

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW SUPREME COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Court of Appeals' Order filed July 20, 2017
Supreme Court Case Tracking No. 2017-002119

Fred Gatewood, #289775, Petitioner,

v.

South Carolina Department of Corrections, Respondent.

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

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Under the authority of South Carolina Appellant Court Rule [“SCACR”] 242(f), the South Carolina Department of Corrections [“SCDC”] respectfully submits its instant return to the petition for writ of certiorari filed by the Petitioner concerning the final order issued July 20, 2017 by the Court of Appeals in the matter styled as *Fred Gatewood, Appellant, v. S.C. Dep’t of Corr., Respondent*, Appellate Case No. 2017-001552 (July 20, 2017) (Apx. p. 3).

I. QUESTION PRESENTED

Fred Gatewood is an inmate currently incarcerated in SCDC’s custody who participated in a prison industries service work project operated by SCDC at Lieber Correctional Institution, and he presented the following sole question for review in his instant petition:¹

Did the Court of Appeals err in deciding the [Administrative Law Court’s June 13, 2017 “Order of Remand”] was not appealable under the rule in [*Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep’t of Health & Envtl. Control*, 692 S.E.2d 894 (S.C. 2010)]?

II. SUMMARY OF SCDC’S OPPOSITION TO THE PETITION

Under SCACR 242(a), this Court, or any two (2) of its justices, “may, in its discretion ... issue a writ of certiorari to review a final decision of the Court of Appeals.” As provided by SCACR 242(b)’s first sentence, such a writ “is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.”

No such “special and important reasons” exist in the instant matter, because the June 13, 2017 “Order of Remand” issued by the Administrative Law Court [“ALC”] is, as the Court of Appeals determined, obviously interlocutory.

SCDC respectfully asserts that Gatewood’s arguments and analysis, which he previously articulated to both the ALC and the Court of Appeals in several filings, border on the nonsensical, and, by extension, his instant petition borders on the frivolous.

¹ See Petition, p. 1.

III. SCDC'S COUNTER-STATEMENT OF THE CASE

A. ORDERS ISSUED BY THE COURT OF APPEALS AND THE ALC

The entirety of the July 20, 2017 order issued by the Court of Appeals and challenged by Gatewood read as follows (Apx. p. 3):

This appeal arises out of an order from the [ALC] remanding the case to [SCDC]. **Because the order of the ALC is not a final order, we dismiss this appeal as interlocutory.** See [*Charlotte-Mecklenburg Hosp. Auth.*, 692 S.E.2d at 895] (“If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory.”). The remittitur will be sent pursuant to [SCACR 221(b)]. [emphasis supplied].

The order referenced by the Court of Appeals consisted of an “Order of Remand” issued June 13, 2017 by the ALC (Apx. pp. 6 – 7), which, in its entirety, read as follows (Apx. p. 6):

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

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

IT IS THEREFORE ORDERED that the grievance is remanded to [SCDC] for processing as set forth in [*Gatewood v. S.C. Dep’t of Corr.*, 785 S.E. 2d 60 (S.C. 2016), cert. denied (May 30, 2017)].

[underlined emphasis by SCDC; bold emphasis supplied by the ALC].

² In the sole footnote from its June 13, 2017 “Order of Remand,” the ALC referenced S.C. Code § 15-77-300(B). (Apx. p. 6). See notes 35 and 36 below.

Gatewood challenged the Court of Appeals' July 20, 2017 order by filing a petition for rehearing dated July 31, 2017 (Apx. pp. 11 – 19), and the Court of Appeals, by the order it issued September 14, 2017, denied Gatewood's petition for rehearing. (Apx. p. 4).

B. FLAWS IN GATEWOOD'S "STATEMENT OF THE CASE"

In the section of his petition entitled "Statement of the Case," Gatewood chronicled the procedural history associated with the litigation of the instant controversy.³

1. Gatewood inaccurately summarized *Adkins* and *Wicker*.

In chronicling the instant controversy, Gatewood offered inaccurate summaries of two (2) decisions by this Court addressing prison industries pay claims by asserting as follows in his "Statement of the Case:⁴"

On August 23, 2004, the Supreme Court issued decisions in [*Adkins, et al. v. S.C. Dep't of Corr.*, 602 S.E. 2d 51 (S.C. 2004)] and [*Wicker v. S.C. Dep't of Corr.*, 602 S.E. 2d 56 (S.C. 2004)]. **These decisions held inmates could file prevailing wage grievances with SCDC and appeal to the [ALC].** [emphasis supplied].

This Court did not hold in either *Adkins* or *Wicker* that inmates "could file prevailing wage grievances with SCDC" and then appeal SCDC's denial of such grievances to the ALC.

In *Adkins*, 602 S.E.2d at 54, this Court noted that SCDC's "failure to pay a certain wage simply does not constitute a tort so as to be cognizable under the Tort Claims Act," and it also noted that even if the inmates' claims animated "a Tort Claims case, the circuit court correctly ruled that [SCDC] was immune from liability under S.C. Code Ann. § 15-78-60(5).⁵"

³ See Petition, pp. 1 – 2.

⁴ *Id.*, p. 1.

⁵ In a parenthetical, the *Adkins* court summarized § 15-78-60(5) as follows: "governmental entity not liable for loss resulting from the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee."

These notes aside, this Court's essential ruling in *Adkins* consisted of its conclusion that the statutes upon which the inmates relied (i.e. § 24-3-430 and, specifically, § 24-3-430(D)) "do not give rise to a private, civil cause of action." *Id.*

This Court then referenced *Wicker* in the final paragraph of *Adkins*, 602 S.E.2d at 55:

... , notwithstanding our holding that Inmates have no private civil cause of action, they are not without a remedy. In accordance with the companion case of [*Wicker*], we hold Inmates may file an inmate grievance to protest [SCDC's] failure to pay wages in accordance with the mandatory statutory provisions.

In *Wicker*, 602 S.E.2d at 57 – 58, this Court invoked *Al-Shabazz v. State*, 527 S.E.2d 742 (S.C. 2000) when it recognized the reality that the ALC could review final decisions rendered by SCDC concerning grievances filed by inmates under SCDC Policy Number GA-01.12 in which the inmates articulated prison industries pay claims:

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

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

[emphasis supplied].

In the footnote associated with above-quoted passage from *Wicker*, 602 S.E.2d at 58, this Court explicitly noted “that our holding today is extremely limited and is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance.”

Thus, contrary to Gatewood’s assertion, SCDC respectfully submits that neither *Adkins* nor *Wicker* explicitly or implicitly “opened the door” for inmates to file prison industries pay grievances with SCDC. Instead, *Adkins* and *Wicker* confirmed that inmates had already possessed the right to do so.

2. The Court of Appeals summarily dismissed Gatewood’s appeal of the ALC’s June 13, 2017 “Order of Remand.”

In the final two (2) paragraphs of his “Statement of the Case,”⁶ Gatewood addressed the June 13, 2017 “Order of Remand” issued by the ALC after this Court issued the remittitur to the ALC’s Clerk of Court on June 2, 2017 (Apx. pp. 6 – 7 and 5):

On June 13, 2017, the ALC remanded the case “ ... to SCDC for processing as set forth in [*Gatewood*].” [Apx. p. 6].⁷

On July 14, 2017, Gatewood filed [a] notice of appeal in the Court of Appeals of the ALC’s [June 13, 2017 “Order of Remand”]. [Apx. pp. 8 – 10]. **Before the parties filed [any] briefs and [the Record on Appeal],** the Court of Appeals on July 20, 2017 issued an order dismissing the appeal as interlocutory. [Apx. p. 3].⁸ On July 31, 2017, Gatewood filed a petition for rehearing. [Apx. pp. 11 – 19]. On September 14, 2017, the Court of Appeals issued an order denying the petition. [Apx. p. 4].

[emphasis supplied].

SCDC respectfully submits that in the second of the above-quoted paragraphs, Gatewood ignored the reality that the Court of Appeals summarily dismissed his appeal of the ALC’s June

⁶ See Petition, pp. 2 – 3.

⁷ The entirety of the ALC’s June 13, 2017 “Order of Remand” appears above on page 2.

⁸ The entirety of the Court of Appeals’ July 20, 2017 order summarily dismissing Gatewood’s appeal of the ALC’s June 13, 2017 “Order of Remand” appears above on page 2.

13, 2017 “Order of Remand” *before* he even filed his initial brief and designation of matter to be included in the record on appeal.

SCDC further respectfully submits that the Court of Appeals, given that the ALC’s June 13, 2017 remand order is obviously interlocutory, acted appropriately.

3. Gatewood omitted several filings he submitted to both the Court of Appeals and the ALC after the ALC issued its June 13, 2017 “Order of Remand.”

