

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT
S.C. SUPREME COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Court of Appeals' Order filed October 17, 2017
Appellate Case No. 2017-002501

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 Fred Gatewood [“Gatewood”] concerning the final order issued October 17, 2017 by the Court of Appeals in the matter styled as *Fred Gatewood, Appellant, v. S.C Dep’t of Corr., Respondent*, Court of Appeals Appellate Case No. 2017-002087 (Oct. 17, 2017) (Apx. p. 3).

I. QUESTION PRESENTED

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] rulings at the September 7, 2017 status conference were not final decisions and thus not appealable?

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, contrary to Gatewood’s assertions, the Chief Administrative Law Judge [“ALJ”] did not issue any rulings during the status conference he conducted in this case on September 7, 2017.

SCDC respectfully asserts that the analysis and argument Gatewood offered in his instant petition, which indisputably concerns the aforementioned *status conference*, border on the nonsensical, and, by extension, his instant petition borders on the frivolous.

¹ See Petition, p. 1.

SCDC also respectfully asserts that Gatewood used his instant petition as nothing more than a platform by which to again trot out many of the similar, if not identical and, SCDC respectfully asserts, unfounded and unpersuasive arguments he articulated in the petition for writ of certiorari concerning the “Order of Remand” issued June 13, 2017 in this case by the Chief ALJ. Gatewood’s petition for writ of certiorari concerning the Chief ALJ’s June 13, 2017 “Order of Remand” is, as of the date of SCDC’s instant return, pending before this Court. *See Gatewood v. S.C. Dep’t of Corr.*, Appellate Case No. 2017-002119.²

III. SCDC’S COUNTER-STATEMENT OF THE CASE

On March 9, 2016, the Court of Appeals issued its decision in *Gatewood v. S.C. Dep’t of Corr.*, 785 S.E.2d 600 (S.C. Ct. App. 2016), and, in the decision’s final paragraph, 785 S.E.2d at 613, the Court of Appeals stated as follows:

Accordingly, we reverse the ALC’s conclusion that [§] 24–1–295 applies retroactively to [Gatewood’s] gross wages earned prior to August 1, 2007. **We remand 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.** We affirm the ALC as to all other issues of this appeal. [emphasis supplied].

Both Gatewood and SCDC filed petitions for rehearing with the Court of Appeals, which the Court of Appeals denied. Both Gatewood and SCDC then filed petitions for writs of certiorari with this Court by which they challenged the Court of Appeals’ March 9, 2016 decision.

² In both his petitions, Gatewood invoked the following precedent: *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep’t of Health & Envd. Control*, 692 S.E.2d 894 (S.C. 2010); *Muller v. Myrtle Beach Golf & Yacht Club*, 438 S.E.2d 248 (S.C. 1993); *Prince v. Beaufort Mem. Hosp.* 709 S.E.2d 122 (S.C. Ct. App. 2011); *SCDSS v. Basnight*, 551 S.E.2d 274 (S.C. Ct. App. 2001); *Ackerman v. McMillan*, 477 S.E.2d 267 (S.C. Ct. App. 1996); *Layman, et al. v. State of South Carolina, et al.*, 658 S.E.2d 320 (S.C. 2008); *Kirven v. Central States Health & Life*, 760 S.E.2d 794 (S.C. 2014); *Edwards v. SLED*, 720 S.E. 2d 462 (S.C. 2011); *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006); *First of America Bank v. Netsch*, 651 N.E.2d 1105 (Ill. 1995); *United States Trust Co. of New York v. New Jersey*, 431 U.S. 1 (1977); *Coombes v. Getz*, 285 U.S. 434 (1932); *Jefferson Disposal Co., Inc. v. Jefferson Parrish*, 603 F. Supp. 1125 (E.D. La. 1985); *Harleysville Nut. Ins. Co. v. South Carolina*, 736 S.E.2d 651 (S.C. 2012); and *Superior Motors, Inc. v. Winnebago Ind., Inc.*, 359 F. Supp. 773 (D.S.C. 1973).

By an order dated May 30, 2017, this Court denied the parties' respective petitions. (Apx. p. 2), and, on June 2, 2017, the Court of Appeals issued the remittitur addressed to the Clerk of the ALC. (Apx. p. 5).

Soon thereafter, the Chief ALJ issued, on June 13, 2017, an "Order of Remand" (Apx. pp. 6 – 7 and 61 – 62), which read as follows (Apx. pp. 6 and 61):

This matter is before the [ALC] on remand from 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,³ 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. Ct. App. 2016), *cert. denied* (May 30, 2017)].

As he acknowledged in the "Statement of the Case" from his instant petition,⁴ Gatewood, on June 30, 2017, filed his "Motion and Memorandum for Appointment of Special Referee" with the ALC. (Apx. pp. 63 – 73).

However, Gatewood completely omitted from his "Statement of the Case" any reference to the Notice of Appeal he filed on or about July 14, 2017 with the Court of Appeals regarding the "Order of Remand" issued June 13, 2017 by the Chief ALJ. By an order issued July 20, 2017, the Court of Appeals summarily rejected Gatewood's appeal of the "Order of Remand"

³ In the footnote associated with this passage from his June 13, 2017 "Order of Remand," the Chief ALJ cited § 17-77-300(B) (2016). (Apx. pp. 6 and 61).

⁴ See Petition, p. 2.

issued June 13, 2017 by the Chief ALJ. In summarily rejecting Gatewood's appeal, the Court of Appeals held that the June 13, 2017 "Order of Remand" did not constitute a final order of the ALC, and it dismissed Gatewood's appeal as interlocutory. Gatewood then petitioned the Court of Appeals to rehear its July 20, 2017 decision, but, by an order issued September 14, 2017, the Court of Appeals denied Gatewood's petition for rehearing.⁵

Thus, when the Chief ALJ conducted his status conference on September 7, 2017 (Apx. pp. 9 – 38), the Court of Appeals was still considering Gatewood's petition for rehearing regarding the Court of Appeals' July 20, 2017 decision to summarily reject Gatewood's appeal of the June 13, 2017 "Order of Remand" issued by the Chief ALJ.

Moreover, when the Chief ALJ issued the July 26, 2017 "Notice of Hearing" by which he directed counsel for the parties to appear before him on September 7, 2017 for a status conference,⁶ Gatewood had already filed his Notice of Appeal dated July 14, 2017 with the Court of Appeals concerning the Chief ALJ's June 13, 2017 "Order of Remand."

