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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Trial Court Case No. 07-ALJ-04-0517-AP
Appellate Case No. 2014-001199

Fred Gatewood, #289775, ... Appellant,

v.

South Carolina Department of Corrections, ... Respondent.

RESPONDENT SCDC'S BRIEF

Lake E. Summers (SC Bar No. 64146)
Katherine Phillips (SC Bar No. 77840)
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300
Fax: (803)-254-0309
E-mail: summers@mtsolawfirm.com
phillips@mtsolawfirm.com

Counsel for Respondent SCDC

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STATEMENT OF ISSUES ON APPEAL

The Respondent, the South Carolina Department of Corrections ["SCDC"], respectfully submits the following Statement of Issues on Appeal:

1. Did the ALC err in denying the Appellant's Motion to Supplement the Record on Appeal with materials the Appellant identified in Sections II(A) and II(C) of his motion to the ALC?
2. Did the ALC err in holding that S.C. Code § 24-1-295, not § 24-3-40, applies to prison industries service projects?
3. Did the ALC apply § 24-1-295 retroactively to the pay the Appellant received before August 2007?
4. Did the ALC err in holding that the Appellant was never entitled to receive $4.00 per hour for the labor he provided to the prison industries service project?
5. Did the ALC err in holding that the Appellant was not entitled to overtime pay?
6. Did the ALC err in holding the Appellant was not entitled to pre-judgment and post-judgment interests, costs, and attorney's fees?
7. Did the ALC err in holding that the Appellant's appeal of SCDC's denial of his grievances did not involve other inmates?
8. Did the ALC err in holding that the Appellant's appeal of SCDC's denial of his grievances was not an injunction action?

STATEMENT OF THE CASE

This matter concerns the appeal by the Appellant of two final orders issued by the South Carolina Administrative Law Court ["ALC"]. The ALC's November 12, 2013 Order denied the Appellant's Motion to Supplement the Record on Appeal. (R. pp. 25 – 28). The ALC's April 29,

2014 Order affirmed SCDC's denial of the Appellant's grievances, which articulated various claims concerning the hourly wage SCDC paid to the Appellant while he voluntarily participated in a prison industries service project operated by SCDC at Lieber Correctional Institution ["Lieber"] in which Williams Technologies, Inc. ["WTI"], and now Caterpillar, Inc., participates as the private industry sponsor. (R. pp. 29 – 39).

The Appellant first raised some of these claims by filing a Step 1 administrative grievance with SCDC (R. p. 46) under the provisions of SCDC's Inmate Grievance System Policy, designated as SCDC Policy Number GA-01.12. (R. pp. 62 – 71). Upon SCDC's denial of his Step 1 grievance, the Appellant, as contemplated by Policy GA-01.12, filed a Step 2 appeal. Upon SCDC's denial of his Step 2 appeal (R. p. 48), which represented SCDC's final decision, the Appellant, by the Notice of Appeal dated May 30, 2007 and signed by his counsel (R. pp. 56 – 57), appealed SCDC's decision to the ALC.

The ALC consolidated the Appellant's instant appeal with approximately 200 appeals filed by the Appellant's undersigned counsel on behalf of other current and former inmates who, like the Appellant, asserted various claims concerning the hourly wage SCDC paid to them while they voluntarily participated in the prison industries *service* project operated by SCDC at Lieber.

The ALC issued its final order in Ackerman, which it styled as its "Second Amended Order," on July 26, 2012, and, by its Order, the ALC determined that while the Appellant had timely filed his Step 1 grievance, all of the other current and former inmates in Ackerman did not timely file their respective Step 1 grievances. The current and former inmates in Ackerman,

appealed the ALC's order to this Court, and, as of the date of SCDC's instant brief, their appeal is still pending.[1]

Ultimately, the ALC retained jurisdiction to determine the issue(s) associated with the "Level Three" phase of the Appellant's case, namely whether, the Appellant was entitled to a $4.00 per hour wage rate for his labor based on the 2001 budget proviso and succeeding enactments allowing SCDC to negotiate the wage to be paid for inmate labor, and the 1998 *service* work contract between SCDC and WTI (hereinafter "Contract"), in which WTI agreed to pay SCDC $4.00 per hour per inmate for work performed. (R. pp. 29 – 39).

In his Step 1 grievance dated October 16, 2004 (R. p. 46), the Appellant, like his fellow current and former inmates in Ackerman, asserted that he was entitled to back pay and a higher hourly rate of pay for the labor he voluntarily provided to the prison industries project operated at Lieber. Specifically, the Appellant asserted that he was entitled to the so-called "prevailing wage" pursuant to S.C. Code Ann. § 24-3-430(D). Section 24-3-430 is entitled "[i]nmate labor in private industry authorized; requirements and conditions." In its entirety, it provides as follows:

> No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector.

The Appellant asserted in his Step 1 grievance that, under the provisions of § 24-3-430, the proper hourly rate of pay for his labor ranged between $8.40 and $12.06 per hour. (R. p. 46). In the amendment to his grievance which he signed on February 3, 2006 (R. p. 50), the Appellant articulated the following claim which more closely resembles the main issue on appeal he presented in his brief:

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[1] As accurately recounted by the Appellant in his "Statement of the Case," the appellate court case number for Ackerman is 2012-210588. (R. p. 115).

> Since July 2001, WTI/Lieber were required to pay [the Appellant] the negotiated wage of $4/hour (Stat. at Large, No. 66, § 37.31; Exh. B, C). In fact, [SCDC's] policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Ex. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for [the Appellant] (Exh. F.)

In his "Statement of the Case,[2]" the Appellant stated that he voluntarily provided labor to the prison industries service project at Lieber "between 2004 and at least 2009." Thus, any notion that, under § 24-3-430, SCDC should have paid the Appellant an hourly rate of between $8.40 and $12.06 for his prison industries labor is, by the Appellant's implicit admission, not viable. Regarding the statutory provisions which controlled the rate at which SCDC paid him for the labor he provided to the prison industries service project at Lieber, the Appellant, in his "Statement of the Case,[3]" stated as follows:

> When [the Appellant] worked, S.C. Code § 24-3-430(D), the "prevailing wage" statute, had been replaced by a budget proviso which allowed SCDC to pay inmates a negotiated wage which could be less than the prevailing wage (Statutes at Large, No. 66, § 37.31, effective July 2001). Similar budget provisos were passed until 2007 (Darrell Williams, Class Representative, et al. v. SCDC, et al., 641 S.E.2d 885, 886 n. 2 (S.C., 2007)). In 2007, § 24-1-295 was passed and contained language that was very similar to the previous budget provisos.