Gatewood also failed to discuss or even mention in his “Statement of the Case” a myriad of filings he submitted to both the Court of Appeals and the ALC after the ALC issued its June 13, 2017 “Order of Remand.”

a) Gatewood’s “Petition for Writ of Mandamus.”

Gatewood failed to mention in his “Statement of the Case.” or anywhere else in his instant petition. his “Petition for Writ of Mandamus” dated July 13, 2017 to the Court of Appeals concerning the ALC’s June 13, 2017 “Order of Remand.”⁹

Pursuant to S.C. Code § 14-8-290, [Gatewood requests the Court of Appeals] to issue a Writ of Mandamus compelling [the ALC] to reconsider [his] entitlement to costs, attorney’s fees, pre-judgment interest, and post-judgment interest in light of [the Court of Appeals’] March 9, 2016 opinion and judgment, and remittitur of June 2, 2017, as more particularly described in the attached memorandum.¹⁰

In the conclusion of his July 13, 2017 “Petition for Writ of Mandamus” to the Court of Appeals, Gatewood articulated the following request:¹¹

⁹ SCDC respectfully submits a copy of Gatewood’s July 13, 2017 “Petition for Writ of Mandamus” to the Court of Appeals, along with its supporting memorandum, and proof of service, as Exhibit A in support of its instant return. *See* Exhibit A, p. 1.

¹⁰ Gatewood’s instant petition includes many of the same arguments and much of the same analysis from the supporting memorandum to his July 13, 2017 “Petition for Writ of Mandamus” to the Court of Appeals. *See* Exhibit A, pp. 2 – 8.

¹¹ *See* Exhibit A, p. 8.

For the above reasons, **Gatewood requests that the [ALC's June 13, 2017 "Order of Remand"] be declared null and void**, and that a writ of mandamus be issued to [the ALC] compelling him to reconsider [his] entitlement to costs, attorney's fees, pre-judgment interest, and post-judgment interest, in light of the March 9, 2016 Court of Appeals' opinion and judgment, and June 2, 2017 remittitur. [emphasis supplied].

In his instant petition,¹² Gatewood also erroneously asserted that the ALC's June 13, 2017 "Order of Remand" was "null and void:"

Finally, because the ALC's [June 13, 2017 "Order of Remand"] was outside its jurisdiction to issue, Gatewood contends **it was null and void, and the proceeding is as if the remand had not occurred** (Am Jur 2d (2007), App. Rev., §740; 20 Am Jur 2d (2015), Courts, §63).

Gatewood submits the [ALC's June 13, 2017 "Order of Remand"] was inconsistent with and did not enforce the Court of Appeals' remand to the ALC, and **the ALC remand was outside the ALC's jurisdiction and thus null and void.**

[bold emphasis supplied by SCDC].

Gatewood likewise failed to mention in his "Statement of the Case" or anywhere else in his instant petition that by correspondence from its Clerk dated July 17, 2017, the Court of Appeals summarily rejected his July 13, 2017 "Petition for Writ of Mandamus:¹³"

Your petition for writ of mandamus was received July 14, 2017. The remittitur was filed in this appeal on June 2, 2017. This Court no longer has jurisdiction over this case. The Court is returning your petition for writ of mandamus to you and no further action will be taken.

Gatewood's July 13, 2017 "Petition for Writ of Mandamus" to the Court of Appeals and the Court of Appeals' rejection of it directly impacts the following paragraph from the next to last page of his instant petition:¹⁴

¹² See Petition, p. 6. See also note 22 below.

¹³ SCDC respectfully submits a copy of the Clerk's July 17, 2017 letter as Exhibit B in support of its instant return.

¹⁴ See Petition, pp. 11 – 12.

As a final consideration governing review, if the Court finds the [ALC's remand] order was not appealable, Gatewood requests the Court to consider this petition as **an application for mandamus** to reconsider [his] entitlement to attorney fees, costs and interest, thus rendering this Court's review of the Court of Appeals' decision appropriate (J. Toal, Appellate Practice in South Carolina, 3rd Ed., 2016, page 165). [emphasis supplied].

Just as the Court of Appeals summarily rejected his July 13, 2017 "Petition for Writ of Mandamus," this Court should also summarily reject Gatewood's request for it to issue a writ of mandamus to the ALC to compel the ALC to consider the merits of his grievance.

b) **Filings by Gatewood with the ALC after the ALC issued its June 13, 2017 "Order of Remand".**

In his instant petition, Gatewood referenced SCDC's response to his "ALC petition for attorney fees,¹⁵" but Gatewood did not include his "ALC petition for attorney fees" in his Appendix.

Moreover, the filing by SCDC described by Gatewood as its response to his "ALC petition for attorney's fees" consisted of a filing to the ALC dated July 13, 2017 and entitled "[SCDC's] Response to Gatewood's Filings dated June 30, 2017 and its Motion to Strike Gatewood's Filings dated June 30, 2017." (Apx. pp. 20 – 38).

As reflected in SCDC's July 13, 2017 filing, Gatewood submitted three (3) items to the ALC, each of them dated June 30, 2017 (Apx. p. 21):

1. A "Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest" and allied "Time Sheets" kept by Gatewood's counsel, which support Gatewood's "Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest;¹⁶"

¹⁵ See Petition, p. 7.

¹⁶ Gatewood's filing to the ALC entitled "Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest" totaled 94 pages, and the allied "Time Sheets" kept by Gatewood's counsel totaled 215 pages. For brevity's sake, SCDC does not submit either of these two (2) items as exhibits in support of its instant return.

2. A “Motion and Memorandum for Appointment of Special Referee,¹⁷” and
3. A “Motion and Memorandum to Supplement the Record.¹⁸”

In his June 30, 2017 filing to the ALC entitled “Motion and Memorandum for Appointment of Special Referee,” Gatewood offered many of the same arguments that he offered in his instant petition. For example, Gatewood asserted in his instant petition that “after 13 years of contesting liability, it appears SCDC has developed a ‘will to win’ in these cases.¹⁹” In his June 30, 2017 “Motion and Memorandum to Supplement the Record” to the ALC,²⁰ Gatewood asserted “that SCDC’s litigation of this matter since 2004 demonstrates its ‘will to win’ to avoid paying statutory wages, and thus, its partiality.²¹”

As reflected by SCDC’s filing to the ALC in *Gatewood* dated July 13, 2017 and entitled “[SCDC’s] Response to Gatewood’s Filings dated June 30, 2017 and its Motion to Strike Gatewood’s Filings dated June 30, 2017” (Apx. p. 24), Gatewood asserted to the ALC that the ALC’s June 13, 2017 “Order of Remand” in his case (Apx. pp. 6 – 7) was “null and void:”

In the footnote at the bottom of the first page of his “Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest,²²” Gatewood addressed the [ALC’s] June 13, 2017 remand order as follows:

¹⁷ Gatewood’s filing to the ALC entitled “Motion and Memorandum for Appointment of Special Referee” totaled 11 pages, and SCDC respectfully submits it as Exhibit C in support of its instant return.

¹⁸ Gatewood’s filing to the ALC entitled “Motion and Memorandum to Supplement the Record” totaled 155 pages, and, again for brevity’s sake, SCDC does not submit it as an exhibit in support of its instant return.

¹⁹ See Petition, p. 9.

²⁰ See Exhibit C, p. 3.

²¹ Gatewood invoked *Ross v. MUSC*, 492 S.E.2d 62, 72 (S.C. 1997) to support his assertion that SCDC has purportedly developed a “will to win” in both his instant petition and his “Motion and Memorandum for Appointment of Special Referee” to the ALC. See Petition, pp. 8 – 9, and Exhibit C, pp. 2 – 3.

²² In the footnote associated with this passage, SCDC observed that Gatewood also asserted elsewhere in his “Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest” that the ALC’s June 13, 2017 remand order in his case “was **null and void.**” [emphasis supplied].

Gatewood respectfully contends **[the ALC's] June 13, 2017 remand to [SCDC] is not consistent with, and does not enforce, the Court of Appeals' judgment of March 9, 2016 and remittitur of June 2, 2017** requiring [the ALC] to reconsider Gatewood's entitlement to costs, attorney fees, pre and post-judgment interest in light of the Court of Appeals' opinion [*Muller v. Myrtle Beach Golf & Yacht Club*, 438 S.E. 2d 248, 249 – 250 (S.C. 1993)] (Once remittitur is sent down from Supreme Court, Circuit Court acquires jurisdiction to enforce judgment and take any action consistent with Supreme Court's ruling); Am Jur 2d (2007), App. Review, §§ 734-737, 740, 744). Gatewood further contends **[the ALC's] remand was outside its jurisdiction, null and void, and the proceeding is as if the remand had not occurred** (Id., § 740; 20 Am Jur 2d (2015), Courts, § 63). Thus, Gatewood contends [the ALC] has jurisdiction to consider the within petition for attorney fees.

[bold emphasis supplied by SCDC].