On September 8, 2017, the day after the status conference, Gatewood's counsel sent a letter to the Chief ALJ in which Gatewood's counsel stated the following:⁷

⁵ On or about October 13, 2017, Gatewood filed a petition for writ of certiorari with this Court challenging the Court of Appeals' July 20, 2017 order by which it summarily rejected Gatewood's appeal of the Chief ALJ's June 13, 2017 "Order of Remand." As explained above on page 2, Gatewood's petition for writ of certiorari concerning the Chief ALJ's June 13, 2017 "Order of Remand" is pending with this Court. Gatewood's Notice of Appeal to the Court of Appeals regarding the June 13, 2017 "Order of Remand," the order issued by the Court of Appeals summarily rejecting Gatewood's appeal of the June 13, 2017 "Order of Remand," and the order issued by the Court of Appeals denying Gatewood's petition for rehearing all appear in the appendix Gatewood submitted to this Court in support of his pending petition for writ of certiorari. See *Gatewood v. S.C. Dep't of Corr.*, Appellate Case No. 2017-002119.

⁶ Gatewood failed to include the Chief ALJ's July 26, 2017 "Notice of Hearing" in his appendix, and, consequentially, SCDC respectfully submits the Chief ALJ's July 26, 2017 "Notice of Hearing" as Exhibit A in support of its instant return.

⁷ Gatewood failed to include his counsel's September 8, 2017 letter to the Chief ALJ in his appendix, and, consequentially, SCDC respectfully submits the September 8, 2017 letter from Gatewood's counsel to the Chief ALJ as Exhibit B in support of its instant return.

This will **confirm** that, during the status hearing on [September 7, 2017], the [Chief ALJ] **decided [he] did not have jurisdiction** to hear the Gatewood June 30, 2017 motions because of Gatewood’s pending petition for rehearing in the Court of Appeals concerning [the Court of Appeals’] dismissal of Gatewood’s appeal of the [Chief ALJ’s June 13, 2017 “Order of Remand”].

I assume the [Chief ALJ’s] position with respect to the Ackerman case is the same, as there is pending in the Court of Appeals a similar petition for rehearing regarding dismissal of appeal of [the Chief ALJ’s June 13, 2017 “Order of Remand”] in that case. Please advise if this is not correct. [emphasis supplied].

On October 8, 2017, Gatewood appealed the rulings purportedly made by the Chief ALJ during the September 7, 2017 status conference to the Court of Appeals. (Apx. p. 8 – 39).

However, just as when it considered Gatewood’s appeal of the Chief ALJ’s June 13, 2017 “Order of Remand,” the Court of Appeals summarily rejected Gatewood’s appeal of the rulings purportedly made by the Chief ALJ during the September 7, 2017 status conference. (Apx. p. 3).

The entirety of the October 17, 2017 order issued by the Court of Appeals and challenged by Gatewood in his instant petition read as follows (Apx. p. 3):

The notice of appeal filed in this case indicates the appeal is taken **from statements made by the [Chief] Administrative Law Judge during a status conference on this case.** Because the decision of the [Chief] Administrative Law Judge is not a final decision, this appeal is dismissed as interlocutory. *See* S.C. Code Ann. § 14-3-330 (2016) (setting forth the categories of judgments from which an appeal may be taken); S.C. Code Ann. § 14-8-200(a) (2016) (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). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules. [emphasis supplied].

IV. ARGUMENT IN OPPOSITION TO GATEWOOD'S PETITION

A. GATEWOOD'S PETITION IS FATALLY UNDERMINED BY THE REALITY THAT THE CHIEF ALJ MADE NO RULINGS DURING THE SEPTEMBER 7, 2017 STATUS CONFERENCE

In his "Statement of the Case," Gatewood offered the following description of the September 7, 2017 status conference conducted by the Chief ALJ, as well as the subsequent procedural history that spawned Gatewood's instant petition:⁸

On September 7, 2017, the [Chief ALJ] held a status conference **and made certain rulings affecting these cases** [Apx. p. 9]. On October 5, 2017, [Gatewood] appealed **the rulings** to the Court of Appeals [Apx. p. 8]. Before the parties filed the briefs or record, the [Court of Appeals] on October 17, 2017 issued an order dismissing the appeal as interlocutory. [Apx. p. 3]. On October 27, 2017, [Gatewood] filed a petition for rehearing with the [Court of Appeals]. [Apx. p. 40]. On November 8, 2017, the [Court of Appeals] issued its order denying [Gatewood's petition for rehearing]. [Apx. p. 4]. [emphasis supplied].

Although he acknowledged that the Court of Appeals dismissed as interlocutory his appeal from the September 7, 2017 status conference conducted by the Chief ALJ "before the parties filed the briefs or record," Gatewood didn't precisely acknowledge that the Court of Appeals dismissed his appeal *before* Gatewood even filed his initial brief and designation of matter to be included in the record on appeal.

By its October 17, 2017 order, the Court of Appeals accurately described Gatewood as having appealed "statements made by" the Chief ALJ "during a status conference on this case."

In the above-quoted passage from the outset of his instant petition, however, Gatewood referenced page 9 from the appendix he prepared in support of his instant petition when he asserted that the Chief ALJ "made certain rulings affecting" this case.

⁸ See Petition, p. 2.

Gatewood sharpened his assertion on the first page of his argument:⁹

The notice of appeal stated it was appealing **the rulings** of the [Chief ALJ] during the September 7, 2017 hearing. [Apx. p. 8]. Moreover, the notice of appeal attached the hearing transcript containing **these rulings**. [Apx. p. 9]. **[Gatewood] contends the appeal of an ALC ruling necessarily encompasses the question of whether the ruling is a final order and thus appealable.** Therefore, [Gatewood] contends the issue of appealability was raised in the Court of Appeals. The issue was also raised and discussed in the petition for rehearing [Apx. pp. 40 – 55].

[Gatewood] contends the ALC rulings were final orders under [*Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control*, 692 S.E.2d 894 (S.C. 2010)], and cases relied on by the Court to explain the meaning of “finality”: [*Mid-State Distributors, Inc. v. Century Importers, Inc.*, 426 S.E. 2d 777 (S.C. 1993) (Regarding issue of appealability of denial of a motion to dismiss for lack of personal jurisdiction, the Court held there was no finality in the denial, and defendant could still show a lack of personal jurisdiction at trial)]; and [*Good v. Hartford Accident & Indem. Co.*, 21 S.E. 2d 209 (S.C. 1942) (Regarding issue of appealability of trial court’s rulings, the Court approved principles that a final order or decree must dispose of the cause, or a distinct branch thereof, or operate to divest some right in such a manner as to put it out of court)].

[emphasis supplied].

SCDC respectfully asserts that the authorities cited by the inmates in their above-quoted circular and defective argument actually support the conclusion that the Chief ALJ made no “rulings” during the September 7, 2017 status conference.

