstitutional deprivation based on Appellant's conditions of confinement. The U.S. Supreme Court, in *Wilson v. Seiter*, 501 U.S. 294 (1991), set forth the following standard for analyzing Eighth Amendment violations based on conditions of confinement: a plaintiff must prove that prison officials acted with "deliberate indifference" and that the prisoner was deprived of "the minimal civilized measure of life's necessities." *Wilson*, 501 U.S. at 298, 303. Though pretrial detainees are not entitled to protection under the Eighth Amendment (*Boring v. Kozakiewicz*, 833 F.2d 468, 471 (3d Cir. 1987), *cert. denied*, 485 U.S. 991 (1988)), this Court agrees with several courts of appeal in other federal circuit that have held that the standard set forth in *Wilson* applies to pretrial detainees through the Due Process Clause of the Fourteenth Amendment. See *Kost v. Kozakiewicz*, 1 F.3d 176, 188 (3d Cir. 1993) (applying the *Wilson* standard to pretrial detainees); see also *Whitnack v. Douglas Cty.*, 16 F.3d 954, 957 (8th Cir. 1994) (same).

In this case, the Department's policy, set forth in a note at the beginning OP-22.12(22), provides that "the commissary will issue essential and other authorized clothing, hygiene items, and writing supplies to indigent inmates in SMU according to guidelines established in [Policy ADM-16.08], 'Commissary Operations.'" The toiletries and necessities that Appellant claims to have been denied access to are also listed among the property items that "ALL inmates in SMU may have" according to OP-22.12(24.1). Thus, the fact that Appellant has not purchased these items from the canteen is insufficient to establish that Appellant was not provided with them, and Appellant has failed to present an affidavit or other evidence reflecting that he was not provided with them, let alone that any deprivation was due to deliberate indifference by the prison officials. It is also noteworthy that this Court mentioned in its November 5, 2015 Order that the Department had asserted at the hearing that a matter regarding denial of Dove soap to Appellant, which SCDC's medical unit had approved for his skin condition, had been resolved. Hence, it appears that Appellant was receiving soap from the Department.

*Deficiency of the Record on Appeal*

Before discussing recreation and showers, the Court must address the deficiency of portions of the Record that both Appellant and the Department rely upon in making their arguments, specifically, Cell Check Logs located within pp. 52-213 of the Record. For each week between the weeks of 4/26/15 and 12/5/16, there are two Cell Check Log pages. The first page contains a column for each day of the week for a given week. Those columns are subdivided into three (3) other columns with the headings "C" for "Code," "Init." for "Initial," and "Time." Each time that the responsible officer on duty records Appellant's activities, he or she must enter the time of the observation, his or her initials, and the "Activity Code" under the respective columns. The "Activity Codes" are listed at the bottom of the page, and they are numbered 1 through 5. Each of these codes corresponds to a different activity as follows: 1. Lying Down; 2. Sitting; 3. Standing; 4. Out of Cell; and 5. Eating. On the second page of the Cell Check Log, there is a column under each day of the week listing "Bkfst" for "Breakfast," "Lunch," "Dinner," "Shower," and "Rec" for "Recreation." The responsible officer on duty is to place either a "Y" for "Yes," a "N" for "No," an "R" for "Refuse," or an "I" for "Ineligible" beside the applicable categories for each day.

However, the Cell Check Logs in this case are patently incomplete and thus unreliable. Appellant relies on the fact that the categories "Shower" and "Rec" were left unmarked on the second page of several Cell Check Logs to argue that Appellant went days and sometimes weeks without a shower and/or recreation time. For instance, Appellant argues that he was provided no recreation or showers for the week of April 26, 2015, and this is based on the fact that on second page of the Call Log for the week of April 26, 2015 (i.e., ROA p. 53), the categories for "Shower" and "Rec" are unmarked for the whole week. Nevertheless, this is misleading. First, the instructions at the top of this page of the Cell Check Log for that week, and on the second page of the log for every week, provides as follows: "Please answer in the spaces provided with Y (Yes) N (No) R (Refuse) or I (Ineligible)" (emphasis added). Thus, every space should have been marked with one of the applicable letters, which collectively covered Appellant's activity with respect to breakfast, lunch, dinner, a shower, and recreation. The Court certainly cannot infer that an unmarked blank that was required to be filled in means "No," especially where, as here, there existed three alternative responses to "Yes": "No," "Refuse," and "Ineligible."

Second, not only are spaces for recreation and showers left blank on most of the logs, but so are the spaces for breakfast, lunch, and dinner. If these logs were to be accepted as a complete record of Appellant's activities, as Appellant would have the Court believe with respect to showers and recreation, then that would also mean, for instance, that Appellant did not eat at all from lunch on Thursday, June 11, 2015 until lunch on Monday, June 22, 2015 (ROA pp. 64-68) or, in an even greater stretch, from breakfast on Tuesday, February 16, 2016 until lunch on Friday, March 4, 2016 (ROA, pp. 130-35) (and 2016 was a leap year, meaning that there was an extra day in February), and astonishingly from breakfast on Monday, November 2, 2015 until breakfast on Tuesday, February 9, 2016 (ROA pp. 106-29).<sup>9</sup> The Court is unaware of any complaints from Appellant about being starved by the Department.

