

ORIGINAL RECEIVED

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

DEC 16 2016

SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2016-000285
Trial Court Case No. 2012ALJ040143AP

Thomas J. Torrence, #094651, Respondent,

v.

South Carolina Department of Corrections, Appellant.

RECORD ON APPEAL

VOLUME 1 OF 3

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STATE OF SOUTH CAROLINA
In The Supreme Court

Thomas J. Torrence, PETITIONER,

vs.

South Carolina Department of Corrections, . . . RESPONDENTS.

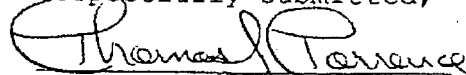
NOTICE AND PETITION FOR ORIGINAL JURISIDICITION

TO: GENERAL COUNSEL FOR SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

YOU WILL PLEASE TAKE NOTICE that the undersigned has petitioned the South Carolina Supreme Court for a Writ of Mandamus to be heard in Original Jurisdiction. You are hereby given Notice pursuant to Rule 245(c), SCACR, and you have twenty (20) days from the date of service in which to serve and file a Return to the attached Petition. Failure of a party to timely file a Return may be deemed consent thereby that party to the matter being heard in the Original Jurisdiction.

Submitted this 5th day of October, 2011

Respectfully submitted,



Thomas J. Torrence
#094651
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472

PETITIONER

STATE OF SOUTH CAROLINA
In The Supreme Court

Thomas J. Torrence, PETITIONER,

vs.

South Carolina Department of Corrections, . . RESPONDENTS.

In the Original Jurisdiction

PETITION FOR WRIT OF MANDAMUS

Thomas J. Torrence
#094651
Lieber Correctional Inst.
P.O. Box 205
Ridgeville, SC 29472

PETITIONER

PETITION FOR WRIT OF MANDAMUS

This Court enjoys jurisdiction to entertain this Writ of Mandamus pursuant to South Carolina Constitution Art. V, §5; South Carolina Code of Laws § 14-3-310 (1976); and Rule 245, SCACR.

The Petitioner seeks a Writ of Mandamus from this Court to compel the South Carolina Department of Corrections (SCDC) to perform the ministerial duty of filing, docketing and resolving Petitioner's agency grievance [Grievance No. ECI-980-10 (filed May 21, 2007)], filed pursuant to SCDC Policy GA-01.12, *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000), and as directed by this Court in *Wicker v. South Carolina Department of Corrections*, 360 S.C. 421, 423, 302 S.E.2d 56 (2004) and instructed in *Torrence v. South Carolina Department of Corrections*, 373 S.C. 586, 593-594, 646 S.E.2d 866 (2007) (rehearing denied), and the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997.

Petitioner recognizes and respects that mandamus is the highest judicial writ, *Wilben v. Long*, 262 S.C. 430, 205 S.E.2d 174 (1974), and is issued only when there is a specific right to be enforced, a positive duty to be performed, or no other specific remedy, *Willimon v. Greenville*, 243 S.C. 82, 132 S.E.2d 69 (1963). The primary purpose of the writ is to

enforce an established right and a corresponding imperative duty created or imposed by law, *Id.*

To be entitled to a writ of mandamus requiring the performance of some act, an Applicant must show: (1) a duty of the Respondent to perform the act; (2) that the duty is ministerial in its character; (3) that the Applicant has a specific legal right for which the discharge of the duty is necessary; and (4) that he has no other legal remedy, *Redmond v. Lexington Co. Sch. Dist.*, 314 S.C. 431, 445 S.E.2d 441 (1994). A ministerial duty is one, which a person performs in obedience in a mandate of legal authority without regard to the exercise of his own judgment upon the propriety of the act to be done. *Godwin v. Carrigan*, 227 S.C. 216, 87 S.E.2d 471 (1955).

The writ is designed to compel action by the Respondent, and it has been held to be a remedial writ of wide scope available in numerous instances to compel performance of statutory duties. The office of the remedy is to direct the will, and obedience may be enforced. Its purpose is to enforce rights already established, rather than to establish or declare the rights of the parties. It proceeds in every case upon the assumption that the Applicant has an immediate and complete legal right to the thing demanded, and that a corresponding duty of an imperative nature rests upon the person to whom the

writ is sent. Honorable Ralph King Anderson, Jr., *Nuts and Bolts of South Carolina Substantive and Procedural Law*, §X.B.6, 2nd Ed. (1998), pg. 610.

A petition for writ of mandamus or other writ is not a cause of action, but a form of remedy or relief. *Plum Creek Development Co. v. City of Conway*, 334 S.C. 30, 512 S.E.2d 106 (1999).

Petitioner, formerly assigned to the SCDC Private Sector Prison Industries with a private employer (ESCOD Industries), asserts that he is entitled to prevailing wages for a 320 hour "training period"; interest thereon; back prevailing wages; interest thereon; and access to his Long Term Savings Account; and interest thereon.

Plaintiff sought declaratory relief in the court of common pleas, *Thomas Torrence, et al. v. SCDOC and the State of South Carolina*, C/A No. 01-CP-40-3409. While this matter was pending, this Court decided the case of *Wicker v. South Carolina Department of Corrections*, 360 S.C. 421, 423, 302 S.E.2d 56 (2004), which held that an inmate is entitled to file a grievance when not being paid the prevailing wage, *Id.* at 421, 602 S.E.2d at 56, particularly where there is a statute mandating payment of the prevailing wage, *Id.* at 425, 602 S.E.2d at 58, see S.C. Code Ann. § 24-3-430 (Supp. 2005).

This Court affirmed the lower court decision in *Thomas Torrence, et al. v. SCDOC and the State of South Carolina*, 373 S.C. 586, 646 S.E.2d 866, on May 7, 2007, rehearing denied, and Petitioner filed a timely grievance (Appendix), in accordance with that decision, under SCDC Policy GA-01.12. Following two attempts, via correspondence (Appendix), and a subsequent grievance on the agency's failure to timely process the grievance (Appendix), Petitioner is left with no other avenue of relief where the lower court has already ruled that Petitioner must pursue this matter through the internal grievance system, see *Torrence, supra*.

SCDC Policy GA-01.12 creates a right to due process and enables prisoners to redress their grievances under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 and the South Carolina Constitution Art. I, §§2 and 3 (right to petition for redress and due process, respectively). This Court, in these particular circumstances, specifically mandates this right via the *Wicker* decision.

SCDC has a duty to perform the act clearly established by Policy GA-01.12 and S.C. Const. Art, §§ 2 and 3. There exists here a specific legal right to due process and the redress of grievances for which the discharge of the duty is necessary. The act is ministerial in nature where the grievance must be filed.

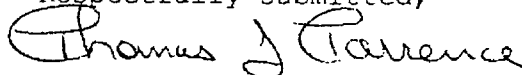
Petitioner believes the public interest is involved in having SCDC grievance matters timely resolved in a manner equitable to all parties. This would monitor the Respondent's current practice of not answering meritorious prisoner grievances, in an order to delay resolution in the South Carolina Administrative Law Court, which has previously settled this prevailing wage matter following the filing of a grievance, see *Earl K. Will, #237037 v. South Carolina Department of Corrections*, Docket No. 05-ALJ-04-01159-AP, filed April 20, 2007.

Petitioner here has shown the co-existence of the four elements required for a writ of mandamus, and is thus entitled to the writ.

CONCLUSION

Based upon the foregoing facts and law, and the Appendix, Petitioner prays this Writ of Mandamus issue to compel the Department of Corrections to resolve Petitioner's grievance in a timely manner, or take such other action, as this Court deems equitable.

Respectfully submitted,



Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
P.O. 205
Ridgeville, SC 29472

dated October 5, 2011
at Ridgeville, SC

PETITIONER

STATE OF SOUTH CAROLINA
In The Supreme Court

Thomas J. Torrence, PETITIONER,

vs.

South Carolina Department of Corrections, . . RESPONDENTS.

In the Original Jurisdiction

APPENDIX

Thomas J. Torrence
#094651
Lieber Correctional Inst.
P.O. Box 205
Ridgeville, SC 29472

PETITIONER

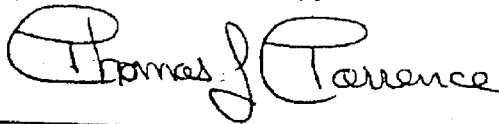
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1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER.

AUG 1 5 RECD

TO: NAME: Grievance Coordinators - BRCI/Evans CI	TITLE:	DATE: May 21, 2007
INMATE'S NAME: Thomas J. Torrence	SCDC #: 094651	
INSTITUTION: BRCI	LIVING QUARTERS: MU-266	
<p>Please find attached a Step 1 Grievance and Addendum in regards to my Private Sector PI wages for my employment period at Evans C.I., from June 1997 to November 2004. I have a pending case in court on this matter, <u>Torrence, et al. v. SCDOC</u>, Op. No. 26328 (S.C. Sup.Ct., filed May 7, 2007). I received a copy of this opinion on the above date. Although I am informed by counsel that the DOC will file a Petition for Rehearing within 30 days, the Supreme Court held I should file an agency grievance on this matter. This grievance is filed within 15 days of receipt of the Supreme Court's decision on this matter and is equitably tolled by the pendency of the civil action.</p> <p>I believe that where this matter emanates from Evans, that the Grievance must be filed and maintained at Evans. On that belief, and having no time to verify the policy on that question, and in an abundance of caution, I am mailing a copy of the attached Grievance and Addendum via first-class mail to the Evans Grievance Office.</p> <p style="text-align: center;">Thank you for your assistance in this matter.</p> <p style="text-align: center;"></p>		
<p>DISPOSITION BY STAFF MEMBER: <i>Inmate Torrence:</i></p> <p style="text-align: center;"><i>Per your letter dated 4/21/10, please be advised your PI grievance has been assigned a #ECI-980-10. Upon review by outside counsel Lake Summers you will receive a Warden's Step 1 response upon completion of Aetny Summers review.</i></p>		
DATE: 6/10/10	SIGNATURE: <i>Mary Polerai, I/M Griev Branch Chief</i>	

SCDC FORM 19-11 (REV. FEB 2001)

2

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

AUG 15 REC'D

INMATE NAME: Thomas John Torrence
SCDC NUMBER: # 094651
INSTITUTION: Broad River C.I.
HOUSING UNIT: MU-266
WORK ASSIGNMENT: Ward Keeper

Office Use Only
Grievance No. _____
Code: General _____
Policy _____
Disc. Hear. _____
Class. _____
Date Received 8-15-07
IGC Initials BT

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)
I was employed by ESCOD Industries, in the SCDC Private Sector Prison Industries Program at Evans Correctional Institution from June 1997 thru November, 2004. During the course of my employment, I learned that SCDC was withholding certain wages and monies from me in contravention of state law, to which I have a property interest. The S.C. Supreme Court recently ruled in Thomas Torrence, et al. v. SCDOC, Op. No. 26328 (filed May 7, 2007) (received by Grievant on May 21, 2007), that I must file a Grievance under SCDC Policy GA-01.12. The claim for this unconstitutional deprivation is set forth in the following eight subsections:

(See ADDENDUM)

ACTION REQUESTED:

Payment of wages, withholdings and interests as set forth in subsections 1 thru 8 of the Addendum attached hereto.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

This matter was pending before S.C. courts from 2001 until the recent May 7, 2007 decision. SCDC intends to petition the state supreme court for a rehearing on this matter within 30 days.

Thomas J. Torrence 5-21-07
Grievant Signature Date

ACTION TAKEN BY IGC:

- I accept the action taken by the IGC and consider the matter closed.
- I do not accept the action taken and wish to appeal.

IGC Signature _____ Date _____
Grievant Signature _____ Date _____

SCDC 10-5 (Rev. November 1997)

Thomas John Torrence
094651

SCDC Grievance - ADDENDUM (Step 1) - May 21, 2007

AUG 15 2007

- 1) Sections 24-3-40, 24-3-315, and 24-3-430(D) created a property interest in the prevailing wage (\$7.17) grievant earned during "regular" hours performed for the period by SCDC as Training Hours and grievant is entitled to said monies.
- 2) Sections 24-3-40, 24-3-315, and 24-3-430(D) created a property interest in the prevailing wage (\$10.75) grievant earned during "overtime" hours performed for the period described by SCDC as Training Hours, in Number 1, above, and grievant is entitled to said monies.
- 3) Grievant has a property interest in the interest earned on the amounts complained of in Numbers 1 and 2, above.
- 4) Sections 24-3-40, 24-3-315, and 24-3-430(D) created a property interest in the \$1.92 difference between the prevailing wage (\$7.17) paid by the private sector employer (Escod Industries) for grievant's "regular" hour labor and the wage (\$9.25) paid grievant by SCDC during the course of grievant's private sector employment [August 1997 thru November 2004], including any change in the rate during his participation and grievant is entitled to said monies.
- 5) Sections 24-3-40, 24-3-315, and 24-3-430(D) created a property interest in the \$3.79 difference between the prevailing wage (\$10.75) paid by the private sector employer (Escod Industries) for grievant's "overtime" hour labor and the wage (\$7.85) paid grievant by SCDC during the course of grievant's private sector employment [August 1997 thru November 2004] including any change in the rate during his participation and grievant is entitled to said monies.
- 6) Grievant has a property interest in the interest earned on the amounts complained of in Numbers 4 and 5, above.
- 7) Sections 24-3-40, 24-3-315, 24-3-430(D), 24-3-430(A)(5) and 24-3-430(B)(2) created a property interest in escrowed wages wherein grievant is entitled to complete and immediate access to the amount of his escrowed wages [\$ 5,358.00 as of November, 2004] to distribute them to persons or entities of his choice at the time said wages were escrowed for grievant's benefit, but grievant is denied his personal benefit because of serving a life sentence.
- 8) Grievant has a property interest in the interest earned on the amount complained of in Number 7, above.

AUG 15 REC'D

CERTIFICATE OF MAILING

The undersigned, Thomas John Torrence, personally appeared before me and certified that he mailed a Step 1 Grievance (SCDC Form 10-5) and attached addendum, to the Grievance Coordinator at Evans Correctional Institution, by placing a copy in the U.S. Mail, first-class prepaid postage affixed thereto, this 22nd day of May, 2007, addressed as follows:

Grievance Coordinator
Evans Correctional Institution
610 Hwy 9 West
Bennettsville, SC 29512

Thomas John Torrence

Thomas John Torrence
094651 MU-266
Broad River Corr. Inst.
4460 Broad River Road
Columbia, SC 29210-4012

SWORN TO AND SUBSCRIBED before me
this 22 day of May, 2007

Eugene Keith
NOTARY PUBLIC OF SOUTH CAROLINA
My Commission Expires April 4, 2015

My Commission Expires: _____

5

Thomas J. Torrence
094651
Lieber Corr. Inst. EB-44
P.O. Box 205
Ridgeville, SC 29472-0205

AUG 15 REC'D

April 21, 2010

Ms. Ann Hallman
Inmate Grievance Administrator
Inmate Grievance Branch
S.C. Department of Corrections
P.O. Box 21787
Columbia, S.C. 29221-1787

Re: Grievances: Jail Credit
Private Sector P.I. Wages
Request for Final Agency Decisions

Dear Ms. Hallman:

I am requesting your assistance in obtaining a final disposition on the above-referenced agency grievances (copies attached). The grievances have now been pending for 10 years and 3 years, respectively.

The enclosed documents in re the jail credit issue clearly indicate SCDC has informed the state supreme court that the agency would process the grievance. As you can see from your records, despite my efforts, the issue remains in limbo. In regards to the P.I. wages, the state Supreme Court ruled in my case Thomas Torrence, et al. v. SCDOC, 373 S.C. 586, 646 SE2d 866, rehearing denied (2007) that I should file an agency grievance. That was done within 15 days of receipt of that decision. That grievance also remains in limbo.

I realize that the agency has no intention of issuing a favorable ruling in either matter. In good faith, I have not asked the Supreme Court for another writ of mandamus and have patiently waited on the agency to act. I am asking for your assistance in either processing the Step 1 grievances or issuing a final agency decision so I may

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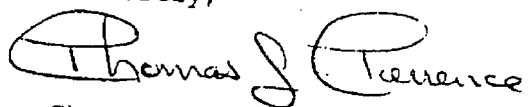
AUG 15 1967

obtain the relief I am entitled to via the state judicial system. In honesty, you are the first person in many years that I have seen take an interest in resolving legitimate issues.

Thank you for your attention to these matters.

With kindest regards, I am,

Sincerely,


Thomas John Torrence

ENCLOSURES: As noted

Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
PO Box 205
Ridgeville, SC 29472

7
AUG 15 2011

June 24, 2011

Mary Coleman, Chief
Inmate Grievance Branch
S.C. Department of Corrections
PO Box 21787
Columbia, SC 29221-1787

Re: Grievance No. ECI-980-10

Dear Ms. Coleman:

I contacted your office in June 2010 regarding the above-referenced grievance. This grievance was originally filed in 2007. Your Office did not assign a case number until I contacted you in 2010. It is now one (1) year after the assignment of the above-referenced number.

Your June 10, 2010 response stated that you referred my Step 1 Grievance to outside counsel (Lake E. Summers) who would answer Step 1. First, I am unaware of any provision that allows an internal grievance to be answered by an "outside" attorney. Second, Mr. Summers represented SCDC in my lawsuit (Torrence v. SCDC) regarding the issue of prison industries wages in the grievance at hand. Third, the SCDC Grievance Policy does not allow longer than 215 days for the disposition of a grievance.

Mr. Summers is intimately aware that the lower court and the South Carolina Supreme Court instructed that I file a grievance in this matter. Therefore, I am formally requesting that your Office make a formal disposition on my Step 1 Grievance within thirty (30) days of receipt of this correspondence. If this matter does not progress with the requested amount of time, which has allowed your Office one (1) year plus an additional month, I will petition the Supreme Court regarding your refusal to follow the mandates of both Wicker and Torrence. I will petition either for a writ of mandamus, or in the alternative, permission to

8

AUG 15 1967

reopen Torrence where an agency grievance has been systematically denied.

Thank you for your assistance in this matter and I look forward to hearing from you.

Sincerely,


Thomas J. Torrence

Cc: file

9

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Thomas J. Torrence
 SCDC NUMBER: 094651
 INSTITUTION: Lieber
 HOUSING UNIT: SA-43
 WORK ASSIGNMENT: Education

AUG 15 2011

Office Use Only
 Grievance No. LCI 1104-11
 Code: General _____
 Policy _____
 Disc. Hear. _____
 Class. _____
 Date Received 8-18-11
 IGC Initials BT

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)
 SCDC has refused or failed to process Grievance No. ECI-980-10 pursuant to the S.C. Supreme Court finding in Torrence v. SCDOC, 373 S.C. 586, 646 S.E.2d 866 (2007), in this matter. This action has denied Grievant due process of law and access to the courts in order to redress grievances in contravention of the South Carolina and United States Constitutions, the Civil Rights of Institutionalized Persons Act (42 USC §1997) and SCDC Policy GA-01.12.

ACTION REQUESTED: Immediate processing of Grievance No. ECI-980-10; or automatically advance 980-10 to Step 2 for disposition; or find ECI-980-10 in favor of Grievant and determine the award to be paid.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
 1) April 21, 2010 correspondence to I/m Grievance Branch (attached)
 2) June 24, 2011 correspondence to I/m Grievance Branch (attached)

Thomas J. Torrence 8/15/11
 Grievant Signature Date

ACTION TAKEN BY IGC: Forwarded to ECI - 8-18-11 BT

Inmate's copy

- I accept the action taken by the IGC and consider the matter closed.
- I do not accept the action taken and wish to appeal.

IGC Signature _____ Date _____
 Grievant Signature _____ Date _____

STATE OF SOUTH CAROLINA
In The Supreme Court

Thomas J. Torrence, PETITIONER,

vs.

South Carolina Department of Corrections, . . . RESPONDENTS.

In the Original Jurisdiction

AFFIDAVIT OF PETITIONER


STATE OF SOUTH CAROLINA)
) -SS-
COUNTY OF DORCHESTER)

PERSONALLY APPEARED before me, Thomas J. Torrence, who first being duly sworn, deposes and says that:

1. I am the Petitioner in the attached and above-captioned Petition for Writ of Mandamus.
2. I am presently incarcerated at Lieber Correctional Institution in custody of the Respondent;
3. That I worked in the Private Sector Prison Industries project (ESCOD Industries) at Evans Correctional Institution from June 1997 through November 2004;
4. That in 2001, I instituted the civil action *Thomas Torrence, et al. v. SCDOC and the State of South Carolina*, C/A No. 01-CP-40-3409, in the Richland County Court of Common Pleas.
5. That the South Carolina Supreme Court affirmed the lower court decision in Opinion No. 26328 on May 7, 2007 [373 S.C. 586, 646 S.E.2d 866, rehearing denied];
6. That counsel of record notified me via correspondence dated May 17, 2007 of this decision;

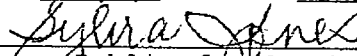
7. That I filed an Agency Grievance under SCDC Policy GA 01.12 concerning my wages, interest and Long Term Savings Account on May 21, 2007;
8. That I served a copy, via Mail, on the Grievance Coordinators for both Broad River Road (assigned institution on 5/21/2001) and Evans Correctional Institutions;
9. That on April 21, 2010, I contacted the S.C. Department of Corrections' Grievance Branch concerning the disposition of this grievance;
10. That as a result of the April 21, 2010 correspondence, on June 10, 2010, the Grievance Branch assigned Grievance No. ECI-980-10 to the grievance and stated that "outside counsel" will respond to the Step 1 Grievance;
11. That on June 24, 2011, I again contacted the Grievance Branch inquiring into the disposition of this grievance and no response was received;
12. That I filed a subsequent Grievance (LCI-1104-11 & ECI 1308-11) on August 15, 2011 on the failure of the Department of Corrections to process my Grievance filed in 2007;
13. That I have received no response or redress to my grievance as of the below date.
14. That I have no other avenue of redress.

FURTHER AFFIANT SAYETH NOT.


 Thomas J. Torrence
 #094651
 Lieber Corr. Inst. SA-43
 P.O. Box 205
 Ridgeville, SC 29472

SWORN TO AND SUBSCRIBED before me

This 5th day of October, 2011


 Notary Public for South Carolina
 My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA
In The Supreme Court

Thomas J. Torrence, PETITIONER,

vs.

South Carolina Department of Corrections, RESPONDENTS.

In the Original Jurisdiction

CERTIFICATE OF SERVICE

The undersigned Petitioner certifies that he has sent a true and correct copy of the Notice and Petition for Original Jurisdiction and the Petition for Writ of Mandamus to counsel for Respondents by placing a copy of same in the U.S. Mail, first-class postage affixed thereto, this 7th day of October, 2011, addressed as follows:

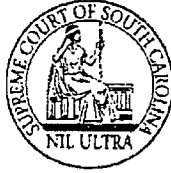
Alan Wilson
Attorney General
Office of S.C. Attorney General
P.O. Box 11540
Columbia, SC 29211

Christopher Florian
General Counsel
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, SC 29221-1787



Thomas J. Torrence
#094651
Lieber Correctional Inst. SA-43
P.O. Box 205
Ridgeville, SC 29472

PETITIONER



RECEIVED

OCT 19 2011

GENERAL COUNSEL

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

October 17, 2011

Christopher D. Florian, Esquire
S.C. Dept. of Corrections
P.O. Box 21787
Columbia, SC 29221-1787

Re: Torrence, Thomas J. v. State

Dear Mr. Florian:

This will acknowledge receipt of a Petition in the Original Jurisdiction Writ of Mandamus in the above matter. A copy of the Petition is enclosed for your files.

Please file a return to this Petition on or before October 27, 2011. Please be sure to show proof that you have served a copy of your return to Mr. Torrence. Upon receipt of the return, you will be advised of action taken.

Very truly yours,

Daniel E. Shearouse

CLERK

DES/bfs

Enclosure

cc: Mr. Thomas J. Torrence # 094651

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Thomas J. Torrence, #94651, Petitioner,

v.

South Carolina Department of Corrections, Respondent.

RETURN TO PETITION FOR WRIT OF MANDAMUS

S.C. SUPREME COURT
OCT 27 2011
RECEIVED

Lake E. Summers
Katherine Phillips
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
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Outside Counsel for SCDC

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South Carolina Department of Corrections
Inmate Grievance System Policy GA-01.12 (November 1, 2004) 1, 10

The South Carolina Department of Corrections ["SCDC"] hereby provides its Return to the Petitioner's Petition for Writ of Mandamus dated October 5, 2011.¹

I. OVERVIEW OF PETITION

On or about October 7, 2011, the Petitioner served SCDC with his "Petition for Writ of Mandamus,"² and, within his Petition, he succinctly stated the relief he seeks from this Court as follows:³

The Petitioner seeks a Writ of Mandamus from this Court to compel the South Carolina Department of Corrections (SCDC) to perform the ministerial duty of filing, docketing and resolving Petitioner's agency grievance [(Grievance No. ECI-980-10 (filed May 21, 2007)], filed pursuant to SCDC Policy GA-01.12, *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000), and as directed by this Court in *Wicker v. South Carolina Department of Corrections*, 360 S.C. 421, 423, 302 S.E.2d 56 (2004) and instructed in *Torrence v. South Carolina Department of Corrections*, 373 S.C. 586, 593-594, 646 S.E.2d 866 (2007) (rehearing denied), and the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997.

¹ In accordance with the applicable appellate court rule and relevant precedent, SCDC does not address the merits of the administrative grievance submitted by the Petitioner under the provisions of SCDC's Inmate Grievance System Policy Number GA-01.12. See e.g. South Carolina Appellate Court Rule [SCACR] 245(c); *Wilson v. Moore*, 178 F.3d 266, 278 (4th Cir. 1999) ("Thus, a respondent need not even address the merits of a habeas petition unless the court first decides to exercise its original jurisdiction and grants the petition.").

² See the Petitioner's "Certificate of Service" dated October 7, 2011. By letter dated October 17, 2011, the Clerk of the Supreme Court directed a representative from the SCDC's Office of General Counsel to file its instant Return and proof of service on or before October 27, 2011. SCDC's Office of General Counsel directed the undersigned counsel to prepare and file the instant Return on the agency's behalf.

³ See the Petitioner's Writ of Mandamus, p. 1. On page 3 of his filing, the Petitioner provided the following summary of the substantive claims at issue in his administrative grievance:

Petitioner, formerly assigned to the SCDC Private Sector Prison Industries with a private employer (ESCOD Industries), asserts that he is entitled to prevailing wages for a 320 hour "training period"; interest thereon; back prevailing wages; interest thereon; and access to his Long Term Savings Account; and interest thereon.

After expressing his understanding of the applicable standard by which a petition for writ of mandamus is considered, the Petitioner asserted as follows:⁴

Petitioner believes the public interest is involved in having SCDC grievance matters timely resolved in a manner equitable to all parties. This would monitor the Respondent's current practice of not answering meritorious prisoner grievances, in an order to delay resolution in the South Carolina Administrative Law Court, which has previously settled this prevailing wage matter following the filing of a grievance, see *Earl K. Will, #237037 v. South Carolina Department of Corrections*, Docket No. 05-ALJ-04-01159-AP, filed April 20, 2007.⁵

The Petitioner then requested the following relief from this Court:⁶

Based upon the foregoing facts and law, and the Appendix, Petitioner prays this Writ of Mandamus issue to compel [SCDC] to resolve Petitioner's grievance in a timely manner, or take such other action, as this Court deems equitable.

II. CONTOURS OF THIS COURT'S ORIGINAL JURISDICTION

This Court's original jurisdiction is derived from the South Carolina Constitution. Specifically, Article V, Section 5 of the South Carolina Constitution is entitled "Jurisdiction of Supreme Court," and provides as follows:

The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs. The Court shall have appellate jurisdiction only in cases of equity, and in such appeals they shall review the findings of fact as well as the law, except in cases where

⁴ *Id.*, p. 5.

⁵ Contrary to the Petitioner's assertions, SCDC continues to litigate prison industries pay claims before the South Carolina Administrative Law Court ["ALC"]. For example in *Francis Ackerman, #266928, et al, v. S.C. Dep't of Corr.*, ALC Docket No. 07-ALJ-04-00444, *et seq.*, Chief Administrative Law Judge Anderson is currently presiding over a consolidated appeal in which 200 inmates have, with the assistance of counsel, challenged the rate at which SCDC paid them and continues to pay them for their prison industries labor. Moreover, SCDC respectfully submits that the ALC in *Will* has not, as asserted by the Petitioner, "previously settled this prevailing wage matter following the filing of a grievance." See *Wright, #200123, v. S.C. Dep't of Corr.*, 2001 WL 1430140 (ALJD 2006) and *Larrimore, #238126, v. S.C. Dep't of Corr.*, ALC Docket No. 09-ALJ-04-00470-AP. Ultimately, as explained further below, the Petitioner has the opportunity to seek relief regarding the issue(s) articulated in his Petition as well as the merits of the claims he articulated in his administrative grievance before the ALC.

⁶ *Id.*, p. 5. Notably, Petitioner did not ask this Court to decide the issues purportedly animated by his administrative grievance. Instead, he simply requests that this Court direct SCDC to process his grievance.

the facts are settled by a jury and the verdict not set aside. The Supreme Court shall constitute a court for the correction of errors at law under such regulations as the General Assembly may prescribe. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.) [emphasis supplied].

Article V, Section 20 of the South Carolina Constitution is entitled "Powers of Justices and judges at chambers" and provides as follows:

Each of the Justices of the Supreme Court and judges of the Court of Appeals and Circuit Court and of all other courts of record shall have the same power at chambers to issue writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition, and interlocutory writs or orders of injunction as when in open court. The judges of the Court of Appeals and Circuit Court and other courts of record shall have such additional powers at chambers as the General Assembly may provide, except in matters required to be determined in a public trial. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.) [emphasis supplied].

The contours of this Court's jurisdiction are also reflected within the rules it promulgates. Specifically, SCACR 245 is entitled "Original Jurisdiction of the Supreme Court,"⁷ and, in its entirety, it provides as follows:

(a) When Appropriate. The Supreme Court will not entertain matters in its original jurisdiction when the matter can be determined in a lower court in the first instance, without material prejudice to the rights of the parties. If the public interest is involved, or if special grounds of emergency or other good reasons exist why the original jurisdiction of the Supreme Court should be exercised, the facts showing the reasons must be stated in the petition with supporting affidavits. [emphasis supplied]

(b) Extraordinary Writs. A party seeking the issuance of an extraordinary writ in the original jurisdiction of the Supreme Court shall serve and file a petition. The petition and any return shall comply with the requirements of Rule 240.

(c) Actions. A party seeking to have the Supreme Court entertain an action in its original jurisdiction (petitioner) shall serve on all other parties (respondents) a petition for original jurisdiction, a complaint setting forth the claim for relief in the manner specified by Rule 8, SCRCF, and a notice advising each respondent he has twenty (20) days from the date of service to serve and file a return to the petition. Service

⁷ This Rule was renumbered from SCACR 229 to SCACR 245 effective April 29, 2009.

shall be in the same manner as required for summons and complaints in Rule 4, SCRCP. The petitioner shall file an original and six (6) copies of the petition, notice and complaint with the Clerk of the Supreme Court, along with proof of service on each respondent. Any party opposing the petition shall have twenty (20) days from the date of service to file an original and six (6) copies of his return with the Clerk of the Supreme Court and serve on all parties a copy of the return. Failure of a party to timely file a return may be deemed a consent by that party to the matter being heard in the original jurisdiction. Unless otherwise ordered by the Supreme Court, the petition shall be decided without oral argument. If the petition is granted, the respondent shall have thirty (30) days to serve and file an answer to the complaint. The Supreme Court may provide for discovery, fact finding and/or a briefing schedule as necessary.

III. ARGUMENT IN OPPOSITION TO THE PETITION

A. THE AVAILABILITY OF RELIEF FROM THE ALC NEGATES ANY AND ALL GROUNDS ARTICULATED BY THE PETITIONER IN SUPPORT OF HIS PETITION

1. This Court should not consider this matter in its original jurisdiction, because the ALC may offer the Petitioner relief without prejudice to either party.

This Court should decline to exercise its original jurisdiction over this matter, because the ALC can adjudicate the issues raised by Petitioner without prejudice to the parties.

In *Key v. Currie*, 406 S.E.2d 356 (S.C. 1991), an inmate petitioned this Court to issue a writ of mandamus in its original jurisdiction to compel defendants to credit him with time served prior to his criminal trial. Ultimately, this Court “refuse[d] to entertain [the] matter in [its] original jurisdiction,” and, consequently, dismissed the petitioner’s petition for writ of mandamus. In reaching its conclusion, this Court, 406 S.E.2d at 357, emphasized the Court’s limited jurisdiction as follows:

Although Article V, § 5, of the South Carolina Constitution vests this Court with the authority to issue extraordinary writs and entertain actions in its original jurisdiction, this Court’s primary function is to act as an appellate court to review appeals from the trial courts. In Rule 229,⁸ SCACR, this Court has indicated it will not entertain matters in its

⁸ See note 7 above.

original jurisdiction where the matter can be entertained in the trial courts of this State. Only when there is an extraordinary reason such as a question of significant public interest or an emergency will this Court exercise its original jurisdiction. [emphasis supplied].

Furthermore, this Court, in *Adkins v. S.C. Dept. of Corr.*, 602 S.E.2d 51, 55 (S.C. 2004), directed inmates, such as the Petitioner, to adjudicate prison industries pay disputes through the auspices of SCDC's inmate grievance system. In the companion case to *Adkins*, *Wicker v. S.C. Dept. of Corr.*, 602 S.E.2d 56, 58 (S.C. 2004), this Court held that "[SCDC's] failure to pay in accordance with the statutes is reviewable by the [Administrative Law Judge]." In *Torrence v. S.C. Dept of Corr.*, 646 S.E.2d 866, 869 (S.C. 2007),⁹ this Court further clarified its holdings in *Adkins* and *Wicker* as follows:

The clear rule emerging from the *Adkins* and *Wicker* cases is this: inmates working in the Prison Industries Program have a cognizable, state-created interest in having the DOC pay them according to the statutory scheme governing the Program, but they do not have a private right of action; instead, the DOC's internal grievance procedure, with recourse to the Administrative Law Court, is the appropriate way to have a prisoner's wage claim adjudicated. [emphasis supplied].

Consequently, pursuant to *Adkins* and *Wicker*, and as acknowledged in *Torrence*, the forum in which an inmate, such as Petitioner, may first challenge SCDC's adjudication of his wage related grievance is the ALC.

Additionally, Article V, Section 20 of the S.C. Constitution expressly provides that "judges . . . of all other courts of record shall have the same power at chambers to issue writs of . . . mandamus." Thus, Administrative Law Judges ["ALJs"] can, and have, consider petitions for writ of mandamus. See e.g. Daniel Jones, # 130817 v. S.C. Dep't of Corr., ALC Docket No. 04-ALJ-04-00361-IJ (denying inmate's petition for writ of mandamus to process his grievance and instead granting SCDC's motion for remand back to SCDC so that SCDC could process inmate's

⁹ The Petitioner was the lead plaintiff in *Torrence*.

grievance); John H. Backus, # 283919 v. S.C. Dep't of Corr., ALC Docket No. 03-ALJ-04-00274-IJ (denying inmate's petition for writ of mandamus for SCDC to process his grievance).

Despite this reality, however, the Petitioner argued that no lower court can provide the relief he requested.¹⁰ However, the Petitioner failed to support this contention with any facts or law. The Petitioner also failed to demonstrate that his rights would be prejudiced in any way if SCDC's purported failure to process or otherwise adjudicate his administrative grievance was addressed by the ALC. Accordingly, the claim for relief articulated by the Petitioner can, and should, be resolved by the ALC, and, therefore, this Court should deny his petition.

2. Even if this Court exercises its original jurisdiction over the issues raised by the Petitioner in his Petition, it should still decline to issue the writ of mandamus sought by the Petitioner in light of the relief available to him before the ALC.

Even if this Court exercises its original jurisdiction over this matter, it should still deny the Petitioner's demand for mandamus.

This Court, in *Edwards v. State*, 678 S.E.2d 412, 419 (S.C. 2009), provided the following guidance when considering a petition for writ of mandamus in this Court original jurisdiction:

The Supreme Court has the power to issue writs of mandamus. S.C. CONST. art. V, § 5; S.C.Code Ann. § 14-3-310 (1976). Mandamus is the highest judicial writ known to the law. *Brackenbrook N. Charleston, LP v. County of Charleston*, 360 S.C. 390, 400, 602 S.E.2d 39, 45 (2004). It is a coercive writ which orders a public official to perform a ministerial duty. *Wilson v. Preston*, 378 S.C. 348, 354, 662 S.E.2d 580, 582 (2008); *Ex Parte Littlefield*, 343 S.C. 212, 222, 540 S.E.2d 81, 86 (2000).

For a writ of mandamus to issue, the following must be shown: (1) a duty of the Respondent to perform the act; (2) the ministerial nature of the act; (3) the Petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy. *Wilson v. Preston*, 378 S.C. at 354, 662 S.E.2d at 583. A ministerial act or duty is one which a person performs because of a legal mandate which is defined

¹⁰ See Petitioner's Petition for Writ of Mandamus, p. 4. The Petitioner did not assert or otherwise demonstrate that he had previously filed a petition for relief from the ALC.

with such precision as to leave nothing to the exercise of discretion. *Id.* at 354, 662 S.E.2d at 583. [emphasis supplied]

This Court has also expressed that “[t]he issuance of the writ of mandamus is not a matter of strict legal right, but it rests in the sound discretion of the court.” *Linton v. Gaillard*, 25 S.E.2d 896, 898 (S.C. 1943) (citation omitted).

As discussed immediately above, this Court, in *Adkins*, *Wicker*, and *Torrence*, declared that inmates, such as the Petitioner, must adjudicate prison industries pay disputes under the auspices of SCDC’s inmate grievance system, and subsequently, they may appeal SCDC’s determination of their pay disputes to the ALC. As also discussed above, Article V, Section 20 of our state’s Constitution expressly provides that ALJs have the power to grant petitions for writ of mandamus. *See also Daniel Jones, # 130817 v. S.C. Dep’t of Corr.* and *John H. Backus, # 283919 v. S.C. Dep’t of Corr.*

Consequently, the ALC has jurisdiction not only to review SCDC’s substantive decision regarding the prison industries pay claims articulated within administrative grievance filed by its inmates, but it also has jurisdiction to grant the relief specifically requested by the Petitioner in his filing.

Thus, contrary to his contentions, the Petitioner clearly has relief available to him via the ALC, and he failed to provide this Court any reason as to why he has not previously availed himself to such relief.¹¹ Accordingly, this Court should deny his petition for writ of mandamus.

¹¹ See note 10 above.

B. THIS COURT SHOULD NOT EXERCISE ITS ORIGINAL JURISDICTION OVER THIS MATTER, BECAUSE THE PETITIONER DID NOT IDENTIFY AN ISSUE OF PUBLIC INTEREST

As reflected by SCACR 245 and this Court's decision in *Key*, this Court may, in limited circumstances, exercise its original jurisdiction over a matter of significant public interest. The issues identified by the Petitioner, however, do not constitute matters of significant public interest.

Specifically, this Court has determined that disputes regarding the election of public officers involves a significant public interest. *See e.g. Mitchell v. Spartanburg County Legislative Delegation*, 685 S.E.2d 812, 813 (S.C. 2009) (finding that a dispute regarding whether the election of officers to a legislative delegation is a procedural or substantive matter was a matter of great public interest); *Sloan v. Hardee*, 640 S.E.2d 457, 459 (S.C. 2007) (exercising its original jurisdiction because the manner in which commissioners for the S.C. Department of Transportation were appointed was a matter of public interest).

This Court has also determined that some constitutional matters present issues of significant public interest. *See e.g. Ex parte Brown*, 711 S.E.2d 899, 900 (S.C. 2011) (holding that the issue of whether the Takings Clause of the Fifth Amendment to the United States Constitution is implicated when an attorney is appointed by the court to represent an indigent litigant presented a matter of significant public interest); *American Petroleum Inst. v. S.C. Dep't of Revenue*, 677 S.E.2d 16 (S.C. 2009) (exercising this Court's original jurisdiction to determine whether a legislative act violated the one subject rule of the South Carolina Constitution); *Bennett v. State*, 669 S.E.2d 594, 594 - 95 (S.C. 2008) (exercising this Court's original jurisdiction to clarify that its prior holding in *State v. McGrier*, 663 S.E.2d 15 (S.C. 2008), which held that the Community Supervision Program statute providing that inmates may be required to

serve additional periods of community supervision for successive revocations was unconstitutional, applied retroactively to incarcerated inmates).

Furthermore, this Court has exercised its original jurisdiction over cases which resolved a dispute between different branches of government. For instance, in *McConnell v. Haley*, 711 S.E.2d 886 (S.C. 2011), this Court exercised its original jurisdiction to enjoin an executive order issued by Governor Haley which required the General Assembly to reconvene in extra session. Similarly, in *Edwards*,¹² this Court exercised its original jurisdiction to resolve a dispute between the Governor and the General Assembly regarding the election to secure federal funds available under the American Recovery and Reinvestment Act of 2009.

Unlike the cases cited above, however, the issues identified by the Petitioner simply do not involve a matter of public interest. Furthermore, the relief requested by the Petitioner – to compel SCDC to process and adjudicate *his* administrative grievance – has absolutely no impact on any other individual or entity. Therefore, this Court should deny his petition and, by extension, decline to exercise its original jurisdiction over this matter.

C. THIS COURT SHOULD NOT EXERCISE ITS ORIGINAL JURISDICTION OVER THIS MATTER, BECAUSE THE PETITIONER DID NOT IDENTIFY AN EMERGENCY OR TIME SENSITIVE ISSUE

As explained by this Court's decision in *Key*, and as reflected by SCACR 245, this Court may, in limited circumstances, exercise its original jurisdiction when an emergency or time sensitive issue exists. *See e.g. Porter v. Jedziniak*, 512 S.E.2d 497 (S.C. 1999) (granting petition for writ under the exigencies of time when the issues related to the abolition of required public notice when an automobile insurers requested certain rate increases); *S.C. Dep't. of Parks, Recreation, & Tourism v. Brookgreen Gardens*, 424 S.E.2d 465, 466 (S.C. 1992) (exercising

¹² In *Edwards*, 678 S.E.2d at 419, this Court also granted a petition for writ of mandamus to require the Governor to submit an application for funds under the American Recovery and Reinvestment Act of 2009.

original jurisdiction to determine the respective rights of the parties in property when deadline for FEMA funding was rapidly approaching).

Succinctly stated, the issues raised by the Petitioner are simply not time sensitive and do not involve an emergency similar to those described above. Furthermore, the Petitioner did not claim that the issues he raised are time sensitive or otherwise constitute emergency circumstances. Therefore, this Court should not exercise its original jurisdiction over this matter.

D. THIS COURT SHOULD NOT EXERCISE ITS ORIGINAL JURISDICTION OVER THIS MATTER, BECAUSE SCDC SHALL PROCESS AND ADJUDICATE THE PETITIONER'S ADMINISTRATIVE GRIEVANCE, AND, THEREFORE, HIS PETITION IS MOOT

As illustrated above, the sole relief sought by the Petitioner in his filing is for this Court to compel SCDC to process and adjudicate his administrative grievance.

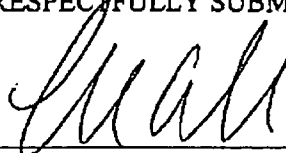
SCDC, by and through its undersigned outside counsel, respectfully submits that it will process and adjudicate the Petitioner's administrative grievance, designated as ECI-980-10, pursuant to the provisions of SCDC's Inmate Grievance System Policy GA-01.12 no later than 30 days after the filing date of its instant Return.

Consequently, as SCDC shall process and adjudicate the Petitioner's administrative grievance, the relief he sought in his instant filing is moot. *Cheap-O's Truck Stop, Inc., v. Cloyd*, 567 S.E.2d 514, 517 (S.C. Ct. App. 2002) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. ... *Byrd v. Irmo High School*, 321 S.C. 426, 468 S.E.2d 861, 864 (1996) ..."). Therefore, SCDC respectfully urges this Court to dismiss his petition in its entirety.

IV. CONCLUSION

For the reasons stated above, this Court should deny the Petitioner's Petition for Writ of Mandamus in its entirety.

RESPECTFULLY SUBMITTED:



Lake E. Summers

Katherine A. Phillips

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

Outside Counsel for SCDC

Columbia, South Carolina
October 27, 2011

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Thomas J. Torrence, #94651, Petitioner,

v.


South Carolina Department of Corrections, Respondent.

PROOF OF SERVICE

This is to certify that I have, on this date, caused to be served a copy of Respondent SCDC's Return to the Petitioner's Petition for Writ of Mandamus upon the Petitioner, via the United States Mail, to the following address:

Thomas J. Torrence, # 094651
Lieber Correctional Institution
SA-43
Post Office Box 205
Ridgeville, South Carolina 29472

October 27, 2011



Lake E. Summers

STATE OF SOUTH CAROLINA
In The Supreme Court

Thomas J. Torrence, PETITIONER,

vs.

South Carolina Department of Corrections, . . RESPONDENTS.

REPLY TO RESPONDENT'S RETURN
TO PETITION FOR WRIT OF MANDAMUS

Thomas J. Torrence
#094651
Lieber Correctional Inst.
P.O. Box 205
Ridgeville, SC 29472

PETITIONER

LAW OFFICES

NOV 02 2011

MALONE, THOMPSON
SUMMERS & OTT, LLC

PETITION FOR WRIT OF MANDAMUS

Thomas J. Torrence ("Petitioner") herein responds to Respondent South Carolina Department of Corrections ("SCDC") Return to Petitioner's Petition for Writ of Mandamus dated October 27, 2011.

I. PURPOSE OF PETITIONER'S WRIT IN ORIGINAL JURISDICTION

Petitioner asserts that the sole relief of [his] writ is to compel SCDC to process Grievance ECI-980-10 in accordance with SCDC Policy GA 01.12 (2006), S.C. Constitution Art. I, §§ 2 and 3, and the Civil Rights of Institutionalized Persons Act, which SCDC, and specifically outside counsel, Lake E. Summers, Esq., have intentionally avoided for a period of ten (10) years, I one forum or another.

II. THIS COURT'S ORIGINAL JURISDICTION

Without contention by either party, this Court enjoys discretion and authority to entertain extraordinary writs regardless of available alternative avenues of relief where such circumstances exist.

III. PETITIONER'S REPLY

SCDC Policy GA 01.12 (2006) controls the internal agency grievance procedure for inmates. A Step 1 Grievance should be answered in 40 days, Id., §13.4. The Step 2 Grievance, "Appeal

Process," should be resolved in 60 days, Id., §13.6 The time for response is set forth in part,

"...Time limits at each step in the procedure are contained herein; but in most instances, grievances will be processed from initiation to final disposition within 125 days... (NOTE: The maximum extension that may be given is 90 days. Under certain circumstances the grievance process may exceed 215 days.)" (Original emphasis)

Mr. Summers was aware of this Court's ruling as to wage related grievances since the *Wicker* decision in 2004, while *Torrence* was pending and specifically thereafter, where Mr. Summers was counsel of record for SCDC in *Torrence*. Yet, Mr. Summers has failed to respond to grievance 980-10 specifically addressed to his attention, see "Disposition by Staff Member", Petitioner's Appendix ("Pet.App.") 1.

Petitioner asserts this matter is capable of repetition and thus concerns the public interest where the agency systematically deprives indigent and *pro se* inmates their right[s] to redress grievances.

SCDC and General Counsel have previously proposed to this Court that one of Petitioner's grievances was moot where SCDC stated it would "process" the grievance, and thereafter refused to timely adjudicate the matter.

Petitioner file Grievance ECI-633-03 on November 20, 2000, Pet.App. 5, pertaining to sentence start date. On July 15, 2003 Petitioner filed a Petition for Writ of Mandamus in this Court to compel SCDC to process the grievance. On July 24,

2003, this Court directed SCDC to respond to the Petition. On July 29, 2003 Petitioner was instructed by SCDC to re-file 633-03, Pet.App. 5. On July 30, 2003, David Tatarsky, Esq., then SCDC General counsel, submitted to this Court "...however, by permitting Mr. Torrence to file this grievance and utilize the Inmate Grievance System, SCDC now believes that Mr. Torrence's Petition is moot." SCDC failed to "process" 633-03 for seven (7) years following that assertion.

Petitioner contacted SCDC concerning 633-03 and the instant grievance on April 21, 2010, Pet. App. 5. As a result Petitioner did not receive a final agency decision (Step 2) on 633-03 until July 19, 2010, fully ten (10) years after the filing of the grievance and seven (7) years after counsel's assertion to this Court. There is a reasonable expectation that the complaining party here will be subjected to the same action again, absent this Court's intervention.

Petitioner asserts in good faith and in an effort not to burden the record here that each document referenced above is available upon request to this Court or Respondent's counsel.

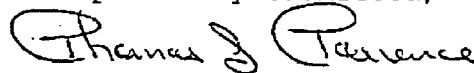
Based on these facts this matter is capable of repetition and should not be considered moot merely upon counsel's submission [it] will "process and adjudicate" the grievance. In light of Respondent's previous failure to process Petitioner's grievances, Petitioner prays this Court grant the

petition and order SCDC to adjudicate Steps 1 and 2 within 60 days to ensure compliance, or take such action this Court deems equitable.

CONCLUSION

Based on the Petition, Appendix and foregoing reasons, this Court should grant Petitioner's Writ of Mandamus.

Respectfully submitted,



Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
P.O. 205
Ridgeville, SC 29472

dated October 3rd, 2011
at Ridgeville, SC

PETITIONER

STATE OF SOUTH CAROLINA
In The Supreme Court

Thomas J. Torrence, PETITIONER,

vs.

South Carolina Department of Corrections, RESPONDENTS.

CERTIFICATE OF SERVICE

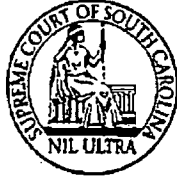
The undersigned Petitioner certifies that he has sent a true and correct copy of the Reply to Respondent's Return to Petition for Writ of Mandamus to counsel for Respondents by placing a copy of same in the U.S. Mail, first-class postage affixed thereto, this 31st day of October, 2011, addressed as follows:

Lake E. Summers, Esq.
MALONE, THOMPSON, SUMMERS & OTT, LLC
339 Heyward Street, Suite 200
Columbia, SC 29201



Thomas J. Torrence
#094651
Lieber Correctional Inst. SA-43
P.O. Box 205
Ridgeville, SC 29472

PETITIONER



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

November 9, 2011

Lake E. Summers, Esquire
Katherine Phillips, Esquire
Malone, Thompson, Summers & Ott
339 Heyward Street
Suite 200
Columbia, SC 29201

Re: Torrence, Thomas J. v. State

Dear Counsel:

This will acknowledge receipt of the return you filed in connection with the above Petition for Writ of Mandamus.

Please advise the Court in writing when Mr. Torrence's SC Department of Corrections grievance has been resolved.

Very truly yours,

Daniel E. Shearouse
CLERK

DES/bfs

cc: Mr. Thomas J. Torrence # 094651

LAW OFFICES

NOV 14 2011

MALONE, THOMPSON
SUMMERS & OTT, LLC

STATE OF SOUTH CAROLINA
In The Supreme Court

Thomas J. Torrence, PETITIONER,

vs.

South Carolina Department of Corrections, . . . RESPONDENTS.

AMENDED REPLY TO RESPONDENT'S RETURN
TO PETITION FOR WRIT OF MANDAMUS

Thomas J. Torrence
#094651
Lieber Correctional Inst.
P.O. Box 205
Ridgeville, .SC 29472

PETITIONER

LAW OFFICES

NOV 16 2011

MALONE, THOMPSON
SUMMERS & OTT, LLC

AMENDED REPLY TO RESPONDENT'S RETURN

Thomas J. Torrence ("Petitioner") herein submits this amended response to Respondent South Carolina Department of Corrections ("SCDC") Return to Petitioner's Petition for Writ of Mandamus dated October 27, 2011, following submissions dated November 1, 2011 (attached).

Counsel for Respondents clearly submitted to this Court in their October 27, 2011 Return, Section D, that:

"...respectfully submits that it will process and adjudicate the Petitioner's administrative grievance, designated as ECI-980-10, pursuant to the provisions of SCDC Inmate Grievance System Policy GA-01.12 no later than 30 days after the filing of its instant Return."

Respondent's Return, § D, page 10.

Respondents contradict counsel's October 27th submission to this Court. On November 10, 2011, Petitioner received a response (attached) to his June 24, 2011 correspondence to Respondent's Grievance Branch Chief (Writ Appendix pg. 7-8). Respondent's submission indicates that no response to ECI-980-10 will be forthcoming until a disposition by the "Appellate Court" in a lawsuit to which this Petitioner is not a party. Respondents clearly state **"we cannot serve you with a response."**

Also on November 10, 2011, Petitioner received a response (attached) to his Grievance complaining of Respondents failing to process ECI-980-10 (Writ Appendix pg. 9). This response

similarly implies Petitioner's grievance will not receive a timely response in stating "The Prison Industries grievances are still pending in the courts. When we receive the final disposition, you will be served the response."

Respondents, despite counsel's submission to "process and adjudicate" the grievance, have no intention of timely responding absent this Court's Writ of Mandamus.

This Court's decision in *Torrence v. South Carolina Department of Corrections*, 373 S.C. 586, 593-594, 646 S.E.2d 866 (2007) instructed this Petitioner must file an agency grievance and proceed through the Administrative Law Court to obtain the relief sought.

CONCLUSION

Based on the Petition, Appendix and recent submissions by Respondents, this Court should grant Petitioner's Writ of Mandamus.

Respectfully submitted,



Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
P.O. 205
Ridgeville, SC 29472

dated November 10, 2011
at Ridgeville, SC

PETITIONER

Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
PO Box 205
Ridgeville, SC 29472

June 24, 2011

Ann Hallman
~~Mary Coleman~~, Chief
Inmate Grievance Branch
S.C. Department of Corrections
PO Box 21787
Columbia, SC 29221-1787

Re: Grievance No. ECI-980-10

Dear Ms. Coleman:

I contacted your office in June 2010 regarding the above-referenced grievance. This grievance was originally filed in 2007. Your Office did not assign a case number until I contacted you in 2010. It is now one (1) year after the assignment of the above-referenced number.

Your June 10, 2010 response stated that you referred my Step 1 Grievance to outside counsel (Lake E. Summers) who would answer Step 1. First, I am unaware of any provision that allows an internal grievance to be answered by an "outside" attorney. Second, Mr. Summers represented SCDC in my lawsuit (Torrence v. SCDC) regarding the issue of prison industries wages in the grievance at hand. Third, the SCDC Grievance Policy does not allow longer than 215 days for the disposition of a grievance.

Mr. Summers is intimately aware that the lower court and the South Carolina Supreme Court instructed that I file a grievance in this matter. Therefore, I am formally requesting that your Office make a formal disposition on my Step 1 Grievance within thirty (30) days of receipt of this correspondence. If this matter does not progress with the requested amount of time, which has allowed your Office one (1) year plus an additional month, I will petition the Supreme Court regarding your refusal to follow the mandates of both Wicker and Torrence. I will petition either for a writ of mandamus, or in the alternative, permission to

reopen Torrence where an agency grievance has been systematically denied.

Thank you for your assistance in this matter and I look forward to hearing from you.

Sincerely,

Thomas J. Torrence

Thomas J. Torrence

Cc: file

Your grievance ECZ-0980-10 is part of a law suit in which the attorney, Lake Turner, Esq. is representing SCDC. Until there is a final disposition from the Appellate Court, we cannot serve you with a response. The grievance will be responded to by an SCDC staff member, which will most likely be David Tartarshy, Esquire or myself. Please wait for the final disposition and we will serve you a response shortly after this case has been adjudicated.

11-1-2011 *Ann Haller*

RECEIVED

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

AUG 26 2011

INMATE GRIEVANCE

TO: NAME: ~~Mary Coleman~~
INMATE'S NAME: ~~Mary Coleman~~

TITLE: Chief Grievance Branch

DATE: 8-24-11

SCDC#: 094651

INSTITUTION: Thomas J Torrence
Lieber

LIVING QUARTERS: SA-43

Mrs Coleman:

Ms. Thomas returned this Grievance (ECE 1104-11) to me on Aug 19, 2011, with information she "forwarded" it to Evans. I reminded her it was a complaint concerning the grievance procedure and thought it should be forwarded to your office. She responded "that is their problem."

My understanding of GA 01.12, §§ 17 and 17.3 leads me to believe your office should handle this matter, especially since the procedure employed (outside counsel) is outside the parameters of the Grievance Policy. Thus, I am forwarding this to your attention in an effort to resolve this matter. Thank you Thomas Torrence

DISPOSITION BY STAFF MEMBER:

RE: ECE-980-10 - filed 5/21/07 in Court on Appeal pending Final Disposition. ECE-1104-11 is a duplicate issue by ECE-980-10; Therefore, ECE 1104-11 was properly not processed by IGC. The Prison Industry Grievances are still pending in the courts when we receive the final disposition, you will be served the response.

DATE:

SIGNATURE:

11-1-2011

Andrew Hall

SCDC FORM 19-11 (REV. FEB 2001)

STATE OF SOUTH CAROLINA
In The Supreme Court

Thomas J. Torrence, PETITIONER,

vs.

South Carolina Department of Corrections, RESPONDENTS.

CERTIFICATE OF SERVICE

The undersigned Petitioner certifies that he has sent a true and correct copy of the Amended Reply to Respondent's Return to Petition for Writ of Mandamus to counsel for Respondents by placing a copy of same in the U.S. Mail, first-class postage affixed thereto, this 14th day of November, 2011, addressed as follows:

Lake E. Summers, Esq.
MALONE, THOMPSON, SUMMERS & OTT, LLC
339 Heyward Street, Suite 200
Columbia, SC 29201



Thomas J. Torrence
#094651
Lieber Correctional Inst. SA-43
P.O. Box 205
Ridgeville, SC 29472

PETITIONER

LAW OFFICES

NOV 16 2011

MALONE, THOMPSON
SUMMERS & OTT, LLC



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 11, 2012

Mr. Thomas J. Torrence # 094651
SA-43
Lieber Correctional
Institution
P. O. Box 205
Ridgeville, SC 29472

Re: Torrence, Thomas J. v. State

Dear Mr. Torrence:

Enclosed is a copy of an order of the Court issued in the above matter.

Very truly yours,

Chief Deputy Clerk

BFS/mgh

Enclosure

cc: Lake E. Summers, Esquire
Katherine Phillips, Esquire

LAW OFFICES

JAN 17 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

The Supreme Court of South Carolina

O R D E R

LAW OFFICES

JAN 12 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

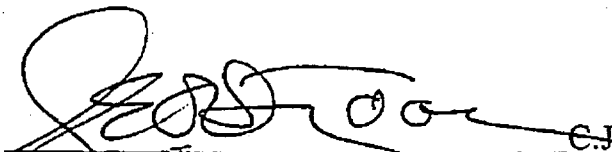
The following matters are dismissed pursuant to Key v.

Currie, 305 S.C. 115, 406 S.E.2d 356 (1991), because no extraordinary reason exists to entertain them in this Court's original jurisdiction:

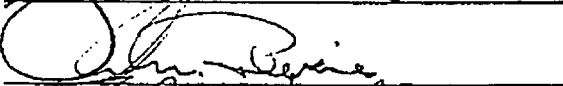
1. Charles Morrow. Letter to the Clerk of Court received December 12, 2011. Case Tracking No. 2011204328.
2. Ronnie Blackwell. Letter to the Clerk of Court received December 12, 2011. Case Tracking No. 2011204331.
3. Aubrey Cohen. Letter to the Chief Justice received December 12, 2011. Case Tracking No. 2011204406.
4. Carl Woods. Letter to the Chief Justice and Notice of Motion for Dismissal received January 3, 2012. Case Tracking No. 2012205629.
5. Dominic Gallman. Letter to the Chief Justice dated November 16, 2011. Case Tracking No. 2011204506.
6. Billy Ray Wright. Letter to the Clerk of Court received December 13, 2011. Case Tracking No. 2011204507.
7. Thomas J. Torrence v. South Carolina Department of Corrections. Petition for a Writ of Mandamus dated October 5, 2011. Case Tracking No. 2011200747.

8. Kenneth Sherman. Notice of Motion and Motion for the Production and Inspection of Evidence and Information which May Lead to Evidence, dated December 5, 2011. Case Tracking No. 2011204127.
9. Eric Samuel v. Hon. Julie J. Armstrong, Clerk of Court, Charleston County. Motion for Leave to Proceed In Forma Pauperis, Summons, Notice of Motion and Motion for a Writ of Mandamus for the Production of Charleston County Grand Jury Impanelment of Documents from the Clerk of Court for Charleston County, and Complaint & Jury Trial Demand & Writ of Mandamus, dated November 30, 2011. Case Tracking No. 2011204026.


IT IS SO ORDERED.



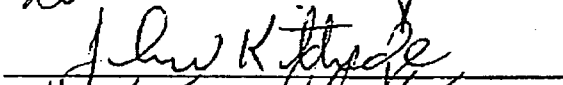
C.J.



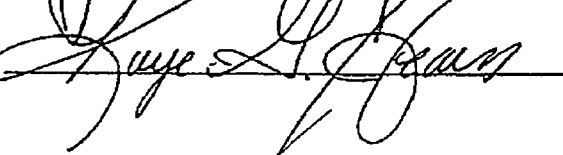
J.



J.



J.



J.

Columbia, South Carolina

January 11, 2012

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, #094651

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. ALJ-04-
GRIEVANCE NO.: ECI-980-10

Notice is hereby given that Thomas J. Torrence does hereby appeal the final decision of the South Carolina Department of Corrections dated 2/9/12 and received on 2/15/12, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):
DOC's final agency decision is in violation of constitutional and statutory provisions; was in excess of the statutory authority of DOC; was made upon unlawful procedure; was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and was arbitrary and capricious in a clearly unwarranted abuse of discretion in that:

- (1) DOC withheld prevailing wages for 320 hours of labor;
- (2) DOC removed a portion of prevailing wages for labor from Nov. 1997 - Nov. 2004, without statutory authority;
- (3) Grievant is entitled to interest on unlawfully withheld wages.
- (4) DOC denies access to wages held in escrow for his benefit under §24-3-40(A)(5) and (B)(2);
- (5) DOC pays a substandard interest rate on escrowed monies held under §24-3-40(A)(5); and
- (6) Time to file grievance equitably tolled by pendency of this action in Torrence v. SCDC, 373 S.C. 586, 640 S.E.2d 866 (2007).

Thomas J. Torrence

Appellant's Name
#094651 SA-43

PO Box 205

Mailing Address

Ridgeville, SC 29472-0205

City, State, Zip Code

Thomas J. Torrence
Signed

March 2, 2012
Dated

CERTIFICATE OF SERVICE

I hereby certify that Thomas J. Torrence (your name), on the 7th day of March, 2012, in Ridgeville (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: General Counsel, S.C. Dept. of Corrections

Address: P.O. Box 21787

City, State, Zip Code: Columbia, SC 29221-1787

Print your name Sign your name
(See reverse side for instructions)

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

LAW OFFICES

MAY 24 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

APPEAL FROM FINAL AGENCY DECISION
South Carolina Department of Corrections

Case No. 12-ALJ-04-0143-AP
Grievance No. ECI-980-10

Honorable Deborah Brooks Durden, Administrative Law Judge

Thomas J. Torrence, #094651 APPELLANT

v.