SCDC further respectfully asserts that the inmates supported their above-quoted circular and defective argument with only conclusory references, and, accordingly, this Court should reject it. *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

⁹ See Petition, pp. 3 – 4.

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).”)

The cover page for the transcript from the September 7, 2017 status conference conducted by the Chief ALJ appears on page 9 of Gatewood’s appendix, and, by repeatedly invoking passages from the transcript, Gatewood erroneously argued throughout his petition that statements made by the Chief ALJ during the status conference constituted “rulings.”

| Petition | Purported “Ruling” | Appendix |
|----------|---|------------------------------|
| Page 4 | The [Chief ALJ] believed [he] did not have to carry out the Court of Appeals’ remand because the ALC only has appellate jurisdiction and the Court of Appeals’ remand is <u>dictum</u> . ¹⁰ | Pages 15 – 17 |
| Page 5 | The [Chief ALJ] stated [the ALC] did not have contested case, but only appellate jurisdiction. | Page 18 |
| | The [Chief ALJ] stated [he] did not have jurisdiction because of the pending appeal to the Court of Appeals of the ALC’s June 13, 2017 remand to SCDC. | Pages 12, 15, 20 and 32 – 33 |
| Page 6 | The [Chief ALJ] stated [he] would not at this point determine the motion for appointment of a special referee. | Page 15 |
| Page 7 | The [Chief ALJ] stated [Gatewood’s] counsel had a “vested contract” to a contingent fee. | Pages 23 – 24 |
| | The [Chief ALJ] stated attorney fee petitions are remedial and §15-77-300, current version, can be applied retroactively. | Pages 21 and 23 – 24 |
| Page 9 | The [Chief ALJ] stated, even if §15-77-300, 2010 version, is not retroactive, [he] can still use it to “clarify” what §15-77-300 “originally intended,” based on [<i>Duvall v. State Budget & Control Board, 659 S.E. 2d 125, 130 (S.C. 2008)</i>]. | Pages 28 – 29 |
| Page 10 | The [Chief ALJ] stated, under the current version of §15-77-300, [he] cannot grant attorney fees greater than the contingent fee. | Page 21 |
| | The [Chief ALJ] stated he did not think he could hear attorney’s fees until there is a determination as to the “official results obtained.” | Page 20 |

¹⁰ As discussed below, the Chief ALJ very recently addressed the ALC’s jurisdiction in an unrelated case concerning prison industries pay claims presented to SCDC by inmates in administrative grievances. *See Joshua Cramer, #251406, v. S.C. Dep’t of Corr., ALC Docket No. 14-ALJ-04-0282-A-AP (A.L.J.D. Dec. 7, 2017)*. *See also* notes 11, 14, and 16 below.

| Petition | Purported “Ruling” | Appendix |
|----------|---|---------------|
| Page 11 | The [Chief ALJ] stated the attorney fee is determined by considering the six (common law) factors, and then if necessary considering the lodestar. The [Chief ALJ] also stated the lodestar is the (fee) enhancement. | Pages 24 – 26 |
| | The [Chief ALJ] stated there is a question of law as to whether litigation in the ALC is a “civil action” under §15-77-300. | Page 34 |

Contrary to Gatewood’s above-listed assertions, the Chief ALJ did not, at any point during the September 7, 2017 status conference, articulate any rulings.

At the outset of the status conference, Gatewood’s counsel and the Chief ALJ engaged in the following dialogue (Apx. pp. 14 – 15):

[Gatewood’s Counsel]: Your Honor, [the Chief ALJ’s June 13, 2017 “Orders of Remand” in both *Gatewood* and *Ackerman*] have been appealed to the Court of Appeals and both of these are now pending on petition for rehearing.

[The Chief ALJ]: Okay.

[Gatewood’s Counsel]: The mandamus petitions the – as you, I’m sure know, the Court of Appeals sent back stating they no longer had jurisdiction of the cases. So -- and that's both -- and – and I'm speaking of both Ackerman and Gatewood. That is, I think, the present status of – of the matters.

[The Chief ALJ]: And if you do a motion for rehearing on both of those?

[Gatewood’s Counsel]: Yes, sir, it’s pending.

The Chief ALJ then stated as follows (Apx. p. 15):

Then, I -- I don’t have any jurisdiction to issue any of the -- any orders in this case right now anyway. I don’t think. I mean, you’ve made a – you’ve [taken] the position it’s a contested case. You wish to have a special referee. I don’t think I would even determine that at this point. Do you have a position on any of that? Is there anything that is left to determine at this point in time? [emphasis supplied].

After the above-quoted announcement, the Chief ALJ and Gatewood’s counsel continued their dialogue (Apx. pp. 15 – 16):

[Gatewood’s Counsel]: Judge, our -- our position in – in very to be -- to concisely state our position is that each Court of Appeals remand order should be and I implore this Court to carry out those remands.

[The Chief ALJ]: I -- I -- just -- I'm going to have to humbly disagree with you. I don't even think this -- the Court of Appeals can, even if it was before this Court to do -- hear it as a contested case, can do that because the **jurisdiction -- the only Court that can grant create jurisdiction like that would be the Supreme Court.** [The ALC] has been granted only appellate jurisdiction by the Supreme Court and that jurisdiction has been affirmed through legislation by the -- the -- by the General Assembly. All right. So I cannot do what I do not have the authority to do unless the Supreme Court orders me to do it, but I say that. I don't know if the Court of Appeals can do that or not, but I'm not challenging them in any way. **It's just at this point in time, I'm saying that -- that I would not do that because I just think that would be an improper exercise of my authority and I don't wish to head down that path.**¹¹

[emphasis supplied].

The Chief ALJ again explicitly stated that he had not and would not issue any rulings during the following exchanges with Gatewood's counsel near the end of the September 7, 2017 status conference (Apx. pp. 33 and 36):

[Gatewood's Counsel]: May I speak to one of those points you made?
[The Chief ALJ]: Yes, well, I -- I don't want to address them quite yet. You can if you want, but I'm just -- I was just telling y'all both some considerations -- **this is a status conference ---**
[Gatewood's Counsel]: Yes, Sir.
[The Chief ALJ]: --- and I'm trying to let you know ---
[Gatewood's Counsel]: Yes, Sir.
[The Chief ALJ]: --- **the status of the case.**

...

[The Chief ALJ]: I recognize and you can make that argument, I'm just telling you that's something I have to consider, Mr. Westbrook.
[Gatewood's Counsel]: Well, it's not just an argument, it's what McDowell said enabled her to have review -- because it was the Judicial Review Court that enabled her to do it.
[The Chief ALJ]: I'll consider -- I'm just telling -- all I'm telling you it's an issue that I have to decide in the case.
[Gatewood's Counsel]: Yes, Sir.
[The Chief ALJ]: I was trying to let y'all know the status is **these are the issues that I have to decide.** I wasn't trying to create an argument or -- or raise anybody's blood pressure. So -- but it's something that I need to address because that -- 15-77-300 brings it up.

