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THE STATE OF SOUTH CAROLINA  
In The Supreme Court  
APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Administrative Law Judge

S.C. SUPREME COURT

Order (S.C. Ct. App. filed July 20, 2017)

Dock Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP, 07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP, 07-ALJ-04-00500-AP, 07-ALJ-04-00501-AP, 07-ALJ-04-00502-AP, 07-ALJ-04-00503-AP, 07-ALJ-04-00504-AP, 07-ALJ-04-00505-AP, 07-ALJ-04-00506-AP, 07-ALJ-04-00507-AP, 07-ALJ-04-00508-AP, 07-ALJ-04-00509-AP, 07-ALJ-04-00510-AP, 07-ALJ-04-00511-AP, 07-ALJ-04-00512-AP, 07-ALJ-04-00513-AP, 07-ALJ-04-00514-AP, 07-ALJ-04-00515-AP, 07-ALJ-04-00516-AP, 07-ALJ-04-00517-AP, 07-ALJ-04-00518-AP, 07-ALJ-04-00519-AP, 07-ALJ-04-00520-AP, 07-ALJ-04-00521-AP, 07-ALJ-04-00522-AP, 07-ALJ-04-00523-AP, 07-ALJ-04-00524-AP, 07-ALJ-04-00525-AP, 07-ALJ-04-00526-AP, 07-ALJ-04-00527-AP, 07-ALJ-04-00528-AP, 07-ALJ-04-00529-AP, 07-ALJ-04-00530-AP, 07-ALJ-04-00531-AP, 07-ALJ-04-00532-AP, 07-ALJ-04-00533-AP, 07-ALJ-04-00534-AP, 07-ALJ-04-00535-AP, 07-ALJ-04-00536-AP, 07-ALJ-04-00537-AP, 07-ALJ-04-00538-AP, 07-ALJ-04-00539-AP, 07-ALJ-04-00540-AP, 07-ALJ-04-00541-AP, 07-ALJ-04-00542-AP, 07-ALJ-04-00543-AP, 07-ALJ-04-00544-AP, 07-ALJ-04-00545-AP, 07-ALJ-04-00546-AP, 07-ALJ-04-00547-AP, 07-ALJ-04-00548-AP, 07-ALJ-04-00549-IJ, 07-ALJ-04-00550-AP, 07-ALJ-04-00551-AP, 07-ALJ-04-00552-AP, 07-ALJ-04-00553-AP, 07-ALJ-04-00554-AP, 07-ALJ-04-00555-AP, 07-ALJ-04-00556-AP, 07-ALJ-04-00557-AP, 07-ALJ-04-00558-AP, 07-ALJ-04-00559-AP, 07-ALJ-04-00623-AP, 07-ALJ-04-00624-AP, 07-ALJ-04-00625-AP, 07-ALJ-04-00626-AP, 07-ALJ-04-00627-AP, 07-ALJ-04-00628-AP, 07-ALJ-04-00629-AP, 07-ALJ-04-00630-AP, 07-ALJ-04-00631-AP, 07-ALJ-04-00632-AP, 07-ALJ-04-00671-AP, 07-ALJ-04-00672-AP, 07-ALJ-04-00673-AP, 07-ALJ-04-00674-AP, 07-ALJ-04-00675-AP, 07-ALJ-04-00676-AP, 07-ALJ-04-00677-AP, 07-ALJ-04-00691-AP, 07-ALJ-04-00752-AP, 07-ALJ-04-00798-AP, 07-ALJ-04-00856-AP, 07-ALJ-04-00857-AP, 07-ALJ-04-00858-AP, 07-ALJ-04-00859-AP, 07-ALJ-04-00860-AP, 07-ALJ-04-00861-AP, 07-ALJ-04-00862-AP, 07-ALJ-04-00863-AP, 07-ALJ-04-00864-AP, 07-ALJ-04-00865-AP, 07-ALJ-04-00866-AP, 07-ALJ-04-00867-AP, 07-ALJ-04-00868-AP, 07-ALJ-04-00869-AP, 07-ALJ-04-00870-AP, 07-ALJ-04-00871-AP, 07-ALJ-04-00872-AP, 07-ALJ-04-00444-AP, 07-ALJ-04-00876-AP, 07-ALJ-04-00885-AP, 08-ALJ-04-00141-AP, 08-ALJ-04-00142-AP, 08-ALJ-04-00143-AP, 08-ALJ-04-00144-AP, 08-ALJ-04-00145-AP, 08-ALJ-04-00146-AP, 08-ALJ-04-00147-AP, 08-ALJ-04-00148-AP, 08-ALJ-04-00149-AP, 08-ALJ-04-00169-AP, 08-ALJ-04-00170-AP, 08-ALJ-04-00171-AP, 08-ALJ-04-00192-AP, 08-ALJ-04-00966-IJ, 08-ALJ-04-00967-IJ, 08-ALJ-04-00968-IJ, 08-ALJ-04-00969-IJ, 08-ALJ-04-00970-IJ, 08-ALJ-04-00971-IJ, 08-ALJ-04-00972-IJ, 08-ALJ-04-00973-IJ, 08-ALJ-04-00974-IJ, 08-ALJ-04-00975-IJ, 08-ALJ-04-00976-IJ, 08-ALJ-04-00977-IJ, 08-ALJ-04-00978-IJ, 08-ALJ-04-00979-IJ, 08-ALJ-04-00980-IJ, 08-ALJ-04-00981-IJ, 08-ALJ-04-00982-IJ, 08-ALJ-04-00983-IJ, 08-ALJ-04-00984-IJ, 08-ALJ-04-00985-IJ, 08-ALJ-04-00986-IJ, 08-ALJ-04-00987-IJ, 08-ALJ-04-00988-IJ, 08-ALJ-04-00989-IJ, 08-ALJ-04-00990-IJ, 08-ALJ-04-00991-IJ, 08-ALJ-04-00992-IJ, 08-ALJ-04-00993-IJ, 08-ALJ-04-00994-IJ, 08-ALJ-04-00995-IJ, 08-ALJ-04-00996-IJ, 08-ALJ-04-00997-IJ, 08-ALJ-04-00998-IJ, 08-ALJ-04-00999-IJ, 08-ALJ-04-01000-IJ, 08-ALJ-04-01001-IJ, 08-ALJ-

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v.

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

Court of Appeals Appellate Case No. 2017-001560

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PETITION FOR A WRIT OF CERTIORARI  
APPENDIX

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\* Docket No. 07-ALJ-04-00826-AP may concern an unrelated case. Also, inmate Jeffrey Spears' correct number is 281697.

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v.

South Carolina Department of Corrections, Petitioner.

Appellate Case No. 2016-000829

Lower Court Case No. 2007-ALJ-04-0444-AP

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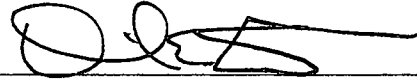
ORDER

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Based on the vote of the Court, the petition for a writ of certiorari to the court of appeals is denied.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

May 30, 2017

cc:

Douglas H. Westbrook, Esquire

Lake Eric Summers, Esquire

The Honorable Jenny Abbott Kitchings

The Honorable Jana E. Shealy

# The South Carolina Court of Appeals

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#245199, Don Hughes, #256862, Michael Key, #266890,  
Archie Lee, #226354, Isaace Richardson, #232574,  
Larkland Richards, #281768, John Wojcik, #219463,  
James Bogan, #288111, Larry Burke, #281911, Jammie  
Gaymon, #208922, David Harrell, #260004, Jeff Stinson,  
#260047, Ricky Libby, #274681, Alain Lareua, #128014,  
Quentin Baker, #297868, Frank Corley, #292975, James  
Jackson, #267718, Quintin Linen, #238553, Thomas  
Miles, #246763, Chauncy Orr, #177069, Isaiah Scott,

#228008, Eric Youmous, #281091, Derek Carter,  
#275938, Willie Hare, #256641, Ernest Miller, #235474,  
Robert Norris, #266101, Ronald Simmons, #267937,  
Samuel Simmons, #302393, William Thomas, #272501,  
Anthony Murphy, #295893, Anthony Murray, #237867,  
Johnny Hayes, #267910, Roy Morris, #288777, Daneil  
Dewey, #276678, Nehemiah Greene, #243339, Leroy  
Choice, #113990, James McFadden, #235419, Francis  
Prioleau, #268813, Darrell Rochester, #146731, Wilbur  
Jordan #292264, Alvin Stewart, #278595, Kevin Poston,  
#266083, Kevin Smith, #272440, Donald Robinson,  
#277520, Douglas Bude, #263537, Willie Elder,  
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#286981, Jacob Beach, #301270, Francis Ackerman,  
#266928, Darrin Miller, #259593, Edward Bryant,  
#255998, Sherman Austin, #20028, Michael Baylor,  
#265682, Taurus Bowman, #252745, Kenneth Carter,  
#243538, Calvin Drummond, #236322, David Feggins,  
#287157, Terry Ferguson, #299080, Willie House,  
#257820, Peter Jenkins, #257321, Percy Martin,  
#270035, James Murray, #165487, Stephone Simmons,  
#300422, Larry McCam, #282972, Tyrone Aiken,  
#244428, Tyrone Aiken, #248367, Frank Anderson,  
#282800, Ronald Brewer, #285756, Keith Brown,  
#295762, Pete Bryant, #242370, Michael Busques,  
#191961, Richard Butler, #162467, Gary Davis,  
#106144, Anthony English, #238474, Kerlan Etheredge,  
#236635, James Evans, #267837, Jose Flores, #240563,  
Robert Garrett, #291096, Reginald Geddis, #183851,  
Richard Graham, #228235, Gary Grooms, #283860,  
Wayne Harlan, #245705, Johnny Hayes, #267910,  
Steven Hickenbottom, #196263, Alfred Joyner, #260442,  
Donald Lyles, #296135, Henry Baker, #263398, Thomas  
Carter, #249362, Thomas Butler, #257552, Bobby  
Williams, #261486, Ray Wells, #173651, Rodney  
Pressley, #177947, Keith Kelly, #257556, Maxie  
Gamble, #254413, James Enriquez, #215539, Perry  
Deveaux, #109601, James Wells, #180458, Cedric  
Martino, #291396, Donald McAteer, #292961, Robert  
Wydman, #260331, Anthony Wright, #214007, Derrick

Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears, #281697, Timothy Smith, #296539, David Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235846, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsen, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charlse Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118, Appellants,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2017-001560

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ORDER

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This appeal arises out of an order from the Administrative Law Court (ALC) remanding the case to the South Carolina Department of Corrections. Because the order of the ALC is not a final order, we dismiss this appeal as interlocutory. *See Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010) ("If there is some further act which must be done by the court prior to a determination of the rights of the parties, the

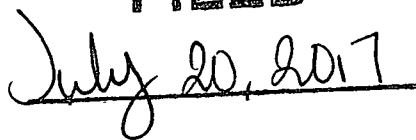
order is interlocutory."). The remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rules.

\_\_\_\_\_, J.  
FOR THE COURT

Columbia, South Carolina

cc:

Douglas H. Westbrook, Esquire  
Lake Eric Summers, Esquire  
The Honorable Jana E. Shealy

**FILED**  


# The South Carolina Court of Appeals

Francis Ackerman, #266928, Malik Aljalil, #219551,  
Linso Allen, #269378, Michael Benninger, #264212,  
Fredrick Brown, #289602, Timothy Brown, #238461,  
Terrell Buchanon, #277262, Christopher Buch, #200690,  
Rudy Cassady, #238732, Sheldon Clark, #264772,  
Zawaski Cobb, #187136, Kamathene Cooper, #145333,  
Gladstone Cummings, #267450, Patrick Curtis, #175139,  
Quintin Daniels, #196284, Curtis Davis, #238776,  
Heyward Dempsey, #134171, Phillip Denney, #240678,  
Paul Durham, #219573, Jerome Durham, #270393, Keith  
Eigner, #299153, Bernard Felder, #122099, Jermaine  
Garriett, #191274, Fred Gatewood, #289775, Dennis  
Goff, #177506, Gregory Grant, #109656, Nelson  
Hampton, #286427, James Hartmant, #219770, Gary  
Hayes, #263985, Michael Hood, #279897, Nikia Law,  
#260855, Stephen Lease, #137016, Harry Leonard,  
#249996, Herbert McFadden, #184297, Michael  
McFarland, #266870, Earl Mack, #216237, John Moultri,  
#276527, Matin Muntaqim, #266870, Tony Pitts,  
#280597, Germaine Pringle, #250390, Gene Richardson,  
#93614, Dennis Richey, #233472, Ignacio Rivera,  
#300424, Vondell Sanders, #241308, James Sattler,  
#235043, Joseph Schmitz, #173987, Arthur Scott,  
#251957, Jerome Scott, #153381, Roosevelt Scott,  
#275631, Archie Simmons, #161419, Robert Smith,  
#199324, James Williams, #282929, Gary Bryant,  
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v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2017-001560

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ORDER

---

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

*James E. Shealy* C J.  
*Paul E. Brooks, Jr.* J.  
*Joe J. Denton* J.

Columbia, South Carolina

cc:  
Douglas H. Westbrook, Esquire  
Lake Eric Summers, Esquire  
Jana E. Shealy

**FILED**  
September 14, 2017

# The South Carolina Court of Appeals

Fred Gatewood, Appellant,

v.

South Carolina Department of Corrections.

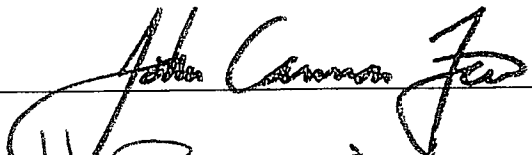
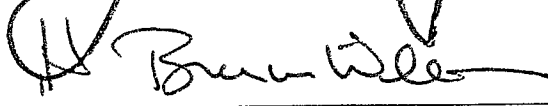
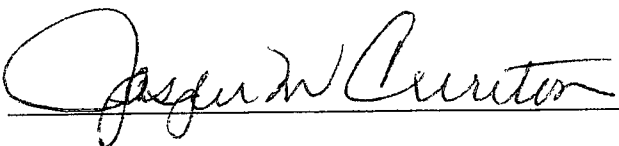
Appellate Case No. 2012-212574

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## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.<sup>1</sup>

 C.J.  
 J.  
 A.J.

Columbia, South Carolina

cc: Douglas H. Westbrook  
Katherine Anne Phillips  
Lake Eric Summers

FILED

St 7/5/13

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<sup>1</sup> Because Gatewood no longer has an appeal pending in this court, the Administrative Law Court has jurisdiction to proceed on the merits of Gatewood's case.



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE (803) 734-1890  
FAX (803) 734-1839  
www.sccourts.org

June 02, 2017

The Honorable Jana E. Shealy  
1205 Pendleton Street  
Columbia SC 29201

## REMITTITUR

Re: Ackerman, Francis v. SCDC  
Lower Court Case No. 2007ALJ040444AP  
Appellate Case No. 2012-210588

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  
Lake Eric Summers, Esquire



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE (803) 734-1890  
FAX (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

August 26, 2013

The Honorable Jana E Shealy  
1205 Pendleton Street  
Columbia SC 29201

### REMITTITUR

Re: Fred Gatewood, #289775 v. SCDC  
Lower Court Case No. 2007ALJ040517AP  
Appellate Case No. 2012-212574

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,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

Enclosure

cc: Douglas H. Westbrook  
Katherine Anne Phillips  
Lake Eric Summers

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Francis Ackerman, #266928, Malik )  
Aljalil, #219551, Linso Allen, #269378, )  
Michael Benninger, #264212, Fredrick )  
Brown, #289602, Timothy Brown, )  
#238461, Terrell Buchanon, #277262, )  
Christopher Buch, #200690, Rudy )  
Cassady, #238732, Sheldon Clark, )  
#264772, Zawaski Cobb, #187136, )  
Kamathene Cooper, #145333, )  
Gladstone Cummings, #267450, Patrick )  
Curtis, #175139, Quintin Daniels, )  
#196284, Curtis Davis, #238776, )  
Heyward Dempsey, #134171, Phillip )  
Denney, #240678, Paul Durham, )  
#219573, Jerome Durham, #270393, )  
Keith Eigner, #299153, Bernard Felder, )  
#122099, Jermaine Garriett, #191274, )  
Dennis Goff, #177506, Gregory Grant, )  
#109656, Nelson Hampton, #286427, )  
James Hartmant, #219770, Gary Hayes, )  
#263985, Michael Hood, #279897, )  
Nikia Law, #260855, Stephen Lease, )  
#137016, Harry Leonard, #249996, )  
Herbert McFadden, #184297, Michael )  
McFarland, #266870, Earl Mack, )  
#216237, John Moultri, #276527, Matin )  
Muntaqim, #266870, Tony Pitts, )  
#280597, Germaine Pringle, #250390, )  
Gene Richardson, #93614, Dennis )  
Richey, #233472, Ignacio Rivera, )  
#300424, Vondell Sanders, #241308, )  
James Sattler, #235043, Joseph )  
Schmitz, #173987, Arthur Scott, )  
#251957, Jerome Scott, #153381, )  
Roosevelt Scott, #275631, Archie )  
Simmons, #161419, Robert Smith, )  
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Gary Bryant, #258972, Harlon Edger, )  
#261866, Johnny Holden, #245199, )  
Don Hughes, #256862, Michael Key, )  
#266890, Archie Lee, #226354, Isaac )  
Richardson, #232574, Larkland )  
Richards, #281768, John Wojcik, )

Docket No. 07-ALJ-04-0444-A-AP

ORDER OF REMAND

FILED

June 13, 2017

SC ADMIN. LAW COURT

#219463, James Bogan, #288111, Larry )  
 Burke, #281911, Jammie Gaymon, )  
 #208922, David Harrell, #260004, Jeff )  
 Stinson, #260047, Ricky Libby, )  
 #274681, Alain Lareua, #128014, )  
 Quentin Baker, #297868, Frank Corley, )  
 #292975, James Jackson, #267718, )  
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 #235474, Robert Norris, #266101, )  
 Ronald Simmons, #267937, Samuel )  
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 #272501, Anthony Murphy, #295893, )  
 Anthony Murray, #237867, Johnny )  
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 Daniel Dewey, #276678, Nehemiah )  
 Greene, #243339, Leroy Choice, )  
 #113990, James McFadden, #235419, )  
 Francis Prioleau, #268813, Darrell )  
 Rochester, #146731, Wilbur Jordan )  
 #292264, Alvin Stewart, #278595, )  
 Kevin Poston, #266083, Kevin Smith, )  
 #272440, Donald Robinson, #277520, )  
 Douglas Bude, #263537, Willie Elder, )  
 #246208, Rogelio Zavala, #245106, )  
 Dennis Knight, #286981, Jacob Beach, )  
 #301270, Francis Ackerman, #266928, )  
 Darrin Miller, #259593, Edward Bryant, )  
 #255998, Sherman Austin, #20028, )  
 Michael Baylor, #265682, Taurus )  
 Bowman, #252745, Kenneth Carter, )  
 #243538, Calvin Drummond, #236322, )  
 David Feggins, #287157, Terry )  
 Ferguson, #299080, Willie House, )  
 #257820, Peter Jenkins, #257321, Percy )  
 Martin, #270035, James Murray, )  
 #165487, Stephone Simmons, #300422, )  
 Larry McClam, #282972, Tyrone Aiken, )  
 #244428, Tyrone Aiken, #248367, )  
 Frank Anderson, #282800, Ronald )  
 Brewer, #285756, Keith Brown, )  
 #295762, Pete Bryant, #242370, )  
 Michael Busques, #191961, Richard )