Contrary to the assertion by Gatewood in his instant petition, SCDC's July 13, 2017 filing to the ALC entitled "[SCDC's] Response to Gatewood's Filings dated June 30, 2017 and its Motion to Strike Gatewood's Filings dated June 30, 2017" did not exclusively or even primarily serve as SCDC's response to Gatewood's "ALC petition for attorneys fees." Instead, it served as the mechanism by which SCDC moved the ALC to strike all three (3) of Gatewood's filing dated June 30, 2017.

As of the date of SCDC's instant return, the ALC has not ruled on SCDC's motion to strike all three (3) of Gatewood's filings dated June 30, 2017 or any of Gatewood's filings dated June 30, 2017, because, Gatewood obviously appealed the June 13, 2017 "Order of Remand" issued by the ALC to the Court of Appeals. (Apx. pp. 8 – 10).

4. **The inaccuracies and glaring omissions from his "Statement of the Case" are emblematic of Gatewood's fundamental and persistent misapprehension of the ALC's jurisdiction in the instant matter.**

Gatewood invoked only SCDC's response to the three (3) filings he submitted to the ALC after the ALC's June 13, 2017 "Order of Remand." Gatewood omitted any discussion of

his three (3) filings to the ALC in his instant petition, and he omitted all three (3) of his filings to the ALC from the Appendix he submitted in support of his instant petition.

Likewise, Gatewood completely omitted from his instant petition any reference to the “Petition for Writ of Mandamus” he filed with the Court of Appeals, and he omitted his “Petition for Writ of Mandamus” from his Appendix.

By doing so, Gatewood confusingly and frustratingly conflated his arguments and analysis with the argument and analysis offered presented in his “Petition for Writ of Mandamus” to the Court of Appeals and his three (3) filings to the ALC dated July 30, 2017.

SCDC respectfully submits that such confusion is emblematic of Gatewood’s fundamental and persistent misapprehension of the ALC’s jurisdiction in the instant matter.

IV. ARGUMENT IN OPPOSITION TO GATEWOOD’S PETITION

A. THE ALC IS NOT THE FORUM IN WHICH GATEWOOD’S CLAIMS ARE LITIGATED, BECAUSE, UNDER *Wicker* AND *Al-Shabazz*, THE ALC SITS *EXCLUSIVELY* IN ITS APPELLATE CAPACITY TO REVIEW SCDC’S FINAL DECISIONS REGARDING HIS CLAIMS

Gatewood divided the argument from his instant petition into four (4) sections:

1. “Mode of Trial;²³”
2. “Inconsistent ALC Remand and Effects;²⁴”
3. “Due Process;²⁵” and
4. “Considerations Governing Review.²⁶”

Gatewood further divided the fourth section of his argument into three (3) subsections:

²³ See Petition, pp. 3 – 4.

²⁴ *Id.*, pp. 5 – 6.

²⁵ *Id.*, p. 6.

²⁶ *Id.*, pp. 6 – 12.

- 4A. “SCACR 242(b)(1)(3)(4);²⁷”
- 4B. “Delay and Denial of Justice;²⁸” and
- 4C. “Back Wage Calculations.”²⁹”

A significant portion of Gatewood’s argument is bound by his interpretation of *Wicker*:

Third, the Court of Appeals’ decision may conflict with S.C. Constitution, Article I, Section 22, and [*Wicker*’s] and [*Ross v. MUSC*’s] guarantee of due process in administrative adjudications (SCACR 242(b)(3)(4)).³⁰ See discussion below at page(s) 8 – 9.

Finally, Gatewood contends there are substantial legal problems with SCDC calculating back wages for any inmate. First, it would be an obvious conflict of interest for SCDC as it would be calculating its own damages.

More importantly, it would violate due process. In [*Wicker*], 602 S.E. 2d at 58, this Court found that §24-3-430(D) creates an interest encompassed by the Fourteenth Amendment which cannot be denied without due process.³¹

However, Gatewood’s interpretation of *Wicker* is fatally flawed by his fundamental misapprehension of the ALC’s jurisdiction and the sources thereof.

Gatewood refused to acknowledge that the ALC’s jurisdiction over the instant matter has always been animated and continues to be animated by Section V of its own Rules of Procedure. Section V is entitled “Special Appeals,” and it encompasses Rules 51 through 66.

Rule 51 is entitled “Applicability,” and it provides that the rules in Section V “**shall apply exclusively in matters heard on appeal from final decisions pursuant to [*Al-Shabazz*].**” [emphasis supplied].

The 2009 Revised Notes to Rule 51 provide as follows:

²⁷ See Petition, pp. 6 – 7.

²⁸ *Id.*, pp. 7 – 8.

²⁹ *Id.*, pp. 8 – 12.

³⁰ *Id.*, p. 7. See also note 21 above.

³¹ *Id.*, p. 8.

The Special Appeals Rules are the exclusive rules of procedure used in appeals from final decisions of [SCDC] and the Department of Probation, Parole and Pardon Services. The [ALC's] jurisdiction to hear such matters is *derived entirely* from the decisions of the South Carolina Supreme Court in [*Al-Shabazz*] and [*Furtick v. S.C. Dep't of Probation, Parole and Pardon Services*, 576 S.E.2d 146 (S.C. 2003)]. These Rules are based upon the [ALC's] existing general procedural and appellate rules, with adaptations for this specific type of appeal. [emphasis supplied].

As explained above,³² this Court in *Wicker*, 602 S.E.2d at 57 – 58, invoked *Al-Shabazz* when it recognized the reality that the ALC could review final decisions rendered by SCDC concerning grievances filed by inmates under Policy GA-01.12 in which the inmates articulated prison industries pay claims.

As explicitly stated in the 2009 Revised Notes to Rule 51 and as reflected by the above-cited passage from *Wicker*,³³ this Court sits *exclusively in its appellate capacity* in reviewing final decisions rendered by SCDC for grievances in which inmates challenge their prison industries pay, and SCDC's administrative grievance process, established in and by Policy GA-01.12, is the forum of record for all such matters.

In his instant petition, Gatewood argued as follows:³⁴

Here, Gatewood has not had ALC reconsideration of his entitlement to attorney fees. Gatewood's entitlement to ALC reconsideration stems from two sources. His immediate entitlement stems from the Court of Appeals' remand to the ALC to reconsider his entitlement to attorney fees, costs and pre and post-judgment interest [*Gatewood*, 785 S.E. 2d at 613]. The ALC's remand to SCDC for processing would deprive Gatewood of the mode of trial to which he is entitled.

Moreover, Gatewood's entitlement to ALC reconsideration of attorney fees is required by statute. On June 30, 2017, Gatewood filed his petition for attorney fees, costs and interest in the ALC pursuant to §15-77-300,

³² See page 4 above.

³³ *Id.*

³⁴ See Petition, p. 4.

1985 version, and the contingent fee contract with counsel [Apx. pp. 6, 20-21, and 39]. Under §15-77-300, it is clearly “the court” which adjudicates entitlement to attorney fees, not the defendant agency.

The ALC would not deprive Gatewood of “the mode of trial” to which he claims entitlement, because the ALC explicitly declared in its June 13, 2017 remand order that it was holding its determination of attorney’s fees in abeyance pending the outcome of proceedings conducted by SCDC on remand regarding the pay claims articulated by Gatewood in his grievance and the pay claims articulated in the grievances filed by Gatewood’s cohorts in *Ackerman*.³⁵

Moreover, SCDC would not, contrary to his above-quoted argument, calculate Gatewood’s attorney’s fees under the ALC’s June 13, 2017 remand order. By its order, the ALC properly recognized the reality that a *final* result in Gatewood’s favor does not yet exist, and, in the final paragraph of its order, the ALC properly remanded Gatewood’s grievance, and the prison industries pay claims he articulated therein, back to SCDC.

On remand, SCDC must apply the relevant statutes (i.e. any operative budget provisos, § 24-1-295, § 24-3-40, and § 24-3-430(D)) in conformity with the Court of Appeals’ decision in *Gatewood*. In so “processing” his grievance, SCDC will adjudicate the merits of Gatewood’s pay claims and determine the amount of back pay owed to Gatewood.

Gatewood may then appeal SCDC’s decision to the ALC, and Gatewood’s ability to so appeal SCDC’s decision constitutes the appropriate process afforded him under *Al-Shabazz*, *Wicker*, and the rules encompassed by Section V of the ALC’s Rules of Procedure.

The ALC will then review SCDC’s determination of the pay owed Gatewood, and, in the course of conducting its review, the ALC will then determine the amount of attorney’s fees to

³⁵ See note 2 above.

which Gatewood is entitled under § 15-77-300, and, as specifically cited by the ALC in its June 13, 2017 remand order, § 15-77-300(B).³⁶

No amount of argument offered by Gatewood in his July 13, 2017 “Petition for Writ of Mandamus” to the Court of Appeals, in his July 31, 2017 “Petition for Rehearing” to the Court of Appeals, or in his instant petition changes, alters, or modifies this reality. Accordingly, this Court should unhesitatingly deny Gatewood’s instant petition.