But even if the Court were to assume that for some reason SCDC did not on a regular basis use the "breakfast," "lunch," and "dinner" categories on the second pages of the logs to record Appellant's eating (though they certainly recorded "Yes" by some of these categories during certain weeks, such as that of November 21, 2016 (ROA p. 208)) and instead recorded it on the first pages, then Appellant apparently did not eat from lunch on August 25, 2016 until October 7, 2016. (ROA pp. 182-94).<sup>10</sup>

Yet another problem with the credibility of the Cell Check Logs is that there are periodic inconsistencies between the two pages for given weeks. For instance, during the week of August 22, 2016, the Department marked a "Yes" beside "Rec" on Friday, August 26, 2016, yet on the first page, there is no record of an activity code marked "4" for that day to indicate that Appellant was "Out of Cell" (ROA pp. 182-83). The same is true for Thursday, September 20, 2016 and Tuesday, October 14, 2016 (ROA pp. 190-91; 196-97). The Department was certainly capable of recording a "4" in one of the spaces on the first pages of the logs because it did so on several of them, such as the log for the week of August 24, 2015, in which a "4" appears in the column for Monday, August 24, 2015; Wednesday, August 26, 2015; Sunday, August 30, 2015; and even twice under Friday, August 28, 2015 (ROA, p. 86), as well as in many other places throughout the logs.

<sup>9</sup> The logs for November 9-15, 2015 are either out of order or missing from the Record.

<sup>10</sup> The Court will give Appellant the benefit of the doubt as to the Activity Code number used for the activity recorded for 12:42 p.m. that day; one could also argue that the number recorded is a "3" (ROA p. 182). Otherwise, the above date range would start after 4:24 p.m. on August 19, 2016 (ROA p. 180).

In short, the Court finds the Cell Check Logs in the Record to be without probative value and utterly unreliable on their face, and considers them to be insufficient to support any arguments by either of the parties. Thus, Appellant failed to carry his burden of proving a "restraint which . . . imposes atypical or significant hardship on the inmate in relation to the ordinary incidents of prison life" (*Sullivan*, 355 S.C. at 445 n.5, 586 at 128 n.5 (quoting *Sandin*, 515 U.S. at 484)), and the Court therefore finds no unconstitutional deprivations.

#### *Recreation Argument*

Turning to Appellant's recreation argument, Appellant does have a constitutional right to a basic minimum of exercise, though this Court could only consider an alleged deprivation of that right if it was so substantial as to constitute a "restraint which . . . imposes atypical or significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sullivan*, 355 S.C. at 445 n.5, 586 at 128 n.5 (quoting *Sandin*, 515 U.S. at 484). In *Harris v. Fleming*, the Seventh Circuit Court of Appeals discussed this issue as follows:

In *French* we stated that lack of exercise could rise to a constitutional violation "[w]here movement is denied and muscles are allowed to atrophy, [and] the health of the individual is threatened." 777 F.2d at 1255. Nothing of that consequence was claimed to have been reached in this case even though it was not a desirable situation. If exercise is what Harris desperately wanted he could have improvised temporarily with jogging in place, aerobics, or pushups. He retained the ability to move about in the unit. This was a short-term situation, lasting only four weeks. Where there is a general policy limitation on exercise some courts have endeavored to set minimums, but in this case we need not reach that issue. *Campbell v. Cauthron*, 623 F.2d 503, 507-08 (8th Cir.1980); *Hutchings v. Corum*, 501 F.Supp. 1276, 1294 (W.D.Mo.1980). Harris claims only to have been deprived of yard or recreation time, not all exercise. In modern prisons the denial of recreation time may deprive inmates of many desirable, entertaining diversions the lack of which would not raise a constitutional issue.

839 F.2d 1232, 1236 (7th Cir. 1988). In the instant case, Appellant has not even established that he was denied recreation time. He relies upon the shoddy records of the Department, which this Court has already determined to be unreliable and not probative; and Appellant has provided no affidavits or other evidence to support his allegations.