S.C. Department of Corrections RESPONDENTS

APPELLANT'S ORIGINAL BRIEF

Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
P.O. Box 205
Ridgeville, SC 29472-0205

APPELLANT, Pro se

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ISSUE(S) ON APPEAL

- I.** THE DEPARTMENT OF CORRECTIONS WITHHELD THE PREVAILING WAGES FOR APPELLANT'S LABOR DURING A 320 HOUR "TRAINING PERIOD" (JUNE 1997 - AUGUST 1997) AGAINST THE STATUTORY AUTHORITY OF S.C. CODE §§ 24-3-40, 24-3-315, AND 24-3-430(D).
- II.** THE DEPARTMENT OF CORRECTIONS REMOVED A PORTION OF PREVAILING WAGES FOR APPELLANT'S LABOR FROM AUGUST 1997 TO NOVEMBER 2004 AGAINST THE STATUTORY AUTHORITY OF S.C. CODE §§ 24-3-40, 24-3-315, AND 24-3-430(D).
- III.** THE DEPARTMENT OF CORRECTIONS DENIES APPELLANT IMMEDIATE ACCESS TO WAGES ESCROWED FOR NHIS BENEFIT AGAINST THE STATUTORY AUTHORITY OF S.C. CODE §§ 24-3-40(A)(5), 24-3-40(B)(2), AND 24-3-315.
- IV.** THE DEPARTMENT OF CORRECTIONS DENIES APPELLANT HIS PROPERTY INTEREST IN A FAIR INTEREST RATE ON WAGES ESCROWED FOR HIS BENEFIT UNDER S.C. CODE ANN. §24-3-40(A)(5).
- V.** APPELLANT IS ENTITLED TO INTEREST ON ALL WAGES WITHHELD WITHOUT STATUTORY AUTHORITY.
- VI.** APPELLANT'S GRIEVANCE WAS QUITABLY TOLLED BY THE PENDANCY OF THIS ACTION IN THE COURTS OF THIS STATE.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, # 094651)	
	)	Docket No. 12-ALJ-04-0143
Appellant,	)	Grievance No. ECI 980-10
)	
vs.	)	Honorable Deborah Brooks Durden
)	
South Carolina Department of Corrections,)	
	)	APPELLANT'S
Respondent.	)	ORIGINAL BRIEF
)	

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed on March 12, 2012 by Thomas J. Torrence ("Appellant"), an inmate incarcerated in the South Carolina Department of Corrections ("DOC"). Appellant asserts that the DOC removed portions of his wages earned in a private sector prison industries program without statutory authority, the DOC refuses to allow Appellant access to his long-term savings funds in escrow, and the DOC distributes a substandard interest on those funds.

JURISDICTION

This Court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court decision in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). The Supreme Court limited the ALC's jurisdiction in inmate appeals to state-created liberty interest typically involving: (1) cases in which an inmate contends that prison officials erroneously calculated his sentence or sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.* Later, the Court clarified that the ALC must provide minimal due process for state-created liberty or property interests in cases involving prevailing wage claims. *Wicker v. S.C. Dept. of Corrections*, 360 S.C. 421, 602 S.E.2d 56 (2004).

PROCEDURAL HISTORY

Appellant filed a Step One agency grievance on May 21, 2007 at Broad River Correctional Institution and served a copy, via U.S. Mail, on the Grievance Coordinator at Evans Correctional Institution. The DOC did not respond until December 1, 2011, following Appellant's petition for writ of mandamus to our Supreme Court. The DOC, through outside counsel appearing here [Lake E. Summers, Esq.] denied Step One in its entirety.

Appellant timely filed a Step Two Appeal with Appendices A-L in support thereof on December 5, 2011. The DOC denied the Step Two in its entirety on February 9, 2012, which was received by Appellant on February 15, 2012. The Notice of Appeal in this matter was filed March 12, 2012.

FACTUAL BACKGROUND

Appellant was hired in the Private Sector Prison Industries (Prison Industries Enhancement Certification Program ("PIE")) - (Insilco Global Technologies/Escod) at Evans Correctional Institution in June 1997. Appellant was required to work a "Training Period" where he performed labor side-by-side with non-inmate individuals employed from the local community (earning between \$8.00 - \$14.00 per hour) by Escod at a rate of .25¢ per hour for 160 hours, and .75¢ per hour for the following 160 hours. Many of these hours were over-time labor. Upon completion of the 320 hour training period Appellant was paid \$5.25 per hour. Appellant continued to labor side-by-side with private sector employees as a Quality Control Inspector and Section Lead Person; and in a corporate buy out, assumed many of the functions of the non-inmate employees (Maintenance Supervisor, Document Control, Training Coordinator and Quality Control Supervisor). Appellant labored in these positions from June 1997 - November 2004. Throughout this period Escod paid \$7.17 per each regular hour of Appellant's labor and \$10.89 per each overtime hour, which was remitted to DOC pursuant to §24-3-40.

When the South Carolina Legislature amended S.C. Code §§ 24-3-40 and 24-3-430 by 1999 Act No. 68, §2, Appellant and other prisoners complained to DOC Division of Industries personnel. In 2000, Appellant and Inmate William Ray Ward petitioned the DOC to change the wage payment practice then in effect. That petition was unanswered.

Appellant, Ward and Inmate Henry Hubbard filed suit in 2001 in the Richland County Court of Common Pleas (2001-CP-40-3409). Appellant obtained counsel who amended the declaratory judgment action and added Susan Smith as representative of the beneficiary class and Kimberley DuBose as representative of the victim class.

In 2003 the DOC filed a motion for summary judgment, which was subsequently denied by the Honorable D. Garrison Hill.

On August 23, 2004 our Supreme Court decided *Wicker v. S.C. Dept. of Corrections*, 360 S.C. 421, 602 S.E.2d 56 (2004) and held that an inmate is entitled to file a grievance when not being paid the prevailing wage, and that this Court had jurisdiction to review such claims.

Appellant was transferred to a different institution on November 14, 2004. The DOC again filed for summary judgment, based solely on the Supreme Court's holding in *Wicker*, creating a right to file a grievance for failure to pay the prevailing wage, and Judge Hill issued an order granting summary judgment dated May 31, 2005. Appellant's motion for reconsideration was denied by Judge Hill on July 8, 2005. Appellant filed a

timely Notice of Appeal in the S.C. Court of Appeals. The S.C. Supreme Court assumed jurisdiction of the case.

In an order dated May 7, 2007, and received by Appellant on May 21, 2007, via correspondence from counsel dated May 17, 2007, the Supreme Court held that Appellant and others must file a grievance, (*Thomas J. Torrence et al. v. S.C. Dept. of Corrections*, 373 S.C. 586, 646 S.E.2d 866 (2007) rehearing denied).

Appellant filed Step One Grievance (No. ECI-980-10) on May 21, 2007 (See Record on Appeal submitted by Respondent and Appendix H attached to Appellant's Step Two¹) within five (5) days of receipt of the Court's decision, while Respondents filed a petition for rehearing based solely on footnote 4 of Torrence. Respondents did not answer Step 1 until December 5, 2011 and Step Two until February 9, 2012. This appeal follows.

ARGUMENT

I. THE DOC WITHHELD PREVAILING WAGES FOR APPELLANT'S LABOR DURING A 320 HOUR "TRAINING PERIOD" (JUNE 1997 - AUGUST 1997) AGAINST THE STATUTORY AUTHORITY OF S.C. CODE §§ 24-3-40, 24-3-315 AND 24-3-430(D).

Appellant performed labor in PIE, many of which were overtime hours, in a DOC created mechanism, unauthorized by statute, to divert *prisoner wages*, in a "Training Period" of 320 hours. The first 160 hours were at .25¢ per hour; the following 160 hours were at .75¢ per hour. Appellant asserts he is entitled to the prevailing wage for that 320-hour training period that the DOC diverted away from Appellant.

Our Supreme Court held in *Wicker v. S.C. Dept. of Corrections*, 360 S.C. 421, 602 S.E.2d 56 (filed August 23, 2004) that where "the state has created a statutory right [§24-3-430(D)] to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process," and that nothing in the statutory scheme creating PIE authorizes the DOC to pay a training wage less than the prevailing wage.

This same holding was continued in Appellant's case before our Supreme Court, *Torrence v. S.C. Dept. of Corrections*, 373 S.C. 586, 646 S.E.2d 866 (2007) (Inmates working in the prison industries program have a cognizable, state-created interest in having the DOC pay them according to the statutory scheme governing the program.)

Appellant is entitled to the prevailing wage Escod paid for his labor, and diverted without statutory authority by the DOC, for the 320 labor hours between June 1997 - August 1997 "training period."

¹ Appendices attached to Appellant's Step Two Grievance ("Gr.App. ____")

II. THE DOC REMOVED A PORTION OF PREVAILING WAGES FOR APPELLANT'S LABOR FROM AUGUST 1997 TO NOVEMBER 2004 AGAINST THE STATUTORY AUTHORITY OF S.C. CODE §§ 24-3-40, 24-3-315 AND 24-3-430(D).

Appellant performed labor in the Evans PIE project, many of which were overtime hours, side-by-side with private sector employees, from August 1997 – November 2004. He performed in a number of supervisory and highly trusted positions, even in a capacity of training other employees on corporate, industry and military standards and specifications.

Appellant received \$5.25 per regular hour and \$7.86 per overtime hour for that labor. Appellant was never informed that Escod actually paid \$7.17 per regular hour and \$10.75 per overtime hour. Appellant asserts he had a state-created property interest, under §§ 24-3-40, 24-3-315 and 24-3-430(D) in the \$1.92 per regular hour and \$2.79 per overtime hour difference Escod paid for his labor and that the DOC diverted without statutory authority.

South Carolina is authorized to operate the umbrella PIE project by the federal government under 18 U.S.C. §1761(c) [64 FR 17000]. To participate in PIE, the United States Department of Justice (DOJ), Bureau of Justice Assistance, required the DOC to submit an application. One requisite was the DOC had to submit certified proof the state legislature had authorized participation. The result was the S.C. Legislature enacted S.C. Code §24-3-315 *specifically* for this purpose. A certified copy of §24-3-315 was attached to the DOC application to the DOJ. An umbrella certification was issued to DOC based on the application and §24-3-315.

Section 24-3-315 states in part "*that the rates of pay and other conditions of employment are not less than those paid and provided for work of a similar nature in the locality in which the work is performed.*"

To re-affirm this proposition, §24-3-430(D), enacted by 1999 Act No. 68, §2, shares similar language to §24-3-315 and is read *in pari materia* therewith, stating in part, "(D) *No inmate participating in the program may earn less than the prevailing wage for work of a similar nature in the private sector.*"

The prisoner's [Appellant here] property interest in the full amount the private employer [Escod] paid for his labor is created and mandated by §24-3-40, which states in part, "*shall pay the prisoner's wages* directly to the Department of Corrections."

Section 24-3-40 is reflected by and read *in pari materia* with §24-3-430(H), which directs "*the earnings of an inmate authorized to work at paid employment pursuant to this section must be paid directly to the DOC and applied as provided under Section 24-3-40.*" (Emphasis supplied).

The DOC had knowledge of and admitted that [they] were without statutory authority to divert such portions of Appellant's wages, See Gr.App. D (Deposition of Tony Ellis, Director of Prison Industries) and Exhibits 3 and 5 contained therein.

The rates of pay Escod paid for Appellant's labor and the DOC paid Appellant are established in Gr.App. A, pp. 5-6 (Deposition of Thomas McQueen, DOC Financial Accounting); Gr.App. B, p. 5 (Deposition of Phillip Pittman, Insilco VP); Gr.App. C, p. 8 (Deposition of Steven Kuznik, Insilco Plant Manager) and Gr.App. D, pp. 17, 20, 45 and Exhibit 5.

DOC representatives candidly admit acting without authority, with intent to remove a portion of the prisoner's wages: Gr.App. A, p. 10; Gr.App. D, pp. 6-7, 20-23 and Exhibit 3, pp. 26-28 ("no state authority;" "we have done it since day one;" and "we just did it"), 34-35 and 42; and Gr.App. E (Deposition of Suzanne Reich, DOC Financial Accounting) pp. 33-37, 53 and 88.

Appellant asserts that he is entitled to the wage paid by Escod for his labor; however, Appellant submits that the prevailing wage for that labor is established by Gr.App. F, pp. 4 and Exhibit 1 (pp. 18 & 30); Exhibit 2 (pp. 33-34, 36-38, 39, 43); Exhibit 3; Exhibit 4 (pp. 46-47, 53, 56-57, 88) and Exhibits 5, 6 and 9 (Deposition of Rebecca Eleazor, S.C. Employment Security Commission) and this Court must determine what the prevailing wage, pursuant to §§24-3-315 and 24-3-430(D) for such labor actually was during that period.

Appellant suggests that this Court remanded a matter emanating from the same PIE project, based on *Wicker, supra*, finding if that inmate timely filed a grievance, the DOC was ordered to determine the dates of employment, rates of pay, total hours worked, and pay the inmate the difference in the wages actually paid and the prevailing wages that should have been paid, *Earl K. Will, #237037 v. S.C. Dept. of Corrections*, No. 05-ALJ-04-1159-AP, (April 20, 2007, Honorable John D. Geathers.)

Appellant asserts that the law regarding the statutory schemes in this matter was settled and set forth in *Torrence, supra*. This holding regarding the state-created statutory prevailing wage right was followed by our Court of Appeals in *S.C. Dept. of Corrections v. Billy Joe Carrette*, 387 S.C. 640, 694 S.E.2d 18 (S.C. App. 2010) and the companion case *S.C. Dept. of Corrections v. Tomlin*, 387 S.C. 652, 694 S.E.2d 25 (S.C. App. 2010) certiorari dismissed. Respondents filed a petition for certiorari, which was subsequently dismissed as improvidently granted (2012). The Court of Appeals found that §24-3-315 resolved the prevailing wage dispute.

Appellant is entitled to the prevailing wage or the difference between the amounts paid for his labor and diverted without statutory authority by the DOC, from August 1997 to November 2004.

III. THE DOC DENIED APPELLANT IMMEDIATE ACCESS TO WAGES ESCROWED FOR HIS BENEFIT AGAINST THE STATUTORY AUTHORITY OF S.C. CODE §§ 24-3-40(A)(5); 24-3-40(B)(2) AND 24-3-315.

Appellant asserts the 10% of *his* wages deducted pursuant to §24-3-40(A)(5) is to be for the "*benefit of the prisoner.*" If the prisoner cannot access the principal or interest, then the prisoner is systematically deprived, via the unconstitutional interpretation of his property interest therein.

Section 24-3-40(B)(2) states in pertinent part: "A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice."

The DOC denies Appellant access to the wages escrowed under (A)(5) in their interpretation of (B)(2), which is that inmates serving a life sentence receive their escrowed wages "only upon the inmate's death." Appellant asserts this is an unconstitutional interpretation.

The original Bills in 1999 Act No. 68, §2 were one (1) each from the Senate and House (Requested in Appellant's May 1, 2012 Motion to Expand Record). The House Bill version of (B)(2) stated "upon death of the inmate." That Bill did not make second reading. The Senate Bill, minus the language "upon death", was the subject of 1999 Act No. 68, §2 and became the law (§24-3-40(B)(2)). However, DOC chooses to employ an interpretation of legislation that did not become law, was not the legislative intent, and deprives Appellant of any benefit, for whom it was enacted, and earned through his labor.

Our Supreme Court held in *Torrence* that "clearly, Torrence and Ward *can* present this claim via the inmate grievance procedure. *See, Wicker, supra*, (emphasis supplied).

Appellant asserts the DOC may not interpret §24-3-40(B)(2) in the manner currently in practice. Our Supreme Court has held the Court "generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation." Nonetheless, where, as here, "the plain language of the statute is contrary to the agency's interpretation, the Court will reject the agency's interpretation." *Brown v. Bi-Lo, Inc.*, 354 S.C.436, 581 S.E.2d 836, 838 (2003) (internal citations omitted). This very proposition is mirrored by the U.S. Supreme Court in *Medtronic Inc. v. Lohr*, ___ U.S. ___, 116 S.Ct. 2240, 2263 (1996) (Where the language of the statute is clear, resort to the agency's interpretation is improper.) However, if the statute is silent or ambiguous with respect to the specific issue, the question for the Court is whether the agency's answer is based on a permissible construction of the statute. *See Chevron U.S.A., Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984).

The PIE project in South Carolina is a creature of statute. As such, this Court is bound to construe the terms of the applicable statute and to rely on the General Assembly to amend the statute when necessary. *See Wigfall v. Tideland Utilities, Inc.*, 354 S.C. 100, 110, 580 S.E.2d 100, 105 (2003).

Appellant, serving a life sentence, is entitled to immediate access to funds escrowed for his benefit by §24-3-40(A)(5) under §24-3-40(B)(2).

IV. THE DOC DENIES APPELLANT A FAIR INTEREST RATE ON WAGES ESCROWED FOR HIS BENEFIT UNDER §24-3-40(A)(5).

Appellant's wages were escrowed, pursuant to §24-3-40(A)(5) (1999) from 1999 to November 2004. Upon Appellant receiving an institutional transfer in November 2004, he had \$5,358.00 escrowed in the DOC "Long Term Savings Account." On February 8, 2011, Appellant requested information from the DOC on interest earned for the year 2010, Gr.App. K. Respondents answered that on the amount of \$5,997.44, Appellant earned .26%. Appellant submitted a request to DOC, dated March 5, 2012, inquiring into interest earned for 2011. (Appendix). DOC answered that for 2011 Appellant earned .27% interest on \$5,997.71, *Id.*

Appellant made specific inquiry of DOC regarding his Long Term Savings Account on April 16, 2012, *Id.* That request remains unanswered. The DOC response dated March 9, 2012 specifically states "Interest will be paid to all inmates with monthly average balances of *greater* than \$10.00, *Id.* (emphasis supplied).

Appellant is entitled to a fair interest rate on his escrowed wages for his benefit under §24-3-40(A)(5) and this amount should be fairly applied for each year. The DOC acts in a fiduciary capacity in the administration of this trust in management of the Long Term Savings Account and thus has a duty to Appellant to pay a comparable interest rate on Appellant's funds held in escrow. The DOC is in violation of South Carolina Code of Laws Title 34, governing banking and financial institutions. Appellant relies upon the theory interest follows principle.

V. APPELLANT IS ENTITLED TO INTEREST ON ALL WAGES WITHHELD WITHOUT STATUTORY AUTHORITY.

The DOC withheld a portion of Appellant's prevailing wages without statutory authority between June 1997 – November 2004. Appellant suggests that upon a determination by this Court that Appellant is entitled to the difference between the prevailing wage or wage paid for his labor by Escod and the amount paid Appellant by Respondents; that this Court order Appellant be awarded statutory interest for those wages for the period June 1997 – November 2004.

VI. APPELLANT'S GRIEVANCE WAS EQUITABLY TOLLED BY THE PENDANCY OF THIS ACTION IN THE COURTS OF THIS STATE.

Appellant filed *Torrence* (C/A No.2001-CP-40-3409) in 2001. At the time the action was filed, the only remedy (monetary award) afforded by the Inmate Grievance System GA-01.12, §10.2 were for lost or destroyed items of personal property. In 2001 the Administrative Law Court precedent was that claims for money damages fell under the South Carolina Tort Claims Act. See *Rosemond v. SCDC*, 00-ALJ-04-1026-AP and *Richard Stearnsmiller v. SCDC*, 00-ALJ-04-00021-AP. It is noted here, for the edification of all parties, that at the time *Torrence* was filed, this Court did not exercise jurisdiction to hear a prevailing wage claim. Further, in *Adkins v. S.C. Dept. of Corrections*, 360 S.C. 413, 602 S.E.2d 51 (2004), the companion case to *Wicker*, our Supreme Court held a Tort Claim was the incorrect vehicle for a prevailing wage claim.

If the DOC did allow a grievance to be filed on prevailing wages at that time, which they [] argued against in *Wicker*, Appellant's rights would have ended upon such denial with no further remedy.

Appellant asserts his claim was equitably tolled during the pendency of his Common Pleas action, which was filed within any statutory or regulatory limitations period.

Appellant suggests that *Wicker* unequivocally created an interest in a prevailing wage claim and thus, the right to file a grievance that would be reviewable, "we find no reason such procedures [DOC internal grievance process] should not apply when an inmate challenges the wages he or she is paid, particularly where there is a statute mandating payment of the prevailing wage." *Id.*

DOC argues Appellant enjoyed a "pre-existing" right to file a grievance. However, DOC did not file a second summary judgment (arguing the correct vehicle was an agency grievance) until *after* the *Wicker* decision. The DOC argued against *Wicker* before this Court that he was not entitled to file a grievance and further, argued before the Supreme Court that this Court [ALC] was without subject matter jurisdiction to hear *Wicker's* appeal. This is contrary to their current position since *Wicker* was decided. Appellant suggests that the right to file a grievance on a prevailing wage claim *did not exist until* created by our Supreme Court in *Wicker* and *Adkins*. The *Wicker* Court even held this was a limited holding, creating the right to hear prevailing wage claims. These matters were decided three (3) years after *Torrence* was filed and pending, thus, the pendency of the timely filed *Torrence* complaint tolled the filing of an agency grievance.

In the Honorable Diane Goodstein's April 21, 2005 Order dismissing *Williams et. al. v. SCDC and Williams Technologies* [later *Williams v. S.C. Dept. of Corrections*, 372 S.C. 255, 641 S.E.2d 885 (2007)], she ordered a Notice for filing grievances in private sector prisoner wage suits was to be posted. That Notice (Gr.App. L) was

posted on October 20, 2008, only at Lieber, and *after* Appellant filed his grievance. That Notice allowed 45 days and thus established a three (3) year grace period from the date of that decision. Where no Notice was provided the *Torrence* plaintiffs and *Torrence* was currently pending, the time to file a grievance was tolled.

Respondents were a party to *Torrence* and were properly served within the limitations period and cannot now assert this defense. Appellant's diligence affects his right to have Respondents estopped from pleading the statute of limitations. *Torrence*, commenced within the time proscribed by statute, arrested the running of limitations, *Henderson v. Griffin*, 5 Pet. 151, 30 U.S.S.C. 151 (1831) and equitable estoppel may nullify Respondent's statute of limitations defense, *see, e.g., Rink v. Richland Memorial Hospital*, ___ S.C. ___, 422 S.E.2d 747 1992.

Appellant exercised due diligence in preserving his legal rights. These are extraordinary circumstances. Equitable tolling has been allowed where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period. *See Irvin v. Dept. of Veteran Affairs*, 498 U.S. 89, 96 (1990).

Appellant neither neglected his rights or failed to exercise reasonable diligence in enforcing his rights and it is not the policy of the law to unjustly deprive an injured person of a remedy, *see, Moriarity v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000).

Appellant suggests this Court should apply the doctrine of equitable tolling in this carefully considered situation to prevent the unjust technical forfeiture of causes of action, where the Respondents would suffer no prejudice. Respondents cannot suffer prejudice where [they] were unjustly enriched with wages and interest improperly withheld from Appellant.

ALC REVIEW

The DOC final agency decision is in violation of constitutional and statutory provisions; in excess of statutory authority of the agency; is affected by error of law in light of the decisions of *Will*, *Wicker*, *Torrence*, *Cartrette* and *Tomlin*; and are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Pursuant to S.C. Code Ann. §1-23-380(A)(5), this Court may reverse the DOC decision where the substantial rights of the Appellant have been prejudiced by the DOC conclusions.

CONCLUSION

WHEREFORE, Appellant respectfully prays this Honorable Court reverse and remand the final agency decision of the Department of Corrections with an appropriate order to structure relief.

Respectfully submitted,



May 23, 2012

Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
P.O. Box 205
Ridgeland, SC 29472-0205

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

APPEAL FROM FINAL AGENCY DECISION
South Carolina Department of Corrections

Case No. 12-ALJ-04-0143-AP
Grievance No. ECI-980-10

Honorable Deborah Brooks Durden, Administrative Law Judge

Thomas J. Torrence, #094651 APPELLANT

v.

S.C. Department of Corrections RESPONDENTS

APPENDIX

Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
P.O. Box 205
Ridgeville, SC 29472-0205

APPELLANT, Pro se

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

TO: NAME: Ms. Evie Link	TITLE: Financial Acct.	DATE: March 5, 2012
INMATE'S NAME: Thomas J. Turrence		SCDC #: 094651
INSTITUTION: Lieber		LIVING QUARTERS: SA-43

Ms. Link:

I Am in receipt of your February 29, 2012 response to my February 24th Request regarding my Long Term Account balance and annual interest. I appreciate your timely response. Could you answer the following questions regarding the same matter?

- 1) Is .37% the amount earned on the principal \$5,997.71 or is that only the amount I receive?
- 2) Why do I earn only .37 on this amount of money?
- 3) What is the rate of interest on a comparable type Account if I had such an account.

Thank you for your assistance.

(Signature of Thomas J. Turrence)

DISPOSITION BY STAFF MEMBER:

- 1.) Yes. .37 was earned on the principal of \$5,997.71
- 2.) See next page
- 3.) See next page

DATE: 3-9-11	SIGNATURE: Evie Link
-----------------	-------------------------

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE CORRESPONDENCE

INMATE: Thomas J. Torrence
SCDC# 094651
INSTITUTION: Dieber
FROM: Financial Accounting Branch
SUBJECT: INTEREST PAID ON PRISON INDUSTRIES ACCOUNT
DATE: 3-9-12

I AM IN RECEIPT OF YOUR RECENT LETTER REGARDING THE INTEREST PAID ON YOUR PRISON INDUSTRIES ACCOUNT.

INTEREST: Interest will be paid to all inmates with monthly average balances of greater than \$10.00. Upon receipt of an interest deposit from the State Treasurer's Office, interest will be distributed to individual inmate accounts in accordance with SC State Law, Section 24-3-40.

The interest rate is comparable to rates paid for similar accounts and services at local financial institutions.

Inmates are not charged service fees for excessive transactions or penalized for falling below a certain balance level. The average balance of \$10.00 is much lower than the \$500 average balance for Wachovia to earn interest. The rate of interest paid varies from period to period depending upon interest received from State Treasurer's office.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME: Ms. Evie Link	TITLE: Financial Accounting	DATE: April 16, 2012
INMATE'S NAME: Thomas J. Torrence		SCDC #: 094651
INSTITUTION: Lieber		LIVING QUARTERS: SA-43
<p>Ms. Link:</p> <p>I am in receipt of your March 9, 2012 response to my March 5th questions regarding interest on my Prison Industries Account. I find the response conflicting and confusing and ask that you clarify these questions:</p> <ol style="list-style-type: none"> 1) My balance (\$5,997.71) exceeds the average balance requirements of SCDC and Wachovia; what was the actual rate of interest for each period of 2011 on my Long Term Account? 2) What is the <u>exact type of account</u> (specific legal name used by Wachovia) that holds my Long Term Savings? 3) Which Office and authority at Wachovia may I contact regarding "rates paid for similar accounts"? <p>Please understand that my family and I are sincerely concerned about the amount of interest earned on an account for my benefit. The amount of .27 for \$5,997.71 in one year is incomprehensible.</p> <p style="text-align: center;">Thank you Thomas J. Torrence</p>		
DISPOSITION BY STAFF MEMBER:		
DATE:	SIGNATURE:	

STATE OF SOUTH CAROLINA
In the Administrative Law Court
Docket Number 12-ALJ-04-0143-AP

LAW OFFICES
MAY 24 2012
MALONE, THOMPSON
SUMMERS & OTT, LLC

APPEAL OF FINAL AGENCY DECISION
South Carolina Department of Corrections

THOMAS J. TORRENCE, APPELLANT

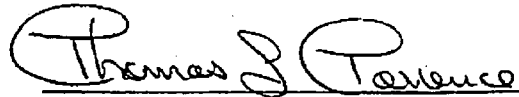
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, . . . RESPONDENT

CERTIFICATE OF SERVICE

The undersigned *pro se* Appellant hereby certifies that he has served a true and correct copy of Appellant's Original Brief on counsel for Respondents, Lake E. Summers, Esq., by depositing a copy of same in the U.S. Mail, first-class postage affixed thereto, this 23rd day of May, 2012, addressed as follows:

Lake E. Summers, Esq.
MALONE, THOMPSON, SUMMERS & OTT, LLC
339 Heyward Street, Suite 200
Columbia, SC 29201



Thomas J. Torrence
#094651
Lieber Corr. Inst. SA-43
P.O. Box 205
Ridgeville, SC 29472-0205

APPELLANT, *pro se*

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, # 94561,	)	Docket No. 12-ALJ-04-00143-AP
)	
Appellant,	)	Grievance No. ECI-0980-10
)	
vs.	)	MOTION BY THE DEPARTMENT
	)	TO ADDRESS ONLY ONE (1)
South Carolina Department of Corrections,	)	ISSUE IN ITS BRIEF AND TO
	)	FILE ITS BRIEF NO LATER THAN
<u>Respondent.</u>	)	JUNE 15, 2012

By an order issued May 8, 2012, this Court granted the motion filed by the Respondent, the South Carolina Department of Corrections ["the Department"], to file the Record on Appeal and its brief no later than Friday, June 8, 2012.

In light of developments in other similar cases, the Department, by and through its undersigned counsel, now hereby respectfully moves this Court for an Order by which it permits the Department to address only (1) issue in the initial brief it will and must submit to this Court. Additionally, in light of obligations confronted by the its undersigned counsel in other matters, the Department respectfully moves this Court for an Order which declares that its brief must be filed no later than Friday, June 15, 2012.

As reflected by the motion previously filed by the Department's undersigned counsel on May 7, 2012, the Appellant has appealed the Department's final decision which denied the prison industries pay claims presented by the Appellant in his administrative grievance designated at ECI-0980-10. As also reflected by the motion filed by the Department's undersigned counsel on May 7, 2012, the Record in the instant matter will consist of the Appellant's Step 1 grievance and attachment, the Department's written denial of the Appellant's Step 1 grievance, the Appellant's Step 2 appeal and substantial number of attachments submitted

FILED

JUN 05 2012

by the Appellant in support of his Step 2 appeal, the Department's written final decision which both denied the Appellant's Step 2 appeal and affirmed its earlier denial of the Appellant's Step 1, as well as other documents including the Appellant's prison industries pay records. The total number of documents associated with the above-identified materials is approximately 200 pages.

In their May 7, 2012 motion, the Department's undersigned counsel referenced the effort associated with preparing a brief responsive to the breadth of issues presented by the Appellant in his Notice of Appeal. Since the Order issued by the Court on May 8, 2012, an order which granted the motion filed May 7, 2012 by the Department's undersigned counsel, the Appellant has served his initial brief upon the Department's undersigned counsel.

In the course of preparing the Department's brief, the Department's undersigned counsel determined that the issue of whether the Appellant timely filed his Step 1 grievance form with the Department was identical to the central issue associated with a consolidated matter recently heard by this Court, *Ackerman, #266928, et al., v. S.C. Dep't of Corr.*, Docket Nos. 07-ALJ-04-00444-AP, *et seq.* Likewise, the issue of whether the Appellant timely filed his Step 1 grievance form with the Department was identical to the central issue in the following other appeals currently pending before the Administrative Law Court: *Freddie Bradley, #281603, v. S.C. Dep't of Corr.*, Docket No. 07-ALJ-0772-AP; *Woodrow J. Cudd, #240049, v. S.C. Dep't of Corr.*, Docket No. 07-ALJ-0771-AP; *Christopher Grate, #232524, v. S.C. Dep't of Corr.*, Docket No. 07-ALJ-0897-AP; *Willie Parker, #291769, v. S.C. Dep't of Corr.*, Docket No. 07-ALJ-0770-AP; *Larry Smith, #2411178, v. S.C. Dep't of Corr.*, Docket No. 07-ALJ-0769-AP; and *Michael Sullivan, #265327, v. S.C. Dep't of Corr.*, Docket No. 07-ALJ-0782-AP.

Like the Appellant in the instant matter, all of the current and former inmates who participated as appellants in *Ackerman*, as well as Inmates Bradley, Cudd, Grate, Parker, Smith, and Sullivan, participated in a prison industries project operated by the Department.

Based upon orders issued by the Court in *Ackerman*, as well as orders very recently issued by the Court in *Bradley, Cudd, Grate, Parker, Smith and Sullivan*,^{*} the Department's undersigned counsel respectfully proposes that the Department's brief in the instant matter focus on only one (1) issue, namely whether the Department properly denied the prison industries pay claims articulated by the Appellant within his administrative grievance when it determined that the Appellant did not timely file his Step 1 within the 15-day filing deadline established by the applicable paragraphs of its Inmate Grievance System Policy.

Thus, should this Court favorably consider this proposal, the Department would file its brief focusing only on the timeliness issue. The Appellant, even though he has already filed his brief in this matter, would then have an opportunity to file a brief specifically rebutting the Department's argument that it properly denied the prison industries pay claims he articulated in his administrative grievance because he did not timely file his Step 1.

If, after reviewing the parties' respective briefs, this Court affirms the Department's determination that the Appellant did not timely file his Step 1, then, just as in *Ackerman, Bradley, Cudd, Grate, Parker, Smith, and Sullivan*, the Appellant would have the opportunity to appeal the Court's decision to the Court of Appeals. Importantly, the Appellant, as the moving party in any such appeal, would confront the prospect (*and limited cost*) of preparing a Record

^{*} Chief Administrative Law Court Judge Anderson issued orders in these six (6) appeals on Thursday, May 31, 2012. On the final page of each of these orders, Chief Judge Anderson directed the Department to only "brief the issue of whether it properly denied the prison industries pay claims articulated by the Appellant within his administrative grievance when it determined that the Appellant did not timely file his Step 1 within the 15-day filing deadline established by [the Department's] Inmate Grievance System Policy."

on Appeal for the Court of Appeals and briefs for the Court of Appeals which would focus only the timeliness issue identified above.

On the other hand, if the Court determined that the Appellant ultimately filed his Step 1 within the 15-day filing deadline established by the applicable paragraphs of the Department's Inmate Grievance System Policy or that this deadline did not apply to the Appellant's grievance or claims, then the Court could direct the Department to submit a supplemental brief on any remaining issues animated by the Appellant's claims.

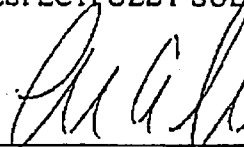
As stated at the outset of the instant motion, this Court, by an order it issued May 8, 2012, granted the Department's motion to file the Record on Appeal and its brief no later than Friday, June 8, 2012. However, in light of the above-provided discussion, the Department's undersigned counsel respectfully moves the Court to extend this deadline until Friday, June 15, 2012. By so extending the deadline by which the Department must file its brief until Friday, June 15, 2012, the Court would have the opportunity to consider the instant motion and, should it favorably consider the instant motion, prepare and serve the appropriate order upon the parties.

Finally, the Department's undersigned counsel respectfully submits that the Appellant will not be prejudiced in any way should the Court adopt the proposal articulated within their instant motion and extend the deadline by which the Department must file its brief until Friday, June 15, 2012. Thus, if the Court adopts the proposal articulated above, the Department's undersigned counsel respectfully submits that the Court could modify the schedule is published at the conclusion of its May 8, 2012 order as follows:

- 1) The Department shall file the Record and its brief focusing only on the timeliness issue no later Friday, June 15, 2012.
- 2) The Appellant's reply brief, again focusing only on the timeliness issue presented by the Department's brief, shall be due no later than 20 days from the date the Department files the Record and its brief.

- 3) Any reply brief filed by the Department must be filed within 10 days of the filing date of the Respondent's reply brief.
- 4) The parties shall submit additional briefs to the Court only when directed to do so.

RESPECTFULLY SUBMITTED,



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Counsel for the Department.

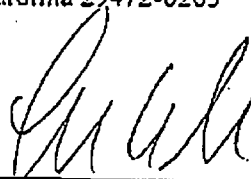
Columbia, South Carolina
June 5, 2012

CERTIFICATE OF SERVICE

This is to certify that I have, on this date, caused to be served a copy of the **MOTION BY THE DEPARTMENT TO ADDRESS ONLY ONE (1) ISSUE IN ITS BRIEF AND TO FILE ITS BRIEF NO LATER THAN JUNE 15, 2012** upon the Appellant, via the United States Mail, to the following address:

Thomas J. Torrence, # 94651
SA-43
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina 29472-0205

BY:



Lake E. Summers
Katherine A. Phillips
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@mtsolfawfirm.com
phillips@mtsolfawfirm.com

Counsel for the Department

Columbia, South Carolina
June 5, 2012

FILED

JUN 05 2012

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, #094651,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-0143-AP
Grievance No.: ECI 0980-10

**ORDER GRANTING RESPONDENT'S
MOTION TO ADDRESS ONLY ONE (1)
ISSUE IN ITS BRIEF AND TO FILE ITS
BRIEF NO LATER THAN JUNE 15, 2012**

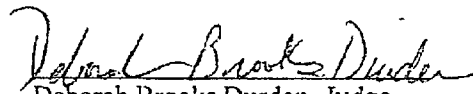
This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Thomas J. Torrence (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or Respondent). Appellant filed a grievance with the Department objecting to the Department's decision concerning prevailing wages. On March 7, 2012, the Appellant filed this appeal with the Court.

On June 5, 2012 counsel for Respondent filed a Motion to Address Only One Issue in its Brief and to File its Brief No Later Than June 15, 2012. The issue Respondent seeks to address as a preliminary matter is whether the Appellant timely filed his Step 1 within the 15-day filing deadline established by the applicable paragraphs of its Inmate Grievance System Policy.

This Court agrees that the interests of judicial economy would be served by considering the timeliness of the filing as a preliminary matter and will grant Respondent additional time to prepare an abbreviated record dealing solely with that issue.

IT IS THEREFORE ORDERED that Respondent shall file those parts of the record related to the timeliness of the grievance filing no later than June 15, 2012. Respondent shall then file a brief limited to the timeliness issue no later than June 29, 2012. Any reply brief must be filed within twenty days from the date Respondent's brief is filed and must be limited to the issue of the timeliness of the grievance.

AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

June 7, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy herof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 7th day of June 2012
By: Le E. Cole
Judicial Law Clerk

FILED

JUN 07 2012

SC ADMIN. LAW COURT

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, # 94561,	)	Docket No. 12-ALJ-04-00143-AP
	)	Grievance No. ECI-0980-10
)	
Appellant,)	
	)	THE DEPARTMENT'S BRIEF IN
vs.	)	SUPPORT OF ITS ARGUMENT THAT
	)	THIS COURT SHOULD AFFIRM THE
South Carolina Department of Corrections,	)	DEPARTMENT'S DENIAL OF THE
	)	APPELLANT'S ADMINISTRATIVE
	)	GRIEVANCE
Respondent.)	

In accordance with Administrative Law Court ["ALC"] Rule of Procedure 60, the Respondent, the South Carolina Department of Corrections ["the Department"], by and through its undersigned outside counsel, respectfully files its brief in the above-captioned matter.

As directed by the Court's June 7, 2012 Order, the Department's instant brief addresses only one (1) issue associated with the Appellant's appeal, namely whether the Department properly denied the prison industries pay claims articulated by the Appellant within his administrative grievance when it determined that the Appellant did not timely file his Step 1 within the filing deadline established by its Inmate Grievance System Policy.

As further directed by the Order filed by this Court on June 7, 2012, the Department also respectfully files an abbreviated Record on Appeal in the instant matter which reflects materials relevant only to the timeliness of the Appellant's administrative grievance.

I. APPLICABLE STANDARD OF REVIEW

The Appellant's instant appeal is before this Court pursuant to *Al-Shabazz v. State*, 527 S.E.2d 742 (S.C. 2000), *Adkins, et al., v. S.C. Dep't of Corr.*, 602 S.E.2d 51 (S.C. 2004), and *Wicker v. S.C. Dep't of Corr.*, 602 S.E.2d 56 (S.C. 2004).

FILED

JUL 09 2012

SC ADMIN. LAW COURT

This Court's jurisdiction to hear the Appellant's instant appeal is derived from *Al-Shabazz*, 527 S.E.2d at 754, which provided that this Court sits in an appellate capacity when reviewing the Department's decisions in inmate grievance matters.

Pursuant to S.C. Code Ann. § 1-23-380(4), this Court's review in inmate grievance appeals is limited to the record presented. *See also* S.C. Code Ann. § 1-23-600(E). Pursuant to § 1-23-380(5), the standard of review applicable to the Appellant's instant appeal is as follows:

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.

II. THE ABBREVIATED RECORD ON APPEAL

The Department respectfully submits the following materials as the abbreviated Record on Appeal in the instant matter (R. pp. 1 – 75):

- A. The Appellant's Step 1 grievance designated as ECI-0910-10 and the Department's response to the Appellant's Step 1 grievance;
- B. The Appellant's Step 2 appeal also designated as ECI-0910-10 (including only Appendices H, I, J, and the first two (2) pages of Appendix L) and the Department's reply to the Appellant's Step 2 appeal; and
- C. Pay records generated and maintained by the Department reflecting the period of time during which the Appellant voluntarily participated in a prison industries project operated by the Department at Evans Correctional Institution ["Evans"], a project in which ESCOD, Inc. ["ESCOD"] participated as the private industry sponsor.

III. RELEVANT PROCEDURAL HISTORY

A. THE APPELLANT'S GRIEVANCE DESIGNATED AS ECI-0910-10

1. The Appellant's Step 1 Grievance and the Department's Response

The Appellant filed a Step 1 grievance with the Department dated May 21, 2007, and the responsible agency official assigned the Appellant's Step 1 the following number: ECI-0910-10.

(R. pp. 2 – 8). In his Step 1, the Appellant asserted as follows (R. p. 2):

I was employed by ESCOD Industries, in the SCDC Private Sector Industries Program at [Evans] from June 1997 thru November, 2004.¹ During the course of my employment,² I learned that [the Department] was withholding certain wages and monies from me in contravention of state law, to which I have a property interest. The S.C. Supreme Court recently ruled in *Thomas Torrence, et al., v. SCDOC*, Op. No. 26328 (filed May 7, 2007) (received by Grievant on May 21, 2007), that I must file a Grievance under SCDC Policy GA-01.12.³ The claim for this unconstitutional deprivation is set forth in the following eight subsections:⁴ ...

¹ The prison industries project in which the Appellant participated at Evans was and remains one of many projects operated by the Department within its prison industries program. The Department's Division of Industries oversees the Department's prison Industries program and the projects operated under this program. See S.C. Code Ann. §§ 24-3-40, 24-3-315, 24-3-410, and 24-3-430.

² Any claims by the Appellant that he "employed" by or otherwise worked for ESCOD or, for that matter, that he was "employed" by or otherwise worked for the Department is flatly negated by our Supreme Court's decision in *Williams, et al., v. S.C. Dep't of Corr. and Williams Technologies, Inc.*, 641 S.E.2d 885, 887 – 88 (S.C. 2007).

³ The case to which the Appellant referred is formally cited as *Torrence, et al., v. S.C. Dep't of Corr.*, 640 S.E.2d 866 (S.C. 2007). In an affidavit he submitted with this Step 2 appeal, the Appellant attested that he, with the assistance of counsel, filed the civil action which our Supreme Court eventually considered in *Torrence* in 2001 in the "Richland County Court of Common Pleas." The Appellant provided the civil action number associated with the *Torrence* litigation in his affidavit: 2001-CP-40-3409. After the circuit court ultimately dismissed the Appellant's civil action, the Appellant, with the continued assistance of counsel, appealed the circuit court's decision to our Court of Appeals, and, as accurately stated by the Appellant, our Supreme Court accepted the case on direct review. (R. pp. 24 – 25). No part of *Torrence* stated that the Appellant or any of his fellow inmate plaintiffs "must file" an administrative grievance within the Department's Inmate Grievance System, which is currently designated as Policy Number GA-01.12.

⁴ The Appellant articulated these eight (8) subsections in an "Addendum" he attached to his Step 1 grievance form. (R. p. 4). In the first subsection appearing in his "Addendum," the Appellant articulated the following claim:

Sections 24-3-40, 24-3-315, and 24-3-430(D) created a property interest in the prevailing wage (\$7.17) grievant earned during "regular" hours performed for the period by [the Department] as Training Hours and grievant is entitled to said monies.

The Appellant then requested the following action in his Step 1 (R. p. 2):

Payment of wages, withholdings and interests as set forth in subsections 1 thru 8 of the Addendum attached hereto.

Finally, the Appellant specified how and when he attempted to informally resolve the claim(s) he articulated within his Step 1 (R. p. 2):

This matter was pending before S.C. courts from 2001 until the recent May 7, 2007 decision. [The Department] intends to petition the state supreme court for a rehearing on this matter within 30 days.⁵

By written response dated December 1, 2011 (R. pp. 9 – 14), the responsible agency official (i.e. the warden at the institution to which the Appellant is currently assigned) denied the claim(s) articulated by the Appellant in his Step 1 by concluding that the Appellant's Step 1 grievance was untimely. Specifically, the warden determined that the Appellant did not file his Step 1 grievance within the applicable filing deadline established by various editions of the Department's Inmate Grievance System Policy. In making this decision (R. p. 10), the warden stated that the Appellant's prison industries pay records reflected the following:

These records confirm that you voluntarily participated in the prison industries project operated by [the Department] at Evans in which ESCOD participated as the private industry sponsor before [the Department] ended its policy of paying inmates a "training wage" for their initial 320 hours of labor. [The Department] ended its policy of paying a "training wage" on July 1, 1999. These pay records reflect that [the Department] began paying you on or about August 15, 1997 at the rate of at least \$5.25 per hour for the labor you voluntarily provided in the project at Evans, and they reflect that [the Department] remitted its final payment to you on or about November 16, 2004.⁶

S.C. Code Ann. § 24-3-430(D) provides that "[n]o inmate participating in the [prison industries] program may earn less than the prevailing wage for work of similar nature in the private sector." [emphasis supplied]. For brevity's sake, the Department does not quote the remaining claims articulated by the Appellant in his "Addendum."

⁵ As reflected by the *Torrence* opinion, our Supreme Court denied the Department's petition for rehearing.

⁶ The Appellant's prison industries pay record appears in the abbreviated Record on Appeal. (R. pp. 44 – 75).

After providing an historical overview of the operative provision(s) of the Department's Inmate Grievance System Policy, the warden concluded as follows (R. pp. 11 – 12):

I conclude, ... , that you did not submit your Step 1 grievance within either seven (7) days or even 15 days of the incident upon which you anchored the claims you presented in your Step 1, namely the date upon which SCDC both first began paying you for your prison industries labor and began applying statutorily mandated deductions to your pay.

The grievance filing deadline established in every edition of the agency's Inmate Grievance System Policy applied and continues to apply to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the deadline applies to your grievance.

Moreover, you filed your Step 1 nearly 10 years after you began participating in the prison industries project operated by SCDC at Evans in which ESCOD participated as the private industry sponsor and approximately 2 ½ years after you concluded your participation in this project. For that matter, you filed your Step 1 over 2 ½ years after the South Carolina Supreme Court issued its decisions in Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under the agency's Inmate Grievance System Policy.

In making his decision, the warden referenced *Adkins* and *Wicker*, and he also referenced numerous decisions issued by the ALC including *Wright*, #200123, v. S.C. Dep't of Corr., 2006 WL 1430140 (ALJD 2006).⁷ (R. pp. 10 – 12).

⁷ In *Wright*, 2006 WL 1430140, * 2 – 3, the ALC ruled that the Department properly applied the 15-day filing deadline from the paragraph 13.1 of the applicable edition of Policy Number GA-01.12 to an inmate's prison industries back pay claim:

The Department's Inmate Grievance System Policy/Procedure GA-01.12 § 13.1 provides that if an informal resolution of a grievable matter is not possible, the grievant must submit a Form 10-5, Step 1 to an employee designated by the Warden within 15 days of the alleged incident. The only exceptions to that requirement are grievances concerning policies/procedures and "incident grievances, provided that the inmate can show reasonable cause, i.e., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc." GA-01.12 § 13.10. This case does not involve an appeal challenging the Department's policies or procedures.

Furthermore, the Appellant has not set forth reasonable cause as to why his claim could not have been presented within the time frame required by the Department's policy. Therefore, Appellant was required to file a grievance within 15 days of the Department's failure to pay him the wages owed.

The Appellant received the denial of his Step 1 on December 1, 2011, and the denial advised him that he could appeal the warden's decision within five (5) days of receipt. (R. p. 3).

2. The Appellant's Step 2 Appeal and the Department's Reply

By his Step 2 appeal dated December 5, 2011 (R. pp. 15 – 25 and 34 – 43), the Appellant challenged the agency's denial of his Step 1 grievance.

In an affidavit he submitted in support of his Step 2 appeal (R. p. 24), the Appellant again admitted that he participated in the prison industries project operated by the Department at Evans "from June 1997 through November 2004," and he also acknowledged that he filed the original complaint which eventually resulted in the decision by our Supreme Court in *Torrence* in 2001.

Regarding the warden's determination that the Appellant did not timely file his Step 1 grievance, the Appellant argued as follows (R. pp. 18 – 19):

The Warden asserts that [the Appellant] is barred by the statute of limitations established in [Department] Policy GA-01.12 by not filing (his) grievance within seven or fifteen days – either the date upon which [the Department] both first began paying [the Appellant] and applying statutorily mandated deductions. The Warden further asserted the Step 1 grievance was filed 10 years after participation began and 2 ½ years following the *Wicker* decision; that the Grievance policy does not provide any exception to prison industries disputes; and that Grievant exceeded a reasonable time with filing the Step 1 Grievance [reference omitted].

[The Appellant] contends the Warden's assertions are moot where the pendency or *Torrence*, filed four (4) years before the decision in *Wicker*, tolls the filing of the [the Appellant's] agency grievance.

In this case, the record reflects that Appellant is seeking prevailing wages for 480 hours worked beginning in April 1994. There is no indication or argument, whatsoever, that he filed a grievance within 15 days of the alleged underpayment with [the Department] or that [the Department's] Policy granted wider latitude to file a grievance in 1994. The Appellant failed to file a grievance as provided by GA-01.12, and this court has no authority to expand the time in which the request for a hearing must be filed. See *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985).

[The Appellant] submits that counsel notified him of the Court's decision in Torrence in correspondence dated May 17, 2007 and received May 21, 2007, App. I.⁸ In that correspondence counsel advised [the Appellant that] "we are preparing the papers for the grievance process and will circulate for your review once the Supreme Court Order has become final." Id. Counsel recognized and informed [the Appellant] of the tolling. [The Appellant] filed [his] Step 1 immediately, App. H.⁹

In correspondence dated August 27, 2007 counsel advised "proceeding through the grievance process to address your claims and ultimately the [ALC] appeal process is the legal requirement," [App. J].¹⁰ Torrence was still pending, the [Department's] petition for rehearing was subsequently denied.

The [Department] filed a Motion to Dismiss Torrence (2001-CP-40-3409) from Circuit Court, however, that court found the Complaint properly stated a declaratory judgment action which involved novel issues and initially denied that motion in November 2002. The [Department] renewed that motion, successfully, only after the decision in Wicker that the procedure to utilize is the grievance system.

Further, in Judge Diane Goodstein's April 21, 2005 Order dismissing Williams et al v. SCDC and Williams Technologies [later *Williams, et al., v. S.C. Dep't of Corr. and Williams Technologies, Inc.*, 641 S.E.2d 885 (S.C. 2007)], Judge Goodstein ordered that a Notice for filing grievances in private sector prisoner wage suits was to be posted. Subsequently that Notice (App. L) was posted on October 20, 2008 only at Lieber, after [the Appellant] had filed his Step 1 grievance.¹¹ That Notice, allowed 45 days – beyond the 7 or 15 days limits of GA-01.12 and established a three year tolling period for the Williams' Plaintiffs. No such opportunity was given to the Torrence Plaintiffs. Where no Notice was provided and Torrence

⁸ The Appellant's "Appendix I" appears in the abbreviated Record on Appeal. (R. pp. 36 – 38).

⁹ The Appellant's "Appendix H" appears in the abbreviated Record on Appeal. (R. pp. 34 – 35). In the affidavit he submitted with his Step 2, the Appellant accurately observed that our Supreme Court released its opinion in Torrence on May 7, 2007. (R. p. 24). See note 3 above. The Appellant stated in this affidavit that he received notice of the Torrence decision via correspondence from his counsel dated May 17, 2007, and he stated that he received the correspondence on May 21, 2007. (R. p. 24). The Appellant included the May 17, 2007 letter from counsel as "Appendix I" in support of his Step 2. See note 8 above. The Appellant argued in his affidavit that he filed his Step 1 "on May 21, 2007, within seven (7) days of receipt of his right to file a grievance in this matter." (R. p. 24). The completely illegitimate nature of the Appellant's argument on this point is fully addressed in Section VII below.

¹⁰ The Appellant mistakenly referenced "Appendix I" regarding the August 27, 2007 correspondence from his counsel. Instead, the Appellant included the August 27, 2007 correspondence from his counsel as "Appendix J" in support of his Step 2. The Appellant's "Appendix J" appears in the abbreviated Record on Appeal. (R. pp. 39 – 40).

¹¹ The Appellant's "Appendix L" appears in the abbreviated Record on Appeal. (R. pp. 41 – 43).

was currently pending, the time to file a grievance was tolled. [emphasis supplied].

Finally, the Appellant articulated the following relevant assertion in his Step 2 (R. p. 19):

{The Appellant} objects to Warden's mischaracterization of a "pre-existing right" to file grievances, [reference omitted]. The Court in Torrence was clear in stating that the procedure to follow was an agency grievance, as established in, and unavailable prior to Wicker.

By written decision dated February 9, 2012 (R. pp. 15 and 26 – 33), the Department's General Counsel affirmed the denial of the Appellant's Step 1, and he denied the Appellant's Step 2. The Department's General Counsel concluded as follows (R. pp. 29 – 30):

Like the warden, I conclude, after reviewing your Step 1 in light of *Adkins*, *Wicker*, *Torrence*, *Al-Shabazz*, and the policy provisions discussed above, that you did not submit your Step 1 within either seven (7) days or even 15 days of the incident upon which you anchored your [prison industries] pay claims, namely the date upon which [the Department] both first begun paying you for your [prison industries] labor and first began applying the statutorily mandated deductions to your pay.

I fully concur with the warden's determination that the grievances filing deadline established in every edition of the relevant policy applied and continues to apply to nearly every aspect of inmate activity, and no special exception exists when it comes to PI pay disputes. Consequently, the deadline applied to your Step 1. Moreover, as the warden accurately chronicled in his response, you filed your Step 1 nearly 10 years after you began participating in the [prison industries] project at Evans and approximately 2½ years after you concluded your participation in this project. For that matter, you filed your Step 1 over 2½ years after the decisions in *Adkins* and *Wicker* had been issued.

You also filed your Step 1 approximately 6 years after you, as you claimed in your affidavit, that you "discovered" that SCDC was "collecting \$7.17 per hour for [your] labor" and almost 8 years after you, as you claimed in your affidavit, discovered a "discrepancy" in your pay.¹² I fully concur with the warden's determination that you clearly exceeded any reasonable time frame associated with filing a grievance under the relevant policy.

¹² In the affidavit he submitted in support of his Step 2 (R. pp. 24 – 25), the Appellant attested that he "had no knowledge of [any] discrepancy in pay until the July 1, 1999 change in law, at which time [he] began diligent research," and he attested that he "discovered in 2000 that [the Department] was collecting \$7.17 per hour for [his] labor and during 'training hours.'" [emphasis supplied].

I also fully concur with the warden's determination that the fact that you first sought relief by participating in a class action lawsuit filed in circuit court instead of filing a Step 1 by which you challenged the rate at which [the Department] both paid you for your PI labor and applied statutorily mandated deductions to your pay does not change the filing deadline(s) from the relevant agency policy. You served as the lead plaintiff in *Torrence*, and your attorneys filed their amended declaratory judgment complaint on your behalf on November 5, 2001. Obviously, you knew before your attorneys filed the complaint that you wanted to challenge the rate at which SCDC had been paying you for your PI labor.

Moreover, the filing of your class action lawsuit in circuit court did not toll the deadline(s) by which you were required to file your Step 1. The appendices you submitted in support of your Step 2 simply do not support your assertion that your participation in the class action lawsuit tolled the deadline by which you were required to file your Step 1. Moreover, these same appendices simply do not establish that date upon which your right to file a grievance in this matter accrued. The appendices you relied upon to support your assertion include correspondence that you received from your own counsel in *Torrence*, and this correspondence has absolutely no bearing on the filing deadline associated with your Step 1. Furthermore, absolutely no aspect of any order issued by Judge Goodstein in *Williams* tolled or otherwise modified the deadline by which you were required to file your Step 1.

I also concur with the warden's determination that nothing in the "notice flyer" posted throughout SCDC in late 2008 affected the applicable time frame associated with filing a Step 1 regarding any purported failure of SCDC to pay you a particular hourly rate for your PI labor.

The Appellant received the denial of his Step 2 on February 15, 2012. (R. p. 15).

3. The Appellant's Notice of Appeal to the ALC

By his Notice of Appeal to the ALC dated March 2, 2012, the Appellant addressed the timeliness issue when he articulated the following ground for appeal regarding the agency's determination that he had not timely filed his Step 1:

Time to file grievance equitably tolled by pendency of this action in [*Torrence, et al., v. S.C. Dep't of Corr.*, 640 S.E.2d 866 (S.C. 2007)].¹³

¹³ See note 3 above.

4. The Appellant's "Original Brief" to the ALC

In his initial brief to this Court,¹⁴ the Appellant offered the following argument on the timeliness issue:

Appellant asserts his claim was equitably tolled during the pendency of his Common Pleas action,¹⁵ which was filed within any statutory or regulatory limitations period.

Appellant suggests that *Wicker* unequivocally created an interest in a prevailing wage claim and thus, the right to file a grievance that would be reviewable, "we find no reason such procedures [DOC internal grievance process] should not apply when an inmate challenges the wages he or she is paid, particularly where there is a statute mandating payment of the prevailing wage." *Id.*

[The Department] argues Appellant enjoyed a "pre-existing" right to file a grievance. However, [the Department] did not file a second summary judgment (arguing the correct vehicle was an agency grievance) until *after* the *Wicker* decision. The [Department] argued against *Wicker* before this Court that he has not entitled to file a grievance and further, argued before the Supreme Court that this Court [ALC] was without subject matter jurisdiction to hear *Wicker's* appeal. This is contrary to their current position since *Wicker* has decided. Appellant suggests that the right to file a grievance on a prevailing wage claim *did not exist until* created by our Supreme Court in *Wicker* and *Adkins*. The *Wicker* Court even held this was a limited holding, creating the right to hear prevailing wage claims. These matters were decided three (3) years after *Torrence* was filed and pending, thus, the pendency of the timely filed *Torrence* complaint tolled the filing of an agency grievance.

In the Honorable Diane Goodstein's April 12, 2005 Order dismissing *Williams et. al. v. SCDC and Williams Technologies* [later *Williams*],¹⁶ she ordered a Notice for filing grievances in private sector prisoner wage suits was to be posted. That Notice was posted on October 20, 2008, only at Lieber, and *after* Appellant filed his grievance. That Notice allowed 45 days and thus established a three (3) year grace period from the date of that decision. Where no Notice was provided the *Torrence* plaintiffs and *Torrence* was currently pending, the time to file a grievance was tolled.

¹⁴ See the Appellant's "Original Brief" dated May 23, 2012, pp. 8 - 9.

¹⁵ The Appellant obviously referenced the *Torrence* litigation.

¹⁶ See note 2 above.

[The Department was] a party to *Torrence* and [was] properly served within the limitations period and cannot now assert this defense. Appellant's diligence affects his right to have [the Department] estopped from pleading the statute of limitations. *Torrence*, commenced within the time proscribed by statute, arrested the running of limitations, *Henderson v. Griffin*, 5 Pet. 151, 30 U.S.S.C. 151 (1831) and equitable *Richland Memorial Hospital*, ____ S.C. ____, 422 S.E.2d 747 1992.

Appellant exercised due diligence in preserving his legal rights. These are extraordinary circumstances. (Equitable tolling has been allowed where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period.) See *Irvin v. Dept. of Veteran Affairs*, 498 U.S. 89, 96 (1990).

Appellant neither neglected his rights or failed to exercise reasonable diligence in enforcing his rights and it is not the policy of the law to unjustly deprive an injured person of a remedy, see, *Moriarity v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000). [emphasis supplied].

IV. NEITHER *Adkins* NOR *Wicker* CREATED ANY NEW RIGHTS OR REMEDIES

The Appellant, in his brief to this Court, "suggested" that, by its decisions in *Adkins* and *Wicker*, our Supreme Court created new rights and/or new remedies for inmates by which to challenge the rates at which the Department paid them for their prison industries labor that did not previously exist. The Department respectfully submits, however, that the Appellant's assertion is, as illustrated below, simply without merit.¹⁷

¹⁷ Nearly all if not all of the arguments articulated by the Appellant in his Step 2 and his initial brief to this Court are identical or nearly identical to arguments articulated by nearly 200 current and former inmates in a consolidated matter very recently considered by Chief Judge Anderson. This consolidated matter was designated as *Ackerman, #266928, et al., v. S.C. Dep't of Corr.*, ALC Docket Nos. 07-ALJ-04-00444-AP, *et seq.* The nearly 200 current and former inmates in *Ackerman* also participated as plaintiffs in the class action litigation which culminated in our Supreme Court's decision in *Williams*, and the attorney who represented the plaintiffs in *Williams* also represented and continues to represent the appellants in *Ackerman*. After extensive briefing, Chief Judge Anderson, by orders he issued in 2011 and 2012, rejected each of the arguments articulated by the *Ackerman* appellants. By rejecting these arguments, Chief Judge Anderson validated the grievance filing deadline from the Department's Inmate System Policy, currently designated as Policy Number GA-01.12. See also notes 28, 30 and 34 below. Counsel for the *Ackerman* appellants has appealed Chief Judge Anderson's orders to our Court of Appeals.

A. NEITHER *Adkins* NOR *Wicker* CREATED ANY NEW RIGHTS

A substantive right is created by the enactment of statute or a decision by the court. A statute presumptively creates substantive rights. See generally *Hooks v. Southern Bell Telephone and Telegraph Co.*, 351 S.E.2d 900 (S.C. Ct. App. 1986). A court creates a new substantive right when it recognizes a new cause of action that did not previously exist. *Toth v. Square D Co.*, 377 S.E.2d 584 (S.C. 1989).

The Department respectfully submits that our Supreme Court did not create a new substantive right by its decision in *Wicker*. Rather, it ruled that "the state's statutory mandate [§ 24-3-430(D)] that inmates be paid the prevailing wage creates [a protected property] interest." *Wicker*, 602 S.E.2d at 58. Thus, the Department contends that *Adkins* and *Wicker* simply recognized that inmates possessed a pre-existing constitutionally protected property interest in the pay they received pursuant to § 24-3-430(D) for the labor they voluntarily provided to any prison industries project operated by the agency.