26

Butler, #162467, Gary Davis, #106144, )  
 Anthony English, #238474, Kerlan )  
 Etheredge, #236635, James Evans, )  
 #267837, Jose Flores, #240563, Robert )  
 Garrett, #291096, Reginald Geddis, )  
 #183851, Richard Graham, #228235, )  
 Gary Grooms, #283860, Wayne Harlan, )  
 #245705, Johnny Hayes, #267910, )  
 Steven Hickenbottom, #196263, )  
 Alfred Joyner, #260442, Donald Lyles, )  
 #296135, Henry Baker, #263398, )  
 Thomas Carter, #249362, Thomas )  
 Butler, #257552, Bobby Williams, )  
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 Pressley, #177947, Keith Kelly, )  
 #257556, Maxie Gamble, #254413, )  
 James Enriquez, #215539, Perry )  
 Deveau, # 109601, James Wells, )  
 # 180458, Cedric Martino, #291396, )  
 Donald McAteer, #292961, Robert )  
 Wydman, #260331, Anthony Wright, )  
 #214007, Derrick Williams, #272958, )  
 Kenneth White, #228409, James )  
 Trumper, #247429, Jeffrey Spears, )  
 #281697, Timothy Smith, #296539, )  
 Davis Sims, #278067, Virgil Simpson, )  
 #281888, Edward Simpson, #220017, )  
 Kenneth Simmons, #278911, George )  
 Shine, #292391, Ralph Sellers, #164295, )  
 Laron Richardson, #258786, Frank )  
 Patterson, #283098, Tony McNeil, )  
 #235846, Larry McClam, #282972, )  
 Lavanza Mack, #189340, Raymond )  
 Livingston, #277133, Nicholas )  
 Lambrose, #215080, Joseph Kelsey, )  
 #217218, Keith Eugene, no number, )  
 Chuck Jackson, #266425, James Foye, )  
 #211523, Timothy Inman, #151123, )  
 Marvin Gilbert, #273934, Demetrius )  
 Wheeling, #264976, Leon Wilson, )  
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 Darryel Beasley, #222388, Curtis )  
 Thompson, #266448, Baron Cobbs, )  
 #280479, James Tino, #145030, Harold )  
 Roberson, #117001, Ray Gadsen, )  
 #187527, Tony Witt, #242918, )

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|                                           |   |
|-------------------------------------------|---|
| Jonathan Singleton, #287670, Joe          | ) |
| Pannell, #89592, Charles Graham,          | ) |
| #294453, Lazarus Brannon, #227847,        | ) |
| Darrell Williams, #219730, Wilbert        | ) |
| Mills, #244004, Howard Grant,             | ) |
| #255473, Timothy Wilson, #261971,         | ) |
| Rodney Elliott, #251337, Henry            | ) |
| Rivers. #219118,                          | ) |
|                                           | ) |
| Appellants.                               | ) |
|                                           | ) |
| vs.                                       | ) |
|                                           | ) |
| South Carolina Department of Corrections. | ) |
|                                           | ) |
| Respondent.                               | ) |

---

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). The case originally came before the ALC on an appeal filed by multiple inmates (Appellants) concerning the Prevailing Wage Statute. The Court denied the appeal, stating that Appellants failed to timely file their grievances. The Court of Appeals subsequently reversed and remanded the cases for processing of the grievances. *See Ackerman, et al. v. S.C. Dep't of Corr.*, 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016), *cert denied* (May 30 2017). Accordingly,

**IT IS THEREFORE ORDERED** that these cases are remanded to the South Carolina Department of Corrections for consideration of Appellants' grievances on the merits in keeping with the Court of Appeals decisions in *Ackerman* and *Gatewood v S.C. Dep't of Corr.*, 416 S.C. 304, 785 S.E. 2d 60 (2016).

**AND IT IS SO ORDERED.**



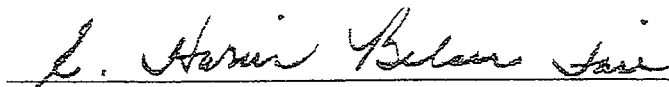
Ralph King Anderson, III  
Chief Administrative Law Judge

June 13, 2017  
Columbia, South Carolina

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CERTIFICATE OF SERVICE

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



E. Harvin Belser Fair  
Judicial Law Clerk

June 13, 2017  
Columbia, South Carolina

5 9

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

|                                           |   |                                |
|-------------------------------------------|---|--------------------------------|
| Fred Gatewood, #289775,                   | ) | Docket No. 07-ALJ-04-0517-A-AP |
|                                           | ) |                                |
| Appellant,                                | ) |                                |
|                                           | ) |                                |
| vs.                                       | ) | <b>ORDER OF REMAND</b>         |
|                                           | ) |                                |
| South Carolina Department of Corrections, | ) |                                |
|                                           | ) |                                |
| Respondent.                               | ) |                                |

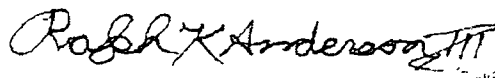
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This matter is before the South Carolina Administrative Law Court (Court or ALC) on remand from the South Carolina Court of Appeals (Court of Appeals). Fred Gatewood (Appellant) participated in prison industries, and his case was one of 197 consolidated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

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

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

**AND IT IS SO ORDERED.**



Ralph King Anderson, III  
Chief Administrative Law Judge

June 13, 2017  
Columbia, South Carolina

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

**FILED**

June 13, 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

E. Harvin Belser Fair  
Judicial Law Clerk

June 13, 2017  
Columbia, South Carolina

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Fred Gateway, #289775,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

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

**ORDER OF REMAND**

**FILED**

October 7, 2013

SC ADMIN. LAW COURT

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to the appeal of Fred Gateway, an inmate incarcerated with the Department of Corrections (Department or SCDC).

**FACTS**

Appellant is an inmate housed with the Department who had participated in the prison industries project at Lieber Correctional Institution. He filed a grievance with SCDC claiming entitlement to back pay as well as a higher hourly pay for labor he provided in the prison industry project. The Court conducted a consolidated review of SCDC's denial of administrative grievances filed by 197 inmates captioned *Ackerman*, #266928, *et al*, v. *South Carolina Department of Corrections*, Docket Nos. 07-ALJ-04-00444 et seq. This Court found in orders dated March 2, 2012 and March 16, 2012 that Appellant filed a timely grievance and ordered briefing of the matter. On March 29, 2012, Appellant filed his Notice of Appeal of the Prior Orders of this Court. This case was included in the caption of the Notice of Appeal in the *Ackerman* cases pending before the South Carolina Court of Appeals. On August 26, 2013, the South Carolina Court of Appeals remitted this case to the ALC for a determination.

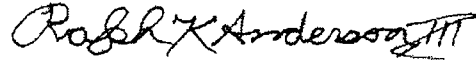
**DISCUSSION**

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *Al-Shabazz*, the Court held that when reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. *Id.* at 377; 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2012) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Here, the Department denied Appellant's

grievance because it was untimely filed. However, this Court determined that he filed that grievance in a timely manner. Therefore,

**IT IS HEREBY ORDERED** that the matter is **REMANDED** to the South Carolina Department of Corrections.

**AND IT IS SO ORDERED.**



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Ralph King Anderson, III  
Chief Administrative Law Judge

October 7, 2013  
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*

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E. Harvin Belser Fair  
Judicial Law Clerk

October 7, 2013  
Columbia, South Carolina

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Fred Gateway, #289775,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

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

**ORDER RESCINDING ORDER OF  
REMAND**

This matter is before the Administrative Law Court (ALC or Court) pursuant to a request of the parties to hold a conference call on the Court's Order of Remand dated October 7, 2013. The conference call was held on Friday, October 11, 2013 with Doug Westbrook appearing on behalf of Appellant and Lake Summers appearing on behalf of the South Carolina Department of Corrections (DOC or Department).

By Order dated October 7, 2013, the Court remanded the matter for the Department to make further findings. The parties asserted that findings of fact are already a part of the record. Based on the assertions of the parties, the Court finds that its Order of Remand should be rescinded.

In addition, Appellant filed a Motion to Supplement the Record on September 17, 2013. The Department thereafter requested a 14-day extension of time to respond to the Appellant's Motion. Appellant did not oppose that extension. Therefore, based upon the assertions of the parties,

**IT IS ORDERED** that the Order to Remand is rescinded.

**IT IS FURTHER ORDERED** that the South Carolina Department of Corrections is granted an extension of time to respond to Appellant's Motion to Supplement Record. The

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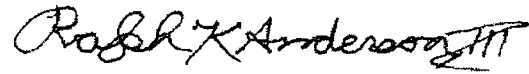
**FILED**

October 14, 2013

SC ADMIN. LAW COURT

Department shall respond to the Appellant's Motion to Supplement Record on or before Monday, October 21, 2013.

**AND IT IS SO ORDERED.**



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Ralph King Anderson, III  
Chief Administrative Law Judge

October 14, 2013  
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*

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E. Harvin Belser Fair  
Judicial Law Clerk

October 14, 2013  
Columbia, South Carolina

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

|                                           |   |                              |
|-------------------------------------------|---|------------------------------|
| Fred Gatewood, #289775,                   | ) |                              |
|                                           | ) | Docket No. 07-ALJ-04-0517-AP |
| Appellant,                                | ) |                              |
|                                           | ) |                              |
| vs.                                       | ) | <b>ORDER</b>                 |
|                                           | ) |                              |
| South Carolina Department of Corrections, | ) |                              |
|                                           | ) |                              |
| Respondent.                               | ) |                              |
|                                           | ) |                              |

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This matter comes before the South Carolina Administrative Law Court (ALC or Court) in its "Level Three" phase pursuant to the appeal of Fred Gateway (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or SCDC). Appellant challenges the hourly wage rate used by the Department for labor that Appellant performed between 2004 and 2009.

**FACTS/PROCEDURAL BACKGROUND**

Appellant is an inmate housed with the Department who had participated in the prison industries project at Lieber Correctional Institution (LCI). He filed Step 1 and Step 2 grievances with SCDC claiming entitlement to back pay as well as a higher hourly pay for labor he provided in the prison industry project. SCDC denied both of Appellant's grievances. The Court conducted a consolidated review of SCDC's denial of administrative grievances filed by 197 inmates captioned *Ackerman*, #266928, *et al*, v. *South Carolina Department of Corrections*, Docket Nos. 07-ALJ-04-00444 et seq. This Court found in orders dated March 2, 2012 and March 16, 2012 that Appellant filed a timely grievance and ordered briefing of the matter. On March 29, 2012, Appellant filed his Notice of Appeal of the Prior Orders of this Court. This case was included in the caption of the Notice of Appeal in the *Ackerman* cases pending before the South Carolina Court of Appeals. On August 26, 2013, the South Carolina Court of Appeals remitted this case to the ALC for a determination. On September 17, Appellant filed a Motion to Supplement Record.

By Order dated October 7, 2013, the Court remanded the matter for the Department to make further findings. However, the parties asserted that the findings of fact were already part

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**FILED**

April 29, 2014

SC ADMIN. LAW COURT

of the record, and therefore the Court rescinded its Order of Remand. The Department requested an extension of time in which to respond to Appellant's Motion to Supplement Record, specifically until October 21, 2013. The Department timely filed its Response to the Appellant's Motion to Supplement Record. In an order dated November 12, 2013, this Court denied Appellant's Motion to Supplement Record. On February 19, 2014, Appellant filed his Appellant's Brief. On March 24, 2014, the Department filed a motion requesting a 14-day extension of time during which to file its brief. The Court granted this motion on March 26, 2014. On April 7, 2014, the Department filed its Respondent's Brief. On April 14, 2014, Appellant filed a Motion for Extension, requesting an extension until April 23, 2014 in order to file a reply brief. The Court granted this motion on April 14, 2014. Finally, on April 17, 2014, Appellant filed a Reply Brief.

#### ISSUES ON APPEAL

1. Was Appellant entitled to a \$4.00-per-hour wage rate for his labor provided to LCI based on the 2001 budget proviso and succeeding enactments, and on the 1998 service work contract between SCDC and Williams Technologies, Inc.?
2. Was Appellant entitled to overtime pay for his labor?
3. Is Appellant entitled to pre- and post-judgment interest on his back pay?
4. Is Appellant entitled to costs and attorney's fees?
5. Should SCDC be enjoined from further wage violations?<sup>1</sup>

#### STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 602 S.E.2d 51 (2004) and *Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004), wherein the Court held that an inmate's claim that he was paid less than the prevailing wage for work performed in the Prison Industries program, in violation of a statute mandating payment of the prevailing wage, implicated a state-created property interest and was therefore reviewable by the ALC. Furthermore, when reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. *Al-Shabazz v. State*, 338 S.C. 354, 377, 527 S.E.2d 742, 754

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<sup>1</sup> In his Appellant's Brief, Appellant included an additional issue stated as follows: "Should SCDC be ordered to process grievances for workers in the program whether or not they personally filed a grievance?" However, the instant case does not involve the grievances of other workers in the program or persons in the program who never filed grievances. Therefore, the Court does not consider this an issue and does not include it in the text above.

(2000); *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2013) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(A)(5) states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2013).

Consequently, an Administrative Law Judge may not substitute his judgment for that of an agency “as to the weight of the evidence on questions of fact.” Section 1-23-380(5). Furthermore, an Administrative Law Judge may not reverse or modify an agency’s decision unless the Record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence, arbitrary, or affected by an error of law. § 1-23-380(5); *see also Marietta Garage, Inc v. S.C. Dep’t of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep’t of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). “‘Substantial evidence’ is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.” *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting *Law v. Richland Cnty Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

## DISCUSSION

**1. Was Appellant entitled to a gross wage rate of \$4.00 per hour for the labor that he performed between 2004 and 2009?**

From the outset, it appears that neither party disputes the fact that Appellant performed work between 2004 and 2009 in a prison industries service project operated by the Department at LCI in which Williams Technologies, Inc. (WTI) was the private sponsor. There also appears to be no dispute that SCDC and WTI entered into a service work contract in 1998 (Contract), and that the rate negotiated in the Contract for the inmate's labor was for \$4.00 per hour. It further appears that the parties do not dispute that Appellant did not receive \$4.00 per hour for the labor that he performed. However, the question before this Court is whether Appellant was entitled to be paid at a gross wage rate of \$4.00 per hour for his labor.

Appellant argues that Appellant was entitled to a gross wage rate of \$4.00 per hour for his labor based on the 2001 budget proviso and succeeding enactments allowing SCDC to negotiate the wages to be paid for inmate labor, and on the Contract between SCDC and WTI.<sup>2</sup> Looking first at the 2001 General Assembly budget proviso,<sup>3</sup> it states in pertinent part:

The department may negotiate the wage to be paid for the inmate labor provided under prison industry service work contracts, and such wages may be less than the prevailing wage for work of similar nature in the private sector.

The General Assembly enacted similar budget provisos each year until it enacted S.C. Code Ann. § 24-1-295, effective August 1, 2007.<sup>4</sup> The first part of S.C. Code Ann. § 24-1-295 (2009)<sup>5</sup> provides:

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<sup>2</sup> Clearly, the prevailing wage statutes were not "enacted for the special benefit of Inmates" *Adkins v SC Dep't of Corr*, 360 S.C. 413, 418, 602 S.E.2d 51, 54 (2004). Moreover, in this case, the purpose of the Contract, which approved the inmate labor with WIT, was "to fulfill the intent of Section 24-3-310." S.C. Code Ann. § 24-3-310(2), in setting forth the "Declaration of Intent" for prison industries, provides that the intent of the prison industries provisions is, in part, to "utilize the labor of inmates for **self-maintenance** and for reimbursing this State for expenses incurred by reason of their crimes and imprisonment" (emphasis added). Appellant has made no challenge that the pay he received violated any agreement between him and the Department or that the Department failed to do a proper accounting of its expenses to insure the program was self-maintaining. Rather, both parties address the Contract provisions as determining the distribution of the inmate wages. Therefore, the Court addresses the arguments from that perspective.

<sup>3</sup> Statutes at Large, No. 66, § 37.31, eff. July 2001.

<sup>4</sup> Both parties agree that a similar budget proviso was passed each year between fiscal years 2001 and 2007, culminating in the codification of Section 24-1-295.

<sup>5</sup> The language of this statute did not change between the effective date of its enactment and 2009, the final year in which Appellant worked in the prison industries service project at LCI.

The Director of the Department of Corrections may enter into contracts with private sector entities that allow inmate labor to be provided for prison industry service work and export work that involves exportation of products. The use of inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Pursuant to this section, service work is defined as any work that includes repair, replacement of original manufactured items, packaging, sorting, recycling, labeling, or similar work that is not original equipment manufacturing. The department may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts and export work contracts, and these wages may be less than the prevailing wage for work of a similar nature in the private sector.

The statute then lists a series of mandatory deductions "from the gross earnings of . . . inmates engaged in prison industry service work," and these deductions are "in addition to any other required deductions."<sup>6</sup>

Section 3.3(1) of the Contract provides:

Williams agrees to **pay SCDC \$4.00 per hour per inmate for work performed . . .**  
**. SCDC shall be responsible to pay inmate workers, cover security costs and**  
**P.I overhead, including any costs for health, safety and welfare of the**  
**inmates, taxes or other payroll deduction. . . .**

(emphasis added) <sup>7</sup> Section 3.2(4) of the Contract states: "At its expense, the Department shall be responsible for the security of the inmate labor force and the security of [WTI's] employees and agents." Section 3.3(1), though, explains that the inmate labor rate of \$4.00 per hour per

<sup>6</sup> There also exists, pursuant to Section 24-3-40, which does not apply in this case, statutory instruction as to how inmate wages are to be handled for inmate labor in prison industry programs involving the private sector that, unlike those services covered by Section 24-1-295, involve "the manufacturing and processing of goods, wares, or merchandise or the provision of services or another business or commercial enterprise considered by the director to enhance the general welfare of South Carolina." See also S.C. Code Ann. 24-3-430(A) (2007). In *Williams v S.C. Dep't of Corr.*, 372 S.C. 255, 259, 641 S.E.2d 885, 887 (2007), the Court pointed out that "the legislature has specifically mandated [via Section 24-3-40] how inmate wages for prison industry labor are to be handled." The Court also emphasized the last phrase of Section 24-3-40(A), which says that the private employer "shall pay the prisoner's wages directly to the Department of Corrections." *Id.* The Court added that "[t]his section also includes specific **deductions from inmate wages** that are to be made by the Director of DOC, including restitution to victims, payment to the State Office of Victim Assistance, child support, and state and federal taxes. . . ." (emphasis added). *Id.* Thus, even had Section 24-3-40 applied to the service work program in this case, the gross wages paid to the Department by a private employer for inmate labor would still have to sustain deductions prior to the Department's payments to the inmates.

<sup>7</sup> The Department in its Respondent's Brief argues that Appellant has no standing to Petition the Court to interpret the terms of the Contract against the Department because Appellant was neither party to the Contract, a third-party beneficiary, or an intended beneficiary of the Contract. However, the Court rejects this argument, finding that Appellant does have standing. Though the amount of wages Appellant was to receive is in dispute, and though Appellant cannot bring an action against WTI (*see Williams, supra*), Appellant has a state-created property interest in the wages that he earned, the amount of which was governed by the terms of the Contract. If Appellant had no standing to challenge the wage terms in the Contract, then he would have no basis on which to exercise his right to file a grievance challenging the amount of wages he was to receive pursuant to the Contract; and the holdings in *Adkins* and *Wicker* would thus be turned on their heads.

inmate that WTI pays to the Department does encompass payment for the Department's overhead. Specifically, Subsection 1 describes the circumstances under which the Department and WTI may agree to increase the \$4.00 per hour rate:

Thirty (30) days prior to each anniversary date of this agreement, [the Department] and [WTI] may negotiate an **increase in the per hour rate** paid by [WTI] to [the Department]. . . . It is the intent of the parties that **such increase shall only reflect [the Department's] increased cost of prison overhead.**

(emphasis added). Along with the Contract was a "bullet sheet," which summarized the contract's key points. Entitled "Williams Technology Transmission Service Contract," it states the following: "Wage Rate: \$4.00 per hour/per inmate - \$.35/hr base for inmates." Under the Contract, the Department would pay inmates a minimum of \$.35 per hour, subject to potential longevity pay increases and "bonus pay." Also, according to a March 12, 2002 memorandum from the project's plant manager, Henry Middleton, to the inmate workers participating in the program, the inmates were "further advised that the MAXIMUM pay allowance is \$1.00/hr, regardless of your longevity status. In addition to the [bonus rates and base rates] above, your overtime pay is applied at a rate of {[Base Rate]+[1/2 Base Rate]} only. Your [Bonus Rate] pay will not be applied to your overtime hours."