However, the Appellant lacks a fundamental understanding of the origins of the applicable budget proviso, the relationship between the budget provisos, their eventual codification in § 24-1-295, and § 24-3-430(D), the types of projects to which the provisos and § 24-1-295 applied and continue to apply, and, critically, the parties to whom the term "negotiated wage" actually applied under the provisos and § 24-1-295. As demonstrated below, the Appellant's inability to grasp the plain meaning of the budget proviso and § 24-1-295 fatally

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[2] Appellant's Brief, Argument 1, p. 2.

[3] Id.

undermines his assertion, as well as his supporting analysis, that he was entitled to an hourly rate of $4.00 for the labor he voluntarily provided to the prison industries service project at Lieber.

STANDARD OF REVIEW

ALC Rule of Procedure 65 states that "[j]udicial review of any decision of the [ALC] shall be as provided in S.C. Code Ann. § 1-23-610 (2005) (as amended)." See also S.C. Dep't of Corr. v. Mitchell, 659 S.E.2d 233, 234 (S.C. Ct. App. 2008) ("Section 1-23-610 ... sets forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency.").

Thus, the provisions of § 1-23-610, specifically § 1-23-610(B), establish the standard of review applicable to this Court's consideration of the Appellant's challenge of the ALC's Orders. In its entirety, § 1-23-610(B) reads as follows:

> The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact.[4] The court of appeals may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if substantial rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the 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.

[4] See generally, Mitchell, 659 S.E.2d at 235 (The ALC must apply the standard articulated in § 1-23-380(5) when reviewing, on appeal, an administrative agency's decision.). SCDC also respectfully submits that the standards of review set forth in §§ 1-23-380(5) and 1-23-610(B) are identical if not nearly identical.

Pursuant to § 1-23-610(B), this Court "may reverse or modify the [ALC's] decision **only if** [the Appellant proves his] substantive rights [have] been prejudiced because the decision is clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion, or affected by other error of law." Mitchell, 659 S.E.2d at 234 [emphasis supplied] (reversing the ALC's order because the "order [was] devoid of any finding of evidence adduced by [the Appellant] warranting the ALC's reversal of the Department."). Moreover, the Appellant must "distinctly and specifically direct the court's attention to the errors or abuses allegedly committed by the [ALC]. [The Appellant] must include all that is necessary to enable [this Court] to decide whether the [ALC] made an erroneous or unsubstantiated ruling. A mere expression of dissatisfaction with the ruling is not sufficient.[5]" Al-Shabazz v. State, 527 S.E.2d 742, 755 (S.C. 2000) (citations omitted).

Critically, the Appellant has the burden of proving convincingly that the ALC's decision to uphold SCDC's decision is unsupported by substantial evidence. Mitchell, 659 S.E.2d at 235. Substantial evidence is relevant evidence "when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the ALC arrived at in justifying its decision." S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control, 669 S.E.2d 899, 905 (S.C. Ct. App. 2008).

The Appellant also has the burden of proving the ALC's decision is arbitrary and otherwise characterized by an abuse of discretion. Mitchell, 659 S.E.2d at 234. A decision is arbitrary if no rational basis for the conclusion exists, or when it is based on one's will and not upon any course of reasoning and exercise of judgment. A decision may also be arbitrary if it is

[5] In 2006, the General Assembly amended the Administrative Procedures Act so that a party must appeal a decision of the ALC, in which the ALC considered an appeal of an administrative agency's decision, to this Court rather than the circuit court.

made at pleasure without adequate determining principles or is governed by no fixed rules or standards. Converse Power Corp. v. S.C. Dep't of Health & Envtl. Control, 564 S.E.2d 341, 345 (S.C. Ct. App. 2002). An "abuse of discretion occurs when the judge's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the judge is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case." Ex parte Capital U-Drive-It, Inc., 630 S.E.2d 464, 467 (S.C. 2006).

ARGUMENT

I. THE ALC CORRECTLY DENIED THE APPELLANT'S MOTION TO SUPPLEMENT THE RECORD ON APPEAL

The Appellant contends that the ALC erred by "denying [his] Motion to Supplement the Record for sections [II(A) and II(C)][6] of the motion.[7]"

In its November 12, 2013 Order, the ALC ruled that the issue before the court was "whether the Appellant was entitled to a gross pay rate of $4.00 per hour" during the time he participated in the prison industries service project at SCDC. The ALC further determined that ALC Rule 58(D) applied to the Appellant's appeal of SCDC's denial of his grievance. (R. p. 26). The ALC concluded that the Appellant misconstrued ALC Rule 58(D) because the "Record on

[6] The ALC's November 12, 2013 Order denied the Appellant's Motion to Supplement the Record with the materials he identified in Sections II(A), (B), (C), and (E) of his Motion. (R. p. 26). The Appellant only contends that the ALC erred by denying his motion to include the material identified in Sections II(A) and II(C) of his motion. Accordingly, SCDC respectfully submits that the Appellant has not challenged the ALC's denial of his motion to supplement the record with the material he identified in Sections II(B) and (E).

[7] Appellant's Brief, Argument 1, pp. 6 – 9.

Appeal" discussed in Rule 58(D) consists of the record considered by SCDC not the ALC during briefing by the parties. *Compare to ALC Rule 36.* (R. pp. 25 – 28).

The Appellant has the burden to prove that the ALC's exclusion of materials from the Record on Appeal affected the ALC's ruling and prejudiced the Appellant. Snyder's Auto World, Inc. v. George Coleman Motor Co., 434 S.E.2d 310, 312 (S.C. Ct. App. 1993) ("The burden is on the appellant to show not only error, but also prejudice."). The Appellant's arguments are nothing other than his disagreement with the ALC's interpretation of ALC Rule 58, and conjecture that "SCDC must have" and "probably" considered these materials when it denied the Appellant's Step 1 and Step 2 grievances.[8] Accordingly, SCDC respectfully submits that the Appellant has articulated nothing other than a "mere expression of dissatisfaction with the ruling," which is insufficient Al-Shabazz, 527 S.E.2d at 755

The Appellant described the materials that he identified in Section II(A) of his motion, as "pay stubs and time cards.[9]" The materials the Appellant sought to include by Section II(C) of his motion consisted of additional arguments by the Appellant in support of the "Level 2" brief in Ackerman and in support of his "Level 3" brief to the ALC. The Appellant does not attempt to explain how the ALC's denial of his Motion to Supplement the Record on Appeal with these materials affected the ALC's ultimate decision that the Appellant was not entitled by contract or statute to receive the $4.00 per hour negotiated wage. Judy v. Judy, 682 S.E.2d 836, 842 (S.C. Ct. App. 2009) ("Generally, appellate courts will not set aside judgments due to insubstantial errors not affecting the result."); Jamison v. Ford Motor Co., 644 S.E.2d 755, 761 (S.C. Ct. App. 2007) ("To warrant reversal based on the admission or exclusion of evidence, the complaining

[8] Appellant's Brief, Argument 1, pp. 6 – 9.