B. NEITHER *Adkins* NOR *Wicker* CREATED ANY NEW REMEDIES

The Department respectfully asserts that the Appellant's assessment and interpretation of *Adkins* and *Wicker* is simply and profoundly incorrect. Instead, it respectfully submits that neither *Adkins* nor *Wicker* created new grievance remedies or appeal remedies, because these remedies had long been available to inmates, including the Appellant.

1. Neither *Adkins* nor *Wicker* created new grievance remedies.

The Department respectfully asserts that neither *Adkins* nor *Wicker* created new grievance remedies for inmates, like the Appellant, concerning their prison industries pay. Instead, *Adkins* and, more precisely, *Wicker* merely acknowledged Policy Number GA-01.12 as the existing and proper procedural mechanism by which inmates, like the Appellant, may

challenge the rate at which the Department paid them for their prison industries labor pursuant to § 24-3-430(D).¹⁸

The Department also contends that the Appellant has demonstrated a fundamental misunderstanding of *Adkins* and *Wicker* and, moreover, he ignored our Supreme Court's decisions in *Al-Shabazz* and, ironically, *Torrence v. S.C. Dep't of Corr.*, 646 S.E.2d 866 (S.C. 2007) in the analysis he presented in his Step 2 and, for that matter, his initial brief.

a) Examination of *Adkins*, *Wicker*, and *Torrence*

In *Adkins*, our Supreme Court held that inmates do not possess a private right of action under the applicable prison industries statutes by which to prosecute prison industries pay claims. In *Wicker*, the companion case to *Adkins*, our Supreme Court considered the proper forum within which inmates may raise and prosecute such claims, and, in its decision, the *Wicker* Court, 602 S.E.2d at 57, held as follows:

However, simply because *Wicker* may not file a civil claim for damages in circuit court does not mean he is without any remedy. There are numerous issues relating to inmates which, although not giving rise to a private, civil cause of action, are nonetheless grievable through [the Department's] internal grievance processes.¹⁹ ... Accordingly, we hold that although *Wicker* has no claim for civil damages, he properly filed a grievance with [the Department]. [emphasis supplied].

¹⁸ As reflected in the decision issued by the ALC regarding Inmate *Wicker*'s appeal of the Department's denial of his grievance, "[the Department] raise[d] [before the ALC] two positions. First, [the Department] argue[d] that *Wicker*'s complaint is non-grievable. Second, if grievable, [the Department] disagrees with *Wicker*'s position on the merits." *Wicker*, 2001 WL 1005574, *1 (ALJD 2001). The ALC, however, disagreed with the Department's position, and, on August 13, 2001, issued a decision by which it held that *Wicker*'s prison industries pay claim was grievable under ¶ 7 of the edition of Policy Number GA-01.12 then in effect, because *Wicker*'s pay represented "conditions which directly affect an inmate." [emphasis supplied]. *Wicker*, 2001 WL 1005574, *1. Thus, the ALC held in 2001 that *Wicker* properly filed a grievance pursuant to Policy Number GA.01-12 to challenge the rate of pay the Department remitted to him for his prison industries labor under the provisions of § 24-3-430(D). In his Step 2, the Appellant attempted to undercut the rationale upon which the Department determined that he failed to timely file his Step 1 grievance by referencing the Department's argument to the ALC in *Wicker*. (R. p. 18). The Appellant reiterated this argument in his initial brief to this Court. See Appellant's Brief, p. 8.

¹⁹ Critically, absolutely nothing in our Supreme Court's ruling in *Wicker* or, for that matter, in its ruling in *Adkins*, suggested that the provisions of the Department's Inmate Grievance System Policy did not apply to inmate grievances in which prison industries pay claims are articulated.

Thus, the *Wicker* Court, 602 S.E.2d at 56, recognized, that Wicker “properly filed a grievance with [the Department],” a grievance in which he “contend[ed] his training wages violated the Prevailing Wage Statute, S.C. Code Ann. § 24-3-430(D).” [emphasis supplied]. The *Wicker* Court’s use of the term “properly” supports the Department’s contention that neither *Adkins* nor *Wicker* created a new grievance remedy by which inmates, such as the Appellant, could vindicate their substantive right to the prevailing wage pursuant to § 24-3-430(D). An act is “proper” when it is “strictly accurate: correct” and “marked by suitability, rightness, or appropriateness: fit.” Merriam-Webster Dictionary, available at <http://www.merriam-webster.com>.

The *Wicker* Court’s conclusion that Wicker properly filed a grievance pursuant to Policy Number GA-01.12 to protest the rate at which the Department paid him for his prison industries labor leads to only one legitimate conclusion: Wicker correctly and appropriately availed himself of the Department’s Inmate Grievance System, as established by Policy Number GA-01.12, as the forum within which to raise and prosecute his prison industries pay claim under the provisions of § 24-3-430(D). Obviously, Wicker could not properly, correctly or appropriately pursue his claim within the agency’s Inmate Grievance System and avail himself of the procedures established by the provisions of the policy if such a forum and such procedures did not already exist for the consideration of such claims. Therefore, the Department’s Inmate Grievance System was already available to Wicker to raise his prison industries pay claim *before* our Supreme Court issued its decision in *Wicker* on August 23, 2004,²⁰ and, consequentially, common sense dictates that the decision of our Supreme Court in *Wicker* did not create new grievance remedies for inmates who purportedly possessed prison industries pay claims.

²⁰ In its August 13, 2001 decision regarding Inmate Wicker’s appeal of the Department’s denial of his Step 2 appeal, the ALC concluded that Wicker’s prison industries claim, born of his receipt of “training wages” during his initial period of participation, was grievable and that the Department violated § 24-3-430(D) by paying Wicker such “training wages.” See *Wicker*, 2001 WL 1005574, *1 – 2 (ALJD 2001). The ALC issued its decision over three (3) years before our Supreme Court issued its opinions in *Adkins* and, of course, *Wicker*.

Our Supreme Court reached a similar conclusion in *Torrence*, the case in which the Appellant served as the lead plaintiff.²¹ In *Torrence*, the Appellant, as well as other inmates, crime victims, and the inmates' dependents brought a declaratory judgment action in circuit court in an effort to determine the inmates' rights to challenge the rates of pay the Department remitted to them for their prison industries labor and to determine the rights of the affected crime victims and dependents to themselves challenge the rates of pay the Department remitted to the inmates for their prison industries labor. In holding that none of the three (3) groups of plaintiffs, including the Appellant and his fellow inmates, could maintain an action in circuit court against the Department regarding these pay claims, the *Torrence* Court reflected upon *Wicker*:

[W]e acknowledged that while Wicker did not have a private, civil cause of action available to him, he nevertheless had a statutory right to a prevailing wage which had been created by the State. . . . Wicker had appropriately utilized the [Department's internal grievance procedure] to adjudicate his rights. [emphasis supplied].

Thus, the *Torrence* Court recognized that Wicker "appropriately utilized [the Department's] internal grievance procedure to adjudicate his rights." [emphasis supplied]. An act is "appropriate" when it is "especially suitable or compatible." Merriam-Webster Dictionary, available at <http://www.meriam-webster.com>. The *Torrence* Court's use of the term "appropriately" further supports the Department's contention that neither *Adkins* nor *Wicker* created a new grievance remedy. Likewise, our Supreme Court in *Torrence* recognized the uncomplicated reality that the Department's Inmate Grievance System Policy was available to Wicker before the issuance of *Adkins* and *Wicker*.

Therefore, as our Supreme Court acknowledged in both *Wicker* and *Torrence* that the Department's Inmate Grievance System Policy was the proper and appropriate forum for inmates to challenge their prison industries pay, neither *Adkins* nor *Wicker* created new grievance

²¹ See note 3 above.

remedies by which inmates, including the Appellant, could vindicate their substantive right to the so-called "prevailing wage" pursuant to § 24-3-430(D).²²

b) Examination of *Al-Shabazz*

Again, neither *Adkins* nor *Wicker* created any new substantive rights. Instead, *Adkins* and *Wicker* recognized that inmates possessed a pre-existing constitutionally protected property interest in their prison industries pay under § 24-3-430(D).

The *Wicker* Court, 602 S.E.2d at 57, specifically recognized that inmates possessed a pre-existing constitutionally protected property interest in their prison industries pay:

[W]here, as here, the state created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law.

Within its decision in *Wicker*, 602 S.E.2d at 57 – 58, our Supreme Court invoked its earlier decision in *Al-Shabazz*:

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. 338 S.C. at 369, 527 S.E.2d at 750. [emphasis supplied].

In *Al-Shabazz*, our Supreme Court considered whether an inmate may challenge an internal disciplinary action through a post-conviction relief action. The *Al-Shabazz* Court, 527 S.E.2d at 754, held that the Department's decisions concerning non-collateral or administrative matters, such as inmate disciplinary matters, are reviewable by the ALC. In reaching this holding, the *Al-Shabazz* Court, 527 S.E.2d at 751 – 52, reviewed the internal process by which

²² The Department respectfully submits that the Appellant's prison industries pay claims clearly constituted grievable issues, and, thus, the procedural mechanisms articulated by the Department's Inmate Grievance System Policy, including the filing deadline, apply. Paragraph 7 of the first edition of the policy, which the agency issued May 1, 1996 under the designation "PS-10.01 (OP)," expressly stated that the following issues are grievable: "Departmental policies, procedures, directives, or conditions which directly affect an inmate." [emphasis supplied]. The ALC cited this very paragraph in its 2001 decision in *Wicker* to support its conclusion that *Wicker's* prison industries pay claim constituted a grievable issue within the Department's Inmate Grievance System, because *Wicker's* prison industries pay represented "conditions which directly affect an inmate." [emphasis supplied]. *Wicker*, 2001 WL 1005574, *1. See note 18 above.

the Department adjudicated inmate disciplinary infractions. As recognized by the *Al-Shabazz* Court, 527 S.E.2d at 751, the Department's Manual for Operations, Inmate Disciplinary System, No. OP-22.14 established the procedures by which the Department may impose disciplinary action on inmates. In its review of the provisions encompassed by the Department's Inmate Disciplinary System, the *Al-Shabazz* Court, 527 S.E.2d at 752, recognized the following:

The warden reviews the disciplinary hearing officer's decision, and may approve, modify or reverse it. Manual for Operations, Inmate Disciplinary System, No. OP-22.14. If an inmate is dissatisfied with the decision, he must file an appeal within fifteen days of receiving the written decision of the disciplinary hearing officer. *Id.* Department requires the disciplinary hearing officer to inform an inmate of the right to appeal a finding of guilt and the penalty imposed. *Id.*

After concluding its review of the provisions encompassed by the Department's Inmate Disciplinary System, the *Al-Shabazz* Court, 527 S.E.2d at 752, then recognized that an inmate may appeal a decision rendered by the Department under its Inmate Disciplinary System by initiating an administrative grievance within this system, which the agency established by promulgating Policy Number GA-01.12 and its predecessors, the identical policy at issue in *Wicker* and at issue in this appeal:

An inmate appeals the decision by initiating a grievance. South Carolina Department of Corrections for General Administration, Inmate Grievance System, No. GA-01.12. The matter is reviewed by the institutional inmate grievance coordinator, who recommends a course of action to the prison warden after interviewing affected employees and inmates. The warden must respond to the inmate in writing within a specified period. The inmate may appeal the warden's decision to the appropriate deputy director, inspector general, or general counsel of [the] Department. That person's response is [the] Department's final decision in the matter.

The *Al-Shabazz* Court, 527 S.E.2d at 752, then provided the following holding:

We hold that [the] Department's disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in *Wolff v. McDonnell*, [418 U.S. 539 (1974)]. [The] Department also prepared its grievance procedures in compliance with the Civil Rights of

Institutionalized Persons Act, 42 U.S.C.A. §§ 1997-1997j (1994 & Supp.1999); see also 28 C.F.R. §§ 40.1 to 40.22 (1998) (standards for inmate grievance procedures). [emphasis supplied].

Later in its opinion, the *Al-Shabazz* Court, 527 S.E.2d at 753, provided the following clarification:

Given our conclusion that [the] Department's disciplinary and grievance procedures comply with the minimal due process required in such proceedings, we decline to apply the following APA provisions to the internal prison disciplinary process.²³ [emphasis supplied].

Therefore, our Supreme Court recognized in both *Al-Shabazz* and *Wicker* that inmates must be afforded due process when they protest a purported deprivation of protected property interest and that the Department's Inmate Grievance System, established by Policy Number GA-01.12 and its predecessors, provides inmates with the forum within which they may receive the required procedural due process. As explained above, our Supreme Court in *Wicker* merely acknowledged that inmates possessed a pre-existing protected property interest in their prison industries pay under § 24-3-430(D). Therefore, when *Al-Shabazz* and *Wicker* are read together, the Department's Inmate Grievance System merely served as the pre-existing forum in which inmates could avail themselves of their due process rights and assert their protected property interest in their prison industries pay.

Succinctly stated, Inmate *Wicker* only availed himself to an existing procedural remedy (i.e. an administrative grievance) within an existing forum (i.e. the Department's Inmate Grievance System) to challenge a purported deprivation of his existing constitutionally protected

²³ The *Al-Shabazz* Court, 527 S.E.2d at 753, n.11, also provided the following assessment:

Further support for not applying these APA provisions to [the] Department's internal disciplinary or decision-making processes is evident in the Legislature's decision to exempt [the] Department from submitting its internal regulations on the care and custody of inmates for legislative review and approval. S.C. Code Ann. § 1-23-10(4) (Supp. 1999). That exemption indicates the Legislature intended to give [the] Department ample latitude to control its internal affairs.

property interest (i.e. his prison industries pay) by the Department, and he did so well over three (3) years before our Supreme Court issued its decisions in *Wicker* and *Adkins*. Accordingly, the Department respectfully asserts that, contrary to any assertion by the Appellant, neither *Wicker* nor *Adkins* created new grievance remedies for inmates, such as him, to vindicate their pre-existing property rights in their prison industries pay under § 24-3-430(D).

c) No language appears in *Wicker* to suggest that our Supreme Court created a new grievance remedy

In decisions by which it created new remedies, our Supreme Court expressly recognized the new remedy within the body of its ruling. For instance, in *Al-Shabazz*, 527 S.E.2d at 758, the Court stated that "[o]ur decision shall apply to ... all administrative matters in which [the Department] renders a final decision after the date of this opinion." [emphasis supplied]. Thus, the Court in *Al-Shabazz* recognized it was creating a new grievance remedy, specifically, that inmates could use the Department's Inmate Grievance System to challenge administrative and non-collateral matters, including protected property and liberty interests, and it provided both inmates and the Department guidance on when and how to apply the grievance procedures.

In *Torrence*, 646 S.E.2d at 869 – 70, the Court held that "the victim and dependent beneficiaries shall be able to maintain their own claims through the [the Department's] internal grievance procedure." [emphasis supplied in original]. In an associated footnote, the *Torrence* Court, 646 S.E.2d at 870, n. 4, stated, in relevant part, the following:

We recognize that the [Department] will need to implement new regulations to allow these claimants access to the agency's internal grievance system. [emphasis supplied].

Thus, the *Torrence* Court obviously recognized that it had created a new remedy for crime victims and dependent beneficiaries by which to challenge the rates of pay the Department

paid inmates for their prison industries labor.²⁴ By doing so, however, the *Torrence* Court impliedly acknowledged that inmates, such as the Appellant, *already possessed* a grievance remedy by which to seek redress for their prison industries pay claims.

The *Wicker* decision, by contrast, contains no language in any way comparable to that which appears in both *Torrence* and *Al-Shabazz*. Consequently, the Department respectfully submits that *Wicker* simply did not create new grievance remedies by which inmates could challenge their prison industries pay under § 24-3-430(D). Instead, *Wicker* merely recognized that inmates possessed a pre-existing right to avail themselves of the Department's Internal Grievance System in order to prosecute their prison industries pay claims.

2. Neither *Adkins* nor *Wicker* created new appeal remedies.

a) Examination of *Wicker* and *Al-Shabazz*

In *Wicker*, 602 S.E.2d at 57, our Supreme Court ruled as follows:

The [Department] also contends, citing the ALJD's en banc decision in *McNeil v. South Carolina Dept. of Corrections*, [00]-ALJ-04-00336-AP (filed Sept. 5, 2001), that the ALJ was without subject-matter jurisdiction to review its denial of *Wicker's* grievance. We disagree. [emphasis supplied].

Thus, our Supreme Court has already rejected the notion that *Wicker* created new appeal remedies to the ALC for inmates articulating prison industries pay claims. Instead, our Supreme Court merely recognized in *Wicker* that the ALC *already* possessed subject-matter jurisdiction to hear *Wicker's* appeal of the Department's final decision concerning his prison industries pay.²⁵

²⁴ In reaching its conclusion, the *Torrence* Court analyzed its prior holdings in *Adkins* and *Wicker* without recognizing, acknowledging, indicating, or otherwise intimating that these decisions had created new rights or remedies in the inmates' favor.

²⁵ The ALC, in its own decision in *Wicker*, did not see the need to address whether or not it possessed subject matter jurisdiction to hear Inmate *Wicker's* appeal of the Department's denial of his grievance. Instead, since its subject matter jurisdiction was not in question, the ALC simply considered and adjudicated *Wicker's* appeal.

In reaching its conclusion, the *Wicker* Court, 602 S.E.2d at 57 – 58, examined its previous holding in *Al-Shabazz* and ruled as follows:

We are not unmindful of our opinion in *Sullivan v. South Carolina Dep't of Corrections*, 355 S.C 437, 586 S.E.2d 124 (2003), in which we held the ALJ has jurisdiction to review [the Department's] grievance proceedings only if they involve the denial of "state created liberty interests." There, we recognized that our opinion in [*Al-Shabazz*] 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. 338 S.C. at 369, 527 S.E.2d at 750. [first emphasis supplied in original; second emphasis supplied].

In *Al-Shabazz*, 572 S.E.2d at 750, the Court held the following:

The question of whether an inmate may seek judicial review of [the] Department's decisions under [the APA] went unanswered in *Pruitt v. State*, 274 S.C. 565, 567 n.2, 266 S.E.2d 779, 780 n. 2 (1980). Today we answer that question affirmatively and hold that an inmate may seek review of [the] Department's final decision in an administrative matter under the APA. Placing review of these cases within the ambit of the APA will ensure that inmate receives due process.

These 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.

"The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569, 92 S.Ct. 2701, 2705. ...

The *Al-Shabazz* Court, 572 S.E.2d at 758, further stated that:

We further hold that an inmate may obtain review of [the] Department's final decision in non-collateral or administrative matters under the APA in the manner we have outlined. However, the specified APA provisions and the specified ALJ Division Rules of Procedure do not apply to the internal prison disciplinary or decision-making processes.

Our decision shall apply to all PCR actions filed and all administrative matters in which [the] Department renders a final decision after the date of this opinion. It also shall apply to all cases currently pending in circuit court or before this Court in which the inmate is similarly situated to petitioner, i.e., cases in which [the] Department has decided a non-collateral or administrative matter and the inmate has not had the opportunity to obtain APA review in the manner we have outlined.²⁶

Thus, *Al-Shabazz*, 572 S.E.2d at 749 – 50, established that non-collateral or administrative matters including protected property and liberty interests, internal disciplinary matters, “credits-related issues and other conditions of imprisonment” and other issues “in which an inmate does not challenge the validity of a conviction or sentence” were reviewable by the ALC. As illustrated above, an inmate’s prison industries pay constitutes a protected property interest that clearly existed before the issuance of *Wicker*. As is clear from *Wicker*, the ALC already possessed subject matter jurisdiction to review the Department’s denial of *Wicker*’s grievance regarding his prison industries pay. *Wicker*, along with *Al-Shabazz*, clearly demonstrate that the ALC possessed the requisite jurisdiction, prior the issuance of *Wicker*, to review the Department’s final decisions concerning inmate grievances in which the inmates alleged deprivations of protected property interests, e.g., their prison industries pay.

Therefore, *Wicker* simply did not create any new appeal remedies.

- b) Well before the issuance of *Adkins* and *Wicker*, Policy Number GA-01.12, and its predecessors, expressly informed inmates, including the Appellant, that they could appeal to the ALC any adverse final decision rendered by the Department regarding claims they raised in an administrative grievance

Our Supreme Court issued its opinion in *Al-Shabazz* on February 14, 2000. Thereafter, on April 1, 2000, the Department revised ¶ 14 of Policy Number GA-01.12, entitled “Steps in the Grievance Process.” Specifically, ¶ 14(f) was revised to read as follows:

²⁶ The *Al-Shabazz* Court outlined in detail the procedures an inmate must take to seek administrative and judicial review of the Department’s final decisions.

As a part of [the Department's] final answer to a grievance, the inmate will be notified that any further appeal must be initiated within 30 days after receipt of [the Department's] final answer. This appeal must be contained on ["ALC"] "Notice of Appeal" that will be attached to [the Department's] final answer and must be sent to the [ALC]. Instructions regarding completion of the form and information indicating where the form must be sent, will also be provided to the inmate. (This form is not available for order from the Commissary, but additional copies can be obtained from the Inmate Grievance Branch.) An inmate may appeal any [final decision by the Department] regarding disciplinary hearings, the calculation of a sentence or sentence related credits, custody determinations that may be grieved under this policy/procedure, or any other decision of this Department that involves issues of a judicial or quasi-judicial nature. The [ALC] will determine if grievances initiated in accordance with this policy/procedure and concerning other types of matters are appropriate for appeal and their review. [emphasis supplied].

By another revision effective on August 15, 2001, the Department clarified inmates' rights to file an appeal to the ALC in an instance where the agency's final decision impacted their substantive rights. Thus, ¶ 14(f) was further amended as follows:

There are five (5) grievance issues that an inmate may appeal to the [ALC]. If an inmate wishes to appeal to the [ALC], s/he may only appeal final [Department] decisions on the following five (5) issues:

- (1) If the inmate's accrued good time has been taken as a result of a major disciplinary hearing;
- (2) The calculation of a sentence;
- (3) The calculation of sentence related credits;
- (4) Custody determinations that may be grieved under this policy/procedure; or
- (5) Allegations of deprivations that would rise to the level of constitutional violations. Where harm or injury is alleged, it must be more than a minor harm or minor injury. [emphasis supplied].

The Department's April 1, 2000 and August 15, 2001 revisions to Policy Number GA-01.12 clearly reflect our Supreme Court's decision in *Al-Shabazz* to expand the ALC's jurisdiction to review the Department's final decisions regarding non-collateral or administrative decisions or other conditions of imprisonment, including constitutionally protected property and

liberty interests. Moreover, protected property interests are "judicial or quasi-judicial" matters that allege "deprivations that would rise to the level of constitutional violations."

The Appellant's substantive right to wages under § 24-3-430(D) existed prior to the *Wicker* decision, and the agency could not and cannot deprive him of this right without due process given its constitutionally protected status. Therefore, the Appellant's prison industries pay claims were both capable of being raised via administrative grievances within the Department's Inmate Grievance System and, upon an adverse final decision from the Department, capable of being appealed to the ALC *prior* to the issuance of *Wicker* or, for that matter, *Torrence*.

The decisions of both the ALC and our Supreme Court in *Wicker* that Inmate Wicker properly filed a grievance under the Department's Inmate Grievance System, currently designated as Policy Number GA-01.12 and that the ALC possessed subject matter jurisdiction by which to review Wicker's prison industries pay claim simply reinforce this reality. Additionally, Policy Number GA-01.12, ¶ 14(f), recognized that the ALC possessed the jurisdiction by which to review inmate grievances in order to determine if the issues presented were appropriate for judicial review. Thus, neither *Wicker* nor *Adkins* nor, for that matter, *Torrence* created new appeal remedies, because these remedies already existed.²⁷

²⁷ As illustrated above, *Wicker* did not create any new grievance rights. If, under Policy Number GA-01.12 and its predecessors, inmates could appeal the Department's final decision concerning grievances in which they articulated claims that the agency deprived them of protected property interests, then, inmates could obviously file grievances under Policy Number GA-01.12 and its predecessors by which they could protest these purported deprivations directly with the agency. The reality that the ALC already possessed jurisdiction by which to consider Inmate Wicker's appeal of the Department's denial of the grievance in which he articulated a prison industries pay claim reinforces the Department's argument that our Supreme Court's decision in *Wicker* did not establish a new grievance remedy. Succinctly stated, the grievance remedy had to already exist in order for the ALC to have jurisdiction to hear Inmate Wicker's appeal.

V. THE APPELLANT FAILED TO TIMELY FILE HIS STEP 1 GRIEVANCE

The Appellant, via his Step 1 grievance and his Step 2 appeal articulated back pay claims associated with the labor he provided to the Department's prison industries project at Evans in which ESCOD participated as the private industry sponsor. By these back pay claims, the Appellant contended that the Department should have paid him higher rates of pay for the labor he voluntarily provided to this project. (R. pp. 3 – 4). In articulating these claims, the Appellant invoked various provisions of S.C. Code Ann. §§ 24-3-40, 24-3-315, and 24-3-430.

The Appellant also claimed that the Department was, contrary to these statutes, improperly denying him "complete and immediate access" to the percentage of his prison industries pay withheld by the Department in accordance with § 24-3-40(B) and maintained by the Department in an escrow account on the Appellant's behalf. (R. p. 4).

For the reasons presented below, however, the Department respectfully urges this Court to affirm the Department's denial of all of the prison industries pay claims articulated by the Appellant in his Step 1 grievance and, for that matter, his Step 2 appeal.

A. THE APPLICABLE PROVISIONS OF THE DEPARTMENT'S INMATE GRIEVANCE SYSTEM, DESIGNATED AS POLICY NUMBER GA-01.12

The Department has published editions of its Inmate Grievance System Policy for nearly 20 years if not longer. Starting in the mid-1990s, the Department's Inmate Grievance System Policy consisted of two (2) parts: Policy Number PS-10.01 and Policy Number PS-10.01 (OP). Paragraph 14(a) of Policy Number PS-10.01 (OP) required that inmates submit their Step 1 grievance forms "within seven (7) days of the alleged incident." Exceptions to the deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

On October 1, 1997, the Department issued new editions of Policy Numbers PS-10.01 and PS-10.01 (OP). In the October 1, 1997 edition of Policy Number PS-10.01 (OP), the

Department changed ¶ 14(a) to require that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

On January 30, 1998, the Department issued a new edition of its Inmate Grievance System Policy, and, just as before, the policy consisted of two (2) parts. However, the Department re-designated these two (2) parts as Policy Number GA-01.12 and Policy Number GA-01.12 (OP). Paragraph 14(a) of Policy Number GA-01.12 (OP) required that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Once again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

The Department consolidated Policy Numbers GA-01.12 and GA-01.12 (OP) into a single policy when it issued a new edition of Policy Number GA-01.12 on April 1, 2000, and the 15-day filing deadline appeared in this edition of the policy as well as every edition issued since April 1, 2000.

In the edition of Policy Number GA-01.12 effective on May 21, 2007, the date of the Appellant's Step 1, the 15-day filing deadline appeared in ¶ 13.1, which provided as follows:

If informal resolution is not possible, the grievant will complete Form 10-5, Step 1 ... and will submit the Form to an employee designated by the Warden (not the Inmate Grievance Coordinator) within 15 days of the alleged incident. . . . An Inmate will submit a grievance within the time frames established in the policy.²⁸ [emphasis supplied].

²⁸ Paragraph 13.10 of the edition of Policy GA-01.12 in effect on the date of the Appellant's Step 1 set forth exceptions to the 15-day filing deadline established in ¶ 13.1, and it stated as follows:

Exceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures. Exceptions may also be made for incident grievances, provided that the inmate can show reasonable cause, i.e., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc.

Nowhere in his Step 1 or Step 2 did the Appellant seek an exception to the 15-day filing deadline as contemplated by ¶ 13.10. For that matter, the Appellant did not assert in either his Step 1 or his Step 2 that an exception to the 15-day filing deadline, as provided in ¶ 13.10, applied to his prison industries pay claims. The appellants in *Ackerman* made such a variety of such assertions, but Chief Judge Anderson rejected them when he affirmed the Department's

B. THE FILING DEADLINE IS FULLY SUPPORTED BY THE RELEVANT PRECEDENT

A collective analysis of our Supreme Court's decisions in *Al-Shabazz*, *Adkins*, *Wicker*, and *Williams* validates that the prison industries pay claims articulated by the Appellant in his Step 1 grievance were and are legitimately subject to the previous and current filing deadlines provided by the operative paragraphs of the Department's Inmate Grievance System Policy.

As discussed above, the *Al-Shabazz* Court held that the Department's Inmate Grievance System Policy complied with federal law governing inmate grievances, and, thus, common sense dictates that the provisions of the policy, including the filing deadlines, are valid.²⁹ In *Adkins*, 602 S.E.2d at 55, the Court held that inmates may not bring a private right of action in circuit court by which to litigate their prison industries pay claims, while in *Wicker*, the companion case to *Adkins*, the Court acknowledged that inmates may pursue such claims via the Department's Inmate Grievance System Policy.

In *Williams*, the class action lawsuit filed in 2002 by counsel for the appellants in a matter recently considered by Chief Judge Anderson, *Ackerman, #266928, et al., v. S.C. Dep't of Corr.*, ALC Docket Nos. 07-ALJ-04-00444-AP, *et seq.*,³⁰ our Supreme Court held that inmates could not bring a private right of action in circuit court against either the Department or Williams

decisions to deny each of their respective administrative grievances based upon their failure to comply with the applicable filing deadline. See note 17 above.

²⁹ As explained above, the Department issued the edition of Policy Number GA-01.12 effective when the parties submitted the controversy in *Al-Shabazz* to our Supreme Court on January 30, 1998, and it also reflected the same 15-day filing deadline for Step 1 grievances. This 15-day filing deadline appeared in paragraph 14(a) of the January 30, 1998 edition of Policy Number GA-01.12 which provided as follows:

Pursuant to Agency policy, inmates should always make an effort to resolve a grievance by discussing their complaints with appropriate staff. However, if informal resolution is not possible, the grievant will complete Form 10-5, Step 1 ... and will submit the form to the Institutional Inmate Grievance Coordinator within 15 days of the alleged incident or disciplinary hearing appeal. [emphasis supplied].

³⁰ See notes 17 and 28 above and note 34 below.

Technologies regarding their prison industries pay under our state's Payment of Wages Act. The *Williams* Court, 641 S.E.2d at 886, n. 1, again recognized that, pursuant to *Wicker*, inmates were directed to pursue prison industries back wage claims within the forum established by the Department's Inmate Grievance System Policy.

No aspect of any of these decisions invalidates or even calls into question either the seven (7) day or 15-day filing deadline established by the current and previous editions of the Department's Inmate Grievance System Policy. Furthermore, the United States Supreme Court has observed, without objection, that "the deadline for [inmates] filing an administrative grievance is generally not very long – 14 to 30 days." *Woodford v. Ngo*, 548 U.S. 81, 95 (2006) (holding that the Prison Litigation Reform Act requires inmates to properly exhaust their administrative remedies, which includes timely filing their grievances). *See also Jones v. Bock*, 549 U.S. 199, 224 (2007) (recognizing without objection that prison grievance time limits are typically short).

C. THE APPELLANT FAILED TO TIMELY FILE HIS STEP 1 GRIEVANCE

The Appellant's filing deadline began to run when the Department first began to pay him for the labor he voluntarily provided to the prison industries project at Evans. Again, the Appellant's labor and the rate at which the Department paid him for his labor constituted a condition of his confinement.³¹ Succinctly stated, the grievance existed when the incident occurred. *See Johnson v. Johnson*, 385 F.3d 503, 519 (5th Cir. 2004) ("While it is true that the conditions that Johnson suffered both before and after the grievance were of the same general character, to permit the March 2001 grievance to reach back to events that transpired up to six months earlier would effectively negate the state's fifteen-day rule and frustrate the prison

³¹ See notes 18 and 22 above.

system's legitimate interest in investigating complaints while they are still fresh. That a condition continues does not excuse the failure to file a grievance earlier.").

By his own admission (R. pp. 2 and 24), the Appellant began voluntarily participating in the prison industries project at Evans in June 1997. A review of the Appellant's prison industries pay records confirms that the Department began paying the Appellant at the rate of \$5.25 per hour for his prison industries labor on or about August 15, 1997.³² (R. p. 75).

As discussed above, the edition of the Department's Inmate Grievance System effective when the Department began paying the Appellant at the rate of \$5.25 per hour for his labor was designated as Policy Number(s) PS-10.01 and PS-10.01(OP), and it required that inmates, such as the Appellant, file an administrative grievance within seven (7) days of the alleged incident of which they complained. In the Appellant's case, the incident about which he has been and continues to complain was the rate(s) at which the Department paid him for his prison industries labor. Thus, at the time the Department first began paying him for his labor, the Appellant had seven (7) days to file his grievance.

Effective October 1, 1997, Policy Number(s) PS-10.01 and PS-10.01(OP) were changed to allow inmates to file a grievance within 15 days of the alleged incident of which they complained. In his Step 2 (R. pp. 24 – 25), the Appellant claimed "had no knowledge of [any] discrepancy in pay until the July 1, 1999 change in law, at which time [he] began diligent research," and he attested that he "discovered in 2000 that [the Department] was collecting \$7.17 per hour for [his] labor and during 'training hours.'³³" Thus, even contorting the provisions of

³² The entirety of the Appellant's prison industries pay record, entitled "PRIVATE SECTOR ACCOUNT TRANSACTIONS," appears in the abbreviated Record. (R. pp. 44 – 75). The Appellant's prison industries pay record shows the Department remitted its final payment to the Appellant for the labor he voluntarily provided to the project at Evans on or about November 14, 2004. (R. p. 46).

³³ See note 12 above.

the applicable editions of the Department's policy to his extreme benefit, the Appellant confronted a 15-day deadline to file his administrative grievance after the "discovery" he made in 2000 regarding his prison industries pay.

When the Appellant actually filed his Step 1 on May 21, 2007, the edition of the Department's Inmate Grievance System then in effect, designated as Policy Number GA-01.12, still required that inmates file an administrative grievance within 15 days of the time that the event complained of occurred.³⁴

Thus, as correctly determined by both the warden at the institution to which the Appellant is currently assigned and the Department's General Counsel (R. pp. 12 and 29), the Appellant simply did not submit his Step 1 within either seven (7) days or 15 days of the incident upon

³⁴ Beginning several years ago, the ALC has affirmed the application of the filing deadline in the manner advocated herein by the Department in the following cases, all of which involved prison industries pay claims. See *Daughtry*, #250139, v. S.C. Dep't of Corr., Docket No. 04-ALJ-00783-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; *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*.

The ALC has continued to rule in the same manner in decisions it has issued since January 1, 2012. See *Ackerman*, #266928, et al., v. S.C. Dep't of Corr., ALC Docket Nos. 07-ALJ-04-00444-AP, et seq.; *Arnold*, #238375, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00200-AP; *Bradley*, #281630, v. S.C. Dep't of Corr., Docket No. 07-ALJ-04-0772-AP; *Bridgeman*, #130350, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00610-AP; *Cudd*, #240049, v. S.C. Dep't of Corr., Docket No. 07-ALJ-04-0771-AP; *Gibson*, #241326, v. S.C. Dep't of Corr., Docket No. 10-ALJ-04-00007-AP; *Grale*, #232524, v. S.C. Dep't of Corr., Docket No. 07-ALJ-04-0897-AP; *Jones*, #130817, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-0506-AP; *Kelitt*, #277284, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-0519-AP; *Lampley*, #97724, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00489-AP; *Parker*, #291769, v. S.C. Dep't of Corr., Docket No. 07-ALJ-04-0770-AP; *Sullivan*, #265327, v. S.C. Dep't of Corr., Docket No. 07-ALJ-04-0782-AP; and *Timmons*, #280769, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-1156-AP. Like the Appellant, Inmates Bridgeman, Jones, Lampley, and Timmons all participated in the prison industries project operated by the Department at Evans in which ESCOD participated as the private industry sponsor.

See also *Patterson v. S.C. Dep't of Corr.*, 2010-UP-292 (S.C. Ct. App. May 27, 2010) ("[The Department] denied Patterson's grievance based on [¶ 13.1], which states an inmate must file a grievance within fifteen days of the alleged incident. ... Patterson should have filed his grievance within fifteen days of December 6, 2004, when he originally discovered that [the Department] lost his inmate property." [emphasis supplied]). The Court of Appeals in *Patterson* also observed that "[t]he adoption and execution of policies and practices . . . are within the province and expertise of correctional officials." (quoting *State v. Blick*, 481 S.E.2d 452, 455 (S.C. Ct. App. 1997)).

which he anchored the prison industries pay claims he articulated in his Step 1, namely the date upon which the Department first began paying him for his prison industries labor.

For that matter, the Appellant, as correctly determined by the Department's General Counsel (R. p. 29), did not timely file his Step 1 after he discovery a "discrepancy" in his pay or otherwise "discovered" a purported problem with the hourly rate at which the Department paid him for his labor. Moreover, the Appellant failed to articulate in his Step 1 or his Step 2 any exception to the 15-day filing deadline which could potentially apply to his grievance.³⁵

Finally, the Department respectfully submits that this Court has no authority to expand the time in which the Appellant was required to file his Step 1 grievance. *See generally Mears v. Mears*, 337 S.E.2d 206 (S.C. 1985).

VI. THE APPELLANT DID NOT TOLL THE FILING DEADLINE WHEN HE INITIATED LITIGATION IN *Torrence* BEFORE THE CIRCUIT COURT

In his Step 2 appeal (R. pp. 18 – 19), his Notice of Appeal, and his brief to this Court,³⁶ the Appellant argued that the Department's filing deadline was tolled during the pendency of the *Torrence* litigation. The Appellant, the lead plaintiff in *Torrence*, began the litigation bearing his name when he filed his action in circuit court in 2001. Again, the action initiated by the Appellant in circuit court eventually resulted in our Supreme Court's decision in *Torrence*.

In his brief, the Appellant references three (3) modern cases that purportedly support his position:³⁷ *Rink v. Richland Memorial Hospital*, 422 S.E.2d 747 (S.C. 1992); *Irvin v. Dep't of Veteran Affairs*, 498 U.S. 89 (1990); and *Moriarty v. Garden Sanctuary Church of God*, 534 S.E.2d 672 (S.C. 2000). However, none of these cases support the Appellant's assertion that the

³⁵ See note 28 above.

³⁶ See Appellants' Brief, pp. 8 – 9.

³⁷ See Appellant's Brief, p. 9. The three (3) cases cited by Appellant also purportedly support his argument that the Department is equitably estopped from applying the filing deadline established by its Inmate Grievance System Policy. The Department's arguments in opposition to the Appellant's equitable estoppel claim appear below.

filing deadline from the Department's relevant policy was tolled during the pendency of the *Torrence* litigation.³⁸

In *Irvin*, 498 U.S. at 96, the United States Supreme Court provided an analysis that, if anything, works against the Appellant's argument:

But an examination of the cases in which we have applied the equitable tolling doctrine as between private litigants affords petitioner little help. Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period (footnote omitted), or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass.³⁹ We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights. (citation omitted). Because the time limits imposed by Congress in a suit against the Government involve a waiver of sovereign immunity, it is evident that no more favorable tolling doctrine may be employed against the Government than is employed in suits between private litigants.

Petitioner urges that his failure to file in a timely manner should be excused because his lawyer was absent from his office at the time that the EEOC notice was received, and that he thereafter filed within 30 days of the day on which he personally received notice. But the principles of equitable tolling described above do not extend to what is at best a garden variety claim of excusable neglect.

Again, by his own admission (R. pp. 24 – 25), the Appellant “had no knowledge of [any] discrepancy in pay until the July 1, 1999 change in law, at which time [he] began diligent research,” and he attested that he “discovered in 2000 that [the Department] was collecting \$7.17

³⁸ For that matter, the facts of these cases do not concern the proposition advocated by the Appellant, namely whether the filing of an action in one (1) forum (i.e. circuit court) tolls any deadlines associated with an action available in another separate forum (i.e. an administrative action viable for disposition under an inmate grievance system policy established and managed by a correctional authority). By way of example, the facts at issue in *Moriarty* concerned “the novel issues of whether a cause of action based on repressed memory syndrome is viable in South Carolina, and whether an adult who alleges repressed memories of childhood sexual abuse may bring a timely cause of action under the ‘discovery rule’ contained in S.C. Code Ann. § 15-3-535 (Supp. 1999) after recovering the memories.” 534 S.E.2d at 673.

³⁹ This example conforms very closely to precedent from our state examined below.

per hour for [his] labor and during 'training hours.⁴⁰' Thus, the Appellant did not file his Step 1 until 2007, some seven (7) years after he admittedly discovered purportedly problems with his prison industries pay.⁴¹

Succinctly stated, nothing prevented the Appellant from filing an administrative grievance as permitted by the Department's Inmate Grievance System Policy in which he challenged any aspect of the pay remitted to him by the Department for the labor he voluntarily provided to the prison industries project at Evans at when he first began receiving such pay. Even if this Court determines that the Appellant could have waited to file an administrative grievance until he "discovered" potential problems with his prison industries pay, the Appellant, by waiting seven (7) years, still did not timely file his grievance. He simply elected not to do so. Accordingly, this Court should not now reward the Appellant for such neglect.

VII. THE DEPARTMENT IS NOT EQUITABLY ESTOPPED FROM APPLYING THE FILING DEADLINE

In his Step 2 appeal, his Notice of Appeal, and his brief, the Appellant also urged this Court to rule that the Department is equitably estopped from applying the filing deadline to his prison industries pay claims. However, the Department is not equitably estopped from applying the filing deadline to the grievance in which the Appellant presented his prison industries pay claims, because he failed to allege that the Department engaged in any affirmative conduct upon which they relied to change their position.

In *Boyd v. Bellsouth Tel. Co., Inc.*, 633 S.E.2d 136, 142 (S.C. 2006), our Supreme Court announced the elements of an equitable estoppel claim as follows:

⁴⁰ See note 12 above.

⁴¹ The doctrine of laches, given this chronology, bars the Appellant's claims. The warden invoked this doctrine in his denial of the Appellant's Step 1. (R. p. 12). The Department's General Counsel affirmed the warden's invocation of laches in his denial of the Appellant's Step 2. (R. p. 30).

The essential elements of equitable estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, they are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.

To establish an equitable estoppel claim, the party to be estopped must have engaged in some affirmative act that induces the other party to act or not act. *See Strickland v. Strickland*, 650 S.E.2d 465, 470 (S.C. 2007); *Kleckley v. Nw. Nat. Cas. Co.*, 526 S.E.2d 218, 220 – 21 (S.C. 2000); and *Kelly v. Logan, Jolley, & Smith, L.L.P.*; 682 S.E.2d 1, 8 (S.C. Ct. App. 2009).

For example, in his Step 2 appeal (R. p. 18), he claimed that his own counsel purportedly advised him by correspondence dated May 17, 2007 (R. pp. 37 – 38) that the litigation of *Torrence* had tolled any of the deadlines associated with filing an administrative grievance with the Department by which he challenged the rate and manner by which it remitted his prison industries pay to him. By his own admission (R. p. 24), the Appellant attested that he filed his Step 1 grievance on May 21, 2007, “within seven (7) days of receipt of his right to file a grievance in this matter.” Thus, the Appellant claims that his own counsel determined “his right to file a grievance in this matter.”

Setting aside for the moment the completely unsustainable notion that his own counsel could lawfully determine when his right to file a grievance accrued, the Appellant did not allege any affirmative conduct undertaken by the Department or any Department official regarding the chronology associated with his filing decision. *See Strickland*, 650 S.E.2d at 470; *Kleckley*, 526 S.E.2d at 220 – 21; and *Kelly*, 682 S.E.2d at 8.

In both his Step 2 (R. pp. 19 and 25) and in his brief, the Appellant attempts to invoke some affirmative conduct purportedly by the Department by referencing the "Notice Flyer" posted at Lieber Correctional Institution by the direction of the circuit court judge in the *Williams* litigation.⁴² However, the Appellant clearly acknowledges that the "Notice Flyer" was posted on October 20, 2008 (R. pp. 42 – 43), a date well after the Appellant filed his Step 1. Thus, the Appellant seeks to attribute some kind of affirmative conduct to the Department for posting the "Notice Flyer" approximately 18 months *after* he filed his Step 1 grievance in May 2007. Obviously, the Department's posting of this flyer could not have acted to change the Appellant's position, because he filed his Step 1 some 18 months *before* the flyer was posted.

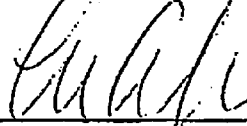
Again, to set forth an equitable estoppel claim, the Appellant must show that he changed his position in reliance on some affirmative conduct by Department. However, he simply cannot show that he relied on any conduct by Department when he filed his Step 1. *Strickland*, 650 S.E.2d at 471. Further, he cannot show that he changed his position in reliance on some action by the Department. *Wright v. Craft*, 640 S.E.2d 486, 506 (S.C. Ct. App. 2006) (denying equitable estoppel claim because there was no evidence that the asserting party changed their position in reliance on the actions of the party to be estopped). Therefore, the Appellant's equitable estoppel argument completely fails.

VIII. CONCLUSION

In light of the above-provided analysis and argument, the Department respectfully urges this Court to deny the Appellant's instant appeal and affirm the Department's denial of the Appellant's administrative grievance and the prison industries pay claims articulated therein.

⁴² See Appellants' Brief, pp. 8 – 9.

RESPECTFULLY SUBMITTED,



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Counsel for the Department

Columbia, South Carolina
July 9, 2012

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, # 94561,)
)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
)
 Respondent.)

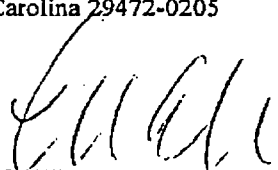
Docket No. 12-ALJ-04-00143-AP
Grievance No. ECI-0980-10

CERTIFICATE OF SERVICE

This is to certify that I have, on this date, caused to be served a copy of THE DEPARTMENT'S BRIEF IN SUPPORT OF ITS ARGUMENT THAT THIS COURT SHOULD AFFIRM THE DEPARTMENT'S DENIAL OF THE APPELLANT'S ADMINISTRATIVE GRIEVANCE and THE ABBREVIATED RECORD ON APPEAL upon the *pro se* Appellant, via the United States Mail, to the following address:

Thomas J. Torrence, # 94651
Lieber Correctional Institution [SA-43]
Post Office Box 205
Ridgeville, South Carolina 29472-0205

BY:



Lake E. Summers
Katherine A. Phillips
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300

Counsel for the Department

Columbia, South Carolina
July 9, 2012

FILED

JUL 09 2012

SC ADMIN. LAW COURT

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, # 94561,)
)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
)
 Respondent.)

Docket No. 12-ALJ-04-00143-AP
Grievance No. ECI-0980-10

**THE DEPARTMENT'S BRIEF IN
SUPPORT OF ITS ARGUMENT THAT
THIS COURT SHOULD AFFIRM THE
DEPARTMENT'S DENIAL OF THE
APPELLANT'S ADMINISTRATIVE
GRIEVANCE**

***ABBREVIATED
RECORD ON APPEAL***

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Thomas John Torrence
SCDC NUMBER: # 094651
INSTITUTION: Broad River C.I.
HOUSING UNIT: MU-266
WORK ASSIGNMENT: ward keeper

Office Use Only
Grievance No. ECI-980-10
Code: General Wages
Policy _____
Disc. Hear. _____
Class. _____
Date Received _____
IGC Initials _____

STATE GRIEVANCE (Includes documentation, and date of incident if SCDC Policy indicates which policy.)

I was employed by ESCOD Industries, in the SCDC Private Sector Prison Industries Program at Evans Correctional Institution from June 1997 thru November, 2004. During the course of my employment, I learned that SCDC was withholding certain wages and monies from me in contravention of state law, to which I have a property interest. The S.C. Supreme Court recently ruled in *Thomas Torrence, et al. v. SCDOC*, Op. No. 26328 (filed May 7, 2007) (received by Grievant on May 21, 2007), that I must file a Grievance under SCDC Policy GA-01.12. The claim for this unconstitutional deprivation is set forth in the following eight subsections:

(See ADDENDUM)

ACTION REQUESTED:

Payment of wages, withholdings and interests as set forth in subsections 1 thru 8 of the Addendum attached hereto.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

This matter was pending before S.C. courts from 2001 until the recent May 7, 2007 decision. SCDC intends to petition the state supreme court for a rehearing on this matter within 30 days.

Thomas J. Torrence 5-21-07
Grievant Signature Date

ACTION TAKEN BY IGC:

Forwarded to Warden

- I accept the action taken by the IGC and consider the matter closed.
- I do not accept the action taken and wish to appeal.

Dev N. Helms 11-30-11
IGC Signature Date
bc 11/30/11
Grievant Signature Date

WARDEN'S DECISION AND REASON:

**SEE ATTACHED
RESPONSE**

Wayne C. McEld 12-1-11
Warden Signature Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.

Thomas J. Torrence 12-1-11
Grievant Signature Date

[Signature] 12/1/11
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

Thomas John Torrence

094651

SCDC Grievance - ADDENDUM (Step 1) - May 21, 2007

- 1) Sections 24-3-40, 24-3-315, and 24-3-430(D) created a property interest in the prevailing wage (\$7.17) grievant earned during "regular" hours performed for the period by SCDC as Training Hours and grievant is entitled to said monies.
- 2) Sections 24-3-40, 24-3-315, and 24-3-430(D) created a property interest in the prevailing wage (\$10.75) grievant earned during "overtime" hours performed for the period described by SCDC as Training Hours, in Number 1, above, and grievant is entitled to said monies.
- 3) Grievant has a property interest in the interest earned on the amounts complained of in Numbers 1 and 2, above.
- 4) Sections 24-3-40, 24-3-315, and 24-3-430(D) created a property interest in the \$1.92 difference between the prevailing wage (\$7.17) paid by the private sector employer (Escod Industries) for grievant's "regular" hour labor and the wage (\$5.25) paid grievant by SCDC during the course of grievant's private sector employment [August 1997 thru November 2004], including any change in the rate during his participation and grievant is entitled to said monies.
- 5) Sections 24-3-40, 24-3-315, and 24-3-430(D) created a property interest in the \$2.79 difference between the prevailing wage (\$10.75) paid by the private sector employer (Escod Industries) for grievant's "overtime" hour labor and the wage (\$7.86) paid grievant by SCDC during the course of grievant's private sector employment [August 1997 thru November 2004] including any change in the rate during his participation and grievant is entitled to said monies.
- 6) Grievant has a property interest in the interest earned on the amounts complained of in Numbers 4 and 5, above.
- 7) Sections 24-3-40, 24-3-315, 24-3-430(D), 24-3-430(A)(5) and 24-3-430(B)(2) created a property interest in escrowed wages wherein grievant is entitled to complete and immediate access to the amount of his escrowed wages (\$ 5,358.00 as of November, 2004) to distribute them to persons or entities of his choice at the time said wages were escrowed for grievant's benefit, but grievant is denied his personal benefit because of serving a life sentence.
- 8) Grievant has a property interest in the interest earned on the amount complained of in Number 7, above.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

TO: NAME: Grievance Coordinators - BRCI/EVANS CT	TITLE:	DATE: May 21, 2007
INMATE'S NAME: Thomas J. Torrence	SCDC #: 094651	
INSTITUTION: BRCI	LIVING QUARTERS: MU-266	
<p>Please find attached a Step 1 Grievance and Addendum in regards to my Private Sector PI wages for my employment period at Evans C.I., from June 1997 to November 2004. I have a pending case in court on this matter, <u>Torrence, et al. v. SCDOC</u>, Op. No. 26328 (S.C. Sup.Ct., filed May 7, 2007). I received a copy of this opinion on the above date. Although I am informed by counsel that the DOC will file a Petition for Rehearing within 30 days, the Supreme Court held I should file an agency grievance on this matter. This grievance is filed within 15 days of receipt of the Supreme Court's decision on this matter and is equitably tolled by the pendency of the civil action.</p> <p>I believe that where this matter emanates from Evans, that the Grievance must be filed and maintained at Evans. On that belief, and having no time to verify the policy on that question, and in an abundance of caution, I am mailing a copy of the attached Grievance and Addendum via first-class mail to the Evans Grievance Office.</p> <p style="text-align: center;">Thank you for your assistance in this matter.</p> <p style="text-align: center;"><i>Thomas J. Torrence</i></p>		
<p>DISPOSITION BY STAFF MEMBER: <i>Inmate Torrence:</i> Per your letter dated 4/21/10, please be advised your PI grievance has been assigned a #ECI-980-10. Upon review by outside counsel Lade Summers you will receive a Warden's Step 1 response upon completion of acting Summers review.</p>		
DATE: 6/10/10	SIGNATURE: <i>Mary Polowan, I/M Griev Branch Chief</i>	

SCDC FORM 19-11 (REV. FEB 2007)

Thomas J. Torrence
094651
Lieber Corr. Inst. EB-44
P.O. Box 205
Ridgeville, SC 29472-0205

April 21, 2010

Ms. Ann Hallman
Inmate Grievance Administrator
Inmate Grievance Branch
S.C. Department of Corrections
P.O. Box 21787
Columbia, S.C. 29221-1787

done 5/25/10 ECI-633-03

Re: Grievances: Jail Credit
Private Sector P.I. Wages ECI-980-10
Request for Final Agency Decisions

Dear Ms. Hallman:

I am requesting your assistance in obtaining a final disposition on the above-referenced agency grievances (copies attached). The grievances have now been pending for 10 years and 3 years, respectively.

The enclosed documents in re the jail credit issue clearly indicate SCDC has informed the state supreme court that the agency would process the grievance. As you can see from your records, despite my efforts, the issue remains in limbo. (In regards to the P.I. wages, the state Supreme Court ruled in my case Thomas Torrence, et al. v. SCDOC, 373 S.C. 585, 646 SE2d 865, rehearing denied (2007) that I should file an agency grievance. That was done within 15 days of receipt of that decision. That grievance also remains in limbo.)

I realize that the agency has no intention of issuing a favorable ruling in either matter. In good faith, I have not asked the Supreme Court for another writ of mandamus and have patiently waited on the agency to act. I am asking for your assistance in either processing the Step 1 grievances or issuing a final agency decision so I may

.....

obtain the relief I am entitled to via the state judicial system. In honesty, you are the first person in many years that I have seen take an interest in resolving legitimate issues. .

Thank you for your attention to these matters.

With kindest regards, I am,

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas John Torrence". The signature is written in dark ink and is positioned above the printed name.

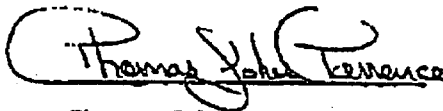
Thomas John Torrence

ENCLOSURES: As noted

CERTIFICATE OF MAILING

The undersigned, Thomas John Torrence, personally appeared before me and certified that he mailed a Step 1 Grievance (SCDC Form 10-5) and attached addendum, to the Grievance Coordinator at Evans Correctional Institution, by placing a copy in the U.S. Mail, first-class prepaid postage affixed thereto, this 22nd day of May, 2007, addressed as follows:

Grievance Coordinator
Evans Correctional Institution
610 Hwy 9 West
Bennettsville, SC 29512



Thomas John Torrence
094651 NU-266
Broad River Corr. Inst.
4460 Broad River Road
Columbia, SC 29210-4012

SWORN TO AND SUBSCRIBED before me
this 27 day of May, 2007


NOTARY PUBLIC OF SOUTH CAROLINA
My Commission Expires April 4, 2018

My Commission Expires: _____

Step 1 Grievance Response
December 1, 2011

Name	SCDC #	Grievance #	Project
Torrence, Thomas J.	094651	ECI-980-10	Evans Ct/ESCOD

I have reviewed your Step 1 grievance bearing your signature and dated May 21, 2007. The responsible SCDC official provided your Step 1 with the following designation: ECI-980-10.

I have also reviewed a second Step 1 bearing your signature and dated August 15, 2011. The responsible SCDC official provided your second Step 1 with the following designation: LCI-1104-11. As one of actions you requested in your Step 1 designated as LCI-1104-11 consisted of the processing your Step 1 designated as ECI-980-10, this response closes out your Step 1 designated as LCI-1104-11.

In your Step 1 designated as ECI-980-10, you stated that you were "employed by ESCOD Industries, in the SCDC Private Sector Prison Industries Program at Evans Correctional Institution from June 1977 thru November, 2004." You also stated that you "learned that SCDC was withholding certain wages and monies from [you] in contravention of state law, to which [you] have a property interest."

You asserted in your grievance that the South Carolina Supreme Court in Torrence, et al., v. S.C. Dep't of Corr., ruled that you "must file a [g]rievance under" under the provisions of SCDC Inmate Grievance System Policy Number GA-01.12. You stated in your grievance that this lawsuit had been pending before South Carolina courts from 2001 until our state's Supreme Court issued its decision on May 7, 2007, and you also indicated that the agency intended to petition our state's Supreme Court to rehear its May 7, 2007 decision.

In the "addendum" you filed with your Step 1 designated as ECI-980-10, you presented the following eight (8) specific claims of purportedly unconstitutional deprivations committed by the agency against you concerning the prison industries pay remitted to you by the agency from June 1977 through November 2004:

(1) You claimed that S.C. Code Ann. § 24-3-40, § 24-3-315, and § 24-3-430(D) "created a property interest" in the purported prevailing wage of \$7.17 per hour for the "regular" labor you performed during the period of time SCDC paid you a "training wage" and that you were entitled to the difference between the rate of pay you received when SCDC paid you a "training wage" and the purported prevailing wage of \$7.17 per hour for your "regular" labor.

(2) You claimed that the same three (3) statutes "created a property interest" in the purported prevailing wage of \$10.75 per hour for the "overtime" labor you performed during the period of time SCDC paid you a "training wage" and that you were entitled to the difference between the rate of pay you received when SCDC paid you a "training wage" and the purported prevailing wage of \$10.75 per hour for your "overtime" labor.

(3) You claimed that you possessed "a property interest" in "the interest earned on" the monies purportedly owed to you by SCDC as a result of your claims in paragraphs #1 and #2.

(4) You claimed that the same three (3) statutes you listed in paragraphs #1 and #2 above "created a property interest" in the \$1.92 per hour difference between the purported prevailing

Step 1 Grievance Response
December 1, 2011

Name	SCDC #	Grievance #	Project
Torrence, Thomas J.	094651	ECI-980-10	Evans CI/ESCOD

wage of \$7.17 per inmate labor hour paid by ESCOD, the private industry sponsor in the prison industries project operated by SCDC at Evans, and the \$5.25 per "regular" inmate labor hour SCDC paid you during the entire time you voluntarily participated in the prison industries project operated by SCDC at Evans beginning in August 1997 through November 2004.

(5) You claimed that the same three (3) statutes you listed in paragraphs #1 and #2 above "created a property interest" in the \$2.79 per hour difference between the purported prevailing wage of \$10.75 per inmate labor hour paid by ESCOD, the private industry sponsor in the prison industries project operated by SCDC at Evans, and the \$7.86 per "overtime" inmate labor hour SCDC paid you during the entire time you voluntarily participated in the prison industries project operated by SCDC at Evans beginning in August 1997 through November 2004.

(6) You claimed that you possessed "a property interest" in "the interest earned on" the monies purportedly owed to you by SCDC as a result of your claims in paragraphs #4 and #5.

(7) You claimed that S.C. Code Ann. §§ 24-3-40, 24-3-315, 24-3-430(D), 24-3-430(A)(5) and 24-3-430(B)(2) "created a property interest in escrowed wages" by which you were and are entitled to "complete and immediate access to the amount of [your] escrowed wages (\$5,358.00 as of November, 2004) to distribute them to persons or entities of [your] choice," and you claimed that, because you are serving a life sentence in SCDC's custody, you have been denied your "personal benefit" to access and distribute these wages.

(8) You claimed that you possessed "a property interest" in "the interest earned on" the monies purportedly owed to you by SCDC as a result of paragraph # 7.

Your prison industries participation and pay records were reviewed by the responsible officials at SCDC Headquarters in Columbia. These records confirm that you voluntarily participated in the prison industries project operated by SCDC at Evans in which ESCOD participated as the private industry sponsor before SCDC ended its policy of paying inmates a "training wage" for their initial 320 hours of labor. SCDC ended its policy of paying a "training wage" on July 1, 1999. These pay records reflect that SCDC began paying you on or about August 15, 1997 at the rate of at least \$5.25 per hour for the labor you voluntarily provided in the project at Evans, and they reflect that SCDC remitted its final payment to you on or about November 16, 2004.

After carefully considering the arguments you made justifying the action you request, I deny the claims from your above referenced Step 1 grievance.

Two (2) decisions issued by the South Carolina Supreme Court in 2004 apply to the claims you presented in your Step 1 designated as ECI-980-10: Adkins v. S.C. Dep't of Corr. and Wicker v. S.C. Dep't of Corr. Both of these cases discussed S.C. Code Ann. § 24-3-40, § 24-3-310, *et seq.* and, specifically, § 24-3-430(D). The South Carolina Supreme Court issued these decisions on August 23, 2004. Adkins and Wicker recognized that inmates possessed a pre-existing right to file administrative grievances concerning their prison industries pay. Under Wicker, such

Step 1 Grievance Response
December 1, 2011

Name	SCDC #	Grievance #	Project
Torrence, Thomas J.	094651	ECI-980-10	Evans CI/ESCOD

grievances must be filed, processed, and determined in accordance with the provisions of the agency's Inmate Grievance System Policy.

In Torrence, the case you mentioned in your Step 1 designated as ECI-980-10 and the case in which you personally participated as the lead plaintiff, the South Carolina Supreme Court issued another decision which applies to your claims. In Torrence, the South Carolina Supreme Court again acknowledged that inmates could file grievances in accordance with the agency's Inmate Grievance System Policy by which they could challenge their prison industries pay.

SCDC has published editions of its Inmate Grievance System Policy for at least 20 years if not far longer. The issue date of the edition of the agency's Inmate Grievance System Policy applicable when you began participating in the project at Evans was May 1, 1996, and the policy consisted of two (2) parts: Policy Number PS-10.01 and Policy Number PS-10.01 (OP). ¶ 14(a) of Policy Number PS-10.01 (OP) required that inmates submit their Step 1 grievance forms "within seven (7) days of the alleged incident." Exceptions to the deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

On October 1, 2007, SCDC issued new editions of Policy Numbers PS-10.01 and PS-10.01 (OP). In the October 1, 2007 edition of Policy Number PS-10.01 (OP), SCDC changed ¶ 14(a) to require that inmates such their Step 1 grievance forms "within 15 days of the alleged incident." Again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

On January 30, 1998, SCDC issued a new edition of its Inmate Grievance System Policy, and, just as before, the policy consisted of two (2) parts. However, SCDC re-designated these two (2) parts as Policy Number GA-01.12 and Policy Number GA-01.12 (OP). ¶ 14(a) of Policy Number GA-01.12 (OP) required that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Once again, exceptions to this deadline appeared in ¶ 14(g) and ¶ 15 of the policy.

The agency consolidated Policy Numbers GA-01.12 and GA-01.12 (OP) into a single policy when it issued a new edition of Policy Number GA-01.12 on April 1, 2000, and the 15-day filing deadline appeared in this edition of the policy as well as every edition issued since April 1, 2000.