"It is well-established that '[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.'" *Grier v. AMISUB of S.C, Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) (quoting *Hodges v Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* at 536, 725 S.E.2d at 695. "It is only when applying the words literally leads to a result so patently absurd that the General Assembly could not have intended it that we look beyond the statute's plain language. *Id.* 397 S.C. at 536, S.E.2d at 695-96 (citing *Cabiness v. Town of James Island*, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011)).

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Madden v. Bent Palm Invs., LLC*, 386 S.C. 459, 464, 688 S.E.2d 597, 600 (Ct. App. 2010) (quoting *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009)). The Court "must first look at the language of the contract to determine the intentions of the parties." *CAN Enters., Inc. v. S.C. Health Human Servs Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). "Contract interpretation

begins with the plain language of the agreement.” *Stevenson Aviation, Inc. v. DynCorp Intern. LLC*, --- S.E.2d ---, 2014 WL 1233859, at \*5 (S.C. S.Ct. March 26, 2014). “The language alone will determine the contract’s force where such language is unambiguous; however, where the language is subject to multiple interpretations, the fact finder must determine the parties’ intentions from the evidence presented.” *Madden*, 386 S.C. at 464-65, 688 S.E.2d at 600. “A party may not create an ambiguity by reading a single sentence or clause, but rather the contract and the language used must be considered as a whole.” *Id.* Finally, “[c]ommon sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair and just, the latter construction must prevail.” *C.A.N. Enters.*, 296 S.C. at 377, 373 S.E.2d at 586.

Appellant argues in his Appellant’s Brief and again in his Reply Brief that “expenses for security, overhead, and health, safety, and welfare are not allowable deductions from an inmate’s gross wages under § 24-3-40.” To support this claim, Appellant, in his Reply Brief, quotes the following footnote from *Torrence, et al. v. S.C. Dep’t of Corr., et al.*:

Furthermore, if appellants prove true their allegation that the DOC removes any of the money remitted by the private industry sponsor and then disburses the percentages listed in section 24-3-40 based on the **lower** rate, the DOC would be in violation of the plain language of the statute which directs it to disburse the money based on the **gross wages**. See § 24-3-40(A).

373 S.C. 586, 594 n.4, 646 S.E.2d 866, 870 n.4 (2007) (emphasis of “lower” in original; emphasis added to “gross wages” by Appellant).<sup>8</sup>

As discussed in footnote 6, *supra*, the Court disagrees that Section 24-3-40 applies in this case, because the contract at issue in this case was a service work contract, and deductions

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<sup>8</sup> In its Motion to Strike Argument from the Appellant’s Reply Brief, the Department argues that the Court should strike all of the arguments that Appellant made in his Reply Brief regarding *Torrence*, because Appellant only mentioned *Torrence* in the Conclusion section of his Appellant’s Brief without making the arguments in a discussion of *Torrence* that he made in his Reply Brief. First, Respondent arguably raised arguments in its brief, specifically on pp. 11-12, as to what was included in deductions pursuant to the contract, which could have given rise to the need for an elaboration on *Torrence* in response. But the Court need not address whether the Appellant’s discussion of *Torrence* was appropriate, because the Court is free to use any law that would be helpful in addressing this case, and would have applied the same analysis of Section 24-3-295 regardless of the “*Torrence* rule.” The Court therefore denies Appellant’s Motion to Strike Argument from Appellant’s Reply Brief.

Appellant also alternatively moved in its Motion to Strike that if the Court were to deny its Motion to Strike, that it grant the Department an opportunity to prepare and file a sur-reply to address the argument that Appellant raised for the first time in his Reply Brief. However, the Court is sufficiently informed of the arguments and therefore does not see the need to consider further arguments on the issue.

from wages resulting from service work provided to private industries by inmates is governed by Section 24-1-295, not Section 24-3-40. However, the Court agrees that the principle from *Torrence* would equally apply to the statutorily required deductions pursuant to Section 24-1-295, because the deductions pursuant thereto must also be "deduct[ed] . . . from the gross earnings of the inmates . . . ." The Court also agrees with Appellant that the gross amount of the wages paid to the Department for his labor was \$4.00 per hour. However, the Court finds that based on the terms of the Contract, security costs and overhead, including costs for health, safety, and welfare, constituted "other required deductions" pursuant to Section 24-1-295.

In this case, both the applicable statutory and contractual provisions are unambiguous,<sup>9</sup> and there is substantial evidence to support the Department's decision. The Department negotiated with WTI for an amount of \$4.00 per hour per inmate **to SCDC for inmate labor** (not **to the inmates**, but **for their labor** and **to SCDC**) with SCDC having the exclusive responsibility of handling payroll deductions and payment of wages to the inmate workers. See Section 24-1-295; *Cf Williams*, 372 S.C. at 259, 641 S.E.2d at 887. Moreover, SCDC was required by the terms of the Contract, specifically under Section 3.3, "to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety, and welfare of the inmates, taxes or other payroll deduction. . . ."<sup>10</sup> Indeed, Section 3.3 allows for increases to the per-hour wage rate based on increases to the cost of prison overhead, thus reasonably implying that the per-hour wage rate takes into account a deduction for the cost of overhead. And again, "overhead" "includ[es] any costs for health, safety and welfare of the inmates . . . ."<sup>11</sup> Therefore, I conclude that security costs and overhead were contractually required deductions that had to be

<sup>9</sup> Appellant, in his Reply Brief, specifically mentioned that he did not take issue with the fact that Section 24-1-295 and the budget proviso are clear and unambiguous. He likewise stated that terms of the 1998 contract were "clear and unambiguous."

<sup>10</sup> In his Reply Brief, Appellant argues that expenses for security are not an allowable deduction from an inmate's gross wages under Section 24-3-40 and are instead to be paid by the Department "at its expense" pursuant to Section 3.2(4) of the Contract. However, as the Court has already discussed, Section 24-3-40 does not apply in this case. Moreover, Appellant did not raise this specific argument concerning Section 3.2(4) in his Appellant's Brief. Therefore, the Court will not consider this argument. See *Hunter v Staples*, 335 S.C. 93, 103, 515 S.E.2d 261, 267 (Ct. App. 1999) (finding that appellant was precluded from asserting an argument for the first time in its reply brief), cited in *Jones ex rel Jones v Enter Leasing Co -Se*, 383 S.C. 259, 269 n.6, 678 S.E.2d 819, 824 n.6 (Ct. App. 2009).

<sup>11</sup> Appellant seems to argue in his Reply Brief that because SCDC is "responsible" for paying security costs and overhead pursuant to Sections 3.2(4) and 3.3(1) of the Contract, that these are both out-of-pocket expenses for the Department. However, under this theory, the Department would also have to pay the inmate workers out of pocket instead of out of the inmates' gross incomes, since the Department is also "responsible to pay inmate workers" pursuant to Section 3.3(1) of the Contract. (emphasis added). This would be an absurd interpretation.

taken from the Appellant's gross wages; and those gross wages had to be calculated at a rate of \$4.00 per hour.

Furthermore, "in addition to [these] required deductions[,] Section § 24-1-295 sets forth additional deductions that the Department must make in handling the wages paid to it for the inmates' labor. These deductions, aside from residual amounts payable towards taxes or incidentals, are in the form of percentages, and these deductions (where applicable) must be taken from "the gross earnings of the inmates engaged in prison industry service work." The only minimum rate of pay guaranteed to be paid directly to Appellant (after contractual and statutory deductions) was the contractual base rate of \$.35 per hour plus potential longevity pay increases and bonus pay, with a maximum allowable pay of \$1.00 per hour. And at least 10% of the gross amount of Appellant's earnings (\$4.00 times the number of hours worked) must be available to Appellant during his incarceration for incidentals and 10% must be held in an interest-bearing escrow account for his benefit, pursuant to Section 24-1-295(4) and (5). Also, pursuant to subsection (6), Appellant would receive any funds remaining after all deductions, including state and federal taxes owed, are taken, and these funds would have to be used to purchase incidentals pursuant to Section 24-1-295(4). Therefore, Appellant was never entitled to actually receive \$4.00 per hour for his labor, though that is the rate by which his gross wages were to be calculated for purposes of Section 24-1-295.

### **Remaining Issues on Appeal**

#### Overtime Pay

Appellant argues that he is entitled to overtime pay. However, this issue was not included in Appellant's Step 1 and Step 2 Grievances and is therefore not preserved for appellate review.<sup>12</sup> See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [factfinder] to be preserved for appellate review.").

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<sup>12</sup> Appellant did not raise this issue until he filed his Notice of Appeal with this Court on June 5, 2007. In his Reply Brief, Appellant notes that "SCDC denied overtime in its step 1 and step 2 decisions." However, in its denials of both Appellant's Step 1 and Step 2 grievances, SCDC merely stated that "to the extent" that Appellant demanded overtime wages, his request was denied. However, there was no extent to which Appellant demanded overtime wages in his Step 1 and Step 2 Grievances, as he had not raised that issue in either grievance.

Pre-judgment and Post-judgment Interest/Costs and Attorney's Fees

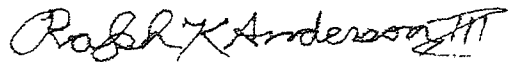
Appellant argues that he is entitled to pre-judgment and post-judgment interest on the back pay owed him, at an interest rate of 8.34 %. Appellant also argues that he is entitled to costs and attorney's fees. However, in light of the Court's ruling in this matter, Appellant is not entitled to pre-judgment or post-judgment interest on any back pay, and is also not entitled to any costs or attorney's fees.

Injunction against Further Wage Violations

Appellant argues that the Department should be enjoined against further wage violations. However, this is an appeal involving whether the Department properly denied Appellant the wages he seeks; it is not an injunction action. In fact, Appellant never raised the issue of an injunction in his Step 1 and 2 grievances or Notice of Appeal. *See Wilder Corp , supra.* Therefore, the Court will not entertain Appellant's injunction request.

ORDER

**IT IS THEREFORE ORDERED** that the Department's decision is **AFFIRMED**  
**AND IT IS SO ORDERED.**



Ralph K. Anderson, III  
Chief Administrative Law Judge

April 29, 2014  
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*

---

E. Harvin Belser Fair  
Judicial Law Clerk

April 29, 2014  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Administrative Law Judge

Dock Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP, 07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP, 07-ALJ-04-00500-AP, 07-ALJ-04-00501-AP, 07-ALJ-04-00502-AP, 07-ALJ-04-00503-AP, 07-ALJ-04-00504-AP, 07-ALJ-04-00505-AP, 07-ALJ-04-00506-AP, 07-ALJ-04-00507-AP, 07-ALJ-04-00508-AP, 07-ALJ-04-00509-AP, 07-ALJ-04-00510-AP, 07-ALJ-04-00511-AP, 07-ALJ-04-00512-AP, 07-ALJ-04-00513-AP, 07-ALJ-04-00514-AP, 07-ALJ-04-00515-AP, 07-ALJ-04-00516-AP, 07-ALJ-04-00517-AP, 07-ALJ-04-00518-AP, 07-ALJ-04-00519-AP, 07-ALJ-04-00520-AP, 07-ALJ-04-00521-AP, 07-ALJ-04-00522-AP, 07-ALJ-04-00523-AP, 07-ALJ-04-00524-AP, 07-ALJ-04-00525-AP, 07-ALJ-04-00526-AP, 07-ALJ-04-00527-AP, 07-ALJ-04-00528-AP, 07-ALJ-04-00529-AP, 07-ALJ-04-00530-AP, 07-ALJ-04-00531-AP, 07-ALJ-04-00532-AP, 07-ALJ-04-00533-AP, 07-ALJ-04-00534-AP, 07-ALJ-04-00535-AP, 07-ALJ-04-00536-AP, 07-ALJ-04-00537-AP, 07-ALJ-04-00538-AP, 07-ALJ-04-00539-AP, 07-ALJ-04-00540-AP, 07-ALJ-04-00541-AP, 07-ALJ-04-00542-AP, 07-ALJ-04-00543-AP, 07-ALJ-04-00544-AP, 07-ALJ-04-00545-AP, 07-ALJ-04-00546-AP, 07-ALJ-04-00547-AP, 07-ALJ-04-00548-AP, 07-ALJ-04-00549-IJ, 07-ALJ-04-00550-AP, 07-ALJ-04-00551-AP, 07-ALJ-04-00552-AP, 07-ALJ-04-00553-AP, 07-ALJ-04-00554-AP, 07-ALJ-04-00555-AP, 07-ALJ-04-00556-AP, 07-ALJ-04-00557-AP, 07-ALJ-04-00558-AP, 07-ALJ-04-00559-AP, 07-ALJ-04-00623-AP, 07-ALJ-04-00624-AP, 07-ALJ-04-00625-AP, 07-ALJ-04-00626-AP, 07-ALJ-04-00627-AP, 07-ALJ-04-00628-AP, 07-ALJ-04-00629-AP, 07-ALJ-04-00630-AP, 07-ALJ-04-00631-AP, 07-ALJ-04-00632-AP, 07-ALJ-04-00671-AP, 07-ALJ-04-00672-AP, 07-ALJ-04-00673-AP, 07-ALJ-04-00674-AP, 07-ALJ-04-00675-AP, 07-ALJ-04-00676-AP, 07-ALJ-04-00677-AP, 07-ALJ-04-00691-AP, 07-ALJ-04-00752-AP, 07-ALJ-04-00798-AP, 07-ALJ-04-00856-AP, 07-ALJ-04-00857-AP, 07-ALJ-04-00858-AP, 07-ALJ-04-00859-AP, 07-ALJ-04-00860-AP, 07-ALJ-04-00861-AP, 07-ALJ-04-00862-AP, 07-ALJ-04-00863-AP, 07-ALJ-04-00864-AP, 07-ALJ-04-00865-AP, 07-ALJ-04-00866-AP, 07-ALJ-04-00867-AP, 07-ALJ-04-00868-AP, 07-ALJ-04-00869-AP, 07-ALJ-04-00870-AP, 07-ALJ-04-00871-AP, 07-ALJ-04-00872-AP, 07-ALJ-04-00444-AP, 07-ALJ-04-00876-AP, 07-ALJ-04-00885-AP, 08-ALJ-04-00141-AP, 08-ALJ-04-00142-AP, 08-ALJ-04-00143-AP, 08-ALJ-04-00144-AP, 08-ALJ-04-00145-AP, 08-ALJ-04-00146-AP, 08-ALJ-04-00147-AP, 08-ALJ-04-00148-AP, 08-ALJ-04-00149-AP, 08-ALJ-04-00169-AP, 08-ALJ-04-00170-AP, 08-ALJ-04-00171-AP, 08-ALJ-04-00192-AP, 08-ALJ-04-00966-IJ, 08-ALJ-04-00967-IJ, 08-ALJ-04-00968-IJ, 08-ALJ-04-00969-IJ, 08-ALJ-04-00970-IJ, 08-ALJ-04-00971-IJ, 08-ALJ-04-00972-IJ, 08-ALJ-04-00973-IJ, 08-ALJ-04-00974-IJ, 08-ALJ-04-00975-IJ, 08-ALJ-04-00976-IJ, 08-ALJ-04-00977-IJ, 08-ALJ-04-00978-IJ, 08-ALJ-04-00979-IJ, 08-ALJ-04-00980-IJ, 08-ALJ-04-00981-IJ, 08-ALJ-04-00982-IJ, 08-ALJ-04-00983-IJ, 08-ALJ-04-00984-IJ, 08-ALJ-04-00985-IJ, 08-ALJ-04-00986-IJ, 08-ALJ-04-00987-IJ, 08-ALJ-04-00988-IJ, 08-ALJ-04-00989-IJ, 08-ALJ-04-00990-IJ, 08-ALJ-04-00991-IJ, 08-ALJ-04-00992-IJ, 08-ALJ-04-00993-IJ, 08-ALJ-04-00994-IJ, 08-ALJ-04-00995-IJ, 08-ALJ-04-00996-IJ, 08-ALJ-04-00997-IJ, 08-ALJ-04-00998-IJ, 08-ALJ-04-00999-IJ, 08-ALJ-04-01000-IJ, 08-ALJ-04-01001-IJ, 08-ALJ-

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Francis Ackerman, #266928, Malik Aljalil, #219551, Linso Allen, #269378, Michael Benninger, #264212, Fredrick Brown, #289602, Timothy Brown, #238461, Terrell Buchanon, #277262, Christopher Bush, #300690, Rudy Cassady, #238732, Sheldon Clark, #264772, Zawaski Cobb, #187136, Kamathene Cooper, #145333, Gladstone Cummings, #267450, Patrick Curtis, #175139, Quintin Daniels, #196284, Curtis Davis, #238776, Heyward Dempsey, #134171, Phillip Denney, #240678, Paul Durham, #219573, Jerome Durham, #270393, Keith Eigner, #299153, Bernard Felder, #122099, Jermaine Garriett, #191274, Fred Gatewood, #289775, Dennis Goff, #177506, Gregory Grant, #109656, Nelson Hampton, #286427, James Hartman, #219770, Gary Hayes, #263985, Michael Hood, #279897, Nikia Law, #260855, Stephen Lease, #137016, Harry Leonard, #249996, Herbert McFadden, #184297, Michael McFarland, #266870, Earl Mack, #216237, John Moultrie, #276527, Matin Muntaqim, #142282, Tony Pitts, #280579, Germaine Pringle, #250390, Gene Richardson, #93614, Dennis Richey, #233472, Ignacio Rivera, #300424, Vondell Sanders, #241308, James Sattler, #235043, Joseph Schmitz, #173987, Arthur Scott, #251957, Jerome Scott, #153381, Roosevelt Scott, #275631, Archie Simmons, #161419, Robert Smith, #199324, James Williams, #282929, Gary Bryant, #258972, Harlon Edger, #261866, Johnny Holden, #245199, Don Hughes, #256862, Michael Key, #266890, Archie Lee, #226354, Isaac Richardson, #232574, Larkland Richards, #281768, John Wojcik, #219463, James Bogan, #288111, Larry Burke, #281911, Jammie Gaymon, #208922, David Harrell, #260004, Jeff Stinson, #260047, Ricky Libby, #274681, Alain Lareau, #128014, Quentin Baker, #297868, Frank Corley, #292975, James Jackson, #267718, Quintin Linen, #238553, Thomas Miles, #246763, Chauncy Orr, #177069, Isaiah Scott, #228008, Eric Youmous, #281091, Derek Carter, #275938, Willie Hare, #256641, Ernest Miller, #235474, Robert Norris, #266101, Ronald Simmons, #267937, Samuel Simmons, #302393, William Thomas, #272501, Anthony Murphy, #295893, Anthony Murray, #237867, Johnny Hayes, #267910, Roy Morris, #288777, Daniel Dewey, #276678, Nehemiah Greene, #243339, Leroy Choice, #113990, James McFadden, #235419, Francis Prioleau, #268813, Darrell Rochester, #146731, Wilbur Jordan, #272264, Alvin Stewart, #278595, Kevin Poston, #266083, Kevin Smith, #272440, Donald Robinson, #277520, Douglas Bude, #263537, Willie Elder, #246208, Rogelio Zavala, #245106, Dennis Knight, #286981, Jacob Beach, #301270, Francis Ackerman, #266928, Darrin Miller, #259593, Edward Bryant, #255998, Sherman Austin, #300028, Michael Baylor, #265682, Taurus Bowman, #252745,

Kenneth Carter, #243538, Calvin Drummond, #236322, David Feggins, #287157, Terry Ferguson, #299080, Willie House, #257820, Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487, Stephone Simmons, #300422, Larry McClam, #282972, Tyrone Aiken, #244428, Tyrone Aiken, #248367, Frank Anderson, #282800, Ronald Brewer, #285756, Keith Brown, #295762, Pete Bryant, #242370, Michael Busques, #191961, Richard Butler, #162467, Gary Davis, #106144, Anthony English, #238474, Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores, #240563, Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham, #228235, Gary Grooms, #283860, Wayne Harlen, #245705, Johnny Hayes, #267910, Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135, Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552, Bobby Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947, Keith Kelly, #257556, Maxie Gamble, #254413, James Enriquez, #215539, Perry Deveaux, #109601, James Wells, #180458, Cedric Martino, #291396, Donald McAteer, #292961, Robert Wydman, #260331, Anthony Wright, #214007, Derrick Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears,\* #281967, Timothy Smith, #296539, David Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235846, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsden, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118... Appellants ,

v.