Yet even with what the Department has managed to record regarding Appellant's activities, and even if it is accurate, the Department has recorded at least eleven (11) times in which Appellant has refused recreation time. One cannot refuse that which was not offered. If Appellant has refused recreation at least eleven (11) times over the last year, then that means that he has been

afforded such opportunities. Therefore, there is no credible evidence that the Department has never offered Appellant recreation time or so scarcely that it would prove detrimental to his health, while offering similarly situated detainees sufficient recreation time. At most, the first paragraph of Attachment A to OP-22.12 suggests that some inmates and detainees may be "required to remain in their cells most of the time. . . ." In addition, even if Appellant has not engaged in outdoor recreation, either by the prison's practice or his own choice, Attachment A provides for in-cell exercise activity to allow for movement and to prevent atrophy, and Appellant has not alleged any specific threat to his health or injury sustained as a result of this policy. Therefore, the Court finds no constitutional deprivation of a liberty interest based on the conditions of Appellant's confinement with respect to recreation time.

#### *Deprivation of Showers*

Turning to Appellant's argument regarding his alleged deprivation of showers, the Court again points out that the Cell Check Logs in the Record upon which Appellant relies to argue a deprivation are unreliable for the reasons stated above, and Appellant has provided no other evidence to support his allegation. But even setting that aside, Appellant has failed to demonstrate how he even has a constitutional right to a particular form of bathing. The Constitution doubtless requires that those housed in prisons be granted certain hygienic necessities. *Kaufman v. Litscher*, 2000 WL 34236015 \*9 (W.D. Wis. Nov. 14, 2000) (citing *Harris*, 839 F.2d at 1235). And OP-22.12(24.1) and (22) allow anyone incarcerated in SMU to have deodorant, soap, a toothbrush, toothpaste, toilet paper, a washcloth, and a towel (as well as clothing items and writing supplies), and these items are provided to indigent inmates. In addition, because items such as soap, a toothbrush, and a washcloth are provided, it is reasonable to infer that the cells in SMU are equipped with sinks with which Appellant would have the ability to clean himself if he chose to do so. Thus, Appellant has been provided with a means of maintaining the "the minimal civilized measure of life's necessities," or at least he has failed to establish by affidavit or other evidence that he was not given these items, and he has therefore failed to establish a "restraint which . . . imposes atypical or significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sullivan*, 355 S.C. at 445 n.5, 586 at 128 n.5 (quoting *Sandin*, 515 U.S. at 484). Appellant may not prefer the means of bathing that has been afforded him (assuming that the faulty Cell Check Logs accurately record the lack of showers he has taken), but he has no constitutional right

to a particular form of bathing, absent a medical necessity (which Appellant has not alleged). Otherwise, an inmate could argue, for example, that he has a right to a bath instead of a shower or to a particular level of water pressure from his showerhead. Therefore, because there was a reasonable alternative available to Appellant for cleaning himself aside from a shower, he was not deprived a state-created liberty interest.

*Receipt of Books or Magazines*

Appellant next argues that unlike other general population inmates, he is not allowed to receive books or magazines from a regular publisher, and this is unconstitutional. He contends that he "should not be subject to any of the disciplinary measures that are imposed on the other inmates for their conduct because Appellant has not committed any disciplinary infraction." Specifically, Appellant argues that he was denied a legal book delivered by U.S. Mail from a publisher, Prisoner Legal News, entitled "Prisoners Self-Help Litigation Manual" because the Department "has determined that Appellant can receive NO magazines or books from any publisher." He asserts that "the Department cannot deny [him] access to magazines and books that are otherwise permissible within the prison, both on First and Sixth Amendment grounds, especially when such books are of a legal nature essential to Appellant's legal cases and self-representation." Appellant cites to *Beard v. Banks*, 548 U.S. 521 (2006) for the proposition that though "a prison may institute some punitive measures for inmates subject to *disciplinary* procedures, even such inmates are still entitled to religious and law-related books and materials." Appellant then mentions that he is presently proceeding *pro se* in pending criminal actions in Georgia and that even though he is presently represented by counsel in his pending criminal trial in South Carolina, he has the right to represent himself in that trial at some point in the future if he so chooses.

The Record reflects that the Department returned an item that had been mailed to Appellant from Prison Legal News based on the following reason: "No Publications Allowed in [SMU]"; and this was pursuant to SCDC Policy PS-10.08 (R. p. 215). OP-22.12(20) – "Correspondence Privileges" states: "All inmates assigned to the SMU will be allowed to send and receive mail in accordance with SCDC Policy/Procedure PS-10.08, 'Inmate Correspondence Privileges.'" The Note within Paragraph 9.1 of PS-10.08 states: "[i]nmates in . . . SMU may not receive any

publications, to include newspapers and magazines, while they are housed in . . . SMU, per SCDC Policy OP-22.12[.]”

In this case, Appellant is being housed in SMU because of his prior behavior in several detention centers. Therefore, the restrictions imposed upon him are justified based on his own actions, as discussed earlier. Because PS-10.08 applies to everyone in SMU, prisoners in that unit have not been given a state-created liberty interest in publications of any kind, and thus this Court is without jurisdiction to decide Appellant’s claim. And since there is no state-created liberty interest involved with respect to the publications issue, this Court must dismiss it. *See Slezak, supra* and *Skipper, supra*.<sup>11</sup>

Therefore, the Court must dismiss Appellant’s Claim II with respect to deprivation of canteen purchases/privileges, recreation time, and showers based on issue abandonment on appeal. *See D.R. Horton, Inc., supra* and *Hill, supra*. Also, the Court must dismiss Appellant’s Claim II with respect to publications based on a lack of a state-created liberty interest involved. *See Slezak, supra* and *Skipper, supra*.