[9] Id., p. 8.

party must prove both the error of the ruling and the resulting prejudice."). Accordingly, even if the ALC erred by denying the Appellant's motion to supplement the Record on Appeal before the ALC, the ALC's ruling is harmless error. Judy, 682 S.E.2d at 842 ("Error is harmless where it could not reasonably have affected the result of the trial.").

Therefore, this Court should affirm the ALC's November 12, 2013 Order which denied the Appellant's Motion to Supplement the Record on Appeal with materials he identified in Sections II(A) and II(C) of his motion. Alternatively, this Court should find that any error by the ALC in denying the Appellant's motion to supplement the record was harmless.

II. THE ALC CORRECTLY DETERMINED THAT S.C. CODE § 24-1-295, NOT § 24-3-40, APPLIED TO THE LABOR THE APPELLANT VOLUNTARILY PROVIDED TO THE PRISON INDUSTRIES SERVICE PROJECT OPERATED AT LIEBER

As acknowledged by the Appellant in his brief, the South Carolina General Assembly, starting in 2001, enacted a budget proviso applicable only to prison industries *service* projects operated by SCDC, such as the service project it operated at Lieber in which WTI originally participated, and now Caterpillar, Inc. participates as the private industry sponsor. In its entirety, the first proviso, which became effective July 1, 2001, stated as follows:

> **37.31.** (CORR: Prison Industry **Service** Contracts) The Director of the Department of Corrections may enter into contracts with private sector entities that would allow for inmate labor to be provided for prison industry **service** work. The use of such inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. **Service** work is defined as any work such as repair, replacement of original manufactured items, packaging, sorting, 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 such wages may be less than the prevailing wage for work of a similar nature in the private sector.** [emphasis supplied].

2001 – 2002 General Appropriations Bill, H. 3687, Section 37 – No. 4 – [SCDC] (June 21, 2001).

Contrary to the description provided by the Appellant in his "Statement of the Case," the above-quoted proviso did not amend § 24-3-430 in any fashion whatsoever.[10] The proviso represented an enactment by the legislature to address only prison industries *service* projects, and, accordingly, the rate(s) at which SCDC paid inmates who voluntarily participated in Prison Industries Enhancement Certification ["PIECP"] projects it operated at various other facilities, under the provisions of § 24-3-315, § 24-3-410, and, of course, § 24-3-430, were not impacted at all by the General Assembly's enactment of the 2001 budget proviso.[11]

The General Assembly enacted similar, if not identical, budget provisos each year until it enacted S.C. Code Ann. § 24-1-295, effective August 1, 2007. *See* Prison Industries Act, Act No. 68, 117th Session (June 18, 2007). In relevant part, § 24-1-295 provides as follows:

> The Director of [SCDC] 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**. However, the Director of the Department of Corrections shall deduct the following from the gross earnings of the inmates engaged in prison industry service work in addition to any other required deductions: [emphasis supplied].

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[10] See R. p. 114.

[11] The types of projects operated by SCDC in Adkins v. S.C. Dep't of Corr., 602 S.E.2d 51 (S.C. 2004) and Wicker v. S.C. Dep't of Corr., 602 S.E.2d 56 (S.C. 2004) differed from the service project operated by SCDC at Lieber, and, therefore, the budget proviso discussed above did not and does not apply to the hourly rates of pay associated with these projects.

"The cardinal rule of statutory construction is for the Court to ascertain and effectuate the intent of the legislature." Wade v. Berkeley Cnty., 559 S.E.2d 586, 588 (S.C. 2002). The first question a court must consider is whether the statute's meaning is "clear on its face." Id. "If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." Id. (quoting Paschal v. State Election Comm'n, 454 S.E.2d 890, 892 (S.C. 1995)). See also Ward v. West Oil Co., Inc., 692 S.E.2d 516, 519 (S.C. 2010) (same). "The text of the statute is considered the best evidence of the legislative intent." Wigfall v. Tideland Utilities, Inc., 580 S.E.2d 100, 105 (S.C. 2003). If a statute's language is ambiguous, the court must construe the terms of the statute. Wade, 559 S.E.2d at 588. Furthermore, "the court should not consider the particular clause being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law." State v. Prince, 517 S.E.2d 229, 232 (S.C. Ct. App. 1999).

The language of the applicable budget provisos, which the General Assembly ultimately codified in § 24-1-295, is clear and unambiguous: SCDC may "negotiate the wage to be paid for inmate labor under prison industry *service* work contracts ... and these wages may be less than the prevailing wage." [emphasis supplied]. The Appellant does not dispute this clear and unambiguous language.

Absolutely nothing in the either the budget provisos nor § 24-1-295 mandate any specific wage or wage range that SCDC must pay inmates, including the Appellant, who voluntarily participate in prison industries *service* projects, such as the project operated at Lieber.

The General Assembly set neither a floor nor a ceiling for the hourly inmate labor rate that SCDC may negotiate with the private industry sponsor in all such prison industry *service*

work contracts. As shown further below, the hourly rate of pay that SCDC pays individual inmates for the labor they voluntarily provide to such service projects *was included* in the hourly inmate labor rate that SCDC negotiated with WTI in the 1998 Contract.

Consequently, the Appellant's claim that the budget provisos and/or the provisions of § 24-1-295 required SCDC to pay him $4.00 per hour for the labor he voluntarily provided to the service project operated at Lieber is completely unsupported by the clear and unambiguous text of the budget provisos and § 24-1-295. Stated plainly, just because the hourly inmate labor rate that SCDC charged WTI for effectively leasing the inmates' labor equaled $4.00, which is less than the rather purported "prevailing wage" of between $8.40 and $12.06 that the Appellant and his cohorts outlandishly claimed in their Step 1 grievances, does not mean that SCDC was required to pay the individual inmates who voluntarily participated in the service project at Lieber at the rate of $4.00 per hour.