I conclude, after reviewing your Step 1 in light of Adkins, Wicker, Torrence, the seven (7) day filing deadline from ¶ 14(a) of the May 1, 1996 edition of Policy Number PS-10.01 (OP), the 15-day filing deadline from ¶ 14(a) of the October 1, 2007 edition of Policy Number PS-10.01 (OP), as well as the exceptions to these deadlines from ¶ 14(g) and ¶ 15 of these editions, that you did not submit your Step 1 grievance within either seven (7) days or even 15 days of the incident upon which you anchored the claims you presented in your Step 1, namely the date upon which SCDC both first began paying you for your prison industries labor and began applying statutorily mandated deductions to your pay.

The grievance filing deadline established in every edition of the agency's Inmate Grievance System Policy applied and continues to apply to nearly every aspect of inmate activity, and no

Step 1 Grievance Response
December 1, 2011

Name	SCDC #	Grievance #	Project
Torrence, Thomas J.	094651	ECL-920-10	Evans CIVESCOD

special exception applies to prison industries pay disputes. Consequentially, the deadline applies to your grievance.

Moreover, you filed your Step 1 nearly 10 years after you began participating in the prison industries project operated by SCDC at Evans in which ESCOD participated as the private industry sponsor and approximately 2 ½ years after you concluded your participation in this project. For that matter, you filed your Step 1 over 2 ½ years after the South Carolina Supreme Court issued its decisions in Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under the agency's Inmate Grievance System Policy.

The fact that you first sought relief by participating in a class action lawsuit filed in circuit court instead of filing a grievance by which you challenged the rate at which SCDC both paid you for your prison industries labor and applied statutorily mandated deductions to your pay does not change the deadline(s) from the agency's Inmate Grievance System Policy. As stated above, you were the lead plaintiff in Torrence, and your attorneys filed their amended declaratory judgment complaint on your behalf on November 5, 2001. Obviously, you knew even before your attorneys filed the lawsuit on your behalf that you wanted to challenge the rate at which SCDC had been paying you for your prison industries labor.

In making this determination, I rely on the following decisions from the South Carolina Administrative Law Court ("ALC"): Cramer, #251406, v. S.C. Dep't of Corr., Docket No. 08-ALJ-04-00577-AP; Daugherty, #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; Grimmen, Jr., #102226, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00757-AP; Larimore, #238126, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00470-AP; Manicault, #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; Pinkin, #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; Sunn, #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, v. 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 2006).

Additionally, in light of the chronology associated with filing your Step 1, I find that your claim is barred by the doctrine of laches.

To the extent that you claim in your Step 1 grievance that you were required to file a grievance, I conclude that neither the opinions in Adkins or Wicker nor the decision in Torrence ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1. These opinions simply recognized your pre-existing right to file grievances presenting prison industries pay claims if you desired.

To the extent that you claim in your Step 1 that you worked for or were otherwise "employed" by ESCOD, I conclude that you never "worked" for nor were you ever "employed" by ESCOD.

Step 1 Grievance Response
December 1, 2011

Name	SCDC #	Grievance #	Project
Torrence, Thomas L.	094651	ECL-980-10	Evans CI/ESCOD

I also conclude that neither Adkins nor Wicker declared that you or inmates in your position were "employed" by SCDC, ESCOD, or, for that matter, any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's decision in Darrell Williams, Class Representative et al. v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of private industry sponsors like ESCOD.

Therefore, to the extent you use the terms "worked for," "employee," "employed," or "employment" within your Step 1 grievance to describe your participation, I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Evans.

Additionally, I deny your claim that you are entitled to any relief under § 24-3-430(D), the so-called "prevailing wage" provision. Specifically, as the prison industries project in which you participated at Evans was a project for which SCDC received certification under the federal government's Prison Industries Enhancement Certification Program ("PIECP"), I conclude that the provisions of § 24-3-410(B)(7) and not Section 24-3-430(D) applied to the rate of pay SCDC was required to remit to you under Section 24-3-40(A) for the labor you voluntarily provided to this project. In making this conclusion, I rely upon the decision issued by the circuit court in Adkins, which concluded that inmates who participated in an identically certified SCDC prison industries project did not possess a viable claim for back wages or higher wages under the provisions of § 24-3-430(D).

Even if you have a viable claim for relief under § 24-3-430(D), I conclude that SCDC paid you the proper rate of pay for the labor you voluntarily provided to the federally certified prison industries project it operates at Evans. In making this conclusion, I rely upon the guidelines established by the federal government, specifically the United States Department of Justice's Bureau of Justice Administration (known as "BJA"). BJA published the guidelines applicable to the PIECP in the Federal Register, specifically 64 FR 17000. Within these guidelines, BJA declared that the rate at which inmates are paid for the labor they voluntarily provide to PIECP projects, like the project in which you participated at Evans CI, cannot be set below the federal minimum wage. With the exception of the period of time SCDC paid you "training wages," SCDC paid you at least the federal minimum wage for the labor you voluntarily provided to the prison industries project it operates at Evans. Again, I find that you did not timely file your grievance in which you demanded any back pay allegedly owed to you by SCDC including any back pay associated with the period of time SCDC paid you a "training wage."

I also conclude that SCDC does not owe you \$1.92, \$2.79, or any other amount for every labor hour you voluntarily provided to the federally certified prison industries project operated by SCDC at Evans CI. Under the contracts struck between SCDC and ESCOD, SCDC legitimately charges ESCOD an hourly rate for "overhead cost" in addition to the hourly rate SCDC pays inmates in accordance with both state and federal law.

Step 1 Grievance Response
December 1, 2011

Name	SCDC #	Grievance #	Project
Torrence, Thomas J.	094631	ECI-980-10	Evans C/ESCOD

The circuit court in Adkins concluded that SCDC's practice of invoicing a private industry sponsor, like ESCOD, such an hourly "overhead cost" was accepted by BJA, the federal agency responsible for certification of both the prison industries project at issue in Adkins and the prison industries project at issue in the instant case.

SCDC's assessment of this "overhead cost" does not violate any applicable South Carolina statute, because the assessment of this cost allows SCDC to comply with a variety of the applicable prison industries statutes, including § 24-3-400. These statutes, including § 24-3-400, either directly or indirectly compel SCDC to collect an hourly "overhead cost" or "administrative charge" from private industry sponsors, like ESCOD, so that it may cover the expenses it incurs as a consequence of operating the project in which you voluntarily participated at Evans.

Furthermore, I find that your claim of being entitled to complete and immediate access to your escrowed wages pursuant to § 24-3-40(B)(2) is without merit. Section 24-3-40(A)(5) requires SCDC to deduct 10% of an inmate's wages and hold them "in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B) directs SCDC to "return a prisoner's wages held in escrow pursuant to [§ 24-3-40(A)]" only when an inmate leaves SCDC's custody. When an inmate is serving a life sentence, § 24-3-40(B)(2) provides the inmate with "the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice." This provision directs SCDC to distribute these escrowed monies only upon the inmate's death, and not prior to that event. Nothing in any provision of § 24-3-40(B) authorizes an inmate to have complete and immediate access to any of these monies while still lawfully held in SCDC's custody. Any other interpretation would conflict with the remaining provisions of § 24-3-40(B).

Your claim that SCDC denied you interest on your escrowed wages is also without merit. SCDC complies with § 24-3-40(A)(5) by depositing the interest you have earned on your monies held in escrow into your account every month. Each pay period you receive an account statement showing the amount of interest deposited into your account.

To the extent you claim SCDC has unconstitutionally denied you of your property interest in these wages without due process of law, I deny your claim. Under Wicker, you and other inmates in your position may exercise your due process rights and litigate your pay disputes with SCDC through SCDC's inmate grievance system. Therefore, SCDC has not denied you due process of law and the filing deadline from the editions of the agency's Inmate Grievance System Policy applies to your claim.

Finally, to the extent that you demand "interest" in your grievance, no decision of the South Carolina Supreme Court nor any provision of any edition of the Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, or for that matter, costs or attorneys' fees in connection with SCDC's review and processing of your grievance.

Therefore, for all of the above stated reasons, I deny the claims you articulated your Step 1 grievance designated as ECI-980-10 in their entirety.

Page 6 of 6

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2**

INMATE NAME: Thomas John Torrence
 SCDC NUMBER: #094651
 INSTITUTION: Lieber
 HOUSING UNIT: SA-43
 WORK ASSIGNMENT: Education

Office Use Only
 Grievance No. 1003-CF180-10
 Code: General PE
 Policy _____
 Disc. Hear. _____
 Class. _____
 Date Received 12-8-11
 IGC Initials TT

RECEIVED
 DEC 14 2011

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

**SEE ATTACHED RESPONSE
AND APPENDICES**

Thomas Torrence 12-5-11
 Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

[Signature] 2/9/12
 Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Thomas Torrence 2-15-12
 Grievant Signature Date

Betty J. Thomas 2-15-12
 IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-1A (Rev. 06/11)

Torrence, Thomas J. #094651
December 5, 2011

Grievance No. ECI-980-10
Step 2

This Step 2 challenge to the Step 1 response in this grievance objects to the findings of the "responsible agency-level official." Although signed by the Warden [Wayne C. McCabe], Grievant notes that outside counsel [Lake E. Summers, Esq.] was retained to respond to this agency grievance. In a letter to the South Carolina Supreme Court, dated November 30, 2011, Mr. Summers assured the Court this Grievant would have an "opportunity to challenge the initial [Step 1] response." Mr. Summers' response ("Warden") is six (6) pages in length and relies on numerous case law and Administrative Law Court ("ALC") authority [14 cases] to which Grievant has no access in print media. This deprives Grievant of a fair opportunity to respond.

In this Step 2 challenge Grievant notes the grievance procedure established is sufficient to give an inmate a method to raise the matter to prison officials and create a reviewable record. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742, 753 (2000). Thus, fair adjudication here requires thorough review of a relevant record. Grievant has supplied a supporting affidavit and Appendices derived of documents directly from and related to the instant case (Appendices A - L). Grievant submits Mr. Summers witnessed and has reviewed most documents contained herein.

Grievant opens this Step 2 by asserting the Warden has relied on no competent evidence to support a finding Grievant is not entitled to the prevailing wage for his labor (to include 320 hours "training"); the difference in the wage paid by the private employer and the wage the Department of Corrections ("DOC") paid Grievant; the interest thereon; access to his Long Term Savings Account and the interest thereon. Restated, DOC improperly deprived Grievant of prevailing wages during a training period and removed \$1.92 each regular hour [\$2.79 per overtime hour] without any statutory authority and interest on those monies.

The Warden's response contradicts South Carolina statutory authority. The South Carolina Legislature specifically authorized inmate labor in private sector prison industry via S.C. Code Ann. § 24-3-430. This statute provides that "[n]o inmate participating in the program may earn less than the prevailing wage for work of a similar nature in private sector." S.C. Code Ann. §24-3-430(D). See also §24-3-315 (for a prison industry project, the DOC must

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Torrence, Thomas J. #094651
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determine "that the rates of pay and other conditions of employment are not less than those paid and provided for work of similar nature in the locality in which the work is performed." Further, §24-3-430(H) expressly directs that "[t]he earnings of an inmate authorized to work at paid employment pursuant to this section must be paid directly to the DOC and applied as provided under Section 24-3-40." See Appendix ("App. ___, p. ___") D, Exhibit 3. These interpretations were set forth in Thomas J. Torrence, et al. v. S.C. Dep't of Corrections, 373 S.C. 586, 646 S.E.2d 866 (filed May 7, 2007) rehearing denied. The original Torrence Complaint was filed in early 2001.

Our Court of Appeals has determined the mandatory language of "shall" and "must" in Bradley v. DOC, 374 S.C. 622, 634, 649 S.E.2d 153 (SC App. 2007).

In the interest of brevity, Grievant acknowledges that the restatement of Grievant's May 21, 2007 Step 1 Grievance and Addendum in Warden's Step 1 response, ("Warden, p. ___, ¶ ___") (attached hereto) p. 1, ¶ 3 thru p. 2, ¶ 4 is an accurate statement of the Step 1 Grievance attached hereto.

Warden, p. 2, ¶ 5 is incorrect. Grievant began participating in the private sector ESCOD project in June 1997. Between June 1997 thru early August 1997, Grievant received "training" wages at 25 cents per hour for 160 hours and then 75 cents per hour for the next 160 hours. ESCOD paid \$7.17 per hour to DOC for each of those "training" hours. Between August 15, 1997 and November 16, 2004, ESCOD paid Grievant \$5.25 per hour, diverting \$1.92 per regular hour and \$2.79 per overtime hour.

The rates of pay ESCOD remitted for and DOC paid Grievant are established here in App. A, p. 5-6 (Thomas McQueen, DOC Financial Accounting Branch); App. B, p. 5 (Philip Pittman, Insilco VP); App. C, p. 8 (Steven Kuznik, Insilco Plant Manager); and App. D, p. 17, 20, 45 and Exhibit 5 (Tony Ray Ellis, Director of Prison Industries).

The Warden erred in rephrasing the holdings of Adkins v. S.C. Dep't of Corrections, 360 S.C. 413, 602 S.E.2d 51 (2004) and Wicker v. S.C. Dep't of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) to read "inmates possessed a pre-existing right to file grievances concerning their prison industries pay," Warden, p. 2, ¶ 7. This was not the language or holding of the Court in either companion case.

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In fact, in Wicker, the DOC asserted the ALC was without subject matter jurisdiction.

The Court in Wicker was very specific in holding "we find no reason such procedures [agency grievance and ALC review] should not apply when an inmate challenges the wages he or she is being paid." Id. The Court further opened the door to review by the ALC in this "very limited circumstance." Id. Prior to the Wicker holding the agency grievance system could not award monetary damages and the DOC relied upon ALC precedent that claims for money damages fell under the South Carolina Tort Claims Act. See Rosemond v. SCDC, 00-ALJ-04-01026-AP and Richard Stearnsmiller v. SCDC, 00-ALJ-04-00021-AP.

The Warden asserts that Grievant is barred by the statute of limitations established in DOC Policy GA-01.12 by not filing [his] grievance within seven or fifteen days - either the date upon which SCDC both first began paying (Grievant) and applying statutorily mandated deductions. The Warden further asserted the Step 1 grievance was filed 10 years after participation began and 2½ years following the Wicker decision; that the Grievance policy does not provide any exception to prison industries disputes; and that Grievant exceeded a reasonable time with filing the Step 1 Grievance, Warden, p. 3, ¶ 2 thru p. 4, ¶ 2.

Grievant contends the Warden's assertions are moot where the pendency or Torrence, filed four (4) years before the decision in Wicker, tolls the filing of the [Grievant's] agency grievance.

Grievant submits that counsel notified him of the Court's decision in Torrence in correspondence dated May 17, 2007 and received May 21, 2007, App. I. In that correspondence counsel advised Grievant "we are preparing the papers for the grievance process and will circulate for your review once the Supreme Court Order has become final." Id. Counsel recognized and informed Grievant of the tolling. Grievant filed Step 1 immediately, App. H.

In correspondence dated August 27, 2007 counsel advised "proceeding through the grievance process to address your claims and ultimately the ALJ appeal process is the legal requirement," App. I. Torrence was still pending, the DOC's petition for rehearing was subsequently denied.

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The DOC filed a Motion to Dismiss Torrence (2001-CP-40-3409) from Circuit Court, however, that court found the Complaint properly stated a declaratory judgment action which involved novel issues and initially denied that motion in November 2002. The DOC renewed that motion, successfully, only after the decision in Wicker that the procedure to utilize is the grievance system.

Further, in Judge Diane Goodstein's April 21, 2005 Order dismissing Williams et al v. SCDC and Williams Technologies (later Williams v. S.C. Dep't of Corrections, op. No. 26274 (filed Feb. 26, 2007)), Judge Goodstein ordered that a Notice for filing grievances in private sector prisoner wage suits was to be posted. Subsequently that Notice (App. L) was posted on October 20, 2008 only at Lieber, after Grievant had filed his Step 1 grievance. That Notice allowed 45 days - beyond the 7 or 15 days limits of GA-01.12 and established a three year tolling period for the Williams' Plaintiffs. No such opportunity was given to the Torrence Plaintiffs. Where no Notice was provided and Torrence was currently pending, the time to file a grievance was tolled.

Grievant objects to Warden relying on 14 ALC cases to which Grievant has no access, in order to determine Grievant is time barred, Warden, p. 4, ¶ 3. Grievant is deprived of access to the courts where [he] is unfairly impeded from being able to research or challenge the applicability of precedent relied upon.

Warden asserts Grievant's claim is barred by the doctrine of laches, Warden, p. 4, ¶ 4. Grievant submits laches is an equitable doctrine defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence. To do what in law should have been done." Hallums v. Hallums, 296 S.C. 195, 198, 311 S.E.2d 525, 527 (1988). Grievant contends that any delay here is not fairly attributable to Grievant where diligence in pursuing these claims through the Circuit and Supreme Courts is a matter of record.

Grievant objects to Warden's mischaracterization of a "pre-existing right" to file grievances, Warden, p. 4, ¶ 5. The Court in Torrence was clear in stating that the procedure to follow was an agency grievance, as established in, and unavailable prior to Wicker.

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Warden asserts that Grievant was not an employee of the State, Warden, p. 4, ¶ 6 thru p. 5, ¶ 2. Grievant agrees he was not a State employee. However, the "label" is not of import here. There is ample evidence (i.e., Comptroller General records; State Treasurer records; DOC records; S.C. statutory law §§24-3-40, 315 & 430; and Federal and South Carolina Income Tax Returns) to establish that some form of labor for remuneration took place. Regardless of whether Grievant is recognized as a member of a paid workforce or not, state and federal statutory law that mandate payment for such labor are the issue at bar.

Warden denied Grievant entitlement to relief under §24-3-430(D) and concluded that §24-3-410(B)(7) and not §24-3-430(D) was applicable to Grievant, Warden, p. 5, ¶ 3. Grievant submits this assertion is incorrect where the South Carolina Supreme Court has previously found that §24-3-430(D) is the applicable law in this case. See Torrence, supra.

Warden incorrectly relied upon Adkins to conclude inmates in an identically federally certified program did not possess a viable claim, Warden, p. 5, ¶ 3. Grievant submits the Supreme Court held in the 2004 Adkins decision that the wage claims were not cognizable under the South Carolina Tort Claims Act, which was the procedural vehicle of Adkins. That theory of recovery was different than in Torrence. Adkins is only similar to the position "inmates may file an inmate grievance to protest DOC's failure to pay wages in accordance with the mandatory statutory provisions."

Warden concluded that even with a viable claim under §24-3-430(D), DOC paid Grievant the proper rate of pay, or that DOC does not owe Grievant "\$1.92, \$2.79, or any other amount for every labor hour," Warden, p. 5, ¶¶ 5 & 6.

To contend Warden's assertion, Grievant submits the following record(s) to establish the rate of pay contracted between ESCOD and DOC, the amounts paid by ESCOD for the Grievant's labor [pursuant to §24-3-40], the difference in these two amounts, and the financial process involved in receiving payment of "prisoner's wages": App. A, p. 5-6, 9-10; App. B, p. 5, 7; App. C, p. 8; App. D, p. 45 and Exhibits 3 and 5; App. E, p. 16, 18, 19, 22, 29-30; and App. F, p. 4 and Exhibit 1, p. 18, 30 and Exhibit 2, p. 33-

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34, 36-38, 39, 43 and Exhibits 3 and 4, p. 46-47, 53, 56-57, 88, and Exhibits 5, 6 & 9.

Warden asserts the federal law applicable was published in the Federal Register, 64 FR 17000, Warden, p. 5, ¶ 4, and that these guidelines declare only that prisoners cannot be paid below the federal minimum wage. Again, Warden piece meals and mischaracterizes. Grievant submits a reading of the applicable federal law, to include that relied upon, will reveal the "prevailing wage" language. The federal minimum wage language was a caveat and wage basement.

Grievant further submits that the South Carolina Legislature specifically enacted §24-3-315 to comply with federal certification requirements and submitted a certified copy of the statute with the PIECP application to the Department of Justice's Bureau of Justice Assistance.

Warden asserted the circuit court in Adkins concluded the DOC's practice of an hourly "overhead cost" was accepted by the BJA, Warden, p. 6, ¶ 1. The circuit court finding in Adkins was not part of the Supreme Court's finding in Adkins in 2004, the precedent of that case. There is no precedent to support "overhead cost." To the contrary, a reading of the original Congressional Record associated with 18 USC §1761(c) and 64 FR 17000 specify that no such money be charged to the inmate. Warden further asserted the "overhead cost" does not violate any applicable South Carolina statute, Warden, p. 6, ¶ 2. This assertion is in contravention to the holding in Torrence that the DOC may only make statutorily authorized deductions. The "overhead cost" ("SCDC Surplus Fund") is not a statutory deduction and thus violates §24-3-40(A).

Grievant submits the following records to support DOC acted without authority, with full knowledge, with intent to deprive prisoner's of a property interest in a portion of [their] wages: App. A, p. 10; App. D, p. 6-7, 20-23 and Exhibit 3, p. 26-28 ("no statutory authority", "we have done it since day one," "we just did it"), 34-35, and 42; App. F, p. 33-37, 53 and 88.

Warden asserts that §24-3-40(B)(2) allows inmates serving a life sentence to receive [their] escrowed wages "only upon the inmate's death," Warden, p. 6, ¶ 3. Grievant contends this is an unconstitutional interpretation of (B)(2). The original Bills in 1999 Act No. 68, §2 were one (1) each from

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the House and Senate. One Bill stated "upon death of the inmate." That Bill did not make second reading. The other Bill, absent the language "upon death of the inmate" was the subject of 1999 Act No. 68. However, DOC chooses to employ an interpretation of legislation that did not become law. This was not the legislative intent concerning §24-3-40(B)(2).

Further, the 10% deducted pursuant to §24-3-40(A)(5) is to be for the "benefit of the prisoner." If the prisoner cannot access the principal or interest, then the prisoner is systematically deprived, via the unconstitutional interpretation, of his property interest therein.

Warden asserted Grievant's claim that he was denied interest on his escrowed wages was without merit and that the DOC complies with §24-3-40(A)(5) by depositing the interest earned into the escrowed account each month, Warden, p. 6, ¶ 4.

Grievant submits as evidence in contravention a February 2011 request for a 1099-INT for 2010 interest, current balance, and account transaction statement. DOC responded Grievant could not receive a statement and only earned 26 cents on five thousand, nine hundred ninety-seven dollars and forty-four cents (\$5,997.44) for 2010. App. K. Follow-up correspondence was ignored.

Warden denied Grievant's claim of denial of property interest without due process of law, Warden, p. 6, ¶ 5. Grievant asserts that DOC diverted a portion of [his] wages between June 1997 and November 2004, and that all available avenues to resolve the matter were taken in good faith prior to filing suit. No due process was provided prior to or during the deprivation. No due process exists now as supported by App. K.

Warden asserts no decision of the State Supreme Court nor any provision of the Inmate Grievance System entitle Grievant to any pre or post-judgment interest, Warden, p. 6, ¶ 6.

Grievant asserts that neither does any provision of Inmate Grievance system entitle Grievant to his wages, (until Wicker) but Warden's talismanic invocation of a "pre-existing right" infers such a right. Where Grievant does not lose his constitutional rights at the gates of the

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prison, he is entitled to the same due process in civil matters as other litigants. South Carolina statute is clear in the matter of pre and post judgment interest, regardless of venue. In the absence of any South Carolina authority directly on point, this becomes a novel issue for our Supreme Court at a later date. Grievant submits the age-old maxim "interest follows principal" applies here.

Warden denied all claims in Step 1.

Grievant submits Warden has produced no record or any evidence to support the findings herein and renews his Step 1 claims in this Step 2 Grievance.

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STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF THOMAS J. TORRENCE
COUNTY OF DORCHESTER)


The undersigned deponent, Thomas J. Torrence, personally appeared before me, deposes and says the following:

- 1) I am the Grievant in SCDC Grievance No. ECI-960-10.
- 2) I was employed in the Private Sector Prison Industries Project (Insilco Technologies / Escod Industries) from June 1997 through November 2004.
- 3) That in 1999, good faith efforts to resolve this matter informally within the agency were ignored by Eugene Baker, SCDC P.I. Business Manager, Tony Ellis, Director of Prison Industries, and Dodge Frederick, Interim Director of SCDC.
- 4) In 2001 I filed civil matter Thomas J. Torrence et al. v. S.C. Dep't of Corrections, C/A No. 2001-CP-40-3409 in the Richland County Court of Common Pleas.
- 5) C/A No. 2001-CP-40-3409 was appealed to the S.C. Court of Appeals, and subsequently the S.C. Supreme Court took jurisdiction.
- 6) The Supreme Court decision in that matter (373 S.C. 586, 646 S.E.2d 866) was issued on May 7, 2007. This Grievant received notice of that decision from counsel on May 21, 2007, via correspondence dated May 17, 2007.
- 7) Grievant filed the instant grievance on May 21, 2007, within seven (7) days of receipt of his right to file a grievance in this matter.
- 8) That the portions of Depositions submitted in the Appendix in this Step 2 Grievance are true and correct copies.
- 9) That the Request to Staff [2/0/11] and correspondence to DOC Financial Accounting [3/29/11] are true and correct copies.
- 10) That Grievant had no knowledge of discrepancy in pay until the July 1, 1999 change in law, at which time

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Grievant began diligent research. Grievant discovered in 2000 that DOC was collecting \$7.17 per hour for Grievant's labor and during "training hours."

- 11) DOC Notice dated October 20, 2008, based on Judge Goodstein's 2005 order to advise the Williams Plaintiffs of their right to file a grievance. This notice gave 45 days and applied ONLY to Williams Plaintiffs.
- 12) Torrence Plaintiffs, to include Grievant here, were not afforded this same three years and forty-five-day window in which to file grievances.
- 13) That all other materials submitted in the Appendices are true and correct copies relevant to this matter.


Thomas J. Torrence
#094651
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472

SHORN TO AND SUBSCRIBED before me
this 05th day of December, 2011



NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: May 26, 2020

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Torrence, Thomas J.	094651	ECT-0980-10	Evans CVESCOD

I have reviewed your Step 2 grievance appeal dated December 5, 2011, the affidavit you submitted in support of your Step 2 also dated December 5, 2011, as well as all of the 12 appendices, labeled "A" - "L," you submitted in support of your Step 2.

The responsible agency officials at Lieber Correctional Institution, the facility at which you are currently confined, received your Step 2 and its supporting items on December 8, 2011. Your Step 2 and supporting materials arrived at SCDC Headquarters on December 14, 2011. I observed that the number of pages you submitted in support of your Step 2 far exceeds the number of pages allowed under the relevant provision(s) of SCDC's Inmate Grievance System Policy Number GA-01.12. However, given the unique circumstances and chronology associated with your grievance, the responsible agency officials authorized a rare exception to the relevant provision(s) of Policy Number GA-01.12 and accepted the entirety of your Step 2.

Along with your Step 2 and all of the items you submitted with your Step 2, I have also reviewed your Step 1 grievance, and the warden's response to your Step 1. By this reply, I concur with the entirety of the warden's response to your Step 1, and I deny your Step 2 in its entirety.

In your Step 2, you reiterated many of the same claims that you originally made in your Step 1. You again claimed that SCDC failed to pay you the prevailing wage for your voluntary participation in the prison industries ["PI"] project operated at Evans Correctional Institution ["Evans"]. You again claimed that SCDC failed to pay you \$1.92 per hour, \$2.79 per hour, or any other difference between the rate at which the private industry sponsor paid SCDC per inmate labor hour and the hourly rate at which SCDC paid you for your labor. You again claimed that SCDC paid you a training wage for the first 320 hours of labor you performed as a participant in the PI project operated at Evans. You again claimed that SCDC has denied you access to your long term savings account. Finally, you again claimed that you are entitled to interest on all the monies SCDC has purportedly withheld from you.

Additionally, you asserted in your Step 2 that the warden, in his response to your Step 1, incorrectly stated that you began participating in the PI project at Evans on August 15, 1997. Instead, you asserted that you began participating in the project at Evans in June 1997.

You asserted in your Step 2 that the warden "erred in rephrasing the holdings of" *Ashtur* and *Wicker*.

You asserted in your Step 2 that the warden's determination that you failed to timely file your Step 1 is moot, because you served as the lead plaintiff in a class action lawsuit filed in circuit court in 2001 in which you and other inmates asserted identical or nearly identical claims regarding your PI pay and your access to your long term savings account. Thus, you argued in your Step 2 that, by having filed a class action lawsuit, any filing deadline applicable to your Step 1 was tolled. The South Carolina Supreme Court affirmed the circuit court's decision to dismiss the class action lawsuit to which you refer and in which you served as the lead plaintiff by its opinion in *Torrence*.

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In your Step 2, you also asserted that no precedent exists to support SCDC's practice of charging the PI sponsor an "overhead cost." Instead, you claimed that "a reading of the original Congressional Record associated with 18 USC § 1761(c) and 64 FR 17000 specify that no money can be charged to the inmate." You also claimed that the *Torrence* Court determined that SCOC may only assess statutorily authorized deductions against an inmate's PI pay, and SCDC's "overhead cost" violates § 24-3-40(A) because it is not a statutory deduction.

In your Step 2, you asserted that the warden, in his response to your Step 1, incorrectly determined that your claim is barred by the doctrine of laches. Instead, you asserted that, by having filed your class action lawsuit in circuit court and prosecuting the lawsuit up to a final decision by our Supreme Court, you diligently pursued your PI pay claims.

In your Step 2, you objected to the warden's reliance on 14 decisions issued by the Administrative Law Court ["ALC"], because you asserted that you did not and do not have access to these decisions. Thus, you asserted that the warden's reliance on these 14 decisions deprives you of a fair opportunity to respond.

You asserted in your Step 2 that the warden's interpretation of § 24-3-40(B)(2) is unconstitutional and that it conflicts with earlier versions of the bill that ultimately amended § 24-3-40(B)(2). Specifically, you asserted that earlier versions of the bill contained the words "upon death of the inmate," and, because the final version of the bill omitted these words, the legislature did not intend for escrowed wages to be held until an inmate's death. You also asserted in your Step 2 that the monies held in escrow by operation of § 24-3-40(A)(5) are held for the "benefit of the prisoner." Thus, you argued that if SCDC denies you access to the principal balance of these monies or the interest generated by these monies, then SCDC is denying you the benefit of all such monies held in escrow on your behalf by operation of § 24-3-40(A)(5). Finally, you asserted that SCDC has not properly assessed interest in the monies it holds on your behalf by operation of § 24-3-40(A)(5). Specifically, you alleged that the monies in your escrow account "only earned 26 cents [of interest] on [\$5,997.44]" for the year 2010.

In your affidavit, you reiterated many of the same claims that you originally made in your Step 1 and Step 2. You also asserted that you filed your Step 1 within seven (7) days after you received the "right to file a grievance in this matter." You further asserted that you had "no knowledge of discrepancy in pay until the July 1, 1999 change in law, at which time [you] began diligent research." Finally, you asserted in your affidavit that you discovered in 2000 that SCDC was "collecting \$7.17 per hour for [your] labor and during 'training hours.'"

Again, after carefully considering all of the arguments you presented in your Step 2, as well as the affidavit and 12 appendices you submitted in support of your Step 1, I deny your Step 2.

As the warden stated in his response to your Step 1, your PI participation and pay records were reviewed by the responsible officials at SCDC Headquarters in Columbia. These records confirm that you voluntarily participated in the PI project operated by SCDC at Evans in which ESCOD participated as the private industry sponsor before SCDC stopped of paying inmates a

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"training wage" for their initial 320 hours of labor. SCDC stopped paying inmates such a "training wage" on July 1, 1999.

As stated by the warden in his response, your PI participation and pay records also reflect that SCDC began paying you at the rate of at least \$5.25 per hour for the labor you voluntarily provided in the project at Evans on or about August 15, 1997. Thus, your assertion that the warden incorrectly stated that you began participating in the project at Evans on August 15, 1997 has no merit. The warden did not conclude that you commenced your voluntary participation in the PI project on August 15, 1997. Instead, the warden simply acknowledged that SCDC began paying you at least \$5.25 per hour for your labor on or about August 15, 1997. As the warden also acknowledged, your participation and pay records also reflect that SCDC made its final payment to you for your labor on or about November 16, 2004.

As the warden correctly stated in his response, two (2) decisions issued by the South Carolina Supreme Court, *Adkins* and *Wicker*, apply to the back pay claims you presented in your Step 1. Both of these cases discussed S.C. Code Ann. § 24-3-40, § 24-3-310, *et seq.*, and, specifically, § 24-3-430(D). Our Supreme Court issued these decisions on August 23, 2004. I agree with the warden that *Adkins* and *Wicker* recognized that inmates, like you, possessed a pre-existing right to file administrative grievances with SCDC concerning their PI pay. *Wicker* specifically recognized that such grievances must be filed, processed, and determined in accordance with the provisions of the agency's Inmate Grievance System Policy. Thus, to the extent that you asserted in your Step 2 that the warden erred in rephrasing the holdings of *Adkins* and *Wicker*, I find that your assertion has no merit. Instead, *Wicker* merely recognized our Supreme Court's prior decision in *Al-Shabazz* which concluded that inmates are entitled to procedural due process when a liberty or property interest is at stake. Accordingly, the *Wicker* Court acknowledged that, pursuant to *Al-Shabazz*, inmates receive procedural due process under SCDC's internal grievance system and the opportunity to have SCDC's decision regarding any such grievance reviewed by the ALC. You even recognized the South Carolina Supreme Court's decision *Al-Shabazz* in your Step 2 grievance.

As recognized by the warden in his response, the *Torrence* decision also applies to the claims from your Step 1. Again, *Torrence* is the case you mentioned in your Step 1 and Step 2 and is the case in which you personally participated as the lead plaintiff. The *Torrence* Court recognized that, under *Wicker*, inmates could file Step 1s by which they could challenge their PI pay under the agency's Inmate Grievance System Policy. Absolutely no part of *Torrence* supports your argument that you or the other inmates in your position could not file a Step 1 challenging your pay before *Adkins* and *Wicker* were issued.

As accurately explained by the warden in his response, SCDC has published editions of its Inmate Grievance System Policy for at least 20 years, if not longer. As he also accurately explained, the edition of the policy that applied when you began participating in the project at Evans was the May 1, 1996 edition of the policy designated as PS-10.01 (OP). Specifically, § 14(a) of Policy Number PS-10.01 (OP) required that inmates submit their Step 1 grievance forms "within seven (7) days of the alleged incident." Exceptions to the deadline appeared in § 14(f) and § 15 of this edition of the policy.

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As the warden further explained, SCDC issued new editions of Policy Numbers PS-10.01 and PS-10.01 (OP) on October 1, 1997. The warden indicated in his response that the agency issued new editions of these policies on October 1, 2007, but his reference to "2007" was a typographical error. In the October 1, 1997 edition of Policy Number PS-10.01 (OP), SCDC changed § 14(a) to require that inmates submit their Step 1 forms "within 15 days of the alleged incident." Again, exceptions to this deadline appeared in § 14(g) and § 15 of the policy.

On January 30, 1998, SCDC issued a new edition of the applicable policy, and, just as before, the policy consisted of two (2) parts. However, SCDC re-designated these two (2) parts as Policy Number GA-01.12 and Policy Number GA-01.12 (OP). § 14(a) of Policy Number GA-01.12 (OP) required that inmates submit their Step 1 grievance forms "within 15 days of the alleged incident." Once again, exceptions to this deadline appeared in § 14(g) and § 15 of the policy.

Again, as accurately explained by the warden, the agency consolidated Policy Numbers GA-01.12 and GA-01.12 (OP) into a single policy when it issued a new edition of Policy Number GA-01.12 on April 1, 2000, and the 15-day filing deadline appeared in this edition as well as every edition issued since April 1, 2000.

Like the warden, I conclude, after reviewing your Step 1 in light of *Adkins*, *Wicker*, *Torrence*, *Al-Shabazz*, and the policy provisions discussed above, that you did not submit your Step 1 within either seven (7) days or even 15 days of the incident upon which you anchored your PI pay claims, namely the date upon which SCDC both first began paying you for your PI labor and first began applying the statutorily mandated deductions to your pay.

I fully concur with the warden's determination that the grievance filing deadline established in every edition of the relevant policy applied and continues to apply to nearly every aspect of inmate activity, and no special exception exists when it comes to PI pay disputes. Consequentially, the deadline applied to your Step 1. Moreover, as the warden accurately chronicled in his response, you filed your Step 1 nearly 10 years after you began participating in the PI project at Evans and approximately 2 ½ years after you concluded your participation in this project. For that matter, you filed your Step 1 over 2 ½ years after the decisions in *Adkins* and *Wicker* had been issued.

You also filed your Step 1 approximately 6 years after you, as you claimed in your affidavit, that you "discovered" that SCDC was "collecting \$7.17 per hour for [your] labor" and almost 8 years after you, as you claimed in your affidavit, discovered a "discrepancy" in your pay. I fully concur with the warden's determination that you clearly exceeded any reasonable time frame associated with filing a grievance under the relevant policy.

I also fully concur with the warden's determination that the fact that you first sought relief by participating in a class action lawsuit filed in circuit court instead of filing a Step 1 by which you challenged the rate at which SCDC both paid you for your PI labor and applied statutorily mandated deductions to your pay does not change the filing deadline(s) from the relevant agency policy. You served as the lead plaintiff in *Torrence*, and your attorneys filed their amended declaratory judgment complaint on your behalf on November 5, 2001. Obviously, you knew

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before your attorneys filed the complaint that you wanted to challenge the rate at which SCDC had been paying you for your PI labor.

Moreover, the filing of your class action lawsuit in circuit court did not toll the deadline(s) by which you were required to file your Step 1. The appendices you submitted in support of your Step 2 simply do not support your assertion that your participation in the class action lawsuit tolled the deadline by which you were required to file your Step 1. Moreover, these same appendices simply do not establish the date upon which your right to file a grievance in this matter accrued. The appendices you relied upon to support your assertion include correspondence that you received from your own counsel in *Torrence*, and this correspondence has absolutely no bearing on the filing deadline associated with your Step 1. Furthermore, absolutely no aspect of any order issued by Judge Goodstein in *Williams* tolled or otherwise modified the deadline by which you were required to file your Step 1.

I also concur with the warden's determination that nothing in the "notice flyer" posted throughout SCDC in late 2008 affected the applicable time frame associated with filing a Step 1 regarding any purported failure of SCDC to pay you a particular hourly rate for your PI labor.

Thus, in denying your Step 2, I concur with the warden's reliance on the 14 decisions from the ALC he cited in his response to your Step 1. Additionally, in denying your Step 2, I have considered the decision issued by the South Carolina Court of Appeals in *Patterson v. S.C. Dep't of Corr.*, 2010-UP-292 (S.C. Ct. App. May 27, 2010) ("[SCDC] denied Patterson's grievance based on [§ 13.1], which states an inmate must file a grievance within fifteen days of the alleged incident. ... Patterson should have filed his grievance within fifteen days of December 6, 2004, when he originally discovered that [SCDC] lost his inmate property.").

To the extent that you object to the warden's reliance on the 14 decisions issued by the ALC in his response because you purportedly do not have access to these decisions, I find that your claim has no merit. In your Step 2, you discussed the following two decisions issued by the ALC: *Rosemond v. S.C. Dep't of Corr.*, Docket No. 00-ALJ-04-01026-AP and *Richard Stearns/Steeler v. S.C. Dep't of Corr.*, Docket No. 00-ALJ-04-00021-AP. Thus, it appears that you have at least some kind of access to decisions issued by the ALC.

Additionally, in light of the chronology associated with your filing of your Step 1, I concur with the warden's determination that your claims are barred by the doctrine of laches. I also find no merit in your assertion that you diligently pursued your PI pay claims, because you filed a class action lawsuit in circuit court and then prosecuted the lawsuit to our Supreme Court. Filing your class action lawsuit in circuit court did not and does not excuse you from diligently pursuing your PI pay claims via SCDC's inmate grievance system policy.

Also, I concur with the warden's denial of your claim for relief under § 24-3-430(D), the so-called "prevailing wage" provision. Specifically, as the PI project in which you participated at Evans was a project for which SCDC received certification under the federal government's Prison Industries Enhancement Certification Program ("PIECP"), I conclude that the provisions of § 24-3-410(B)(7) rather than the provisions of § 24-3-430(D) applied to the rate of pay SCDC

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Torrence, Thomas J.	094651	ECT-0980-10	Evans CVESCOD

was required to remit to you by operation of § 24-3-40(A). I concur with the warden's reliance upon the decision issued by the circuit court in *Adkins* in making this determination. The circuit court in *Adkins* concluded that inmates who participated in an identically certified PI project did not possess a viable claim for back wages or higher wages under the provisions of § 24-3-430(D). Instead, the circuit court in *Adkins* concluded that the provisions of § 24-3-410(B)(7) applied. To the extent that you claim that the Supreme Court's decision in *Torrence* found that § 24-3-430(D) is applicable to your case, I find your claim is without merit.

Even if you have a viable claim for relief under § 24-3-430(D), I concur with the warden's conclusion that that SCDC remitted to you the proper rate of pay for the labor you voluntarily provided to the federally certified PI project operated at Evans. In making this conclusion, I concur with the warden's reliance upon the guidelines established by the federal government, specifically the United States Department of Justice's Bureau of Justice Administration (known as "BJA"). BJA published the guidelines applicable to the PIECP in the Federal Register, specifically 64 FR 17000. Within these guidelines, BJA declared that the rate at which inmates are paid for the labor they voluntarily provide to PIECP projects, like the project in which you participated at Evans, cannot be set below the federal minimum wage. Except for the period of time it paid you a "training wage," SCDC paid you at least the federal minimum wage for your labor. Again, I concur with the warden's determination that you did not timely file your Step 1 in which you demanded any back pay allegedly owed to you by SCDC including any back pay associated with the period of time SCDC paid you a "training wage."

I concur with the warden's determination that SCDC does not owe you \$1.92, \$2.79, or any other amount for every labor hour you voluntarily provided to the federally certified PI project operated by SCDC at Evans. Again, ESCOD was and remains the private industry sponsor for the PI project operated at Evans. Under the contracts struck between SCDC and ESCOD, SCDC legitimately charges ESCOD an hourly rate for "overhead cost" in addition to the hourly rate SCDC pays inmates in accordance with both state and federal law. None of the appendices you submitted in support of your Step 2 change this reality. As an aside, I observe that some of the materials you referenced as appendices to your Step 2 did not actually appear within the materials you submitted in support of your Step 2. Neither 18 USC § 1761(c), 64 FR 17000, § 24-3-315, nor the decisions in *Adkins* and *Torrence* contradict this reality. The "overhead cost" SCDC charges ESCOD is simply not a part of your inmate pay and it is not deducted from your inmate pay.

Furthermore, as the warden accurately observed in his response, the circuit court in *Adkins* concluded that SCDC's practice of invoicing a private industry sponsor, like ESCOD, such an hourly "overhead cost" was accepted by BJA, the federal agency responsible for certifying both the PI project at issue in *Adkins* and the PI project operated at Evans.

As the warden accurately explained in his response, SCDC's assessment of this "overhead cost" does not violate any applicable South Carolina statute, because the assessment of this cost allows the agency to comply with the various applicable PI statutes, including § 24-3-400. These statutes, including § 24-3-400, either directly or indirectly compel SCDC to collect an hourly

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Torrence, Thomas J.	094631	ECT-0980-10	Evans CV/ESCOD

"overhead cost" or "administrative charge" from private industry sponsors so that the agency may cover the expenses it incurs as a consequence of operating these projects.

Regarding your claim of being entitled to complete and immediate access to your escrowed monies pursuant to § 24-3-40(B)(2), I concur with the warden's determination that your claim has no merit. Section 24-3-40(A)(5) requires SCDC to deduct 10% of an inmates wages and hold them "in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B) directs SCDC to "return a prisoner's wages held in escrow pursuant to [§ 24-3-40(A)]" only when an inmate leaves SCDC's custody. When an inmate is serving a life sentence, § 24-3-40(B)(2) provides the inmate with "the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice." This provision directs SCDC to distribute these escrowed monies only upon the inmate's death, and not prior to that event. Nothing in any provision of § 24-3-40(B) authorizes an inmate to have complete and immediate access to any of these monies while still lawfully held in SCDC's custody. Any other interpretation would conflict with the remaining provisions of § 24-3-40(B).

You asserted in your Step 2 that the warden's interpretation of § 24-3-40(B) is unconstitutional and that it conflicts with earlier versions of the bill that ultimately amended § 24-3-40(B)(2). Specifically, you asserted that earlier versions of the bill contained the words "upon death of the inmate," and, because the final version of the bill omitted these words, the legislature did not intend for escrowed monies to be held until an inmate's death. I conclude that your assertion has no merit. Specifically, I conclude that the meaning of § 24-3-40(B)(2) would not have changed even if the words "upon death of the inmate" appeared in the final version of the bill that amended § 24-3-40(B)(2) in 1999.

You further asserted in your Step 2 that inmates cannot benefit from their escrowed monies without access to the principal or interest. Again, I conclude that your assertion possesses no merit. You do receive a benefit under the provisions of § 24-3-40(B)(2), namely the option to designate, during your lifetime, persons or entities of your choice who will receive your escrowed monies, and you may do so without the need to prepare and execute a will.

In your Step 1, you specifically demanded immediate access to your escrowed monies so that you could immediately distribute the monies to persons or entities of your choice. However, I conclude that you will not receive any personal benefit by immediately distributing such monies to persons or entities of your choice.

Therefore, I concur with the warden's determination that no provision of § 24-3-40 requires inmates to have complete and immediate access to any of these monies while they are still lawfully held in SCDC's custody.

You asserted in your Step 2 that SCDC denied you interest on your escrowed monies, and I concur with the warden's determination that your assertion has no merit. SCDC complies with § 24-3-40(A)(5) by depositing interest you have earned on your monies held in escrow into your account every month. SCDC receives interest payments from the State Treasurer's Office and

Step 2 Appeal Reply

Name	SCDC #	Grievance #	Project
Torrence, Thomas J.	094651	EC1-0980-10	Evans CI/ESCOD

then SCDC deposits that interest into your escrow account. The amount of interest you receive on such monies is simply not determined by SCDC.

To the extent that you claimed in your Step 2 that SCDC has unconstitutionally denied you of your property interest in these monies without due process of law, I deny your claim. As recognized by our Supreme Court in *Torrence*, *Wicker*, and *Al-Shabazz*, SCDC's inmate grievance system complies with minimum due process requirements. As also recognized in *Wicker*, you and other inmates in your position may exercise your pre-existing due process rights and litigate your PI pay disputes with SCDC through SCDC's Inmate Grievance System Policy. Therefore, SCDC has not denied you due process of law, and the filing deadline from the various editions of the agency's policy applies to the PI pay claims you articulated in your Step 1.

Finally, to the extent that you demanded various types of interest in your Step 2, no decision of the South Carolina Supreme Court nor any provision of any edition of the Inmate Grievance System Policy entitles you or any other inmate to any pre-judgment or post-judgment interest, or for that matter, costs or attorneys' fees in connection with SCDC's processing and consideration of your grievance. Although you asserted that South Carolina statutes entitle you to pre-judgment and post-judgment interest, you failed to identify any statute which purportedly supported your claim. South Carolina law contemplates that interest may be awarded in certain cases, but only after a judgment has been awarded. No judgment has been awarded to you as a consequence of you filing your Step 1 or Step 2.

Therefore, for all of the above stated reasons, I concur with the entirety of the warden's response to your Step 1, and accordingly, I deny your Step 2 in its entirety.

APPENDIX E

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

AUG 15 2007

TO: NAME: Grievance Coordinators - BRCT/Evans CI	TITLE:	DATE: May 21, 2007
INMATES NAME: Thomas J. Torrence	SCDC #: 094651	
INSTITUTION: BRCT	LIVING QUARTERS: MU-256	
<p>Please find attached a Step 1 Grievance and Addendum in regards to my Private Sector PI wages for my employment period at Evans C.I., from June 1997 to November 2004. I have a pending case in court on this matter, <u>Torrence, et al. v. SCDOC</u>, Op. No. 26328 (S.C. Sup.Ct., filed May 7, 2007). I received a copy of this opinion on the above date. Although I am informed by counsel that the DOC will file a Petition for Rehearing within 30 days, the Supreme Court held I should file an agency grievance on this matter. This grievance is filed within 15 days of receipt of the Supreme Court's decision on this matter and is equitably tolled by the pendency of the civil action.</p> <p>I believe that where this matter emanates from Evans, that the Grievance must be filed and maintained at Evans. On that belief, and having no time to verify the policy on that question, and in an abundance of caution, I am mailing a copy of the attached Grievance and Addendum via first-class mail to the Evans Grievance Office.</p> <p>Thank you for your assistance in this matter.</p> <p align="right"><i>Thomas J. Torrence</i></p>		
DISPOSITION BY STAFF MEMBER:		
DATE:	SIGNATURE:	

SCDC FORM 19 (REV FEB 2001)

APPENDIX I

LAW OFFICES
LEWIS & BABCOCK, L.L.P.
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211

TELEPHONE: 803 / 771-8000
FAX: 803 / 733-3534
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A. CAIDEN LEWIS
KEITH M. BABCOCK
MARY G. LEWIS
ARJAIL E. KING
PETER D. PROTOPAPAS
BRADY R. THOMAS
W. JONATHAN HARLING

STREET ADDRESS:
1513 ELAMPTON STREET
COLUMBIA, SOUTH CAROLINA 29201

May 17, 2007

Mr. Thomas J. Torrence
#94651 MU A266
Broad River Correctional Institute
4460 Broad River Road
Columbia, South Carolina 29210-4012

Mr. Henry Hubbard, Jr.
#192701
Tyger River CI, Unit8-113
200 Prison Rd
Enoree, South Carolina. 29335

Mr. William Ray Ward #091566
Q-4 B-308 Parry Correctional Institute
430 Oaklawn Drive
Pelzer, South Carolina 29669

Ms. Susan Smith
1738 Bridgewater Driver
Canway, South Carolina 29526

RE: *Thomas Torrence, et al. v. SCDOC and The State of South Carolina*
Civil Action No. 01-CP-40-3409
Our File No. 01-606

Dear All:

Enclosed please find the Supreme Court Order affirming dismissal of our lawsuit in result. However, after you have had the opportunity to review the document, you will notice that there is good news in it. At footnote four of the Order, the Supreme Court recognized that the Department of Corrections can not remove any of the money remitted by the private industry. Footnote four clearly supports our interpretation of the law and give us an opportunity now to go before the grievance system with the law established. It is my understanding that the Department of Corrections is so distraught with the Order, that they are proceeding to file a Motion to Reconsider. We are preparing the papers for the grievance process and will circulate for your review once the Supreme Court Order has become final.

Page 2
May 17, 2007

Once again, I am disappointed that the result was affirmed, however, I am optimistic after considering the reasoning of the Court.

With best regard, I remain

Sincerely,

LEWIS & BABCOCK LLP.


Peter D. Protopoulos

PDP:mas

Enclosure

cc: Helen T. McFadden, Esquire

APPENDIX J

LAW OFFICES
LEWIS & BABCOCK, L.L.P.
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211

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W. RICHARD HARRIS

STREET ADDRESS
1511 HAMPDEN STREET
COLUMBIA, SOUTH CAROLINA 29201

August 27, 2007

Mr. Thomas J. Torrence
#04651 MU A266
Broad River Correctional Institute
4460 Broad River Road
Columbia, South Carolina 29210-4012

Mr. Henry Hubbard, Jr.
#192701
Tyger River CI, Unit 8-113
200 Prison Rd
Enoree, South Carolina. 29335

RE: *Thomas Torrence, et al. v. SCDOC and The State of South Carolina*
Civil Action No. 01-CP-40-3409
Our File No. 01-506

Gentlemen:

I am in receipt of Henry's letter of August 7, 2007. I believe that our lawsuit in Circuit Court will likely not provide the prisoner subclass the relief that you want. Proceeding through the grievance process to address your claims and ultimately the ALJ appeal process is the legal requirement. The Supreme Court clearly stated that something had to be done to allow for due process rights for the prisoners. The grievance procedure is the due process right that is available to you.

As far as how to proceed, you must establish your entitlement to the gross wage paid to the SCDOC. I will advise you of any changes in the Circuit Court action.

With best regards, I remain

Sincerely,

LEWIS & BABCOCK L.L.P.

Peter D. Protopapas

PDP:mas

cc: Helen T. McFadden, Esquire

APPENDIX I

Summaries of Adkins and Wicker Opinions issued by SC Supreme Court on August 23, 2004

Adkins, et al., v. SCDC

- Cited as 360 S.C. 413, 602 S.E.2d 51 (2004)
- Adkins and the other inmates participated in PI program at Tyger River CI
- Covers SC Code Sections 24-3-40, 24-3-410, and 24-3-430
- Inmates may not sue SCDC in circuit court for any alleged failure of SCDC to comply with these statutes
- Inmates may not sue SCDC in circuit court for back wages or higher wages under SC Tort Claims Act
- Inmates may not sue SCDC in circuit court for back wages or higher wages under SC Payment of Wages Act
- Inmates may, under Wicker v. SCDC, file Step 1 grievances to protest SCDC's alleged failure to pay wages in accordance with Sections 24-3-40, 24-3-410, and 24-3-430

Wicker v. SCDC

- Cited as 360 S.C. 421, 602 S.E.2d 56 (2004)
- Wicker participated in PI program at Evans CI
- SCDC paid Wicker \$0.25/hour for the 1st 160 hours of his PI labor and \$0.75/hour for the 2nd 160 hours of his PI labor. After he finished the 1st 320 hours of labor, SCDC then paid Wicker \$5.25/hour
- Wicker filed a grievance stating that SCDC violated Section 24-3-430(D) by not paying him \$5.25/hour for the 1st 320 hours of his PI labor
- Section 24-3-430(D) reads as follows: No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector
- SCDC should have paid Wicker \$5.25/hour for the 1st 320 hours of his PI labor
- SCDC must pay Wicker back wages to make up the difference between these wages
- Inmates may appeal to the South Carolina Administrative Law Court SCDC's denial of Step 2 appeals alleging SCDC's failure to pay the "prevailing wage" under Section 24-3-430(D).

465.21

POSTED
10-20-07

332

NOTICE

TO ALL INMATES WHO CURRENTLY PARTICIPATE OR AT ONE TIME PARTICIPATED IN THE SCDC/WILLIAMS TECHNOLOGIES, INC., PRISON INDUSTRIES PROJECT AT LIEBER CI

- ▶ A circuit court judge recently dismissed with prejudice a class action lawsuit filed on behalf of all inmates who currently participate or at one time participated in the SCDC/Williams Technologies, Inc., prison industries project located at Lieber CI.
- ▶ This lawsuit was captioned as Darryl Williams, et al., v. SCDC and Williams Technologies, Inc., and Attorney Douglas H. Westbrook represented the inmate in this class action lawsuit.
- ▶ The circuit court also dismissed with prejudice the class of inmate plaintiffs it certified in 2004.
- ▶ In dismissing both the class action lawsuit and the class of plaintiffs, the circuit court relied on 2 recent SC Supreme Court case: Adkins, et al., v. SCDC and Wicker v. SCDC. Important points about these cases appear on the reverse side of this notice.
- ▶ Inmates who participate or participated in this project may, if they have not already done so, file Step 1 grievances and Step 2 appeals against SCDC by placing them in the grievance box to be picked up by MARY BEATTIE, who has been designated by the Warden at this institution to receive such items, for any alleged violation of the prevailing wage statute, Section 24-3-430(D).
- ▶ These Step 1s and Step 2s must conform to the procedures, substances and deadlines established in SCDC's Inmate Grievance System Policy Number GA-01.12 (revised July 1, 2008).
- ▶ Inmates have 45 days from the date this notice is posted to file these Step 1 grievances. SCDC shall not accept any Step 1 grievance filed after this 45 day period.
- ▶ Inmates may appeal any denial of a Step 2 appeal to the SC Administrative Law Court.
- ▶ The information and deadline appearing on this notice apply only to inmates who participate or participated in the SCDC/Williams Technologies PI project located at Lieber.