B. GATEWOOD CONCEDED IN HIS JULY 13, 2017 “PETITION FOR WRIT OF MANDAMUS” TO THE COURT OF APPEALS THAT THE ALC’S JUNE 13, 2017 “ORDER OF REMAND” IS “PROBABLY INTERLOCUTORY AND NOT IMMEDIATELY APPEALABLE”

At the outset of the section of his petition entitled “Argument,”³⁷ Gatewood asserted that that the Court of Appeals “should have decided that [*Charlotte-Mecklenburg Hosp. Auth.*] is distinguishable, and the ALC’s [June 13, 2017 “Order of Remand”] was appealable.

Gatewood then quoted the sole footnote which appeared in his Notice of Appeal to the Court of Appeals dated July 14, 2017. However, as illustrated by the following side-by-side

³⁶ See notes 2 and 35 above. Section 15-77-300(B) provides as follows:

Attorney’s fees allowed pursuant to [§15-77-300(A)] must be limited to a reasonable time expended at a reasonable rate. Factors to be applied in determining a reasonable rate include:

- (1) the nature, extent, and difficulty of the case;
- (2) the time devoted;
- (3) the professional standing of counsel;
- (4) the beneficial results obtained; and
- (5) the customary legal fees for similar services.

The judge must make specific written findings regarding each factor listed above in making the award of attorney’s fees. However, in no event shall a prevailing party be allowed to shift attorney’s fees pursuant to this section that exceed the fees the party has contracted to pay counsel personally for work on the litigation.

Under § 15-77-300(B)(4), the ALC will consider “the beneficial results obtained” by Gatewood’s counsel in determining “a reasonable rate.” Again, the ALC sits exclusively in its appellate jurisdiction in the instant matter, and, accordingly, the “beneficial results obtained” on Gatewood’s behalf by Gatewood’s will be determined on remand, subject to appellate review by the ALC.

³⁷ See Petition, p. 3.

comparison, Gatewood did not quote the entirety of the sole footnote from his July 14, 2017 Notice of Appeal in his instant petition:

Gatewood’s Petition (Page 3)	Gatewood’s July 14, 2017 Notice of Appeal (Apx. pp. 8 – 9)
<p>.. Thus, it is possible the [Court of Appeals] may distinguish [<i>Charlotte-Mecklenburg Hosp. Auth.</i>] based on other circumstances here which were not addressed in that case. Therefore, Gatewood attempts to appeal the [ALC’s June 13, 2017 “Order of Remand”] to preserve his rights should the Court consider the remand a final order.</p>	<p>In Gatewood’s petition for a writ of mandamus filed July 13, 2017 [with the Court of Appeals], he contends the remand is probably interlocutory and not immediately appealable, based on circumstances here and [<i>Charlotte-Mecklenburg Hosp. Auth.</i>, 692 S.E.2d at 894 – 895]. However, it is permissible to argue against precedent in the appellate brief (SCACR 217). Thus, it is possible the [Court of Appeals] may distinguish [<i>Charlotte-Mecklenburg Hosp. Auth.</i>] based on other circumstances here which were not addressed in that case. Therefore, Gatewood attempts to appeal the [ALC’s June 13, 2017 “Order of Remand”] to preserve his rights should the Court consider the remand a final order. [emphasis supplied].</p>

Remarkably, Gatewood made the following representation to the Court of Appeals in his July 13, 2017 “Petition for Writ of Mandamus,” which, again, he neither referenced in his instant petition nor included in his Appendix:³⁸

Here, the ALC has yet to consider Gatewood’s entitlement to costs, attorney’s fees, and pre and post-judgment interest as the Court of Appeals ordered. As a result, [the ALC’s June 13, 2017 “Order of Remand”] to SCDC **is probably an interlocutory order, and thus not immediately appealable** [*Charlotte-Mecklenburg Hosp. Auth.*, 692 S.E.2d at 894 – 895]. Therefore, **it appears that mandamus is Gatewood’s only remedy in these circumstances.** [emphasis supplied].

When he quoted the sole footnote from his July 14, 2017 Notice of Appeal in his instant petition, Gatewood purposefully failed to quote the entire footnote, and the concession offered therein. Gatewood also purposefully failed to reference his July 13, 2017 “Petition for Writ of Mandamus” to the Court of Appeals, and he failed to include it in his Appendix.

³⁸ See Exhibit A, p. 7.

Gatewood's purposeful failure to do so is understandable, because he did not want this Court to realize that he had twice conceded to the Court of Appeals that the ALC's June 13, 2017 "Order of Remand" is "probably" interlocutory under *Charlotte-Mecklenburg Hosp. Auth.* Likewise, Gatewood did not want this Court to realize that while he twice conceded to the Court of Appeals that the ALC's June 13, 2017 remand order is "probably" interlocutory under *Charlotte-Mecklenburg Hosp. Auth.*, most stridently in his July 13, 2017 "Petition for Writ of Mandamus," he argued the opposite in his instant petition.

The ALC's June 13, 2017 "Order of Remand" is not "probably" interlocutory under this Court's decision in *Charlotte-Mecklenburg Hosp. Auth.* Rather, the order is most assuredly interlocutory under *Charlotte-Mecklenburg Hosp. Auth.*, as borne out by the following passages from the decision, 692 S.E.2d at 894 – 895:

The order of the ALC in this case is not a final order. If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory. (citations omitted). A judgment which determines the applicable law, but leaves open questions of fact, is not a final judgment. (citations omitted). A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined. (citation omitted).

The ALC's order upholds DHEC's finding that Amisub was a competing applicant for the certificate of need at issue in this matter. However, the ALC found DHEC erroneously interpreted the State Health Plan to allow only existing providers to obtain a certificate of need. Based on this finding, the ALC remanded the matter to DHEC to determine whether any of the applicants were entitled to the certificate of need. Although the ALC decided questions of law involved in this matter, a final determination as to the certificate of need has not been made. Therefore, the order of the ALC is interlocutory and is not a final decision which is immediately appealable under § 1-23-610. Accordingly, we dismiss this matter.

[emphasis supplied].

Just like the ALC in *Charlotte-Mecklenburg Hosp. Auth.*, the ALC remanded Gatewood's grievance, and the prison industries pay claims articulated therein, to SCDC. In its 2016 decision in *Gatewood*, the Court of Appeals obviously decided questions of law that impact if not determine the adjudication of Gatewood claims. The ALC sits *exclusively in its appellate capacity* in this matter as declared in Section V of its own Rules of Procedure, which is anchored upon *Al-Shabazz* and, by extension, *Wicker*.

Thus, the ALC properly remanded Gatewood's claims to SCDC for SCDC to adjudicate them under the Court of Appeals' decision in *Gatewood*, and, until SCDC adjudicates Gatewood's claims and, specifically, the back pay associated with his claims, no final decisions exist from which Gatewood may appeal to the ALC. Accordingly, this Court should unhesitatingly deny Gatewood's instant petition.

Any distaste Gatewood may possess with length of time associated with the above-described sequence of events simply doesn't trump the applicable statutes, precedent, and rules of procedure. Had he simply embraced the reality that the ALC's June 13, 2017 "Order of Remand" is, under *Charlotte-Mecklenburg Hosp. Auth.*, most assuredly interlocutory, SCDC would have either concluded its adjudication of Gatewood's claims, including a calculation of the back pay owed to him under *Gatewood*, by now or it would be well on its way to doing so.

C. THIS COURT SHOULD NOT CONSIDER GATEWOOD'S ARGUMENT AS TO WHETHER *Charlotte-Mecklenburg Hosp. Auth.* WAS DISTINGUISHABLE

In his instant petition, Gatewood contended as follows regarding the sole footnote from his July 14, 2017 Notice of Appeal:³⁹

³⁹ See Petition, p. 3.

Based on the above, Gatewood contends he raised in the Court of Appeals the issue that [*Charlotte-Mecklenburg Hosp. Auth.*] may be distinguishable, and the [ALC's June 13, 2017 "Order of Remand"] was appealable. Gatewood further contends this issue includes every subsidiary question fairly comprised therein, including the various [circumstances] distinguishing this case from [*Charlotte-Mecklenburg Hosp. Auth.*] (SCACR 242(d)(2)).

Gatewood also purposefully – and understandably – omitted the following sentence from the sole footnote in his July 14, 2017 Notice of Appeal from his instant petition (Apx. p. 9): “However, it is permissible to **argue against precedent in the appellate brief** (SCACR 217).” [emphasis supplied].

As discussed above, the Court of Appeals, by the order it issued July 20, 2017 (Apx. p. 3), summarily dismissed Gatewood's appeal, and it did so *before* it allowed Gatewood to file his initial brief and designation of matter.