The Appellant further contends that our Supreme Court in Torrence, et al. v. SCDC, et al., 646 S.E.2d 866 (S.C. 2007) and Darrell Williams, Class Representative, et al. v. SCDC, et al., 641 S.E.2d 885, n. 2 (S.C., 2007) held that all deductions from inmate wages are governed by § 24-3-40.[12] In his argument, however, the Appellant fails to accept that the prison industries project at issue in Torrence was a PIECP project, not a service project, as explained above. As accurately explained by the ALC in its April 29, 2014 Order, § 24-3-40 does not apply to this case because § 24-3-40 applies to PIECP projects, not service projects. Section 24-1-295, not § 24-3-40 applies, to *service* projects, like the one the Appellant participated in at Lieber. (R. p. 33 n. 6).

[12] See R. pp. 123 – 124.

Moreover, the sole issue in Williams was whether the inmates could maintain a private right of action under the South Carolina Payment of Wages Act. Williams, 641 S.E.2d at 886. Ultimately, the court held that inmates could not. Id. at 888. The court cited § 24-3-40 as evidence of the legislature's intent as to the entity responsible for paying inmate wages. The Williams Court did not consider whether § 24-3-40 applied to service projects. Id. at 887. Moreover, Williams did not discuss or distinguish between PIECP projects and service projects.

Critically, the legislature had not enacted § 24-1-295 when our Supreme Court issued its decisions in Torrence and Williams. More importantly, if § 24-3-40 applies to inmates wages in service projects *and* PIECP projects, as advocated by the Appellant, then § 24-1-295 would have absolutely no meaning. Such an absurd result is contrary to the cardinal rules of statutory construction, which is to ascertain and effectuate the intent of the legislature. Grier v. AMISUB OF S.C., Inc., 725 S.E.2d 693, 695 (S.C. 2012).

Accordingly, this Court should affirm the ALC's ruling that § 24-1-295, not § 24-3-40, applies to service projects, such as the project in which the Appellant participated in at Lieber.

III. THE ALC DID NOT APPLY § 24-1-295 RETROACTIVELY TO THE APPELLANT'S PRE-AUGUST 2007 WORK

The Appellant contends that the ALC erred by holding that § 24-1-295 governed deductions from the Appellant's pre-August 2007 work,[13] and by purportedly doing so, the ALC violated the Appellant's due process rights[14] and violated the South Carolina Constitution by "impair[ing] the obligation of contracts.[15]"

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[13] Appellant's Brief, Argument 3, pp. 15 – 16.

[14] Id., Argument 4, pp. 16 – 18.

[15] Id., Argument 5, pp. 18 – 21. SCDC respectfully responds to Appellant's arguments 3 – 5 collectively. See also Section IV below.

SCDC respectfully submits that the Appellant did not raise these arguments before the ALC and the ALC did not rule of these arguments in its April 29, 2014 Order. Accordingly, the Appellant did not preserve these arguments for appellate review and this Court should dismiss the Appellant's arguments 3 – 5 in their entirety. Doe v. Roe, 631 S.E.2d 317, 330 (S.C. Ct. App. 2006) ("An issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

Even if the Appellant preserved these arguments for appellate review, the ALC did not apply § 24-1-295 retroactively to the labor the Appellant voluntarily provided to the prison industries service project before § 24-1-295 was enacted in August 2007.

Before § 24-1-295 was enacted in August 2007, no statute mandated SCDC to deduct monies from an inmate's wages that he received due to his voluntary participation in the prison industries service project. However, before the legislature enacted § 24-1-295, SCDC entered into the 1998 Contract with WTI, which required SCDC to deduct security and overhead expenses from the $4.00 negotiated wage it invoiced the private industry sponsor. The ALC recognized this distinction. Specifically, the ALC observed that "SCDC was required by the terms of the 1998 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...'" (R. p. 36). Thus, the ALC concluded that "security costs and overhead were contractually required deductions," before § 24-1-295 was enacted. (R. p. 36).

Accordingly, the ALC did not apply § 24-1-295 retroactively to the Appellant's Pre-August 2007 labor, and this Court should affirm the ALC's ruling that SCDC was required by contract, not statute, to deduct security and overhead costs from the wage SCDC negotiated with WTI before § 24-1-295 was enacted. Moreover, because the ALC did not apply § 24-1-295

retroactively to the Appellant's wages before August 2007, this Court should conclude that the ALC's Order did not violate the Appellant's due process rights or violate the South Carolina's Constitution related to obligation of contracts.

IV. THE ALC CORRECTLY DETERMINED THAT THE APPELLANT WAS NEVER ENTITLED TO RECEIVE $4.00 PER HOUR FOR THE LABOR HE VOLUNTARILY PROVIDED TO THE PRISON INDUSTRIES SERVICE PROJECT

The Appellant contends that the ALC erred by concluding that SCDC was contractually required to deduct security and overhead costs and those deductions were "other required deductions" under § 24-1-295. (R. pp. 32 – 37). The Appellant contends that, pursuant to the 1998 Contract, security and overhead costs were "at SCDC's expense.[16]"

SCDC respectfully submits that the clear and unambiguous terms of the 1998 Contract required SCDC to deduct security and overhead expenses from the $4.00 negotiated wage it invoiced the private industry sponsor, before and after § 24-1-295 was enacted and irrespective of the other required deductions language from § 24-1-295.

A. Applicable Provisions of the 1998 Contract

1. The Parties to the 1998 Contract

On or about September 30, 1998, SCDC entered into a 10-year contract with WTI to establish the prison industries service project at Lieber. (R. pp. 72 – 87). The Contract clearly identifies the parties as follows (R. p. 73):

> THE AGREEMENT is entered into this 30th day of September, 1998 , by and between the **South Carolina Department of Corrections** (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and **Williams Technologies, Inc.,** (hereinafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman. [emphasis supplied].

[16] Appellant's Brief, Argument 6, pp. 21 – 28. See also Id., Argument 5, pp. 18 – 21. SCDC respectfully responds to Appellant's arguments 5 and 6 collectively.

2. The Purpose of the 1998 Contract

The Contract's purpose was "to fulfill the intent of Section 24-3-310.[17]" (R. p. 73). Section 24-3-310, entitled "Declaration of Intent," provides as follows:

> Since the means now provided for the employment of convict labor is inadequate to furnish a sufficient number of convicts with employment it is the intent of this article to:
>
> (1) further provide more adequate, regular, and suitable employment for the convicts of this State, consistent with proper penal purposes;
>
> (2) further utilize the labor of convicts for self-maintenance and for reimbursing this State for expenses incurred by reason of their crimes and imprisonment;
>
> (3) effect the requisitioning and disbursement of prison products directly through established state authorities with no possibility of private profits therefrom; and
>
> (4) provide prison industry projects designed to place inmates in a realistic working and training environment in which they are able to acquire marketable skills and to make financial payments for restitution to their victims, for support of their families, and for the support of themselves in the institution.