POSTED

10-26-08

REPORT NO. 01

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

10/27/11 PAGE 38

PACACCLT
00084651 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
IN	08/19/11	0.00	0.00	0.00	0.00	0.27		INTEREST		5,997.71
IN	08/19/10	0.00	0.00	0.00	0.00	0.28		INTEREST		5,997.44
IN	10/22/09	0.00	0.00	0.00	0.00	1.83		INTEREST		5,997.18
IN	04/14/09	0.00	0.00	0.00	0.00	0.87		INTEREST		5,998.85
IN	03/13/09	0.00	0.00	0.00	0.00	0.73		INTEREST		5,994.78
IN	02/17/09	0.00	0.00	0.00	0.00	1.83		INTEREST		5,994.05
IN	01/23/09	0.00	0.00	0.00	0.00	2.02		INTEREST		5,992.12
IN	12/18/08	0.00	0.00	0.00	0.00	1.80		INTEREST		5,990.10
IN	12/15/08	0.00	0.00	0.00	0.00	4.88		INTEREST		5,888.20
IN	10/21/08	0.00	0.00	0.00	0.00	4.46		INTEREST		5,883.34
IN	09/28/08	0.00	0.00	0.00	0.00	7.37		INTEREST		5,878.89
IN	08/29/08	0.00	0.00	0.00	0.00	2.85		INTEREST		5,871.52
IN	07/14/08	0.00	0.00	0.00	0.00	0.83		INTEREST		5,868.67
IN	06/12/08	0.00	0.00	0.00	0.00	7.84		INTEREST		5,867.74
IN	05/21/08	0.00	0.00	0.00	0.00	7.93		INTEREST		5,859.80
IN	04/17/08	0.00	0.00	0.00	0.00	12.17		INTEREST		5,851.87
IN	03/17/08	0.00	0.00	0.00	0.00	18.83		INTEREST		5,838.70
IN	02/19/08	0.00	0.00	0.00	0.00	17.82		INTEREST		5,824.17
IN	01/17/08	0.00	0.00	0.00	0.00	8.88		INTEREST		5,808.26
IN	12/14/07	0.00	0.00	0.00	0.00	17.86		INTEREST		5,887.27
IN	11/18/07	0.00	0.00	0.00	0.00	18.62		INTEREST		5,878.42
IN	10/17/07	0.00	0.00	0.00	0.00	13.08		INTEREST		5,862.80
IN	09/18/07	0.00	0.00	0.00	0.00	22.71		INTEREST		5,848.72
IN	08/17/07	0.00	0.00	0.00	0.00	11.12		INTEREST		5,827.01
IN	07/17/07	0.00	0.00	0.00	0.00	18.33		INTEREST		5,815.88
IN	08/14/07	0.00	0.00	0.00	0.00	18.17		INTEREST		5,798.68
IN	05/14/07	0.00	0.00	0.00	0.00	22.82		INTEREST		5,781.39

Torrence v. S.C. Dept of Corr-
Docket # 12-ALJ-04-00143-AP

REPORT NO. 01

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

10/27/11 PAGE 40

PACACCLT
00084851 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
IN	04/12/07	0.00	0.00	0.00	0.00	17.35		INTEREST		5,759.77
IN	03/18/07	0.00	0.00	0.00	0.00	18.38		INTEREST		5,741.42
IN	02/07/07	0.00	0.00	0.00	0.00	21.02		INTEREST		5,723.04
IN	01/18/07	0.00	0.00	0.00	0.00	17.39		INTEREST		5,702.02
IN	12/11/06	0.00	0.00	0.00	0.00	18.25		INTEREST		5,684.83
IN	11/17/06	0.00	0.00	0.00	0.00	20.49		INTEREST		5,665.38
IN	11/01/06	0.00	0.00	0.00	0.00	17.04		INTEREST		5,648.89
IN	09/19/06	0.00	0.00	0.00	0.00	18.83		INTEREST		5,629.85
IN	08/08/06	0.00	0.00	0.00	0.00	15.28		INTEREST		5,612.02
IN	07/13/06	0.00	0.00	0.00	0.00	18.43		INTEREST		5,596.78
IN	06/19/06	0.00	0.00	0.00	0.00	12.71		INTEREST		5,581.33
IN	05/18/06	0.00	0.00	0.00	0.00	17.80		INTEREST		5,563.82
IN	04/13/06	0.00	0.00	0.00	0.00	13.63		INTEREST		5,551.02
IN	03/14/06	0.00	0.00	0.00	0.00	18.21		INTEREST		5,537.48
IN	02/02/06	0.00	0.00	0.00	0.00	21.02		INTEREST		5,521.28
IN	01/17/06	0.00	0.00	0.00	0.00	1.84		INTEREST		5,500.26
IN	12/21/05	0.00	0.00	0.00	0.00	8.88		INTEREST		5,488.41
IN	11/17/05	0.00	0.00	0.00	0.00	18.33		INTEREST		5,461.54
IN	10/28/05	0.00	0.00	0.00	0.00	13.58		INTEREST		5,475.21
IN	10/24/05	0.00	0.00	0.00	0.00	8.84		INTEREST		5,461.83
IN	08/18/05	0.00	0.00	0.00	0.00	7.85		INTEREST		5,451.88
IN	07/27/05	0.00	0.00	0.00	0.00	7.43		INTEREST		5,443.84
IN	06/17/05	0.00	0.00	0.00	0.00	8.08		INTEREST		5,438.41
IN	05/19/05	0.00	0.00	0.00	0.00	8.91		INTEREST		5,430.33
IN	05/13/05	0.00	0.00	0.00	0.00	7.48		INTEREST		5,423.42
IN	05/12/05	0.00	0.00	0.00	0.00	8.89		INTEREST		5,415.88
IN	05/09/05	0.00	0.00	0.00	0.00	8.20		INTEREST		5,408.87

Torrence v. S.C. Dept of Corr.
Docket # 12-ALLJ-04-00143-AP

REPORT NO. 01

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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PACACCLT
00094851 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
IN	05/08/05	0.00	0.00	0.00	0.00	6.85		INTEREST		5,402.77
IN	01/28/05	0.00	0.00	0.00	0.00	4.98		INTEREST		5,388.82
IN	12/29/04	0.00	0.00	0.00	0.00	4.05		INTEREST		5,380.80
IN	12/02/04	0.00	0.00	0.00	0.00	2.87		INTEREST		5,389.91
IN	11/30/04	0.00	0.00	0.00	0.00	1.45		INTEREST		5,384.24
CI	11/18/04						72.01	CASH FOR INMATE		5,382.79
PR	11/18/04						82.67	PGM FEE: ROOM/BOARD		5,484.80
PV	11/18/04						50.14	PGM FEE: VICTM COMP		5,517.47
DP	11/18/04	47.75	5.25	250.88	209.89	209.89		DEPOSIT		5,587.61
CI	11/01/04						98.88	CASH FOR INMATE		5,357.72
PR	11/01/04						90.58	PGM FEE: ROOM/BOARD		5,454.38
PV	11/01/04						72.48	PGM FEE: VICTM COMP		5,544.84
DP	11/01/04	69.00	5.25	362.25	285.80	285.80		DEPOSIT		5,617.39
IN	10/25/04	0.00	0.00	0.00	0.00	4.08		INTEREST		5,321.49
CI	10/15/04						105.82	CASH FOR INMATE		5,317.43
PR	10/15/04						101.08	PGM FEE: ROOM/BOARD		5,423.05
PV	10/15/04						80.88	PGM FEE: VICTM COMP		5,524.11
DP	10/15/04	77.00	5.25	404.25	327.88	327.88		DEPOSIT		5,604.96
IN	10/13/04	0.00	0.00	0.00	0.00	4.09		INTEREST		5,277.00
CI	10/01/04						87.50	CASH FOR INMATE		5,272.91
PR	10/01/04						91.55	PGM FEE: ROOM/BOARD		5,370.41
PV	10/01/04						73.24	PGM FEE: VICTM COMP		5,481.96
DP	10/01/04	88.75	5.25	388.18	288.81	288.81		DEPOSIT		5,525.20
CI	09/18/04						113.20	CASH FOR INMATE		5,235.28
PR	09/18/04						113.20	PGM FEE: ROOM/BOARD		5,349.49
PV	09/18/04						90.58	PGM FEE: VICTM COMP		5,482.88
DP	09/10/04	88.25	5.25	482.81	382.24	382.24		DEPOSIT		5,553.25

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PACACCLT
00094851 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
CI	09/01/04						108.58	CASH FOR INNATE		5,191.01
PR	09/01/04						105.88	PGM FEE: ROOM/BOARD		5,289.59
PV	09/01/04						84.52	PGM FEE: VICTM COMP		5,405.25
DP	09/01/04	80.50	5.25	422.82	341.02	341.02		DEPOSIT		5,489.77
IN	08/31/04	0.00	0.00	0.00	0.00	2.87		INTEREST		5,148.75
CI	08/18/04						108.25	CASH FOR INNATE		5,145.88
PR	08/18/04						105.33	PGM FEE: ROOM/BOARD		5,254.23
PV	08/18/04						84.28	PGM FEE: VICTM COMP		5,359.56
DP	08/18/04	80.00	5.27	421.30	340.07	340.07		DEPOSIT		5,443.82
CI	07/30/04						82.48	CASH FOR INNATE		5,103.75
PR	07/30/04						53.48	PGM FEE: ROOM/BOARD		5,187.21
PV	07/30/04						42.78	PGM FEE: VICTM COMP		5,220.89
DP	07/30/04	40.75	5.28	213.83	181.12	181.12		DEPOSIT		5,283.48
IN	07/27/04	0.00	0.00	0.00	0.00	1.02		INTEREST		5,082.38
IN	07/19/04	0.00	0.00	0.00	0.00	1.45		INTEREST		5,081.34
CI	07/16/04						107.54	CASH FOR INNATE		5,078.88
PR	07/16/04						104.01	PGM FEE: ROOM/BOARD		5,187.43
PV	07/16/04						83.21	PGM FEE: VICTM COMP		5,291.44
DP	07/16/04	77.00	5.40	416.03	338.38	338.38		DEPOSIT		5,374.85
CI	07/01/04						115.82	CASH FOR INNATE		5,038.28
PR	07/01/04						117.47	PGM FEE: ROOM/BOARD		5,184.11
PV	07/01/04						83.97	PGM FEE: VICTM COMP		5,271.58
DP	07/01/04	88.50	5.25	468.87	374.25	374.25		DEPOSIT		5,385.55
CI	08/18/04						108.17	CASH FOR INNATE		4,891.30
PR	08/18/04						105.00	PGM FEE: ROOM/BOARD		5,099.47
PV	08/18/04						84.00	PGM FEE: VICTM COMP		5,204.47
DP	08/18/04	80.00	5.25	420.00	339.17	339.17		DEPOSIT		5,288.47

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PACACCLT
00084881 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
CI	08/01/04						103.38	CASH FOR INMATE		4,848.30
PR	08/01/04						88.44	PGM FEE: ROOM/BOARD		5,082.88
PV	08/01/04						78.78	PGM FEE: VICTM COMP		5,151.12
DP	08/01/04	78.00	5.25	383.75	319.85	319.85		DEPOSIT		5,228.87
IN	05/27/04	0.00	0.00	0.00	0.00	1.28		INTEREST		4,809.92
CI	05/14/04						101.14	CASH FOR INMATE		4,808.88
PR	05/14/04						85.81	PGM FEE: ROOM/BOARD		5,009.70
PV	05/14/04						78.85	PGM FEE: VICTM COMP		5,105.51
DP	05/14/04	73.00	5.25	383.25	311.93	311.93		DEPOSIT		5,182.18
CI	04/30/04						101.15	CASH FOR INMATE		4,870.23
PR	04/30/04						85.81	PGM FEE: ROOM/BOARD		4,871.38
PV	04/30/04						78.85	PGM FEE: VICTM COMP		5,087.18
DP	04/30/04	73.00	5.25	383.25	311.84	311.84		DEPOSIT		5,143.84
IN	04/29/04	0.00	0.00	0.00	0.00	1.61		INTEREST		4,831.80
CI	04/18/04						115.01	CASH FOR INMATE		4,830.28
PR	04/18/04						118.18	PGM FEE: ROOM/BOARD		4,848.30
PV	04/18/04						82.82	PGM FEE: VICTM COMP		5,081.46
DP	04/18/04	88.80	5.25	484.82	370.55	370.55		DEPOSIT		5,154.38
CI	04/01/04						109.37	CASH FOR INMATE		4,783.83
PR	04/01/04						108.97	PGM FEE: ROOM/BOARD		4,883.20
PV	04/01/04						85.87	PGM FEE: VICTM COMP		5,000.17
DP	04/01/04	81.80	5.25	427.87	344.70	344.70		DEPOSIT		5,085.74
IN	03/31/04	0.00	0.00	0.00	0.00	1.72		INTEREST		4,741.04
CI	03/18/04						85.55	CASH FOR INMATE		4,739.32
PR	03/18/04						89.25	PGM FEE: ROOM/BOARD		4,834.67
PV	03/18/04						71.40	PGM FEE: VICTM COMP		4,924.12
DP	03/18/04	88.00	5.25	387.00	291.80	291.80		DEPOSIT		4,995.52

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PACACCLT
000948E1 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
IN	03/03/04	0.00	0.00	0.00	0.00	1.48		INTEREST		4,703.62
IN	03/02/04	0.00	0.00	0.00	0.00	1.08		INTEREST		4,702.17
CI	03/01/04						100.03	CASH FOR INMATE		4,701.08
PR	03/01/04						84.80	PGM FEE: ROOM/BOARD		4,801.11
PV	03/01/04						75.60	PGM FEE: VICTM COMP		4,885.81
DP	03/01/04	72.00	5.25	378.00	307.83	307.83		DEPOSIT		4,871.21
CI	02/13/04						81.71	CASH FOR INMATE		4,883.28
PR	02/13/04						73.50	PGM FEE: ROOM/BOARD		4,744.88
PV	02/13/04						58.80	PGM FEE: VICTM COMP		4,818.48
DP	02/13/04	88.00	5.25	294.00	243.41	243.41		DEPOSIT		4,877.29
CI	01/30/04						100.03	CASH FOR INMATE		4,833.88
PR	01/30/04						84.50	PGM FEE: ROOM/BOARD		4,733.81
PV	01/30/04						75.80	PGM FEE: VICTM COMP		4,828.41
DP	01/30/04	72.00	5.25	378.00	307.83	307.83		DEPOSIT		4,804.01
CI	01/18/04						80.08	CASH FOR INMATE		4,586.08
PR	01/18/04						48.88	PGM FEE: ROOM/BOARD		4,658.18
PV	01/18/04						38.80	PGM FEE: VICTM COMP		4,708.04
DP	01/18/04	38.00	6.25	188.50	188.81	188.81		DEPOSIT		4,745.84
CI	01/02/04						118.24	CASH FOR INMATE		4,578.13
PR	01/02/04						121.40	PGM FEE: ROOM/BOARD		4,894.27
PV	01/02/04						87.12	PGM FEE: VICTM COMP		4,815.77
DP	01/01/04	81.00	5.34	485.81	385.32	385.32		DEPOSIT		4,812.88
IN	12/29/03	0.00	0.00	0.00	0.00	1.74		INTEREST		4,627.57
CI	12/18/03						87.78	CASH FOR INMATE		4,625.83
PR	12/18/03						81.88	PGM FEE: ROOM/BOARD		4,823.61
PV	12/18/03						73.50	PGM FEE: VICTM COMP		4,715.48
DP	12/18/03	70.00	5.25	367.50	288.81	288.81		DEPOSIT		4,788.88

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PACACCLT
00084851 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
IN	12/04/03	0.00	0.00	0.00	0.00	2.08		INTEREST		4,488.08
CI	12/01/03						100.04	CASH FOR INMATE		4,488.99
PR	12/01/03						94.50	PGM FEE: ROOM/BOARD		4,587.03
PV	12/01/03						78.80	PGM FEE: VICTM COMP		4,881.83
DP	12/01/03	72.00	5.25	378.00	307.84	307.84		DEPOSIT		4,757.13
CI	11/14/03						105.07	CASH FOR INMATE		4,449.18
PR	11/14/03						100.41	PGM FEE: ROOM/BOARD		4,554.28
PV	11/14/03						80.32	PGM FEE: VICTM COMP		4,654.87
DP	11/14/03	78.50	5.25	401.82	325.88	325.88		DEPOSIT		4,734.88
CI	10/31/03						108.17	CASH FOR INMATE		4,409.03
PR	10/31/03						105.00	PGM FEE: ROOM/BOARD		4,517.20
PV	10/31/03						84.00	PGM FEE: VICTM COMP		4,822.20
DP	10/31/03	80.00	5.25	420.00	338.17	338.17		DEPOSIT		4,708.20
IN	10/28/03	0.00	0.00	0.00	0.00	3.18		INTEREST		4,397.03
CI	10/18/03						103.88	CASH FOR INMATE		4,383.88
PR	10/18/03						98.08	PGM FEE: ROOM/BOARD		4,487.84
PV	10/18/03						78.27	PGM FEE: VICTM COMP		4,568.83
DP	10/18/03	75.50	5.25	398.37	321.88	321.88		DEPOSIT		4,848.20
CI	10/01/03						108.17	CASH FOR INMATE		4,324.24
PR	10/01/03						105.00	PGM FEE: ROOM/BOARD		4,432.41
PV	10/01/03						84.00	PGM FEE: VICTM COMP		4,537.41
DP	10/01/03	80.00	5.25	420.00	338.17	338.17		DEPOSIT		4,821.41
IN	09/28/03	0.00	0.00	0.00	0.00	2.29		INTEREST		4,282.24
CI	09/18/03						100.58	CASH FOR INMATE		4,278.85
PR	09/18/03						85.18	PGM FEE: ROOM/BOARD		4,380.54
PV	09/18/03						78.12	PGM FEE: VICTM COMP		4,475.70
DP	09/18/03	72.80	5.25	380.62	308.83	308.83		DEPOSIT		4,851.82

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PACACCLT
00084851 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME. BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
CI	08/28/03						100.04	CASH FOR INMATE		4,241.88
PR	08/28/03						94.50	PGM FEE: ROOM/BOARD		4,341.83
PV	08/28/03						75.60	PGM FEE: VICTM COMP		4,438.43
DP	08/28/03	72.00	5.25	378.00	307.94	307.94		DEPOSIT		4,512.03
IN	08/27/03	0.00	0.00	0.00	0.00	8.51		INTEREST		4,204.08
CI	08/15/03						112.58	CASH FOR INMATE		4,185.58
PR	08/15/03						112.22	PGM FEE: ROOM/BOARD		4,308.17
PV	08/15/03						88.77	PGM FEE: VICTM COMP		4,420.38
DP	08/18/03	85.50	5.25	448.87	358.47	358.47		DEPOSIT		4,510.16
CI	08/01/03						62.53	CASH FOR INMATE		4,150.88
PR	08/01/03						52.50	PGM FEE: ROOM/BOARD		4,213.22
PV	08/01/03						42.00	PGM FEE: VICTM COMP		4,265.72
DP	08/01/03	40.00	5.25	210.00	178.03	178.03		DEPOSIT		4,307.72
IN	07/31/03	0.00	0.00	0.00	0.00	2.47		INTEREST		4,129.88
CI	07/18/03						112.19	CASH FOR INMATE		4,127.22
PR	07/18/03						111.55	PGM FEE: ROOM/BOARD		4,238.41
PV	07/18/03						88.25	PGM FEE: VICTM COMP		4,350.97
DP	07/18/03	85.00	5.25	446.25	357.83	357.83		DEPOSIT		4,440.22
CI	07/01/03						108.57	CASH FOR INMATE		4,082.58
PR	07/01/03						105.88	PGM FEE: ROOM/BOARD		4,181.18
PV	07/01/03						84.52	PGM FEE: VICTM COMP		4,298.82
DP	07/01/03	80.50	5.25	422.82	341.01	341.01		DEPOSIT		4,381.34
IN	08/24/03	0.00	0.00	0.00	0.00	1.83		INTEREST		4,040.33
CI	08/18/03						80.78	CASH FOR INMATE		4,038.40
PR	08/18/03						83.87	PGM FEE: ROOM/BOARD		4,128.18
PV	08/18/03						88.84	PGM FEE: VICTM COMP		4,212.88
DP	08/18/03	83.75	5.25	334.88	274.88	274.88		DEPOSIT		4,278.78

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PACACCLT
00094851 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
CI	05/30/03						99.78	CASH FOR INMATE		4,004.93
PR	05/30/03						99.81	PGM FEE: ROOM/BOARD		4,104.71
PV	05/30/03						78.65	PGM FEE: VICTM COMP		4,200.52
DP	05/30/03	73.00	5.25	383.25	310.57	310.87		DEPOSIT		4,277.17
IN	05/27/03	0.00	0.00	0.00	0.00		1.82	INTEREST		3,988.80
CI	05/18/03						103.85	CASH FOR INMATE		3,884.77
PR	05/18/03						101.72	PGM FEE: ROOM/BOARD		4,088.42
PV	05/18/03						81.37	PGM FEE: VICTM COMP		4,170.14
DP	05/18/03	77.50	5.25	408.87	327.43	327.43		DEPOSIT		4,251.51
CI	05/01/03						107.37	CASH FOR INMATE		3,824.08
PR	05/01/03						107.63	PGM FEE: ROOM/BOARD		4,031.45
PV	05/01/03						85.10	PGM FEE: VICTM COMP		4,138.08
DP	05/01/03	82.00	5.25	430.50	344.15	344.15		DEPOSIT		4,225.18
IN	04/21/03	0.00	0.00	0.00	0.00		1.78	INTEREST		3,981.03
CI	04/16/03						112.21	CASH FOR INMATE		3,878.27
PR	04/16/03						115.50	PGM FEE: ROOM/BOARD		3,991.48
PV	04/16/03						92.40	PGM FEE: VICTM COMP		4,108.98
DP	04/16/03	88.00	5.25	462.00	388.31	388.31		DEPOSIT		4,189.38
IN	04/15/03	0.00	0.00	0.00	0.00		1.78	INTEREST		3,833.07
CI	04/01/03						97.44	CASH FOR INMATE		3,831.31
PR	04/01/03						92.20	PGM FEE: ROOM/BOARD		3,928.78
PV	04/01/03						73.78	PGM FEE: VICTM COMP		4,020.85
DP	04/01/03	70.25	5.25	368.81	300.28	300.28		DEPOSIT		4,084.71
CI	03/14/03						100.02	CASH FOR INMATE		3,784.43
PR	03/14/03						99.14	PGM FEE: ROOM/BOARD		3,894.45
PV	03/14/03						78.81	PGM FEE: VICTM COMP		3,980.59
DP	03/14/03	73.25	5.25	384.58	311.53	311.53		DEPOSIT		4,067.50

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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PACACCLT
00094851 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
CI	02/28/08						100.21	CASH FOR INMATE		3,755.87
PR	02/28/03						86.47	PGM FEE: ROOM/BOARD		3,658.18
PV	02/28/03						77.17	PGM FEE: VICTM COMP		3,582.85
DP	02/28/03	73.50	5.25	385.87	312.44	312.44		DEPOSIT		4,028.82
IN	02/24/03	0.00	0.00	0.00	0.00		1.88	INTEREST		3,717.38
CI	02/14/03						88.14	CASH FOR INMATE		3,715.40
PR	02/14/03						84.83	PGM FEE: ROOM/BOARD		3,814.54
PV	02/14/03						75.88	PGM FEE: VICTM COMP		3,508.37
DP	02/14/03	72.25	5.25	378.31	307.76	307.76		DEPOSIT		3,885.23
CI	01/31/03						108.18	CASH FOR INMATE		3,677.47
PR	01/31/03						105.68	PGM FEE: ROOM/BOARD		3,783.65
PV	01/31/03						84.52	PGM FEE: VICTM COMP		3,889.31
DP	01/31/03	80.50	5.25	422.82	338.82	338.82		DEPOSIT		3,873.83
IN	01/27/03	0.00	0.00	0.00	0.00		1.93	INTEREST		3,835.21
CI	01/18/03						45.08	CASH FOR INMATE		2,633.88
PR	01/18/03						34.13	PGM FEE: ROOM/BOARD		3,678.74
PV	01/18/03						27.30	PGM FEE: VICTM COMP		3,712.87
DP	01/18/03	28.00	5.25	138.50	120.14	120.14		DEPOSIT		3,740.17
CI	01/02/03						108.88	CASH FOR INMATE		3,620.03
PR	01/02/03						109.58	PGM FEE: ROOM/BOARD		3,728.81
PV	01/02/03						87.87	PGM FEE: VICTM COMP		3,838.20
DP	01/01/03	83.50	5.25	438.37	349.88	349.88		DEPOSIT		3,825.87
IN	12/27/02	0.00	0.00	0.00	0.00		1.89	INTEREST		3,578.19
CI	12/18/02						108.18	CASH FOR INMATE		2,574.30
PR	12/18/02						105.84	PGM FEE: ROOM/BOARD		3,680.48
PV	12/18/02						84.51	PGM FEE: VICTM COMP		3,788.10
DP	12/18/02	74.75	5.65	422.58	338.57	338.57		DEPOSIT		3,870.81

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PACACCLT
00084851 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME. BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
IN	12/08/02	0.00	0.00	0.00	0.00	1.88		INTEREST		3,532.04
CI	11/27/02						89.78	CASH FOR INMATE		3,530.06
PR	11/27/02						85.81	PGM FEE: ROOM/BOARD		3,829.83
PV	11/27/02						76.85	PGM FEE: VICTM COMP		3,728.64
DP	11/27/02	73.00	5.25	383.25	310.57	310.57		DEPOSIT		3,802.29
CI	11/15/02						110.19	CASH FOR INMATE		3,481.72
PR	11/15/02						112.22	PGM FEE: ROOM/BOARD		3,801.81
PV	11/15/02						89.77	PGM FEE: VICTM COMP		3,714.13
DP	11/15/02	85.50	5.25	448.87	357.07	357.07		DEPOSIT		3,803.90
CI	11/01/02						108.17	CASH FOR INMATE		3,448.83
PR	11/01/02						105.68	PGM FEE: ROOM/BOARD		3,553.00
PV	11/01/02						84.82	PGM FEE: VICTM COMP		3,888.88
DP	11/01/02	80.80	5.25	422.82	338.81	338.81		DEPOSIT		3,743.18
IN	10/28/02	0.00	0.00	0.00	0.00	0.87		INTEREST		3,404.87
IN	10/28/02	0.00	0.00	0.00	0.00	0.92		INTEREST		3,409.70
CI	10/18/02						114.52	CASH FOR INMATE		3,402.78
PR	10/18/02						118.27	PGM FEE: ROOM/BOARD		3,617.30
PV	10/18/02						88.41	PGM FEE: VICTM COMP		3,836.57
DP	10/18/02	88.75	5.38	477.08	378.81	378.81		DEPOSIT		3,731.88
CI	10/01/02						109.89	CASH FOR INMATE		3,355.07
PR	10/01/02						111.89	PGM FEE: ROOM/BOARD		3,485.08
PV	10/01/02						88.81	PGM FEE: VICTM COMP		3,576.88
DP	10/01/02	83.50	5.38	447.54	358.14	358.14		DEPOSIT		3,888.46
IN	09/25/02	0.00	0.00	0.00	0.00	1.89		INTEREST		3,310.32
CI	09/18/02						100.21	CASH FOR INMATE		3,308.83
PR	09/18/02						86.47	PGM FEE: ROOM/BOARD		3,408.84
PV	09/18/02						77.17	PGM FEE: VICTM COMP		3,505.31

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PACACCLT THOMAS JOHN TORRENCE
00084891

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
DP	09/18/02	73.50	5.25	385.87	312.44	312.44		DEPOSIT		3,582.48
CI	08/30/02						134.18	CASH FOR INMATE		3,270.04
PR	08/30/02						181.24	PGM FEE: ROOM/BOARD		2,404.20
PV	08/30/02						120.89	PGM FEE: VICTM COMP		2,555.44
DP	08/30/02	105.00	5.78	604.95	488.89	488.89		DEPOSIT		3,878.43
IN	08/29/02	0.00	0.00	0.00	0.00	1.43		INTEREST		3,209.84
CI	08/18/02						113.42	CASH FOR INMATE		3,208.11
PR	08/18/02						117.47	PGM FEE: ROOM/BOARD		3,321.53
PV	08/18/02						93.87	PGM FEE: VICTM COMP		3,439.00
DP	08/18/02	89.50	5.25	469.87	371.85	371.85		DEPOSIT		3,532.87
IN	08/02/02	0.00	0.00	0.00	0.00	1.48		INTEREST		3,181.12
CI	08/01/02						85.48	CASH FOR INMATE		2,159.84
PR	08/01/02						88.25	PGM FEE: ROOM/BOARD		3,255.13
PV	08/01/02						71.40	PGM FEE: VICTM COMP		3,344.38
DP	08/01/02	88.00	5.25	357.00	291.84	291.84		DEPOSIT		3,415.78
CI	07/18/02						110.18	CASH FOR INMATE		3,123.84
PR	07/18/02						112.22	PGM FEE: ROOM/BOARD		3,234.13
PV	07/18/02						88.77	PGM FEE: VICTM COMP		3,348.35
DP	07/18/02	84.50	5.31	448.86	357.07	357.07		DEPOSIT		3,438.12
CI	07/01/02						100.23	CASH FOR INMATE		3,078.05
PR	07/01/02						98.47	PGM FEE: ROOM/BOARD		3,178.28
PV	07/01/02						77.17	PGM FEE: VICTM COMP		3,278.75
DP	07/01/02	73.50	5.25	385.87	312.48	312.48		DEPOSIT		3,352.82
IN	08/27/02	0.00	0.00	0.00	0.00	2.01		INTEREST		3,040.48
CI	08/14/02						88.83	CASH FOR INMATE		3,038.48
PR	08/14/02						84.50	PGM FEE: ROOM/BOARD		3,137.38
PV	08/14/02						75.80	PGM FEE: VICTM COMP		3,231.88

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PACADCLT
00094851 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
DP	08/14/02	72.00	5.25	378.00	308.83	308.83		DEPOSIT		3,307.48
IN	08/10/02	0.00	0.00	0.00	0.00	1.20		INTEREST		3,000.65
IN	08/08/02	0.00	0.00	0.00	0.00	1.80		INTEREST		2,889.45
CI	05/31/02						108.77	CASH FOR INMATE		2,887.55
PR	05/31/02						105.00	PGM FEE: ROOM/BOARD		3,103.32
PV	05/31/02						84.00	PGM FEE: VICTM COMP		3,208.32
DP	05/31/02	80.00	5.25	420.00	338.77	338.77		DEPOSIT		3,282.32
CI	05/18/02						107.37	CASH FOR INMATE		2,855.55
PR	05/18/02						107.83	PGM FEE: ROOM/BOARD		3,062.92
PV	05/18/02						88.10	PGM FEE: VICTM COMP		3,170.55
DP	05/18/02	82.00	5.25	430.50	344.15	344.15		DEPOSIT		3,258.65
CI	05/01/02						122.38	CASH FOR INMATE		2,812.80
PR	05/01/02						132.08	PGM FEE: ROOM/BOARD		3,034.88
PV	05/01/02						105.84	PGM FEE: VICTM COMP		3,169.84
DP	05/01/02	85.28	5.55	528.22	412.80	412.80		DEPOSIT		3,272.58
CI	04/18/02						102.78	CASH FOR INMATE		2,859.88
PR	04/18/02						100.41	PGM FEE: ROOM/BOARD		2,862.47
PV	04/18/02						80.32	PGM FEE: VICTM COMP		3,062.88
DP	04/18/02	78.50	5.25	401.82	323.88	323.88		DEPOSIT		3,143.20
IN	04/09/02	0.00	0.00	0.00	0.00	1.45		INTEREST		2,819.52
CI	04/01/02						108.07	CASH FOR INMATE		2,818.07
PR	04/01/02						108.77	PGM FEE: ROOM/BOARD		2,928.14
PV	04/01/02						87.01	PGM FEE: VICTM COMP		2,034.81
DP	04/01/02	80.75	5.39	435.08	347.38	347.38		DEPOSIT		3,121.82
CI	03/15/02						99.79	CASH FOR INMATE		2,774.58
PR	03/15/02						85.81	PGM FEE: ROOM/BOARD		2,874.38
PV	03/15/02						76.85	PGM FEE: VICTM COMP		2,870.18

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PACACCLT
00094851 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
DP	03/15/02	73.00	8.25	383.25	310.58	310.58		DEPOSIT		3,048.81
CI	03/01/02						88.77	CASH FOR INMATE		2,738.23
PR	03/01/02						85.81	PGM FEE: ROOM/BOARD		2,838.00
PV	03/01/02						78.88	PGM FEE: VICTM COMP		2,831.81
DP	03/01/02	73.00	8.25	383.25	310.58	310.58		DEPOSIT		3,008.48
IN	02/28/02	0.00	0.00	0.00	0.00	1.83		INTEREST		2,897.90
CI	02/15/02						103.68	CASH FOR INMATE		2,888.27
PR	02/15/02						101.72	PGM FEE: ROOM/BOARD		2,788.83
PV	02/15/02						81.37	PGM FEE: VICTM COMP		2,801.88
DP	02/15/02	77.50	5.25	408.87	327.44	327.44		DEPOSIT		2,882.02
CI	02/01/02						84.89	CASH FOR INMATE		2,855.88
PR	02/01/02						88.89	PGM FEE: ROOM/BOARD		2,750.57
PV	02/01/02						70.87	PGM FEE: VICTM COMP		2,839.18
DP	02/01/02	87.50	5.25	354.37	289.89	289.89		DEPOSIT		2,810.03
IN	01/31/02	0.00	0.00	0.00	0.00	3.40		INTEREST		2,820.14
CI	01/18/02						88.88	CASH FOR INMATE		2,816.74
PR	01/18/02						80.38	PGM FEE: ROOM/BOARD		2,888.82
PV	01/18/02						48.30	PGM FEE: VICTM COMP		2,747.00
DP	01/18/02	48.00	5.25	241.50	202.71	202.71		DEPOSIT		2,785.30
IN	01/14/02	0.00	0.00	0.00	0.00	5.49		INTEREST		2,582.58
CI	01/02/02						173.43	CASH FOR INMATE		2,587.10
PR	01/02/02						215.18	PGM FEE: ROOM/BOARD		2,780.83
PV	01/02/02						172.14	PGM FEE: VICTM COMP		2,978.71
DP	01/01/02	138.00	8.33	980.72	848.82	848.82		DEPOSIT		3,147.85
IN	12/17/01	0.00	0.00	0.00	0.00	5.64		INTEREST		2,501.03
CI	12/14/01						98.48	CASH FOR INMATE		2,485.38
PR	12/14/01						114.83	PGM FEE: ROOM/BOARD		2,884.88

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PACACCLT
00084851 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
PV	12/14/01						91.80	PGM FEE: VICTM COMP		2,709.71
DP	12/14/01	80.50	5.71	459.30	352.11	352.11		DEPOSIT		2,801.67
CI	11/30/01						109.37	CASH FOR INMATE		2,449.48
PR	11/30/01						130.80	PGM FEE: ROOM/BOARD		2,558.82
PV	11/30/01						104.72	PGM FEE: VICTM COMP		2,689.73
DP	11/30/01	82.25	5.68	823.81	397.35	397.35		DEPOSIT		2,784.46
CI	11/18/01						103.84	CASH FOR INMATE		2,397.10
PR	11/18/01						122.08	PGM FEE: ROOM/BOARD		2,501.04
PV	11/18/01						97.85	PGM FEE: VICTM COMP		2,623.10
DP	11/18/01	93.00	5.25	486.25	372.48	372.48		DEPOSIT		2,720.75
CI	11/01/01						93.87	CASH FOR INMATE		2,348.27
PR	11/01/01						109.69	PGM FEE: ROOM/BOARD		2,442.14
PV	11/01/01						84.52	PGM FEE: VICTM COMP		2,547.80
DP	11/01/01	90.50	5.25	422.82	228.31	326.31		DEPOSIT		2,632.32
IN	10/31/01	0.00	0.00	0.00	0.00	6.85		INTEREST		2,308.01
CI	10/15/01						111.08	CASH FOR INMATE		2,298.38
PR	10/15/01						133.70	PGM FEE: ROOM/BOARD		2,410.44
PV	10/15/01						108.88	PGM FEE: VICTM COMP		2,544.14
DP	10/15/01	97.25	5.50	534.78	405.22	405.22		DEPOSIT		2,651.10
IN	10/02/01	0.00	0.00	0.00	0.00	7.22		INTEREST		2,245.88
CI	10/01/01						80.41	CASH FOR INMATE		2,238.88
PR	10/01/01						84.88	PGM FEE: ROOM/BOARD		2,319.07
PV	10/01/01						87.89	PGM FEE: VICTM COMP		2,404.05
DP	10/01/01	84.75	5.25	338.83	287.37	287.37		DEPOSIT		2,472.04
CI	09/14/01						88.17	CASH FOR INMATE		2,204.87
PR	09/14/01						87.27	PGM FEE: ROOM/BOARD		2,272.84
PV	09/14/01						53.81	PGM FEE: VICTM COMP		2,340.11

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PACACCLT
00094851 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
DP	09/14/01	51.25	5.25	269.08	218.18	218.18		DEPOSIT		2,393.82
CI	08/31/01						84.05	CASH FOR INMATE		2,177.78
PR	08/31/01						80.58	PGM FEE: ROOM/BOARD		2,281.81
PV	08/31/01						72.48	PGM FEE: VICTM COMP		2,352.37
DP	08/31/01	88.00	5.25	382.25	283.29	283.28		DEPOSIT		2,424.82
IN	08/28/01	0.00	0.00	0.00	0.00	7.10		INTEREST		2,141.53
CI	08/18/01						100.71	CASH FOR INMATE		2,134.43
PR	08/18/01						118.81	PGM FEE: ROOM/BOARD		2,235.14
PV	08/18/01						83.45	PGM FEE: VICTM COMP		2,351.95
DP	08/18/01	88.00	5.25	487.25	357.70	357.70		DEPOSIT		2,445.40
IN	08/08/01	0.00	0.00	0.00	0.00	7.27		INTEREST		2,087.70
CI	08/01/01						43.23	CASH FOR INMATE		2,080.43
PR	08/01/01						33.47	PGM FEE: ROOM/BOARD		2,123.68
PV	08/01/01						28.77	PGM FEE: VICTM COMP		2,157.13
DP	08/01/01	28.60	5.25	123.27	118.88	118.88		DEPOSIT		2,183.90
CI	07/18/01						88.13	CASH FOR INMATE		2,087.04
PR	07/18/01						98.80	PGM FEE: ROOM/BOARD		2,155.17
PV	07/18/01						77.44	PGM FEE: VICTM COMP		2,281.97
DP	07/18/01	73.78	5.25	387.18	301.09	301.09		DEPOSIT		2,329.41
CI	07/02/01						87.48	CASH FOR INMATE		2,028.32
PR	07/02/01						95.81	PGM FEE: ROOM/BOARD		2,115.80
PV	07/02/01						78.85	PGM FEE: VICTM COMP		2,211.81
DP	07/01/01	73.00	5.25	383.25	288.27	288.27		DEPOSIT		2,288.28
IN	08/28/01	0.00	0.00	0.00	0.00	7.18		INTEREST		1,888.89
CI	08/18/01						81.14	CASH FOR INMATE		1,882.83
PR	08/18/01						101.38	PGM FEE: ROOM/BOARD		2,073.87
PV	08/18/01						81.11	PGM FEE: VICTM COMP		2,175.38

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PACACCLT
00084651 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERTIME'S MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
DP	08/18/01	77.25	5.25	405.56	314.20	314.20		DEPOSIT		2,259.47
CI	08/01/01						98.89	CASH FOR INMATE		1,942.27
PR	08/01/01						113.53	PGM FEE: ROOM/BOARD		2,040.89
PV	08/01/01						80.82	PGM FEE: VICTM COMP		2,154.48
DP	08/01/01	84.80	5.37	454.10	348.45	348.45		DEPOSIT		2,245.21
IN	05/31/01	0.00	0.00	0.00	0.00	7.51		INTEREST		1,898.88
CI	05/18/01						94.27	CASH FOR INMATE		1,888.35
PR	05/18/01						108.31	PGM FEE: ROOM/BOARD		1,993.82
PV	05/18/01						85.05	PGM FEE: VICTM COMP		2,089.93
DP	05/18/01	81.00	5.25	425.25	328.18	328.18		DEPOSIT		2,174.98
CI	05/01/01						90.50	CASH FOR INMATE		1,846.82
PR	05/01/01						100.41	PGM FEE: ROOM/BOARD		1,937.32
PV	05/01/01						80.32	PGM FEE: VICTM COMP		2,037.73
DP	05/01/01	78.80	5.25	401.82	311.38	311.38		DEPOSIT		2,115.05
IN	04/27/01	0.00	0.00	0.00	0.00	7.75		INTEREST		1,808.68
CI	04/18/01						79.54	CASH FOR INMATE		1,788.91
PR	04/18/01						83.07	PGM FEE: ROOM/BOARD		1,875.45
PV	04/18/01						68.84	PGM FEE: VICTM COMP		1,882.12
DP	04/18/01	83.75	5.25	334.88	283.82	283.82		DEPOSIT		2,029.08
CI	03/30/01						88.85	CASH FOR INMATE		1,785.44
PR	03/30/01						84.83	PGM FEE: ROOM/BOARD		1,892.28
PV	03/30/01						75.88	PGM FEE: VICTM COMP		1,947.12
DP	03/30/01	72.25	5.25	379.31	285.47	285.47		DEPOSIT		2,022.98
IN	03/29/01	0.00	0.00	0.00	0.00	9.14		INTEREST		1,727.51
CI	03/18/01						79.55	CASH FOR INMATE		1,718.37
PR	03/18/01						83.67	PGM FEE: ROOM/BOARD		1,787.82
PV	03/18/01						68.84	PGM FEE: VICTM COMP		1,851.59

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PACACCLT
00094851 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
DP	03/10/01	63.75	5.25	334.88	283.63	283.63		DEPOSIT		1,848.53
CI	03/01/01						81.35	CASH FOR INMATE		1,684.60
PR	03/01/01						104.72	PGM FEE: ROOM/BOARD		1,778.25
PV	03/01/01						81.37	PGM FEE: VICTM COMP		1,877.87
DP	03/01/01	77.50	5.25	408.87	315.13	315.13		DEPOSIT		1,958.24
IN	02/21/01	0.00	0.00	0.00	0.00	8.98		INTEREST		1,644.21
CI	02/18/01						100.71	CASH FOR INMATE		1,635.23
PR	02/18/01						118.51	PGM FEE: ROOM/BOARD		1,735.84
PV	02/18/01						83.45	PGM FEE: VICTM COMP		1,852.75
DP	02/18/01	88.00	5.25	467.25	357.70	357.70		DEPOSIT		1,948.20
IN	02/14/01	0.00	0.00	0.00	0.00	8.51		INTEREST		1,588.80
CI	02/01/01						87.07	CASH FOR INMATE		1,579.89
PR	02/01/01						85.18	PGM FEE: ROOM/BOARD		1,687.08
PV	02/01/01						78.12	PGM FEE: VICTM COMP		1,782.22
DP	02/01/01	72.50	5.25	380.82	288.41	288.41		DEPOSIT		1,838.34
CI	01/18/01						54.18	CASH FOR INMATE		1,541.93
PR	01/18/01						47.91	PGM FEE: ROOM/BOARD		1,588.08
PV	01/18/01						38.32	PGM FEE: VICTM COMP		1,644.00
DP	01/18/01	38.50	5.25	181.82	158.55	158.55		DEPOSIT		1,682.32
CI	01/02/01						87.48	CASH FOR INMATE		1,522.77
PR	01/02/01						85.81	PGM FEE: ROOM/BOARD		1,610.25
PV	01/02/01						78.85	PGM FEE: VICTM COMP		1,708.08
DP	01/01/01	73.00	5.25	383.25	288.27	288.27		DEPOSIT		1,782.71
IN	12/27/00	0.00	0.00	0.00	0.00	8.70		INTEREST		1,484.44
IN	12/27/00	0.00	0.00	0.00	0.00	8.14		INTEREST		1,475.74
CI	12/15/00						77.05	CASH FOR INMATE		1,487.80
PR	12/15/00						80.08	PGM FEE: ROOM/BOARD		1,544.85

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PACACCLT THOMAS JOHN TORRENCE
00084881

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
PV	12/15/00						84.05	PGM FEE: VICTM COMP		1,824.71
DP	12/15/00	01.00	5.25	320.25	253.18	253.18		DEPOSIT		1,688.76
CI	12/01/00						87.07	CASH FOR INMATE		1,435.57
PR	12/01/00						85.18	PGM FEE: ROOM/BOARD		1,522.84
PV	12/01/00						76.12	PGM FEE: VICTM COMP		1,517.80
DP	12/01/00	72.50	5.25	380.82	288.41	288.41		DEPOSIT		1,693.92
CI	11/16/00						88.30	CASH FOR INMATE		1,397.51
PR	11/16/00						114.52	PGM FEE: ROOM/BOARD		1,488.81
PV	11/16/00						81.81	PGM FEE: VICTM COMP		1,511.33
DP	11/16/00	87.25	5.25	458.08	351.24	351.24		DEPOSIT		1,702.94
CI	11/01/00						94.27	CASH FOR INMATE		1,351.70
PR	11/01/00						109.31	PGM FEE: ROOM/BOARD		1,448.87
PV	11/01/00						88.05	PGM FEE: VICTM COMP		1,552.28
DP	11/01/00	81.00	5.25	425.25	328.18	328.18		DEPOSIT		1,937.93
IN	10/24/00	0.00	0.00	0.00	0.00	8.00		INTEREST		1,309.17
IN	10/24/00	0.00	0.00	0.00	0.00	7.02		INTEREST		1,301.17
CI	10/16/00						87.48	CASH FOR INMATE		1,294.18
PR	10/16/00						85.81	PGM FEE: ROOM/BOARD		1,381.83
PV	10/16/00						78.85	PGM FEE: VICTM COMP		1,477.44
DP	10/16/00	73.00	5.25	383.25	288.27	288.27		DEPOSIT		1,554.09
CI	09/28/00						82.77	CASH FOR INMATE		1,255.82
PR	09/28/00						88.58	PGM FEE: ROOM/BOARD		1,338.58
PV	09/28/00						70.87	PGM FEE: VICTM COMP		1,427.18
DP	09/28/00	67.50	5.25	354.37	277.67	277.67		DEPOSIT		1,498.05
CI	09/15/00						115.82	CASH FOR INMATE		1,220.38
PR	09/15/00						142.71	PGM FEE: ROOM/BOARD		1,337.00
PV	09/15/00						114.17	PGM FEE: VICTM COMP		1,479.71

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PACACCLT
00084881 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
DP	09/16/00	88.75	5.72	570.84	430.58	430.58		DEPOSIT		1,583.88
CI	08/01/00						88.81	CASH FOR INMATE		1,183.30
PR	08/01/00						115.50	PGM FEE: ROOM/BOARD		1,283.21
PV	08/01/00						82.40	PGM FEE: VICTM COMP		1,378.71
DP	08/01/00	88.00	5.25	462.00	354.01	354.01		DEPOSIT		1,471.11
IN	08/31/00	0.00	0.00	0.00	0.00		7.25	INTEREST		1,117.10
CI	08/18/00						84.08	CASH FOR INMATE		1,108.85
PR	08/18/00						105.88	PGM FEE: ROOM/BOARD		1,203.83
PV	08/18/00						84.78	PGM FEE: VICTM COMP		1,308.81
DP	08/18/00	80.75	5.25	423.83	327.24	327.24		DEPOSIT		1,384.70
CI	08/01/00						80.81	CASH FOR INMATE		1,087.48
PR	08/01/00						85.31	PGM FEE: ROOM/BOARD		1,148.07
PV	08/01/00						68.25	PGM FEE: VICTM COMP		1,233.38
DP	08/01/00	65.00	5.25	341.25	268.30	268.30		DEPOSIT		1,301.83
IN	07/28/00	0.00	0.00	0.00	0.00		5.83	INTEREST		1,033.33
CI	07/14/00						108.04	CASH FOR INMATE		1,027.50
PR	07/14/00						125.50	PGM FEE: ROOM/BOARD		1,133.54
PV	07/14/00						100.40	PGM FEE: VICTM COMP		1,288.04
DP	07/14/00	80.75	5.53	501.98	382.14	382.14		DEPOSIT		1,359.44
CI	06/30/00						84.27	CASH FOR INMATE		977.30
PR	06/30/00						108.31	PGM FEE: ROOM/BOARD		1,071.57
PV	06/30/00						85.05	PGM FEE: VICTM COMP		1,177.88
DP	07/01/00	79.00	5.38	425.23	328.15	328.15		DEPOSIT		1,282.83
IN	08/27/00	0.00	0.00	0.00	0.00		3.71	INTEREST		934.78
CI	06/16/00						84.27	CASH FOR INMATE		831.07
PR	06/16/00						108.21	PGM FEE: ROOM/BOARD		1,025.34
PV	06/16/00						85.05	PGM FEE: VICTM COMP		1,131.85

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PACACCLT
00094861 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
DP	08/18/00	81.00	5.25	425.25	328.18	328.18		DEPOSIT		1,218.70
IN	08/02/00	0.00	0.00	0.00	0.00	3.81		INTEREST		888.84
CI	08/01/00						94.88	CASH FOR INMATE		884.83
PR	08/01/00						107.30	PGM FEE: ROOM/BOARD		879.78
PV	08/01/00						88.84	PGM FEE: VICTM COMP		1,087.08
DP	08/01/00	81.75	5.25	429.18	330.92	330.82		DEPOSIT		1,172.83
CI	05/18/00						90.48	CASH FOR INMATE		842.01
PR	05/18/00						100.41	PGM FEE: ROOM/BOARD		832.50
PV	05/18/00						80.32	PGM FEE: VICTM COMP		1,032.81
DP	05/18/00	78.50	5.25	401.82	311.38	311.38		DEPOSIT		1,113.23
CI	05/01/00						120.04	CASH FOR INMATE		801.89
PR	05/01/00						148.29	PGM FEE: ROOM/BOARD		821.88
PV	05/01/00						118.83	PGM FEE: VICTM COMP		1,070.18
DP	05/01/00	102.00	5.82	589.14	448.27	448.27		DEPOSIT		1,188.81
IN	04/24/00	0.00	0.00	0.00	0.00	3.80		INTEREST		742.84
CI	04/14/00						92.43	CASH FOR INMATE		738.74
PR	04/14/00						103.38	PGM FEE: ROOM/BOARD		831.17
PV	04/14/00						82.88	PGM FEE: VICTM COMP		834.53
DP	04/14/00	78.75	5.25	413.43	319.82	319.82		DEPOSIT		1,017.22
CI	03/31/00						89.41	CASH FOR INMATE		887.40
PR	03/31/00						114.88	PGM FEE: ROOM/BOARD		788.81
PV	03/31/00						81.74	PGM FEE: VICTM COMP		911.48
DP	03/31/00	87.25	5.28	458.71	351.70	351.70		DEPOSIT		1,003.23
IN	03/20/00	0.00	0.00	0.00	0.00	3.44		INTEREST		851.53
CI	03/18/00						85.78	CASH FOR INMATE		848.09
PR	03/18/00						93.18	PGM FEE: ROOM/BOARD		733.86
PV	03/18/00						74.55	PGM FEE: VICTM COMP		827.04

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PACACCLT
00084881 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
DP	03/16/00	71.00	5.25	372.75	280.78	280.78		DEPOSIT		901.58
CI	03/01/00						82.08	CASH FOR INMATE		810.81
PR	03/01/00						88.02	PGM FEE: ROOM/BOARD		883.78
PV	03/01/00						71.14	PGM FEE: VICTM COMP		782.71
DP	03/01/00	87.75	5.25	388.88	278.81	278.81		DEPOSIT		853.85
IN	02/28/00	0.00	0.00	0.00	0.00	2.88		INTEREST		575.24
CI	02/18/00						71.14	CASH FOR INMATE		572.38
PR	02/18/00						71.53	PGM FEE: ROOM/BOARD		643.80
PV	02/18/00						67.22	PGM FEE: VICTM COMP		715.03
DP	02/18/00	64.80	5.28	288.12	228.50	228.50		DEPOSIT		772.26
IN	02/07/00	0.00	0.00	0.00	0.00	2.88		INTEREST		543.75
CI	02/01/00						88.34	CASH FOR INMATE		541.19
PR	02/01/00						87.13	PGM FEE: ROOM/BOARD		628.53
PV	02/01/00						77.70	PGM FEE: VICTM COMP		726.66
DP	02/01/00	74.00	5.25	388.50	302.02	302.02		DEPOSIT		804.38
IN	02/01/00	0.00	0.00	0.00	0.00	0.48-		INTEREST		502.34
IN	01/28/00	0.00	0.00	0.00	0.00	0.48		INTEREST		502.82
CI	01/14/00						89.88	CASH FOR INMATE		502.34
PR	01/14/00						89.22	PGM FEE: ROOM/BOARD		571.89
PV	01/14/00						85.38	PGM FEE: VICTM COMP		641.11
DP	01/14/00	48.25	5.74	278.88	221.84	221.84		DEPOSIT		688.49
CI	01/04/00						118.80	CASH FOR INMATE		474.65
PR	01/04/00						143.05	PGM FEE: ROOM/BOARD		591.45
PV	01/04/00						114.44	PGM FEE: VICTM COMP		734.50
DP	01/01/00	102.75	5.57	572.18	431.51	431.51		DEPOSIT		848.84
IN	12/30/88	0.00	0.00	0.00	0.00	2.23		INTEREST		417.43
IN	12/28/88	0.00	0.00	0.00	0.00	1.73		INTEREST		415.20

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PACACCLT
00084881 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
CI	12/18/89						89.50	CASH FOR INMATE		419.47
PR	12/18/89						114.84	PGM FEE: ROOM/BOARD		512.97
PV	12/18/89						81.87	PGM FEE: VICTM COMP		627.81
DP	12/18/89	88.00	5.40	458.35	382.15	352.15		DEPOSIT		719.69
CI	12/01/89						107.25	CASH FOR INMATE		367.53
PR	12/01/89						127.47	PGM FEE: ROOM/BOARD		474.78
PV	12/01/89						101.87	PGM FEE: VICTM COMP		602.25
DP	12/01/89	83.75	5.44	508.87	387.88	387.88		DEPOSIT		704.22
CI	11/18/89						113.21	CASH FOR INMATE		318.54
PR	11/18/89						137.14	PGM FEE: ROOM/BOARD		429.78
PV	11/18/89						108.71	PGM FEE: VICTM COMP		688.88
DP	11/18/89	89.50	5.81	548.57	414.92	414.92		DEPOSIT		678.60
IN	11/15/89	0.00	0.00	0.00	0.00	0.44		INTEREST		261.08
CI	11/01/89						82.12	CASH FOR INMATE		252.24
PR	11/01/89						87.81	PGM FEE: ROOM/BOARD		334.38
PV	11/01/89						70.08	PGM FEE: VICTM COMP		421.87
DP	11/01/89	68.75	5.25	350.43	274.88	274.88		DEPOSIT		492.08
CI	10/15/89						118.44	CASH FOR INMATE		217.20
PR	10/15/89						147.31	PGM FEE: ROOM/BOARD		335.64
PV	10/15/89						117.84	PGM FEE: VICTM COMP		483.85
DP	10/15/89	104.00	5.87	599.22	443.51	443.51		DEPOSIT		601.79
CI	10/01/89						83.21	CASH FOR INMATE		188.28
PR	10/01/89						88.25	PGM FEE: ROOM/BOARD		241.49
PV	10/01/89						71.40	PGM FEE: VICTM COMP		330.74
DP	10/01/89	88.00	5.25	387.00	278.59	278.59		DEPOSIT		402.14
OF	09/24/89						1,884.85	COURT ORDER: FEES		122.58
IN	08/21/89	0.00	0.00	0.00	0.00	12.27		INTEREST		2,107.23

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PACACCLT THOMAS JOHN TORRENCE
 COOP4051

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
CI	09/18/89						125.88	CASH FOR INMATE		2,094.88
PR	09/18/89						187.87	PGM FEE: ROOM/BOARD		2,220.94
PV	09/18/89						128.38	PGM FEE: VICTM COMP		2,378.91
DP	09/18/89	112.00	5.84	631.88	473.82	473.52		DEPOSIT		2,505.29
CI	09/01/89						101.31	CASH FOR INMATE		2,031.77
PR	09/01/89						117.79	PGM FEE: ROOM/BOARD		2,133.08
PV	09/01/89						84.23	PGM FEE: VICTM COMP		2,250.87
DP	09/01/89	88.25	5.34	471.17	380.45	380.45		DEPOSIT		2,345.10
IN	08/19/89	0.00	0.00	0.00	0.00		12.37	INTEREST		1,984.85
CI	08/18/89						189.10	CASH FOR INMATE		1,972.28
PR	08/18/89						79.13	PGM FEE: ROOM/BOARD		2,181.38
PV	08/18/89						79.13	PGM FEE: VICTM COMP		2,240.51
DP	08/18/89	81.00	5.80	527.59	400.11	400.11		DEPOSIT		2,319.84
CI	07/30/89						183.11	CASH FOR INMATE		1,918.53
PR	07/30/89						81.10	PGM FEE: ROOM/BOARD		2,112.64
PV	07/30/89						81.10	PGM FEE: VICTM COMP		2,183.74
DP	07/30/89	97.00	5.57	540.69	409.38	409.38		DEPOSIT		2,274.84
IN	07/20/89	0.00	0.00	0.00	0.00		5.12	INTEREST		1,885.48
CI	07/18/89						185.28	CASH FOR INMATE		1,859.34
PR	07/18/89						82.18	PGM FEE: ROOM/BOARD		2,084.82
PV	07/18/89						82.18	PGM FEE: VICTM COMP		2,138.81
DP	07/18/89	89.25	5.52	547.81	414.45	414.45		DEPOSIT		2,219.00
CI	07/01/89						158.47	CASH FOR INMATE		1,804.55
PR	07/01/89						83.88	PGM FEE: ROOM/BOARD		1,883.02
PV	07/01/89						83.98	PGM FEE: VICTM COMP		2,027.00
DP	07/01/89	81.25	5.25	428.59	328.09	328.09		DEPOSIT		2,090.89
IN	08/28/89	0.00	0.00	0.00	0.00		8.81	INTEREST		1,781.88

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PACACCLT
00094891 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
CI	09/18/89						177.86	CASH FOR INMATE		1,755.28
PR	09/18/89						73.63	PGM FEE: ROOM/BOARD		1,839.24
PV	09/16/89						73.63	PGM FEE: VICTM COMP		2,008.87
DP	08/18/89	91.00	5.38	480.88	374.31	374.31		DEPOSIT		2,080.50
CI	09/01/89						131.00	CASH FOR INMATE		1,708.19
PR	08/01/89						50.79	PGM FEE: ROOM/BOARD		1,837.19
PV	08/01/89						50.79	PGM FEE: VICTM COMP		1,887.98
DP	08/01/89	64.50	5.25	338.82	288.44	288.44		DEPOSIT		1,938.77
IN	05/28/89	0.00	0.00	0.00	0.00	8.71		INTEREST		1,872.33
CI	05/14/89						112.38	CASH FOR INMATE		1,885.82
PR	05/14/89						42.13	PGM FEE: ROOM/BOARD		1,777.88
PV	05/14/89						42.13	PGM FEE: VICTM COMP		1,820.11
DP	05/14/89	53.50	5.25	280.87	224.71	224.71		DEPOSIT		1,882.24
CI	04/30/89						183.81	CASH FOR INMATE		1,837.53
PR	04/30/89						78.58	PGM FEE: ROOM/BOARD		1,821.44
PV	04/30/89						78.58	PGM FEE: VICTM COMP		1,898.02
DP	04/30/89	91.50	5.58	510.50	388.12	388.12		DEPOSIT		1,874.60
IN	04/21/89	0.00	0.00	0.00	0.00	8.02		INTEREST		1,588.48
CI	04/18/89						244.85	CASH FOR INMATE		1,581.48
PR	04/18/89						108.89	PGM FEE: ROOM/BOARD		1,828.31
PV	04/18/89						108.89	PGM FEE: VICTM COMP		1,833.00
DP	04/18/89	122.75	5.79	711.24	529.35	529.35		DEPOSIT		2,038.88
CI	04/01/89						200.08	CASH FOR INMATE		1,510.34
PR	04/01/89						84.55	PGM FEE: ROOM/BOARD		1,710.40
PV	04/01/89						84.55	PGM FEE: VICTM COMP		1,794.95
DP	04/01/89	101.25	5.57	563.85	425.53	425.53		DEPOSIT		1,878.80
IN	03/28/89	0.00	0.00	0.00	0.00	4.71		INTEREST		1,453.97

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Abbreviated ROA

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PACACCLT
00094851

THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
CI	03/16/88						180.42	CASH FOR INMATE		1,448.28
PR	03/16/88						84.88	PGM FEE: ROOM/BOARD		1,609.68
PV	03/16/88						84.88	PGM FEE: VICTM COMP		1,674.64
DP	03/16/88	76.50	5.66	433.08	333.85	333.85		DEPOSIT		1,739.60
CI	03/01/88						206.24	CASH FOR INMATE		1,405.95
PR	03/01/88						87.60	PGM FEE: ROOM/BOARD		1,612.18
PV	03/01/88						87.60	PGM FEE: VICTM COMP		1,699.78
DP	03/01/88	108.00	5.51	584.00	439.84	439.84		DEPOSIT		1,767.39
IN	02/24/88	0.00	0.00	0.00	0.00	5.18		INTEREST		1,347.55
IN	02/17/88	0.00	0.00	0.00	0.00	4.99		INTEREST		1,343.40
CI	02/16/88						143.33	CASH FOR INMATE		1,337.41
PR	02/16/88						56.70	PGM FEE: ROOM/BOARD		1,480.74
PV	02/16/88						56.70	PGM FEE: VICTM COMP		1,637.44
DP	02/16/88	72.00	5.25	378.00	284.53	284.53		DEPOSIT		1,694.14
CI	02/01/88						134.28	CASH FOR INMATE		1,299.81
PR	02/01/88						52.37	PGM FEE: ROOM/BOARD		1,433.89
PV	02/01/88						52.37	PGM FEE: VICTM COMP		1,486.28
DP	02/01/88	68.50	5.25	349.12	273.93	273.93		DEPOSIT		1,638.83
CI	01/15/88						84.21	CASH FOR INMATE		1,264.70
PR	01/15/88						29.33	PGM FEE: ROOM/BOARD		1,348.81
PV	01/15/88						29.33	PGM FEE: VICTM COMP		1,378.24
DP	01/15/88	37.25	5.25	195.55	162.43	162.43		DEPOSIT		1,407.57
CI	01/04/88						217.17	CASH FOR INMATE		1,245.14
PR	01/04/88						93.01	PGM FEE: ROOM/BOARD		1,462.31
PV	01/04/88						93.01	PGM FEE: VICTM COMP		1,555.32
DP	01/01/88	108.25	5.73	620.05	465.20	465.20		DEPOSIT		1,648.33
IN	12/30/88	0.00	0.00	0.00	0.00	4.87		INTEREST		1,183.13

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PACACCLT
000946B1 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
CI	12/18/88						188.87	CASH FOR INMATE		1,178.58
PR	12/18/88						88.88	PGM FEE: ROOM/BOARD		1,348.53
PV	12/18/88						88.88	PGM FEE: VICTM COMP		1,418.22
DP	12/18/88	83.00	5.80	484.87	388.81	388.81		DEPOSIT		1,487.81
CI	12/01/88						133.04	CASH FOR INMATE		1,132.10
PR	12/01/88						51.78	PGM FEE: ROOM/BOARD		1,285.14
PV	12/01/88						51.78	PGM FEE: VICTM COMP		1,318.92
DP	12/01/88	85.75	5.25	348.18	271.12	271.12		DEPOSIT		1,388.70
IN	11/30/88	0.00	0.00	0.00	0.00	4.87		INTEREST		1,087.58
CI	11/18/88						147.87	CASH FOR INMATE		1,082.81
PR	11/18/88						58.88	PGM FEE: ROOM/BOARD		1,240.78
PV	11/18/88						58.88	PGM FEE: VICTM COMP		1,288.84
DP	11/18/88	74.78	5.28	392.43	304.83	304.83		DEPOSIT		1,388.50
CI	10/30/88						183.84	CASH FOR INMATE		1,083.87
PR	10/30/88						88.54	PGM FEE: ROOM/BOARD		1,217.31
PV	10/30/88						88.54	PGM FEE: VICTM COMP		1,283.85
DP	10/30/88	84.50	5.25	443.82	341.08	341.08		DEPOSIT		1,380.38
IN	10/28/88	0.00	0.00	0.00	0.00	4.44		INTEREST		1,008.31
CI	10/18/88						147.04	CASH FOR INMATE		1,004.87
PR	10/18/88						58.47	PGM FEE: ROOM/BOARD		1,151.81
PV	10/18/88						58.47	PGM FEE: VICTM COMP		1,210.38
DP	10/18/88	74.25	5.28	388.81	302.88	302.88		DEPOSIT		1,288.88
CI	10/01/88						140.45	CASH FOR INMATE		888.89
PR	10/01/88						55.32	PGM FEE: ROOM/BOARD		1,108.34
PV	10/01/88						55.32	PGM FEE: VICTM COMP		1,181.88
DP	10/01/88	70.25	5.25	368.81	287.87	287.87		DEPOSIT		1,218.88
IN	08/24/88	0.00	0.00	0.00	0.00	4.14		INTEREST		928.01

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PACACCLT
00084881 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
CI	09/18/98						166.47	CASH FOR INMATE		824.87
PR	09/18/98						83.00	PGM FEE: ROOM/BOARD		1,081.34
PV	09/18/98						83.00	PGM FEE: VICTM COMP		1,144.34
DP	09/18/98	80.00	5.25	420.00	324.47	324.47		DEPOSIT		1,207.34
IN	09/02/98	0.00	0.00	0.00	0.00	3.48		INTEREST		882.87
CI	09/01/98						117.47	CASH FOR INMATE		878.38
PR	09/01/98						44.48	PGM FEE: ROOM/BOARD		985.88
PV	09/01/98						44.48	PGM FEE: VICTM COMP		1,041.35
DP	09/01/98	56.50	5.25	296.62	236.11	236.11		DEPOSIT		1,085.84
CI	08/14/98						148.48	CASH FOR INMATE		848.73
PR	08/14/98						59.16	PGM FEE: ROOM/BOARD		898.19
PV	08/14/98						59.16	PGM FEE: VICTM COMP		1,057.35
DP	08/14/98	74.00	5.33	394.62	309.22	309.22		DEPOSIT		1,116.51
CI	07/31/98						143.73	CASH FOR INMATE		810.29
PR	07/31/98						55.80	PGM FEE: ROOM/BOARD		854.02
PV	07/31/98						55.80	PGM FEE: VICTM COMP		1,010.82
DP	07/31/98	72.25	5.25	378.31	285.46	285.46		DEPOSIT		1,087.82
IN	07/29/98	0.00	0.00	0.00	0.00	2.84		INTEREST		772.38
CI	07/18/98						171.99	CASH FOR INMATE		769.52
PR	07/18/98						70.67	PGM FEE: ROOM/BOARD		841.51
PV	07/18/98						70.67	PGM FEE: VICTM COMP		1,012.18
DP	07/18/98	87.00	5.42	471.15	380.46	380.46		DEPOSIT		1,082.85
IN	07/02/98	0.00	0.00	0.00	0.00	2.82		INTEREST		722.40
CI	07/01/98						216.19	CASH FOR INMATE		718.78
PR	07/01/98						92.62	PGM FEE: ROOM/BOARD		835.97
PV	07/01/98						92.62	PGM FEE: VICTM COMP		1,028.48
DP	07/01/98	108.50	5.83	616.79	482.91	482.91		DEPOSIT		1,121.01

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

PRIVATE SECTOR ACCOUNT TRANSACTIONS

PACACCLT 0004851 THOMAS JOHN TORRENCE

= RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL MONTHLY RATE.

TRAN TYPE	DATE	HOURS	RATE	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
CI	08/18/88		202.25					CASH FOR INMATE		858.10
PR	08/18/88		88.82					PGM FEE: ROOM/BOARD		880.38
PV	08/18/88		85.83					PGM FEE: VICTM COMP		948.98
DP	08/18/88	102.00	5.60	570.88	430.80	430.80		DEPOSIT		1,031.61
CI	08/01/88		181.09					CASH FOR INMATE		801.01
PR	08/01/88		80.12					PGM FEE: ROOM/BOARD		782.10
PV	08/01/88		80.12					PGM FEE: VICTM COMP		872.22
DP	08/01/88	84.50	5.55	834.11	404.74	404.74		DEPOSIT		982.36
IN	08/28/88	0.00	0.00	0.00	0.00	0.00	3.88	INTEREST		547.60
CI	05/15/88		173.18					CASH FOR INMATE		543.82
PR	05/15/88		71.27					PGM FEE: ROOM/BOARD		717.10
PV	05/15/88		71.27					PGM FEE: VICTM COMP		788.37
DP	05/15/88	88.00	5.40	478.10	383.23	383.23		DEPOSIT		858.84
TX	08/04/88		287.00					TAX PAYMENT		498.41
CI	05/01/88		182.38					CASH FOR INMATE		792.41
PR	05/01/88		81.03					PGM FEE: ROOM/BOARD		848.79
PV	05/01/88		81.03					PGM FEE: VICTM COMP		1,008.82
DP	05/01/88	77.50	5.25	408.87	318.13	318.13		DEPOSIT		1,087.65
IN	04/29/88	0.00	0.00	0.00	0.00	0.00	2.84	INTEREST		752.72
CI	04/18/88		171.21					CASH FOR INMATE		749.88
PR	04/18/88		70.28					PGM FEE: ROOM/BOARD		821.09
PV	04/18/88		70.28					PGM FEE: VICTM COMP		881.37
DP	04/18/88	88.25	5.25	498.88	388.83	388.83		DEPOSIT		1,081.65
CI	04/01/88		181.94					CASH FOR INMATE		703.02
PR	04/01/88		78.80					PGM FEE: ROOM/BOARD		884.88
PV	04/01/88		75.80					PGM FEE: VICTM COMP		880.88
DP	04/01/88	83.50	5.39	503.87	383.84	383.84		DEPOSIT		1,038.18

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PACACCLY
0004851 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
IN	03/31/88	0.00	0.00	0.00	0.00	2.57		INTEREST		852.82
CI	03/18/88						170.28	CASH FOR INMATE		650.06
PR	03/18/88						68.88	PGM FEE: ROOM/BOARD		820.43
PV	03/18/88						68.88	PGM FEE: VICTM COMP		880.31
DP	03/18/88	83.00	5.81	485.87	358.73	358.73		DEPOSIT		960.19
CI	02/27/88						181.93	CASH FOR INMATE		602.48
PR	02/27/88						78.80	PGM FEE: ROOM/BOARD		785.38
PV	02/27/88						78.80	PGM FEE: VICTM COMP		880.88
DP	02/27/88	83.80	5.98	503.87	383.83	383.83		DEPOSIT		938.58
IN	02/25/88	0.00	0.00	0.00	0.00	2.38		INTEREST		553.08
CI	02/13/88						141.80	CASH FOR INMATE		550.87
PR	02/13/88						68.01	PGM FEE: ROOM/BOARD		682.67
PV	02/13/88						68.01	PGM FEE: VICTM COMP		748.58
DP	02/13/88	70.75	5.28	373.40	281.28	281.28		DEPOSIT		804.88
CI	01/30/88						172.40	CASH FOR INMATE		513.30
PR	01/30/88						70.88	PGM FEE: ROOM/BOARD		885.73
PV	01/30/88						70.88	PGM FEE: VICTM COMP		758.88
DP	01/30/88	84.25	5.81	472.43	381.30	381.38		DEPOSIT		827.48
IN	01/28/88	0.00	0.00	0.00	0.00	1.87		INTEREST		488.08
CI	01/18/88						101.04	CASH FOR INMATE		484.42
PR	01/18/88						38.81	PGM FEE: ROOM/BOARD		885.48
PV	01/18/88						38.81	PGM FEE: VICTM COMP		802.37
DP	01/18/88	42.00	5.88	248.04	188.48	188.48		DEPOSIT		838.28
CI	01/02/88						178.38	CASH FOR INMATE		438.82
PR	01/02/88						72.84	PGM FEE: ROOM/BOARD		818.20
PV	01/02/88						72.84	PGM FEE: VICTM COMP		888.04
DP	01/01/88	81.80	5.31	485.81	370.82	370.82		DEPOSIT		781.88

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PACACCLT
00084851 THOMAS JOHN TORRENCE

PRIVATE SECTOR ACCOUNT TRANSACTIONS

* RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL HOURLY RATE.