## 2. Denial of Religious Items (Claim VII)

Appellant further argues that he has been denied religious items afforded to general population, non-disciplinary inmates. His specific request is for Muslim Prayer Oil, which he asserts is “a sacrament relevant to his religious affiliation” and “which is allowed for other general population, non-disciplinary inmates.” First, as stated earlier, Appellant is not a general population, non-disciplinary inmate, and he is being held in the SMU unit because of his prior behavior in several other detention facilities. In addition, SCDC Policy OP-22.12(24.1) affords all officially recognized Muslim inmates in SMU a Qura’n, kufi, and prayer rug but not prayer oil.

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<sup>11</sup> Even if the Court had jurisdiction, Appellant has failed to demonstrate substantial prejudice. As to his pending criminal actions in Georgia, Appellant has not established any denial of access to legal materials within the prison library that he may use to assist in his defense. This provides a distinction from *Beard* in that that Court never addressed whether a prisoner had a constitutional right to receive legal materials in the mail given that he had access to legal material provided by the prison’s library. In fact, though *Beard* did involve depriving inmates in the most severe level of a “Restricted Housing Unit” of access to newspapers, magazines, and photographs, that deprivation was actually upheld in that case. *See Beard*, 548 U.S. at 535. In addition, as noted in the Step 2 Grievance, the IGC stated that the Law Library logs reflected that Appellant had used the library more than sixteen (16) separate times. The IGC also noted that Appellant has access to the Law Library by requesting books. (ROA p. 38). Appellant has provided no evidence to refute these statements from the Department.

As to Appellant’s pending criminal action in South Carolina, Appellant currently has counsel and has access to the prison library; thus, he is not presently prejudiced.

Because the Department does not offer prayer oil to Muslim inmates, it is not a state-created liberty interest and therefore is not within the jurisdiction of this Court. Consequently, the Court must dismiss Appellant's Claim VII regarding deprivation of Muslim prayer oil. *See Slezak, supra* and *Skipper, supra*.

### 3. Denial of, and Interference with, Legal Mail (Claim XII)

Appellant filed a Step 2 Grievance regarding this issue but did not address the claim in the corresponding section of his brief. To the extent that Appellant's Claim XII is addressed in Section (B), *infra* regarding the denial or hindrance of his legal work, the Court directs attention thereto. Otherwise, because Appellant failed to specifically address Claim XII in his brief, the Court dismisses this issue as abandoned on appeal. *See Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006) ("An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.") (citations omitted).

#### **B. Denial of Appellant's Ability to Conduct Constitutionally Protected Legal Work (Claims X, XI, XIII, XIV, XV, and XVI)**

Appellant argues that he is being denied an opportunity to conduct constitutionally protected legal work for several reasons. First, Appellant asserts that he "is not allowed to have his box of legal materials in his cell, in that he is limited to a 'one box at a time' rule." He also asserts he "is not provided access to make telephone calls to his attorneys on a regular basis," but rather is only allowed to make one or two phone calls to his attorney each month. Appellant further alleges that he "is denied the ability to be provided copies of his *pro se* legal materials," as well as "adequate access to a prison law library." He further asserts that his "legal mail is improperly delayed[,] both outgoing and incoming." Finally, he alleges that he "is denied adequate access to supplies including paper, pens, and other materials [with] which to prepare his *pro se* legal pleadings and communicate with his attorneys."

As an initial matter, the Court again points out that Appellant has not preserved these issues on appeal. Appellant blanket cites "U.S. Constitution, Amend[s]. 1, 5, 6, and 14; S.C. Const. [a]rt. I §§[ ]2, 3, and 14; *Johnson v. Avery, supra*; *Beard v. Banks, supra*" at the end of his arguments addressing this group of claims. Appellant prefaced these string citations with the phrase "Appellant incorporates the argument and legal foundation for this claim as set forth above and herein." However, no analysis was provided as to why or how these authorities apply to each of

the arguments presented for Appellant's claims, either earlier in the brief or in this section, except perhaps as to access to publications in Claim II. As such, these issues, like the previous issues are deemed abandoned on appeal. See *D.R. Horton, Inc.*, *supra* and *Hill*, *supra*.