3. The Contract's "Bullet Sheet"

Along with the Contract itself, the Record reflects a "bullet sheet" which summarizes the Contract's key points.[18] Entitled "Williams Technology Transmissions Service Contract" (R. p. 72), it states the following "Wage Rate:" "$4.00 per hour/per inmate - $.35/hr base for inmates."

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[17] The General Assembly amended § 24-3-310 effective June 11, 2010. The amendment appears only to have substituted the term "convict" with the term "inmate." *See* Local Detention Facility Mutual Aid and Assistance Act, Act No. 237 (2010).

[18] The term "bullet sheet" appears in the bottom left corner of the document. (R. p. 72).

4. Section 3.2 of the Contract

Section 3.2 is entitled "Duties of SCDC," and, in relevant part, Section 3.2 provides as follows (R. p. 77):

> 1. Inmate Laborers: [SCDC] will use its best efforts to provide a stable and available work force of inmates, which shall fulfill [WTI's] reasonable manpower requests.
>
> 2. Screening of Potential Inmate Laborers: Subject to Section 3.1,[19] [SCDC] will pre-screen, interview and select inmates according to the job descriptions submitted, which shall specify performance criteria for each job.
>
> ...
>
> 4. Security: **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.
>
> 5. Training of [WTI's] Staff: [SCDC] shall train [WTI's] civilian staff in institutional operational matters.
>
> 6. Management and Supervision: SCDC will provide management and supervision of the inmates for all phases of the work. [emphasis supplied].

5. Section 3.3 of the Contract

Section 3.3 is entitled "Mutual Duties of the Parties," and, in relevant part, it provides as follows (R. p. 78):

> 1. Payment for Services: [WTI] agrees to pay [SCDC] **$4.00 per hour per inmate** for work performed including training hours and hours in excess of the inmate's normal shift. **[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.** No compensation will be paid for time not worked. ....
>
> Thirty (30) days prior to each anniversary date of this agreement, [SCDC] and [WTI] may negotiate an increase in the per hour rate paid by [WTI] to [SCDC]. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. **It is the intent of the parties**

[19] Section 3.1 sets forth WTI's duties with respect to the Contract. (R. pp. 76 – 77).

that such increase shall only reflect [SCDC's] increased cost of prison overhead.

[WTI] and [SCDC] may mutually agree upon a bonus plan for inmates based on productivity and quality control, such bonuses will be paid in its entirety by [WTI] to [SCDC] for distribution to inmates. [emphasis supplied].

B. Applicable Legal Standard for Interpreting the Contract

"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 Investments, LLC, 688 S.E.2d 597, 600 (S.C. Ct. App. 2010) (quoting McGill v. Moore, 672 S.E.2d 571, 574 (S.C. 2009)). The court "must first look at the language of the contract to determine the intentions of the parties." C.A.N. Enters, Inc. v. S. Carolina Health & Human Servs. Fin. Comm'n, 373 S.E.2d 584, 586 (S.C. 1988). The contract must be construed as a whole. Madden, 688 S.E.2d at 600. If the contract's language is unambiguous, the language alone will determine the terms of the contract. If, however, the contract's language is ambiguous, the court must determine the intention of the parties based on the evidence presented. "A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation." *Id.* "Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties.[20]" Wallace v. Day, 700 S.E.2d 446, 449 (S.C. Ct. App. 2010) (quoting S.C. Dep't of Natural Res. v. Town of McClellanville, 550 S.E.2d 299, 303 (S.C.2001)).

[20] SCDC respectfully submits that the Appellant was not a party to the contract between WTI and SCDC. Consequently, the Appellant cannot produce any evidence of the intent of the "parties." *Compare* Touchberry v. City of Florence, 367 S.E.2d 149, 150 (S.C. 1988) ("A third-party beneficiary is a party that the contracting parties intend to directly benefit.") *with* Adkins v. S.C. Dep't of Corr., 602 S.E.2d 51, 54 (S.C. 2004) (holding that the prevailing wage statutes were not enacted for the special benefits of inmates) and Williams v. S.C. Dep't of Corr., 641 S.E.2d 885, 888 (S.C. 2007) (citing Adkins).

"Common 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. Enterps., 373 S.E.2d at 586 (citing Farr v. Duke Power Co., 218 S.E.2d 431, 434 (S.C. 1975)).

C. Application of the Applicable Legal Standard to the Contract

As reflected above, the clear and unambiguous terms of Section 3.2 of the Contract require SCDC to screen potential inmates, to provide security for the inmates and WTI employees, to train WTI's staff, and to provide management and supervision of the inmates for all phases of work. (R. pp. 77 – 78).

Section 3.3, subsection 1 of the Contract, which is entitled "Payment for Services," is also clear and unambiguous. (R. p. 78). Specifically, this section required WTI to pay SCDC a flat rate of $4.00 per inmate labor hour, from which SCDC was required to pay the inmates voluntarily participating in the project, *as well as* cover security costs, cover SCDC's overhead attributable to prison industries, including applicable taxes and payroll deductions, and cover the costs associated with the health, welfare and safety of the inmates participating in the project. The ALC agreed that SCDC was contractually obligated to pay these expenses out of the $4.00 per hour wage that SCDC negotiated with the private industry sponsor. (R. p. 36).

Furthermore, the Contract's "bullet sheet," combined with Subsection 6 of Section 3.1 of the Contract (R. p. 77), clearly reflects that SCDC invoiced WTI at the rate of $4.00 per inmate labor hour and, critically, that SCDC paid the inmates who voluntarily participated in the service project at Lieber at the base rate of $0.35 per hour. Again, absolutely nothing in the budget

provisos or in § 24-1-295 prohibited SCDC from negotiating these terms with WTI regarding the operation of the service project at Lieber.

Thus, the Contract is clear that WTI pays SCDC $4.00 per inmate labor hour to cover *all* expenses associated with operating the service project at Lieber, including the inmates' hourly rate of pay. Absolutely no provision of the Contract states, implies, or otherwise suggests that WTI and SCDC agreed that SCDC would pay inmates at the rate of $4.00 per hour. Accordingly, the Contract language is clear, and this Court may not infer another meaning from the language in the Contract. Madden, 688 S.E.2d at 600. (See R. p. 36).