¹¹ See note 10 above and notes 14 and 16 below.

All right. So with that, **I now know the status of the case. Is there anything else we need to consider because I won't address this or do anything today, anyway?**

[emphasis supplied].

Thus, as recognized by the Court of Appeals in its October 17, 2017 order and contrary to the argument Gatewood offered in his instant petition,¹² the Chief ALJ articulated only *statements*, not rulings, during the status conference he conducted on September 7, 2017.

The appendix submitted by Gatewood in support of his instant petition only supports this reality, as it reflects no written order(s) of any kind from the Chief ALJ memorializing any ruling from the status conference.

The reason for such an omission is as simple as it is obvious: the Chief ALJ issued no rulings during the status conference, and, in the absence of any rulings by the Chief ALJ, Gatewood had no choice but to rely exclusively upon the transcript from the status conference to prop up his misguided petition.

Therefore, SCDC respectfully, but frankly, asserts that Gatewood has no case to present to this Court in his instant petition.

B. AS IT SITS EXCLUSIVELY IN ITS APPELLATE CAPACITY WHEN REVIEWING SCDC'S FINAL DECISIONS REGARDING INMATES' PRISON INDUSTRIES PAY CLAIMS, THE ALC IS NOT THE FORUM IN WHICH FACTUAL DETERMINATIONS CONCERNING SUCH CLAIMS ARE MADE

SCDC again respectfully asserts that Gatewood used his instant petition as nothing more than a platform by which to again present argument concerning the Chief ALJ's June 13, 2017

¹² See Petition, p. 3.

“Order of Remand,” for which he has a petition for writ of certiorari pending with this Court. *See Gatewood v. S.C. Dep’t of Corr.*, Appellate Case No. 2017-002119.¹³

As in his pending petition for writ of certiorari, the real focus of Gatewood’s instant petition is his insistence that the Chief ALJ, by his June 13, 2017 “Order of Remand,” ran afoul of the final paragraph from the Court of Appeals decision in *Gatewood*, 785 S.E.2d at 613:

Accordingly, we reverse the ALC’s conclusion that [§] 24–1–295 applies retroactively to [Gatewood’s] gross wages earned prior to August 1, 2007. **We remand 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.** We affirm the ALC as to all other issues of this appeal. [emphasis supplied].

Gatewood admitted as much in his instant petition:

The [Chief ALJ] believed [he] did not have to carry out the Court of Appeals’ remand because the ALC only has appellate jurisdiction and the Court of Appeals’ remand is dictum.¹⁴

On June 13, 2017, the [Chief ALJ] remanded this case back to SCDC [Apx. p. 6]. The [Chief ALJ] now believes [he] does not have jurisdiction to carry out the Court of Appeals’ remand.¹⁵

The Chief ALJ recently confronted an identical situation in another matter involving an inmate incarcerated in SCDC who participated in a prison industries project and who filed an administrative grievance in which the inmate articulated prison industries pay claims.

In his order in *Joshua Cramer, #251406, v. S.C. Dep’t of Corr.*, ALC Docket No. 14-ALJ-04-0282-A-AP (A.L.J.D. Dec. 7, 2017), the Chief ALJ addressed the question of whether the ALC itself can adjudicate the merits of inmates’ prison industries pay claims:¹⁶

¹³ See notes 2 and 5 above.

¹⁴ See notes 10 and 11 above and note 16 below.

¹⁵ See Petition, p. 4.

¹⁶ SCDC’s undersigned counsel respectfully submits a copy of the ALC’s December 7, 2017 order as Exhibit C in support of SCDC’s instant return. See Order, p. 2. See also notes 10, 11, and 14 above.

At the end of the Court of Appeals' decision remanding this case to the ALC,¹⁷ the [Court of Appeals] concluded by stating that **“the decision of the ALC is reversed and this case is remanded for the ALC’s consideration of [Cramer’s] grievance on the merits.”** The Court of Appeals’ opinion thus suggests that the ALC has jurisdiction to entertain [Cramer’s] grievances on the merits and make findings of fact. **However, the ALC does not have the jurisdiction to hear inmate cases on the merits, as the ALC sits in an appellate capacity in inmate grievance matters, pursuant to [Al-Shabazz v. State, 527 S.E.2d 742 (2000)] and [Furtick v. S.C. Dep’t of Prob., Parole and Pardon Servs., 576 S.E.2d 146 (2003)].** [emphasis supplied].

The Chief ALJ continued in *Cramer* as follows:¹⁸

The ALC is a court of record within the executive branch of government. S.C. Code Ann. § 1-23-500 (Supp. 2017). As the Legislature created the ALC, it has the authority to limit the subject matter jurisdiction of a court that it has created. *See [Black v. Town of Springfield, 60 S.E.2d 854, 855 (1950)]* (“The jurisdiction of a Court of the subject matter of an action depends upon the authority granted to it by the Constitution and laws of the State and is fundamental). **Indeed, the South Carolina Supreme Court has recognized the Legislature’s authority to limit the jurisdiction and prescribe the parameters of the ALC.** [*Howard v. S.C. Dep’t. of Corr.*, 733 S.E.2d 211, 216 (2012)]; [*S.C. Dep’t of Consumer Affairs v. Foreclosure Specialists*, 700 S.E.2d 468 (Ct. App. 2010)] (observing the ALC does not have the authority to exceed its statutorily granted powers). [emphasis supplied].

The Chief ALJ then examined the ALC’s Rules of Procedure:¹⁹

The Rules of Procedure for the [ALC] (SCALC Rules), which are approved by the General Assembly, are divided into six (6) sections: I — General Provisions; II — Contested Cases; III — Matters Heard On Appeal From Final Decisions of Certain Agencies; IV — Regulation Hearing Procedures; V — Special Appeals; and VI — Miscellaneous Provisions. Those Rules provide for review of this matter by the ALC pursuant to the Special Appeals rules. Specifically, SCALC Rule 51, the very first rule under Section V — Special Appeals, states that “[t]he Rules in this section shall apply **exclusively in matters heard on appeal from final decisions pursuant to [Al-Shabazz].**” [emphasis supplied by the

¹⁷ *See Cramer v. S.C. Dep’t of Corr.*, Opinion No. 2016-UP-392, 2016 WL 4125880 (S.C. Ct. App. Aug. 3, 2016). SCDC’s undersigned counsel respectfully submits a copy of the Court of Appeals’ unpublished opinion in *Cramer* as Exhibit D in support of SCDC’s instant return.