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

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NOTICE OF APPEAL

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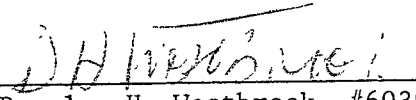
Francis Ackerman and the above named Appellants appeal the order of remand

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\* Docket No. 07-ALJ-04-00826-AP may concern an unrelated case. Also, inmate Jeffrey Spears' correct number is 281697.

of The Honorable Ralph K. Anderson, III dated June 13, 2017.\* Appellants received a copy of the order on June 15, 2017.

July 14, 2017.

  
Douglas H. Westbrook, #6039  
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(843) 853-9600  
Attorney for Appellants

Other Counsel of Record:

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Suite 200  
Columbia, SC 29201  
(803) 254-3300  
Attorney for Respondent  
S.C. Department of Corrections

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\* In inmates' petition for a writ of mandamus filed July 13, 2017, they contend the remand is probably interlocutory and not immediately appealable, based on circumstances here and Charlotte-Mecklenburg Hosp. v. DHEC 387 S.C. 265, 267, 692 S.E. 2d 894 (S.C., 2010). However, it is permissible to argue against precedent in the appellate brief (SCACR 217). Thus, it is possible the Court may distinguish Charlotte-Mecklenburg Hosp. based on other circumstances here which were not addressed in that case. Therefore, inmates attempt to appeal the remand order to preserve their rights should the Court consider the remand a final order.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Francis Ackerman, #266928, Malik )  
Aljalil, #219551, Linso Allen, #269378, )  
Michael Benninger, #264212, Fredrick )  
Brown, #289602, Timothy Brown, )  
#238461, Terrell Buchanon, #277262, )  
Christopher Buch, #200690, Rudy )  
Cassady, #238732, Sheldon Clark, )  
#264772, Zawaski Cobb, #187136, )  
Kamathene Cooper, #145333, )  
Gladstone Cummings, #267450, Patrick )  
Curtis, #175139, Quintin Daniels, )  
#196284, Curtis Davis, #238776, )  
Heyward Dempsey, #134171, Phillip )  
Denney, #240678, Paul Durham, )  
#219573, Jerome Durham, #270393, )  
Keith Eigner, #299153, Bernard Felder, )  
#122099, Jermaine Garriett, #191274, )  
Dennis Goff, #177506, Gregory Grant, )  
#109656, Nelson Hampton, #286427, )  
James Hartmant, #219770, Gary Hayes, )  
#263985, Michael Hood, #279897, )  
Nikia Law, #260855, Stephen Lease, )  
#137016, Harry Leonard, #249996, )  
Herbert McFadden, #184297, Michael )  
McFarland, #266870, Earl Mack, )  
#216237, John Moultri, #276527, Matin )  
Muntaqim, #266870, Tony Pitts, )  
#280597, Germaine Pringle, #250390, )  
Gene Richardson, #93614, Dennis )  
Richey, #233472, Ignacio Rivera, )  
#300424, Vondell Sanders, #241308, )  
James Sattler, #235043, Joseph )  
Schmitz, #173987, Arthur Scott, )  
#251957, Jerome Scott, #153381, )  
Roosevelt Scott, #275631, Archie )  
Simmons, #161419, Robert Smith, )  
#199324, James Williams, #282929, )  
Gary Bryant, #258972, Harlon Edger, )  
#261866, Johnny Holden, #245199, )  
Don Hughes, #256862, Michael Key, )  
#266890, Archie Lee, #226354, Isaac )  
Richardson, #232574, Larkland )  
Richards, #281768, John Wojcik, )

Docket No. 07-ALJ-04-0444-A-AP

**ORDER OF REMAND**

**FILED**

June 13, 2017

SC ADMIN. LAW COURT

#219463, James Bogan, #288111, Larry )  
 Burke, #281911, Jammie Gaymon, )  
 #208922, David Harrell, #260004, Jeff )  
 Stinson, #260047, Ricky Libby, )  
 #274681, Alain Lareua, #128014, )  
 Quentin Baker, #297868, Frank Corley, )  
 #292975, James Jackson, #267718, )  
 Quintin Linen, #238553, Thomas Miles, )  
 #246763, Chauncy Orr, #177069, )  
 Isaiah Scott, #228008, Eric Youmous, )  
 #281091, Derek Carter, #275938, )  
 Willie Hare, #256641, Ernest Miller, )  
 #235474, Robert Norris, #266101, )  
 Ronald Simmons, #267937, Samuel )  
 Simmons, #302393, William Thomas, )  
 #272501, Anthony Murphy, #295893, )  
 Anthony Murray, #237867, Johnny )  
 Hayes, #267910, Roy Morris, #288777, )  
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 Greene, #243339, Leroy Choice, )  
 #113990, James McFadden, #235419, )  
 Francis Prioleau, #268813, Darrell )  
 Rochester, #146731, Wilbur Jordan )  
 #292264, Alvin Stewart, #278595, )  
 Kevin Poston, #266083, Kevin Smith, )  
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 Douglas Bude, #263537, Willie Elder, )  
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 Dennis Knight, #286981, Jacob Beach, )  
 #301270, Francis Ackerman, #266928, )  
 Darrin Miller, #259593, Edward Bryant, )  
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 David Feggins, #287157, Terry )  
 Ferguson, #299080, Willie House, )  
 #257820, Peter Jenkins, #257321, Percy )  
 Martin, #270035, James Murray, )  
 #165487, Stephone Simmons, #300422, )  
 Larry McClam, #282972, Tyrone Aiken, )  
 #244428, Tyrone Aiken, #248367, )  
 Frank Anderson, #282800, Ronald )  
 Brewer, #285756, Keith Brown, )  
 #295762, Pete Bryant, #242370, )  
 Michael Busques, #191961, Richard )

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Butler, #162467, Gary Davis, #106144, )  
 Anthony English, #238474, Kerlan )  
 Etheredge, #236635, James Evans, )  
 #267837, Jose Flores, #240563, Robert )  
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 Gary Grooms, #283860, Wayne Harlan, )  
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 Steven Hickenbottom, #196263, )  
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 Thomas Carter, #249362, Thomas )  
 Butler, #257552, Bobby Williams, )  
 #261486, Ray Wells, #173651, Rodney )  
 Pressley, #177947, Keith Kelly, )  
 #257556, Maxie Gamble, #254413, )  
 James Enriquez, #215539, Perry )  
 Deveaux, # 109601, James Wells, )  
 # 180458, Cedric Martino, #291396, )  
 Donald McAteer, #292961, Robert )  
 Wydman, #260331, Anthony Wright, )  
 #214007, Derrick Williams, #272958, )  
 Kenneth White, #228409, James )  
 Trumper, #247429, Jeffrey Spears, )  
 #281697, Timothy Smith, #296539, )  
 Davis Sims, #278067, Virgil Simpson, )  
 #281888, Edward Simpson, #220017, )  
 Kenneth Simmons, #278911, George )  
 Shine, #292391, Ralph Sellers, #164295, )  
 Laron Richardson, #258786, Frank )  
 Patterson, #283098, Tony McNeil, )  
 #235846, Larry McClam, #282972, )  
 Lavanza Mack, #189340, Raymond )  
 Livingston, #277133, Nicholas )  
 Lambrose, #215080, Joseph Kelsey, )  
 #217218, Keith Eugene, no number, )  
 Chuck Jackson, #266425, James Foye, )  
 #211523, Timothy Inman, #151123, )  
 Marvin Gilbert, #273934, Demetrius )  
 Wheeling, #264976, Leon Wilson, )  
 #155867, Jeffrey Tevis, #216442, )  
 Darryel Beasley, #222388, Curtis )  
 Thompson, #266448, Baron Cobbs, )  
 #280479, James Tino, #145030, Harold )  
 Roberson, #117001, Ray Gadsen, )  
 #187527, Tony Witt, #242918, )

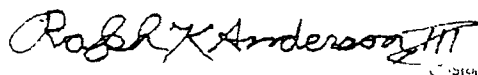
|                                           |   |
|-------------------------------------------|---|
| Jonathan Singleton, #287670, Joe          | ) |
| Pannell, #89592, Charles Graham,          | ) |
| #294453, Lazarus Brannon, #227847,        | ) |
| Darrell Williams, #219730, Wilbert        | ) |
| Mills, #244004, Howard Grant,             | ) |
| #255473, Timothy Wilson, #261971,         | ) |
| Rodney Elliott, #251337, Henry            | ) |
| Rivers, #219118,                          | ) |
|                                           | ) |
| Appellants,                               | ) |
|                                           | ) |
| vs.                                       | ) |
|                                           | ) |
| South Carolina Department of Corrections, | ) |
|                                           | ) |
| Respondent.                               | ) |

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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). The case originally came before the ALC on an appeal filed by multiple inmates (Appellants) concerning the Prevailing Wage Statute. The Court denied the appeal, stating that Appellants failed to timely file their grievances. The Court of Appeals subsequently reversed and remanded the cases for processing of the grievances. *See Ackerman, et al. v S.C. Dep't of Corr.*, 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016), *cert. denied* (May 30 2017). Accordingly,

**IT IS THEREFORE ORDERED** that these cases are remanded to the South Carolina Department of Corrections for consideration of Appellants' grievances on the merits in keeping with the Court of Appeals decisions in *Ackerman* and *Gatewood v S.C. Dep't of Corr.*, 416 S.C. 304, 785 S.E. 2d 60 (2016).

**AND IT IS SO ORDERED.**



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Ralph King Anderson, III  
Chief Administrative Law Judge

June 13, 2017  
Columbia, South Carolina

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CERTIFICATE OF SERVICE

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

E. Harvin Belser Fair

E. Harvin Belser Fair  
Judicial Law Clerk

June 13, 2017  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Administrative Law Judge

Dock Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP, 07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP, 07-ALJ-04-00500-AP, 07-ALJ-04-00501-AP, 07-ALJ-04-00502-AP, 07-ALJ-04-00503-AP, 07-ALJ-04-00504-AP, 07-ALJ-04-00505-AP, 07-ALJ-04-00506-AP, 07-ALJ-04-00507-AP, 07-ALJ-04-00508-AP, 07-ALJ-04-00509-AP, 07-ALJ-04-00510-AP, 07-ALJ-04-00511-AP, 07-ALJ-04-00512-AP, 07-ALJ-04-00513-AP, 07-ALJ-04-00514-AP, 07-ALJ-04-00515-AP, 07-ALJ-04-00516-AP, 07-ALJ-04-00517-AP, 07-ALJ-04-00518-AP, 07-ALJ-04-00519-AP, 07-ALJ-04-00520-AP, 07-ALJ-04-00521-AP, 07-ALJ-04-00522-AP, 07-ALJ-04-00523-AP, 07-ALJ-04-00524-AP, 07-ALJ-04-00525-AP, 07-ALJ-04-00526-AP, 07-ALJ-04-00527-AP, 07-ALJ-04-00528-AP, 07-ALJ-04-00529-AP, 07-ALJ-04-00530-AP, 07-ALJ-04-00531-AP, 07-ALJ-04-00532-AP, 07-ALJ-04-00533-AP, 07-ALJ-04-00534-AP, 07-ALJ-04-00535-AP, 07-ALJ-04-00536-AP, 07-ALJ-04-00537-AP, 07-ALJ-04-00538-AP, 07-ALJ-04-00539-AP, 07-ALJ-04-00540-AP, 07-ALJ-04-00541-AP, 07-ALJ-04-00542-AP, 07-ALJ-04-00543-AP, 07-ALJ-04-00544-AP, 07-ALJ-04-00545-AP, 07-ALJ-04-00546-AP, 07-ALJ-04-00547-AP, 07-ALJ-04-00548-AP, 07-ALJ-04-00549-IJ, 07-ALJ-04-00550-AP, 07-ALJ-04-00551-AP, 07-ALJ-04-00552-AP, 07-ALJ-04-00553-AP, 07-ALJ-04-00554-AP, 07-ALJ-04-00555-AP, 07-ALJ-04-00556-AP, 07-ALJ-04-00557-AP, 07-ALJ-04-00558-AP, 07-ALJ-04-00559-AP, 07-ALJ-04-00623-AP, 07-ALJ-04-00624-AP, 07-ALJ-04-00625-AP, 07-ALJ-04-00626-AP, 07-ALJ-04-00627-AP, 07-ALJ-04-00628-AP, 07-ALJ-04-00629-AP, 07-ALJ-04-00630-AP, 07-ALJ-04-00631-AP, 07-ALJ-04-00632-AP, 07-ALJ-04-00671-AP, 07-ALJ-04-00672-AP, 07-ALJ-04-00673-AP, 07-ALJ-04-00674-AP, 07-ALJ-04-00675-AP, 07-ALJ-04-00676-AP, 07-ALJ-04-00677-AP, 07-ALJ-04-00691-AP, 07-ALJ-04-00752-AP, 07-ALJ-04-00798-AP, 07-ALJ-04-00856-AP, 07-ALJ-04-00857-AP, 07-ALJ-04-00858-AP, 07-ALJ-04-00859-AP, 07-ALJ-04-00860-AP, 07-ALJ-04-00861-AP, 07-ALJ-04-00862-AP, 07-ALJ-04-00863-AP, 07-ALJ-04-00864-AP, 07-ALJ-04-00865-AP, 07-ALJ-04-00866-AP, 07-ALJ-04-00867-AP, 07-ALJ-04-00868-AP, 07-ALJ-04-00869-AP, 07-ALJ-04-00870-AP, 07-ALJ-04-00871-AP, 07-ALJ-04-00872-AP, 07-ALJ-04-00444-AP, 07-ALJ-04-00876-AP, 07-ALJ-04-00885-AP, 08-ALJ-04-00141-AP, 08-ALJ-04-00142-AP, 08-ALJ-04-00143-AP, 08-ALJ-04-00144-AP, 08-ALJ-04-00145-AP, 08-ALJ-04-00146-AP, 08-ALJ-04-00147-AP, 08-ALJ-04-00148-AP, 08-ALJ-04-00149-AP, 08-ALJ-04-00169-AP, 08-ALJ-04-00170-AP, 08-ALJ-04-00171-AP, 08-ALJ-04-00192-AP, 08-ALJ-04-00966-IJ, 08-ALJ-04-00967-IJ, 08-ALJ-04-00968-IJ, 08-ALJ-04-00969-IJ, 08-ALJ-04-00970-IJ, 08-ALJ-04-00971-IJ, 08-ALJ-04-00972-IJ, 08-ALJ-04-00973-IJ, 08-ALJ-04-00974-IJ, 08-ALJ-04-00975-IJ, 08-ALJ-04-00976-IJ, 08-ALJ-04-00977-IJ, 08-ALJ-04-00978-IJ, 08-ALJ-04-00979-IJ, 08-ALJ-04-00980-IJ, 08-ALJ-04-00981-IJ, 08-ALJ-04-00982-IJ, 08-ALJ-04-00983-IJ, 08-ALJ-04-00984-IJ, 08-ALJ-04-00985-IJ, 08-ALJ-04-00986-IJ, 08-ALJ-04-00987-IJ, 08-ALJ-04-00988-IJ, 08-ALJ-04-00989-IJ, 08-ALJ-04-00990-IJ, 08-ALJ-04-00991-IJ, 08-ALJ-04-00992-IJ, 08-ALJ-04-00993-IJ, 08-ALJ-04-00994-IJ, 08-ALJ-04-00995-IJ, 08-ALJ-04-00996-IJ, 08-ALJ-04-00997-IJ, 08-ALJ-04-00998-IJ, 08-ALJ-04-00999-IJ, 08-ALJ-04-01000-IJ, 08-ALJ-04-01001-IJ, 08-ALJ-

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Francis Ackerman, #266928, Malik Aljalil, #219551, Linso Allen, #269378, Michael Benninger, #264212, Fredrick Brown, #289602, Timothy Brown, #238461, Terrell Buchanan, #277262, Christopher Bush, #300690, Rudy Cassady, #238732, Sheldon Clark, #264772, Zawaski Cobb, #187136, Kamathene Cooper, #145333, Gladstone Cummings, #267450, Patrick Curtis, #175139, Quintin Daniels, #196284, Curtis Davis, #238776, Heyward Dempsey, #134171, Phillip Denney, #240678, Paul Durham, #219573, Jerome Durham, #270393, Keith Eigner, #299153, Bernard Felder, #122099, Jermaine Garriett, #191274, Fred Gatewood, #289775, Dennis Goff, #177506, Gregory Grant, #109656, Nelson Hampton, #286427, James Hartman, #219770, Gary Hayes, #263985, Michael Hood, #279897, Nikia Law, #260855, Stephen Lease, #137016, Harry Leonard, #249996, Herbert McFadden, #184297, Michael McFarland, #266870, Earl Mack, #216237, John Moultrie, #276527, Matin Muntaqim, #142282, Tony Pitts, #280579, Germaine Pringle, #250390, Gene Richardson, #93614, Dennis Richey, #233472, Ignacio Rivera, #300424, Vondell Sanders, #241308, James Sattler, #235043, Joseph Schmitz, #173987, Arthur Scott, #251957, Jerome Scott, #153381, Roosevelt Scott, #275631, Archie Simmons, #161419, Robert Smith, #199324, James Williams, #282929, Gary Bryant, #258972, Harlon Edger, #261866, Johnny Holden, #245199, Don Hughes, #256862, Michael Key, #266890, Archie Lee, #226354, Isaac Richardson, #232574, Larkland Richards, #281768, John Wojcik, #219463, James Bogan, #288111, Larry Burke, #281911, Jammie Gaymon, #208922, David Harrell, #260004, Jeff Stinson, #260047, Ricky Libby, #274681, Alain Lareau, #128014, Quentin Baker, #297868, Frank Corley, #292975, James Jackson, #267718, Quintin Linen, #238553, Thomas Miles, #246763, Chauncy Orr, #177069, Isaiah Scott, #228008, Eric Youmous, #281091, Derek Carter, #275938, Willie Hare, #256641, Ernest Miller, #235474, Robert Norris, #266101, Ronald Simmons, #267937, Samuel Simmons, #302393, William Thomas, #272501, Anthony Murphy, #295893, Anthony Murray, #237867, Johnny Hayes, #267910, Roy Morris, #288777, Daniel Dewey, #276678, Nehemiah Greene, #243339, Leroy Choice, #113990, James McFadden, #235419, Francis Prioleau, #268813, Darrell Rochester, #146731, Wilbur Jordan, #272264, Alvin Stewart, #278595, Kevin Poston, #266083, Kevin Smith, #272440, Donald Robinson, #277520, Douglas Bude, #263537, Willie Elder, #246208, Rogelio Zavala, #245106, Dennis Knight, #286981, Jacob Beach, #301270, Francis Ackerman, #266928, Darrin Miller, #259593, Edward Bryant, #255998, Sherman Austin, #300028, Michael Baylor, #265682, Taurus Bowman, #252745,

Kenneth Carter, #243538, Calvin Drummond, #236322, David Feggins, #287157, Terry Ferguson, #299080, Willie House, #257820, Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487, Stephone Simmons, #300422, Larry McClam, #282972, Tyrone Aiken, #244428, Tyrone Aiken, #248367, Frank Anderson, #282800, Ronald Brewer, #285756, Keith Brown, #295762, Pete Bryant, #242370, Michael Busques, #191961, Richard Butler, #162467, Gary Davis, #106144, Anthony English, #238474, Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores, #240563, Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham, #228235, Gary Grooms, #283860, Wayne Harlen, #245705, Johnny Hayes, #267910, Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135, Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552, Bobby Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947, Keith Kelly, #257556, Maxie Gamble, #254413, James Enriquez, #215539, Perry Deveau, #109601, James Wells, #180458, Cedric Martino, #291396, Donald McAteer, #292961, Robert Wydman, #260331, Anthony Wright, #214007, Derrick Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears,\* #281967, Timothy Smith, #296539, David Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235846, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsden, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118... Appellants ,

v.