Moreover, common sense dictates that SCDC would not have, in light of the overhead expenses identified in Subsection 1 of Section 3.3 the Contract, entered into a contract with WTI by which it would invoice WTI at a flat rate of $4.00 per inmate labor hour and then have to pay the inmates who voluntarily performed labor in the service project at the rate of $4.00 per hour. By doing so, SCDC would have sacrificed the means by which it would be able to cover the various costs associated with operating the service project at Lieber identified in Subsection 1 of Section 3.3, as well as § 24-1-295. (See R. pp. 36 – 37).

Likewise, common sense dictates that SCDC would not have entered into a contract with WTI without an expectation that it would receive reimbursement for its overhead expenses. See C.A.N. Enters., 373 S.E.2d at 586. Subsection 1 of Section 3.3 of the Contract clearly explains that the $4.00 per inmate labor hour rate WTI pays to SCDC encompasses payment for SCDC's overhead. Specifically, Subsection 1 describes the circumstances under which SCDC's and WTI may agree to increase the $4.00 per inmate labor hour rate paid by WTI to SCDC. Again, the relevant provision provides as follows:

> **Thirty (30) days prior to each anniversary date of this agreement, [SCDC] and [WTI] may negotiate an increase in the per hour rate paid by [WTI] to [SCDC].** If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. **It is the intent of the parties that such increase shall only reflect [SCDC's] increased cost of prison overhead.** [emphasis supplied].

The clear and unambiguous language of this provision states that any agreed upon increase in the $4.00 per inmate labor hour rate will "only reflect [SCDC's] increased cost of prison overhead" and does not reflect or envision a change in the base or gross rate earned by inmates.

Thus, by these terms, the $4.00 per inmate labor hour rate is the amount that WTI pays to SCDC and is meant to offset SCDC's overhead costs, and any agreed upon increase in the hourly inmate labor rate would reflect an increase in SCDC's overhead costs and would not benefit the inmates participating in the project. Again, absolutely no provision or language in the Contract reflects that the $4.00 per hour rate was the rate at which SCDC and WTI agreed that SCDC would pay the inmates participating in the project, including the Appellant, for their labor. (See R. p. 37). Furthermore, absolutely no provision or language in the Contract reflects that the $4.00 per hour rate was the Appellant's base or gross wage.

In addition, Subsection 1 of Section 3.3 also states that WTI and the Department may agree upon "a bonus plan" for inmates, and the particulars of such a plan are reflected in the WTI "Bonus Pay/Programs" materials which appear in the Record. (R. pp. 85 – 88). The example provided in these materials expressly states that the "Base Rate" for inmate pay was "$.35[21]" per hour and not the $4.00 per hour rate asserted by the Appellant in his administrative grievance and in the brief he filed with this Court. (R. p. 86).

[21] SCDC respectfully submits that the $0.35/hr base rate constitutes the Appellant's gross rate of pay.

Furthermore, the sample pay card included within these materials clearly defines the $0.35 per hour "base rate" paid to an inmate participating in the project as follows (R. p. 87):

> [$0.35 per hour] is the minimum rate that you will ever receive. Your base rate can only go up if you receive longevity increases.

Obviously, this language is consistent with the language from the "bullet sheet," which provided that the applicable wage rate is "$4.00 per hour/per inmate - $.35/hr base for inmates." (R. p. 72). Inmates, including the Appellant, were aware that their base or gross rate of pay was $0.35 per hour.

The Contract's provisions clearly, unambiguously, and repeatedly state that the inmates' "base pay" rate is $0.35 per hour and not $4.00 per hour. Under the Contract, SCDC would pay inmates a minimum of $0.35 per hour, subject to potential longevity pay increases or "bonus pay." SCDC, therefore, paid a "base pay" rate of $0.35 per hour to inmates who participate in the service project at Lieber, and the $0.35 per hour paid to the inmate by SCDC comes out of the $4.00 per inmate labor hour that WTI remits to SCDC under the terms of the Contract. (R. pp. 72, 86 – 88). The remaining balance clearly and intentionally covers SCDC's overhead and security costs.

Even if its terms were somehow ambiguous, this Court must look to the Contract to determine the intent of the parties (i.e. WTI and SCDC and not the Appellant). As explained above, the parties' intent, under Subsection 1 of Section 3.3. was that the $4.00 flat inmate labor hour rate at which WTI paid to SCDC encompasses the hourly rate at which SCDC would pay the inmates for their labor (i.e. the "base rate" discussed above), *as well as* security costs, SCDC's prison industries overhead, including any costs associated with the health, welfare and safety of the inmates participating in the project, applicable taxes and payroll deductions. (R. p.

78). Absolutely no evidence exists to suggest any other intent of the parties related to the rate of pay for the inmates, including the Appellant, who participated in the prison industries project.

Again, absolutely nothing in the budget provisos nor in § 24-1-295 prohibited SCDC from negotiating these terms with WTI regarding the operation of the service project at Lieber. Section 3.3 clearly demonstrates, again, that just because the hourly inmate labor rate that SCDC charged WTI for effectively leasing the inmates' labor equaled $4.00, which is less than the rather purported "prevailing wage" of between $8.40 and $12.06 that the Appellant and his cohorts outlandishly claimed in their Step 1 grievances, does not mean that SCDC was required to pay the individual inmates who voluntarily participated in the service project at Lieber at the rate of $4.00 per hour. (See R. p. 37).

Furthermore, in 1998 when SCDC entered into the contract with WTI, neither the budget provisos nor § 24-1-295 were enacted. In the absence of statutorily required deductions, SCDC entered into a contract with WTI which contractually required SCDC to deduct certain expenses from the $4.00 per hour rate it negotiated with WTI. As essentially argued by the Appellant, § 24-1-295 cannot apply to the 1998 Contract because it violates the contract clause from the South Carolina Constitution.[22] Mibbs, Inc. v. S.C. Dep't of Revenue, 524 S.E.2d 626, 629 (S.C. 1999) ("[T]here is no impairment for purposes of a Contract Clause analysis where the statute does not affect a pre-existing contract between private parties."). SCDC's obligations pursuant to the 1998 Contract with WTI did not change when the legislature enacted the budget provisos or § 24-1-295. Kirven v. Cent. States Health & Life Co., of Omaha, 760 S.E.2d 794, 799 (S.C. 2014) (holding that recently enacted statute cannot apply to "contracts entered into prior to the statute's

[22] Appellant's Brief, Argument 5, pp. 18 – 21.

effective date because such an application would violate the Contract Clause of the state and federal constitutions.").