Nevertheless, Appellant's claim regarding his inability to have more than one box of legal materials in his cell at a time (Claim X), the Department has a policy that imposes this restriction on all of the prisoners in SMU. OP-22.12(17), "Legal Materials" states in pertinent part:

Inmates will have access to legal materials and to available legal reference material. Refer to SCDC Policy/Procedure GA-01.03, "Inmate Access to the Courts," for additional information. Each SMU inmate will be allowed to retain the amount of legal material that would fit into an 15" x 12" x 10" box. Any excess legal materials beyond an 15" x 12" x 10" box will be put into another box(es) (any size box may be used). . . The box(es) containing the excess legal materials will be stored in the property room. No legal materials will be disposed of. When the inmate needs to use the legal materials stored in the excess legal materials box, he will complete an SCDC Form 19-11, "Request to Staff Member." The inmate must identify the number of the box he requires and the amount of time that he will need the box. In general, the inmate may be allowed to keep the box for five calendar days, however the box may be removed from the cell sooner if security or safety needs dictate. The box will be provided to the inmate in a timely manner upon receipt of his SCDC Form 19-11. The inmate is allowed to remove material from the box stored in his cell and exchange it with materials stored in the excess legal materials box. When the inmate is finished with the excess legal materials box, it will be re-sealed in the inmate's presence and returned to the property room.

Because this policy restricting the number of boxes of legal materials within a cell to one is applied to all of prisoners in SMU, there is no state-created liberty interest in more than one box of legal material at a time in each cell. Accordingly, this Court is without authority to decide this claim. See *Slezak*, *supra* and *Skipper*, *supra*.<sup>12</sup>

<sup>12</sup> Even if the Court had jurisdiction, Appellant has not demonstrated any prejudice from the policy, as none of his legal materials have been destroyed but are stored, he can substitute documents from other boxes to his box, and can request any of the other boxes by filling out the appropriate form. Therefore, Appellant has access to all of his legal documents and has not provided evidence to the contrary. Indeed, in response to his Step 2 Grievance, the IGC denied Appellant's grievance on the grounds that "[t]here [was] no evidence of [Appellant] requesting an additional box and/or [him] complaining about the legal box interfering with assisting [his] attorney." (ROA p. 26). See *Hendricks*, 385 S.C. at 629-30, 686 S.E.2d at 193 ("Because *Bounds* did not create an abstract, freestanding right to a law library or legal assistance, an inmate cannot establish relevant actual injury simply by establishing that his prison's law library or legal assistance program is subpar in some theoretical sense. . . . "Insofar as the right vindicated by *Bounds* is concerned . . . the inmate therefore must go one step further and demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim.") (quoting *Lewis*, 518 U.S. at 351) (internal quotation marks omitted).

As to Appellant's claim that he is not allowed to make phone calls to his attorney on a regular basis but has been limited to only one or two calls a month (Claim XI), he has not alleged a state-created liberty interest in the opportunity to call his attorney at any time he wishes. The Department's policy governing prisoners' legal phone calls is found in OP-22.12(21.2), which states:

All inmates will be allowed to place verified telephone calls to their legal counsel. For purposes of these procedures, "legal counsel" may consist of the inmate's attorney of record and/or paralegal(s). Inmate requests for attorney calls require 24 hours advance notice to allow for staff verification. Telephone calls will be scheduled and approved by the Captain, Lieutenant, or SMU Supervisor. Inmates must be able to demonstrate, and SMU staff will be responsible for verifying, that communication with the attorney by correspondence or visiting is not adequate, i.e., court deadline or other legal deadline. Attorney calls will be dialed by an Officer. Once verified, the call will not be monitored. Any deviation from this procedure will be documented in the inmate's record.

Under this policy, no prisoners in SMU are allowed to call their counsel whenever they wish.<sup>13</sup> Rather, they are allowed to make a request at least twenty-four (24) hours in advance of when they would like to talk to their attorneys, after which the calls will be scheduled upon verification. And to be allowed to call their attorneys, inmates must "demonstrate . . . that communication with the attorney[s] by correspondence or visiting is not adequate." Thus, although prisoners have a constitutional right to contact their attorneys and assist in their defense, the State has not created a right for prisoners that entitles them to the format, frequency, and time of their choosing when it comes to contact with their attorneys. Because there is no state-created liberty interest involved

<sup>13</sup> Appellant, following his arguments in this section of his brief, included a request for relief with respect to telephone calls to his attorney. Specifically, Appellant requests that he be "allowed to make telephone calls to his attorneys when requested, during regular office hours of 9:00a.m. – 5:00p.m. on Monday through Friday, including but not limited to one per week." First, though Appellant complained in his Step 2 Grievance about only being allowed an opportunity to make phone calls to his attorneys after 7:00 p.m., and thus after hours, Appellant did not renew this part of his argument in the argument section of his brief even though it was inferred in the relief that he requests. Nevertheless, because this part of his argument was not included in the arguments section of his brief, and was, at best, merely included in a request for relief, the Court must consider it abandoned on appeal. *See Wright*, 372 S.C. at 20, 640 S.E.2d at 497 ("An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court."). Even still, as discussed above, this argument was not supported by analysis and application of a legal authority, and would have been considered abandoned on appeal anyhow. And even further still, had the issue not been abandoned on appeal, it would not involve a state-created liberty interest for which this Court can provide a remedy and would thus still be dismissed.