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

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PROOF OF SERVICE

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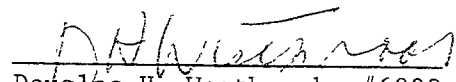
I certify that I have served Appellants' Notice of Appeal and the Adminis-

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\* Docket No. 07-ALJ-04-00826-AP may concern an unrelated case. Also, inmate Jeffrey Spears' correct number is 281697.

trative Law Court's order of June 13, 2017 on The Honorable Ralph K. Anderson, III and the S.C. Department of Corrections, by depositing copies of these documents in the U.S. Mail, postage prepaid, on July 14, 2017, addressed to: 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 Lake Summers, Esquire, Malone, Thompson, Summers & Ott, LLC, 339 Heyward St., Suite 200, Columbia, SC 29201, attorney of record for Respondent S.C. Department of Corrections.

July 14, 2017.

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

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Administrative Law Judge

Dock Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP, 07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP, 07-ALJ-04-00500-AP, 07-ALJ-04-00501-AP, 07-ALJ-04-00502-AP, 07-ALJ-04-00503-AP, 07-ALJ-04-00504-AP, 07-ALJ-04-00505-AP, 07-ALJ-04-00506-AP, 07-ALJ-04-00507-AP, 07-ALJ-04-00508-AP, 07-ALJ-04-00509-AP, 07-ALJ-04-00510-AP, 07-ALJ-04-00511-AP, 07-ALJ-04-00512-AP, 07-ALJ-04-00513-AP, 07-ALJ-04-00514-AP, 07-ALJ-04-00515-AP, 07-ALJ-04-00516-AP, 07-ALJ-04-00517-AP, 07-ALJ-04-00518-AP, 07-ALJ-04-00519-AP, 07-ALJ-04-00520-AP, 07-ALJ-04-00521-AP, 07-ALJ-04-00522-AP, 07-ALJ-04-00523-AP, 07-ALJ-04-00524-AP, 07-ALJ-04-00525-AP, 07-ALJ-04-00526-AP, 07-ALJ-04-00527-AP, 07-ALJ-04-00528-AP, 07-ALJ-04-00529-AP, 07-ALJ-04-00530-AP, 07-ALJ-04-00531-AP, 07-ALJ-04-00532-AP, 07-ALJ-04-00533-AP, 07-ALJ-04-00534-AP, 07-ALJ-04-00535-AP, 07-ALJ-04-00536-AP, 07-ALJ-04-00537-AP, 07-ALJ-04-00538-AP, 07-ALJ-04-00539-AP, 07-ALJ-04-00540-AP, 07-ALJ-04-00541-AP, 07-ALJ-04-00542-AP, 07-ALJ-04-00543-AP, 07-ALJ-04-00544-AP, 07-ALJ-04-00545-AP, 07-ALJ-04-00546-AP, 07-ALJ-04-00547-AP, 07-ALJ-04-00548-AP, 07-ALJ-04-00549-IJ, 07-ALJ-04-00550-AP, 07-ALJ-04-00551-AP, 07-ALJ-04-00552-AP, 07-ALJ-04-00553-AP, 07-ALJ-04-00554-AP, 07-ALJ-04-00555-AP, 07-ALJ-04-00556-AP, 07-ALJ-04-00557-AP, 07-ALJ-04-00558-AP, 07-ALJ-04-00559-AP, 07-ALJ-04-00623-AP, 07-ALJ-04-00624-AP, 07-ALJ-04-00625-AP, 07-ALJ-04-00626-AP, 07-ALJ-04-00627-AP, 07-ALJ-04-00628-AP, 07-ALJ-04-00629-AP, 07-ALJ-04-00630-AP, 07-ALJ-04-00631-AP, 07-ALJ-04-00632-AP, 07-ALJ-04-00671-AP, 07-ALJ-04-00672-AP, 07-ALJ-04-00673-AP, 07-ALJ-04-00674-AP, 07-ALJ-04-00675-AP, 07-ALJ-04-00676-AP, 07-ALJ-04-00677-AP, 07-ALJ-04-00691-AP, 07-ALJ-04-00752-AP, 07-ALJ-04-00798-AP, 07-ALJ-04-00856-AP, 07-ALJ-04-00857-AP, 07-ALJ-04-00858-AP, 07-ALJ-04-00859-AP, 07-ALJ-04-00860-AP, 07-ALJ-04-00861-AP, 07-ALJ-04-00862-AP, 07-ALJ-04-00863-AP, 07-ALJ-04-00864-AP, 07-ALJ-04-00865-AP, 07-ALJ-04-00866-AP, 07-ALJ-04-00867-AP, 07-ALJ-04-00868-AP, 07-ALJ-04-00869-AP, 07-ALJ-04-00870-AP, 07-ALJ-04-00871-AP, 07-ALJ-04-00872-AP, 07-ALJ-04-00444-AP, 07-ALJ-04-00876-AP, 07-ALJ-04-00885-AP, 08-ALJ-04-00141-AP, 08-ALJ-04-00142-AP, 08-ALJ-04-00143-AP, 08-ALJ-04-00144-AP, 08-ALJ-04-00145-AP, 08-ALJ-04-00146-AP, 08-ALJ-04-00147-AP, 08-ALJ-04-00148-AP, 08-ALJ-04-00149-AP, 08-ALJ-04-00169-AP, 08-ALJ-04-00170-AP, 08-ALJ-04-00171-AP, 08-ALJ-04-00192-AP, 08-ALJ-04-00966-IJ, 08-ALJ-04-00967-IJ, 08-ALJ-04-00968-IJ, 08-ALJ-04-00969-IJ, 08-ALJ-04-00970-IJ, 08-ALJ-04-00971-IJ, 08-ALJ-04-00972-IJ, 08-ALJ-04-00973-IJ, 08-ALJ-04-00974-IJ, 08-ALJ-04-00975-IJ, 08-ALJ-04-00976-IJ, 08-ALJ-04-00977-IJ, 08-ALJ-04-00978-IJ, 08-ALJ-04-00979-IJ, 08-ALJ-04-00980-IJ, 08-ALJ-04-00981-IJ, 08-ALJ-04-00982-IJ, 08-ALJ-04-00983-IJ, 08-ALJ-04-00984-IJ, 08-ALJ-04-00985-IJ, 08-ALJ-04-00986-IJ, 08-ALJ-04-00987-IJ, 08-ALJ-04-00988-IJ, 08-ALJ-04-00989-IJ, 08-ALJ-04-00990-IJ, 08-ALJ-04-00991-IJ, 08-ALJ-04-00992-IJ, 08-ALJ-04-00993-IJ, 08-ALJ-04-00994-IJ, 08-ALJ-04-00995-IJ, 08-ALJ-04-00996-IJ, 08-ALJ-04-00997-IJ, 08-ALJ-04-00998-IJ, 08-ALJ-04-00999-IJ, 08-ALJ-04-01000-IJ, 08-ALJ-04-01001-IJ, 08-ALJ-

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Kenneth Carter, #243538, Calvin Drummond, #236322, David Feggins, #287157, Terry Ferguson, #299080, Willie House, #257820, Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487, Stephone Simmons, #300422, Larry McClam, #282972, Tyrone Aiken, #244428, Tyrone Aiken, #248367, Frank Anderson, #282800, Ronald Brewer, #285756, Keith Brown, #295762, Pete Bryant, #242370, Michael Busques, #191961, Richard Butler, #162467, Gary Davis, #106144, Anthony English, #238474, Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores, #240563, Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham, #228235, Gary Grooms, #283860, Wayne Harlen, #245705, Johnny Hayes, #267910, Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135, Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552, Bobby Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947, Keith Kelly, #257556, Maxie Gamble, #254413, James Enriquez, #215539, Perry Deveaux, #109601, James Wells, #180458, Cedric Martino, #291396, Donald McAteer, #292961, Robert Wydman, #260331, Anthony Wright, #214007, Derrick Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears,\* #281967, Timothy Smith, #296539, David Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235846, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsden, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118... Appellants,

v.

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

Appellate Case No. 2017-001560

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PETITION FOR REHEARING

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Francis Ackerman, et al. (inmates) submit their Petition for Rehearing in this matter, contending the Court of Appeals overlooked the following points in its July 20, 2017 dismissal of the appeal, as more particularly described

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\* Docket No. 07-ALJ-04-00826-AP may concern an unrelated case. Also, inmate Jeffrey Spears' correct number is 281697.

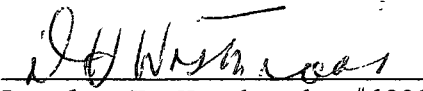
in the attached memorandum, affidavit and attachment(s).

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

(2) The subsidiary effects of the inconsistency.

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

Respectfully submitted,

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

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Administrative Law Judge

Dock Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP, 07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP, 07-ALJ-04-00500-AP, 07-ALJ-04-00501-AP, 07-ALJ-04-00502-AP, 07-ALJ-04-00503-AP, 07-ALJ-04-00504-AP, 07-ALJ-04-00505-AP, 07-ALJ-04-00506-AP, 07-ALJ-04-00507-AP, 07-ALJ-04-00508-AP, 07-ALJ-04-00509-AP, 07-ALJ-04-00510-AP, 07-ALJ-04-00511-AP, 07-ALJ-04-00512-AP, 07-ALJ-04-00513-AP, 07-ALJ-04-00514-AP, 07-ALJ-04-00515-AP, 07-ALJ-04-00516-AP, 07-ALJ-04-00517-AP, 07-ALJ-04-00518-AP, 07-ALJ-04-00519-AP, 07-ALJ-04-00520-AP, 07-ALJ-04-00521-AP, 07-ALJ-04-00522-AP, 07-ALJ-04-00523-AP, 07-ALJ-04-00524-AP, 07-ALJ-04-00525-AP, 07-ALJ-04-00526-AP, 07-ALJ-04-00527-AP, 07-ALJ-04-00528-AP, 07-ALJ-04-00529-AP, 07-ALJ-04-00530-AP, 07-ALJ-04-00531-AP, 07-ALJ-04-00532-AP, 07-ALJ-04-00533-AP, 07-ALJ-04-00534-AP, 07-ALJ-04-00535-AP, 07-ALJ-04-00536-AP, 07-ALJ-04-00537-AP, 07-ALJ-04-00538-AP, 07-ALJ-04-00539-AP, 07-ALJ-04-00540-AP, 07-ALJ-04-00541-AP, 07-ALJ-04-00542-AP, 07-ALJ-04-00543-AP, 07-ALJ-04-00544-AP, 07-ALJ-04-00545-AP, 07-ALJ-04-00546-AP, 07-ALJ-04-00547-AP, 07-ALJ-04-00548-AP, 07-ALJ-04-00549-IJ, 07-ALJ-04-00550-AP, 07-ALJ-04-00551-AP, 07-ALJ-04-00552-AP, 07-ALJ-04-00553-AP, 07-ALJ-04-00554-AP, 07-ALJ-04-00555-AP, 07-ALJ-04-00556-AP, 07-ALJ-04-00557-AP, 07-ALJ-04-00558-AP, 07-ALJ-04-00559-AP, 07-ALJ-04-00623-AP, 07-ALJ-04-00624-AP, 07-ALJ-04-00625-AP, 07-ALJ-04-00626-AP, 07-ALJ-04-00627-AP, 07-ALJ-04-00628-AP, 07-ALJ-04-00629-AP, 07-ALJ-04-00630-AP, 07-ALJ-04-00631-AP, 07-ALJ-04-00632-AP, 07-ALJ-04-00671-AP, 07-ALJ-04-00672-AP, 07-ALJ-04-00673-AP, 07-ALJ-04-00674-AP, 07-ALJ-04-00675-AP, 07-ALJ-04-00676-AP, 07-ALJ-04-00677-AP, 07-ALJ-04-00691-AP, 07-ALJ-04-00752-AP, 07-ALJ-04-00798-AP, 07-ALJ-04-00856-AP, 07-ALJ-04-00857-AP, 07-ALJ-04-00858-AP, 07-ALJ-04-00859-AP, 07-ALJ-04-00860-AP, 07-ALJ-04-00861-AP, 07-ALJ-04-00862-AP, 07-ALJ-04-00863-AP, 07-ALJ-04-00864-AP, 07-ALJ-04-00865-AP, 07-ALJ-04-00866-AP, 07-ALJ-04-00867-AP, 07-ALJ-04-00868-AP, 07-ALJ-04-00869-AP, 07-ALJ-04-00870-AP, 07-ALJ-04-00871-AP, 07-ALJ-04-00872-AP, 07-ALJ-04-00444-AP, 07-ALJ-04-00876-AP, 07-ALJ-04-00885-AP, 08-ALJ-04-00141-AP, 08-ALJ-04-00142-AP, 08-ALJ-04-00143-AP, 08-ALJ-04-00144-AP, 08-ALJ-04-00145-AP, 08-ALJ-04-00146-AP, 08-ALJ-04-00147-AP, 08-ALJ-04-00148-AP, 08-ALJ-04-00149-AP, 08-ALJ-04-00169-AP, 08-ALJ-04-00170-AP, 08-ALJ-04-00171-AP, 08-ALJ-04-00192-AP, 08-ALJ-04-00966-IJ, 08-ALJ-04-00967-IJ, 08-ALJ-04-00968-IJ, 08-ALJ-04-00969-IJ, 08-ALJ-04-00970-IJ, 08-ALJ-04-00971-IJ, 08-ALJ-04-00972-IJ, 08-ALJ-04-00973-IJ, 08-ALJ-04-00974-IJ, 08-ALJ-04-00975-IJ, 08-ALJ-04-00976-IJ, 08-ALJ-04-00977-IJ, 08-ALJ-04-00978-IJ, 08-ALJ-04-00979-IJ, 08-ALJ-04-00980-IJ, 08-ALJ-04-00981-IJ, 08-ALJ-04-00982-IJ, 08-ALJ-04-00983-IJ, 08-ALJ-04-00984-IJ, 08-ALJ-04-00985-IJ, 08-ALJ-04-00986-IJ, 08-ALJ-04-00987-IJ, 08-ALJ-04-00988-IJ, 08-ALJ-04-00989-IJ, 08-ALJ-04-00990-IJ, 08-ALJ-04-00991-IJ, 08-ALJ-04-00992-IJ, 08-ALJ-04-00993-IJ, 08-ALJ-04-00994-IJ, 08-ALJ-04-00995-IJ, 08-ALJ-04-00996-IJ, 08-ALJ-04-00997-IJ, 08-ALJ-04-00998-IJ, 08-ALJ-04-00999-IJ, 08-ALJ-04-01000-IJ, 08-ALJ-04-01001-IJ, 08-ALJ-

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v.

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

Appellate Case No. 2017-001560

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MEMORANDUM IN SUPPORT OF  
PETITION FOR REHEARING

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This appeal was filed on July 14, 2017. The parties did not brief the appeal before the Court of Appeals issued its order dismissing the appeal on July 20, 2017. The Court dismissed the appeal as interlocutory, citing Char-

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\* Docket No. 07-ALJ-04-00826-AP may concern an unrelated case. Also, inmate Jeffrey Spears' correct number is 281697.

lotte-Mecklenburg Hosp. Auth. v. SCDHEC 387 S.C. 265, 267, 692 S.E. 2d 894, 895 (S.C., 2010) ("If there is some further act which must be done by the Court prior to a determination of the rights of the parties, the order is interlocutory").

Pursuant to SCACR 221(a), inmates contend the Court of Appeals' order overlooked the point made in inmates' 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 February 10, 2016 Court of Appeals' opinion "...remand for the ALC's consideration of Inmates' grievances on the merits" (Ackerman, et al. v. SCDC 415 S.C. 412, 782 S.E. 2d 757, 762 (S.C. App., 2016)); and the ALC's June 13, 2017 remand "...to the South Carolina Department of Corrections for consideration of Appellants' grievances on the merits...". See ALC remand, attached hereto.

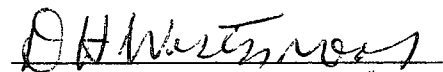
Inmates further contend the Court of Appeals overlooked the subsidiary effects of the inconsistency. The ALC remand does not enforce the Court of Appeals' opinion remand and June 2, 2017 remittitur (Muller v. Myrtle Beach Golf & Yacht Club 313 S.C. 412, 414-415, 438 S.E. 2d 248 (S.C., 1993); Am Jur 2d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

Inmates contend the Court of Appeals overlooked their entitlement to the ALC's consideration of grievances on the merits. The entitlement stems from

the above quoted Court of Appeals' remand for the ALC to consider grievances on the merits. However, the ALC's remand to SCDC for merits consideration would deprive inmates of the mode of trial to which they are entitled, and that is immediately appealable (J. Toal, Appellate Practice in South Carolina, 3d Ed., 2016, p. 155, citing Williford v. Downs 265 S.C. 319, 218 S.E. 2d 242 (1975)). Inmates contend these circumstances further distinguish Charlotte-Mecklenburg Hosp. Auth.

In conclusion, inmates request the Court to grant their petition for a rehearing, and if appropriate, allow the parties to brief these issues.