The terms of the contract also fulfills the legislature's pre-existing "declaration of intent" for prison industries programs to "utilize the labor of inmates for self-maintenance and for reimbursing this State for expenses incurred by reason of their crimes and imprisonment." § 24-3-310 (1987 as amended). SCDC respectfully submits that this Court cannot reconcile the legislative mandate for SCDC to "utilize the labor of inmates for self-maintenance and reimbursing this State for expenses incurred by reason of their crimes and imprisonment," with the Appellant's argument that SCDC is prohibited from deducting overhead costs and security costs, as required by the contract, from the amount SCDC invoiced WTI for inmate labor. Clearly, security costs and overhead costs are "expenses incurred" because of the inmate's imprisonment and ensure this project is "self-maint[aining]." Section 24-3-310.

Finally, the Appellant's argument is primarily derived from a single transitional phrase in one provision of the 1998 Contract: "at its expense.[23]" Section 3.2(4) (R. pp. 76 – 77). "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." Madden, 688 S.E.2d at 600. (R. p. 34). "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." Madden, 688 S.E.2d at 600. (R. p. 35). "[W]here 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., 373 S.E.2d at 586. (R. p. 35). Accordingly, this Court cannot read the phrase "at its expense" in isolation. Instead, this Court

[23] Appellant's Brief, pp. 21, 23, and 28.

must read contract provisions 3.2(4) and 3.3(1) together. Collectively, these contract provisions clearly and unambiguously require SCDC to pay the inmate's hourly wage (i.e. $0.35), *and* security and overhead costs from the $4.00 per hour negotiated wage.

Alternatively, SCDC respectfully submits for argument purposes only and in order to preserve its position regarding this issue, that it paid security, overhead, and other related costs "at its expense" after those expenses were reimbursed by WTI pursuant to the 1998 Contract.

Therefore, SCDC respectfully urges this Court to affirm the portion of the ALC's ruling that held SCDC was contractually required to deduct security and overhead costs from the $4.00 per hour wage it negotiated with WTI, and reject the Appellant's assertion that he was entitled to a $4.00 per hour wage rate for the labor he voluntarily provided to the prison industries service project operated at Lieber. See Rule 220(c), SCACR.

V. THE ALC CORRECTLY RULED THAT THE APPELLANT IS NOT ENTITLED TO OVERTIME PAY

A. The ALC correctly ruled that the Appellant did not preserve the issue of whether the Appellant is entitled to overtime pay for appellate review

The Appellant contends that the ALC erred by ruling that "overtime was not presented for review because it was not preserved.[24]" The Appellant admits that he "did not raise overtime in his grievances" and that he raised overtime as an issue for the first time in his notice of appeal to the ALC.[25] Despite this reality, the Appellant contends that SCDC, when it denied the Appellant's Step 1 and Step 2 grievances, preserved overtime as an issue.

As correctly observed by the ALC, SCDC did not raise or preserve overtime as an appellant issue. (R. p. 37). Rather, SCDC merely stated in its denial of the Appellant's Step 1

[24] Appellant's Brief, Argument 7, pp. 28 – 31.

[25] Appellant's Brief, pp. 29 – 30.

and Step 2 grievance that, "to the extent" the Appellant demanded overtime wages, his request was denied. (R. pp. 37 n. 12, 40, 44). As pointed out by the Appellant, SCDC did not address the merits of the Appellant's overtime claim in his appeal to the ALC.

Irrespective of whether SCDC raised issue preservation within their brief to the ALC, the Appellant admitted that he did not demand overtime wages in Step 1 or Step 2 grievance. Thus, there was no extent to which SCDC could consider the Appellants' overtime wages. "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 [fact finder] to be preserved for appellate review." Wilder Corp. v. Wilke, 497 S.E.2d 731, 733 (S.C. 1998).

Accordingly, this Court should affirm the ALC's decision that the Appellant did not preserve the issue of overtime pay for appellate review.

B. Alternatively, SCDC respectfully submits that it is premature for the Court to determine whether the Appellant is entitled to overtime pay

Any determination by this Court as to whether the Appellant was entitled to any overtime pay is not yet ripe for adjudication and it will not be ripe for adjudication unless and until this Court reverses the ALC's ruling that the Appellant is not entitled to the $4.00 per hour negotiated wage.

As explained above, the rate the Department was required to pay the Appellant was not the $4.00 per hour negotiated wage. As also explained above and as reflected in a March 12, 2002 memorandum from the project's Plant Manager to all inmates participating in the project, the subject of which was designated as "Longevity Pay Scales," the Department agreed to pay inmates a minimum "base rate" of $0.35 per hour, subject to longevity pay increases and bonus pay in certain circumstances. (R. p. 88). This same memorandum also stated as follows:

> You are further advised that the MAXIMUM pay allowance is $1.00/hr, regardless of your longevity status. In addition to the 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.

Thus, it appears from this memorandum and provisions within the Contract that inmates could perform overtime labor. (R. p. 76). However, the only pay records for the Appellant which currently appear in the Record consist of a spreadsheet print-out, and the only columns of data included on the print-out are columns designated "Pay Date," "Pay Rate," "Hours, and "Pay Amount." (R. pp. 58 – 60). For every "Pay Date" increment reflected on the print-out, a "Pay Rate" of $0.50 per labor hour appears.

No clarifying data appears within the column labeled "Pay Rate" which would indicate whether the $0.50 figure represents the Appellant's "base rate" or his "base rate" plus a bonus rate and/or overtime rate. Thus, it appears that SCDC paid the Appellant an hourly rate which exceeded the "base rate" of $0.35 per hour for every hour of labor he performed, and the Appellant has not, at any point in this litigation, argued that SCDC failed to pay him for any labor he performed. Consequently, even if this Court were to find that the Appellant was not properly paid for his overtime hours, the Appellant would be owed the half-time rate for only the labor hours he performed in excess of a forty-hour workweek.

Furthermore, the "Pay Date" increments which appear on the print-out occur every two (2) weeks, and, therefore, it appears that the number of labor hours which appear in the column designated as "Hours" reflect the aggregate number of labor hours performed by the Appellant during a two-week pay period. (R. pp. 58 – 60).

Accordingly, SCDC respectfully submits that the parties and the Court cannot determine the amount of labor hours performed by the Appellant during a single work week when the

column designated as "Hours" reflects a cumulative total of the labor hours the Appellant performed over a two-week period.