¹⁸ *See* Exhibit C, pp. 2 – 3.

¹⁹ *Id.*, p. 3.

Chief ALJ]. In addition, the 2009 Revised Notes to SCALC Rule 51 set forth the following:

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*]. These Rules are based upon the [ALC's] existing general procedural and appellate rules, with adaptations for this specific type of appeal.

[emphasis supplied by the Chief ALJ]. Thus, SCALC Rule 51 clearly states that all appeals arising from final decisions of [SCDC] pursuant to [*Al-Shabazz*] (and from final decisions of the Department of Probation, Parole and Pardon Services pursuant to *Furtick*) are heard by the ALC “on appeal.”

The Chief ALJ next examined *Al-Shabazz*.²⁰

In *Al-Shabazz*, the South Carolina Supreme Court held that the ALC had jurisdiction to hear appeals involving inmate grievances in its appellate capacity only. Unambiguously, the Court stated in pertinent part:

We decline ... to apply the[ALC's] contested case rules to non-collateral and administrative matters decided by [SCDC]. [SCDC's] procedures provide a sufficient method of resolving administrative matters pertaining to inmates without the need for a contested-case hearing before an [Administrative Law Judge]. An inmate may, however, seek review of [SCDC's] final decision by an ALJ in a non-collateral or administrative matter. **The ALJ sits in an appellate capacity to review [SCDC's] decisions.**

[*Al-Shabazz*, 527 S.E.2d at 754] (citations omitted) [emphasis supplied by the Chief ALJ]. Moreover, the Supreme Court in [*Wicker v. S.C. Dep't of Corr.*, 602 S.E.2d 56 (S.C. 2004)] extended the application of *Al-Shabazz* and [the ALC's] appellate jurisdiction to inmate wage grievances. [602 S.E.2d 56, 58 (2004)] (holding that [SCDC's] “failure to pay in accordance with the [prevailing wage] statutes is reviewable by the ALJ”).

Accordingly, the Chief ALJ determined as follows:²¹

²⁰ See Exhibit C, pp. 3 – 4.

²¹ *Id.*, p. 4.

In the instant case, [Cramer] appealed [SCDC's] final decision in a grievance concerning his inmate wages. As such, the ALC can **only** consider [SCDC's] decision in its appellate capacity pursuant to *Al-Shabazz* (and *Wicker*). **And because the matter is on remand for a hearing on the merits, [the ALC] is without jurisdiction to hear the matter and must, therefore, further remand the matter to [SCDC] to make the necessary factual determinations.**²² [emphasis supplied].

The Chief ALJ concluded his analysis as follows:²³

Though the Court of Appeals remanded [Cramer's] case to [the ALC] for a hearing on the merits, this did not deprive the ALC of its authority to remand [Cramer's] case to [SCDC] for that hearing. [The Chief ALJ] finds this situation similar to that in [*Hamm v. S. Bell Tel. & Tel. Co.*, 406 S.E.2d 157 (1991)]. In that case, the South Carolina Supreme Court had remitted a case to the circuit court that had come to the circuit court on appeal from the Public Service Commission (Commission). However, when remitting the case to the circuit court, the Supreme Court did not explicitly remand the case to the Commission with instructions to refund the illegally collected funds with interest, but instead used only the word "reversed." Nevertheless, the [Supreme] Court rejected the arguments that [it] had not granted relief and that circuit court had no authority to remand the case to the Commission for enforcement of the [Supreme] Court's opinion. [*Id.* at 406 S.E.2d at 159 – 60]. Similarly, just because the Court of Appeals did not expressly remand the instant case to [SCDC] for the factual determination did not mean that [the ALC] did not have the authority to remand the case to [SCDC] for such a determination. **Because [the ALC] sits in an appellate capacity, there is no other reasonable interpretation of the Court of Appeals' remittitur than for [the ALC] to remand this matter to [SCDC] for a factual determination as to whether [Cramer] is entitled to immediate access to escrowed wages and whether the calculation of interest on those wages was accurate.** [emphasis supplied].

Given the above-quoted and, SCDC respectfully submits, directly applicable analysis of the ALC's jurisdiction recently crafted by the Chief ALJ in *Cramer*, the legitimacy of the operative provisions from the Chief ALJ's June 13, 2017 "Order of Remand" in this case is obvious (Apx. pp. 6 and 61):

²² In the footnote associated with this sentence, the Chief ALJ stated the following: "Even if the Court of Appeals was attempting to confer contested case jurisdiction on [the ALC], only the General Assembly has the authority to create jurisdiction for the ALC." See Exhibit C, p. 4.

²³ *Id.*, p. 4.

This matter is before the [ALC] on remand from 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-judgment interest.

Because the determination of attorney's fees encompasses several factors, including the beneficial results obtained,²⁴ 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].

Accordingly, **IT IS THEREFORE ORDERED that the grievance is remanded to [SCDC] for processing as set forth in [Gatewood].**

[emphasis supplied].

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

Contrary to his argument, 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.

²⁴ See note 3 above.

Gatewood asserted that the Court of Appeals' summary rejection of his appeal from the September 7, 2017 status conference "raises novel questions of law ... about the effective finality of lower court rulings which dispose of or prejudice a distinct branch of the case, or take away vested contract rights, due process rights, and statutory attorney fee rights."²⁵

SCDC respectfully asserts that no novel questions of law have been animated by the Court of Appeals correctly concluding that the Chief ALJ made only statements, not rulings, during the September 7, 2017 status conference.

Gatewood also asserted that the Court of Appeals' summary rejection of his appeal from the September 7, 2017 status conference "conflicts with the meaning of 'finality' in in [the cited authorities from *Charlotte-Mecklenburg Hosp. Auth.*, *Mid-State Distributors, Inc.*, and *Good v. Hartford Accident & Indem. Co.*]."²⁶

SCDC respectfully asserts that no aspect of the Court of Appeals' October 17, 2017 order, which summarily rejected Gatewood's appeal from the September 7, 2017 status conference conducted by the Chief ALJ, conflicts with any precedent or other authority Gatewood invoked in his instant petition. Again, the Court of Appeals correctly concluded that the Chief ALJ made only statements during the September 7, 2017 status conference.

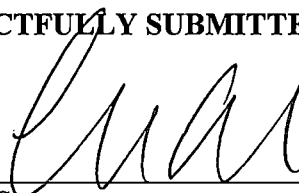
V. CONCLUSION

For all the foregoing reasons, this Court should, therefore, unhesitatingly deny Gatewood's instant petition and let stand the October 17, 2017 order by which the Court of Appeals summarily dismissed his appeal from the status conference conducted September 7, 2017 by the Chief ALJ in the instant matter.

²⁵ See Petition, p. 12.