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
IN	12/30/87	0.00	0.00	0.00	0.00	1.37		INTEREST		391.28
CI	12/18/87						189.17	CASH FOR INMATE		388.89
PR	12/18/87						89.29	PGM FEE: ROOM/BOARD		559.09
PV	12/18/87						89.29	PGM FEE: VICTM COMP		628.38
DP	12/18/87	78.00	5.85	481.81	353.84	353.84		DEPOSIT		687.84
CI	12/01/87						108.86	CASH FOR INMATE		343.70
PR	12/01/87						40.55	PGM FEE: ROOM/BOARD		452.68
PV	12/01/87						40.55	PGM FEE: VICTM COMP		483.21
DP	12/01/87	48.00	5.83	270.34	217.09	217.09		DEPOSIT		633.78
IN	11/20/87	0.00	0.00	0.00	0.00	0.88		INTEREST		318.67
CI	11/14/87						243.84	CASH FOR INMATE		315.88
PR	11/14/87						108.09	PGM FEE: ROOM/BOARD		559.62
PV	11/14/87						108.09	PGM FEE: VICTM COMP		685.71
DP	11/14/87	118.50	6.07	707.28	628.55	628.55		DEPOSIT		771.80
CI	10/31/87						281.89	CASH FOR INMATE		245.25
PR	10/31/87						115.14	PGM FEE: ROOM/BOARD		507.24
PV	10/31/87						115.14	PGM FEE: VICTM COMP		622.38
DP	10/31/87	128.00	5.85	787.83	589.03	589.03		DEPOSIT		737.52
IN	10/28/87	0.00	0.00	0.00	0.00	0.31		INTEREST		188.48
CI	10/18/87						238.88	CASH FOR INMATE		188.18
PR	10/18/87						102.74	PGM FEE: ROOM/BOARD		405.08
PV	10/18/87						102.74	PGM FEE: VICTM COMP		507.60
DP	10/18/87	114.80	5.88	684.88	510.88	510.88		DEPOSIT		610.54
CI	10/01/87						87.28	CASH FOR INMATE		98.88
PR	10/01/87						30.71	PGM FEE: ROOM/BOARD		188.97
PV	10/01/87						30.71	PGM FEE: VICTM COMP		217.68
DP	10/01/87	38.00	5.25	204.75	189.18	189.18		DEPOSIT		248.39

Torrence v. S.C. Dept of Corr.
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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

REPORT NO. 01

PRIVATE SECTOR ACCOUNT TRANSACTIONS
 * RATE IS CALCULATED AVERAGE RATE - OVERTIME, BACKPAY
 OR OVERPAYMENTS MAY CAUSE RATE TO VARY FROM ACTUAL
 HOURLY RATE.

PASACCLT THOMAS JUMM TORRENCE

TRAN TYPE	DATE	HOURS	RATE*	GROSS	NET	DEPOSIT	WITHDRAW	DESCRIPTION	VOID	BALANCE
CI	08/18/87						129.61	CASH FOR INMATE		79.20
PR	09/16/87						54.93	PCM FEE: ROOM/BOARD		218.81
PV	09/18/87						64.93	PCM FEE: VICTM COMP		273.74
DP	09/18/87	89.75	5.25	388.18	288.08	288.08		DEPOSIT		328.67
CI	08/29/87						150.53	CASH FOR INMATE		42.58
PR	08/29/87						80.14	PCM FEE: ROOM/BOARD		183.11
PV	08/29/87						80.14	PCM FEE: VICTM COMP		253.25
DP	08/29/87	73.75	9.44	400.83	310.80	310.80		DEPOSIT		312.39
CI	08/15/87						12.55	CASH FOR INMATE		2.49
PR	08/15/87						3.74	PCM FEE: ROOM/BOARD		15.04
PV	08/15/87						3.74	PCM FEE: VICTM COMP		18.78
DP	08/15/87	4.75	5.25	24.83	22.52	22.52		DEPOSIT		22.52

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, #094651,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 12-ALJ-04-0143-AP

Grievance No.: ECI 0980-10

**ORDER DENYING APPELLANT'S
MOTION TO DISMISS RESPONDENT'S
BRIEF, GRANTING APPELLANT'S
MOTION FOR ACCESS TO THE COURT,
AND GRANTING APPELLANT'S
MOTION TO ENLARGE TIME TO FILE
ITS BRIEF**

This matter is before the South Carolina Administrative Law Court (ALC) pursuant to the Notice of Appeal filed March 7, 2012 by Appellant Thomas J. Torrence (Inmate). On July 16, 2012, Inmate filed the following motions: Motion to Dismiss Respondent's Brief Pursuant to Rules 60(A) and 62, ALC, Appellant's Renewed Motion to Order Respondent to Provide Appellant a Copy of All Administrative Law Court Cases Cited in Brief(s), and Appellant's Motion to Enlarge Time to File Principal Brief.

Concerning Appellant's Motion to Dismiss Respondent's Brief Pursuant to Rules 60(A) and 62, ALC, in light of the complexity and importance of the issue raised the Court grants leave to the parties to exceed the page limitations for briefs found in ALC Rule 60(A). Each party may file a brief that does not exceed 40 pages.

Concerning Appellant's Renewed Motion to Order Respondent to Provide Appellant a Copy of All Administrative Law Court Cases Cited in Brief(s), the Court grants Appellant's renewed motion for Access. Respondent must serve copies of all Administrative Law Court decision cited in its brief upon Appellant by August 15, 2012.

Concerning Appellant's Motion to Enlarge Time to File Principal Brief, the Court grants Appellant's Motion to Enlarge Time to File its Brief. Appellant's Reply Brief must be filed no later than November 15, 2012.

LAW OFFICES

JUL 26 2012

MALONE THOMPSON
SUMMERS & OTT, LLC

FILED

JUL 25 2012


SC ADMIN. LAW COURT

IT IS HEREBY ORDERED that the Appellant's Motion to Dismiss Respondent's Brief is **DENIED** and each party may file a brief that does not exceed forty (40) pages.

IT IS ALSO ORDERED that the Appellant's Renewed Motion for Access to the Court is **GRANTED** and Respondent must serve copies of all ALC decisions cited in its brief upon Appellant by August 15, 2012.

IT IS FURTHER ORDERED that any reply brief must be filed by November 15, 2012 and must not exceed 40 pages in length.

AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

July 25, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date
served this order in the above entitled action upon all
parties to this cause by depositing a copy hereof,
in the United States mail, postage paid, or in the Emergency
Mail Service addressed to the party(ies) or their attorney(s).
This 25th day of July 2012
By: R. E. L.
Judicial Law Clerk

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas J. Torrence, # 94561,)
)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
)
Respondent.)

Docket No. 12-ALJ-04-00143-AP
Grievance No. ECI-0980-10

THE DEPARTMENT'S RESPONSE IN
SATISFACTION OF THE COURT'S
DECISION TO GRANT THE
APPELLANT'S RENEWED MOTION
FOR ACCESS

By an order issued July 25, 2012, this Court granted the Appellant's renewed motion for access which the Appellant had filed on or about July 16, 2012.

The operative portion of the July 25, 2012 order determined and directed as follows:

Concerning Appellant's Renewed Motion to Order [the Department] to Provide [Him] a Copy of All Administrative Law Court Cases Cited in Brief(s), the Court grants Appellant's renewed motion for Access. [The Department] must serve copies of all Administrative Law Court [decisions] cited in its brief upon Appellant by August 15, 2012.¹

Thus, in satisfaction of the above-quoted provision of the Court's July 25, 2012 Order, the Department, by and through its undersigned counsel, respectfully serves the Appellant with hard copies of all of the Administrative Law Court ["ALC"] decisions it cited within the brief it filed with the Court on July 9, 2012 in the instant case.²

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¹ See this Court's July 25, 2012 Order, pp. 1 - 2.

² The above-referenced brief, filed on July 9, 2012, was styled as follows: "The Department's Brief in Support of its Argument that this Court Should Affirm the Department's Denial of the Appellant's Administrative Grievance."

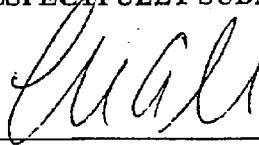
The Department provides the following alphabetical accounting of the 25 ALC decisions it cited within its July 9, 2012 brief, and, consequentially, the decisions for which it now provides hard copies to the Appellant:

- 1) *Ackerman*, #266928, *et al.*, v. S.C. Dep't of Corr., ALC Docket Nos. 07-ALJ-04-00444-AP, *et seq.*;
- 2) *Arnold*, #238375, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00200-AP;
- 3) *Bradley*, #281630, v. S.C. Dep't of Corr., Docket No. 07-ALJ-04-0772-AP;
- 4) *Bridgeman*, #130350, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00610-AP;
- 5) *Cudd*, #240049, v. S.C. Dep't of Corr., Docket No. 07-ALJ-04-0771-AP;
- 6) *Daughtry*, #250139, v. S.C. Dep't of Corr., Docket No. 04-ALJ-00783-AP;
- 7) *Gibson*, #241326, v. S.C. Dep't of Corr., Docket No. 10-ALJ-04-00007-AP;
- 8) *Grate*, #232524, v. S.C. Dep't of Corr., Docket No. 07-ALJ-04-0897-AP;
- 9) *Grimmett, Jr.*, #102226, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00757-AP;
- 10) *Jones*, #130817, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-0506-AP;
- 11) *Keitt*, #277284, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-0519-AP;
- 12) *Lampley*, #97724, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00489-AP;
- 13) *Larrimore*, #238126, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00470-AP;
- 14) *Manigault*, #280550, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00756-AP;
- 15) *McLemore*, #127966, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00023-AP;
- 16) *Parker*, #291769, v. S.C. Dep't of Corr., Docket No. 07-ALJ-04-0770-AP;
- 17) *Pipkin*, #283616, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00733-AP;
- 18) *Sapp*, #218694, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00732-AP;
- 19) *Smiley*, #262734, v. S.C. Dep't of Corr., Docket No. 08-ALJ-04-00571-AP;
- 20) *Sullivan*, #265327, v. S.C. Dep't of Corr., Docket No. 07-ALJ-04-0782-AP;
- 21) *Sumter*, #242379, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00749-AP;
- 22) *Timmons*, #280769, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-1156-AP;
- 23) *Wicker v. S.C. Dep't of Corr.*, 2001 WL 1005574 (ALJD 2001);
- 24) *Williams*, #187203, vs. S.C. Dep't of Corr., Docket No. 06-ALJ-04-622-AP; and
- 25) *Wright*, #200123, v. S.C. Dep't of Corr., 2006 WL 1430140 (ALJD 2006).

The hard copies of these decisions appear in the same order as is reflected in the list provided immediately above.

Out of abundance of caution and in an effort to preserve the record in the instant matter, the Department's undersigned counsel is filing with the Court a copy of the Department's instant submission as well as hard copies of the 25 decisions listed above.

RESPECTFULLY SUBMITTED,



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August 15, 2012

JUL 27 2012

MALONE, THOMPSON
SUMMERS & OTT, LLCSTATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Francis Ackerman, #266928, et al.,	)	Docket Nos. 07-ALJ-04-00444 through 00449-AP
	)	Docket Nos. 07-ALJ-04-00500 through 00548-AP
	)	0549-IJ, 0550 through 07-00559-AP
Appellants,	)	Docket Nos. 07-ALJ-04-00623 through 00632-AP
	)	Docket Nos. 07-ALJ-04-00671 through 00677-AP
	)	Docket Nos. 07-ALJ-04-00691, 0752, 0798, 0826,
	)	0856 through 0868-AP
	)	Docket Nos. 07-ALJ-04-00869 through 00872-AP
vs.	)	Docket Nos. 07-ALJ-04-00444, 0876, 0885
	)	Docket Nos. 08-ALJ-04-00141 through 00149-AP
	)	Docket Nos. 08-ALJ-04-00169 through 0171-AP
	)	Docket No. 08-ALJ-04-00192-AP
South Carolina Department of Corrections,	)	Docket Nos. 08-ALJ-04-00966 through 01022-IJ
	)	Docket Nos. 08-ALJ-04-01023 through 01045-IJ
	)	Docket No. 09-ALJ-04-00304-IJ
)	
Respondent.	)	SECOND AMENDED ORDER¹

STATEMENT OF THE CASE

In this consolidated action before the Administrative Law Court (ALC), the Appellants appeal the denial by the South Carolina Department of Corrections (Department or DOC) of 197 administrative grievances filed by them under DOC Policy Number GA-01.12 (GA-01.12). The Appellants include current and former inmates of the Department who either currently participate or at one time participated in the prison industries project operated by the Department at Lieber Correctional Institution (Lieber) in which Williams Technologies, Inc. (WTI), and now Caterpillar, Inc., act as the private industry sponsors. The Appellants argue that they are entitled to back pay and a higher hourly rate of pay for the labor they have provided or currently provide to the prison industries project operated at Lieber. Specifically, the Appellants contend that they are entitled to the "prevailing wage" under S.C. Code Ann. § 24-3-430(D) (2007).

Pursuant to an April 14, 2010 order, this court, in the interest of judicial economy, instructed the parties that it would consider the issues relevant to the Appellants' appeals in three

¹ This Order is issued pursuant to an Order of the South Carolina Court of Appeals allowing the Administrative Law Court to issue this Second Amended Order to correct a clerical error. This Order is amended to correct the caption to include the docket numbers of four (4) inmates inadvertently omitted.

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levels. In the first level of review, which was set forth in an order dated March 10, 2011, the court addressed the following two issues: (1) did Adkins v. S.C. Department of Corrections, 360 S.C. 413, 602 S.E.2d 51 (2004) and Wicker v. S.C. Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) create new substantive rights and/or new remedies? and (2) do Adkins and Wicker apply prospective or retrospectively? As discussed in the March 10, 2011 order, the court found that Adkins and Wicker created neither new substantive rights nor new remedies and that both decisions applied retrospectively.

The court now turns to the second level of review, which involves the timeliness of the filing of the Appellants' grievances under GA-01.12. The Appellants make the following arguments: (1) the Appellants' grievances are not time-barred under the fifteen-day time limit for filing grievances set forth in Paragraph 13.1 of GA-01.12 because they concern policies/procedures and thus fall under Paragraph 13.9; (2) the Appellants had reasonable cause under Paragraph 13.9 of GA-01.12 not to file within Paragraph 13.1's fifteen-day time limit; (3) the Department's application of Paragraph 13.1 violated the Appellants' due process rights because it cut off the Appellants' claims before they accrued; (4) the Department waived Paragraph 13.1 because it did not raise Paragraph 13.1 until the Step 2 appeal and it considered the Appellants' grievances on the merits before invoking Paragraph 13.1; (5) the Department was equitably estopped from raising Paragraph 13.1; (6) the Appellants were "effectively barred" from exercising their grievance and appeal rights before Adkins and Wicker and therefore Paragraph 13.1's fifteen-day filing deadline was tolled prior to the issuance of those decisions; (7) Paragraph 13.1's fifteen-day filing deadline was tolled by the filing of the Appellants' class action suit in circuit court; and (8) the Appellants complied with Paragraph 13.1 by filing their grievances within fifteen days of a term of employment.

BACKGROUND

In 2002, the Appellants filed a class action lawsuit in circuit court against the Department and WTI in which they sought back pay and higher current pay under the provisions of Section 24-3-430(D). In that lawsuit, which was captioned Williams v. S.C. Department of Corrections, the Appellants alleged a cause of action under South Carolina's Payment of Wages Act, claiming they were due lost wages because they were not paid the "prevailing wage" as specified in Section 24-3-430(D).

On August 23, 2004, while the Appellants' class action lawsuit was pending, the Supreme Court issued its decisions in Wicker and Adkins. In those two cases, inmates who then participated or at one time participated in a prison industries projects operated by the Department alleged that they were entitled to the "prevailing wage" pursuant to Section 24-3-430(D). As discussed in this court's March 10, 2011 order, the Supreme Court held that Section 24-3-430(D) did not give rise to a private cause of action,² but that inmates could pursue their claims under the Department's grievance policies and, if necessary, appeal the Department's decision to the ALC.³

After Adkins and Wicker were issued on August 23, 2004, the Appellants' counsel filed grievances with Department officials at Lieber on behalf of the Appellants. Although Department officials had begun processing those grievances, on November 3, 2004, the circuit court judge presiding over the class action lawsuit, which was still active, stayed the Department's efforts to process and adjudicate all administrative grievances—including the Appellants'—which it had received from or on behalf of inmates who articulated pay claims attributed to their participation in the Department's project at Lieber. After it imposed this stay on November 3, 2004, however, the circuit court granted motions for dismissal filed by both the Department and WTI, and, by an order filed on July 1, 2005, the circuit court dismissed the Appellants' class action lawsuit and decertified the class it had originally recognized. In its July 1, 2005 order, the circuit court also lifted the stay it had imposed on November 3, 2004. However, because the Appellants subsequently appealed the circuit court's order, the stay imposed by the circuit court on November 3, 2004 was reimposed.

On February 26, 2007, the South Carolina Supreme Court affirmed the circuit court's dismissal of the class action lawsuit in its opinion, Williams v. S.C. Department of Corrections, 372 S.C. 255, 641 S.E.2d 885 (2007), and, as a result, the stay imposed by the circuit court on November 3, 2004 ceased being effective on or about May 22, 2007. Thereafter, the Department resumed processing and adjudicating the Appellants' grievances. Ultimately, the Department issued final decisions denying each Appellant's respective grievance, largely finding that the grievances were not filed within the fifteen-day time period required under Paragraph 13.1 of

² Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55.

³ Wicker, 360 S.C. at 423-25, 602 S.E.2d at 57-58.

GA-01.12. The Appellants timely appealed those decisions to this court. Subsequently, during a conference call held on February 25, 2010, the parties agreed to consolidate the appeals for the purposes of briefing and filing the record.

ISSUES ON APPEAL

1. Are the Appellants' grievances not time-barred under the fifteen-day time limit for filing grievances set forth in Paragraph 13.1 of GA-01.12 because they concern "policies/procedures" and thus fall under Paragraph 13.9 of GA-01.12?
2. Did the Appellants have reasonable cause not to file within Paragraph 13.1's fifteen-day time limit?
3. Did the Department's application of Paragraph 13.1 violate the Appellants' due process rights because it cut off the Appellants' claims before they accrued?
4. Did the Department waive its right to raise Paragraph 13.1's fifteen-day time limit?
5. Was the Department equitably estopped from raising Paragraph 13.1?
6. Was the fifteen-day time limit set forth in Paragraph 13.1 tolled until after the issuance of Adkins and Wicker because, prior to that time, the Appellants were "effectively barred" from exercising their grievance and appeal rights?
7. Was the fifteen-day time limit set forth in Paragraph 13.1 tolled by the filing of the Appellants' class action suit in circuit court?
8. Did the Appellants comply with Paragraph 13.1 by filing their grievances within fifteen days of a term of employment?

STANDARD OF REVIEW

As set forth above, this case is before the ALC on appeal from consolidated final decisions of the Department pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2010) of the Administrative Procedures Act (APA). As such, the Administrative Law Judge (ALJ) sits in an appellate capacity under the APA rather than as an independent finder of fact. In South Carolina, the provisions of the APA—specifically Section 1-23-380(A)(5)—govern the circumstances in which an appellate body may reverse or modify an agency decision. That section 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. 2010).

DISCUSSION

I. Did the Appellants' claims involve a DOC "policy/procedure" such that there was no time limit to file under Paragraph 13.9 of GA-01.12?

Paragraph 13.1 of GA-01.12 generally requires that Step 1 grievances be filed "within 15 days of the alleged incident." DOC Policy Number GA-01.12, ¶ 13.1. However, Paragraph 13.9 of GA-01.12 provides that "[e]xceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures." DOC Policy Number GA-01.12, ¶ 13.9. In the present case, the Appellants contend that their grievances concerned DOC "policies/procedures" and that no time limit therefore applied to the filing of their grievances. I disagree.

Before delving into the specifics of the Appellants' argument, it is necessary to briefly discuss the nature of, and the purpose behind, Paragraph 13.1's fifteen-day filing deadline. By issuing GA-01.12, the Department has unquestionably established a prescribed procedure for handling inmate grievance matters that has been approved by the South Carolina Supreme Court. See Al-Shabazz v. State, 338 S.C. 354, 373, 527 S.E.2d 742, 752 (2000) ("We hold that Department's disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in Wolff v. McDonnell, *supra*. We note that Department also prepared its grievance procedures in compliance with the Civil Rights of Institutionalized Persons Act."). The Department's prescribed procedure further sets forth a specific time frame to exercise the rights created under those provisions. Therefore, as discussed below, it appears that the Department's regulations are a "statute of creation."

Under South Carolina law, a statute that creates a new liability and affixes the time within which an action may be commenced is a “statute of creation,” and commencement within the time affixed is an indispensable condition of the action. Knight Publ’g Co. v. Univ. of S.C., 295 S.C. 31, 33, 367 S.E.2d 20, 22 (1988), overruled on other grounds by McLendon v. S.C. Dep’t of Highways and Public Transp., 313 S.C. 525, 443 S.E.2d 539 (1994). Although the failure to timely commence an action pursuant to a statute of creation is not a subject matter jurisdiction defect, such an action “cannot be maintained unless brought within the time allowed by that statute.” Simpson v. Sanders, 314 S.C. 413, 415 n.1, 445 S.E.2d 93, 94 n.1 (1994). When a statute both creates a cause of action and includes a time limit for its commencement, compliance with the time limit is a condition precedent to the maintenance of the action. 54 C.J.S. Limitations of Actions § 31 (updated Dec. 2011). “Such a statutory time limit conditions the existence of the right of action, thereby creating a substantive, rather than procedural, limitation on the right. Bringing suit within the prescribed time is a condition of liability itself, not of the remedy alone.” Id.

The rationale behind a statute of creation is similar to that of a statute of limitations. Significantly, South Carolina courts have held that “[s]tatutes of limitations are not simply technicalities,” but rather are “fundamental to a well-ordered judicial system.” Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). “The purpose of statutes of limitation is to ensure litigation is ‘brought within a reasonable time in order that evidence be reasonably available and there be some end to litigation.’” Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (quoting Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct. App. 2008)). “Statutes of limitation embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690 (quoting Moates, 322 S.C. at 176, 470 S.E.2d at 404). Moreover, statutes of limitations relieve courts of the burden of trying stale claims of those who have “slept on their rights.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690.

In the present case, the court finds that the Appellants’ interpretation of the term “policies/procedures” in Paragraph 13.9 is overly expansive. The Appellants appear to argue that the term, which is not defined in GA-01.12, refers to any “act or method of proceeding in an

action.” However, if the term were construed that broadly, Paragraph 13.9’s exception would effectively swallow Paragraph 13.1’s general rule. Because such a construction would fail to give proper effect to Paragraph 13.1’s fifteen-day filing deadline, it must be rejected. Cf. State ex rel. McLeod v. Nessler, 273 S.C. 371, 373, 256 S.E.2d 419, 420 (1979) (“In determining the meaning of a statute, it is the duty of this Court to give force and effect to all parts of the statute, if possible.”); Hinton v. S.C. Dep’t of Prob., Parole & Pardon Servs., 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004) (“Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect”) (emphasis added).

Moreover, the Appellants’ broad interpretation of the term “policies/procedures” does not comport with public policy. The Department has a legitimate interest in investigating grievances while they are still new, and thus public policy calls for the application of some limitations period to the Appellants’ prevailing wage claims. See Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004) (noting that the prison system has a legitimate interest in investigating complaints while they are still fresh); see also Woodford v. Ngo, 548 U.S. 81, 95 (2006) (“When a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved.”). Here, the fifteen-day filing deadline from Paragraph 13.1 is the only limitations period applicable to these claims.⁴ Therefore, ruling in favor of the Appellants would mean that inmates would not be required to file prevailing wage grievances within any set time period. Due in part to public policy concerns over such a result, this court has consistently held that prevailing wage claims do not involve the Department’s “policies or procedures.” See, e.g., Lawson v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 12, 2007); Wright v. S.C. Dep’t of Corr., 06-ALJ-04-00114-AP, 2006 WL 1430140 (S.C. Admin. Law Ct. Apr. 28, 2006).

The importance of filing deadlines is underscored by the facts of this case. The record demonstrates the Department did not begin receiving Step 1s from the Appellants regarding their prevailing wage claims until September 22, 2004. The record also reflects that a significant

⁴ The statutory provisions upon which Appellants base their pay claims do not create a private right of action. See Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Therefore, statutes of limitations derived from state law do not apply to Appellants’ claims. See Talford v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 14, 2007).

number of the Appellants began participating in the prison industries project at Lieber in 1999. Thus, approximately five years passed between when these Appellants began participating in the project and when they filed their Step 1s challenging their pay. Clearly, the passage of five years could significantly affect the Department's ability to defend the Appellants' claims.⁵

In contrast to the Appellants, the Department—the agency that drafted Paragraph 13.9—presents a very persuasive construction of the term “policies/procedures.” In its brief, the Department argues:

[T]he terms “policies” and “procedures” constitute approved guidelines for handling the agency's day-to-day operations as well as statements expressing the basic expectations of conduct for agency staff and inmates. More formally stated, the terms “policies” and “procedures” constitute agency directives deemed by the responsible agency officials as “necessary to preserve internal order and discipline, and to maintain institutional security in the prison.”

(footnote and citations omitted). This interpretation is consistent with the way in which “policies/procedures” is used throughout GA-01.12. See Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Ct. App. 2003) (holding that undefined terms “must be construed in context”). Significantly, nearly all of the references to “policy/procedure” in GA-01.12 are to the official policies and procedures set forth within that document or another similar operating document issued by the Department. See, e.g., DOC Policy Number GA-01.12, ¶ 1.3 (“Every inmate assigned to a South Carolina Department of Corrections (SCDC) institution is eligible to utilize the grievance system as set forth in this policy/procedure.”) (emphasis added); DOC Policy Number GA-01.12, Note to ¶ 10.5 (“The Warden's decision to grant restitution/monetary reimbursement will not require additional approval to have state provided like/issued items issued or deposits made to the grievant's E.H. Cooper Account so long as the amount of reimbursement is within the monetary limits of SCDC Policy/Procedure OP-22.03”) (emphasis added); DOC Policy Number GA-01.12, ¶ 13.1 (“No inmate (except the grievant, if s/he requests it) and no employee (other than those specified in this policy/procedure) will be given a copy of a grievance.”) (emphasis added); DOC Policy

⁵ The court notes in this regard that the statutory deadline for filing wage recovery claims under South Carolina's Payment of Wages Act is three years. See S.C. Code Ann. § 41-10-80(C) (Supp. 2010) (“Any civil action for the recovery of wages must be commenced within three years after the wages become due.”).

Number GA-01.12, ¶ 17 (“The Inmate Grievance Branch will serve as monitor to ensure compliance with this policy/procedure.”) (emphasis added).

In addition to being supported by the text of GA-01.12, the Department’s interpretation of the term “policies/procedures” in Paragraph 13.9 avoids the public policy problems inherent in the Appellants’ construction. Under the Department’s interpretation, the filing of a “policies/procedures” grievance under Paragraph 13.9 would not force the Department to defend actions it took many years ago. Rather, the Department would merely be required to determine whether the “policies/procedures” it currently has in effect should be changed.

I find that the Department’s interpretation of “policies/procedures” is reasonable and should be accepted by this court. In that light, it is clear that the Appellants’ prevailing wage claims do not concern “policies/procedures” as that term is used in Paragraph 13.9.

The Appellants’ attempt to argue otherwise by pointing to this court’s use of the term “policies” in its March 10, 2011 order is unpersuasive. Specifically, Appellants refer to the following portion of the court’s order:

Paragraph 7 of DOC Policy Number GA-01.12, which has existed in some form since May 1, 1996, sets forth the issues that are considered grievable by DOC. Among other grievable issues, it includes the following: “Department policies/procedures, directives, or conditions which directly affect an inmate.” DOC Policy Number GA-01.12, ¶ 7.1 (emphasis added). Unquestionably, inmates are “directly affect[ed]” by DOC policies that cause them to be paid less than that required by law. Thus, this provision, which is very broad in scope, encompasses prevailing wage claims.

(emphasis added).

Although the court employed the term “policies” in discussing the Appellants’ claims, its use of that term was made in the context of determining whether the Appellants’ claims were grievable under Paragraph 7.1 of GA-01.12. The court was simply describing the Appellants’ claims; it was not ruling on whether the Department did in fact have policies to underpay inmates. Moreover, in utilizing the term “policies,” the court was referring to its broad meaning as “course[s] of action,”⁶ not to the meaning ascribed to the term in Paragraph 13.9. The sentence highlighted above was meant to convey the court’s conclusion that the Department’s

⁶ See [Dictionary.com](http://dictionary.reference.com), <http://dictionary.reference.com> (last visited Jan. 23, 2012) (defining “policy”).

alleged action in the case (i.e., deciding to pay the Appellants less than the prevailing wage) would have, if true, created a "condition" that "directly affected" the Appellants.⁷

While the Appellants contend that the term "policies" should be given the same meaning in Paragraph 7.1 as it is in Paragraph 13.9, Paragraph 7.1 makes grievable not only "policies/procedures" that directly affect inmates, but also "directives" and "conditions." See DOC Policy Number GA-01.12, ¶ 7.1 ("The following issues will be considered grievable: Department policies/procedures, directives, or conditions which directly affect an inmate.") (emphasis added). Thus, ruling that the Appellants' grievances do not concern "policies/procedures" under Paragraph 13.9 is not inconsistent with ruling that the Appellants' claims were grievable under Paragraph 7.1.

For the foregoing reasons, I conclude that prevailing wage claims do not constitute grievances concerning "policies/procedures" under Paragraph 13.9 of GA-01.12. Rather, I find that prevailing wage claims are "incident" grievances and thus must be filed within the fifteen-day timeframe set forth in Paragraph 13.1.

II. Did the Appellants have reasonable cause under Paragraph 13.9 not to file within Paragraph 13.1's fifteen-day time frame?

The Appellants next argue that, if this court determines that their Step 1 grievances constituted "incident" grievances and, therefore, were subject to Paragraph 13.1's fifteen-day filing deadline, they had "reasonable cause" under Paragraph 13.9 not to file their Step 1s before the South Carolina Supreme Court issued its opinions in Adkins and Wicker. Specifically, the Appellants contend that the Department's "practice of denying grievability" for prevailing wage claims, as well as the ALC's en banc order in McNeil v. South Carolina Department of Corrections, 00-ALJ-04-00336-AP (S.C. Admin. Law Ct. Sept. 5, 2001), "effectively barred"

⁷ In this court's view, the Appellants' wage rates were "condition[s]" affecting their participation in the prison industries project operated at Lieber. Indeed, the Prison Industries Act specifically refers to inmates' "rates of pay" as "conditions of employment." See S.C. Code Ann. § 24-3-315 (2007) (The director must determine prior to using inmate labor in a prison industry project that it will not displace employed workers, that the locality does not have a surplus of available labor for the skills, crafts, or trades that would utilize inmate labor, and that the rates of pay and other conditions of employment are not less than those paid and provided for work of similar nature in the locality in which the work is performed.") (emphasis added).

them from exercising their grievance and appeal rights prior to the issuance of Adkins and Wicker.⁸ I disagree.

Paragraph 13.9 of GA-01.12 provides in pertinent part:

Exceptions [to the 15 day time limit requirement] may . . . be made for incident grievances by the Chief/designee, Inmate Grievance Branch, provided that documented reasonable cause can be demonstrated as to why the original time frame was not met, e.g., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc. The waiver must be requested by the grievant.

DOC Policy Number GA-01.12, ¶ 13.9 (emphasis added).

Paragraph 13.9 clearly states that “documented reasonable cause” must be shown as to why the fifteen-day time limit “was not met,” and that any such waiver of the time limit must be “requested by the grievant.” Thus, exceptions to the fifteen-day filing deadline are not automatic or guaranteed. Instead, the grievant must affirmatively request a waiver to the fifteen-day time limit and provide documented reasonable cause in support for such a request.

As reflected by the record, no Appellant requested a waiver to the fifteen-day time limit in his Step 1 grievance by which he asserted “reasonable cause” as permitted by Paragraph 13.9. Also, no Appellant provided “documented reasonable cause” in the manner required by Paragraph 13.9. Therefore, no Appellant satisfied the procedural requirements set forth in Paragraph 13.9.

Instead, the vast majority of the Appellants first explicitly invoked such a “reasonable cause” exception in their Notices of Appeal to this court. By only invoking this exception within their Notices of Appeal, the Appellants failed to afford the Department an opportunity to consider their request. Accordingly, this issue has not been properly preserved by the Appellants. See Brown v. S.C. Dep’t of Health & Envtl. Control, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002) (“[I]ssues not raised to and ruled on by the agency are not preserved for judicial consideration.”); Kiawah Resort Assocs. v. S.C. Tax Comm’n, 318 S.C. 502, 505, 458 S.E.2d 542, 544 (1995) (holding that a court reviewing a decision of an administrative agency on appeal cannot consider issues that were not raised to and ruled upon by the agency).

⁸ In McNeil, the ALC held that its appellate jurisdiction in inmate appeals was limited to either: (1) cases in which an inmate contended that prison officials had erroneously calculated his sentence, sentence related credits, or custody status; or (2) cases in which the Department had taken an inmate’s created liberty interest as punishment in a major disciplinary hearing.

Furthermore, even if this issue were preserved, I find that it lacks merit. In its March 10, 2011 order, this court expressly held that “Adkins and Wicker did not create new substantive rights, new grievance remedies, or new appeal remedies.” In doing so, the court explained that under the broad provision of Paragraph 7.1 of GA-01.12, the Appellants’ prevailing wage claims were grievable and had, in fact, been held to be so by an Administrative Law Judge in 2001.

This court also specifically rejected the Appellants’ argument that the ALC’s decision in McNeil made prevailing wage claims unappealable prior to the issuance of Wicker. The court explained: “Because the ALC is a lower court, its decisions do not constitute binding precedent. Given that the ALC cannot create judicial precedent, it certainly cannot answer legal questions with “finality.” (citations omitted).

Indeed, as the Department correctly notes, the McNeil decision was not the final word on the appealability of inmate grievances. In Sullivan v. S.C. Dep’t of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003), a decision issued a year prior to Adkins and Wicker, our Supreme Court specifically instructed the ALC to refrain from relying upon McNeil when determining its jurisdiction to hear inmate appeals. See id. at 445 n.5, 586 S.E.2d at 128 n.5 (“[B]ecause we know McNeil has been relied upon by the ALJ in other cases to deny jurisdiction, the ALJD and the circuit court are instructed to look to this opinion, not McNeil, for guidance in future cases.”). Moreover, in that case, the Supreme Court reiterated its holding in Al-Shabazz that procedural due process was guaranteed whenever an inmate was deprived of an interest encompassed by “the Fourteenth Amendment’s protection of liberty and property.”⁹ Id. at 441-42, 586 S.E.2d at 126 (emphasis added). Notwithstanding the issuance of Sullivan in August 2003, the earliest any of the Appellants filed a grievance regarding their prevailing wage claims was September 22, 2004. Thus, in light of Sullivan, it seems disingenuous for the Appellants to suggest that they would have filed their grievances earlier had it not been for McNeil.

For these reasons, I find that the Appellants’ contention that they were “effectively barred” from filing their Step 1s before the issuance of Adkins and Wicker is without merit.

⁹ In Al-Shabazz, our Supreme Court, quoting U.S. Supreme Court precedent from 1972, held that “[t]he requirements of procedural due process apply . . . to the deprivation of interests encompassed by the Fourteenth Amendment’s protection of liberty and property.” Al-Shabazz, 338 S.C. at 369, 527 S.E.2d at 750 (quoting Bd. of Regents of State Colleges v. Roth, 408 U.S. 564, 569 (1972)).

III. Did the Department violate the Appellants' due process rights by applying the fifteen-day filing deadline in Paragraph 13.1 to their claims?

Next, the Appellants argue that their right to file Step 1 grievances regarding their prevailing wage claims did not accrue until the issuance of Adkins and Wicker and that they could not enforce such rights until the issuance of those two decisions. Therefore, they argue that the Department denied them due process by applying Paragraph 13.1's fifteen-day filing deadline to those grievances involving prevailing wage claims that arose prior to the issuance of Adkins and Wicker. I disagree.

As discussed above, this court's March 10, 2011 order previously determined that "Adkins and Wicker did not create new substantive rights, new grievance remedies, or new appeal remedies." Thus, the court has already determined that the Appellants possessed grievance rights and appellate remedies concerning their prevailing wage claims prior to the Supreme Court's issuance of Adkins and Wicker.

Furthermore, it should be noted that, in Al-Shabazz, 338 S.C. 354, 374-75, 527 S.E.2d 742, 753 (2000), our Supreme Court held that "[DOC]'s disciplinary and grievance procedures comply with the minimal due process required in such proceedings." Al-Shabazz, 338 S.C. at 374-75, 527 S.E.2d at 753 (emphasis added). The Court also determined that "an inmate may seek review of [DOC's] final decision in an administrative matter under the APA," and that "[p]lacing review of these cases within the ambit of the APA will ensure that inmate receives due process." Id. at 369, 527 S.E.2d at 750 (emphasis added). Thus, the Court recognized that inmates received due process by filing a grievance with the Department and then appealing the Department's final decision regarding the grievance to the ALC.

The Court also recognized as much in Wicker when it rejected the notion that the ALC lacked jurisdiction to review the Department's denial of an inmate's prevailing wage grievance. See Wicker, 360 S.C. at 424-25, 602 S.E.2d at 57-58. The Court concluded that because the inmate was entitled to due process with regard to his prevailing wage claim under Al-Shabazz, the Department's denial of his grievance was reviewable by the ALC. Id. Thus, the Court implicitly acknowledged that inmates receive due process by processing their prevailing wage claims through the Department's grievance system and the review procedures of the APA.

In conclusion, this court's March 10, 2011 order and the relevant precedent from our Supreme Court clearly contradict the Appellants' claim that the Department denied them due process by invoking the fifteen-day filing deadline set forth in Paragraph 13.1. The Appellants' failure to timely avail themselves to the process available to them is exclusively attributable to their own failure to act in conformity with the provisions of this paragraph. Consequently, the Department's application of the fifteen-day filing deadline to the Appellants' prevailing wage claims that arose before the issuance of Adkins and Wicker did not violate their due process rights.

IV. Did the Department waive its right to raise Paragraph 13.1's fifteen-day time limit?

Next, the Appellants argue that the Department waived its right to apply the fifteen-day filing deadline to their Step 1 grievances for the following reasons: (1) the language in Paragraph 13.9 and the instructions on the Department's pre-printed Step 1 grievance form, which both state that policy grievances may be filed at any time, are inconsistent with an intent to raise the fifteen-day filing deadline; (2) for 153 inmates, the Department did not raise timeliness as an issue in its responses to the Appellants' Step 1 grievances; and (3) for 32 Step 1 responses, and 136 Step 2 final decisions, the Department raised the fifteen-day filing deadline and considered the merits of the Appellants' prevailing wage claims. As discussed below, I find the Appellants' arguments unpersuasive.

A

As stated above, the Appellants contend that the language in Paragraph 13.9 and the instructions appearing on the preprinted Step 1 grievance form are inconsistent with the Department's intent to assert the fifteen-day filing deadline as a basis by which to deny the prevailing wage claims articulated by the Appellants within their Step 1s. I disagree.

"Waiver is a voluntary and intentional abandonment or relinquishment of a known right." Eason v. Eason, 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009) (quoting Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994)). It may be either express or implied. Lyles v. BMI, Inc., 292 S.C. 153, 158, 355 S.E.2d 282, 285 (Ct. App. 1987). Acts that are inconsistent with the continued assertion of a right may give rise to a waiver. Provident Life and Acc. Ins.

Co. v. Driver, 317 S.C. 471, 478, 451 S.E.2d 924, 928 (Ct. App. 1994). Waiver is an affirmative defense, and the burden of proof is upon the party who asserts it. Id. at 478, 451 S.E.2d at 929.

Here, the Department applied the fifteen-day filing deadline set forth in Paragraph 13.1 to the Appellants' prevailing wage claims because those claims represented "incidents" by which the Appellants challenged the conditions of their participation in the prison industries project at Lieber. Importantly, the pre-printed form and Paragraph 13.1 expressly stated that inmates were required to file their Step 1s within 15 days of any alleged "incident." Thus, the Department's application of the fifteen-day filing deadline in Paragraph 13.1 was entirely consistent with the Department's grievance policy and the pre-printed Step 1 forms.

Although the Step 1 form and Paragraph 13.9 provided an exception to the fifteen-day filing deadline for grievances concerning "policies/procedures," nothing in the Department's grievance policy or in the language of the pre-printed Step 1 form suggested that prevailing wage claims constituted policies/procedures grievances under Paragraph 13.9. By merely providing an exception to the fifteen-day filing deadline, the Department did not waive its right to invoke the fifteen-day deadline for cases falling outside that exception. Accordingly, I find that the Department did not waive the fifteen-day deadline in Paragraph 13.1 for filing incident grievances by issuing the language in Paragraph 13.9 or the instructions on the pre-printed Step 1 grievance form.

B

The Appellants also argue that the Department waived the fifteen-day filing deadline in Paragraph 13.1 because it did not raise timeliness as an issue in 153 of its responses to the Appellants' Step 1 grievances. I disagree.

"Administrative agencies have an inherent authority to reconsider a prior determination which is not final" 2 Am. Jur. 2d Administrative Law § 468 (updated Nov. 2011). As discussed below, the responses provided to the Appellants' Step 1s did not constitute final decisions of the Department. Accordingly, during the Step 2 review process, the Department was authorized to reverse the Step 1 decision or, alternatively, to uphold the Step 1 decision on different grounds.

Paragraph 13 of the Department's grievance policy sets forth the steps in the grievance process. Per Paragraph 13.1, an inmate must complete a Step 1 grievance form in which he must

articulate the basis of his complaint. The inmate must then submit that form to an employee designated by the Warden within fifteen days of the alleged "incident." DOC Policy Number GA-01.12, ¶ 13.1. Paragraph 13.2 further articulates that the Step 1 must be forwarded to the Institutional Inmate Grievance Coordinator, who, if unable to resolve the matter informally, must conduct a complete investigation and make recommendations to the Warden. DOC Policy Number GA-01.12, ¶ 13.2. The Warden must respond to the inmate "in writing . . . indicating in detail the rationale for the decision rendered and any recommended remedies." DOC Policy Number GA-01.12, ¶ 13.3.

If the inmate is unsatisfied with the response at the institutional level, he may appeal under Paragraphs 13.4 and 13.5 by filing a "Step 2" appeal and thereby seek a final agency decision. Paragraph 13.4 provides that "[i]f the grievant is not satisfied with the decision of the Warden, the grievant may next appeal to the Division Director of Operations for final resolution of the grievance." DOC Policy Number GA-01.12, ¶ 13.4 (emphasis added). Furthermore, Paragraph 13.5 states: "The responsible official will render the final decision on the grievance within 60 days from the date that the Institutional Inmate Grievance Coordinator received the appeal of the Warden's decision. . . . The response of the responsible official will be the Department's final response in the matter. DOC Policy Number GA-01.12, ¶ 13.5 (emphases added);

Thus, under Paragraphs 13.4 and 13.5, the final decisions concerning the issues raised in the Appellants' grievances were rendered by the responsible official at the agency level, and this official's response to the Step 2 appeals constituted the final agency decisions. Therefore, because the Department raised the issue of the fifteen-day filing deadline in its Step 2 decisions, the failure by the Warden to raise the issue in some of his Step 1 decisions did not constitute waiver of the issue. Rather, as noted above, the Department possessed the authority to modify the Warden's Step 1 decisions because they were not final.

For instance, in Friends of Potter Marsh v. Peters, 371 F. Supp. 2d 1115 (D. Alaska 2005), the plaintiffs objected to the Secretary of Transportation's waiver, in a federal transportation legislation guidance, of a statutory requirement that Surface Transportation Program projects not be located on local roads or rural minor collectors. The defendants moved

to dismiss the matter, contending that there had been no final agency action. The court granted the defendant's motion to dismiss, explaining:

Even if Plaintiffs are correct that the waiver is invalid, an erroneous legal interpretation at one stage in the process is not a final agency action. There is still time for the Secretary to change or modify the waiver, issue an individualized waiver, or the agency may not need to rely on the waiver.

Id. at 1122 (emphasis added).

Like the legislation guidance at issue in Peters, the Step 1s in this case were not final agency decisions. In its Step 2 responses, the Department retained the right to come to a different conclusion than that reached in the Step 1 responses. Just as the Department could have reversed the Step 1 decisions, it also had the authority to affirm the Step 1 decisions on other grounds. Thus, because the Step 1 responses were not final agency decisions, the mere fact that the Department failed to invoke the fifteen-day filing deadline when it issued some of the Step 1 responses did not preclude it from raising the issue in its Step 2 responses.

The Appellants' reliance on Ross v. County of Bernalillo, 365 F.3d 1181 (10th Cir. 2004), abrogated in part by Jones v. Bock, 549 U.S. 199 (2007), is misplaced. In that case, the Tenth Circuit addressed whether an inmate had exhausted his administrative remedies regarding his claim that the prison shower was unreasonably dangerous where the inmate failed to file a complaint within the three-day timeframe set forth in the prison's procedures. The Tenth Circuit concluded that because prison officials had accepted his complaint and found in his favor, the inmate had exhausted his administrative remedies. Specifically, the court held:

We need not address in the abstract whether Ross' complaint was timely because in this case the prison did actually consider it. Nothing in the record suggests that MCDC treated Ross' complaint as untimely; indeed, Ross received a favorable response and a mat was placed in the shower as he requested. If a prison accepts a belated filing, and considers it on the merits, that step makes the filing proper for purposes of state law and avoids exhaustion, default, and timeliness hurdles in federal court.

Id. at 1186.

The present case is distinguishable from Ross. In Ross, the court based its decision on the fact that “[n]othing in the record suggests that MCDC treated Ross' complaint as untimely” and that “Ross received a favorable response” to his complaint. Id. Here, in contrast, the Department found against the Appellants in its responses to both the Appellants' Step 1s and

Step 2s. Moreover, in its responses to the Appellants' Step 2s, the Department made it clear that it considered the Appellants' grievances to be untimely.

Accordingly, because the Department raised the issue of the fifteen-day filing deadline in its Step 2 decisions, it did not waive its right to do so in the present appeal.

C

Finally, the Appellants note that there are 32 Step 1 responses and 136 Step 2 final decisions in which the Department both raised the fifteen-day filing deadline in Paragraph 13.1 and considered the merits of the Appellants' prevailing wage claims. The Appellants contend that with respect to those responses, waiver should apply because the Department's consideration of the merits was inconsistent with an intent to rely on Paragraph 13.1. I disagree.

In the responses at issue, the Department plainly stated that the Appellants' prevailing wage claims were time-barred under Paragraph 13.1. While the Department also addressed the merits of the Appellants' claims within those responses, that mere fact did not preclude the Department from applying the fifteen-day filing deadline from Paragraph 13.1. The Department's decisions must be read in their entirety. When done so, it is plain that there is no basis for concluding that the Department waived, either expressly or impliedly, its right to invoke the fifteen-day filing deadline. *Cf. Brooks v. Walls*, 279 F.3d 518, 523 (7th Cir. 2002) (holding that when a state court rules against a party on both procedural and substantive grounds, the court "has not abandoned the procedural ground but has instead added a substantive failing to the procedural one.")¹⁰

¹⁰ Appellants cite *Pozo v. McCaughtry*, 286 F.3d 1022 (7th Cir. 2002) for the proposition that courts are divided on the issue of whether a filing that is dismissed as both untimely and unmeritorious is properly filed. In that case, the Seventh Circuit considered whether a prisoner's failure to take a timely administrative appeal within the state system meant that he failed to exhaust state remedies for purposes of 42 U.S.C. § 1997e(a). Although the court answered the question in the affirmative, in dicta it stated that "[c]ases took both ways on the question whether a document that is rejected as both late and unmeritorious counts as properly filed." *Id.* at 1025.

Appellants now attempt to rely on that statement, but they neglect to discuss the U.S. Supreme Court's subsequent decision in *Pace v. DiGuglielmo*, 544 U.S. 408 (2005). In that case, the Court addressed whether a state post-conviction petition that the state court had rejected as untimely could nonetheless be considered "properly filed" for the purposes of the tolling provision of 28 U.S.C. § 2244(d)(2). After noting the division among the circuit courts on the issue, the Court held: "[T]ime limits, no matter their form, are 'filing' conditions. Because the state court rejected petitioner's PCRA petition as untimely, it was not 'properly filed' . . ." *Id.* at 417; *see also Carey v. Saffold*, 536 U.S. 214, 226 (2002) (holding that if a state court clearly ruled that a prisoner's application for collateral review was untimely, then "that would be the end of the matter" for federal purposes, "regardless of whether [the state court] also addressed the merits of the claim, or whether its timeliness ruling was 'entangled' with the merits."). In light of the U.S. Supreme Court's holding in *Pace*, this court is unwilling to rely upon any federal circuit court decision holding that a document dismissed as both untimely and unmeritorious is properly filed.

V. Was the Department equitably estopped from raising Paragraph 13.1?

Next, the Appellants contend that the Department is equitably estopped from raising the fifteen-day filing deadline in Paragraph 13.1. Specifically, the Appellants argue that Paragraph 13.9 and the pre-printed Step 1 form "lulled" them into believing that their prevailing wage claims were policy grievances and thus could be filed "at any time." I disagree.

"The essential elements of equitable estoppel are divided between the estopped party and the party claiming estoppel." Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). The elements of equitable estoppel as related to the party being estopped are: (1) conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. Id. The party asserting estoppel must show: (1) lack of knowledge, and the means of knowledge, of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change of position in reliance on the conduct of the party being estopped. Id. at 84-85, 650 S.E.2d at 470. The party asserting equitable estoppel bears the burden of establishing all of the elements. Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 682 S.E.2d 1, 7 (Ct. App. 2009).

Under South Carolina law, a party may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute was induced by the party's conduct. Kleckley v. Nw. Nat. Cas. Co., 338 S.C. 131, 136, 526 S.E.2d 218, 220 (2000). The South Carolina Supreme Court has described the necessary "inducement" as follows:

Such inducement may consist of an express representation that the claim will be settled without litigation or conduct that suggests a lawsuit is not necessary. The defendant's conduct may also involve inducing the plaintiff either to believe that an amicable adjustment of the claim will be made without suit or to forbear exercising the right to sue.

Id. at 136-37, 526 S.E.2d at 220 (citations omitted).

Here, the only conduct of the Department that the Appellants point to in making their estoppel argument is the Department's issuance of Paragraph 13.9 and the Step 1 instructions. However, Paragraph 13.9 and the Step 1 instructions did not state that *all* grievances could be

filed outside of Section 13.1's fifteen-day deadline. Rather, they merely stated that grievances concerning "policies/procedures" could be filed outside of that deadline. Additionally, both Paragraph 13.1 and the Step 1 instructions clearly notified the Appellants that "incident" grievances had to be filed within fifteen days. Although the Appellants claim they thought that Paragraph 13.9 applied to their prevailing wage claims, there is no evidence that the Department, through its words or actions, induced the Appellants into believing that their grievances constituted "policies/procedures" grievances. Therefore, the Appellants have failed to show that the Department engaged in conduct which "amount[ed] to a false representation," or conduct which was "calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert." See Strickland, 375 S.C. at 84, 650 S.E.2d at 470.

The Appellants have also failed to establish that the Department engaged in the type of "inducement" described in Kleckley. See Kleckley, 338 S.C. at 136-37, 526 S.E.2d at 220. There is no evidence the Department did anything that would have induced the Appellants into believing that filing a grievance was unnecessary. Rather, the record merely shows that the Department issued a grievance policy that set forth, in a straightforward fashion, different time periods for filing different types of grievances. In the court's view, such evidence, on its own, is insufficient to establish an estoppel claim. A party should not be able to avoid the consequences of a filing deadline simply by claiming that it misinterpreted the deadline.¹¹ For these reasons, I find that the Department is not equitably estopped from raising the fifteen-day filing deadline in Paragraph 13.1.

VI. Was the fifteen-day time limit set forth in Paragraph 13.1 tolled until after the issuance of Adkins and Wicker?

Next, the Appellants argue that the fifteen-day filing deadline in Paragraph 13.1 was tolled until after the issuance of Adkins and Wicker because, prior to that time, Appellants were "effectively barred" from exercising any grievance and appeal rights. I disagree.

Where a statute sets forth a limitation period for commencement of an action, courts have invoked the doctrine of equitable tolling to suspend the statutory period "to ensure fundamental

¹¹ Significantly, there is no evidence that any of the Appellants ever asked the Department whether a prevailing wage claim constituted an "incident" grievance or a grievance concerning "policies/procedures."

practicality and fairness.” Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009) (quoting Rodriguez v. Superior Court, 98 Cal. Rptr. 3d 728, 736 (Cal. Ct. App. 2009)). Equitable tolling is a judicially created doctrine, and it stems from the judiciary’s inherent power to formulate rules of procedure “where justice demands it.” Hooper, 386 S.C. at 115, 687 S.E.2d at 32. The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. Id.

Equitable tolling is reserved for extraordinary circumstances, and it is rarely applied in South Carolina. American Legion Post 15 v. Horry County, 381 S.C. 576, 582, 674 S.E.2d 181, 184 (Ct. App. 2009). The threshold necessary to trigger equitable tolling is very high, lest the exception swallow the rule. Ex parte Ward, 46 So. 3d 888, 897 (Ala. 2007). Our Court of Appeals has explained:

[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation.

Pelzer v. State, 378 S.C. 516, 522, 662 S.E.2d 618, 621 (Ct. App. 2008) (quoting Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir. 2000)).

Typically, equitable tolling applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control. Hooper, 386 S.C. at 116, 687 S.E.2d at 32; see also 54 C.J.S. Limitations of Actions § 133 (updated Dec. 2011) (“The statute of limitations generally will not be tolled when the plaintiff has slept on his or her rights, but only when he or she has been prevented from asserting them.”). However, as the South Carolina Supreme Court has noted, courts have flexibility in applying equitable remedies such as tolling:

“The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other.” Equitable tolling may be applied where it is justified under all the circumstances. We agree, however, that equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use.

Hooper, 386 S.C. at 116-17, 687 S.E.2d at 33 (citations omitted).

Turning to the present case, the court notes at the onset it is questionable whether Paragraph 13.1’s fifteen-day filing deadline is subject to tolling. As noted above, it appears that

the deadline is a statute of creation. Unlike statutes of limitations, statutes of creation cannot be tolled. See 54 C.J.S. Limitations of Actions § 5 (updated Dec. 2011) (“Statutes of limitations are subject to tolling, whereas statutes of creation are not.”).

Even if the deadline can be tolled, the circumstances do not warrant the application of equitable tolling here. The Appellants contend that tolling should be applied because the McNeil decision prevented them from filing their grievances. However, as noted above, McNeil was an ALC decision and did not constitute binding precedent. See 21 C.J.S. Courts § 212 (updated Dec. 2011). Had the Appellants timely filed grievances and had the ALC denied their grievances based upon McNeil, the Appellants could have appealed to the Court of Appeals, which possessed the authority to reverse McNeil. In fact, as discussed above, the pertinent portions of McNeil were unmistakably superseded by the Sullivan decision in August 2003— a full year before any of the Appellants filed a grievance. See Sullivan, 355 S.C. at 445 n.5, 586 S.E.2d at 128 n.5. Thus, while McNeil may have discouraged the Appellants from filing their prevailing wage grievances, it did not bar them from doing so.

Furthermore, the “interests of justice” do not call for the application of equitable tolling in this case. There is no evidence that the Department prevented the Appellants from timely filing their grievances. Moreover, if equitable tolling were applied here, the Department would be forced to defend actions it took many years ago. As our Court of Appeals has noted, the passage of time can greatly hinder a party’s ability to defend against a claim:

[W]ith the passage of time, evidence becomes more difficult to obtain and is less reliable. Physical evidence is lost or destroyed, witnesses become impossible to locate, and memories fade. With passing time, a defendant faces an increasingly difficult task in formulating and mounting an effective defense.

Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 163, 511 S.E.2d 699, 706 (Ct. App. 1999), aff’d, 341 S.C. 320, 534 S.E.2d 672 (2000).

While not tolling Paragraph 13.1 will mean the dismissal of nearly all of the Appellants’ prevailing wage claims, in Adkins, our Supreme Court held that the prevailing wage statute was not enacted for the special benefit of inmates, but rather was passed to “prevent unfair competition.” Adkins, 360 S.C. at 418, 602 S.E.2d at 54. In the present case, any unfair competition that arose as a result of the Department’s alleged failure to pay the prevailing wage years ago will not be rectified by allowing the inmates to bring a prevailing wage claim now.

Competitors who may have been previously harmed by the Department's asserted failure to pay the prevailing wage likely will not receive any type of benefit as a result of the inmates bringing such a case. The damage has already been done. Rather, the main party that stands to benefit from prevailing wage claims involving conduct that occurred long ago is the inmates—a group which our Supreme Court expressly stated was not the intended beneficiary of the prevailing wage statute.

VII. Did inmates comply with Paragraph 13.1's filing deadline because it was tolled by their class action?

Next, the Appellants argue that the fifteen-day filing deadline in Paragraph 13.1 was tolled when they filed their class action in Williams on January 29, 2002. I disagree.

In making this argument, Appellants rely upon the U.S. Supreme Court's decision in Crown, Cork & Seal Co. v. Parker, 462 U.S. 345 (1983). In that case, the Court held that the running of the ninety-day statutory period within which the plaintiff was required to commence his employment discrimination suit was tolled during the period there was pending a class action in which he was a putative class member. Id. at 353-54. The Court further held that because the plaintiff did not receive his notice of right to sue until after the class action was filed, he retained a full ninety days to bring suit after the class certification was denied. Id. at 354. In reaching these conclusions, the Court reasoned that "unless the statute of limitations was tolled by the filing of the class action, class members would not be able to rely on the existence of the suit to protect their rights." Id. at 350. The Court further reasoned:

A putative class member who fears that class certification may be denied would have every incentive to file a separate action prior to the expiration of his own period of limitations. The result would be a needless multiplicity of actions—precisely the situation that Federal Rule of Civil Procedure 23¹² and the tolling rule of American Pipe were designed to avoid.

Id. at 350-51.

The facts of the present case are notably different from those of Crown. Unlike the class action in Crown, the Appellants' class action did not fail because their certification was denied. Rather, it failed because the South Carolina Supreme Court concluded in Adkins that the inmates

¹² Federal Rule of Civil Procedure 23 sets forth the requirements regarding the filing of class actions. See Fed. R. Civ. P. 23.

did not have a private cause of action with regard to their prevailing wage claims. See Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Thus, applying tolling to the present matter would constitute a significant extension of Crown. Such an extension would also require this court to conclude that the Appellants were justified in relying upon the 2002 class action to protect their rights, despite the fact that the South Carolina Supreme Court ultimately determined that no private right of action existed.

The Appellants' reliance on Crown is also mistaken because the Crown decision was based in large part upon Federal Rule of Civil Procedure 23—a rule which does not apply to the Department's internal grievance system. Moreover, the Court is unaware of any applicable rule similar to Rule 23 that allows inmates to file grievances as a class. Therefore, the Crown Court's reasoning regarding Rule 23 and its purpose are simply inapplicable to the present case.

Finally, the court notes that, unlike in Crown, for a significant number of Appellants, their right to file a grievance regarding their prevailing wage claims arose long before the filing of the class action in 2002. The record shows that numerous Appellants began participating in the prison industries project at Lieber several months, and in some cases *years*, before the class action was filed. As discussed in more detail below, under Paragraph 13.1, these Appellants were required to file a grievance within fifteen days after being informed of the Department's decision to pay them less than the prevailing wage. Thus, by the time the 2002 class action was filed, Paragraph 13.1's fifteen-day filing deadline had already passed with regard to their prevailing wage claims. Accordingly, even if the running of the fifteen-day filing deadline were suspended by the filing of the class action, these Appellants still failed to timely file their grievances.

For these reasons, I conclude that Crown is distinguishable from the present case and that Paragraph 13.1's fifteen-day filing deadline was therefore not tolled by the filing of Appellants' class action in Williams.

VIII. Are inmates' grievances timely filed because they filed within fifteen days of a term of employment?

Finally, the Appellants argue that all Step 1s filed during or within fifteen days of completion of a term of employment should be considered timely regardless of when the Appellants began their employment. I disagree.

As noted above, Paragraph 13.1 of GA-01.12 states that inmates must submit their grievances "within 15 days of the alleged incident." The "alleged incident" in this case was not the Appellants' "completion of a term of employment," but rather the Department's decision to pay the Appellants less than the prevailing wage as required under Section 24-3-430(D). Accordingly, the fifteen-day time frame in Paragraph 13.1 began to run when the Appellants were informed of the Department's decision to pay them less than that mandated by Paragraph 24-3-430(D).