In the event this Court concludes that the Appellant preserved the issue of overtime for appellate review, SCDC respectfully submits that, once the Court rules on the remaining issue presented by the Appellant in his brief, the Court will likely have to remand this matter back to ALC, to remand the matter back to SCDC, so that SCDC, to the extent possible, may supplement the record with documents which accurately reflect the number of hours the Appellant worked during each work week, the "base rate" at which SCDC paid the Appellant for the labor he performed, and whether the Appellant's "Pay Rate" included any bonus or overtime pay.

VI. THE ALC CORRECTLY RULED THAT THE APPELLANT WAS NOT ENTITLED TO PRE-JUDGMENT AND POST-JUDGMENT INTEREST, COSTS AND ATTORNEY'S FEES

The Appellant contends that the ALC erred in not granting the Appellant's request for pre-judgment and post-judgment interest, costs and attorney's fees because the ALC erred when it determined that § 24-1-295 applied to the Appellant's wages.[26]

As explained above, the ALC correctly ruled that § 24-1-295 applied to the Appellant's wages, that SCDC was bound by § 24-1-295 and its 1998 Contract with WTI to make deductions from the $4.00 per hour negotiated rate, and, ultimately, that the Appellant was not entitled to a negotiated wage of $4.00 per hour. The ALC correctly determined that the Appellant was not entitled to any additional monies at all.

If this Court affirms the ALC's rulings, then this Court should also find that the Appellant was not entitled to pre-judgment and post-judgment interest, costs or attorney's fees.

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[26] Appellant's Brief, Argument 8, pp. 31 – 33.

Alternatively, any determination by this Court as to whether the Appellant is entitled to pre-judgment and/or and post-judgment interest on any back pay is not yet ripe for adjudication and, as respectfully submitted by the SCDC, it will not be ripe for adjudication *unless and until* this Court resolves the wage issue on appeal in the Appellant's favor.

To the extent necessary, the SCDC respectfully submits, in order to preserve its position regarding this issue, that the Appellant is not entitled, under any applicable statute, precedent, or theory, to any pre-judgment and/or and post-judgment interest on any back pay that he may receive as a result of his appeal. See Future Grp., II v. Nationsbank, 478 S.E.2d 45, 51 (S.C. 1996). Furthermore, SCDC respectfully submits, in order to preserve its position regarding this issue, that the Appellant is not entitled, under any applicable statute, precedent, or theory, to any costs and attorneys fees attributable to his prosecution of his instant appeal. See Layman v. State, 658 S.E.2d 320, 331 (S.C. 2008).

VII. THE ALC CORRECTLY RULED THAT THE APPELLANT'S APPEAL OF SCDC'S DENIAL OF HIS GRIEVANCES DID NOT INVOLVE THE GRIEVANCES OF OTHER INMATES OR OTHER PERSONS WHO DID NOT FILE GRIEVANCES

The Appellant contends that the ALC erred "in declining to consider the issue of whether SCDC should have to process grievance[s] for all workers even if they had not personally filed" a grievance.

The ALC did not consider this issue because "the instant case does not involve the grievances of other workers in the program or persons in the program who never filed grievances." (R. p. 30 n.1).

The Appellant's Notice of Appeal to the ALC, dated May 30, 2007 and bearing the signature of Appellant's counsel (R. p. 56), identified the eight (8) grounds associated with the Appellant's instant appeal. Critically, the Appellant did not include this argument as a ground for

appeal. Appellant's arguments in his appellate brief to the ALC related to this ground to do not correct his defective Notice of Appeal.[27]

Even if the Appellant included this ground in his Notice of Appeal, the ALC correctly determined that the Appellant's appeal did not involve grievances of other workers or persons who never filed a grievance. The ALC was not required to "address a point which is manifestly without merit," and the ALC was not required to identify each and every point that was manifestly without merit. ALC Rule 65. Moreover, the ALC could affirm SCDC's denial of the Appellant's grievance "upon *any* ground(s) appearing in the Record." ALC Rule 65 (emphasis supplied).

Accordingly, this Court should affirm the ALC's decision to not consider this issue because the Appellant's appeal involved SCDC's denial of *his* Step 1 and Step 2 grievances. (R. p. 30 n.1). This Court should also strike this issue from consideration in any further litigation associated with the instant appeal.

VIII. THE ALC CORRECTLY RULED THAT THE APPELLANT'S APPEAL OF SCDC'S DENIAL OF HIS GRIEVANCE WAS NOT AN INJUNCTION ACTION AND APPELLANT DID NOT PRESERVE THE ISSUE OF INJUNCTION FOR APPELLATE REVIEW

The Appellant contends the ALC erred by "declining to enjoin SCDC from further wage violations.[28]"

The Appellant, however, did not raise the issue of injunction within his Step 1 or Step 2 grievance to SCDC and the Appellant did not include the issue of injunction in his Notice of Appeal to the ALC. See Wilder, 497 S.E.2d at 733 ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [fact finder] to be

[27] Appellants' Brief, Argument 9, pp. 33 – 34.

[28] Appellant's brief, Argument 10, pp. 34 – 35.

preserved for appellate review."). Accordingly, this Court should affirm the ALC's ruling that the Appellant failed to preserve this issue for appellate review. (R. p. 38).

CONCLUSION

Therefore, pursuant to the applicable legal standard articulated above, SCDC respectfully urges this Court to affirm the ALC's November 12, 2013 and April 29, 2014 Orders for the reasons explained above.

RESPECTFULLY SUBMITTED,

BY: _____

Lake E. Summers (SC Bar No. 64146)
Katherine Phillips (SC Bar No. 77840)
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300
Fax: (803)-254-0309
E-mail: summers@mtsolawfirm.com
phillips@mtsolawfirm.com

Counsel for Respondent SCDC

Columbia, South Carolina
December 22, 2014

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Trial Court Case No. 07-ALJ-04-0517-AP
Appellate Case No. 2014-001199

Fred Gatewood, #289775, ... Appellant,

v.

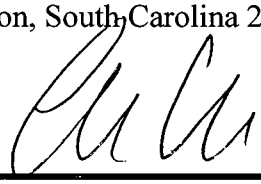
South Carolina Department of Corrections, ... Respondent.

PROOF OF SERVICE

I certify that I have served a copy of **Respondent SCDC's Brief** on the above named Appellant by mailing a copy of it to his counsel, first class postage pre-paid, at the following address:

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

December 22, 2014



LAKE E. SUMMERS