²⁶ *Id.*

RESPECTFULLY SUBMITTED:



Lake E. Summers

Malone, Thompson, Summers & Ott LLC

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Columbia, South Carolina 29201

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Counsel for SCDC

Columbia, South Carolina
January 25, 2018

LAW OFFICES

JUL 27 2017

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

MALONE, THOMPSON
SUMMERS & OTT, LLC

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

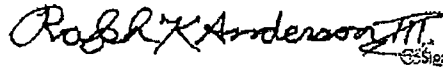
Docket No. 07-ALJ-04-0517-A-AP

NOTICE OF HEARING

IT IS HEREBY ORDERED that a status conference will be held regarding this case before Ralph King Anderson, III, Administrative Law Judge, **beginning at 10:00 a.m. on Thursday, September 7, 2017** at the Administrative Law Court (ALC or Court), Edgar Brown Building, Second Floor, 1205 Pendleton Street, Columbia, South Carolina.

1. This hearing will be conducted in accordance with the Rules of Procedure of the Administrative Law Court, a copy of which is available from the Clerk of the Court.
2. TAKE NOTICE THAT A FAILURE TO APPEAR AT THE HEARING MAY RESULT IN:
 - a. A finding that the party who fails to appear does not object to the timèframes and trial dates that may be set by the Court
 - b. Such other rulings as are deemed appropriate by the Administrative Law Judge.
3. Parties may request continuances no later than 48 hours prior to the scheduled hearing date.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

July 26, 2017
Columbia, South Carolina

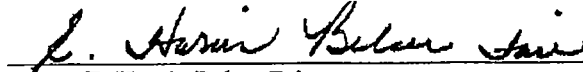
FILED

July 26, 2017

SC ADMIN. LAW COURT

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

July 26, 2017
Columbia, South Carolina

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

September 8, 2017

The Honorable Ralph K. Anderson, III
Chief Judge
S.C. Administrative Law Court
Edgar A. Brown Building
Ste. 224
1205 Pendleton St.
Columbia, SC 29201

Re: Gatewood v. SCDC Dock. No. 07-ALJ-04-00517-AP
Ackerman v. SCDC Dock. No. 07-ALJ-04-00444-AP, etc.
Sept. 7, 2017 Status Hearing in Columbia

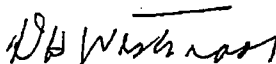
Dear Judge Anderson:

This will confirm that, during the status hearing on September 7, the Court decided it did not have jurisdiction to hear the Gatewood June 30, 2017 motions because of Gatewood's pending petition for rehearing in the Court of Appeals concerning that Court's dismissal of Gatewood's appeal of the ALC's June 13, 2017 remand order.

I assume the Court's position with respect to the Ackerman case is the same, as there is pending in the Court of Appeals a similar petition for rehearing regarding dismissal of appeal of the ALC's June 13, 2017 remand order in that case. Please advise if this is not correct.

Thank you for your attention to these matters.

Sincerely,



Douglas H. Westbrook

DHW/

cc: Lake Summers, Esq.

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DEC 9 1 2017

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

GENERAL COUNSEL

Joshua Cramer, #251406,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No. 14-ALJ-04-0282-A-AP

ORDER

This matter is before the South Carolina Administrative Law Court (Court or ALC) on remand from the South Carolina Court of Appeals (Court of Appeals). Because the Court of Appeals remanded the case to this Court for a hearing on the merits, and only Respondent South Carolina Department of Corrections (Department) can hold hearings on the merits in inmate wage grievance matters, the Court further remands this matter to the Department for a hearing consistent with the Court of Appeal's opinion.

BACKGROUND

Joshua Crumer (Appellant) is an inmate incarcerated by the Department. Appellant is currently serving a life sentence without the possibility of parole. He filed Step 1 and Step 2 Grievance with the Department regarding immediate access to the portion of his wages from a prison industries service project that had been placed in escrow pursuant to S.C. Code Ann. § 24-3-40(A)(5). He had also challenged the interest rates on his escrow account. The Department denied Appellant's grievance because it was not filed within the fifteen-day deadline set forth for incidents under its policy but was instead filed nearly two years after the Department first paid Appellant for his participation in the prison industries project and began applying the statutory deductions to his wages.

Appellant appealed to the ALC, arguing that the Department erred in denying him immediate access to his escrowed wages, that the Department erred in denying him a fair interest rate on his escrowed wages, and that the Department erred in apply the fifteen-day deadline for "incident" grievances under policy number GA-01.12 paragraph 13.1 and should instead have applied the mandatory exception to the fifteen-day deadline under GA-01.12 paragraph 13.9

FILED

December 7, 2017

SC ADMIN. LAW COURT

because his claims were "policy/procedure" grievances. Judge Matthews affirmed the Department's decision, finding that Appellant's wage claims were "incident" grievances instead of "policy/procedure" grievances and thus the fifteen-day deadline applied. Accordingly, she also found that Appellant should have filed his grievance contesting access to escrowed funds within fifteen days of the date that he first received payment. Because the ALC ruled that the appeal was not timely, the Court did not address the other issues in the appeal.

Appellant appealed the ALC's decision to the South Carolina Court of Appeals, which reversed and remanded the ALC's decision, holding that Appellant's claims were "policy/procedure" grievances regarding inmate wage distribution, which is a topic expressed as a policy by both the legislature through statute and by the Department's operation of the prison industries service project as one of its daily operations. *Cramer v. S.C. Dep't of Corr.*, Op. No. 2016-UP-392 (S.C. Ct. App. filed Aug. 3, 2016). The Court found these claims akin to those at issue in *Ackerman v. S.C. Dep't of Corr.*, 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016). The Court thus found that Appellant's grievance could not be considered an "incident" because "many inmates are serving life sentences and any of those inmates who participate in the prison industries service project will be in the same situation as [Appellant]."¹ *Id.*

DISCUSSION

At the end of the Court of Appeals' decision remanding this case to the ALC, the Court concluded by stating that "the decision of the ALC is reversed and this case is remanded for the ALC's consideration of [Appellant's] grievance on the merits." The Court of Appeals' opinion thus suggests that the ALC has jurisdiction to entertain Appellant's grievances on the merits and make findings of fact. However, the ALC does not have the jurisdiction to hear inmate cases on the merits, as the ALC sits in an appellate capacity in inmate grievance matters, pursuant to *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003).