with this claim, the Court has no jurisdiction to decide it, even had the Court decided that it had not been abandoned on appeal. See *Slezak, supra* and *Skipper, supra*.<sup>14</sup>

Regarding Appellant's assertion that he "is denied the ability to be provided copies of his *pro se* legal materials," as well as "adequate access to a prison law library" (Claims XIII and XIV, respectively), Appellant has provided no evidence to substantiate his assertions with respect to either of these claims. Because Appellant has failed to establish an actual injury, the Court dismisses both of these claims pursuant to *Bounds, supra*, *Lewis, supra*, and *Hendricks, supra*, as well as on preservation grounds due to a lack of analysis and application of legal authorities, as discussed above.<sup>15</sup>

As to Appellant claims concerning an improper delay of his incoming and outgoing mail, and the alleged denial of adequate access of supplies and materials necessary to prepare legal documents and correspondence with his attorneys (Claims XV and XVI, respectively), in addition to a lack of application of legal authority to support his assertions of constitutional violations, Appellant again points to no evidence in the Record to substantiate these claims.

<sup>14</sup> The Court also agrees with the Department's position that Appellant has failed to demonstrate any interference or real possibility of interference with his communication with his attorney that has inhibited his or his attorney's ability to effectively represent him in his pending criminal matters, i.e., he has established no actual injury. Appellant's claim would thus still fail under *Bounds, supra*, *Lewis, supra*, and *Hendricks, supra*.

<sup>15</sup> With respect to Appellant's argument concerning adequate access to a prison law library, in his brief, Appellant inserts the adjective "adequate" to modify "access to a prison law library." However, in Appellant's Step 2 Grievance, Appellant "object[ed] to the [Department's] failure to allow him access to a law library. . . ." (Emphasis added). Thus, Appellant's original grievance was over an alleged lack of access to a law library, not to just "adequate access," which would necessarily imply that access had been granted but was insufficient. This is tantamount to introducing an entirely new issue. Because Appellant did not reassert in his brief the argument that he made in his grievance, I find that argument abandoned on appeal. I also find that Appellant cannot now assert his new issue for the first time on appeal. See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [factfinder] to be preserved for appellate review."). For the same reason, Appellant's additional assertion, that "when he is granted access [to the law library,] the library computer for research is inoperable," which was added in a parenthetical to Appellant's other assertion in his brief "that he is regularly denied access to the law library," is not preserved for appellate review.

Moreover, even had this issue been preserved, Appellant has provided no evidence to establish either a denial of access to the law library or that the library research computer is inoperable every time he is granted access. In fact, the IGC, in responding to and denying Appellant's Step 2 Grievance, pointed out that Appellant had visited the prison law library more than sixteen (16) separate times. (ROA p. 38). Also, according to the entries for Appellant in the "Law Computer Room Log" for Appellant, of the four (4) times that Appellant used the computer between 11/29/16 and 12/23/16, the computer parts were checked off as operable after his use in least the first three occasions (the entry for his last visit is illegible). (ROA pp. 338-39). Therefore, the law computer was certainly not, as Appellant suggests, inoperable every time he used it.

Moreover, as to Appellant's alleged excessive delays in ingoing and outgoing mail (Claim XV), the Court first notes that though Appellant objects in his brief to alleged delays in both outgoing and incoming mail, citing to page 40 of the Record, Appellant's Step 2 Grievance indicates that he objected to allegedly excessive delays in *only* his outgoing legal mail to his attorney, that "[o]n average, it takes more than ten (10) days for [his] outgoing legal mail to be processed and approved at the Institution's mail room before going out . . . for regular delivery to [his] attorney." Therefore, the Court will not consider his claim with regards incoming mail, only outgoing mail. *See Wilder*, 330 S.C. at 76, 497 S.E.2d at 733 ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [factfinder] to be preserved for appellate review."). In response to Appellant's mail claim, the IGC, relying upon the Mailroom Director, a Ms. Whitney, averred:

[M]ail is picked up at least once every other day. Usually, the mail is picked up every day from the roll around cart in F7 Unit. If the mail was in the box, it would go out on the same day or the day after it was picked up. It does not take 10 days to process the mail at the institution as [Appellant] ha[s] alleged.

Appellant has provided no evidence to refute these statements from the Department. As such, even had this issue not been abandoned on appeal due to a lack of application of legal authority, the Court would have found unrefuted substantial evidence in the record to support the Department's decision to deny Appellant's claim.