Respectfully submitted,

  
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Charleston, SC 29401  
(843) 853-9600  
Attorney for Inmates

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Administrative Law Judge

Dock Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP, 07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP, 07-ALJ-04-00500-AP, 07-ALJ-04-00501-AP, 07-ALJ-04-00502-AP, 07-ALJ-04-00503-AP, 07-ALJ-04-00504-AP, 07-ALJ-04-00505-AP, 07-ALJ-04-00506-AP, 07-ALJ-04-00507-AP, 07-ALJ-04-00508-AP, 07-ALJ-04-00509-AP, 07-ALJ-04-00510-AP, 07-ALJ-04-00511-AP, 07-ALJ-04-00512-AP, 07-ALJ-04-00513-AP, 07-ALJ-04-00514-AP, 07-ALJ-04-00515-AP, 07-ALJ-04-00516-AP, 07-ALJ-04-00517-AP, 07-ALJ-04-00518-AP, 07-ALJ-04-00519-AP, 07-ALJ-04-00520-AP, 07-ALJ-04-00521-AP, 07-ALJ-04-00522-AP, 07-ALJ-04-00523-AP, 07-ALJ-04-00524-AP, 07-ALJ-04-00525-AP, 07-ALJ-04-00526-AP, 07-ALJ-04-00527-AP, 07-ALJ-04-00528-AP, 07-ALJ-04-00529-AP, 07-ALJ-04-00530-AP, 07-ALJ-04-00531-AP, 07-ALJ-04-00532-AP, 07-ALJ-04-00533-AP, 07-ALJ-04-00534-AP, 07-ALJ-04-00535-AP, 07-ALJ-04-00536-AP, 07-ALJ-04-00537-AP, 07-ALJ-04-00538-AP, 07-ALJ-04-00539-AP, 07-ALJ-04-00540-AP, 07-ALJ-04-00541-AP, 07-ALJ-04-00542-AP, 07-ALJ-04-00543-AP, 07-ALJ-04-00544-AP, 07-ALJ-04-00545-AP, 07-ALJ-04-00546-AP, 07-ALJ-04-00547-AP, 07-ALJ-04-00548-AP, 07-ALJ-04-00549-IJ, 07-ALJ-04-00550-AP, 07-ALJ-04-00551-AP, 07-ALJ-04-00552-AP, 07-ALJ-04-00553-AP, 07-ALJ-04-00554-AP, 07-ALJ-04-00555-AP, 07-ALJ-04-00556-AP, 07-ALJ-04-00557-AP, 07-ALJ-04-00558-AP, 07-ALJ-04-00559-AP, 07-ALJ-04-00623-AP, 07-ALJ-04-00624-AP, 07-ALJ-04-00625-AP, 07-ALJ-04-00626-AP, 07-ALJ-04-00627-AP, 07-ALJ-04-00628-AP, 07-ALJ-04-00629-AP, 07-ALJ-04-00630-AP, 07-ALJ-04-00631-AP, 07-ALJ-04-00632-AP, 07-ALJ-04-00671-AP, 07-ALJ-04-00672-AP, 07-ALJ-04-00673-AP, 07-ALJ-04-00674-AP, 07-ALJ-04-00675-AP, 07-ALJ-04-00676-AP, 07-ALJ-04-00677-AP, 07-ALJ-04-00691-AP, 07-ALJ-04-00752-AP, 07-ALJ-04-00798-AP, 07-ALJ-04-00856-AP, 07-ALJ-04-00857-AP, 07-ALJ-04-00858-AP, 07-ALJ-04-00859-AP, 07-ALJ-04-00860-AP, 07-ALJ-04-00861-AP, 07-ALJ-04-00862-AP, 07-ALJ-04-00863-AP, 07-ALJ-04-00864-AP, 07-ALJ-04-00865-AP, 07-ALJ-04-00866-AP, 07-ALJ-04-00867-AP, 07-ALJ-04-00868-AP, 07-ALJ-04-00869-AP, 07-ALJ-04-00870-AP, 07-ALJ-04-00871-AP, 07-ALJ-04-00872-AP, 07-ALJ-04-00444-AP, 07-ALJ-04-00876-AP, 07-ALJ-04-00885-AP, 08-ALJ-04-00141-AP, 08-ALJ-04-00142-AP, 08-ALJ-04-00143-AP, 08-ALJ-04-00144-AP, 08-ALJ-04-00145-AP, 08-ALJ-04-00146-AP, 08-ALJ-04-00147-AP, 08-ALJ-04-00148-AP, 08-ALJ-04-00149-AP, 08-ALJ-04-00169-AP, 08-ALJ-04-00170-AP, 08-ALJ-04-00171-AP, 08-ALJ-04-00192-AP, 08-ALJ-04-00966-IJ, 08-ALJ-04-00967-IJ, 08-ALJ-04-00968-IJ, 08-ALJ-04-00969-IJ, 08-ALJ-04-00970-IJ, 08-ALJ-04-00971-IJ, 08-ALJ-04-00972-IJ, 08-ALJ-04-00973-IJ, 08-ALJ-04-00974-IJ, 08-ALJ-04-00975-IJ, 08-ALJ-04-00976-IJ, 08-ALJ-04-00977-IJ, 08-ALJ-04-00978-IJ, 08-ALJ-04-00979-IJ, 08-ALJ-04-00980-IJ, 08-ALJ-04-00981-IJ, 08-ALJ-04-00982-IJ, 08-ALJ-04-00983-IJ, 08-ALJ-04-00984-IJ, 08-ALJ-04-00985-IJ, 08-ALJ-04-00986-IJ, 08-ALJ-04-00987-IJ, 08-ALJ-04-00988-IJ, 08-ALJ-04-00989-IJ, 08-ALJ-04-00990-IJ, 08-ALJ-04-00991-IJ, 08-ALJ-04-00992-IJ, 08-ALJ-04-00993-IJ, 08-ALJ-04-00994-IJ, 08-ALJ-04-00995-IJ, 08-ALJ-04-00996-IJ, 08-ALJ-04-00997-IJ, 08-ALJ-04-00998-IJ, 08-ALJ-04-00999-IJ, 08-ALJ-04-01000-IJ, 08-ALJ-04-01001-IJ, 08-ALJ-

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v.

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

Appellate Case No. 2017-001560

AFFIDAVIT

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

1. I represent inmates in the within matter.
2. Between the time of filing inmates' notice of appeal on July 14, 2017

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\* Docket No. 07-ALJ-04-00826-AP may concern an unrelated case. Also, inmate Jeffrey Spears' correct number is 281697.

and receipt of the Court of Appeals' July 20, 2017 order dismissing the appeal,  
I did not file inmates' initial brief, and to my knowledge, neither did the Department of Corrections file its initial brief.

Further Deponent Sayeth Not.

D H Westbrook  
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Charleston, SC 29401  
(843) 853-9600  
Attorney for Inmates

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

Denise Corcoran  
Notary Public for S.C.

My Commission Expires:

3/12/2023

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Francis Ackerman, #266928, Malik )  
Aljalil, #219551, Linso Allen, #269378, )  
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#238461, Terrell Buchanon, #277262, )  
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#300424, Vondell Sanders, #241308, )  
James Sattler, #235043, Joseph )  
Schmitz, #173987, Arthur Scott, )  
#251957, Jerome Scott, #153381, )  
Roosevelt Scott, #275631, Archie )  
Simmons, #161419, Robert Smith, )  
#199324, James Williams, #282929, )  
Gary Bryant, #258972, Harlon Edger, )  
#261866, Johnny Holden, #245199, )  
Don Hughes, #256862, Michael Key, )  
#266890, Archie Lee, #226354, Isaac )  
Richardson, #232574, Larkland )  
Richards, #281768, John Wojcik, )

Docket No. 07-ALJ-04-0444-A-AP

ORDER OF REMAND

FILED

June 13, 2017

SC ADMIN LAW COURT

#219463, James Bogan, #288111, Larry )  
 Burke, #281911, Jammie Gaymon, )  
 #208922, David Harrell, #260004, Jeff )  
 Stinson, #260047, Ricky Libby, )  
 #274681, Alain Lareua, #128014, )  
 Quentin Baker, #297868, Frank Corley, )  
 #292975, James Jackson, #267718, )  
 Quintin Linen, #238553, Thomas Miles, )  
 #246763, Chauncy Orr, #177069, )  
 Isaiah Scott, #228008, Eric Youmous, )  
 #281091, Derek Carter, #275938, )  
 Willie Hare, #256641, Ernest Miller, )  
 #235474, Robert Norris, #266101, )  
 Ronald Simmons, #267937, Samuel )  
 Simmons, #302393, William Thomas, )  
 #272501, Anthony Murphy, #295893, )  
 Anthony Murray, #237867, Johnny )  
 Hayes, #267910, Roy Morris, #288777, )  
 Daniel Dewey, #276678, Nehemiah )  
 Greene, #243339, Leroy Choice, )  
 #113990, James McFadden, #235419, )  
 Francis Prioleau, #268813, Darrell )  
 Rochester, #146731, Wilbur Jordan )  
 #292264, Alvin Stewart, #278595, )  
 Kevin Poston, #266083, Kevin Smith, )  
 #272440, Donald Robinson, #277520, )  
 Douglas Bude, #263537, Willie Elder, )  
 #246208, Rogelio Zavala, #245106, )  
 Dennis Knight, #286981, Jacob Beach, )  
 #301270, Francis Ackerman, #266928, )  
 Darrin Miller, #259593, Edward Bryant, )  
 #255998, Sherman Austin, #20028, )  
 Michael Baylor, #265682, Taurus )  
 Bowman, #252745, Kenneth Carter, )  
 #243538, Calvin Drummond, #236322, )  
 David Feggins, #287157, Terry )  
 Ferguson, #299080, Willie House, )  
 #257820, Peter Jenkins, #257321, Percy )  
 Martin, #270035, James Murray, )  
 #165487, Stephone Simmons, #300422, )  
 Larry McClam, #282972, Tyrone Aiken, )  
 #244428, Tyrone Aiken, #248367, )  
 Frank Anderson, #282800, Ronald )  
 Brewer, #285756, Keith Brown, )  
 #295762, Pete Bryant, #242370, )  
 Michael Busques, #191961, Richard )

2-6

Butler, #162467, Gary Davis, #106144, )  
 Anthony English, #238474, Kerlan )  
 Etheredge, #236635, James Evans, )  
 #267837, Jose Flores, #240563, Robert )  
 Garrett, #291096, Reginald Geddis, )  
 #183851, Richard Graham, #228235, )  
 Gary Grooms, #283860, Wayne Harlan, )  
 #245705, Johnny Hayes, #267910, )  
 Steven Hickenbottom, #196263, )  
 Alfred Joyner, #260442, Donald Lyles, )  
 #296135, Henry Baker, #263398, )  
 Thomas Carter, #249362, Thomas )  
 Butler, #257552, Bobby Williams, )  
 #261486, Ray Wells, #173651. Rodney )  
 Pressley, #177947, Keith Kelly, )  
 #257556, Maxie Gamble, #254413, )  
 James Enriquez, #215539, Perry )  
 Deveaux, # 109601, James Wells, )  
 # 180458, Cedric Martino, #291396, )  
 Donald McAteer, #292961, Robert )  
 Wydman, #260331, Anthony Wright, )  
 #214007, Derrick Williams, #272958, )  
 Kenneth White, #228409, James )  
 Trumper, #247429, Jeffrey Spears, )  
 #281697, Timothy Smith, #296539, )  
 Davis Sims, #278067, Virgil Simpson, )  
 #281888, Edward Simpson, #220017, )  
 Kenneth Simmons, #278911, George )  
 Shine, #292391, Ralph Sellers, #164295. )  
 Laron Richardson, #258786, Frank )  
 Patterson, #283098, Tony McNeil, )  
 #235846, Larry McClam, #282972, )  
 Lavanza Mack, #189340, Raymond )  
 Livingston, #277133, Nicholas )  
 Lambrose, #215080, Joseph Kelsey, )  
 #217218, Keith Eugene, no number, )  
 Chuck Jackson, #266425, James Foye, )  
 #211523, Timothy Inman, #151123, )  
 Marvin Gilbert, #273934, Demetrius )  
 Wheeling, #264976, Leon Wilson, )  
 #155867, Jeffrey Tevis, #216442, )  
 Darryel Beasley, #222388, Curtis )  
 Thompson, #266448, Baron Cobbs, )  
 #280479, James Tino, #145030, Harold )  
 Roberson, #117001, Ray Gadsen, )  
 #187527, Tony Witt, #242918. )

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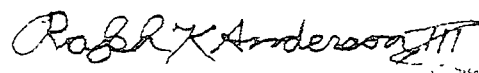
Jonathan Singleton, #287670, Joe )  
Pannell, #89592, Charles Graham, )  
#294453, Lazarus Brannon, #227847, )  
Darrell Williams, #219730, Wilbert )  
Mills, #244004, Howard Grant, )  
#255473, Timothy Wilson, #261971, )  
Rodney Elliott, #251337, Henry )  
Rivers, #219118, )  
Appellants, )  
vs. )  
South Carolina Department of Corrections, )  
Respondent. )

---

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). The case originally came before the ALC on an appeal filed by multiple inmates (Appellants) concerning the Prevailing Wage Statute. The Court denied the appeal, stating that Appellants failed to timely file their grievances. The Court of Appeals subsequently reversed and remanded the cases for processing of the grievances. *See Ackerman, et al v S.C. Dep't of Corr.*, 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016), *cert. denied* (May 30 2017). Accordingly,

**IT IS THEREFORE ORDERED** that these cases are remanded to the South Carolina Department of Corrections for consideration of Appellants' grievances on the merits in keeping with the Court of Appeals decisions in *Ackerman* and *Gatewood v S.C. Dep't of Corr.*, 416 S.C. 304, 785 S.E. 2d 60 (2016).

**AND IT IS SO ORDERED.**



Ralph King Anderson, III  
Chief Administrative Law Judge

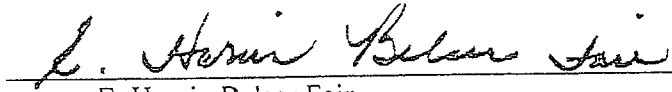
June 13, 2017  
Columbia, South Carolina

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71

CERTIFICATE OF SERVICE

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



E. Harvin Belser Fair  
Judicial Law Clerk

June 13, 2017  
Columbia, South Carolina

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Administrative Law Judge

Dock Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP, 07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP, 07-ALJ-04-00500-AP, 07-ALJ-04-00501-AP, 07-ALJ-04-00502-AP, 07-ALJ-04-00503-AP, 07-ALJ-04-00504-AP, 07-ALJ-04-00505-AP, 07-ALJ-04-00506-AP, 07-ALJ-04-00507-AP, 07-ALJ-04-00508-AP, 07-ALJ-04-00509-AP, 07-ALJ-04-00510-AP, 07-ALJ-04-00511-AP, 07-ALJ-04-00512-AP, 07-ALJ-04-00513-AP, 07-ALJ-04-00514-AP, 07-ALJ-04-00515-AP, 07-ALJ-04-00516-AP, 07-ALJ-04-00517-AP, 07-ALJ-04-00518-AP, 07-ALJ-04-00519-AP, 07-ALJ-04-00520-AP, 07-ALJ-04-00521-AP, 07-ALJ-04-00522-AP, 07-ALJ-04-00523-AP, 07-ALJ-04-00524-AP, 07-ALJ-04-00525-AP, 07-ALJ-04-00526-AP, 07-ALJ-04-00527-AP, 07-ALJ-04-00528-AP, 07-ALJ-04-00529-AP, 07-ALJ-04-00530-AP, 07-ALJ-04-00531-AP, 07-ALJ-04-00532-AP, 07-ALJ-04-00533-AP, 07-ALJ-04-00534-AP, 07-ALJ-04-00535-AP, 07-ALJ-04-00536-AP, 07-ALJ-04-00537-AP, 07-ALJ-04-00538-AP, 07-ALJ-04-00539-AP, 07-ALJ-04-00540-AP, 07-ALJ-04-00541-AP, 07-ALJ-04-00542-AP, 07-ALJ-04-00543-AP, 07-ALJ-04-00544-AP, 07-ALJ-04-00545-AP, 07-ALJ-04-00546-AP, 07-ALJ-04-00547-AP, 07-ALJ-04-00548-AP, 07-ALJ-04-00549-IJ, 07-ALJ-04-00550-AP, 07-ALJ-04-00551-AP, 07-ALJ-04-00552-AP, 07-ALJ-04-00553-AP, 07-ALJ-04-00554-AP, 07-ALJ-04-00555-AP, 07-ALJ-04-00556-AP, 07-ALJ-04-00557-AP, 07-ALJ-04-00558-AP, 07-ALJ-04-00559-AP, 07-ALJ-04-00623-AP, 07-ALJ-04-00624-AP, 07-ALJ-04-00625-AP, 07-ALJ-04-00626-AP, 07-ALJ-04-00627-AP, 07-ALJ-04-00628-AP, 07-ALJ-04-00629-AP, 07-ALJ-04-00630-AP, 07-ALJ-04-00631-AP, 07-ALJ-04-00632-AP, 07-ALJ-04-00671-AP, 07-ALJ-04-00672-AP, 07-ALJ-04-00673-AP, 07-ALJ-04-00674-AP, 07-ALJ-04-00675-AP, 07-ALJ-04-00676-AP, 07-ALJ-04-00677-AP, 07-ALJ-04-00691-AP, 07-ALJ-04-00752-AP, 07-ALJ-04-00798-AP, 07-ALJ-04-00856-AP, 07-ALJ-04-00857-AP, 07-ALJ-04-00858-AP, 07-ALJ-04-00859-AP, 07-ALJ-04-00860-AP, 07-ALJ-04-00861-AP, 07-ALJ-04-00862-AP, 07-ALJ-04-00863-AP, 07-ALJ-04-00864-AP, 07-ALJ-04-00865-AP, 07-ALJ-04-00866-AP, 07-ALJ-04-00867-AP, 07-ALJ-04-00868-AP, 07-ALJ-04-00869-AP, 07-ALJ-04-00870-AP, 07-ALJ-04-00871-AP, 07-ALJ-04-00872-AP, 07-ALJ-04-00444-AP, 07-ALJ-04-00876-AP, 07-ALJ-04-00885-AP, 08-ALJ-04-00141-AP, 08-ALJ-04-00142-AP, 08-ALJ-04-00143-AP, 08-ALJ-04-00144-AP, 08-ALJ-04-00145-AP, 08-ALJ-04-00146-AP, 08-ALJ-04-00147-AP, 08-ALJ-04-00148-AP, 08-ALJ-04-00149-AP, 08-ALJ-04-00169-AP, 08-ALJ-04-00170-AP, 08-ALJ-04-00171-AP, 08-ALJ-04-00192-AP, 08-ALJ-04-00966-IJ, 08-ALJ-04-00967-IJ, 08-ALJ-04-00968-IJ, 08-ALJ-04-00969-IJ, 08-ALJ-04-00970-IJ, 08-ALJ-04-00971-IJ, 08-ALJ-04-00972-IJ, 08-ALJ-04-00973-IJ, 08-ALJ-04-00974-IJ, 08-ALJ-04-00975-IJ, 08-ALJ-04-00976-IJ, 08-ALJ-04-00977-IJ, 08-ALJ-04-00978-IJ, 08-ALJ-04-00979-IJ, 08-ALJ-04-00980-IJ, 08-ALJ-04-00981-IJ, 08-ALJ-04-00982-IJ, 08-ALJ-04-00983-IJ, 08-ALJ-04-00984-IJ, 08-ALJ-04-00985-IJ, 08-ALJ-04-00986-IJ, 08-ALJ-04-00987-IJ, 08-ALJ-04-00988-IJ, 08-ALJ-04-00989-IJ, 08-ALJ-04-00990-IJ, 08-ALJ-04-00991-IJ, 08-ALJ-04-00992-IJ, 08-ALJ-04-00993-IJ, 08-ALJ-04-00994-IJ, 08-ALJ-04-00995-IJ, 08-ALJ-04-00996-IJ, 08-ALJ-04-00997-IJ, 08-ALJ-04-00998-IJ, 08-ALJ-04-00999-IJ, 08-ALJ-04-01000-IJ, 08-ALJ-04-01001-IJ, 08-ALJ-

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Francis Ackerman, #266928, Malik Aljalil, #219551, Linso Allen, #269378, Michael Benninger, #264212, Fredrick Brown, #289602, Timothy Brown, #238461, Terrell Buchanon, #277262, Christopher Bush, #300690, Rudy Cassady, #238732, Sheldon Clark, #264772, Zawaski Cobb, #187136, Kamathene Cooper, #145333, Gladstone Cummings, #267450, Patrick Curtis, #175139, Quintin Daniels, #196284, Curtis Davis, #238776, Heyward Dempsey, #134171, Phillip Denney, #240678, Paul Durham, #219573, Jerome Durham, #270393, Keith Eigner, #299153, Bernard Felder, #122099, Jermaine Garriett, #191274, Fred Gatewood, #289775, Dennis Goff, #177506, Gregory Grant, #109656, Nelson Hampton, #286427, James Hartman, #219770, Gary Hayes, #263985, Michael Hood, #279897, Nikia Law, #260855, Stephen Lease, #137016, Harry Leonard, #249996, Herbert McFadden, #184297, Michael McFarland, #266870, Earl Mack, #216237, John Moultrie, #276527, Matin Muntaqim, #142282, Tony Pitts, #280579, Germaine Pringle, #250390, Gene Richardson, #93614, Dennis Richey, #233472, Ignacio Rivera, #300424, Vondell Sanders, #241308, James Sattler, #235043, Joseph Schmitz, #173987, Arthur Scott, #251957, Jerome Scott, #153381, Roosevelt Scott, #275631, Archie Simmons, #161419, Robert Smith, #199324, James Williams, #282929, Gary Bryant, #258972, Harlon Edger, #261866, Johnny Holden, #245199, Don Hughes, #256862, Michael Key, #266890, Archie Lee, #226354, Isaac Richardson, #232574, Larkland Richards, #281768, John Wojcik, #219463, James Bogan, #288111, Larry Burke, #281911, Jammie Gaymon, #208922, David Harrell, #260004, Jeff Stinson, #260047, Ricky Libby, #274681, Alain Lareau, #128014, Quentin Baker, #297868, Frank Corley, #292975, James Jackson, #267718, Quintin Linen, #238553, Thomas Miles, #246763, Chauncy Orr, #177069, Isaiah Scott, #228008, Eric Youmous, #281091, Derek Carter, #275938, Willie Hare, #256641, Ernest Miller, #235474, Robert Norris, #266101, Ronald Simmons, #267937, Samuel Simmons, #302393, William Thomas, #272501, Anthony Murphy, #295893, Anthony Murray, #237867, Johnny Hayes, #267910, Roy Morris, #288777, Daniel Dewey, #276678, Nehemiah Greene, #243339, Leroy Choice, #113990, James McFadden, #235419, Francis Prioleau, #268813, Darrell Rochester, #146731, Wilbur Jordan, #272264, Alvin Stewart, #278595, Kevin Poston, #266083, Kevin Smith, #272440, Donald Robinson, #277520, Douglas Bude, #263537, Willie Elder, #246208, Rogelio Zavala, #245106, Dennis Knight, #286981, Jacob Beach, #301270, Francis Ackerman, #266928, Darrin Miller, #259593, Edward Bryant, #255998, Sherman Austin, #300028, Michael Baylor, #265682, Taurus Bowman, #252745,

Kenneth Carter, #243538, Calvin Drummond, #236322, David Feggins, #287157, Terry Ferguson, #299080, Willie House, #257820, Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487, Stephone Simmons, #300422, Larry McClam, #282972, Tyrone Aiken, #244428, Tyrone Aiken, #248367, Frank Anderson, #282800, Ronald Brewer, #285756, Keith Brown, #295762, Pete Bryant, #242370, Michael Busques, #191961, Richard Butler, #162467, Gary Davis, #106144, Anthony English, #238474, Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores, #240563, Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham, #228235, Gary Grooms, #283860, Wayne Harlen, #245705, Johnny Hayes, #267910, Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135, Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552, Bobby Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947, Keith Kelly, #257556, Maxie Gamble, #254413, James Enriquez, #215539, Perry Deveaux, #109601, James Wells, #180458, Cedric Martino, #291396, Donald McAteer, #292961, Robert Wydman, #260331, Anthony Wright, #214007, Derrick Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears, \* #281967, Timothy Smith, #296539, David Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235846, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsden, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118... Appellants,

v.