The ALC is a court of record within the executive branch of government. S.C. Code Ann. §1-23-500 (Supp. 2017). As the Legislature created the ALC, it has the authority to limit the subject matter jurisdiction of a court that it has created. See *Black v. Town of Springfield*, 217 S.C. 13, 415, 60 S.E.2d 854, 855 (1950) ("The jurisdiction of a Court of the subject matter of an action

¹ The Department appealed to the South Carolina Supreme Court, but the Supreme Court denied certiorari.

depends upon the authority granted to it by the Constitution and laws of the State and is fundamental). Indeed, the South Carolina Supreme Court has recognized the Legislature's authority to limit the jurisdiction and prescribe the parameters of the ALC. *Howard v. S.C. Depart. of Corrections*, 399 S.C. 618, 627, 733 S.E. 2d 211, 216 (2012); *S.C. Dep't of Consumer Affairs v. Foreclosure Specialists*, 390 S.C. 182, 700 S.E.2d 468 (Cl.App.2010) (observing the ALC does not have the authority to exceed its statutorily granted powers).

The Rules of Procedure for the Administrative Law Court (SCALC Rules), which are approved by the General Assembly, are divided into six (6) sections: I – General Provisions; II – Contested Cases; III – Matters Heard On Appeal From Final Decisions of Certain Agencies; IV – Regulation Hearing Procedures; V – Special Appeals; and VI – Miscellaneous Provisions. Those Rules provide for review of this matter by the ALC pursuant to the Special Appeals rules. Specifically, SCALC Rule 51, the very first rule under Section V – Special Appeals, states that “[t]he Rules in this section shall apply **exclusively in matters heard on appeal from final decisions pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).**” (Emphasis added). In addition, the 2009 Revised Notes to SCALC Rule 51 set forth the following:

The Special Appeals Rules are the exclusive rules of procedure used in appeals from final decisions of the Department of Corrections and the Department of Probation, Parole and Pardon Services. The Court's jurisdiction to hear such matters is derived entirely from the decisions of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), and Furtick v. S.C. Dep't of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2003). These Rules are based upon the Court's existing general procedural and appellate rules, with adaptations for this specific type of appeal.

(Emphasis added). Thus, SCALC Rule 51 clearly states that all appeals arising from final decisions of the Department pursuant to *Al-Shabazz v. State* (and from final decisions of the Department of Probation, Parole and Pardon Services pursuant to *Furtick*) are heard by the ALC “on appeal.” In *Al-Shabazz*, the South Carolina Supreme Court held that the ALC had jurisdiction to hear appeals involving inmate grievances in its appellate capacity only. Unambiguously, the Court stated in pertinent part:

We decline . . . to apply the[ALC's] contested case rules to non-collateral and administrative matters decided by Department [of Corrections]. Department's procedures provide a sufficient method of resolving administrative matters pertaining to inmates without the need for a contested-case hearing before an ALJ.

An inmate may, however, seek review of Department's final decision by an ALJ in a non-collateral or administrative matter. **The ALJ sits in an appellate capacity to review Department's decisions.**

Al-Shabazz, 338 S.C. at 376-77, 527 S.E.2d at 754 (citations omitted) (emphasis added). Moreover, the Supreme Court in *Wicker v. S.C. Dep't of Corr.* extended the application of *Al-Shabazz* and this Court's appellate jurisdiction to inmate wage grievances. 360 S.C. 421, 424-425, 602 S.E.2d 56, 58 (2004) (holding that the Department's "failure to pay in accordance with the [prevailing wage] statutes is reviewable by the ALJ").

In the instant case, Appellant appealed the Department's final decision in a grievance concerning his inmate wages. As such, the ALC can only consider the Department's decision in its appellate capacity pursuant to *Al-Shabazz* (and *Wicker*). And because the matter is on remand for a hearing on the merits, this Court is without jurisdiction to hear the matter and must, therefore, further remand the matter to the Department to make the necessary factual determinations.²

Though the Court of Appeals remanded the case to this Court for a hearing on the merits, this did not deprive the ALC of its authority to remand the case to the Department for that hearing. The Court finds this situation similar to that in *Hamm v. S. Bell Tel. & Tel. Co.*, 305 S.C. 1, 406 S.E.2d 157 (1991). In that case, the South Carolina Supreme Court had remitted a case to the circuit court that had come to the circuit court on appeal from the Public Service Commission (Commission). However, when remitting the case to the circuit court, the Supreme Court did not explicitly remand the case to the Commission with instructions to refund the illegally collected funds with interest, but instead used only the word "reversed." Nevertheless, the Court rejected the arguments that the Court had not granted relief and that circuit court had no authority to remand the case to the Commission for enforcement of the Court's opinion. *Id.* at 5-6, 406 S.E.2d at 159-60. Similarly, just because the Court of Appeals did not expressly remand the instant case to the Department for the factual determination did not mean that this Court did not have the authority to remand the case to the Department for such a determination. Because this Court sits in an appellate capacity, there is no other reasonable interpretation of the Court of Appeals' remittitur than for this Court to remand this matter to the Department for a factual determination as to

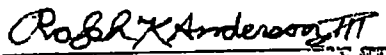
² Even if the Court of Appeals was attempting to confer contested case jurisdiction on this Court, only the General Assembly has the authority to create jurisdiction for the ALC.

whether Appellant is entitled to immediate access to escrowed wages and whether the calculation of interest on those wages was accurate.

ORDER

IT IS THEREFORE ORDERED that this matter is **REMANDED** to the Department for a factual determination consistent with the Court of Appeals' opinion.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

December 7, 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).


E. Harvin Belser Fair
Judicial Law Clerk

December 7, 2017
Columbia, South Carolina

2016 WL 4125880

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.**THIS OPINION HAS NO PRECEDENTIAL
VALUE. IT SHOULD NOT BE CITED
OR RELIED ON AS PRECEDENT
IN ANY PROCEEDING EXCEPT AS
PROVIDED BY RULE 268(d)(2), SCACR.**

Court of Appeals of South Carolina.

Joshua Cramer, Appellant,

v.

South Carolina Department
of Corrections, Respondent.

Appellate Case No. 2014-002172

Unpublished Opinion No. 2016-UP-392

Submitted April 1, 2016

Filed August 3, 2016

Appeal From The Administrative Law Court, Carolyn C.
Matthews, Administrative Law Court Judge**Attorneys and Law Firms**

Joshua Cramer, pro se.