A similar conclusion was reached in Wallace v. Burbury, 305 F. Supp. 2d 801, 806 (N.D. Ohio 2003). In that case, an inmate brought an action in federal court alleging that prison officials violated his constitutional rights by denying his religious accommodation request for Passover. The prison officials argued that the inmate failed to exhaust his administrative remedies because he did not timely file a complaint under Ohio's inmate grievance procedure. The procedure required that "[w]ithin fourteen calendar days of the date of the event giving rise to the complaint, the inmate shall file an informal complaint to the direct supervisor of the staff member, or department most directly responsible for the particular subject matter of the complaint." Id. at 806. The inmate, despite learning of the denial of his religious accommodation request a week before Passover began, did not file a complaint until eleven days after the week-long holiday ended. Nevertheless, the inmate contended that his complaint was timely filed, arguing that "because his requests for religious accommodation were denied through the week of Passover," the "event giving rise to the complaint" occurred daily through the last day of the holiday. Id. The court rejected the inmate's argument, explaining:

To allow a filing deadline to toll with a continuous violation . . . would undermine the very purpose of the deadline, which is to limit the time to file a claim. The event giving rise to the complaint was the date in March, 2002, when plaintiff first learned that NCCI would not honor his request to observe Passover. All subsequent grievances stem from that initial event. The filing of plaintiff's informal grievance was therefore untimely, and failure to file a timely grievance does not constitute an exhaustion of available administrative remedies.

Id. (emphasis added); see also Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004) ("While it is true that the conditions that Johnson suffered both before and after the grievance were of the same general character, to permit the March 2001 grievance to reach back to events that transpired up to six months earlier would effectively negate the state's fifteen-day rule and

frustrate the prison system's legitimate interest in investigating complaints while they are still fresh. That a condition continues does not excuse the failure to file a grievance earlier.") (emphasis added).

Similar to the court in Wallace, this court concludes that the Appellants should have filed a grievance within fifteen days after being informed of the Department's decision to pay them less than the prevailing wage. Like the deadline at issue in that case, the purpose of the fifteen-day deadline in Paragraph 13.1 is to limit the time to file a claim. If this court were to hold that inmates may timely file grievances within fifteen days of any term of employment, the Department could be forced to defend wage decisions it made a long time ago.

The Appellants contend that ruling against them on this issue would be "absurd" because it would require an inmate asserting a prevailing wage claim to file a grievance every time he received a paycheck. However, the court's decision here does not mandate such a result. Rather, a timely filed grievance will cover all damages recoverable by an inmate as a result of the Department's decision to pay him less than the prevailing wage. Thus, as long as an inmate timely files a grievance within fifteen days of learning of the Department's decision to pay him less than that required under Section 24-3-430(D), he will not need to file any additional grievances during the period of his employment affected by that decision.

CONCLUSION AND ORDER

Based on the foregoing, I conclude the following:

1. The Appellants' grievances did not concern "policies/procedures" as that term is used in Paragraph 13.9 of GA-01.12 and thus the fifteen-day filing deadline in Paragraph 13.1 applied to their grievances.
2. The Appellants did not have reasonable cause for not filing their grievances within Paragraph 13.1's fifteen-day time limit.
3. The Department's application of Paragraph 13.1 did not violate the Appellants' due process rights.
4. The Department did not waive its right to raise Paragraph 13.1's fifteen-day filing deadline.
5. The Department was not equitably estopped from raising Paragraph 13.1.
6. The Appellants were not "effectively barred" from exercising their grievance and appeal rights before Adkins and Wicker and therefore the fifteen-day filing deadline set forth in Paragraph 13.1 was not tolled prior to the issuance of those decisions.

7. Paragraph 13.1's fifteen-day filing deadline was not tolled by the filing of the Appellants' class action suit in circuit court.
8. The Appellants did not comply with Paragraph 13.1 by filing their grievances within fifteen days of a term of employment.

Applying these conclusions to this case, a review of the record reveals that, with the lone exception of Fred Gatewood, #289775, none of the Appellants timely filed their Step I grievances. Other than Gatewood, each Appellant filed his Step I grievance more than fifteen days after his initial pay date. Certainly, by his initial pay date, each Appellant should have known of the Department's decision to pay him less than the prevailing wage. Accordingly,

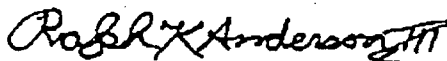
IT IS HEREBY ORDERED that, for every Appellant other than Gatewood, the Department's final decisions in this matter are **AFFIRMED**.

IT IS FURTHER ORDERED that, as to Gatewood's appeal, within twenty (20) days from the date of this Order, the Department shall supplement, to the extent necessary, the Record on Appeal to include all content required under ALC Rule 36(B).

IT IS FURTHER ORDERED that the parties prepare briefs on the merits of Gatewood's appeal, taking into account the court's rulings in this Order.

IT IS FURTHER ORDERED that the Appellants' Brief shall be filed thirty (30) days from the date of receipt of the supplemented Record on Appeal and shall be limited to no more than thirty (30) pages. The Respondent's Brief shall be filed thirty (30) days from the date of receipt of the Appellants' Brief and shall be limited to no more than thirty (30) pages. If the Appellants wish to file a Reply to Respondent's Brief, that Reply shall be due fifteen (15) days from the date of receipt of the Respondent's Brief and shall be limited to no more than fifteen (15) pages.

AND IT IS SO ORDERED.



Ralph K. Anderson, III
Chief Administrative Law Judge

July 26, 2012
Columbia, South Carolina

LAW OFFICES

JUL 27 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

LAW OFFICES

JUL 27 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

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

July 26, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

LAW OFFICES

MAY 03 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

Kenneth Arnold, #238375,)
)
Petitioner,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)

Docket No. 09-ALJ-04-00200-AP

ORDER

FILED

MAY - 1 2012

SC ADMIN. LAW COURT

This matter comes before the Administrative Law Court (ALC) pursuant to the appeal of Kenneth Arnold, an inmate incarcerated with the Department of Corrections (DOC or Department). Appellant claims that his constitutional rights were violated because the training wages he received when he worked in South Carolina Department of Corrections Print and Graphic were less than "prevailing wages" under S.C. Code Ann. §24-3-430(D). Appellant requested back pay for the difference between his "training wages" and prevailing wages for the period of time he worked in prison industries.¹

BACKGROUND

Appellant filed a Step 1 grievance dated November 17, 2008, claiming the Department failed to pay him wages in violation of South Carolina Code § 24-3-430(D). Appellant's grievance was denied and served on Appellant January 7, 2009. Appellant filed his Step 2 grievance dated January 8, 2009. Appellant asserts that he was employed by prison industries as

¹ In the Notice of Appeal, Appellant also contends the Department violated constitutional protections in issuing its decision. Appellant did not establish he raised the issues of a violation of his constitutional protections below. An inmate cannot sit silently during a hearing, raising no objections, and then raise issues such as these for the first time on appeal. See Kiawah Resort Associates v. South Carolina Tax Com'n, 318 S.C. 502, 458 S.E.2d 542 (1995) (In reviewing a final decision of an administrative agency, the Administrative Law Judge "has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency."). Our law is also clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review. State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). This rule also applies to constitutional arguments. See State v. Owens, 378 S.C. 636, 638, 664 S.E.2d 80, 81 (2008) (finding constitutional claims not preserved for review without a contemporaneous objection at trial). State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). Furthermore, all of the arguments raised by Appellant were merely conclusory statements. Consequently, Appellant abandoned these issues on appeal, and they need not be considered. See Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004) (failure to provide arguments or supporting authority for an issue renders it abandoned); Muir v. C.R. Bard, Inc., 336 S.C. 266, 298-99, 519 S.E.2d 583, 600 (Cl. App. 1999) (conclusory arguments may be treated as abandoned).

he was paid by SCDC Printing and Graphic Services, that his grievance was timely under DOC policies and procedures #GA-01.12 paragraph 13.11, and that the Department's violation of SC Code 24-3-430(D) was a criminal activity. The Warden denied Appellant's grievance on February 6, 2009. Appellant received the denial on February 18, 2009 and filed this appeal on March 3, 2009.

STANDARD OF REVIEW

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). When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Al-Shabazz, 338 S.C. at 377; 527 S.E.2d at 754. Consequently, the review in inmate grievance cases is limited to the record presented. See S.C. Code Ann. § 1-23-380(4) (Supp. 2011) ("The review must be conducted by the court and must be confined to the record . . ."); see also S.C. Code Ann. § 1-23-600(E) (Supp. 2011) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). That section 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. 2010).

DISCUSSION

Timeliness of Wage Claim

The South Carolina Department of Corrections Policies and Procedures, Paragraph 13.1 of GA-01.12 generally requires that Step 1 grievances be filed "within 15 days of the alleged

incident." DOC Policy Number GA-01.12, ¶ 13.1.² The Department's procedure further sets forth a specific time frame to exercise the rights created under those provisions. Therefore, it appears that the Department's regulations require that inmates file their grievance within a specific period of time pursuant to a "statute of creation."

Under South Carolina law, a statute that creates a new liability and affixes the time within which an action may be commenced is a "statute of creation," and commencement within the time affixed is an indispensable condition of the action. Knight Publ'g Co. v. Univ. of S.C., 295 S.C. 31, 33, 367 S.E.2d 20, 22 (1988), overruled on other grounds by McLendon v. S.C. Dep't of Highways and Public Transp., 313 S.C. 525, 443 S.E.2d 539 (1994). Although the failure to timely commence an action pursuant to a statute of creation is not a subject matter jurisdiction defect, such an action "cannot be maintained unless brought within the time allowed by that statute." Simpson v. Sanders, 314 S.C. 413, 415 n.1, 445 S.E.2d 93, 94 n.1 (1994). When a statute both creates a cause of action and includes a time limit for its commencement, compliance with the time limit is a condition precedent to the maintenance of the action. 54 C.J.S. Limitations of Actions § 31 (updated October 2010). "Such a statutory time limit conditions the existence of the right of action, thereby creating a substantive, rather than procedural, limitation on the right. Bringing suit within the prescribed time is a condition of liability itself, not of the remedy alone." Id.

The reason for a specific time frame to seek review of these matters is much like statutes of limitations. Notably, the South Carolina courts have held that "[s]tatutes of limitations are not simply technicalities," but rather are "fundamental to a well-ordered judicial system." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "The purpose of statutes of limitation is to ensure litigation is 'brought within a reasonable time in order that evidence be reasonably available and there be some end to litigation.'" Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (quoting Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct. App. 2008)). "Statutes of limitation embody important public policy considerations in that they stimulate

² The Department's prescribed procedures for inmates to seek review of these matters has been approved by the South Carolina Supreme Court. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) ("We hold that Department's disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in Wolff v. McDonnell, supra. We note that Department also prepared its grievance procedures in compliance with the Civil Rights of Institutionalized Persons Act.").

activity, punish negligence, and promote repose by giving security and stability to human affairs." Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690 (quoting Moates, 322 S.C. at 176, 470 S.E.2d at 404). Moreover, statutes of limitations relieve courts of the burden of trying stale claims of those who have "slept on their rights." Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690.

Because the Department has a legitimate interest in investigating grievances while they are still new, public policy calls for the application of some limitations period to Appellant's prevailing wage claim. See Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004) (noting that the prison system has a legitimate interest in investigating complaints while they are still fresh); see also Woodford v. Ngo, 548 U.S. 81, 95 (2006) ("When a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved."). Here, the fifteen-day filing deadline from Paragraph 13.1 is the only limitations period applicable to this claim.³ Therefore, ruling in favor of Appellant would mean that inmates would not be required to file prevailing wage grievances within any set time period. Due in part to public policy concerns over such a result, this court has consistently held that prevailing wage claims do not involve the Department's "policies or procedures." See, e.g., Lawson v. S.C. Dep't of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 12, 2007); Wright v. S.C. Dep't of Corr., 06-ALJ-04-00114-AP, 2006 WL 1430140 (S.C. Admin. Law Ct. Apr. 28, 2006).

The importance of filing deadlines is underscored by the facts of this case. The record demonstrates the Appellant filed his Step 1 regarding his wage claims on November 17, 2008. Records reflect Appellant began work in Print and Graphic on July 12, 2006. Thus, over two years passed between when Appellants began participating in the project and when he filed his Step 1 challenging his pay.

Implication of Wicker and Adkins

New Substantive Rights

Appellant also argues that his grievance was timely filed as he filed within fifteen days of being notified of Adkins v. S.C. Department of Corrections, 360 S.C. 413, 602 S.E.2d 51 (2004)

³ The statutory provisions upon which Appellant bases his pay claim does not create a private right of action. See Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Therefore, statutes of limitations derived from state law do not apply to Appellant's claim. See Talford v. S.C. Dep't of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 14, 2007).

and Wicker v. S.C. Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004). However, Wicker and Adkins did not create new substantive rights. A “substantive right” is “[a] right that can be protected or enforced by law,” and it is “a right of substance rather than form.” Black’s Law Dictionary 1324 (7th ed. 1999). It is distinguishable from a procedural right, which is “a right that derives from legal or administrative procedure” and which “helps in the protection or enforcement of a substantive right.” Black’s Law Dictionary 1323 (7th ed. 1999). A substantive right can be created by statute or by judicial decision. See, e.g., Lawson v. S.C. Dep’t of Corrections, 340 S.C. 346, 350, 532 S.E.2d 259, 261 (2000) (holding that the whistleblower statute created new substantive rights); McCaskey v. Shaw, 295 S.C. 372, 375, 368 S.E.2d 672, 673 (Ct. App. 1988) (holding that a prior Supreme Court decision “created a new substantive right”). A court creates a new substantive right when it recognizes a new cause of action that did not previously exist. See Toth v. Square D Co., 298 S.C. 6, 8, 377 S.E.2d 584, 585-86 (1989).

In Adkins, our Supreme Court held that Section 24-3-430 and the accompanying prison industries statutes did not provide inmates with the right to bring a private cause of action against DOC. Adkins, 360 S.C. at 419, 602 S.E.2d at 55. More relevant to the case at hand, the Court further held that:

[N]otwithstanding our holding that inmates have no private civil cause of action, they are not without a remedy. In accordance with the companion case of Wicker v. South Carolina Dept. of Corrections, 360 S.C. 421, 602 S.E.2d 56, 2004 WL 1877947 (2004), we hold inmates may file an inmate grievance to protest DOC’s failure to pay wages in accordance with the mandatory statutory provisions.

Id.

In Wicker, the Supreme Court fleshed out this latter holding. It explained that “where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law.” Wicker, 360 S.C. at 424, 602 S.E.2d at 57. The Court thus held that inmates’ prevailing wage claims were grievable through DOC’s internal grievance processes and that DOC’s denial of those claims could be appealed to the ALC. Id. at 423-25, 602 S.E.2d at 57-58.

I find that Adkins and Wicker did not create new substantive rights. The substantive right at issue in Adkins and Wicker - i.e., the right to a prevailing wage—was granted to inmates in 1995 pursuant to Section § 24-3-430(D). Adkins and Wicker, both of which were published in 2004, simply addressed the appropriate procedure for seeking redress for a denial of that existing right. Accordingly, they did not create new substantive rights. See Atlantic Soft Drink Co. of

Columbia, Inc. v. S.C. Nat. Bank, 287 S.C. 228, 336 S.E.2d 876 (1985) (holding that statute that related “only to remedies and modes of procedure” did not affect substantive rights); Hooks v. Southern Bell Tel. & Tel. Co., 291 S.C. 41, 351 S.E.2d 900 (Ct. App. 1986) (holding that the “right to seek review” is procedural, not substantive); cf. Baker v. McCollan, 443 U.S. 137, 145 n.3 (1979) (holding that 42 U.S.C. § 1983 “is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes”); Harvey v. S.C. Dep’t of Corrections, 338 S.C. 500, 527 S.E.2d 765 (Ct. App. 2000) (holding that the Uniform Declaratory Judgments Act did not create substantive rights or duties because it merely authorized a court action to establish a party’s entitlement to a pre-existing right).

New Grievance Remedies

Adkins and Wicker also did not create new grievance rights. Paragraph 7 of DOC Policy Number GA-01.12, which has existed in some form since May 1, 1996, sets forth the issues that are considered grievable by DOC.⁴ Among other grievable issues, it includes the following: “Department policies/procedures, directives, or conditions which directly affect an inmate.” DOC Policy Number GA-01.12, ¶ 7.1 (emphasis added). Unquestionably, inmates are “directly affect[ed]” by DOC policies that cause them to be paid less than that required by law. Thus, this provision, which is very broad in scope, encompasses prevailing wage claims.⁵

Indeed, an ALJ reached that very conclusion in a 2001 decision that gave rise to, and was ultimately affirmed by, the Supreme Court’s opinion in Wicker. See Wicker v. S.C. Dep’t of Corrections, 00-ALJ-04-00781, 2001 WL 1005574 (S.C. Admin. Law Ct. Aug. 13, 2001). In the case before the ALJ, DOC contended that prevailing wage claims were “non-grievable.” See id. at *1. Upon reviewing DOC’s grievance policies, the ALJ disagreed, holding:

⁴ Notably, the existence of DOC’s grievance policies was specifically recognized by the Supreme Court in its 2000 decision, Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), where the Court held that DOC’s grievance procedures were consistent with the standards delineated by the U.S. Supreme Court in Wolff v. McDonnell, 418 U.S. 539 (1974). See Al-Shabazz, 338 S.C. at 371-373, 527 S.E.2d at 751-52.

⁵ In addition to Paragraph 7 of DOC Policy Number GA-01.12, DOC’s policies also include Paragraph 9 of Policy Number GA-01.12, which sets forth the procedure by which grievances concerning questionable issues are determined. This provision, which has existed in all versions and editions of DOC’s inmate grievance policies since at least May 1, 1996, states in pertinent part: “In those cases where a question may arise as to whether an item is grievable, the Institutional Inmate Grievance Coordinator will confer with the Chief, Inmate Grievance Branch, who will make that determination.” Thus, to the extent that inmates were not certain whether or not prevailing wage claims were grievable prior to Adkins and Wicker, they could have utilized this provision to resolve the issue.

Wicker's wage dispute falls under the listed issues considered "grievable" under DOC policy at GA-01.12(OP), Specific Procedures, paragraph 7; the first issue listed is "Department policies/procedures, directives, or conditions which directly affect an inmate." Wicker is directly affected by DOC's arrangement with private industry to pay inmates less than the "prevailing wage for work of similar nature in the private sector" for the first 320 hours of work. Therefore, Wicker's wage dispute is grievable under the agency's grievance system.

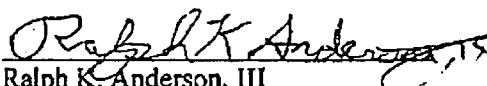
Id. at *1. Thus, as early as 2001, an ALJ held that inmates could grieve prevailing wage claims.⁶

Furthermore, in affirming the ALJ's decision in Wicker, the Supreme Court did not suggest that it was granting inmates "new" grievance rights. For instance, there was no indication by the Court that DOC's grievance procedures were inadequate or that they should be enlarged. Quite the contrary, the Court ruled that "[t]here are numerous issues relating to inmates which, although not giving rise to a private, civil cause of action, are nonetheless grievable through DOC's internal grievance processes" and that Wicker "properly filed a grievance with the DOC." Wicker, 360 S.C. at 423-24, 602 S.E.2d at 57 (emphases added). These statements reflect a conclusion by the Court that DOC's then-existing grievance policies were broad enough to incorporate prevailing wage claims and that the inmate therefore properly filed a grievance with DOC under those grievance policies.

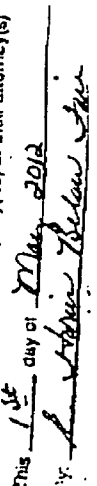
Based upon the foregoing, I conclude that, prior to the Supreme Court's decisions in Adkins and Wicker, inmates could have submitted a grievance relating to their prevailing wage claims. Accordingly, I conclude that Adkins and Wicker did not create new grievance rights, but merely confirmed that prevailing wage claims were grievable under DOC's existing policies. Accordingly, I find that the Appellant failed to file his Step 1 grievance in a timely manner.

IT IS THEREFORE ORDERED that the Department's final decisions in this matter are **AFFIRMED**.

AND IT IS SO ORDERED.


Ralph K. Anderson, III
Chief Administrative Law Judge

May 1, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy herof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s)
This 1st day of May 2012
by: 

⁶ Although, as discussed herein, an ALJ's decision does not constitute binding precedent, the ALJ's decision in Wicker nevertheless counteracted DOC's claims that prevailing wage claims were non-grievable.

JUN 28 2012

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

MALONE, THOMPSON
SUMMERS & OTT, LLC

Freddie Bradley, #281630)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No. 07-ALJ-04-0772-AP

ORDER

This matter comes before the Administrative Law Court (ALC) pursuant to the appeal of Freddie Bradley, an inmate incarcerated with the Department of Corrections (DOC or Department). Appellant claims that his constitutional rights were violated because the training wages he received when he worked in prison industries were less than "prevailing wages" required under S.C. Code Ann. §24-3-430(D). Appellant requested back pay for the difference between his "training wages" and prevailing wages for the period of time he worked in prison industries.¹

BACKGROUND

The Appellant filed a Step 1 grievance dated April 11, 2007, stating he worked for prison industries from 1999 to present and was not paid prevailing wages under South Carolina Code 24-3-430. He thus asserted he was entitled to back wages from 1999 to present. The Warden denied Appellant's grievance and served the Appellant with the denial on May 30, 2007.

¹ In the Notice of Appeal, Appellant also contends the Department violated constitutional protections in issuing its decision. Appellant did not raise the issues of violation of constitutional protections below. An inmate cannot sit silently during a hearing, raising no objections, and then raise issues such as these for the first time on appeal. See Kiwah Resort Associates v. South Carolina Tax Com'n, 318 S.C. 502, 458 S.E.2d 542 (1995) (in reviewing a final decision of an administrative agency, the Administrative Law Judge "has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency."). Our law is also clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review. State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). This rule also applies to constitutional arguments. See State v. Owens, 378 S.C. 636, 638, 664 S.E.2d 80, 81 (2008) (finding constitutional claims not preserved for review without a contemporaneous objection at trial). State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). Furthermore, all of the arguments raised by Appellant were merely conclusory statements. Consequently, Appellant abandoned these issues on appeal, and they need not be considered. See Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004) (failure to provide arguments or supporting authority for an issue renders it abandoned); Muir v. C.R. Bard, Inc., 336 S.C. 266, 298-99, 519 S.E.2d 583, 600 (Ct. App. 1999) (conclusory arguments may be treated as abandoned).

FILED

June 27, 2012
SC ADMIN. LAW COURT

Appellant timely filed his Step 2 grievance dated May 30, 2007. After Appellant's Step 2 grievance was denied on August 8, 2007, Appellant filed this appeal on August 15, 2007.

Appellant has not filed a brief in this case. Pursuant to ALC Rule 38, an Administrative Law Judge may dismiss an appeal for failure to comply with the rules of procedure for appeals or for failure to comply with any time limits set forth in an appeal. This delay is well beyond the time period set forth in the Rules of Procedure for the Administrative Law Court. As the Appellant has been afforded ample time to file his Brief and has not notified the ALC of any extenuating circumstances regarding his failure to file, I conclude that this matter should be dismissed sua sponte.²

STANDARD OF REVIEW

This case is before the ALC on appeal from a final decision of the Department pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2010) of the Administrative Procedures Act (APA). As such, the Administrative Law Judge (ALJ) sits in an appellate capacity under the APA rather than as an independent finder of fact. In South Carolina, the provisions of the APA—specifically Section 1-23-380(A)(5)—govern the circumstances in which an appellate body may reverse or modify an agency decision. That section 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. 2010).

² Though Appellant's failure to file a brief warrant dismissal of this case, for sake of judicial expediency I also address the issue of timeliness of the grievance.

DISCUSSION

Timeliness of Wage Claim

The South Carolina Department of Corrections Policies and Procedures, Paragraph 13.1 of GA-01.12 generally requires that Step 1 grievances be filed "within 15 days of the alleged incident." DOC Policy Number GA-01.12, ¶ 13.1.³ The Department's procedure further sets forth a specific time frame to exercise the rights created under those provisions. Therefore, it appears that the Department's regulations require that inmates file their grievance within a specific period of time pursuant to a "statute of creation."

Under South Carolina law, a statute that creates a new liability and affixes the time within which an action may be commenced is a "statute of creation," and commencement within the time affixed is an indispensable condition of the action. Knight Publ'g Co. v. Univ. of S.C., 295 S.C. 31, 33, 367 S.E.2d 20, 22 (1988), overruled on other grounds by McLendon v. S.C. Dep't of Highways and Public Transp., 313 S.C. 525, 443 S.E.2d 539 (1994). Although the failure to timely commence an action pursuant to a statute of creation is not a subject matter jurisdiction defect, such an action "cannot be maintained unless brought within the time allowed by that statute." Simpson v. Sanders, 314 S.C. 413, 415 n.1, 445 S.E.2d 93, 94 n.1 (1994). When a statute both creates a cause of action and includes a time limit for its commencement, compliance with the time limit is a condition precedent to the maintenance of the action. 54 C.J.S. Limitations of Actions § 31 (updated October 2010). "Such a statutory time limit conditions the existence of the right of action, thereby creating a substantive, rather than procedural, limitation on the right. Bringing suit within the prescribed time is a condition of liability itself, not of the remedy alone." Id.

The reason for a specific time frame to seek review of these matters is much like statutes of limitations. Notably, the South Carolina courts have held that "[s]tatutes of limitations are not simply technicalities," but rather are "fundamental to a well-ordered judicial system." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "The purpose of statutes of limitation is to ensure litigation is 'brought within a reasonable time in order that evidence be

³ The Department's prescribed procedures for inmates to seek review of these matters that has been approved by the South Carolina Supreme Court. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) ("We hold that Department's disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in Wolff v. McDonnell, supra. We note that Department also prepared its grievance procedures in compliance with the Civil Rights of Institutionalized Persons Act.").

reasonably available and there be some end to litigation.” Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (quoting Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct. App. 2008)). “Statutes of limitation embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690 (quoting Moates, 322 S.C. at 176, 470 S.E.2d at 404). Moreover, statutes of limitations relieve courts of the burden of trying stale claims of those who have “slept on their rights.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690.

Because the Department has a legitimate interest in investigating grievances while they are still new, public policy calls for the application of some limitations period to Appellant’s prevailing wage claim. See Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004) (noting that the prison system has a legitimate interest in investigating complaints while they are still fresh); see also Woodford v. Ngo, 548 U.S. 81, 95 (2006) (“When a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved.”). Here, the fifteen-day filing deadline from Paragraph 13.1 is the only limitations period applicable to this claim.⁴ Therefore, ruling in favor of Appellant would mean that inmates would not be required to file prevailing wage grievances within any set time period. Due in part to public policy concerns over such a result, this court has consistently held that prevailing wage claims do not involve the Department’s “policies or procedures.” See, e.g., Lawson v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 12, 2007); Wright v. S.C. Dep’t of Corr., 06-ALJ-04-00114-AP, 2006 WL 1430140 (S.C. Admin. Law Ct. Apr. 28, 2006).

The importance of filing deadlines is underscored by the facts of this case. The record demonstrates the Appellant filed his Step 1 regarding his wage claims on April 11, 2007. The Appellant acknowledges in his grievance that he is seeking wages for employment from 1999. Thus, over seven years passed between when Appellants began participating in the project and when he filed his Step 1 challenging his pay.

⁴ The statutory provisions upon which Appellant bases his pay claim does not create a private right of action. See Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Therefore, statutes of limitations derived from state law do not apply to Appellant’s claim. See Talford v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 14, 2007).

Implication of Wicker and Adkins

New Substantive Rights

Appellant also argues that his grievance was timely filed as he filed within a reasonable time of being notified of Adkins v. S.C. Department of Corrections, 360 S.C. 413, 602 S.E.2d 51 (2004) and Wicker v. S.C. Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004). However, Wicker and Adkins did not create new substantive rights. A "substantive right" is "[a] right that can be protected or enforced by law," and it is "a right of substance rather than form." Black's Law Dictionary 1324 (7th ed. 1999). It is distinguishable from a procedural right, which is "a right that derives from legal or administrative procedure" and which "helps in the protection or enforcement of a substantive right." Black's Law Dictionary 1323 (7th ed. 1999). A substantive right can be created by statute or by judicial decision. See, e.g., Lawson v. S.C. Dep't of Corrections, 340 S.C. 346, 350, 532 S.E.2d 259, 261 (2000) (holding that the whistleblower statute created new substantive rights); McCaskey v. Shaw, 295 S.C. 372, 375, 368 S.E.2d 672, 673 (Ct. App. 1988) (holding that a prior Supreme Court decision "created a new substantive right"). A court creates a new substantive right when it recognizes a new cause of action that did not previously exist. See Toth v. Square D Co., 298 S.C. 6, 8, 377 S.E.2d 584, 585-86 (1989).

In Adkins, our Supreme Court held that Section 24-3-430 and the accompanying prison industries statutes did not provide inmates with the right to bring a private cause of action against DOC. Adkins, 360 S.C. at 419, 602 S.E.2d at 55. More relevant to the case at hand, the Court further held that:

[N]otwithstanding our holding that Inmates have no private civil cause of action, they are not without a remedy. In accordance with the companion case of Wicker v. South Carolina Dept. of Corrections, 360 S.C. 421, 602 S.E.2d 56, 2004 WL 1877947 (2004), we hold Inmates may file an inmate grievance to protest DOC's failure to pay wages in accordance with the mandatory statutory provisions.

Id.

In Wicker, the Supreme Court fleshed out this latter holding. It explained that "where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law." Wicker, 360 S.C. at 424, 602 S.E.2d at 57. The Court thus held that inmates' prevailing wage claims were grievable through DOC's internal grievance processes and that DOC's denial of those claims could be appealed to the ALC. Id. at 423-25, 602 S.E.2d at 57-58.

I find that Adkins and Wicker did not create new substantive rights. The substantive right at issue in Adkins and Wicker - i.e., the right to a prevailing wage—was granted to inmates in 1995 pursuant to Section § 24-3-430(D). Adkins and Wicker, both of which were published in 2004, simply addressed the appropriate procedure for seeking redress for a denial of that existing right. Accordingly, they did not create new substantive rights. See Atlantic Soft Drink Co. of Columbia, Inc. v. S.C. Nat. Bank, 287 S.C. 228, 336 S.E.2d 876 (1985) (holding that statute that related “only to remedies and modes of procedure” did not affect substantive rights); Hooks v. Southern Bell Tel. & Tel. Co., 291 S.C. 41, 351 S.E.2d 900 (Ct. App. 1986) (holding that the “right to seek review” is procedural, not substantive); cf. Baker v. McCollan, 443 U.S. 137, 145 n.3 (1979) (holding that 42 U.S.C. § 1983 “is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes”); Harvey v. S.C. Dep’t of Corrections, 338 S.C. 500, 527 S.E.2d 765 (Ct. App. 2000) (holding that the Uniform Declaratory Judgments Act did not create substantive rights or duties because it merely authorized a court action to establish a party’s entitlement to a pre-existing right).

New Grievance Remedies

Adkins and Wicker also did not create new grievance rights. Paragraph 7 of DOC Policy Number GA-01.12, which has existed in some form since May 1, 1996, sets forth the issues that are considered grievable by DOC.⁵ Among other grievable issues, it includes the following: “Department policies/procedures, directives, or conditions which directly affect an inmate.” DOC Policy Number GA-01.12, ¶ 7.1 (emphasis added). Unquestionably, inmates are “directly affect[ed]” by DOC policies that cause them to be paid less than that required by law. Thus, this provision, which is very broad in scope, encompasses prevailing wage claims.⁶

⁵ Notably, the existence of DOC’s grievance policies was specifically recognized by the Supreme Court in its 2000 decision, Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), where the Court held that DOC’s grievance procedures were consistent with the standards delineated by the U.S. Supreme Court in Wolff v. McDonnell, 418 U.S. 539 (1974). See Al-Shabazz, 338 S.C. at 371-373, 527 S.E.2d at 751-52.

⁶ In addition to Paragraph 7 of DOC Policy Number GA-01.12, DOC’s policies also include Paragraph 9 of Policy Number GA-01.12, which sets forth the procedure by which grievances concerning questionable issues are determined. This provision, which has existed in all versions and editions of DOC’s inmate grievance policies since at least May 1, 1996, states in pertinent part: “In those cases where a question may arise as to whether an item is grievable, the Institutional Inmate Grievance Coordinator will confer with the Chief, Inmate Grievance Branch, who will make that determination.” Thus, to the extent that inmates were not certain whether or not prevailing wage claims were grievable prior to Adkins and Wicker, they could have utilized this provision to resolve the issue.

Indeed, an ALJ reached that very conclusion in a 2001 decision that gave rise to, and was ultimately affirmed by, the Supreme Court's opinion in Wicker. See Wicker v. S.C. Dep't of Corrections, 00-ALJ-04-00781, 2001 WL 1005574 (S.C. Admin. Law Ct. Aug. 13, 2001). In the case before the ALJ, DOC contended that prevailing wage claims were "non-grievable." See id. at *1. Upon reviewing DOC's grievance policies, the ALJ disagreed, holding:

Wicker's wage dispute falls under the listed issues considered "grievable" under DOC policy at GA-01.12(OP), Specific Procedures, paragraph 7; the first issue listed is "Department policies/procedures, directives, or conditions which directly affect an inmate." Wicker is directly affected by DOC's arrangement with private industry to pay inmates less than the "prevailing wage for work of similar nature in the private sector" for the first 320 hours of work. Therefore, Wicker's wage dispute is grievable under the agency's grievance system.

Id. at *1. Thus, as early as 2001, an ALJ held that inmates could grieve prevailing wage claims.⁷

Furthermore, in affirming the ALJ's decision in Wicker, the Supreme Court did not suggest that it was granting inmates "new" grievance rights. For instance, there was no indication by the Court that DOC's grievance procedures were inadequate or that they should be enlarged. Quite the contrary, the Court ruled that "[t]here are numerous issues relating to inmates which, although not giving rise to a private, civil cause of action, are nonetheless grievable through DOC's internal grievance processes" and that Wicker "properly filed a grievance with the DOC." Wicker, 360 S.C. at 423-24, 602 S.E.2d at 57 (emphases added). These statements reflect a conclusion by the Court that DOC's then-existing grievance policies were broad enough to incorporate prevailing wage claims and that the inmate therefore properly filed a grievance with DOC under those grievance policies.

Based upon the foregoing, I conclude that, prior to the Supreme Court's decisions in Adkins and Wicker, inmates could have submitted a grievance relating to their prevailing wage claims. Accordingly, I conclude that Adkins and Wicker did not create new grievance rights, but merely confirmed that prevailing wage claims were grievable under DOC's existing policies. Accordingly, I find that the Appellant failed to file his Step 1 grievance in a timely manner.

IT IS THEREFORE ORDERED that the Department's final decisions in this matter are **AFFIRMED**.

⁷ Although, as discussed herein, an ALJ's decision does not constitute binding precedent, the ALJ's decision in Wicker nevertheless counteracted DOC's claims that prevailing wage claims were non-grievable.

AND IT IS SO ORDERED.

Ralph K. Anderson III

Ralph K. Anderson, III
Chief Administrative Law Judge

June 27, 2012
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

June 27, 2012
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

William Bridgeman, #130350,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No. 09-ALJ-04-00610-AP

ORDER FILED
 APR 26 2012
 SC ADMIN. LAW COURT

This matter comes before the Administrative Law Court (ALC) pursuant to the appeal of William Bridgeman, an inmate incarcerated with the Department of Corrections (DOC or Department). Appellant claims that his constitutional rights were violated because the wages he received when he worked in prison industries were less than "prevailing wages" under S.C. Code Ann. §§ 24-3-40, 24-3-410, and 24-3-430 (Supp. 2002). Appellant also challenged the time limit to file grievances and requested back pay for the difference between his "training wages" and prevailing wages for the period of time he worked in prison industries.¹ The Appellant also alleges a violation of Footnote 4 from the case of Torrence v. South Carolina Department of Corrections, 373 S.C. 586, 646 S.E. 2d 866 (2007).

BACKGROUND

The Appellant filed a Step 1 grievance dated October 29, 2008, claiming he worked for prison industries from June 13, 1990 through February 15, 1995 while he was housed at Evans

¹ In the Notice of Appeal, Appellant also contends the Department violated constitutional protections in issuing its decision. Appellant did not raise the issue of violation of constitutional protections below. An inmate cannot sit silently during a hearing, raising no objections, and then raise issues such as these for the first time on appeal. See Kiawah Resort Associates v. South Carolina Tax Com'n, 318 S.C. 502, 458 S.E.2d 542 (1995) (In reviewing a final decision of an administrative agency, the Administrative Law Judge "has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency."). Our law is also clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review. State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). This rule also applies to constitutional arguments. See State v. Owens, 378 S.C. 636, 638, 664 S.E.2d 80, 81 (2008) (finding constitutional claims not preserved for review without a contemporaneous objection at trial). State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). Furthermore, all of the arguments raised by Appellant were merely conclusory statements. Consequently, Appellant abandoned these issues on appeal, and they need not be considered. See Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004) (failure to provide arguments or supporting authority for an issue renders it abandoned); Muir v. C.R. Bard, Inc., 336 S.C. 266, 298-99, 519 S.E.2d 583, 600 (Ct. App. 1999) (conclusory arguments may be treated as abandoned).

Correctional Institution. Appellant alleged that the Department violated Statutes 24-3-40(A) and (D), that the Department owes his additional monies plus interest, and that the Department was withholding "grievances." Appellant's grievance was denied, and Appellant filed his Step 2 grievance dated April 26, 2009. Appellant asserts that he was advised to file his grievance when prison officials posted information regarding wage claims in October 2008. The Warden denied Appellant's grievance on April 7, 2009. Appellant received the denial on June 5, 2009 and filed this appeal on July 1, 2009. The Department objects to the appeal as being untimely and in addition notes that South Carolina Code § 24-3-430(D) was not effective prior to July 1, 1995.

STANDARD OF REVIEW

This case is before the ALC on appeal from a final decisions of the Department pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2010) of the Administrative Procedures Act (APA). As such, the Administrative Law Judge (ALJ) sits in an appellate capacity under the APA rather than as an independent finder of fact. In South Carolina, the provisions of the APA—specifically Section 1-23-380(A)(5)—govern the circumstances in which an appellate body may reverse or modify an agency decision. That section 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. 2010).

DISCUSSION

Timeliness of Wage Claim

The South Carolina Department of Corrections Policies and Procedures, Paragraph 13.1 of GA-01.12 generally requires that Step 1 grievances be filed "within 15 days of the alleged

incident.” DOC Policy Number GA-01.12, ¶ 13.1.² The Department’s procedure further sets forth a specific time frame to exercise the rights created under those provisions. Therefore, it appears that the Department’s regulations require that inmates file their grievance within a specific period of time pursuant to a “statute of creation.”

Under South Carolina law, a statute that creates a new liability and affixes the time within which an action may be commenced is a “statute of creation,” and commencement within the time affixed is an indispensable condition of the action. Knight Publ’g Co. v. Univ. of S.C., 295 S.C. 31, 33, 367 S.E.2d 20, 22 (1988), overruled on other grounds by McLendon v. S.C. Dep’t of Highways and Public Transp., 313 S.C. 525, 443 S.E.2d 539 (1994). Although the failure to timely commence an action pursuant to a statute of creation is not a subject matter jurisdiction defect, such an action “cannot be maintained unless brought within the time allowed by that statute.” Simpson v. Sanders, 314 S.C. 413, 415 n.1, 445 S.E.2d 93, 94 n.1 (1994). When a statute both creates a cause of action and includes a time limit for its commencement, compliance with the time limit is a condition precedent to the maintenance of the action. 54 C.J.S. Limitations of Actions § 31 (updated October 2010). “Such a statutory time limit conditions the existence of the right of action, thereby creating a substantive, rather than procedural, limitation on the right. Bringing suit within the prescribed time is a condition of liability itself, not of the remedy alone.” Id.

The reason for a specific time frame to seek review of these matters is much like statutes of limitations. Notably, the South Carolina courts have held that “[s]tatutes of limitations are not simply technicalities,” but rather are “fundamental to a well-ordered judicial system.” Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). “The purpose of statutes of limitation is to ensure litigation is ‘brought within a reasonable time in order that evidence be reasonably available and there be some end to litigation.’” Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (quoting Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct. App. 2008)). “Statutes of limitation embody important public policy considerations in that they stimulate

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activity, punish negligence, and promote repose by giving security and stability to human affairs." Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690 (quoting Moates, 322 S.C. at 176, 470 S.E.2d at 404). Moreover, statutes of limitations relieve courts of the burden of trying stale claims of those who have "slept on their rights." Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690.

Because the Department has a legitimate interest in investigating grievances while they are still new, public policy calls for the application of some limitations period to Appellant's prevailing wage claim. See Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004) (noting that the prison system has a legitimate interest in investigating complaints while they are still fresh); see also Woodford v. Ngo, 548 U.S. 81, 95 (2006) ("When a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved."). Here, the fifteen-day filing deadline from Paragraph 13.1 is the only limitations period applicable to this claim.³ Therefore, ruling in favor of Appellant would mean that inmates would not be required to file prevailing wage grievances within any set time period. Due in part to public policy concerns over such a result, this court has consistently held that prevailing wage claims do not involve the Department's "policies or procedures." See, e.g., Lawson v. S.C. Dep't of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 12, 2007); Wright v. S.C. Dep't of Corr., 06-ALJ-04-00114-AP, 2006 WL 1430140 (S.C. Admin. Law Ct. Apr. 28, 2006).

The importance of filing deadlines is underscored by the facts of this case. The record demonstrates the Appellant filed his Step 1 regarding his wage claims on October 29, 2008. The Appellant acknowledges in his grievance that he is seeking wages for employment from June 13, 1990, through February 15, 1995. Thus, approximately eighteen years passed between when Appellants began participating in the project and when he filed his Step 1 challenging his pay. Clearly, the passage of eighteen years could significantly affect the Department's ability to defend Appellants' claims.⁴

³ The statutory provisions upon which Appellant bases his pay claim does not create a private right of action. See Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Therefore, statutes of limitations derived from state law do not apply to Appellant's claim. See Talford v. S.C. Dep't of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 14, 2007).

⁴ The court notes in this regard that the statutory deadline for filing wage recovery claims under South Carolina's Payment of Wages Act is three years. See S.C. Code Ann. § 41-10-80(C) (Supp. 2010) ("Any civil action for the recovery of wages must be commenced within three years after the wages become due.").

Implication of *Wicker* and *Adkins*

New Substantive Rights

Appellant also argues that his grievance was timely filed as he filed within fifteen days of being notified of *Adkins v. S.C. Department of Corrections*, 360 S.C. 413, 602 S.E.2d 51 (2004) and *Wicker v. S.C. Department of Corrections*, 360 S.C. 421, 602 S.E.2d 56 (2004). However, *Wicker* and *Adkins* did not create new substantive rights. A "substantive right" is "[a] right that can be protected or enforced by law," and it is "a right of substance rather than form." *Black's Law Dictionary* 1324 (7th ed. 1999). It is distinguishable from a procedural right, which is "a right that derives from legal or administrative procedure" and which "helps in the protection or enforcement of a substantive right." *Black's Law Dictionary* 1323 (7th ed. 1999). A substantive right can be created by statute or by judicial decision. See, e.g., *Lawson v. S.C. Dep't of Corrections*, 340 S.C. 346, 350, 532 S.E.2d 259, 261 (2000) (holding that the whistleblower statute created new substantive rights); *McCaskey v. Shaw*, 295 S.C. 372, 375, 368 S.E.2d 672, 673 (Ct. App. 1988) (holding that a prior Supreme Court decision "created a new substantive right"). A court creates a new substantive right when it recognizes a new cause of action that did not previously exist. See *Toth v. Square D Co.*, 298 S.C. 6, 8, 377 S.E.2d 584, 585-86 (1989).

In *Adkins*, our Supreme Court held that Section 24-3-430 and the accompanying prison industries statutes did not provide inmates with the right to bring a private cause of action against DOC. *Adkins*, 360 S.C. at 419, 602 S.E.2d at 55. More relevant to the case at hand, the Court further held that:

[N]otwithstanding our holding that Inmates have no private civil cause of action, they are not without a remedy. In accordance with the companion case of *Wicker v. South Carolina Dept. of Corrections*, 360 S.C. 421, 602 S.E.2d 56, 2004 WL 1877947 (2004), we hold Inmates may file an inmate grievance to protest DOC's failure to pay wages in accordance with the mandatory statutory provisions.

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In *Wicker*, the Supreme Court fleshed out this latter holding. It explained that "where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law." *Wicker*, 360 S.C. at 424, 602 S.E.2d at 57. The Court thus held that inmates' prevailing wage claims were grievable through DOC's internal grievance processes and that DOC's denial of those claims could be appealed to the ALC. *Id.* at 423-25, 602 S.E.2d at 57-58.

I find that Adkins and Wicker did not create new substantive rights. The substantive right at issue in Adkins and Wicker - i.e., the right to a prevailing wage—was granted to inmates in 1995 pursuant to Section § 24-3-430(D). Adkins and Wicker, both of which were published in 2004, simply addressed the appropriate procedure for seeking redress for a denial of that existing right. Accordingly, they did not create new substantive rights. See Atlantic Soft Drink Co. of Columbia, Inc. v. S.C. Nat. Bank, 287 S.C. 228, 336 S.E.2d 876 (1985) (holding that statute that related “only to remedies and modes of procedure” did not affect substantive rights); Hooks v. Southern Bell Tel. & Tel. Co., 291 S.C. 41, 351 S.E.2d 900 (Ct. App. 1986) (holding that the “right to seek review” is procedural, not substantive); cf. Baker v. McCollan, 443 U.S. 137, 145 n.3 (1979) (holding that 42 U.S.C. § 1983 “is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes”); Harvey v. S.C. Dep’t of Corrections, 338 S.C. 500, 527 S.E.2d 765 (Ct. App. 2000) (holding that the Uniform Declaratory Judgments Act did not create substantive rights or duties because it merely authorized a court action to establish a party’s entitlement to a pre-existing right).

New Grievance Remedies

Adkins and Wicker also did not create new grievance rights. Paragraph 7 of DOC Policy Number GA-01.12, which has existed in some form since May 1, 1996, sets forth the issues that are considered grievable by DOC.⁵ Among other grievable issues, it includes the following: “Department policies/procedures, directives, or conditions which directly affect an inmate.” DOC Policy Number GA-01.12, ¶ 7.1 (emphasis added). Unquestionably, inmates are “directly affect[ed]” by DOC policies that cause them to be paid less than that required by law. Thus, this provision, which is very broad in scope, encompasses prevailing wage claims.⁶

⁵ Notably, the existence of DOC’s grievance policies was specifically recognized by the Supreme Court in its 2000 decision, Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), where the Court held that DOC’s grievance procedures were consistent with the standards delineated by the U.S. Supreme Court in Wolff v. McDonnell, 418 U.S. 539 (1974). See Al-Shabazz, 338 S.C. at 371-373, 527 S.E.2d at 751-52.

⁶ In addition to Paragraph 7 of DOC Policy Number GA-01.12, DOC’s policies also include Paragraph 9 of Policy Number GA-01.12, which sets forth the procedure by which grievances concerning questionable issues are determined. This provision, which has existed in all versions and editions of DOC’s inmate grievance policies since at least May 1, 1996, states in pertinent part: “In those cases where a question may arise as to whether an item is grievable, the Institutional Inmate Grievance Coordinator will confer with the Chief, Inmate Grievance Branch, who will make that determination.” Thus, to the extent that inmates were not certain whether or not prevailing wage claims were grievable prior to Adkins and Wicker, they could have utilized this provision to resolve the issue

Indeed, an ALJ reached that very conclusion in a 2001 decision that gave rise to, and was ultimately affirmed by, the Supreme Court's opinion in Wicker. See Wicker v. S.C. Dep't of Corrections, 00-ALJ-04-00781, 2001 WL 1005574 (S.C. Admin. Law Ct. Aug. 13, 2001). In the case before the ALJ, DOC contended that prevailing wage claims were "non-grievable." See id. at *1. Upon reviewing DOC's grievance policies, the ALJ disagreed, holding:

Wicker's wage dispute falls under the listed issues considered "grievable" under DOC policy at GA-01.12(OP), Specific Procedures, paragraph 7; the first issue listed is "Department policies/procedures, directives, or conditions which directly affect an inmate." Wicker is directly affected by DOC's arrangement with private industry to pay inmates less than the "prevailing wage for work of similar nature in the private sector" for the first 320 hours of work. Therefore, Wicker's wage dispute is grievable under the agency's grievance system.

Id. at *1. Thus, as early as 2001, an ALJ held that inmates could grieve prevailing wage claims.⁷

Furthermore, in affirming the ALJ's decision in Wicker, the Supreme Court did not suggest that it was granting inmates "new" grievance rights. For instance, there was no indication by the Court that DOC's grievance procedures were inadequate or that they should be enlarged. Quite the contrary, the Court ruled that "[t]here are numerous issues relating to inmates which, although not giving rise to a private, civil cause of action, are nonetheless grievable through DOC's internal grievance processes" and that Wicker "properly filed a grievance with the DOC." Wicker, 360 S.C. at 423-24, 602 S.E.2d at 57 (emphases added). These statements reflect a conclusion by the Court that DOC's then-existing grievance policies were broad enough to incorporate prevailing wage claims and that the inmate therefore properly filed a grievance with DOC under those grievance policies.

Based upon the foregoing, I conclude that, prior to the Supreme Court's decisions in Adkins and Wicker, inmates could have submitted a grievance relating to their prevailing wage claims. Accordingly, I conclude that Adkins and Wicker did not create new grievance rights, but merely confirmed that prevailing wage claims were grievable under DOC's existing policies. Accordingly, I find that the Appellant failed to file his Step 1 grievance in a timely manner.

South Carolina Code Section 24-3-430(D)


South Carolina Code Section 24-3-430 (D) provides "No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector. "

⁷ Although, as discussed herein, an ALJ's decision does not constitute binding precedent, the ALJ's decision in Wicker nevertheless counteracted DOC's claims that prevailing wage claims were non-grievable.

This code section was enacted and became effective on July 1, 1995. In his Step 1 grievance, Appellant states he is seeking wages for employment from June 13, 1990 to February 15, 1995. Thus, this statute does not apply to any wages owed prior to July 1, 1995.

IT IS THEREFORE ORDERED that the Department's final decisions in this matter are **AFFIRMED**.

AND IT IS SO ORDERED.


Ralph K. Anderson, III
Chief Administrative Law Judge

April 26, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s)

This 26th day of April, 2012

By: 
Judicial Law Clerk

STATE OF SOUTH CAROLINA
Administrative Law Court

LAW OFFICES

APR 27 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

PHONE: (803) 734-0550

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Ralph K. Anderson, III
Chief Judge

Jana E. Cox Shealy
Clerk



April 26, 2012

William Bridgeman, #130350
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669

Lake Summers, Esquire
Malone, Thompson, Summers, and Ott, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201

Re: William Bridgeman, #130350 v. SC Department of Corrections, 09-ALJ-04-00610-AP

Dear Mr. Bridgeman and Mr. Summers:

Enclosed please find the Order in the above-captioned case which is hereby served upon you.

Sincerely,

A handwritten signature in cursive script that reads "E. Harvin Belser Fair".

E. Harvin Belser Fair

Administrative Law Clerk for the Honorable Ralph King Anderson, III

Enclosure

LAW OFFICES

APR 27 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

LAW OFFICES

JUL 03 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Woodrow J. Cudd, #240049)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No. 07-ALJ-04-0771-AP

ORDER

This matter comes before the Administrative Law Court (ALC) pursuant to the appeal of Woodrow J. Cudd, an inmate incarcerated with the Department of Corrections (DOC or Department). Appellant claims that his constitutional rights were violated because the training wages he received when he worked in prison industries were less than "prevailing wages" required under S.C. Code Ann. §24-3-430(D). Appellant requested back pay for the difference between his "training wages" and prevailing wages for the period of time he worked in prison industries.¹

BACKGROUND

The Appellant filed a Step 1 grievance dated August 22, 2005, stating he worked for prison industries and was not paid prevailing wages under South Carolina Code 24-3-430. He thus asserted he was entitled to back wages. The Warden denied Appellant's grievance and

¹ In the Notice of Appeal, Appellant also contends the Department violated constitutional protections in issuing its decision. Appellant did not raise the issues of violation of constitutional protections below. An inmate cannot sit silently during a hearing, raising no objections, and then raise issues such as these for the first time on appeal. See Kiwah Resort Associates v. South Carolina Tax Com'n, 318 S.C. 502, 458 S.E.2d 542 (1995) (In reviewing a final decision of an administrative agency, the Administrative Law Judge "has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency."). Our law is also clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review. State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). This rule also applies to constitutional arguments. See State v. Owens, 378 S.C. 636, 638, 664 S.E.2d 80, 81 (2008) (finding constitutional claims not preserved for review without a contemporaneous objection at trial). State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). Furthermore, all of the arguments raised by Appellant were merely conclusory statements. Consequently, Appellant abandoned these issues on appeal, and they need not be considered. See Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004) (failure to provide arguments or supporting authority for an issue renders it abandoned); Muir v. C.R. Bard, Inc., 336 S.C. 266, 298-99, 519 S.E.2d 583, 600 (Ct. App. 1999) (conclusory arguments may be treated as abandoned).

FILED

July 2, 2012

SC ADMIN. LAW COURT

served the Appellant with the denial on May 22, 2007. Appellant timely filed his Step 2 grievance dated May 23, 2007. After Appellant's Step 2 grievance was denied on August 2, 2007, Appellant filed this appeal on August 15, 2007. Appellant filed his brief prior to the Department filing the Record on Appeal. Although the decision in the Step 1 grievance notes Appellant worked from March 22, 2002 to April 1, 2002, Appellant did not provide any evidence of when he worked in prison industries.

STANDARD OF REVIEW

This case is before the ALC on appeal from a final decisions of the Department pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2010) of the Administrative Procedures Act (APA). As such, the Administrative Law Judge (ALJ) sits in an appellate capacity under the APA rather than as an independent finder of fact. In South Carolina, the provisions of the APA—specifically Section 1-23-380(A)(5)—govern the circumstances in which an appellate body may reverse or modify an agency decision. That section 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. 2010).

DISCUSSION

Timeliness of Wage Claim

The South Carolina Department of Corrections Policies and Procedures, Paragraph 13.1 of GA-01.12 generally requires that Step 1 grievances be filed "within 15 days of the alleged

incident.” DOC Policy Number GA-01.12, ¶ 13.1.² The Department’s procedure further sets forth a specific time frame to exercise the rights created under those provisions. Therefore, it appears that the Department’s regulations require that inmates file their grievance within a specific period of time pursuant to a “statute of creation.”

Under South Carolina law, a statute that creates a new liability and affixes the time within which an action may be commenced is a “statute of creation,” and commencement within the time affixed is an indispensable condition of the action. Knight Publ’g Co. v. Univ. of S.C., 295 S.C. 31, 33, 367 S.E.2d 20, 22 (1988), overruled on other grounds by McLendon v. S.C. Dep’t of Highways and Public Transp., 313 S.C. 525, 443 S.E.2d 539 (1994). Although the failure to timely commence an action pursuant to a statute of creation is not a subject matter jurisdiction defect, such an action “cannot be maintained unless brought within the time allowed by that statute.” Simpson v. Sanders, 314 S.C. 413, 415 n.1, 445 S.E.2d 93, 94 n.1 (1994). When a statute both creates a cause of action and includes a time limit for its commencement, compliance with the time limit is a condition precedent to the maintenance of the action. 54 C.J.S. Limitations of Actions § 31 (updated October 2010). “Such a statutory time limit conditions the existence of the right of action, thereby creating a substantive, rather than procedural, limitation on the right. Bringing suit within the prescribed time is a condition of liability itself, not of the remedy alone.” Id.

The reason for a specific time frame to seek review of these matters is much like statutes of limitations. Notably, the South Carolina courts have held that “[s]tatutes of limitations are not simply technicalities,” but rather are “fundamental to a well-ordered judicial system.” Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). “The purpose of statutes of limitation is to ensure litigation is ‘brought within a reasonable time in order that evidence be reasonably available and there be some end to litigation.’” Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (quoting Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct. App. 2008)). “Statutes of limitation embody important public policy considerations in that they stimulate

² The Department’s prescribed procedures for inmates to seek review of these matters that has been approved by the South Carolina Supreme Court. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) (“We hold that Department’s disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in Wolff v. McDonnell, *supra*. We note that Department also prepared its grievance procedures in compliance with the Civil Rights of Institutionalized Persons Act.”).

activity, punish negligence, and promote repose by giving security and stability to human affairs." Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690 (quoting Moates, 322 S.C. at 176, 470 S.E.2d at 404). Moreover, statutes of limitations relieve courts of the burden of trying stale claims of those who have "slept on their rights." Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690.

Because the Department has a legitimate interest in investigating grievances while they are still new, public policy calls for the application of some limitations period to Appellant's prevailing wage claim. See Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004) (noting that the prison system has a legitimate interest in investigating complaints while they are still fresh); see also Woodford v. Ngo, 548 U.S. 81, 95 (2006) ("When a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved."). Here, the fifteen-day filing deadline from Paragraph 13.1 is the only limitations period applicable to this claim.³ Therefore, ruling in favor of Appellant would mean that inmates would not be required to file prevailing wage grievances within any set time period. Due in part to public policy concerns over such a result, this court has consistently held that prevailing wage claims do not involve the Department's "policies or procedures." See, e.g., Lawson v. S.C. Dep't of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 12, 2007); Wright v. S.C. Dep't of Corr., 06-ALJ-04-00114-AP, 2006 WL 1430140 (S.C. Admin. Law Ct. Apr. 28, 2006).

The importance of filing deadlines is underscored by the facts of this case. The record demonstrates the Appellant filed his Step 1 regarding his wage claims on May 22, 2007. The Record on Appeal shows that Appellant is seeking wages for employment from less than one month of employment from March 22, 2002 to April 1, 2002. Thus, over five years passed between when Appellants began participating in the project and when he filed his Step 1 challenging his pay.

³ The statutory provisions upon which Appellant bases his pay claim does not create a private right of action. See Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Therefore, statutes of limitations derived from state law do not apply to Appellant's claim. See Talford v. S.C. Dep't of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 14, 2007).

Implication of *Wicker* and *Adkins*

New Substantive Rights

Appellant also argues that his grievance was timely filed as he filed within a reasonable time of being notified of *Adkins v. S.C. Department of Corrections*, 360 S.C. 413, 602 S.E.2d 51 (2004) and *Wicker v. S.C. Department of Corrections*, 360 S.C. 421, 602 S.E.2d 56 (2004). However, *Wicker* and *Adkins* did not create new substantive rights. A "substantive right" is "[a] right that can be protected or enforced by law," and it is "a right of substance rather than form." *Black's Law Dictionary* 1324 (7th ed. 1999). It is distinguishable from a procedural right, which is "a right that derives from legal or administrative procedure" and which "helps in the protection or enforcement of a substantive right." *Black's Law Dictionary* 1323 (7th ed. 1999). A substantive right can be created by statute or by judicial decision. See, e.g., *Lawson v. S.C. Dep't of Corrections*, 340 S.C. 346, 350, 532 S.E.2d 259, 261 (2000) (holding that the whistleblower statute created new substantive rights); *McCaskey v. Shaw*, 295 S.C. 372, 375, 368 S.E.2d 672, 673 (Ct. App. 1988) (holding that a prior Supreme Court decision "created a new substantive right"). A court creates a new substantive right when it recognizes a new cause of action that did not previously exist. See *Toth v. Square D Co.*, 298 S.C. 6, 8, 377 S.E.2d 584, 585-86 (1989).

In *Adkins*, our Supreme Court held that Section 24-3-430 and the accompanying prison industries statutes did not provide inmates with the right to bring a private cause of action against DOC. *Adkins*, 360 S.C. at 419, 602 S.E.2d at 55. More relevant to the case at hand, the Court further held that:

[N]otwithstanding our holding that inmates have no private civil cause of action, they are not without a remedy. In accordance with the companion case of *Wicker v. South Carolina Dept. of Corrections*, 360 S.C. 421, 602 S.E.2d 56, 2004 WL 1877947 (2004), we hold inmates may file an inmate grievance to protest DOC's failure to pay wages in accordance with the mandatory statutory provisions.

Id.

In *Wicker*, the Supreme Court fleshed out this latter holding. It explained that "where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law." *Wicker*, 360 S.C. at 424, 602 S.E.2d at 57. The Court thus held that inmates' prevailing wage claims were grievable through

DOC's internal grievance processes and that DOC's denial of those claims could be appealed to the ALC. *Id.* at 423-25, 602 S.E.2d at 57-58.

I find that Adkins and Wicker did not create new substantive rights. The substantive right at issue in Adkins and Wicker - i.e., the right to a prevailing wage—was granted to inmates in 1995 pursuant to Section § 24-3-430(D). Adkins and Wicker, both of which were published in 2004, simply addressed the appropriate procedure for seeking redress for a denial of that existing right. Accordingly, they did not create new substantive rights. See Atlantic Soft Drink Co. of Columbia, Inc. v. S.C. Nat. Bank, 287 S.C. 228, 336 S.E.2d 876 (1985) (holding that statute that related “only to remedies and modes of procedure” did not affect substantive rights); Hooks v. Southern Bell Tel. & Tel. Co., 291 S.C. 41, 351 S.E.2d 900 (Ct. App. 1986) (holding that the “right to seek review” is procedural, not substantive); cf. Baker v. McCollan, 443 U.S. 137, 145 n.3 (1979) (holding that 42 U.S.C. § 1983 “is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes”); Harvey v. S.C. Dep't of Corrections, 338 S.C. 500, 527 S.E.2d 765 (Ct. App. 2000) (holding that the Uniform Declaratory Judgments Act did not create substantive rights or duties because it merely authorized a court action to establish a party's entitlement to a pre-existing right).

New Grievance Remedies

Adkins and Wicker also did not create new grievance rights. Paragraph 7 of DOC Policy Number GA-01.12, which has existed in some form since May 1, 1996, sets forth the issues that are considered grievable by DOC.⁴ Among other grievable issues, it includes the following: “Department policies/procedures, directives, or conditions which directly affect an inmate.” DOC Policy Number GA-01.12, ¶ 7.1 (emphasis added). Unquestionably, inmates are “directly affect[ed]” by DOC policies that cause them to be paid less than that required by law. Thus, this provision, which is very broad in scope, encompasses prevailing wage claims.⁵

⁴ Notably, the existence of DOC's grievance policies was specifically recognized by the Supreme Court in its 2000 decision, Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), where the Court held that DOC's grievance procedures were consistent with the standards delineated by the U.S. Supreme Court in Wolff v. McDonnell, 418 U.S. 539 (1974). See Al-Shabazz, 338 S.C. at 371-373, 527 S.E.2d at 751-52.