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

Appellate Case No. 2017-001560

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PROOF OF SERVICE

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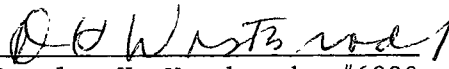
I certify that I have served Appellants' Petition for Rehearing, Memorandum, Affidavit and attachment(s) on the S.C. Department of Corrections by depositing a copy of these documents in the U.S. Mail, postage prepaid, on July

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\* Docket No. 07-ALJ-04-00826-AP may concern an unrelated case. Also, inmate Jeffrey Spears' correct number is 281697.

31, 2017, addressed to Lake Summers, Esquire, Malone, Thompson, Summers & Ott, LLC, 339 Heyward St., Suite 200, Columbia, SC 29201, attorney of record for Respondent S.C. Department of Corrections.

July 31, 2017.

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

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

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

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|                                           |   |                                     |
|-------------------------------------------|---|-------------------------------------|
| Fred Gatewood, # 289775,                  | ) | Docket No. 07-ALJ-04-0517-AP        |
|                                           | ) |                                     |
|                                           | ) |                                     |
| Appellant,                                | ) | <b>THE DEPARTMENT'S RESPONSE TO</b> |
|                                           | ) | <b>GATEWOOD'S FILINGS DATED</b>     |
| vs.                                       | ) | <b>JUNE 30, 2017 AND ITS MOTION</b> |
|                                           | ) | <b>TO STRIKE GATEWOOD'S FILINGS</b> |
| South Carolina Department of Corrections, | ) | <b>DATED JUNE 30, 2017</b>          |
|                                           | ) |                                     |
|                                           | ) |                                     |
| Respondent.                               | ) |                                     |

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The Respondent, the South Carolina Department of Corrections ["the Department"], by and through its undersigned counsel and pursuant to Rule 63 of the South Carolina Administrative Law Court ["ALC"] Rules of Procedure, respectfully provides its response to the three (3) filings dated June 30, 2017 and submitted by the Appellant, Fred Gatewood ["Gatewood"], in the above-captioned matter.

The Department also moves this Court, for the reasons articulated in its instant response, to strike Gatewood's three (3) filings dated June 30, 2017. The Department so moves, because Gatewood's three (3) filings were void ab initio.

**I. GATEWOOD'S FILINGS DATED JUNE 30, 2017**

On July 5, 2017, the Department's undersigned counsel received the following three (3) filings from Gatewood, each dated June 30, 2017:

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

## II. APPLICABLE RULES OF PROCEDURE

### A. SECTION V OF THE ALC’S RULES OF PROCEDURE

This Court’s jurisdiction over the instant matter has always been animated and continues to be animated by Section V of the ALC’s 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 v. State*, 527 S.E.2d 742 (S.C. 2000)].” [emphasis supplied].

The 2009 Revised Notes to Rule 51 provide as follows:

**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 [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].

### B. SECTION VI OF THE ALC’S RULES OF PROCEDURE

Section VI of the ALC’s Rules of Procedure is entitled “Miscellaneous Provisions,” and it encompasses Rules 67 through 73.

Rule 68 is entitled “Applicability of the South Carolina Rules of Civil Procedure and South Carolina Appellate Court Rules,” and, in its entirety, it provides as follows:

The South Carolina Rules of Civil Procedure **and the South Carolina Appellate Court Rules**, in contested cases and **appeals** respectively, **may, in the discretion of the presiding administrative law judge**, be applied to resolve questions not addressed by these rules. [emphasis supplied].

The 2015 Revised Notes to Rule 68 provide as follows:

In contested cases only, the South Carolina Rules of Civil Procedure may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these Rules. Furthermore, **the South Carolina Appellate Court Rules may be applied in like manner in appellate proceedings only**. The South Carolina Rules of Civil Procedure **and the South Carolina Appellate Court Rules do not automatically apply when invoked by a party**. Rather, the presiding judge must determine whether to apply the rules. [emphasis supplied].

**III. THIS COURT SHOULD, AT A MINIMUM, STRIKE GATEWOOD'S "MOTION AND MEMORANDUM FOR APPOINTMENT OF SPECIAL REFEREE"**

Before responding to Gatewood's three (3) filings dated June 30, 2017, the Department respectfully moves this Court to strike Gatewood's "Motion and Memorandum for Appointment of Special Referee."

As noted above, Section V of the ALC Rules of Procedure, under which this Court has always possessed jurisdiction and continues to possess jurisdiction over the instant matter, simply does not permit, or even contemplate, the appointment of a special referee as advocated by Gatewood in his motion. Gatewood conceded this point in his motion.<sup>1</sup>

As also noted above, the 2015 Revised Notes to ALC Rule of Procedure 68 provides that neither the South Carolina Rules of Civil Procedure nor the South Carolina Appellate Court Rules automatically apply when invoked by a party. As the instant matter exclusively falls under this Court's jurisdiction in its appellate capacity under Section V, only the South Carolina Appellate Court Rules may apply when invoked by a party.

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<sup>1</sup> See "Motion and Memorandum for Appointment of Special Referee," p. 2.

In his motion,<sup>2</sup> however, Gatewood asserted that “ALC Rule 68 allows [this Court] to apply the South Carolina Rules of Civil Procedure to resolve questions not raised by the ALC rules.” For clarity’s sake, Gatewood did not invoke any provision of the South Carolina Appellate Court Rules in his motion.

Gatewood’s assertion regarding the applicability of the South Carolina Rules of Civil Procedure under ALC Rule of Procedure 68 in the instant matter is obviously wrong, because it’s contrary to the 2015 Revised Notes to ALC Rule of Procedure 68.

Accordingly, the Department respectfully urges this Court to declare the entirety of Gatewood’s “Motion and Memorandum for Appointment of Special Referee” as void ab initio, and the Department moves to strike Gatewood’s motion. *See Pee Dee Health Care, P.A. v. Estate of Thompson*, 795 S.E.2d 40, 43 (S.C. Ct. App. 2016).

Importantly, Gatewood’s profound misapprehension of the procedural mechanisms which have animated and which continue to animate this Court’s jurisdiction over the instant matter fatally undermines his three (3) filings dated June 30, 2017.

#### **IV. THE DEPARTMENT’S RESPONSE(S) TO GATEWOOD’S THREE (3) FILINGS**

##### **A. THIS COURT’S JUNE 13, 2017 REMAND ORDER**

In its entirety, this Court’s June 13, 2017 “Order of Remand” provided as follows:

This matter is before [this Court] on remand from the South Carolina Court of Appeals (Court of Appeals). [Gatewood] participated in prison industries, and his case was one of 197 consolidated cases regarding wages. The Court of Appeals reversed [this Court’s] conclusion that S.C. Code § 24-1-295 (2007) applied retroactively to [Gatewood’s] 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.

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<sup>2</sup> See “Motion and Memorandum for Appointment of Special Referee,” p. 2.

Because the determination of attorney's fees encompasses several factors, including the beneficial results obtained,<sup>3</sup> this matter shall be held in abeyance pending the outcome of the grievance hearings on the wage cases arising from both this case and [*Ackerman, et al. v. S.C. Dep't of Corr.* 782 S.E.2d 757 (S.C. Ct. App. 2016)], *cert. denied* (May 30, 2017). Accordingly,

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

**B. GATEWOOD FUNDEMENTALLY MISAPPREHENDED THIS COURT'S JUNE 13, 2017 REMAND ORDER**

In the footnote at the bottom of the first page of his "Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest,"<sup>4</sup> Gatewood addressed the Court's June 13, 2017 remand order as follows:

Gatewood respectfully contends [this Court's] June 13, 2017 remand to [the Department] is not consistent with, and does not enforce, the Court of Appeals' judgment of March 9, 2016 and remittitur of June 2, 2017 requiring [this Court] 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 [this Court'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 [this Court] has jurisdiction to consider the within petition for attorney fees. [emphasis supplied].

Gatewood completely and fundamentally misapprehended this Court's remand order. This Court simply did not, as he asserted in the above-quoted footnote, explicitly or implicitly declare in its remand order that it would not exercise its jurisdiction regarding Gatewood's

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<sup>3</sup> In the footnote associated with this passage, this Court referenced S.C. Code Ann. § 15-77-300(B) (2016).

<sup>4</sup> See Petition, p. 1. On page 5, Gatewood again asserted that this Court's remand order "was null and void, and [this] Court has jurisdiction." [emphasis supplied].

entitlement to costs, attorney fees, pre-judgment, and post-judgment interest in light of the Court of Appeals' March 9, 2016 decision.

Instead, this Court declared *only* that it would hold in abeyance the determination of attorney's fees, which encompasses several factors, including the beneficial results obtained, pending the outcome of the grievance proceedings on both Gatewood's prison industries pay claims and the prison industries pay claims advanced by Gatewood's cohorts in *Ackerman*.

Likewise, the determination of any pre-judgment and post-judgment interest that may be due Gatewood cannot occur until the administrative grievance he filed with the Department under SCDC Policy Number GA-01.12 has been processed anew by the Department and, as part of its processing of his grievance, the Department has adjudicated the merits of the prison industries pay claims Gatewood articulated in his grievance in conformity with the Court of Appeals' March 9, 2016 decision.

Stated another way, this Court recognized the reality that a *final* result in Gatewood's favor does not yet exist, and, in the concluding paragraph of its June 13, 2017 remand order, it properly remanded Gatewood's grievance back to the Department, the original forum of record, for processing so that the Department may adjudicate the merits of his prison industries pay claims in conformity with *Gatewood*.

**C. THE COURT OF APPEALS' MARCH 9, 2016 DECISION DOES NOT REPRESENT A JUDGMENT IN GATEWOOD'S FAVOR**

Gatewood also misapprehended the Court of Appeals' March 9, 2016 decision in the above-quoted footnote from his Petition, because the Court of Appeals' decision does not represent a judgment in his favor.

1. **The Court of Appeals' March 9, 2016 decision resolved eight (8) issues associated with the order issued by this Court on April 29, 2014 order in the instant matter.**

The Court of Appeals' March 9, 2016 decision only resolved the following eight (8) issues associated with the order issued by this Court on April 29, 2014, by which this Court upheld the Department's denial of the prison industries pay claims Gatewood articulated in the grievance he filed with the Department under Policy GA-01.12:

1. Did this Court err in denying Gatewood's motion to supplement the record?
2. Did this Court err in applying § 24-1-295 rather than § 24-3-40 to determine the deductions from Gatewood's gross wages?
3. Did this Court err in holding that security and overhead constituted "other required deductions" for purposes of § 24-1-295?
4. Does § 24-1-295 apply retroactively to Gatewood's pre-August 1, 2007 work?
5. Did this Court err in holding that the issue of overtime was not preserved for review?
6. Did this Court err in denying Gatewood's request for pre-judgment interest, post-judgment interest, costs, and attorney's fees?
7. Did this Court err in declining to consider whether the Department should process grievances for all inmates participating "in the program?"
8. Did this Court err in declining to enjoin the Department from further wage violations?

*See Gatewood*, 785 S.E.2d at 605 (footnotes omitted).

By its March 9, 2016 decision, the Court of Appeals affirmed this Court's rulings on five (5) of the above-listed eight (8) issues (i.e. #1, #3, #5, #7, and #8), reversed on two (2) issues (i.e. #2 and #4), and remanded a single issue (i.e. #6) back to this Court.

Again, this Court, by its June 13, 2017 remand order, is only holding its consideration of issue #6 in abeyance.

In reversing on issues #2 and #4, however, the Court of Appeals did not calculate a net or even a gross back pay award for Gatewood, an award which would have constituted a judgment in Gatewood's favor.

**2. Several issues, including the "prevailing wage" applicable to Gatewood's labor in July 2007, remain to be adjudicated.**

Before such a judgment may be entered in Gatewood's favor, one essential issue, among several, remains to be adjudicated, namely the "prevailing wage," from S.C. Code Ann. § 24-3-430(D), applicable to the labor Gatewood voluntarily provided in July 2007 to the prison industries service project the Department operated at Lieber Correctional Institution.<sup>5</sup> See *Gatewood*, 785 S.E.2d at 605 – 08.

By its June 13, 2017 remand order, this Court simply recognized that Gatewood originally filed his grievance, in which he articulated his prison industries pay claims, with the Department under Policy GA-01.12. Thus, by its remand order, this Court properly recognized that the Department is the appropriate forum in which to adjudicate the "prevailing wage" during July 2007 and, by extension, the net back wage owed to Gatewood under the Court of Appeals' March 9, 2016 decision.

**3. Gatewood's "Motion and Memorandum for Appointment of Special Referee" is glaringly inconsistent with the footnote from his "Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest."**

In his "Motion and Memorandum for Appointment of Special Referee," Gatewood again assailed this Court's June 13, 2017 remand order:<sup>6</sup>

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 [the Department] for "processing" to determine the "beneficial results obtained", apparently

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<sup>5</sup> See note 7 below.

<sup>6</sup> See "Motion and Memorandum for Appointment of Special Referee," pp. 2 – 3.

meaning Gatewood's back wages due. However, if [the Department] **calculates [Gatewood's] back wages,<sup>7</sup> deductions and the like**, in effect [the Department] will be determining its own damages. In such circumstances, [the Department] would not be an impartial adjudicator as required by due process. Moreover, Gatewood submits that **[the Department's] litigation of this matter since 2004 demonstrates its "will to win" to avoid paying statutory wages, and thus, its partiality** [*Ross v. Med. Univ. of S.C.*, 492 S.E.2d 62, 72 (S.C. 1997)]. [emphasis supplied].

By the above-quoted passage from his "Motion and Memorandum for Appointment of Special Referee," Gatewood clearly acknowledged the reality that the Court of Appeals' March 9, 2016 decision did not and does not constitute a judgment in his favor.

Moreover, Gatewood's "Motion and Memorandum for Appointment of Special Referee," to the extent this Court considers it viable,<sup>8</sup> and the above-quoted footnote from his "Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest" are glaringly inconsistent.

On the one hand, Gatewood asserted in the above-quoted footnote from his Petition that by remanding the merits of his prison industries pay claims back to the Department via its June 13, 2017 order, this Court both ran afoul of the Court of Appeals' March 9, 2016 decision and exceeded its own jurisdiction. According to Gatewood, the Court of Appeals' decision requires

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<sup>7</sup> On page 5 of his "Motion and Memorandum for Appointment of Special Referee," Gatewood addressed the "prevailing wage" applicable to his July 2007 labor as follows: "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 (citation to record and footnote omitted)." The Department, in its response denying his Step 1 grievance and its final decision denying his Step 2 appeal, rejected Gatewood's reliance on the "estimates" of the "prevailing wage" offered in 2004 by Dr. Benich. Gatewood, in advocating his methodology for calculating the back pay owed to him under the Court of Appeals' March 9, 2016 decision, now claims that the "estimates" of the "prevailing wage" offered by Dr. Benich in 2004, which addressed only the years 1999, 2000, and 2001, are dispositive on the calculation of his hourly rate of pay in July 2007. The applicability of Dr. Benich's "estimates" of the "prevailing wage" in 1999, 2000, and 2001, which Dr. Benich generated in 2004, to the hourly rate at which Gatewood should have been paid in July 2007 is dubious at best. The legitimacy of Dr. Benich's 2004 "estimates" is also dubious, particularly since his "estimates" did not account for the hourly rate at which the private industry sponsor involved in the "service" project at Lieber paid the workers it employed at the facility it operated near Lieber. Thus, Dr. Benich's "estimates" may well constitute rates of pay higher than the rates of pay the private industry sponsor paid its employees who performed similar or even identical job tasks at the facility it operated near Lieber.

<sup>8</sup> See Section III above, pp. 3 – 4, and Section V below, pp. 16 – 17.

this Court itself to not only “reconsider Gatewood’s entitlement to costs, attorney fees, pre and post-judgment interest,” but to also adjudicate the merits of his prison industries pay claims.

On the other hand, Gatewood asked this Court, by his “Motion and Memorandum for Appointment of Special Referee,” to refer the adjudication of the merits of his prison industries pay claim to a special referee rather than considering the merits of his claims itself.

By way of stating the obvious, Gatewood wants to have it both ways, and the Department urges this Court to recognize the glaringly inconsistent positions Gatewood embraced between the above-quoted footnote from his Petition and his “Motion and Memorandum for Appointment of Special Referee.”

Accordingly, the Department respectfully urges this Court to deny, to the extent it considers them viable,<sup>9</sup> both Gatewood’s “Motion and Memorandum for Appointment of Special Referee” and his “Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest.”

**4. Contrary to Gatewood’s assertion, the Department is not possessed of a “will to win” that undermines its impartiality.**

As an important aside, the Department is not possessed of any purported “will to win” which undermines its impartiality on remand in any way, as Gatewood asserted in the above-quoted passage from his “Motion and Memorandum for Appointment of Special Referee.”<sup>10</sup>

As a state agency, the Department must diligently, fairly, correctly, and impartially apply the law, as well as comply with orders and decisions issued by the bench. During the litigation of both the instant matter and the consolidated matters which comprise *Ackerman*, the Department did nothing more than advocate its position that the prison industries pay claims

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<sup>9</sup> See Section III above, pp. 3 – 4, and Section V below, pp. 16 – 17.