Finally, as to Appellant's alleged denial of his request for legal supplies (Claim XVI), SCDC Policy PS-10.08(4.2.1) and (4.2.2) provide:

4.2.1 All indigent inmates, regardless of custody status, will be provided with one (1) pencil (which will be exchanged for a new pencil when it wears out), eight (8) sheets of paper, and two (2) date-stamped envelopes on a monthly basis to be used for sending mail not weighing more than one (1) ounce per envelope. Indigent inmates will be allowed to exchange a current date-stamped envelope for postage to be placed on another envelope (i.e., a greeting card provided by the Chaplain). The inmate's account will not be debited for these supplies.

4.2.2 The materials will be a part of a hygiene pack that will be issued to authorized indigent inmates on a monthly basis. An indigent inmate's account will not be debited for the postage affixed to the date-stamped envelope.

According to the IGC's response denying Appellant's claim, he reviewed Appellant's Agreement to Debit E.H. Cooper Account dated September 29, 2015 and found that on September 30, 2016, Appellant was issued five (5) envelopes and twenty (20) sheets of paper, which actually exceeds

the monthly allotment of materials that can be used for legal pleadings or correspondence. Appellant has no state-created liberty interest in more than what the State has provided pursuant to PS-10.08(4.2.1), and Appellant has not demonstrated that he was given less. Therefore, even if the Court did not deem this issue abandoned on appeal for failure to apply legal authority to support his conclusory argument, the Court would nevertheless find that Appellant has failed to carry his burden of proving that he was deprived of a state-created liberty interest, and that there is substantial evidence in the Record to support the Department's decision to deny Appellant's claim.

### C. Inadequate Medical Care (Claims IV and V)

As an initial matter, because Appellant's Claim IV (failure to prescribe proper medication to treat Appellant's various medical ailments) is reiterated by Appellant as part of his Claim V, the Court will address both claims collectively.<sup>16</sup> Appellant argues that he was denied adequate medical treatment for his sundry maladies and was not given follow-up examinations for other medical conditions.

First, Appellant again cites collectively to the same string of authorities at the end of his conclusory arguments and attempts to "incorporate[] the argument and legal foundation for this claim set forth above and herein." However, the Court, as noted throughout this Order, finds this want of specific application and legal analysis inadequate to preserve this issue on appeal and must, therefore, consider the issues abandoned. See *D.R. Horton, Inc., supra* and *Hill, supra*.

As to Appellant's allegation that he has not received adequate medical treatment, he has not demonstrated that this implicates a state-created liberty interest. Therefore, the Court must dismiss it pursuant to *Slezak, supra* and *Skipper, supra*; see also, e.g., *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 236 (Ct. App. 2008) (observing that a request for medically recommended support shoes "undeniably" implicated no state-created liberty interest).<sup>17</sup>

<sup>16</sup> Appellant made a motion in footnote 14 of his brief to place pages 278-315 and 340-45 of the Record under seal because they contained Appellant's medical records and information. The Court granted this motion in its Order on Motion to Supplement the Record and Seal a Portion of the Record on Appeal filed February 6, 2017.

<sup>17</sup> Even if the Court had jurisdiction, though Appellant cites to pages 278-315, 340-45 of the Record generally to support his allegation, he has failed to specify how Appellant's treatment was inadequate, let alone any deliberate indifference on the part of SCDC's medical staff as to his treatment for any serious medical conditions. See *Belcher v. Oliver*, 898 F.2d 32, 34 (4th Cir. 1990) ("[t]he Fourteenth Amendment, like the Eighth Amendment right of convicted prisoners, requires that government officials not be deliberately indifferent to any serious medical needs of [a] pretrial detainee."). Moreover, the Department provided Appellant prescription medication and refills on numerous occasions. (ROA, pp. 279-80; 287-88; 289-98; 343-45). Likewise, regarding Appellant's contention that he was denied "follow-up exams, laboratory tests, or other standard of care procedures," the Record reflects that he

#### D. Day-to-Day Conditions in Appellant's Cell (Claims VIII and IX)

Appellant asserts that he is "subjected to improper ventilation, constant and persistent blowing of dust, [and] pernicious and noxious smell of human waste" (Claim VIII).<sup>18</sup> Appellant also alleges that the Department denied his requests for adequate cleaning supplies with which to clean his "unsanitary and unhealthy" cell (Claim IX).

First, Appellant again cites collectively to the same string of authorities at the end of his conclusory arguments and incorporates "the argument and legal foundation for this claim set forth above and herein." However, the Court, as noted throughout this Order, finds the lack of specific application and legal analysis fails to preserve this issue on appeal and, therefore, the issues are abandoned. *See D.R. Horton, Inc., supra* and *Hill, supra*.

Furthermore, Appellant has not demonstrated that this claim implicates a state-created liberty interest. Therefore, the Court must dismiss it pursuant to *Slezak, supra* and *Skipper, supra*.<sup>19</sup>

#### E. Safekeeper Statute (Claims I and III)

Appellant challenges his classification as a Safekeeper pretrial detainee (Claim I) and challenges the constitutionality, both facially and as applied, of the Safekeeper statute – S.C. Code Ann. § 24-3-80 (Claim III). As an initial matter, because Appellant's Claim I is intertwined with his as-applied challenge in Claim III, the Court will address those two together and will address the facial challenge to Claim III separately.