As he never filed briefs with the Court of Appeals, Gatewood failed to offer any argument against the precedent established by *Charlotte-Mecklenburg Hosp. Auth.*

At most, Gatewood offered only conclusory references regarding *Charlotte-Mecklenburg Hosp. Auth.* in the sole footnote from his Notice of Appeal, and, therefore, this Court should not consider the argument he offered in his instant petition as to whether *Charlotte-Mecklenburg Hosp. Auth.* was distinguishable. *See Smith v. Tiffany*, 799 S.E.2d 479, 484, n. 3 (S.C. 2017) (“Further, because Appellants’ brief includes only conclusory references to ‘due process considerations of fairness and equity’ and sets forth no substantive legal argument or supporting citations to authority (even to the due process clauses themselves), we do not consider Appellants’ argument that the trial court erred in finding their due process rights were not violated by the inability to join Mizzell or include him on the verdict form for purposes of allocation. *See [First Sav. Bank v. McLean*, 444 S.E.2d 513, 514 (S.C. 1994)] (finding an

assertion to be abandoned where appellant failed to provide arguments or supporting authority therefor and explaining mere allegations are insufficient to demonstrate trial court error).”)

In response to the above-provided argument, Gatewood may assert that he preserved this issue for review by this Court in his July 31, 2017 “Memorandum in Support of Petition for Rehearing” to the Court of Appeals. (Apx. pp. 13 – 15). In his supporting memorandum, Gatewood asserted as follows (Apx. pp. 13 – 14):

Pursuant to SCACR 221(a), Gatewood contends the Court of Appeals’ order overlooked the point made in [his] notice of appeal footnote, that it is possible the Court may distinguish [*Charlotte-Mecklenburg Hosp. Auth.*] based on circumstances here which were not addressed in that case. Circumstances include the inconsistency between the March 9, 2016 Court of Appeals’ opinion remand of “... the issue of Inmate’s entitlement to costs, attorney’s fees, pre-judgment interest, and post-judgment interest to the ALC for reconsideration in light of this opinion” [*Gatewood*, 785 S.E. 2d at 613]; and the ALC’s June 13, 2017 remand “... to [SCDC] for processing ...” See ALC remand, attached hereto.

In the conclusion of his supporting memorandum, Gatewood asked the Court of Appeals “to grant his [petition for rehearing], and if appropriate, **allow the parties to brief these issues.**” [emphasis supplied]. (Apx. p. 15). Critically, however, the Court of Appeals did not grant his petition for rehearing, and the Court of Appeals denied Gatewood’s petition for rehearing without directing Gatewood and/or SCDC to submit briefs or memoranda.

Thus, Gatewood again, at most, offered only conclusory references regarding *Charlotte-Mecklenburg Hosp. Auth.* in the memorandum supporting his July 31, 2017 “Petition for Rehearing” to the Court of Appeals, and this Court should not consider the argument he offered in his instant petition as to whether *Charlotte-Mecklenburg Hosp. Auth.* was distinguishable. See *Smith v. Tiffany*, supra.

Accordingly, this Court should unhesitatingly deny Gatewood’s instant petition.

D. THE ALC'S JUNE 13, 2017 "ORDER OF REMAND" IS NOT AN ORDER FROM WHICH AN IMMEDIATE APPEAL MAY BE TAKEN

This Court ruled in *Charlotte-Mecklenburg Hosp. Auth.*, 692 S.E.2d at 895, that the order issued by the ALC under review was interlocutory and not, under § 1-23-610, an order from which an immediate appeal may be taken.

Section 1-23-610 is entitled "Judicial review of final decision of administrative law judge; stay of enforcement of decision," and § 1-23-610(A)(1) provides as follows:

For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the [ALC] not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right. [emphasis supplied].

As established above, the ALC's June 13, 2017 "Order of Remand" is simply not a final order issued by the presiding administrative law judge, and, consequentially, it is most assuredly interlocutory. Accordingly, this Court should unhesitatingly deny Gatewood's instant petition.

Moreover, the ALC's June 13, 2017 remand order does not, under other applicable statutes, constitute an order from which an appeal may be taken. *See* § 14-3-330 (setting forth the categories of judgments from which an appeal may be taken); and § 14-8-200(a) (defining the appellate jurisdiction of the Court of Appeals to include final decisions of an administrative law judge with the same scope of review as the Supreme Court would apply in a similar case).

E. NONE OF THE CONSIDERATIONS GOVERNING REVIEW FROM SCACR 242(b) APPLY IN THE INSTANT MATTER

Contrary to his argument,⁴⁰ no “special and important reasons” exist under SCACR 242(b)(1), (b)(3), or (b)(4) by which this Court should grant Gatewood’s instant petition.

SCACR 242(b) is entitled “Considerations Governing Review,” and, in its entirety, it provides as follows:

A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

- (1) Where there are novel questions of law.
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.
- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

No novel question of law exists under SCACR 242(b)(1), because, as evidenced by *Charlotte-Mecklenburg Hosp. Auth.*, this Court has previously adjudicated controversies concerning whether an order issued by the ALC was interlocutory.

The Court of Appeals’ July 20, 2017 order, which summarily dismissed Gatewood’s appeal in the instant matter, conforms to, rather than conflicts with, a prior decision issued by this Court, namely *Charlotte-Mecklenburg Hosp. Auth.*, and, consequentially, 242(b)(3) does not apply to the instant matter.

Finally, no substantial constitutional issues are animated, as contemplated by SCACR 242 (b)(4), by the Court Appeals’ decision in the instant matter, as the Court of Appeals, by

⁴⁰ See Petition, p. 6. See also note 27 above.

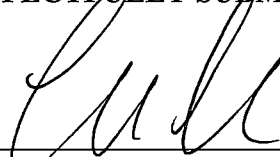
summarily dismissing Gatewood's July 14, 2017 Notice of Appeal, properly let stand the ALC's June 13, 2017 "Order of Remand."

Accordingly, this Court should unhesitatingly deny Gatewood's instant petition.

V. CONCLUSION

For all the foregoing reasons, this Court should deny Gatewood's instant petition and let stand the July 20, 2017 order by which the Court of Appeals summarily dismissed his July 14, 2017 Notice of Appeal in the instant matter.

RESPECTFULLY SUBMITTED:



Lake E. Summers

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Counsel for SCDC

Columbia, South Carolina
November 28, 2017

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Court of Appeals' Order filed July 20, 2017
Supreme Court Case Tracking No. 2017-002119

Fred Gatewood, #289775, Petitioner,

v.

South Carolina Department of Corrections, Respondent.

PROOF OF SERVICE

I certify that I have served **THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS' RETURN TO PETITION FOR WRIT OF CERTIORARI AND ITS SUPPORTING EXHIBITS** on the above-named Petitioner by mailing a copy of the same to his counsel of record at the following address:

Douglas H. Westbrook, Esquire
Attorney at Law
23 Broad Street
Charleston, South Carolina 29401

November 28, 2017



LAKE E. SUMMERS

A

DOUGLAS H. WESTBROOK
ATTORNEY AT LAW
23 BROAD STREET
CHARLESTON, SOUTH CAROLINA 29401
TELEPHONE: (843) 853-9600
FAX: (843) 577-2241

LAW OFFICES

JUL 17 2017

MALONE, THOMPSON
SUMMERS & OTT, LLC

July 13, 2017

The Honorable Jenny Abbott Kitchings
Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Fred Gatewood v. SCDC
Court of Appeals Appellate Case No. 2014-001199
Supreme Court Appellate Case No. 2016-001221

Dear Ms. Kitchings:

Please find enclosed for filing with the Court the original and six copies of Petitioner's Petition for a Writ of Mandamus, Memorandum in Support of Petition for a Writ of Mandamus, attachments and Proof of Service, for the above case. I also enclose a check for the \$25 filing fee.

By copy of this letter, I have this date served a copy of these documents on The Honorable Ralph K. Anderson, III and counsel for Respondent Department of Corrections, Lake E. Summers.

Thank you for your assistance in this matter.

Sincerely,



Douglas H. Westbrook

DHW/
Encl.

cc: The Honorable Ralph K. Anderson, III
Lake E. Summers, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Fred Gatewood..... Petitioner,

v.

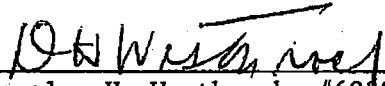
The Honorable Ralph K. Anderson, III and The South Carolina Department of
Corrections..... Respondents.

Court of Appeals Appellate Case No. 2014-001199
Supreme Court Appellate Case No. 2016-001221

PETITION FOR A WRIT OF MANDAMUS

Pursuant to S.C. Code §14-8-290, Fred Gatewood requests the Court to issue a Writ of Mandamus compelling The Honorable Ralph K. Anderson, III, Chief Judge, S.C. Administrative Law Court (ALC), to reconsider Gatewood's entitlement to costs, attorney's fees, pre-judgment interest, and post-judgment interest in light of this Court's March 9, 2016 opinion and judgment, and remittitur of June 2, 2017, as more particularly described in the attached memorandum.