<sup>10</sup> See note 6 above.

articulated in grievances filed in accordance with Policy GA-01.12 by Gatewood, as well as his cohorts in *Ackerman*, were subject to the fifteen-day filing deadline established in the policy.

The ALC, including this Court, upheld the Department's application of the fifteen-day filing deadline to grievances filed by inmates in which they articulated prison industries pay claims in myriad of instances, a sampling of which includes the following:

- *Bridgeman*, #130350, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00610-AP;
- *Cramer*, #251406, v. S.C. Dep't of Corr., Docket No. 08-ALJ-04-00577-AP;
- *Daughtry*, #250139, v. S.C. Dep't of Corr., Docket No. 04-ALJ-00783-AP;
- *Grant*, #81314, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-750-AP;
- *Grimmett, Jr.*, #102226, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00757-AP;
- *Larrimore*, #238126, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00470-AP;
- *Manigault*, #280550, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00756-AP;
- *McLemore*, #127966, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00023-AP;
- *Pipkin*, #283616, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00733-AP;
- *Pritchett*, #260687, v. S.C. Dep't of Corr., Docket No. 07-ALJ-04-690-AP;
- *Sapp*, #218694, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00732-AP;
- *Sumter*, #242379, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00749-AP;
- *Smiley*, #262734, v. S.C. Dep't of Corr., Docket No. 08-ALJ-04-00571-AP;
- *Williams*, #187203, vs. S.C. Dep't of Corr., Docket No. 06-ALJ-04-622-AP; and
- *Wright*, #200123, v. S.C. Dep't of Corr., 2006 WL 1430140 (ALJD Apr. 28, 2006).

Moreover, our Supreme Court in *Okeru v. S.C. Dep't of Corr.*, -- S.E.2d --, 2012 WL 10907962 (No. 2012-MO-042) (S.C. Oct. 24, 2012), albeit an unpublished per curiam decision, *affirmed* another decision by the ALC in which the ALC upheld SCDC's application of the fifteen-day filing deadline to an inmate's grievance in which the inmate articulated prison industries pay claims.

Considering the overwhelming number of instances in which the ALC and, for that matter, our Supreme Court upheld or otherwise endorsed the Department's application of the fifteen-day filing deadline to grievances in which inmates articulated prison industries pay claims, the Department's application of the fifteen-day deadline to the grievances filed by

Gatewood and his cohorts in *Ackerman* was grounded in a reasonable basis of law and fact, and it simply does not reflect a “will to win.”

In the instant matter, this Court recognized that Gatewood filed his grievance within fifteen days of the Department first paying him for his prison industries labor, and, consequentially, this Court did not find that the filing deadline from Policy GA-01.12 barred Gatewood’s grievance.

Instead, this Court considered the final decision rendered by the Department regarding the merits of the prison industries pay claims Gatewood articulated in his grievance when Gatewood appealed the Department’s final decision as contemplated in Section V of the ALC Rules of Procedure. By its April 29, 2014 order, this Court upheld the Department’s final decision on the merits of his prison industries pay claims, and Gatewood, as was his right, appealed this Court’s decision to our Court of Appeals.

Aside from the final decision it rendered regarding the merits of Gatewood’s prison industries pay claims, this Court has not considered any other final decision rendered by the Department regarding the merits of the prison industries pay claims articulated by any of Gatewood’s cohorts from *Ackerman*.

Again, all acts undertaken by the Department in defending Gatewood’s appeal of its final decision on the merits of his prison industries pay claims or in defending Gatewood’s appeal of this Court’s April 29, 2014 order upholding the Department’s final decision to our Court of Appeals were grounded in a reasonable basis of law and fact.

Consequentially, the Department, contrary to the assertions from the above-quoted passage in his “Motion and Memorandum for Appointment of Special Referee,”<sup>11</sup> is not possessed of any “will to win” that undermines its impartiality in considering anew the merits of

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<sup>11</sup> See note 6 above.

Gatewood's prison industries pay claims in conformity with *Gatewood* as directed by this Court's June 13, 2017 remand order.

**D. AS THIS COURT SITS EXCLUSIVELY IN ITS APPELLATE CAPACITY IN THE INSTANT MATTER, THE DEPARTMENT IS THE FORUM OF RECORD**

As explained above, Gatewood completely ignored the reality that the Court of Appeals' March 9, 2016 decision does not represent a judgment in his favor. As also explained above, Gatewood completely ignored the reality that under Section V of the ALC Rules of Procedure, this Court sits in its appellate capacity when reviewing the Department's final decisions.

As noted above, the 2009 Revised Notes to ALC Rule of Procedure 51 provide that the rules in Section V "are the exclusive rules of procedure used in *appeals*" by inmates from final decisions rendered by the Department, and this Court's jurisdiction to hear such appeals "is derived entirely from" our Supreme Court's decision in *Al-Shabazz*.

In *Wicker v. S.C. Dep't of Corr.*, 602 S.E.2d 56, 57 – 58 (S.C. 2004), our Supreme Court invoked *Al-Shabazz* when it recognized the reality that the ALC could review final decisions rendered by the Department concerning administrative grievances filed by inmates in accordance with Policy 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,<sup>12</sup> **we hold the [Department's] failure to pay in accordance with the statutes is reviewable by the [ALC].** [emphasis supplied].

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

In the footnote at the bottom of the first page of his "Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest,"<sup>13</sup> Gatewood invoked our Supreme Court's decision in *Muller*, 438 S.E. 2d at 249 – 250, in support of the following proposition: "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."

Bluntly stated, Gatewood failed to analyze the above-quoted proposition from *Muller* in the context in which it was uttered. More precisely, Gatewood failed to account for the reality that the circuit court was the forum of record in the controversy examined in *Muller*.

However, the *Muller* Court, in the first paragraph from the section of its decision entitled "Facts," 438 S.E.2d at 249, acknowledged the obvious:

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<sup>12</sup> In the footnote associated with this passage from *Wicker*, 602 S.E.2d at 58, our Supreme Court commented as follows: "We note that our holding today is extremely limited and is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance." [emphasis supplied].

<sup>13</sup> See note 4 above.

In 1988, [Muller] brought suit against Winters for foreclosure of a mechanic's lien and, alternatively, breach of contract and *quantum meruit*. **In Circuit Court Muller prevailed** and was awarded attorney's fees pursuant to S.C. Code Ann. § 29-5-10 (1991) (mechanic's lien statute). [emphasis supplied].

The *Muller* Court, *Id.*, continued with the relevant procedural history as follows:

Court of Appeals reversed this judgment. [*Muller v. Myrtle Beach Golf & Yacht Club*, 399 S.E.2d 430 (S.C. Ct. App.1990), *cert. dismissed* 408 S.E.2d 242 (S.C. 1991)]. The remittitur was then sent to the **Circuit Court** on August 21, 1991.

On September 17, 1991, Winters petitioned this Court for attorney's fees and costs pursuant to [South Carolina Appellate Court Rule 222]. He was advised that this Court no longer had jurisdiction since the remittitur had been sent down.

Winters then petitioned **Circuit Court** for attorney's fees and costs incurred in the trial phase, as well as the appellate and post-appellate phases of the case, pursuant to § 29-5-10. After a hearing, **Circuit Court** denied attorney's fees, holding that, absent a directive of the Supreme Court, it was without jurisdiction to act. **This appeal follows.** [emphasis supplied].

After identifying the issues on appeal, the *Muller* Court, in the first paragraph of the section of its decision entitled "Jurisdiction," 438 S.E.2d at 250, articulated the proposition Gatewood offered in the footnote from the bottom of the first page of his Petition:

The holding of Circuit Court that it was without jurisdiction to adjudicate the issue of attorney's fees was erroneous. **Once the remittitur is sent down from this Court, Circuit Court acquires jurisdiction to enforce the judgment and take any action consistent with the Supreme Court ruling.** [emphasis supplied and citations omitted].

Again, this Court did not, in its June 13, 2017 remand order, decline to exercise its jurisdiction over Gatewood's entitlement to costs, attorney fees, pre-judgment, and post-judgment interest in light of the Court of Appeals' March 9, 2016 decision; it simply held the determination of the same in abeyance.

By its June 13, 2017 order, this Court remanded the merits of Gatewood's prison industries pay claims back to the Department for processing and, by extension, adjudication. Like the circuit court in *Muller*, the Department, by and under Policy GA-01.12, is the forum of record for the adjudication of Gatewood's pay claims.

Once the Department adjudicates his pay claims and calculates the amount of any back pay to which he may be entitled in conformity with the Court of Appeals' March 9, 2016 decision, Gatewood may, as it his right, appeal the Department's final decision to this Court.

For clarity's sake, the Department also respectfully urges this Court, to the extent it may consider it viable,<sup>14</sup> to deny Gatewood's "Motion and Memorandum to Supplement the Record."

Gatewood may move for the inclusion of the materials he identified in his motion and memorandum, and which accompanied the same, while this controversy is on remand to the Department, the forum of record for the instant matter, pursuant to the Court's June 13, 2017 order. Should the Department deny any such motion he files, Gatewood may appeal the Department's denial to this Court and/or move this Court to supplement the record if and when he appeals whatever final decision the Department renders regarding his prison industries pay claims when it reconsiders them in light of *Gatewood*.

Thus, for the foregoing reasons, Gatewood's invocation of *Muller* is profoundly flawed, and, as such, it presents no legitimate grounds upon which this Court should consider any of Gatewood's three (3) filings dated June 30, 2017.

**V. THE DEPARTMENT MOVES TO STRIKE EACH OF GATEWOOD'S THREE (3) FILINGS DAED JUNE 30, 2017**

The appellant in *Muller* challenged the circuit court's denial of his petition for attorney's fees and costs by appealing it. Nothing in the procedural history discussed by our Supreme

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<sup>14</sup> See Section V immediately below.

Court in *Muller* indicates that the appellant advised the circuit court that its action was outside of its jurisdiction, null and void, and the matter before the circuit court remained as if the circuit court's denial of the petition for attorney's fees and costs had simply not occurred.

Gatewood's assertion, in the footnote on the first page of his Petition,<sup>15</sup> that this Court's June 13, 2017 remand order "was outside of [its] jurisdiction, null and void and the proceeding is as if the remand had not occurred" is absurd, and it represents nothing more than a conclusory statement lacking the support of any applicable precedent or rule of procedure.

By uttering such an assertion, Gatewood simply ignored, without any legitimate grounds, this Court's remand order as if it never existed. Unlike the appellant in *Muller*, Gatewood took no action to challenge, such as a motion to set aside, withdraw, or vacate, this Court's remand order, and, accordingly, this Court's remand order remains unfettered and in full effect.

Therefore, the Department respectfully asserts that each of Gatewood's three (3) filings dated June 30, 2017 were void ab initio, and it respectfully moves this Court to strike them. *See Channel Group, LLC, v. Parks*, 2013 WL 8541547 (S.C. Ct. App. Oct. 30, 2013) (quoting *Ness v. Eckerd Corp.*, 566 S.E.2d 193, 196 (S.C. Ct. App. 2002) and *I'On, L.L.C. v. Town of Mt. Pleasant*, 526 S.E.2d 716, 724 (S.C. 2000)). *See also Pee Dee Health Care*, supra.

## VI. CONCLUSION

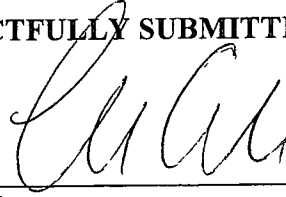
For the reasons articulated above in Sections III and V respectively, this Court should strike each of Gatewood's three (3) filings dated June 30, 2017.

Should it deny the Department's motion to strike, this Court should, for all the foregoing reasons, deny each of Gatewood's three (3) filings dated June 30, 2017.

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<sup>15</sup> See note 4 above.

RESPECTFULLY SUBMITTED,



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November 23, 2007

Lake Summers, Esquire  
Malone, Thompson, Summers, & Ott, LLC  
339 Heyward St., Ste. 200  
Columbia, SC 29201

Re: Phone Conference With Judge Anderson, Nov. 15, 2007

Dear Lake:

This will confirm our phone conference on November 15, 2007 with Judge Anderson, during which the following were ordered:

(1) November 22, 2007 SCDC deadline to send revised Exh. F to me. I did receive this November 19, and thanks.

(2) December 15, 2007 SCDC deadline to issue final decisions for the 60-70 client grievance decisions still outstanding.

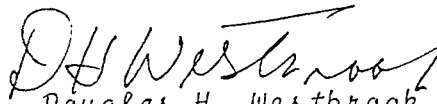
(3) December 15, 2007 SCDC deadline to process the roughly 25 client releasee grievances. These 25 or so are in addition to the 60-70 grievances in (2) above.

In our conversation following the phone conference, you agreed to confirm with SCDC sending the 25 or so releasee responses to me for handling. In this regard, I will need to know who I send responses to and the "ground rules" for processing. Please advise.

We also discussed notice posting and class releasee names and addresses (J. Goodstein's order), and you agreed to address these matters.

Thank you for your attention to these matters.

Sincerely,

  
Douglas H. Westbrook

DHW/

cc: The Honorable Ralph King Anderson, III

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

January 25, 2008

Lake Summers, Esquire  
Malone, Thompson, Summers, & Ott, LLC  
339 Heyward St., Ste. 200  
Columbia, SC 29201

Re: Conference at Lieber on January 23, 2008

Dear Lake:

Confirming our meeting with SCDC officials at Lieber on January 23, SCDC gave me copies of EWC's for each client/grievant still incarcerated, and for those released. In support of EWC's, I requested the following for each client/grievant for this work program: Form 1954's, initial agreements, and disciplinary history records. Please send these soon.

Regarding client/releasee grievances, you said SCDC would process these by January 28, 2008. This will comply with Judge Anderson's Jan. 15 order. You further indicated SCDC does not oppose sending me its responses to step 1's, and filing step 2's on their behalf. You also believed allowing me 30 days to file the step 2, instead of 5, would be satisfactory. I also asked that inmate signatures not be required on filings due to possible unreliable addresses, and you said you would look into this. Please advise.

There seems to be some inmates, incarcerated and released, who never filed a step 1 grievance. See attachment 1. After the Jan. 28 notice posting date, see below, I may need to file step 1's on their behalf. Please verify which of the names on the attachment (which came from your spreadsheet) have not filed step 1's.

For step 1's and 2's I may file, please provide name/address of the SCDC person I send them to, or whether they are to be sent to you.

I also enclose attachment 2 for my current designations for inclusion in the record. At your convenience, please send me your designations.

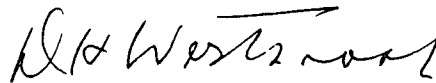
Regarding notice posting, you indicated Jan. 23rd SCDC intends to post the notice required by Judge Goodstein's order in all prisons by Jan. 28. You also indicated you would review the order and send me class releasee names/addresses. (On Jan. 23, you provided this information for client/grievants, and Ms. Hallman stated the "emergency address" is the most reliable.)

Lake Summers, Esquire  
January 25, 2008  
Page Two

Finally, you indicated the 60-70 final grievance decisions will be issued by Jan. 28, which will comply with Judge Anderson's extension order of Jan. 15.

Thank you for your attention to these matters, and I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "D. H. Westbrook", with a stylized flourish at the end.

Douglas H. Westbrook

DHW/  
Encl.

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

April 23, 2008

The Honorable Ralph King Anderson, III  
Administrative Law Court  
Edgar A. Brown Bldg., Ste. 224  
1205 Pendleton St.  
Columbia, SC 29201

Re: Grievance Appeals

Dear Judge Anderson:

I have received copies of Lake Summers' request for extension of time to May 14, 2008 to file the record in certain pro se wage grievance appeals. The stated grounds for Mr. Summers' request is our uncompleted efforts to stipulate a consolidated record in the 200 or so cases I have. He states he intends to submit the same record on appeal in the pro se cases. This is all well and good.

However, the record in my cases cannot be finalized, as I see it, until we reach a stipulation on work start/stop and grievance file dates. We've been working on this since July 2007. To reach a stipulation, it seems two things need to occur: (1) We need to get all appeals filed, otherwise we don't know whose work/file dates we're dealing with. About 116 of the 200 or so appeals have now been filed with the Administrative Law Court. The remaining 84 grievances have not, to my knowledge, even been processed by SCDC to final decision. Most of the 84 are subject to your orders to process of November 15 and December 13, 2007, and January 15, 2008; (2) In addition, I will need to verify accuracy of the proposed stipulation.

From my perspective, the key is to get all grievances processed and final decisions issued so appeals can be filed. It may be that a status conference with the court would help move things along. If the court agrees, I am available most any day this week or next.

Sincerely,

  
Douglas H. Westbrook

DHW/  
cc: Lake Summers, Esquire

DOUGLAS H. WESTBROOK  
ATTORNEY AT LAW  
23 BROAD STREET  
CHARLESTON, SOUTH CAROLINA 29401  
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September 14, 2004

Mr. Darrell Williams  
#219730  
Lieber Correctional Institution  
P.O. Box 205  
Ridgeville, SC 29472

Re: Collection of Wages Against SCDC and Williams  
Technologies, Inc.; Supplement to August 27,  
2002 Fee Agreement; Authorization to File a  
Grievance and Proceed Through ALJ and Court  
Channels

Dear Mr. Williams:

This will confirm our previous conversations concerning  
the above captioned matter.

This letter will supplement our August 27, 2002 Fee Agree-  
ment, and authorize me as class counsel in Williams, et al. v.  
SCDC, et al., Case No. 02-CP-18-134, and Darrell Williams as  
class representative, to file a grievance against SCDC for  
collection of wages, and pursue that grievance on behalf of  
the class through the Administrative Law Judge Division and  
Courts, if necessary.

My attorney fee will be one third of any amount recovered  
by the inmates by way of settlement, judgment, or otherwise,  
whether before or after suit is filed. I may ask the Court,  
in appropriate circumstances, to require the State to pay the  
attorney fees in this case pursuant to S.C. Code 15-77-300.

The attorney fee does not include any costs which may be  
incurred, which are the inmates' responsibility to pay, and  
must be paid in advance at my election.

The above described 33 1/3 % contingent fee is based on  
the gross amount recovered, before costs, and if approved by  
the Court, any statutory deductions are made.

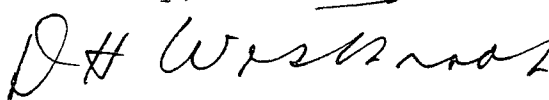
Mr. Darrell Williams  
September 14, 2004  
Page Two

This supplemental fee agreement covers handling the case at the grievance level only, plus appeal to the ALJ Division and Circuit Court. I retain the right to include any appeal beyond the Circuit Court in this contingent fee agreement, and if that occurs, the attorney fee will increase to 40% of any amount recovered, and the inmates will bear the cost of any appeal costs.

I also retain the right to withdraw from representing you and the inmates if, after further investigation and research, I determine there is questionable liability and/or damages, or there is no likely source of funds from which an award or attorney fee could be paid. In addition, if you discharge me as your lawyer, I will be entitled to compensation for my services up to the time of discharge.

If the above is agreeable, please sign (and have the below named other inmates sign) and date the blanks by your name(s), and return all sheets to me.

Sincerely,



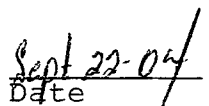
Douglas H. Westbrook

DHW/

I have read the attached supplemental fee agreement dated September 14, 2004, and understand and agree that it, along with the August 27, 2002 fee agreement, constitutes the fee agreement for this case. I further agree to make prompt payment of any expenses required. I also understand that the outcome of any litigation is uncertain, and that no promises of success in the case have been made to me.



Darrell Williams  
Class Representative

  
Signature  
Date