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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

27932

Fred Gatewood, #289775..... Appellant,

v.

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

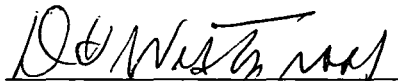
Appellate Case No. 2012-212574

APPELLANT FRED GATEWOOD'S PETITION FOR RE-
HEARING OF THE COURT'S MARCH 26, 2013 ORDER.

COMES NOW, Appellant by counsel, who respectfully requests that the within Petition for Rehearing of the Court's March 26, 2013 order dismissing this appeal be granted because the Court overlooked or misapprehended the following matters: First, the underlying order of the ALC, dated June 19, 2012, was a final decision under S.C. Code §1-23-610(A)(1), and appealable to the Court of Appeals. Second, this Court should have remanded the case to the ALC with instructions to merits brief Gatewood's grievance (SCACR 220(a)).

These matters are more particularly described in the attached Memorandum.

Respectfully submitted,



Douglas H. Westbrook, #6039
23 Broad St.
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(843) 853-9600
Attorney for Appellant

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MEMORANDUM IN SUPPORT OF APPELLANT FRED GATEWOOD'S PETITION FOR REHEARING OF THE COURT'S MARCH 26, 2013 ORDER

COMES NOW, Appellant by counsel, who submits the within memorandum in support of his Petition for Rehearing of the Court's March 26, 2013 order dismissing this appeal.

1. This appeal from the Administrative Law Court (ALC) involves inmate-appellant Fred Gatewood's grievance for prison work wages under S.C. Code §24-3-430, the prevailing wage statute. SCDC denied the grievance and Gatewood had appealed to the ALC.

2. By orders dated March 2 and 16, 2012, the ALC upheld Gatewood's grievance as timely filed, and ordered the parties to merits brief Gatewood's grievance. These rulings were reiterated in a July 26, 2012 amended order.

3. On June 19, 2012, the ALC issued an order dismissing Gatewood's grievance for want of jurisdiction under SCACR 205. This was due to Gatewood and others' March 29, 2012 appeal of the consolidated case in Francis

Ackerman, #266928, et al. v. SCDC, Appellate Case No. 2012-210588 to the Court of Appeals.

4. On July 18, 2012, Gatewood filed notice of appeal of the June 19 order with the Court of Appeals.

5. In an order of March 26, 2013, this Court dismissed Gatewood's appeal because the ALC June 19 order was not a final decision under S.C. Code §1-23-610(A)(1). Gatewood contends this Court's dismissal overlooked and misapprehended the following two matters.

6. First, Gatewood contends the June 19 order was a final order for appellate review purposes. A decision does not have to be on the merits for it to be "final" and appealable. A trial court's declination to try a case for lack of jurisdiction is a final decision and thus appealable (Am Jur 2d (2007), vol. 4, §142, and cases cited). Moreover, an order dismissing a civil action is ordinarily a final appealable judgment, even if dismissal is without prejudice to the filing of another action (Id., §155). Compare, Hagood v. Sommerville 607 S.E. 2d 707, 709 (S.C., 2005) (An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review, is usually an interlocutory order allowing no appeal).

Here, the ALC's June 19 order dismissed Gatewood's case for lack of jurisdiction. Gatewood contends it also had the effect of preventing a final judgment from which an appeal may be taken. Without an appeal to correct the ALC's ruling of no jurisdiction, Gatewood's grievance may never be considered on the merits, thus depriving Gatewood of appellate review.

7. Second, this Court's March 26, 2013 order dismissed Gatewood's appeal/grievance outright, without remanding to the ALC to continue merits briefing of Gatewood's grievance. Unless changed, the Court's dismissal means the case is no longer in the Court of Appeals. If so, SCACR 205, the basis of the ALC's no jurisdiction ruling, would no longer apply and the ALC is able to proceed with Gatewood's merits briefing, pursuant to the ALC's July 26, 2012 order.

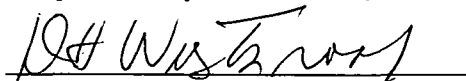
Moreover, SCACR 220(a) lists the various options the Court of Appeals has in issuing opinions: "The Court may affirm, reverse, or modify the decision below or **remand** all or any issues for further proceedings." However, the Court's March 26 order did none of these but dismissed the appeal outright.

Gatewood respectfully submits that, in these circumstances, it is appropriate to remand the case to the ALC with instructions to proceed with merits briefing of Gatewood's grievance.

8. Finally, SCACR 240(i) (The Court will not entertain petitions for rehearing unless the Court's action dismisses or finally decides the appeal) is satisfied since the March 26, 2013 order dismissed Gatewood's appeal.

For the above reasons, Gatewood requests that his Petition for Rehearing be granted.

Respectfully submitted,



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

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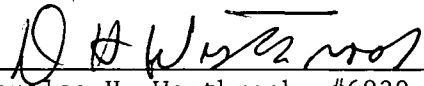
AFFIDAVIT

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

1. I represent appellant Fred Gatewood in the above captioned case.
2. By orders dated March 2 and 16, 2012, and July 26, 2012, the ALC upheld Gatewood's grievance as timely filed, and directed the parties to brief the grievance on the merits.
3. On June 19, 2012, the ALC issued an order dismissing Gatewood's grievance for want of jurisdiction under SCACR 205. This was due to the fact that Gatewood and other inmates, on March 29, 2012, had appealed the consolidated case in Francis Ackerman, #266928, et al. v. SCDC, Appellate Case No. 2012-210588 to the Court of Appeals.
4. On August 24, 2012, Gatewood by counsel filed his merits brief with the ALC and served a copy on counsel for SCDC.
5. By letter dated September 5, 2012, the ALC returned Gatewood's merits brief to undersigned counsel, stating the matter was no longer

pending before the ALC but was on appeal in the Court of Appeals, and therefore the brief was not being filed in the ALC.


Further Deponent Sayeth Not.



Douglas H. Westbrook, #6039

Signed and Sealed Before Me

This 2nd Day of April, 2013.



Notary Public for South Carolina

My Commission Expires:

4/4/16

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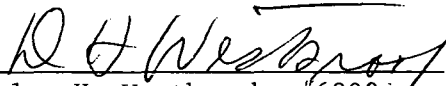
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PROOF OF SERVICE

I certify that I have served Appellant Fred Gatewood's Petition for Rehearing of the Court's March 26, 2013 Order, Memorandum in Support of Appellant Fred Gatewood's Petition for Rehearing of the Court's March 26, 2013 Order, and Affidavit on the S.C. Department of Corrections by depositing a copy of these documents in the U.S. Mail, first class postage prepaid, on *4-4-13* addressed to its attorneys of record, Lake Summers, Esquire and Katherine Phillips, Esquire, Malone, Thompson, Summers & Ott, LLC, 339 Heyward St., Ste. 200, Columbia, SC 29201.



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