Respectfully submitted,


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

LAW OFFICES

JUL 17 2017

MALONE, THOMPSON
SUMMERS & OTT, LLC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Fred Gatewood..... Petitioner,

v.

The Honorable Ralph K. Anderson, III and The South Carolina Department of
Corrections..... Respondents.

Court of Appeals Appellate Case No. 2014-001199
Supreme Court Appellate Case No. 2016-001221

MEMORANDUM IN SUPPORT OF PET-
ITION FOR A WRIT OF MANDAMUS

Fred Gatewood submits the within Memorandum in Support of Petition For a
Writ of Mandamus, as follows.

I. Background

This case concerns Gatewood's inmate wage grievance filed with the Depart-
ment of Corrections (SCDC) in 2004. In 2007, SCDC denied the grievance on the
merits, and for not meeting the filing deadline in §13.1 of grievance policy
for "incident" grievances.

In 2007, Gatewood appealed the grievance denial to the Administrative Law
Court (ALC). In 2010, the ALC directed briefing to proceed in three levels of
review. In 2012, the ALC ruled Gatewood's grievance was timely filed. How-
ever, in 2014 following merits briefing the ALC ruled S.C. Code §1-24-295 ap-
plied to Gatewood's work, and thus he was not entitled to back wages.

Gatewood appealed the ALC's decision to the Court of Appeals. On March 9,

2016, the Court of Appeals held that §24-1-295 did not apply retroactively to Gatewood's work before August 1, 2007. The Court remanded "...the issue of (Gatewood's) entitlement to costs, attorney's fees, pre-judgment interest, and post-judgment interest to the ALC for reconsideration in light of this opinion" (Gatewood v. SCDC 416 S.C. 304, 785 S.E. 2d 600 (S.C. App., 2016)).

On May 30, 2017, the Supreme Court denied SCDC's petition for certiorari. On June 2, 2017, the Court of Appeals issued the remittitur back to the ALC.

On June 13, 2017, the ALC issued a remand to "...the South Carolina Department of Corrections for processing as set forth in Gatewood.." (remand attached). The remand also stated, because the determination of attorney's fees involves the beneficial results obtained (S.C. Code §15-77-300(B)), the matter would be held in abeyance pending outcome of grievance hearings in this case and Ackerman, the companion case. See 782 S.E. 2d 757. Prior to its remand, the ALC did not reconsider Gatewood's entitlement to costs, attorney's fees, pre and post-judgment interest in light of the Court of Appeals' opinion.

II. Law

Each Court of Appeals judge has the power at chambers to issue writs of mandamus as when in open court (S.C. Code §14-8-290). To obtain a writ of mandamus, petitioner must demonstrate (1) respondent has a duty to perform an act; (2) the ministerial nature of the act; (3) petitioner's specific legal right necessitates discharge of that duty; and (4) petitioner lacks any other legal remedy (J. Toal, Appellate Practice in South Carolina, 3d Ed., 2016, p. 324; citing Porter v. Jedziniak 334 S.C. 16, 512 S.E. 2d 497 (S.C., 1999)).

Where a writ of mandamus is sought to require a judge to perform an act, the judge must be served with the petition and named as a party (Id, pp. 325-326; citing City of Rock Hill v. Thompson 349 S.C. 197, 563 S.E. 2d 101 (2002); and Miller v. State 377 S.C. 99, 659 S.E. 2d 492 (2008)). Moreover, there is no time limit per se for filing a petition for mandamus (Id, p. 326; citing State v. Truesdale 345 S.C. 542, 548 S.E. 2d 896 (Ct. App., 2001)).

Finally, a motion for leave to file a petition for mandamus is the proper remedy for a lower court's failure to comply with the mandate (Am Jur 2d (2007), App. Rev., §744).

III. Discussion

A. Respondent's Duty to Perform an Act

In Muller v. Myrtle Beach Golf & Yacht Club 313 S.C. 412, 414-415, 438 S.E. 2d 248, 250 (S.C., 1993), the Supreme Court stated that, once the remittitur is sent down, the Circuit Court acquires jurisdiction "...to enforce the judgment and take any action consistent with the Supreme Court ruling". The trial court is re-invested with jurisdiction, but only such jurisdiction as defined by terms of the remittitur (Am Jur 2d (2007), App. Rev., §733). Thus, the question of whether the lower court followed the mandate also involves a question of the lower court's jurisdiction (Id).

On remand, the lower court proceedings must follow the mandate of the appellate court; be in accord with the result contemplated by the appellate court opinion; follow exactly the appellate court's instructions; be consistent with the appellate court's opinion; and act on the appellate court's mandate without variation (Id, §§734, 736-737, 740). The lower court must not

undertake proceedings beyond those specified by the appellate court; retry the case; or undertake proceedings contrary to directions in the mandate (Id., §§ 736, 740).

In addition, proceedings and decisions of a court without jurisdiction of the subject matter are null and void. The proceeding is as if it had never happened (20 Am Jur 2d (2015), Courts, §63).

Here, the ALC had a duty to enforce the Court of Appeals' judgment and take any action consistent with that judgment (Muller, 438 S.E. 2d at 250). The Court of Appeals remanded "...the issue of Inmate's entitlement to costs, attorney's fees, pre-judgment interest, and post-judgment interest to the ALC for reconsideration in light of this opinion". See, Gatewood v. SCDC 785 S.E. 2d 600 (S.C. App., 2016). The Court did not remand "...for processing." of the grievance, as stated in the ALC remand to SCDC. Throughout this litigation, "processing" has meant SCDC's step 1 and 2 consideration of inmates' grievances. For Gatewood's grievance, that occurred over ten years ago. Thus, the ALC's remand order is not consistent with, nor does it enforce, the Court of Appeals' remand and judgment as to the ALC's duty to be performed on remand. See Gatewood Record, p. 42.

Equally important, by remanding "...to the South Carolina Department of Corrections for processing..", the ALC did not act consistently with, or enforce, the Court of Appeals' remand for the ALC to reconsider Gatewood's entitlement to costs, attorney's fees, and pre and post-judgment interest in light of the Court of Appeals' opinion. Thus, with respect to the forum and duty to be performed, the ALC initiated proceedings not authorized and contra-

ry to the Court of Appeals' remand and judgment. Gatewood contends the ALC remand was outside the ALC's jurisdiction, void and of no effect, and the situation is as if the remand had not occurred (Muller, 438 S.E. 2d at 250; Am Jur 2d (2007), §§733-734, 736-737, 740; Am Jur 2d (2015), Courts, §63).

B. Ministerial Nature of the Act

A ministerial act or duty is one which a person performs because of a legal mandate which is defined with such precision as to leave nothing to exercise of discretion (Edwards v. State 383 S.C. 82, 678 S.E. 2d 412 (S.C., 2009); J. Toal, Appellate Practice in South Carolina, 3d Ed., 2016, p. 324). A party may seek a writ of mandamus to direct a judicial officer to rule on a pending motion because the act of ruling itself is ministerial in nature (City of Rock Hill v. Thompson 349 S.C. 197, 563 S.E. 2d 101 (S.C., 2002); J. Toal, Appellate Practice in South Carolina, 3d Ed., 2016, p. 325). Moreover, mandamus may lie to compel an inferior court to exercise its discretion (Thompson, 563 S.E. 2d at 103; citing 55 C.J.S. (1988), Mandamus, §83).

Here, Gatewood requests that the ALC be compelled to exercise its discretion and rule on Gatewood's entitlement to costs, attorney's fees, and pre and post-judgment interest in light of the Court of Appeals' March 9, 2016 opinion. Gatewood submits this is exactly what the Court of Appeals ordered. It is also a ministerial duty because of the Court of Appeals' legal mandate to the ALC to exercise its discretion in reconsidering Gatewood's entitlement to costs, attorney's fees, and pre and post-judgment interest (Edwards, 678 S.E. 2d at 419-420; Thompson, 563 S.E. 2d at 103; J. Toal, Appellate Practice in South Carolina, 3d Ed., 2016, pp. 324-325).

C. Petitioner's Specific Legal Right Necessitating Discharge of Duty

The primary purpose of mandamus is to enforce an established right and a corresponding imperative duty imposed by law (Ex Parte Littlefield, 343 S.C. 212, 540 S.E. 2d 81, 86 (S.C., 2000)). Gatewood contends the Court of Appeals' opinion and remittitur constitute a legal mandate issued by that Court to the ALC (Am Jur 2d (2007), App. Rev., §§734-737, 740). The ALC, in turn, must discharge that duty by reconsidering Gatewood's entitlement to costs, attorney fees, and pre and post-judgment interest, as the Court of Appeals directed. Gatewood contends, as prevailing party on the Gatewood appeal, he has the legal right to have the Court of Appeals' legal mandate enforced by the ALC's reconsideration of these specified issues (Muller, 313 S.C. at 414-415).