First, Appellant again cites collectively to the same string of authorities at the end of his conclusory arguments and incorporates "the argument and legal foundation for this claim set forth above and herein." However, the Court, as noted throughout this Order, finds that the lack of

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was given physical examinations, though there were also other times when Appellant could not be seen because of security issues. (ROA, pp. 278; 279-80; 286-87; 302-03, 340-41).

<sup>18</sup> It is quizzical that a man who was transferred to SCDC's SMU for safekeeping for, among other reasons, throwing bodily fluid at prison officials and other inmates is now complaining about the "pernicious and noxious smell of human waste."

<sup>19</sup> Even if the Court did not deem Appellant's Claims VIII and IX abandoned on appeal, and even if the Court had jurisdiction to hear this claim based on its implication of a state-created liberty interest, the Court would find no unconstitutional conditions of confinement and would find substantial evidence in the Record to support the Department's decisions to dismiss both of Appellant's claims.

specific application of legal analysis fails to preserve this issue on appeal and, therefore, the issues are abandoned. *See D.R. Horton, Inc., supra* and *Hill, supra*.

Second, concerning Appellant's facial challenge of the Safekeeper statute, the Court reiterates what it already stated in its November 5, 2015 Order: this Court lacks jurisdiction to 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. But as the Court also stated in its November 5, 2015 Order, Appellant failed to establish how the statute was unconstitutionally applied, i.e. that he had 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. Therefore, the Court must assume the validity of the reasons for Appellant's classification set forth in the Edgefield County Sheriff's affidavit.

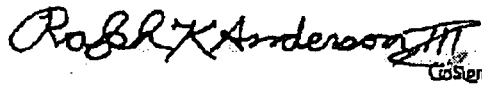
In his brief, "Appellant relies on his previously submitted arguments to the Court, as well as the citations in his Step-2 grievance form and notice of appeal on th[is] issue[]." As noted above, Appellant's argument that "[t]here is no rational basis for this rule for security reasons, separate housing requirements, disciplinary purposes (since Appellant is not a disciplinary inmate), or for the regular management and order of the institution" is contradicted by Appellant's prior actions leading to his designation as Safekeeper. According to the Edgefield County Sheriff's affidavit, Appellant's actions caused "disruptions" and that "[f]ood service to inmates was severely delayed on several occasions due to Barnes throwing bodily fluids on food trays and carts." These actions, which were recurring, disrupted the regular management and order of the detention centers at which they occurred. They also threatened the health of other inmates. Furthermore, Appellant, on multiple occasions, was cited for assault and possession of a weapon, as well as for refusal to cooperate with correctional officers. Because Lee and any other SCDC prison has a "legitimate nonpunitive governmental purpose" in managing and/or preventing the type of dangerous and disruptive behavior that had previously threatened the order and security of the detention centers that had previously housed Appellant, it was wholly reasonable for the Department to segregate Appellant and restrict his privileges and rights. *See Hoover*, 886 F. Supp. at 418 (the government has legitimate interests which stem from its need to maintain institutional security and order and 'to manage the facility in which the individual is detained'") (quoting *Bell*, 441 U.S. at 540); *see*

*also Union Cty. Jail Inmates*, 713 F.2d 984, 993 (3d Cir. 1983) ("It is plain that there is a legitimate governmental interest in effective management of a detention facility."), *cert. denied*, 465 U.S. 1102 (1984).

**ORDER**

**IT IS THEREFORE ORDERED** that Appellant's appeal is **DISMISSED WITH PREJUDICE**.

**AND IT IS SO ORDERED.**

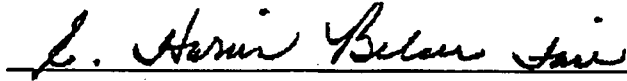
A handwritten signature in dark ink, reading "Ralph King Anderson, III". The signature is written in a cursive, flowing style. Below the signature, there is a horizontal line, and to the right of the line, the word "Caption" is printed in a small font.

Ralph King Anderson, III  
Chief Administrative Law Judge

March 29, 2017  
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).

A handwritten signature in cursive script, reading "E. Harvin Belser Fair", is written over a horizontal line.

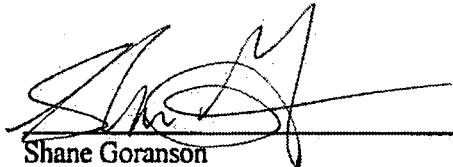
E. Harvin Belser Fair  
Judicial Law Clerk

March 29, 2017  
Columbia, South Carolina

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 2, 2017



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**RECEIVED**

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