Lake Eric Summers, of Malone Thompson Summers &
Ott, LLC, of Columbia, for Respondent.**Opinion****PER CURIAM:**

*1 Joshua Cramer appeals an order from the Administrative Law Court (ALC) arguing (1) the ALC erred in affirming the South Carolina Department of Corrections' (SCDC) denial of Cramer's grievances for failure to file his Step 1 Grievance within the Inmate Grievance System Policy's fifteen-day deadline provided by SCDC Policy GA-01.12 paragraph 13.1, (2) SCDC's denial of Cramer's grievance based on the fifteen-day deadline conflicts with SCDC Policy GA-01.12 section 13.9, (3) SCDC erred in denying him immediate access to wages escrowed for his benefit pursuant to section 24-3-

40(A)(5) and (B)(2) of the South Carolina Code (Supp. 2015) and section 24-3-315 of the South Carolina Code (2007), and (4) SCDC denied him a fair interest rate on wages escrowed for his benefit under section 24-3-40(A)(5). We reverse and remand.¹

Cramer is currently serving a life sentence without the possibility of parole at the Broad River Correctional Institution. Between July 2005 and January 2010, Cramer participated in the prison industries service project operated by SCDC. On April 26, 2007, Cramer filed a Step 1 Grievance alleging (1) he should be allowed immediate access to the portion of his wages from the prison industries service project that were placed in escrow as required by section 24-3-40(A)(5) because he was never going to be released from prison and keeping the money in escrow to be distributed at his death deprived him of a liberty interest and (2) he had a liberty interest in the amount of interest earned on the money in escrow and the interest rate had declined. In this response, SCDC denied Cramer's claims, finding Cramer "exceeded any reasonable time frame associated with filing a grievance under the agency's Inmate Grievance System Policy" because he "filed [his] Step 1 [Grievance] nearly two (2) years after SCDC first paid [him] for [his] voluntary participation in the prison industries [service] project," which was also "nearly two (2) years after SCDC began applying the statutorily mandated deductions to [his] prison industries [service project] pay pursuant to [s]ection 24-3-40." Additionally, SCDC found Cramer's allegations were without merit. Cramer appealed SCDC's decision in a Step 2 Grievance. He argued he was entitled to a distribution of the wages in his escrow account, asserted concerns about the interest rate on his escrow account, and contended SCDC erred in construing the fifteen-day deadline because his escrowed wages were wrongfully withheld daily, and therefore, the incident was ongoing. SCDC reiterated its response to Cramer's Step 1 Grievance and denied his appeal.

In March 2014, Cramer appealed to the ALC arguing (1) SCDC erred in denying him immediate access to his escrowed wages, (2) SCDC erred in denying him a fair interest rate on his escrowed wages, and (3) SCDC's denial of his grievance "based on the 'fifteen-[day] deadline' [found in policy number GA-0.12 paragraph 13.1] conflicts with [SCDC] policy number GA-01.12 [paragraph] 13.[9]." Cramer also argued his grievance was not an incident grievance but a policy and procedure

grievance that was not limited to the fifteen-day deadline. The ALC affirmed SCDC's decision, finding Cramer's wage claims were "incident" grievances and subject to the Inmate Grievance System Policy fifteen-day deadline. The ALC did not address the merits of Cramer's appeal.

*2 "Section 1-23-610 of the South Carolina Code (Supp. 20[15]) sets forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency." *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (Ct. App. 2008). This court's "review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-610(B). Under section 1-23-610(B)(d), the court of appeals "may reverse or modify the [ALC's] decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is ... affected by other error of law."

The Inmate Grievance System, found in SCDC Policy GA-01.12, allows inmates to seek formal review of complaints. Guidance on how and when to submit a formal grievance is provided under SCDC Policy GA-01.12 paragraph 13 titled "Steps in the Grievance Process." Grievances are broken into two categories: "incident" grievances and "policies/procedures" grievances. Paragraph 13.1 addresses the timeframe for submitting an incident grievance; this section provides, "If informal resolution [of a grievance] is not possible, the grievant will complete Form 10-5, Step 1, which is located in common areas, ... and will submit the Form to an employee designated by the Warden ... within 15 days of the alleged incident." (italics omitted). Paragraph 13.9 addresses the timeframe for submitting a "policy/procedure" grievance; this section provides, "Exceptions to the 15 day time limit requirement *will* be made for grievances concerning policies/procedures." (emphasis added).

We find Cramer's grievance is a "policy/procedure" and SCDC's characterization of Cramer's grievance as an incident grievance was arbitrary and capricious. *Cf. Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 34-35, 766 S.E.2d 707, 718 (2014) ("We defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the

statute.' " (quoting *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984))). Cramer's grievance stems from section 24-3-40(A)(5) and (B)(2) of the South Carolina Code. Section 24-3-40(A)(5) states the director of SCDC, or the local detention or correctional facility manager, shall deduct ten percent of an inmate's wages to "be held in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B)(2) provides "[a] prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice."

This court recently decided *Ackerman v. South Carolina Department of Corrections*, 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016), holding an inmate grievance challenging the specific pay rate in a contract with a prison industries sponsor was a policy/procedure grievance rather than an incident grievance. As in *Ackerman*, the substance of Cramer's grievance, which involves the distribution of his wages, is "a topic governed by statute and, thus, an expression of the legislature's policy," and "SCDC is mandated to carry out these legislative policies." *Id.* at 420, 782 S.E.2d at 761-62. "SCDC, in turn, expresses its own, more specific policies" regarding inmate wage distribution. *Id.* at 420, 782 S.E.2d at 762. Furthermore, Cramer's grievance "naturally fall[s] within [SCDC's] definition [of the terms 'policies' and 'procedures'] because SCDC has operated the prison industries service project as one of its day-to-day operations." *Id.* at 419, 782 S.E.2d at 761.

*3 Additionally, Cramer's grievance cannot "realistically be characterized as [an] 'incident[],' which [is] temporally limited and rarely affect[s] more than a few inmates" because many inmates are serving life sentences and any of those inmates who participate in the prison industries service project will be in the same situation as Cramer. *See id.* at 421, 782 S.E.2d at 762 (finding the provisions of the inmates contracts were enduring and had the same effect on numerous inmates and therefore, could not "realistically be characterized as 'incidents,' which are temporally limited and rarely affect more than a few inmates").

Accordingly, the decision of the ALC is reversed and this case is remanded for the ALC's consideration of Cramer's grievance on the merits.²

REVERSED AND REMANDED.

All Citations

Not Reported in S.E.2d, 2016 WL 4125880

HUFF, KONDUROS, and GEATHERS, JJ., concur.

Footnotes

- 1 We decide this case without oral argument pursuant to Rule 215, SCACR.
- 2 We do not address Cramer's remaining issues because we are remanding these issues to the ALC.

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT SUPREME COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Court of Appeals' Order filed October 17, 2017
Supreme Court Case Tracking No. 2017-002501

Fred Gatewood, #289775, Petitioner,

v.

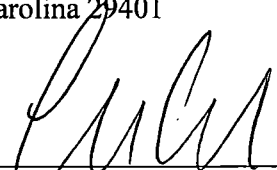
South Carolina Department of Corrections, Respondent.

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
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January 25, 2018


LAKE E. SUMMERS