D. Petitioner Lacks Any Other Legal Remedy

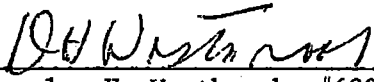
An aggrieved party may appeal to the Court of Appeals a final decision of an Administrative Law Judge (S.C. Code §§14-8-200(a), 1-23-610(A); Charlotte-Mecklenburg Hosp. v. DHEC 387 S.C. 265, 266, 692 S.E. 2d 894 (S.C., 2010); J. Toal, Appellate Practice in South Carolina, 3d Ed., 2016, pp. 88, 178-179).

Here, the ALC has yet to reconsider Gatewood's entitlement to costs, attorney's fees, and pre and post-judgment interest as the Court of Appeals ordered. As a result, the ALC remand to SCDC is probably an interlocutory order and not immediately appealable (Charlotte-Mecklenburg Hosp., 387 S.C. at 267). Therefore, it appears that mandamus is Gatewood's only remedy in these circumstances.

IV. Conclusion

For the above reasons, Gatewood requests that the ALC June 13, 2017 remand be declared null and void, and that a writ of mandamus be issued to The Honorable Ralph K. Anderson, III compelling him to reconsider Gatewood's entitlement to costs, attorney's fees, pre-judgment interest, and post-judgment interest, in light of the March 9, 2016 Court of Appeals' opinion and judgment, and June 2, 2017 remittitur.

Respectfully submitted,


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

LAW OFFICES

JUL 17 2017

MALONE, THOMPSON
SUMMERS & OTT, LLC



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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June 02, 2017

The Honorable Jana E. Shealy
Edgar A. Brown Building
1205 Pendleton Street
Suite 224
Columbia SC 29201

REMITTITUR

Re: Fred Gatewood v. SCDC (2)
Lower Court Case No. 2007ALJ040517AP
Appellate Case No. 2014-001199

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Douglas H. Westbrook, Esquire 9
Lake Eric Summers, Esquire 12

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

E. Harvin Belser Fair
Judicial Law Clerk

June 13, 2017
Columbia, South Carolina

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Fred Gatewood..... Petitioner,

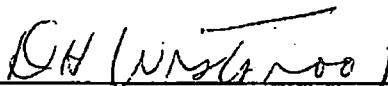
v.

The Honorable Ralph K. Anderson, III and The South Carolina Department of
Corrections..... Respondents.

Court of Appeals Appellate Case No. 2014-001199
Supreme Court Appellate Case No. 2016-001221

PROOF OF SERVICE

I certify that I have served Petitioner's Petition for a Writ of Mandamus; Memorandum in Support of Petition for a Writ of Mandamus, and attachments on The Honorable Ralph K. Anderson, III and the S.C. Department of Corrections by depositing a copy of these documents in the U.S. Mail, postage prepaid, on July 13, 2017, addressed to: (1) The Honorable Ralph K. Anderson, III, Chief Judge, S.C. Administrative Law Court, Edgar A. Brown Building, Suite 224, 1205 Pendleton St., Columbia, SC 29201; and (2) the S.C. Department of Corrections' attorney of record, Lake Summers, Esquire, Malone, Thompson, Summers & Ott, LLC, 339 Heyward St., Suite 200, Columbia, SC 29201. July 13, 2017.


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

LAW OFFICES

JUL 17 2017

MALONE, THOMPSON
SUMMERS & OTT, LLC

B



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

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July 17, 2017

Mr. Douglas H. Westbrook, Esquire
23 Broad Street
Charleston SC 29401

Re: Fred Gatewood v. SCDC (2)
Appellate Case No. 2014-001199

Dear Counsel:

Your petition for writ of mandamus was received July 14, 2017. The remittitur was filed in this appeal on June 2, 2017. This Court no longer has jurisdiction over this case. The Court is returning your petition for writ of mandamus to you and no further action will be taken.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Lake Eric Summers, Esquire

LAW OFFICES

JUL 18 2017

MALONE, THOMPSON
SUMMERS & OTT, LLC

C

JUL 05 2017

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

MALONE, THOMPSON
SUMMERS & OTT, LLC

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

Dock. No. 07-ALJ-04-00517-AP

MOTION AND MEMORANDUM FOR
APPOINTMENT OF SPECIAL
REFEREE

Inmate Fred Gatewood requests the Court to appoint a Special Referee in this case, as follows.

I. BACKGROUND

On July 5, 2007, Gatewood and other inmates by counsel filed a Motion to Appoint Special Master to calculate back wages, deductions and other matters "in the event Appellants' grievances are upheld". On March 9, 2016, the Court of Appeals held that §24-1-295 did not apply retroactively to Gatewood's pre-August 1, 2007 work and remanded for ALC reconsideration of the issue of attorney's fees and other matters. On May 30, 2017, the Supreme Court denied SCDC's petition for certiorari. Gatewood contends he is now the prevailing party, and submits his motion for appointment of a Special Referee to calculate back wages, deductions, and the like.

II. LAW

(A) Due Process

The requirements of procedural due process apply to deprivation of interests encompassed by the Fourteenth Amendment (Al Shabazz v. State 527 S.E. 2d at 750). In Wicker v. SCDC 602 S.E. 2d at 58, the S.C. Supreme Court found

that the prevailing wage statute, §24-3-430(D), creates an interest encompassed by the Fourteenth Amendment's protection of liberty and property which cannot be denied without due process.

The South Carolina Constitution, Article I, Section 22, states as follows:

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication.

In Ross v. MUSC 492 S.E. 2d 62, 72 (S.C., 1997), the Supreme Court stated that the purpose of S.C. Constitution, Article I, Section 22, is to:

ensure adjudications are conducted by impartial administrative bodies. See Babcock v. Office of Audits, supra note 7 (due process requires impartial decisionmaker). Partiality exists where, among others, an adjudicator either has ex parte information as a result of prior investigation or has developed, by prior involvement with the case, a "will to win".

(B) S.C. Code §14-11-60 and SCRCP 53(b)

S.C. Code §14-11-60 and SCRCP 53(b) allow a Circuit Court judge to appoint a Special Referee to decide a matter upon agreement of the parties, and in default and foreclosure cases. The Circuit Court may also direct a reference "in all other actions" as to some or all causes of action. Moreover, ALC Rule 68 allows the Administrative Law Court to apply the South Carolina Rules of Civil Procedure to resolve questions not raised by the ALC rules. There is no known ALC rule addressing appointment of Special Referees.

III. DISCUSSION

(A) Reasons to Appoint Special Referee

The initial reason to appoint a Special Referee is to comply with due process in the calculation of Gatewood's back wages. On June 13, 2017, the ALC

issued an order of remand to SCDC for "processing" to determine the "beneficial results obtained", apparently meaning Gatewood's back wages due. However, if SCDC calculates back wages, deductions and the like, in effect SCDC will be determining its own damages. In such circumstances, SCDC would not be an impartial adjudicator as required by due process. Moreover, Gatewood submits that SCDC's litigation of this matter since 2004 demonstrates its "will to win" to avoid paying statutory wages, and thus, its partiality (Ross v. MUSC).

Second, these calculations will require back wage, deductions, interest and tax computations for Gatewood from 2004 to 2009. Gatewood submits that the computations will require the skills and objectivity of a Special Referee, preferably a Certified Public Accountant or tax attorney.

(B) SCDC Responsibilities

Gatewood requests the Court to issue an order requiring SCDC to perform the following responsibilities:

1. Within 30 days after appointment of the Special Referee, submit to the Special Referee and counsel for the parties all documents relevant to Gatewood's wage calculations, including but not limited to Gatewood's "Exhibit F" documents (containing Gatewood's pay dates, pay rates, hours worked and pay amounts);* pay stubs and time cards; dates and hours worked, pay dates, pay rates, and pay amounts; and deductions, including but not limited to, child

* SCDC has indicated Exhibit F may have incorrect information after a certain date. Gatewood contends Exhibit F, as an SCDC document, is prima facie evidence of the information stated therein.

support, victim assistance, court orders for same, and deductions for security and prison industry overhead, including health, safety and welfare of Gatewood.

2. Within the 35-60 day period following file date of the Special Referee's calculations and payment order, if the order has not been appealed by a party:

(a) SCDC shall make payment in the amounts owed under the order as follows: (1) to Gatewood's prison account if he has one, and if not, a prison account should be opened in his name and payment made, and obtain a written receipt signed by Gatewood acknowledging receipt of said funds into his prison account. If Gatewood cannot have a prison account, or otherwise accept funds, SCDC shall notify the Special Referee and both counsel of that fact and cooperate with Gatewood and counsel to have the funds sent to a person or persons of Gatewood's choice; (2) to Gatewood's counsel for any attorney fees and costs owed by SCDC to counsel; and (3) to the Special Referee for SCDC's portion, and Gatewood's portion, of the Special Referee fee owed;

(b) When the payments in (a) are made to Gatewood, SCDC shall submit a written accounting to Gatewood for all payments SCDC makes per the Special Referee's order; and submit the written accounting, and a copy of Gatewood's signed receipt of funds into his prison account, to the Special Referee and to both parties' counsel;

(c) SCDC shall also provide Gatewood's current prison location and address to the Special Referee and both parties' counsel.

(C) Special Referee Responsibilities

Gatewood requests the Court to issue an order requiring the Special Referee to perform the following responsibilities:

1. Gross Wages. Calculate Gatewood's gross wages from 2004 to 2009 at \$4 per hour based on the budget provisos for that period, and §24-1-295. The prevailing wage should apply for July 2007, and should be at least \$12.06 per hour based on the 2004 estimates of economist Joe Benich in the record (Gatewood v. SCDC App. Case No. 2014-001199 (Op. No. 5389, 3-9-16, p. 10; SR p. 865; SC App, p. 1225)).*

2. Statutory Deductions. For 2004 to June 30, 2007, calculate deductions per the budget provisos from gross wages as follows:

(a) 20% for court-ordered restitution, or 10% for Victim Compensation Fund if no court-ordered restitution or court-ordered restitution has been satisfied;

(b) 10% for room and board. See Gatewood v. SCDC Op. p. 10.

For July 1, 2007 to July 31, 2007, calculate deductions per §24-3-40(A) from gross wages as follows:

(a) 20% for court-ordered restitution, or 10% to State Office of Victim Assistance and 10% retained by SCDC for services to crime victims if restitution has not been court-ordered or if court-ordered restitution has been satisfied;

* "SR" denotes the ALC 1st Supplemental Record on Appeal in Ackerman, et al. v. SCDC Dock. No. 07-ALJ-04-00444, etc., dated May 6, 2011. "SC App." denotes the Appendix in Ackerman, et al. v. SCDC Sup. Ct. App. Case No. 2016-000829.

(b) 35% for court-ordered or agreed upon child support obligation, or 25% for room and board if no child support obligation;

(c) 10% set aside for Gatewood, plus another 10% if no child support, plus another 10% in interest bearing account for Gatewood (not deductions);

(d) balance to pay Gatewood's federal and state taxes;

(e) any balance to Gatewood (not a deduction). Gatewood, p. 10.

For August 1, 2007 to 2009, pursuant to the March 9, 2016 Court of Appeals' decision, calculate deductions per §24-1-295 from gross wages as follows:

(a) any required deductions for security and prison industries overhead;

(b) 20% for court-ordered restitution, or 20% to S.C. Victims Compensation Fund if restitution has not been court-ordered or if court-ordered restitution has been satisfied;

(c) 35% for court-ordered or agreed upon child support obligation, or 25% for room and board if no child support obligation;

(d) 10% to Gatewood if no child support; another 10% to Gatewood; and another 10% held in interest bearing account for Gatewood (not deductions);

(e) balance to pay Gatewood's federal and state taxes;

(f) any balance to Gatewood (not a deduction). Gatewood, p. 10.

The Court of Appeals stated in its March 9, 2016 decision, page 16, note 14, it was "likely" that SCDC was already taking deductions for security and overhead from Gatewood's gross wages. If that proves true, Gatewood requests that he be credited for these improper deductions against any applicable

security/overhead deductions taken after August 1, 2007.

Gatewood contends SCDC incurred no expense for security/overhead. In its Court of Appeals brief, SCDC stated at page 25 that it was reimbursed by WTI for security and overhead and all expenses. Also, the 2004 deduction records Gatewood proposes for the record show only victim compensation and room and board deductions for inmates, but no deductions for security or prison industries overhead. If SCDC had no expense for these items, they should not be deductible from Gatewood's wages.

3. SCDC Payments Made. For Gatewood, deduct the wage amount SCDC previously paid, to arrive at the net back wage amount due.

4. Pre-Judgment Interest. For Gatewood, calculate and add to the net back wage due, pre-judgment interest at 8 3/4% from each pay date, based on the amount underpaid, that is, the amount that should have been paid (gross wages less statutory deductions), less the amount actually paid. Pre-judgment interest accrues per annum (S.C. Code §34-31-20(A)).

5. Post-Judgment Interest. For Gatewood, calculate and add post-judgment interest at 7.5%, compounded annually, from March 9, 2016, the Court of Appeals' opinion date. See, S.C. Code §34-31-20(B).

6. Attorney Fee. The attorney fee is either the \$15-77-300 fee or the 40% contingent fee, whichever is greater. The \$15-77-300 fee is determined by the Court. The Special Referee shall first calculate the "full 40% contingent fee amount" for Gatewood. Calculate Gatewood's total gross wages (para. 1) for all pay periods worked, before costs, and if approved by the Court, any statutory deductions are made (2004 Fee Contract). Then, subtract SCDC's total wage payments to Gatewood for all pay periods worked (para. 3). The result

is the "gross amount recovered" under the fee contract, before costs and statutory deductions, for Gatewood. Next, multiply the "gross amount recovered" by 40% to arrive at the "full 40% contingent fee amount" for Gatewood. The final step is to calculate the difference between the "full 40% contingent fee amount", and the \$15-77-300 fee amount, to arrive at the "portion of the full contingent fee amount" which Gatewood shall pay counsel from his recovery.

If the \$15-77-300 fee does not apply, the Special Referee shall calculate the "full 40% contingent fee amount" as stated above, however, the provision requiring Gatewood to pay counsel the difference between the "full 40% contingent fee amount" and the \$15-77-300 fee would not apply, and Gatewood would pay counsel the "full 40% contingent fee amount".

7. Attorney Costs. Section 15-77-300 costs will be determined by the Court. It is expected that costs will be the same whether assessed under \$15-77-300 or the contingent fee contract. If assessed under \$15-77-300, SCDC will pay costs. If assessed under the contingent fee contract, Gatewood will pay costs to counsel from Gatewood's recovery.

8. Special Referee Fee. The Special Referee shall also calculate Gatewood's share of the Special Referee's fee. This probably works out to 50% of the Special Referee's fee to do Gatewood's calculations alone, since S.C. Code §14-11-60 requires the Special Referee to be compensated "by the parties", presumably leaving 50% of the total Gatewood fee to be paid by SCDC, and 50% to be paid by Gatewood from his recovery.

9. Net Inmate Payment. The result should be the total back wages and interest net recovery for Gatewood.

10. Attorney Fee Interest. For Gatewood, calculate interest on any attorney fee award at 7.75%, compounded annually, from the date of such award.

11. No statutory deduction should be taken without verifiable written documentation in the record to support it.

12. In a Title VII action, the precise amount of back wages need not be determined (Hance v. Norfolk South. Ry. Co. 571 F 3d 511 (6 Cir., 2009); 45C Am Jur 2d (2012), Job Discrim., §2555). The back pay calculations may be based on a just and reasonable inference of the imprecise figure (Akouri v. State of Florida Dept. of Trans. 408 F 3d 1338 (11 Cir., 2005); 45C Am Jur 2d (2012), Job Discrim., §2555). Any ambiguity should be resolved against a discriminating employer (Hance v. Norfolk South. Ry. Co.), and when it is impossible to reconstruct the employment of each claimant, back pay equal to the maximum amount which could have been earned but for the discrimination is appropriate (U.S. v. City of Warren, Mich. 138 F 3d 1083 (6 Cir., 1998); 45C Am Jur 2d (2012), Job Discrim., §2555). One whose wrongful conduct has rendered difficult the ascertainment of precise damages cannot complain of the impreciseness. Thus, doubt regarding the certainty of damages is resolved against the wrongdoer (22 Am Jur 2d (2013), Damages, §343). Gatewood contends these rules should apply here.

13. Gatewood is currently in a county prison facility and apparently has no prison account. He requests instructions as to how he is to receive any back wage recovery. He apparently has a "county" account.

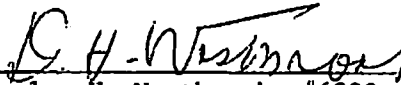
14. Gatewood's counsel requests permission to petition the Court for further instructions if the need arises.

15. Finally, the Special Referee should prepare and file a calculations and payment order incorporating the within suggestions and any others that the Court deems appropriate.

IV. CONCLUSION

For the above reasons, Gatewood respectfully requests appointment of a Special Referee in this matter, preferably a Certified Public Accountant or tax attorney. Gatewood also requests orders to SCDC and the Special Referee to perform the responsibilities discussed herein, and any others the Court may deem appropriate.

Respectfully submitted,


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(843) 853-9600
Attorney for Fred Gatewood

LAW OFFICES

JUL 05 2017

MALONE, THOMPSON
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