⁵ In addition to Paragraph 7 of DOC Policy Number GA-01.12, DOC's policies also include Paragraph 9 of Policy Number GA-01.12, which sets forth the procedure by which grievances concerning questionable issues are determined. This provision, which has existed in all versions and editions of DOC's inmate grievance policies since

Indeed, an ALJ reached that very conclusion in a 2001 decision that gave rise to, and was ultimately affirmed by, the Supreme Court's opinion in Wicker. See Wicker v. S.C. Dep't of Corrections, 00-ALJ-04-00781, 2001 WL 1005574 (S.C. Admin. Law Ct. Aug. 13, 2001). In the case before the ALJ, DOC contended that prevailing wage claims were "non-grievable." See id. at *1. Upon reviewing DOC's grievance policies, the ALJ disagreed, holding:

Wicker's wage dispute falls under the listed issues considered "grievable" under DOC policy at GA-01.12(OP), Specific Procedures, paragraph 7; the first issue listed is "Department policies/procedures, directives, or conditions which directly affect an inmate." Wicker is directly affected by DOC's arrangement with private industry to pay inmates less than the "prevailing wage for work of similar nature in the private sector" for the first 320 hours of work. Therefore, Wicker's wage dispute is grievable under the agency's grievance system.

Id. at *1. Thus, as early as 2001, an ALJ held that inmates could grieve prevailing wage claims.⁶

Furthermore, in affirming the ALJ's decision in Wicker, the Supreme Court did not suggest that it was granting inmates "new" grievance rights. For instance, there was no indication by the Court that DOC's grievance procedures were inadequate or that they should be enlarged. Quite the contrary, the Court ruled that "[t]here are numerous issues relating to inmates which, although not giving rise to a private, civil cause of action, are nonetheless grievable through DOC's internal grievance processes" and that Wicker "properly filed a grievance with the DOC." Wicker, 360 S.C. at 423-24, 602 S.E.2d at 57 (emphases added). These statements reflect a conclusion by the Court that DOC's then-existing grievance policies were broad enough to incorporate prevailing wage claims and that the inmate therefore properly filed a grievance with DOC under those grievance policies.

Based upon the foregoing, I conclude that, prior to the Supreme Court's decisions in Adkins and Wicker, inmates could have submitted a grievance relating to their prevailing wage claims. Accordingly, I conclude that Adkins and Wicker did not create new grievance rights, but

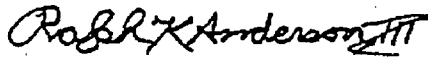
at least May 1, 1996, states in pertinent part: "In those cases where a question may arise as to whether an item is grievable, the Institutional Inmate Grievance Coordinator will confer with the Chief, Inmate Grievance Branch, who will make that determination." Thus, to the extent that inmates were not certain whether or not prevailing wage claims were grievable prior to Adkins and Wicker, they could have utilized this provision to resolve the issue.

⁶ Although, as discussed herein, an ALJ's decision does not constitute binding precedent, the ALJ's decision in Wicker nevertheless counteracted DOC's claims that prevailing wage claims were non-grievable.

merely confirmed that prevailing wage claims were grievable under DOC's existing policies. Accordingly, I find that the Appellant failed to file his Step I grievance in a timely manner.

IT IS THEREFORE ORDERED that the Department's final decisions in this matter are **AFFIRMED.**

AND IT IS SO ORDERED.



Ralph K. Anderson, III
Chief Administrative Law Judge

July 2, 2012
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

July 2, 2012
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Terry Daughtry, #250139,	)	Docket No. 05-ALJ-04-00734-AP
	)	Grievance No. RCI 0162-05
Appellant,)	
)	
v.	)	ORDER
)	
South Carolina Department of Corrections,)	
)	
Respondent.)	

STATEMENT OF THE CASE

In the above-captioned matter, Appellant Terry Daughtry ("Daughtry") appeals the decision of Respondent South Carolina Department of Corrections ("Department") to deny his grievance concerning payment of the prevailing wage he argues is owed to him for work performed in the Prison Industries private sector program ("prison industries program"). In response, the Department contends that, pursuant to Department Policy Number GA-01.12, ¶ 13.1, he failed to file a grievance within fifteen (15) days of the occurrence of the alleged grievance. Based upon the record, the parties' briefs, and applicable law, the Department's decision to deny Appellant's grievance must be affirmed.

BACKGROUND

On February 17, 2005, Daughtry submitted a Step One Grievance to the Department and argued that he was entitled to payment of the prevailing wage for work he performed in the prison industries program. The Department denied his grievance on April 29, 2005. Daughtry submitted his Step Two grievance on May 12, 2005 and again challenged the same issues contained in his Step One form. In response, the Department issued its final agency decision on July 26, 2005 denying his grievance. Based upon this final decision of the Department, Daughtry filed a Notice of Appeal with the Administrative Law Court ("ALC" or "Court") on August 25, 2005 to challenge the Department's determination.

DISCUSSION

This appeal is before this Court pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), Sullivan v. South Carolina Department of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003), Slezak v. South Carolina Department of Corrections, 361 S.C. 327, 605 S.E.2d 100 (2004).

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SC ADMIN. LAW COURT

and Furtick v. South Carolina Department of Corrections, 649 S.E.2d 35 (S.C. 2007). Pursuant to Al-Shabazz, an inmate is permitted to seek judicial review with the ALC of Department decisions concerning non-collateral or administrative matters, and the ALC sits in an appellate capacity when reviewing such Department decisions. Al-Shabazz, 338 S.C. at 376, 527 S.E.2d at 754.

In this matter, Daughtry complains that he was not paid the prevailing wage for work performed in the private sector program, as mandated by S.C. Code Ann. § 24-3-430. Specifically, Section 24-3-430(D) clearly provides that “[n]o inmate participating in the [prison industries] program may earn less than the prevailing wage for work of similar nature in the private sector.” Id. The Supreme Court of South Carolina has unequivocally held in Wicker v. South Carolina Dep’t of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) that: (1) an inmate is entitled to file a grievance when not being paid the prevailing wage; (2) the ALC has jurisdiction to review the Department’s failure to pay the prevailing wage; and, (3) an inmate is entitled to be paid the prevailing wage while working in the private sector program. Id. at 421, 602 S.E.2d at 56.


Nonetheless, Daughtry is required to timely file his grievance with the Department concerning the payment of prevailing wages. Daughtry began working in the prison industries program on or about May 16, 2003, yet did not file his grievance until February 17, 2005, approximately two years later. Daughtry’s grievance was clearly filed outside of the required fifteen day timeframe as mandated by Department policy. The inmate is required to present his grievance within 15 days of the time that the event complained of occurred. He was not entitled to wait until Wicker v. South Carolina Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004), was decided. The grievance existed when it occurred. Daughtry failed to file a grievance as provided by GA-01.12, and this court has no authority to expand the time in which the request for a hearing must be filed. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).

Moreover, Daughtry’s claim is barred under the principle of laches. “Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). Daughtry filed a grievance approximately 8 years after the disputed wages were paid to him. The delay in filing his claims is unreasonable and obviously prejudices the Department. See Brown v. Butler, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct. App. 2001).

Accordingly, Daughtry did not timely file his grievance, and the Department’s decision must be **AFFIRMED**.

ORDER

IT IS HEREBY ORDERED that the Department's decision in this matter is **AFFIRMED**.
AND IT IS SO ORDERED.


Marvin F. Kittrell
Chief Judge

February 11, 2009
Columbia, South Carolina

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CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or the attorney(s).
This 12th day of Feb., 2009
By: Michael W. Winters
Judicial Law Clerk

LAW OFFICES

MAY 03 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Andre Gibson, #241326,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No. 10-ALJ-04-00007-AP

ORDER

FILED

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SC ADMIN. LAW COURT

This matter comes before the Administrative Law Court (ALC) pursuant to the appeal of Andre Gibson, an inmate incarcerated with the Department of Corrections (DOC or Department). Appellant claims that his constitutional rights were violated because the wages he received when he worked in prison industries were less than "prevailing wages" under S.C. Code Ann. §24-3-40, -410, and -430 (Supp. 2002). Appellant also challenged the time limit to file grievances, requested back pay for the difference in wages actually received and prevailing wages for the period of time he worked in prison industries.¹

BACKGROUND

The Appellant filed a Step 1 grievance dated November 4, 2008, stating he worked for prison industries from March 15, 2000 through May 29, 2003 and was not paid prevailing wages under South Carolina Code 24-3-430. Appellant asserts that he was advised to file his grievance when prison officials posted information regarding wage claims in October 2008. The Warden

¹ In the Notice of Appeal, Appellant also contends the Department violated constitutional protections in issuing its decision. Appellant did not establish that he raised the issue of a violation of his constitutional protections below. An inmate cannot sit silently during a hearing, raising no objections, and then raise issues such as these for the first time on appeal. See *Kiawah Resort Associates v. South Carolina Tax Com'n*, 318 S.C. 502, 458 S.E.2d 542 (1995) (In reviewing a final decision of an administrative agency, the Administrative Law Judge "has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency."). Our law is also clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review. *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). This rule also applies to constitutional arguments. See *State v. Owens*, 378 S.C. 636, 638, 664 S.E.2d 80, 81 (2008) (finding constitutional claims not preserved for review without a contemporaneous objection at trial). *State v. Sheppard*, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). Furthermore, all of the arguments raised by Appellant were merely conclusory statements. Consequently, Appellant abandoned these issues on appeal, and they need not be considered. See *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004) (failure to provide arguments or supporting authority for an issue renders it abandoned); *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 298-99, 519 S.E.2d 583, 600 (Ct. App. 1999) (conclusory arguments may be treated as abandoned).

denied Appellant's grievance and served the Appellant with the denial on June 16, 2009. Appellant timely filed his Step 2 grievance dated June 20, 2009. After Appellant's Step 2 grievance was denied on December 1, 2009, Appellant filed this appeal dated December 29, 2009.

STANDARD OF REVIEW

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). When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. Al-Shabazz, 338 S.C. at 377; 527 S.E.2d at 754. Consequently, the review in inmate grievance cases is limited to the record presented. See S.C. Code Ann. § 1-23-380(4) (Supp. 2011) ("The review must be conducted by the court and must be confined to the record"); see also S.C. Code Ann. § 1-23-600(E) (Supp. 2011) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). That section 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. 2010).

DISCUSSION

Timeliness of Wage Claim

The South Carolina Department of Corrections Policies and Procedures, Paragraph 13.1 of GA-01.12 generally requires that Step 1 grievances be filed "within 15 days of the alleged

incident." DOC Policy Number GA-01.12, ¶ 13.1.² The Department's procedure further sets forth a specific time frame to exercise the rights created under those provisions. Therefore, it appears that the Department's regulations require that inmates file their grievance within a specific period of time pursuant to a "statute of creation."

Under South Carolina law, a statute that creates a new liability and affixes the time within which an action may be commenced is a "statute of creation," and commencement within the time affixed is an indispensable condition of the action. Knight Publ'g Co. v. Univ. of S.C., 295 S.C. 31, 33, 367 S.E.2d 20, 22 (1988), overruled on other grounds by McLendon v. S.C. Dep't of Highways and Public Transp., 313 S.C. 525, 443 S.E.2d 539 (1994). Although the failure to timely commence an action pursuant to a statute of creation is not a subject matter jurisdiction defect, such an action "cannot be maintained unless brought within the time allowed by that statute." Simpson v. Sanders, 314 S.C. 413, 415 n.1, 445 S.E.2d 93, 94 n.1 (1994). When a statute both creates a cause of action and includes a time limit for its commencement, compliance with the time limit is a condition precedent to the maintenance of the action. 54 C.J.S. Limitations of Actions § 31 (updated October 2010). "Such a statutory time limit conditions the existence of the right of action, thereby creating a substantive, rather than procedural, limitation on the right. Bringing suit within the prescribed time is a condition of liability itself, not of the remedy alone." Id.

The reason for a specific time frame to seek review of these matters is much like statutes of limitations. Notably, the South Carolina courts have held that "[s]tatutes of limitations are not simply technicalities," but rather are "fundamental to a well-ordered judicial system." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "The purpose of statutes of limitation is to ensure litigation is 'brought within a reasonable time in order that evidence be reasonably available and there be some end to litigation.'" Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (quoting Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct. App. 2008)). "Statutes of limitation embody important public policy considerations in that they stimulate

² The Department's prescribed procedures for inmates to seek review of these matters has been approved by the South Carolina Supreme Court. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) ("We hold that Department's disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in Wolff v. McDonnell, *supra*. We note that Department also prepared its grievance procedures in compliance with the Civil Rights of Institutionalized Persons Act.").

activity, punish negligence, and promote repose by giving security and stability to human affairs.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690 (quoting Moates, 322 S.C. at 176, 470 S.E.2d at 404). Moreover, statutes of limitations relieve courts of the burden of trying stale claims of those who have “slept on their rights.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690.

Because the Department has a legitimate interest in investigating grievances while they are still new, public policy calls for the application of some limitations period to Appellant’s prevailing wage claim. See Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004) (noting that the prison system has a legitimate interest in investigating complaints while they are still fresh); see also Woodford v. Ngo, 548 U.S. 81, 95 (2006) (“When a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved.”). Here, the fifteen-day filing deadline from Paragraph 13.1 is the only limitations period applicable to this claim.³ Therefore, ruling in favor of Appellant would mean that inmates would not be required to file prevailing wage grievances within any set time period. Due in part to public policy concerns over such a result, this court has consistently held that prevailing wage claims do not involve the Department’s “policies or procedures.” See, e.g., Lawson v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 12, 2007); Wright v. S.C. Dep’t of Corr., 06-ALJ-04-00114-AP, 2006 WL 1430140 (S.C. Admin. Law Ct. Apr. 28, 2006).

The importance of filing deadlines is underscored by the facts of this case. The record demonstrates the Appellant filed his Step 1 regarding his wage claims on November 4, 2008. The Appellant acknowledges in his grievance that he is seeking wages for employment from March 15, 2000 through May 29, 2003. Thus, over eight years passed between when Appellants began participating in the project and when he filed his Step 1 grievance challenging his pay.

Implication of Wicker and Adkins

New Substantive Rights

Appellant also argues that his grievance was timely filed as he filed within forty-five days of being notified of Adkins v. S.C. Department of Corrections, 360 S.C. 413, 602 S.E.2d 51

³ The statutory provisions upon which Appellant bases his pay claim does not create a private right of action. See Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Therefore, statutes of limitations derived from state law do not apply to Appellant’s claim. See Talford v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 14, 2007).

(2004) and Wicker v. S.C. Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004). However, Wicker and Adkins did not create new substantive rights. A “substantive right” is “[a] right that can be protected or enforced by law,” and it is “a right of substance rather than form.” Black’s Law Dictionary 1324 (7th ed. 1999). It is distinguishable from a procedural right, which is “a right that derives from legal or administrative procedure” and which “helps in the protection or enforcement of a substantive right.” Black’s Law Dictionary 1323 (7th ed. 1999). A substantive right can be created by statute or by judicial decision. See, e.g., Lawson v. S.C. Dep’t of Corrections, 340 S.C. 346, 350, 532 S.E.2d 259, 261 (2000) (holding that the whistleblower statute created new substantive rights); McCaskey v. Shaw, 295 S.C. 372, 375, 368 S.E.2d 672, 673 (Ct. App. 1988) (holding that a prior Supreme Court decision “created a new substantive right”). A court creates a new substantive right when it recognizes a new cause of action that did not previously exist. See Toth v. Square D Co., 298 S.C. 6, 8, 377 S.E.2d 584, 585-86 (1989).

In Adkins, our Supreme Court held that Section 24-3-430 and the accompanying prison industries statutes did not provide inmates with the right to bring a private cause of action against DOC. Adkins, 360 S.C. at 419, 602 S.E.2d at 55. More relevant to the case at hand, the Court further held that:

[N]otwithstanding our holding that Inmates have no private civil cause of action, they are not without a remedy. In accordance with the companion case of Wicker v. South Carolina Dept. of Corrections, 360 S.C. 421, 602 S.E.2d 56, 2004 WL 1877947 (2004), we hold Inmates may file an inmate grievance to protest DOC’s failure to pay wages in accordance with the mandatory statutory provisions.

Id.

In Wicker, the Supreme Court fleshed out this latter holding. It explained that “where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law.” Wicker, 360 S.C. at 424, 602 S.E.2d at 57. The Court thus held that inmates’ prevailing wage claims were grievable through DOC’s internal grievance processes and that DOC’s denial of those claims could be appealed to the ALC. Id. at 423-25, 602 S.E.2d at 57-58.

I find that Adkins and Wicker did not create new substantive rights. The substantive right at issue in Adkins and Wicker - i.e., the right to a prevailing wage—was granted to inmates in 1995 pursuant to Section § 24-3-430(D). Adkins and Wicker, both of which were published in 2004, simply addressed the appropriate procedure for seeking redress for a denial of that existing

right. Accordingly, they did not create new substantive rights. See Atlantic Soft Drink Co. of Columbia, Inc. v. S.C. Nat. Bank, 287 S.C. 228, 336 S.E.2d 876 (1985) (holding that statute that related “only to remedies and modes of procedure” did not affect substantive rights); Hooks v. Southern Bell Tel. & Tel. Co., 291 S.C. 41, 351 S.E.2d 900 (Ct. App. 1986) (holding that the “right to seek review” is procedural, not substantive); cf. Baker v. McCollan, 443 U.S. 137, 145 n.3 (1979) (holding that 42 U.S.C. § 1983 “is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes”); Harvey v. S.C. Dep’t of Corrections, 338 S.C. 500, 527 S.E.2d 765 (Ct. App. 2000) (holding that the Uniform Declaratory Judgments Act did not create substantive rights or duties because it merely authorized a court action to establish a party’s entitlement to a pre-existing right).

New Grievance Remedies

Adkins and Wicker also did not create new grievance rights. Paragraph 7 of DOC Policy Number GA-01.12, which has existed in some form since May 1, 1996, sets forth the issues that are considered grievable by DOC.⁴ Among other grievable issues, it includes the following: “Department policies/procedures, directives, or conditions which directly affect an inmate.” DOC Policy Number GA-01.12, ¶ 7.1 (emphasis added). Unquestionably, inmates are “directly affect[ed]” by DOC policies that cause them to be paid less than that required by law. Thus, this provision, which is very broad in scope, encompasses prevailing wage claims.⁵

Indeed, an ALJ reached that very conclusion in a 2001 decision that gave rise to, and was ultimately affirmed by, the Supreme Court’s opinion in Wicker. See Wicker v. S.C. Dep’t of Corrections, 00-ALJ-04-00781, 2001 WL 1005574 (S.C. Admin. Law Ct. Aug. 13, 2001). In the case before the ALJ, DOC contended that prevailing wage claims were “non-grievable.” See id. at *1. Upon reviewing DOC’s grievance policies, the ALJ disagreed, holding:

⁴ Notably, the existence of DOC’s grievance policies was specifically recognized by the Supreme Court in its 2000 decision, Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), where the Court held that DOC’s grievance procedures were consistent with the standards delineated by the U.S. Supreme Court in Wolff v. McDonnell, 418 U.S. 539 (1974). See Al-Shabazz, 338 S.C. at 371-373, 527 S.E.2d at 751-52.

⁵ In addition to Paragraph 7 of DOC Policy Number GA-01.12, DOC’s policies also include Paragraph 9 of Policy Number GA-01.12, which sets forth the procedure by which grievances concerning questionable issues are determined. This provision, which has existed in all versions and editions of DOC’s inmate grievance policies since at least May 1, 1996, states in pertinent part: “In those cases where a question may arise as to whether an item is grievable, the Institutional Inmate Grievance Coordinator will confer with the Chief, Inmate Grievance Branch, who will make that determination.” Thus, to the extent that inmates were not certain whether or not prevailing wage claims were grievable prior to Adkins and Wicker, they could have utilized this provision to resolve the issue.

Wicker's wage dispute falls under the listed issues considered "grievable" under DOC policy at GA-01.12(OP), Specific Procedures, paragraph 7; the first issue listed is "Department policies/procedures, directives, or conditions which directly affect an inmate." Wicker is directly affected by DOC's arrangement with private industry to pay inmates less than the "prevailing wage for work of similar nature in the private sector" for the first 320 hours of work. Therefore, Wicker's wage dispute is grievable under the agency's grievance system.

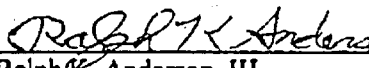
Id. at *1. Thus, as early as 2001, an ALJ held that inmates could grieve prevailing wage claims.⁶

Furthermore, in affirming the ALJ's decision in Wicker, the Supreme Court did not suggest that it was granting inmates "new" grievance rights. For instance, there was no indication by the Court that DOC's grievance procedures were inadequate or that they should be enlarged. Quite the contrary, the Court ruled that "[t]here are numerous issues relating to inmates which, although not giving rise to a private, civil cause of action, are nonetheless grievable through DOC's internal grievance processes" and that Wicker "properly filed a grievance with the DOC." Wicker, 360 S.C. at 423-24, 602 S.E.2d at 57 (emphases added). These statements reflect a conclusion by the Court that DOC's then-existing grievance policies were broad enough to incorporate prevailing wage claims and that the inmate therefore properly filed a grievance with DOC under those grievance policies.

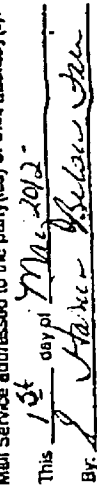
Based upon the foregoing, I conclude that, prior to the Supreme Court's decisions in Adkins and Wicker, inmates could have submitted a grievance relating to their prevailing wage claims. Accordingly, I conclude that Adkins and Wicker did not create new grievance rights, but merely confirmed that prevailing wage claims were grievable under DOC's existing policies. Accordingly, I find that the Appellant failed to file his Step 1 grievance in a timely manner.

IT IS THEREFORE ORDERED that the Department's final decisions in this matter **AFFIRMED.**

AND IT IS SO ORDERED.


Ralph K. Anderson, III
Chief Administrative Law Judge

May 1, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy herof, in the United States mail, postage paid, at in the Interservice Mail Service addressed to the party(ies) or their attorney(s).
This 1st day of May 2012.
By: 
Heather Below
Judicial Law Clerk

⁶ Although, as discussed herein, an ALJ's decision does not constitute binding precedent, the ALJ's decision in Wicker nevertheless counteracted DOC's claims that prevailing wage claims were non-grievable.

JUN 20 2012

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

MALONE, THOMPSON
SUMMERS & OTT, LLC

Christopher Grate, #232524	)	Docket No. 07-ALJ-04-0897-AP
)	
Appellant,)	
	)	ORDER
vs.)	
)	
South Carolina Department of Corrections,)	
)	
Respondent.)	

This matter comes before the Administrative Law Court (ALC) pursuant to the appeal of Christopher Grate, an inmate incarcerated with the Department of Corrections (DOC or Department). Appellant claims that his constitutional rights were violated because the training wages he received when he worked in prison industries were less than "prevailing wages" required under S.C. Code Ann. §24-3-430(D). Appellant requested back pay for the difference between his "training wages" and prevailing wages for the period of time he worked in prison industries.¹

BACKGROUND

The Appellant filed a Step 1 grievance dated May 2, 2007, stating he worked for prison industries from 1999 to present and was not paid prevailing wages under South Carolina Code 24-3-430. He thus asserted he was entitled to back wages from 1999 to present. The Warden denied Appellant's grievance and served the Appellant with the denial on June 13, 2007.

¹ In the Notice of Appeal, Appellant also contends the Department violated constitutional protections in issuing its decision. Appellant did not raise the issues of violation of constitutional protections below. An inmate cannot sit silently during a hearing, raising no objections, and then raise issues such as these for the first time on appeal. See Kiawah Resort Associates v. South Carolina Tax Com'n, 318 S.C. 502, 458 S.E.2d 542 (1995) (In reviewing a final decision of an administrative agency, the Administrative Law Judge "has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency."). Our law is also clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review. State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). This rule also applies to constitutional arguments. See State v. Owens, 378 S.C. 636, 638, 664 S.E.2d 80, 81 (2008) (finding constitutional claims not preserved for review without a contemporaneous objection at trial). State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). Furthermore, all of the arguments raised by Appellant were merely conclusory statements. Consequently, Appellant abandoned these issues on appeal, and they need not be considered. See Medical Univ. of South Carolina v. Amaid, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004) (failure to provide arguments or supporting authority for an issue renders it abandoned); Muir v. C.R. Bard, Inc., 336 S.C. 266, 298-99, 519 S.E.2d 583, 600 (Ct. App. 1999) (conclusory arguments may be treated as abandoned).

FILED

June 27, 2012

SC ADMIN. LAW COURT

Appellant timely filed his Step 2 grievance dated June 13, 2007. After Appellant's Step 2 grievance was denied on August 8, 2007, Appellant filed this appeal on September 6, 2007.

Appellant has not filed a brief in this case. Pursuant to ALC Rule 38, an Administrative Law Judge may dismiss an appeal for failure to comply with the rules of procedure for appeals or for failure to comply with any time limits set forth in an appeal. This delay is well beyond the time period set forth in the Rules of Procedure for the Administrative Law Court. As the Appellant has been afforded ample time to file his Brief and has not notified the ALC of any extenuating circumstances regarding his failure to file, I conclude that this matter should be dismissed sua sponte.²

STANDARD OF REVIEW

This case is before the ALC on appeal from a final decisions of the Department pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2010) of the Administrative Procedures Act (APA). As such, the Administrative Law Judge (ALJ) sits in an appellate capacity under the APA rather than as an independent finder of fact. In South Carolina, the provisions of the APA—specifically Section 1-23-380(A)(5)—govern the circumstances in which an appellate body may reverse or modify an agency decision. That section 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;
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- (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. 2010).

² Though Appellant's failure to file a brief warrant dismissal of this case, for sake of judicial expediency I also address the issue of timeliness of the grievance.

DISCUSSION

Timeliness of Wage Claim

The South Carolina Department of Corrections Policies and Procedures, Paragraph 13.1 of GA-01.12 generally requires that Step 1 grievances be filed "within 15 days of the alleged incident." DOC Policy Number GA-01.12, ¶ 13.1.³ The Department's procedure further sets forth a specific time frame to exercise the rights created under those provisions. Therefore, it appears that the Department's regulations require that inmates file their grievance within a specific period of time pursuant to a "statute of creation."

Under South Carolina law, a statute that creates a new liability and affixes the time within which an action may be commenced is a "statute of creation," and commencement within the time affixed is an indispensable condition of the action. Knight Publ'g Co. v. Univ. of S.C., 295 S.C. 31, 33, 367 S.E.2d 20, 22 (1988), overruled on other grounds by McLendon v. S.C. Dep't of Highways and Public Transp., 313 S.C. 525, 443 S.E.2d 539 (1994). Although the failure to timely commence an action pursuant to a statute of creation is not a subject matter jurisdiction defect, such an action "cannot be maintained unless brought within the time allowed by that statute." Simpson v. Sanders, 314 S.C. 413, 415 n.1, 445 S.E.2d 93, 94 n.1 (1994). When a statute both creates a cause of action and includes a time limit for its commencement, compliance with the time limit is a condition precedent to the maintenance of the action. 54 C.J.S. Limitations of Actions § 31 (updated October 2010). "Such a statutory time limit conditions the existence of the right of action, thereby creating a substantive, rather than procedural, limitation on the right. Bringing suit within the prescribed time is a condition of liability itself, not of the remedy alone." Id.

The reason for a specific time frame to seek review of these matters is much like statutes of limitations. Notably, the South Carolina courts have held that "[s]tatutes of limitations are not simply technicalities," but rather are "fundamental to a well-ordered judicial system." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "The purpose of statutes of limitation is to ensure litigation is 'brought within a reasonable time in order that evidence be

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reasonably available and there be some end to litigation.” Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (quoting Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct. App. 2008)). “Statutes of limitation embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690 (quoting Moates, 322 S.C. at 176, 470 S.E.2d at 404). Moreover, statutes of limitations relieve courts of the burden of trying stale claims of those who have “slept on their rights.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690.

Because the Department has a legitimate interest in investigating grievances while they are still new, public policy calls for the application of some limitations period to Appellant’s prevailing wage claim. See Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004) (noting that the prison system has a legitimate interest in investigating complaints while they are still fresh); see also Woodford v. Ngo, 548 U.S. 81, 95 (2006) (“When a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved.”). Here, the fifteen-day filing deadline from Paragraph 13.1 is the only limitations period applicable to this claim.⁴ Therefore, ruling in favor of Appellant would mean that inmates would not be required to file prevailing wage grievances within any set time period. Due in part to public policy concerns over such a result, this court has consistently held that prevailing wage claims do not involve the Department’s “policies or procedures.” See, e.g., Lawson v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 12, 2007); Wright v. S.C. Dep’t of Corr., 06-ALJ-04-00114-AP, 2006 WL 1430140 (S.C. Admin. Law Ct. Apr. 28, 2006).

The importance of filing deadlines is underscored by the facts of this case. The record demonstrates the Appellant filed his Step 1 regarding his wage claims on May 2, 2007. The Appellant acknowledges in his grievance that he is seeking wages for employment from 1999. Thus, over seven years passed between when Appellants began participating in the project and when he filed his Step 1 challenging his pay.

⁴ The statutory provisions upon which Appellant bases his pay claim does not create a private right of action. See Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Therefore, statutes of limitations derived from state law do not apply to Appellant’s claim. See Talford v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 14, 2007).

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New Substantive Rights

Appellant also argues that his grievance was timely filed as he filed within a reasonable time of being notified of Adkins v. S.C. Department of Corrections, 360 S.C. 413, 602 S.E.2d 51 (2004) and Wicker v. S.C. Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004). However, Wicker and Adkins did not create new substantive rights. A "substantive right" is "[a] right that can be protected or enforced by law," and it is "a right of substance rather than form." Black's Law Dictionary 1324 (7th ed. 1999). It is distinguishable from a procedural right, which is "a right that derives from legal or administrative procedure" and which "helps in the protection or enforcement of a substantive right." Black's Law Dictionary 1323 (7th ed. 1999). A substantive right can be created by statute or by judicial decision. See, e.g., Lawson v. S.C. Dep't of Corrections, 340 S.C. 346, 350, 532 S.E.2d 259, 261 (2000) (holding that the whistleblower statute created new substantive rights); McCaskey v. Shaw, 295 S.C. 372, 375, 368 S.E.2d 672, 673 (Ct. App. 1988) (holding that a prior Supreme Court decision "created a new substantive right"). A court creates a new substantive right when it recognizes a new cause of action that did not previously exist. See Toth v. Square D Co., 298 S.C. 6, 8, 377 S.E.2d 584, 585-86 (1989).

In Adkins, our Supreme Court held that Section 24-3-430 and the accompanying prison industries statutes did not provide inmates with the right to bring a private cause of action against DOC. Adkins, 360 S.C. at 419, 602 S.E.2d at 55. More relevant to the case at hand, the Court further held that:

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Id.

In Wicker, the Supreme Court fleshed out this latter holding. It explained that "where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law." Wicker, 360 S.C. at 424, 602 S.E.2d at 57. The Court thus held that inmates' prevailing wage claims were grievable through DOC's internal grievance processes and that DOC's denial of those claims could be appealed to the ALC. Id. at 423-25, 602 S.E.2d at 57-58.

I find that Adkins and Wicker did not create new substantive rights. The substantive right at issue in Adkins and Wicker - i.e., the right to a prevailing wage—was granted to inmates in 1995 pursuant to Section § 24-3-430(D). Adkins and Wicker, both of which were published in 2004, simply addressed the appropriate procedure for seeking redress for a denial of that existing right. Accordingly, they did not create new substantive rights. See Atlantic Soft Drink Co. of Columbia, Inc. v. S.C. Nat. Bank, 287 S.C. 228, 336 S.E.2d 876 (1985) (holding that statute that related “only to remedies and modes of procedure” did not affect substantive rights); Hooks v. Southern Bell Tel. & Tel. Co., 291 S.C. 41, 351 S.E.2d 900 (Ct. App. 1986) (holding that the “right to seek review” is procedural, not substantive); cf. Baker v. McCollan, 443 U.S. 137, 145 n.3 (1979) (holding that 42 U.S.C. § 1983 “is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes”); Harvey v. S.C. Dep't of Corrections, 338 S.C. 500, 527 S.E.2d 765 (Ct. App. 2000) (holding that the Uniform Declaratory Judgments Act did not create substantive rights or duties because it merely authorized a court action to establish a party's entitlement to a pre-existing right).

New Grievance Remedies

Adkins and Wicker also did not create new grievance rights. Paragraph 7 of DOC Policy Number GA-01.12, which has existed in some form since May 1, 1996, sets forth the issues that are considered grievable by DOC.⁵ Among other grievable issues, it includes the following: “Department policies/procedures, directives, or conditions which directly affect an inmate.” DOC Policy Number GA-01.12, ¶ 7.1 (emphasis added). Unquestionably, inmates are “directly affect[ed]” by DOC policies that cause them to be paid less than that required by law. Thus, this provision, which is very broad in scope, encompasses prevailing wage claims.⁶

⁵ Notably, the existence of DOC's grievance policies was specifically recognized by the Supreme Court in its 2000 decision, Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), where the Court held that DOC's grievance procedures were consistent with the standards delineated by the U.S. Supreme Court in Wolff v. McDonnell, 418 U.S. 539 (1974). See Al-Shabazz, 338 S.C. at 371-373, 527 S.E.2d at 751-52.

⁶ In addition to Paragraph 7 of DOC Policy Number GA-01.12, DOC's policies also include Paragraph 9 of Policy Number GA-01.12, which sets forth the procedure by which grievances concerning questionable issues are determined. This provision, which has existed in all versions and editions of DOC's inmate grievance policies since at least May 1, 1996, states in pertinent part: “In those cases where a question may arise as to whether an item is grievable, the Institutional Inmate Grievance Coordinator will confer with the Chief, Inmate Grievance Branch, who will make that determination.” Thus, to the extent that inmates were not certain whether or not prevailing wage claims were grievable prior to Adkins and Wicker, they could have utilized this provision to resolve the issue.

Indeed, an ALJ reached that very conclusion in a 2001 decision that gave rise to, and was ultimately affirmed by, the Supreme Court's opinion in Wicker. See Wicker v. S.C. Dep't of Corrections, 00-ALJ-04-00781, 2001 WL 1005574 (S.C. Admin. Law Ct. Aug. 13, 2001). In the case before the ALJ, DOC contended that prevailing wage claims were "non-grievable." See id. at *1. Upon reviewing DOC's grievance policies, the ALJ disagreed, holding:

Wicker's wage dispute falls under the listed issues considered "grievable" under DOC policy at GA-01.12(OP), Specific Procedures, paragraph 7; the first issue listed is "Department policies/procedures, directives, or conditions which directly affect an inmate." Wicker is directly affected by DOC's arrangement with private industry to pay inmates less than the "prevailing wage for work of similar nature in the private sector" for the first 320 hours of work. Therefore, Wicker's wage dispute is grievable under the agency's grievance system.

Id. at *1. Thus, as early as 2001, an ALJ held that inmates could grieve prevailing wage claims.⁷

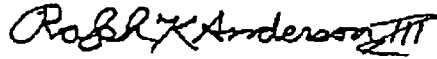
Furthermore, in affirming the ALJ's decision in Wicker, the Supreme Court did not suggest that it was granting inmates "new" grievance rights. For instance, there was no indication by the Court that DOC's grievance procedures were inadequate or that they should be enlarged. Quite the contrary, the Court ruled that "[t]here are numerous issues relating to inmates which, although not giving rise to a private, civil cause of action, are nonetheless grievable through DOC's internal grievance processes" and that Wicker "properly filed a grievance with the DOC." Wicker, 360 S.C. at 423-24, 602 S.E.2d at 57 (emphases added). These statements reflect a conclusion by the Court that DOC's then-existing grievance policies were broad enough to incorporate prevailing wage claims and that the inmate therefore properly filed a grievance with DOC under those grievance policies.

Based upon the foregoing, I conclude that, prior to the Supreme Court's decisions in Adkins and Wicker, inmates could have submitted a grievance relating to their prevailing wage claims. Accordingly, I conclude that Adkins and Wicker did not create new grievance rights, but merely confirmed that prevailing wage claims were grievable under DOC's existing policies. Accordingly, I find that the Appellant failed to file his Step I grievance in a timely manner.

IT IS THEREFORE ORDERED that the Department's final decisions in this matter are **AFFIRMED**.

⁷ Although, as discussed herein, an ALJ's decision does not constitute binding precedent, the ALJ's decision in Wicker nevertheless counteracted DOC's claims that prevailing wage claims were non-grievable.

AND IT IS SO ORDERED.



Ralph K. Anderson, III
Chief Administrative Law Judge

June 27, 2012
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

June 27, 2012
Columbia, South Carolina

and Furtick v. South Carolina Department of Corrections, 649 S.E.2d 35 (S.C. 2007). Pursuant to Al-Shabazz, an inmate is permitted to seek judicial review with the ALC of Department decisions concerning non-collateral or administrative matters, and the ALC sits in an appellate capacity when reviewing such Department decisions. Al-Shabazz, 338 S.C. at 376, 527 S.E.2d at 754.

In this matter, Grimmatt complains that he was not paid the prevailing wage for work performed in the private sector program, as mandated by S.C. Code Ann. § 24-3-430. Specifically, Section 24-3-430(D) clearly provides that “[n]o inmate participating in the [prison industries] program may earn less than the prevailing wage for work of similar nature in the private sector.” Id. The Supreme Court of South Carolina has unequivocally held in Wicker v. South Carolina Dep’t of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) that: (1) an inmate is entitled to file a grievance when not being paid the prevailing wage; (2) the ALC has jurisdiction to review the Department’s failure to pay the prevailing wage; and, (3) an inmate is entitled to be paid the prevailing wage while working in the private sector program. Id. at 421, 602 S.E.2d at 56.


Nonetheless, Grimmatt is required to timely file his grievance with the Department concerning the payment of prevailing wages. Grimmatt began working in the prison industries program on or about May 30, 1997, yet did not file his grievance until February 13, 2005, approximately eight years later. Grimmatt’s grievance was clearly filed outside of the required fifteen day timeframe as mandated by Department policy. The inmate is required to present his grievance within 15 days of the time that the event complained of occurred. He was not entitled to wait until Wicker v. South Carolina Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004), was decided. The grievance existed when it occurred. Grimmatt failed to file a grievance as provided by GA-01.12, and this court has no authority to expand the time in which the request for a hearing must be filed. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).

Moreover, Grimmatt’s claim is barred under the principle of laches. “Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). Grimmatt filed a grievance approximately 8 years after the disputed wages were paid to him. The delay in filing his claims is unreasonable and obviously prejudices the Department. See Brown v. Butler, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct. App. 2001).

Accordingly, Grimmatt did not timely file his grievance, and the Department’s decision must be **AFFIRMED**.

ORDER

IT IS HEREBY ORDERED that the Department's decision in this matter is **AFFIRMED.**
AND IT IS SO ORDERED.

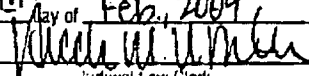

Marvin F. Kittpell
Chief Judge

February 11, 2009
Columbia, South Carolina

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M

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy thereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 12th day of Feb. 2009
By: 
Judicial Law Clerk

APR 02 2012

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

MALONE, THOMPSON
SUMMERS & OTT, LLC

Daniel Jones, #130817,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No. 09-ALJ-04-0506-AP

ORDER

This matter comes before the Administrative Law Court (ALC) pursuant to the appeal of Daniel Jones, an inmate incarcerated with the Department of Corrections (DOC or Department). Appellant claims that his constitutional rights were violated because the training wages he received when he worked in prison industries were less than "prevailing wages" under S.C. Code Ann. §24-3-430(D). Appellant requested back pay for the difference between his "training wages" and prevailing wages for the period of time he worked in prison industries.¹

BACKGROUND

The Appellant filed a Step 1 grievance dated October 29, 2008, stating he worked for prison industries in 1990, 1991 and 1992 while he was housed at the Evans Correctional Institution. Appellant alleges he was paid \$0.25 for the first 160 hours of work which increased to \$0.75 for the next 160 hours of work. After working for the first 320 hours, Appellant

¹ In the Notice of Appeal, Appellant also contends the Department violated constitutional protections in issuing its decision and violated DOC policy and procedure in failing to issue decisions on the grievance in a timely manner. While the issue of timeliness was raised below, there is no prejudice to the Appellant and therefore that issue will not be addressed in this order. As to the violation of constitutional protections, these arguments were not raised below. An inmate cannot sit silently during a hearing, raising no objections, and then raise issues such as these for the first time on appeal. See *Kiawah Resort Associates v. South Carolina Tax Com'n*, 318 S.C. 502, 458 S.E.2d 542 (1995) (In reviewing a final decision of an administrative agency, the Administrative Law Judge "has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency."). Our law is also clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review. *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). This rule also applies to constitutional arguments. See *State v. Owens*, 378 S.C. 636, 638, 664 S.E.2d 80, 81 (2008) (finding constitutional claims not preserved for review without a contemporaneous objection at trial). *State v. Sheppard*, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). Furthermore, all of the arguments raised by Appellant were merely conclusory statements. Consequently, Appellant abandoned these issues on appeal, and they need not be considered. See *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004) (failure to provide arguments or supporting authority for an issue renders it abandoned); *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 298-99, 519 S.E.2d 583, 600 (Ct. App. 1999) (conclusory arguments may be treated as abandoned).

FILED

March 30, 2012

SC ADMIN. LAW COURT

received \$4.25 per hour. Appellant asserts that he was advised to file his grievance when prison officials posted information regarding wage claims in October 2008. The Warden denied Appellant's grievance on April 15, 2009. After Appellant's Step 2 grievance was denied on May 21, 2009, Appellant filed this appeal on May 27, 2009. The Department objects to the appeal as being untimely.

STANDARD OF REVIEW

This case is before the ALC on appeal from a final decisions of the Department pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2010) of the Administrative Procedures Act (APA). As such, the Administrative Law Judge (ALJ) sits in an appellate capacity under the APA rather than as an independent finder of fact. In South Carolina, the provisions of the APA—specifically Section 1-23-380(A)(5)—govern the circumstances in which an appellate body may reverse or modify an agency decision. That section 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. 2010).

DISCUSSION

Timeliness of Wage Claim

Under the South Carolina Department of Corrections Policies and Procedures, Paragraph 13.1 of GA-01.12 generally requires that Step 1 grievances be filed "within 15 days of the alleged incident." DOC Policy Number GA-01.12, ¶ 13.1. The Department's prescribed

procedures to seek review of these matters that has been approved by the South Carolina Supreme Court. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) (“We hold that Department’s disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in Wolff v. McDonnell, *supra*. We note that Department also prepared its grievance procedures in compliance with the Civil Rights of Institutionalized Persons Act.”). The Department’s procedure further sets forth a specific time frame to exercise the rights created under those provisions. Therefore, it appears that the Department’s regulations are a “statute of creation.”

Under South Carolina law, a statute that creates a new liability and affixes the time within which an action may be commenced is a “statute of creation,” and commencement within the time affixed is an indispensable condition of the action. Knight Publ’g Co. v. Univ. of S.C., 295 S.C. 31, 33, 367 S.E.2d 20, 22 (1988), overruled on other grounds by McLendon v. S.C. Dep’t of Highways and Public Transp., 313 S.C. 525, 443 S.E.2d 539 (1994). Although the failure to timely commence an action pursuant to a statute of creation is not a subject matter jurisdiction defect, such an action “cannot be maintained unless brought within the time allowed by that statute.” Simpson v. Sanders, 314 S.C. 413, 415 n.1, 445 S.E.2d 93, 94 n.1 (1994). When a statute both creates a cause of action and includes a time limit for its commencement, compliance with the time limit is a condition precedent to the maintenance of the action. 54 C.J.S. Limitations of Actions § 31 (updated October 2010). “Such a statutory time limit conditions the existence of the right of action, thereby creating a substantive, rather than procedural, limitation on the right. Bringing suit within the prescribed time is a condition of liability itself, not of the remedy alone.” *Id.*

The reason for a specific time frame to seek review of these matters is much like statutes of limitations. Notably, the South Carolina courts have held that “[s]tatutes of limitations are not simply technicalities,” but rather are “fundamental to a well-ordered judicial system.” Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). “The purpose of statutes of limitation is to ensure litigation is ‘brought within a reasonable time in order that evidence be reasonably available and there be some end to litigation.’” Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (quoting Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct. App. 2008)). “Statutes of limitation embody important public policy considerations in that they stimulate

activity, punish negligence, and promote repose by giving security and stability to human affairs.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690 (quoting Moates, 322 S.C. at 176, 470 S.E.2d at 404). Moreover, statutes of limitations relieve courts of the burden of trying stale claims of those who have “slept on their rights.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690.

Because the Department has a legitimate interest in investigating grievances while they are still new, public policy calls for the application of some limitations period to Appellant’s prevailing wage claim. See Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004) (noting that the prison system has a legitimate interest in investigating complaints while they are still fresh); see also Woodford v. Ngo, 548 U.S. 81, 95 (2006) (“When a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved.”). Here, the fifteen-day filing deadline from Paragraph 13.1 is the only limitations period applicable to this claim.² Therefore, ruling in favor of Appellant would mean that inmates would not be required to file prevailing wage grievances within any set time period. Due in part to public policy concerns over such a result, this court has consistently held that prevailing wage claims do not involve the Department’s “policies or procedures.” See, e.g., Lawson v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 12, 2007); Wright v. S.C. Dep’t of Corr., 06-ALJ-04-00114-AP, 2006 WL 1430140 (S.C. Admin. Law Ct. Apr. 28, 2006).

The importance of filing deadlines is underscored by the facts of this case. The record demonstrates the Appellant filed his Step I regarding his wage claims on October 29, 2008. The Appellant acknowledges in his grievance that he is seeking wages for employment in 1990, 1991, and 1992. Thus, approximately sixteen years passed between when Appellants began participating in the project and when he filed his Step I challenging his pay. Clearly, the passage of sixteen years could significantly affect the Department’s ability to defend Appellants’ claims.³

² The statutory provisions upon which Appellant bases his pay claim does not create a private right of action. See Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Therefore, statutes of limitations derived from state law do not apply to Appellant’s claim. See Talford v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 14, 2007).

³ The court notes in this regard that the statutory deadline for filing wage recovery claims under South Carolina’s Payment of Wages Act is three years. See S.C. Code Ann. § 41-10-80(C) (Supp. 2010) (“Any civil action for the recovery of wages must be commenced within three years after the wages become due.”).

Implication of *Wicker* and *Adkins*

New Substantive Rights

Appellant also argues that his grievance was timely filed as he filed within fifteen days of being notified of *Adkins v. S.C. Department of Corrections*, 360 S.C. 413, 602 S.E.2d 51 (2004) and *Wicker v. S.C. Department of Corrections*, 360 S.C. 421, 602 S.E.2d 56 (2004). However, *Wicker* and *Adkins* did not create new substantive rights. A "substantive right" is "[a] right that can be protected or enforced by law," and it is "a right of substance rather than form." Black's Law Dictionary 1324 (7th ed. 1999). It is distinguishable from a procedural right, which is "a right that derives from legal or administrative procedure" and which "helps in the protection or enforcement of a substantive right." Black's Law Dictionary 1323 (7th ed. 1999). A substantive right can be created by statute or by judicial decision. See, e.g., *Lawson v. S.C. Dep't of Corrections*, 340 S.C. 346, 350, 532 S.E.2d 259, 261 (2000) (holding that the whistleblower statute created new substantive rights); *McCaskey v. Shaw*, 295 S.C. 372, 375, 368 S.E.2d 672, 673 (Ct. App. 1988) (holding that a prior Supreme Court decision "created a new substantive right"). A court creates a new substantive right when it recognizes a new cause of action that did not previously exist. See *Toth v. Square D Co.*, 298 S.C. 6, 8, 377 S.E.2d 584, 585-86 (1989).

In *Adkins*, our Supreme Court held that Section 24-3-430 and the accompanying prison industries statutes did not provide inmates with the right to bring a private cause of action against DOC. *Adkins*, 360 S.C. at 419, 602 S.E.2d at 55. More relevant to the case at hand, the Court further held that:

[N]otwithstanding our holding that Inmates have no private civil cause of action, they are not without a remedy. In accordance with the companion case of *Wicker v. South Carolina Dept. of Corrections*, 360 S.C. 421, 602 S.E.2d 56, 2004 WL 1877947 (2004), we hold Inmates may file an inmate grievance to protest DOC's failure to pay wages in accordance with the mandatory statutory provisions.

Id.

In *Wicker*, the Supreme Court fleshed out this latter holding. It explained that "where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law." *Wicker*, 360 S.C. at 424, 602 S.E.2d at 57. The Court thus held that inmates' prevailing wage claims were grievable through DOC's internal grievance processes and that DOC's denial of those claims could be appealed to the ALC. Id. at 423-25, 602 S.E.2d at 57-58.

I find that Adkins and Wicker did not create new substantive rights. The substantive right at issue in Adkins and Wicker - i.e., the right to a prevailing wage—was granted to inmates in 1995 pursuant to Section § 24-3-430(D). Adkins and Wicker, both of which were published in 2004, simply addressed the appropriate procedure for seeking redress for a denial of that existing right. Accordingly, they did not create new substantive rights. See Atlantic Soft Drink Co. of Columbia, Inc. v. S.C. Nat. Bank, 287 S.C. 228, 336 S.E.2d 876 (1985) (holding that statute that related “only to remedies and modes of procedure” did not affect substantive rights); Hooks v. Southern Bell Tel. & Tel. Co., 291 S.C. 41, 351 S.E.2d 900 (Ct. App. 1986) (holding that the “right to seek review” is procedural, not substantive); cf. Baker v. McCollan, 443 U.S. 137, 145 n.3 (1979) (holding that 42 U.S.C. § 1983 “is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes”); Harvey v. S.C. Dep’t of Corrections, 338 S.C. 500, 527 S.E.2d 765 (Ct. App. 2000) (holding that the Uniform Declaratory Judgments Act did not create substantive rights or duties because it merely authorized a court action to establish a party’s entitlement to a pre-existing right).

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⁴ Notably, the existence of DOC’s grievance policies was specifically recognized by the Supreme Court in its 2000 decision, Al-Shabbaz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), where the Court held that DOC’s grievance procedures were consistent with the standards delineated by the U.S. Supreme Court in Wolff v. McDonnell, 418 U.S. 539 (1974). See Al-Shabbaz, 338 S.C. at 371-373, 527 S.E.2d at 751-52.

⁵ In addition to Paragraph 7 of DOC Policy Number GA-01.12, DOC’s policies also include Paragraph 9 of Policy Number GA-01.12, which sets forth the procedure by which grievances concerning questionable issues are determined. This provision, which has existed in all versions and editions of DOC’s inmate grievance policies since at least May 1, 1996, states in pertinent part: “In those cases where a question may arise as to whether an item is grievable, the Institutional Inmate Grievance Coordinator will confer with the Chief, Inmate Grievance Branch, who will make that determination.” Thus, to the extent that inmates were not certain whether or not prevailing wage claims were grievable prior to Adkins and Wicker, they could have utilized this provision to resolve the issue

Indeed, an ALJ reached that very conclusion in a 2001 decision that gave rise to, and was ultimately affirmed by, the Supreme Court's opinion in Wicker. See Wicker v. S.C. Dep't of Corrections, 00-ALJ-04-00781, 2001 WL 1005574 (S.C. Admin. Law Ct. Aug. 13, 2001). In the case before the ALJ, DOC contended that prevailing wage claims were "non-grievable." See id. at *1. Upon reviewing DOC's grievance policies, the ALJ disagreed, holding:

Wicker's wage dispute falls under the listed issues considered "grievable" under DOC policy at GA-01.12(OP), Specific Procedures, paragraph 7; the first issue listed is "Department policies/procedures, directives, or conditions which directly affect an inmate." Wicker is directly affected by DOC's arrangement with private industry to pay inmates less than the "prevailing wage for work of similar nature in the private sector" for the first 320 hours of work. Therefore, Wicker's wage dispute is grievable under the agency's grievance system.

Id. at *1. Thus, as early as 2001, an ALJ held that inmates could grieve prevailing wage claims.⁶

Furthermore, in affirming the ALJ's decision in Wicker, the Supreme Court did not suggest that it was granting inmates "new" grievance rights. For instance, there was no indication by the Court that DOC's grievance procedures were inadequate or that they should be enlarged. Quite the contrary, the Court ruled that "[t]here are numerous issues relating to inmates which, although not giving rise to a private, civil cause of action, are nonetheless grievable through DOC's internal grievance processes" and that Wicker "properly filed a grievance with the DOC." Wicker, 360 S.C. at 423-24, 602 S.E.2d at 57 (emphases added). These statements reflect a conclusion by the Court that DOC's then-existing grievance policies were broad enough to incorporate prevailing wage claims and that the inmate therefore properly filed a grievance with DOC under those grievance policies.

Based upon the foregoing, I conclude that, prior to the Supreme Court's decisions in Adkins and Wicker, inmates could have submitted a grievance relating to their prevailing wage claims. Accordingly, I conclude that Adkins and Wicker did not create new grievance rights, but merely confirmed that prevailing wage claims were grievable under DOC's existing policies. Accordingly, I find that the Appellant failed to file his step I grievance in a timely manner.

⁶ Although, as discussed herein, an ALJ's decision does not constitute binding precedent, the ALJ's decision in Wicker nevertheless counteracted DOC's claims that prevailing wage claims were non-grievable.

IT IS HEREBY ORDERED that the Department's final decisions in this matter are
AFFIRMED.

AND IT IS SO ORDERED.

Ralph K. Anderson III

Ralph K. Anderson, III
Chief Administrative Law Judge

March 30, 2012
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

March 30, 2012
Columbia, South Carolina

LAW OFFICES

APR 02 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

STATE OF SOUTH CAROLINA
Administrative Law Court

Ralph K. Anderson, III
Chief Judge

Jana E. Cox Shealy
Clerk



PHONE: (803) 734-0550
FAX: (803) 734-6400
WEB: WWW.SCALC.NET

March 30, 2012

Daniel Jones, #130817
McCormick Correctional Institution
386 Redemption Rd.
McCormick, South Carolina 29899

Lake E. Summers, Esquire
339 Heyward Street, Suite 200
Columbia, South Carolina 29201

Re: Daniel Jones, #130817 v. SC Department of Corrections, 09-ALJ-04-00506-AP

Dear Mr. Jones and Mr. Summers::

Enclosed please find the Order in the above-captioned case which is hereby served upon you.

Sincerely,

A handwritten signature in cursive script that reads "E. Harvin Belser Fair".

E. Harvin Belser Fair

Administrative Law Clerk for the Honorable Ralph King Anderson, III

Enclosure

LAW OFFICES

APR 02 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Terry Keitt, #277284,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No. 09-ALJ-04-0519-AP

ORDER

FILED

APR 26 2012

SC ADMIN. LAW COURT

This matter comes before the Administrative Law Court (ALC) pursuant to the appeal of Terry Keitt, an inmate incarcerated with the Department of Corrections (DOC or Department). Appellant claims that his constitutional rights were violated because the training wages he received when he worked in prison industries were less than "prevailing wages" under S.C. Code Ann. §24-3-430(D). Appellant requested back pay for the difference between his "training wages" and prevailing wages for the period of time he worked in prison industries.¹

BACKGROUND

The Appellant filed a Step 1 grievance dated November 10, 2008, stating he worked for prison industries in 2006 and was paid training wages instead of prevailing wages under South Carolina Code 24-3-430. Appellant asserts that he was advised to file his grievance when prison officials posted information regarding wage claims in November 2008. The Warden denied Appellant's grievance and served the Appellant with the denial on March 12, 2009. Appellant

¹ In the Notice of Appeal, Appellant also contends the Department violated constitutional protections in issuing its decision. Appellant did not raise the issues of violation of constitutional protections below. An inmate cannot sit silently during a hearing, raising no objections, and then raise issues such as these for the first time on appeal. See Kiawah Resort Associates v. South Carolina Tax Com'n, 318 S.C. 502, 458 S.E.2d 542 (1995) (In reviewing a final decision of an administrative agency, the Administrative Law Judge "has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency."). Our law is also clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review. State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). This rule also applies to constitutional arguments. See State v. Owens, 378 S.C. 636, 638, 664 S.E.2d 80, 81 (2008) (finding constitutional claims not preserved for review without a contemporaneous objection at trial). State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). Furthermore, all of the arguments raised by Appellant were merely conclusory statements. Consequently, Appellant abandoned these issues on appeal, and they need not be considered. See Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004) (failure to provide arguments or supporting authority for an issue renders it abandoned); Muir v. C.R. Bard, Inc., 336 S.C. 266, 298-99, 519 S.E.2d 583, 600 (Ct. App. 1999) (conclusory arguments may be treated as abandoned).

timely filed his Step 2 grievance claiming he received training wages in 2007. After Appellant's Step 2 grievance was denied on May 14, 2009, Appellant filed this appeal on June 9, 2009. The Department moved to dismiss this appeal as the grievance was not filed timely.

STANDARD OF REVIEW

This case is before the ALC on appeal from a final decisions of the Department pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2010) of the Administrative Procedures Act (APA). As such, the Administrative Law Judge (ALJ) sits in an appellate capacity under the APA rather than as an independent finder of fact. In South Carolina, the provisions of the APA—specifically Section 1-23-380(A)(5)—govern the circumstances in which an appellate body may reverse or modify an agency decision. That section 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. 2010).

DISCUSSION

Timeliness of Wage Claim

The South Carolina Department of Corrections Policies and Procedures, Paragraph 13.1 of GA-01.12 generally requires that Step 1 grievances be filed “within 15 days of the alleged incident.” DOC Policy Number GA-01.12, ¶ 13.1.² The Department’s procedure further sets

² The Department’s prescribed procedures for inmates to seek review of these matters that has been approved by the South Carolina Supreme Court. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (“We hold that Department’s disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in *Wolff v. McDonnell*, *supra*. We note that Department also prepared its grievance procedures in compliance with the Civil Rights of Institutionalized Persons Act.”).

forth a specific time frame to exercise the rights created under those provisions. Therefore, it appears that the Department's regulations require that inmates file their grievance within a specific period of time pursuant to a "statute of creation."

Under South Carolina law, a statute that creates a new liability and affixes the time within which an action may be commenced is a "statute of creation," and commencement within the time affixed is an indispensable condition of the action. Knight Publ'g Co. v. Univ. of S.C., 295 S.C. 31, 33, 367 S.E.2d 20, 22 (1988), overruled on other grounds by McLendon v. S.C. Dep't of Highways and Public Transp., 313 S.C. 525, 443 S.E.2d 539 (1994). Although the failure to timely commence an action pursuant to a statute of creation is not a subject matter jurisdiction defect, such an action "cannot be maintained unless brought within the time allowed by that statute." Simpson v. Sanders, 314 S.C. 413, 415 n.1, 445 S.E.2d 93, 94 n.1 (1994). When a statute both creates a cause of action and includes a time limit for its commencement, compliance with the time limit is a condition precedent to the maintenance of the action. 54 C.J.S. Limitations of Actions § 31 (updated October 2010). "Such a statutory time limit conditions the existence of the right of action, thereby creating a substantive, rather than procedural, limitation on the right. Bringing suit within the prescribed time is a condition of liability itself, not of the remedy alone." Id.

The reason for a specific time frame to seek review of these matters is much like statutes of limitations. Notably, the South Carolina courts have held that "[s]tatutes of limitations are not simply technicalities," but rather are "fundamental to a well-ordered judicial system." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "The purpose of statutes of limitation is to ensure litigation is 'brought within a reasonable time in order that evidence be reasonably available and there be some end to litigation.'" Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (quoting Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct. App. 2008)). "Statutes of limitation embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690 (quoting Moates, 322 S.C. at 176, 470 S.E.2d at 404). Moreover, statutes of limitations relieve courts of the burden of trying stale claims of those who have "slept on their rights." Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690.

Because the Department has a legitimate interest in investigating grievances while they are still new, public policy calls for the application of some limitations period to Appellant's prevailing wage claim. See Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004) (noting that the prison system has a legitimate interest in investigating complaints while they are still fresh); see also Woodford v. Ngo, 548 U.S. 81, 95 (2006) ("When a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved."). Here, the fifteen-day filing deadline from Paragraph 13.1 is the only limitations period applicable to this claim.³ Therefore, ruling in favor of Appellant would mean that inmates would not be required to file prevailing wage grievances within any set time period. Due in part to public policy concerns over such a result, this court has consistently held that prevailing wage claims do not involve the Department's "policies or procedures." See, e.g., Lawson v. S.C. Dep't of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 12, 2007); Wright v. S.C. Dep't of Corr., 06-ALJ-04-00114-AP, 2006 WL 1430140 (S.C. Admin. Law Ct. Apr. 28, 2006).

The importance of filing deadlines is underscored by the facts of this case. The record demonstrates the Appellant filed his Step 1 regarding his wage claims on November 12, 2008. The Appellant acknowledges in his grievance that he is seeking wages for employment in January 2007. Thus, over a year and a half passed between when Appellants began participating in the project and when he filed his Step 1 challenging his pay.

Implication of Wicker and Adkins

New Substantive Rights

Appellant also argues that his grievance was timely filed as he filed within fifteen days of being notified of Adkins v. S.C. Department of Corrections, 360 S.C. 413, 602 S.E.2d 51 (2004) and Wicker v. S.C. Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004). However, Wicker and Adkins did not create new substantive rights. A "substantive right" is "[a] right that can be protected or enforced by law," and it is "a right of substance rather than form." Black's Law Dictionary 1324 (7th ed. 1999). It is distinguishable from a procedural right, which is "a right that derives from legal or administrative procedure" and which "helps in the protection or

³ The statutory provisions upon which Appellant bases his pay claim does not create a private right of action. See Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Therefore, statutes of limitations derived from state law do not apply to Appellant's claim. See Talford v. S.C. Dep't of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 14, 2007).

enforcement of a substantive right.” Black’s Law Dictionary 1323 (7th ed. 1999). A substantive right can be created by statute or by judicial decision. See, e.g., Lawson v. S.C. Dep’t of Corrections, 340 S.C. 346, 350, 532 S.E.2d 259, 261 (2000) (holding that the whistleblower statute created new substantive rights); McCaskey v. Shaw, 295 S.C. 372, 375, 368 S.E.2d 672, 673 (Ct. App. 1988) (holding that a prior Supreme Court decision “created a new substantive right”). A court creates a new substantive right when it recognizes a new cause of action that did not previously exist. See Toth v. Square D Co., 298 S.C. 6, 8, 377 S.E.2d 584, 585-86 (1989).

In Adkins, our Supreme Court held that Section 24-3-430 and the accompanying prison industries statutes did not provide inmates with the right to bring a private cause of action against DOC. Adkins, 360 S.C. at 419, 602 S.E.2d at 55. More relevant to the case at hand, the Court further held that:

[N]otwithstanding our holding that Inmates have no private civil cause of action, they are not without a remedy. In accordance with the companion case of Wicker v. South Carolina Dept. of Corrections, 360 S.C. 421, 602 S.E.2d 56, 2004 WL 1877947 (2004), we hold Inmates may file an inmate grievance to protest DOC’s failure to pay wages in accordance with the mandatory statutory provisions.

Id.

In Wicker, the Supreme Court fleshed out this latter holding. It explained that “where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law.” Wicker, 360 S.C. at 424, 602 S.E.2d at 57. The Court thus held that inmates’ prevailing wage claims were grievable through DOC’s internal grievance processes and that DOC’s denial of those claims could be appealed to the ALC. Id. at 423-25, 602 S.E.2d at 57-58.

I find that Adkins and Wicker did not create new substantive rights. The substantive right at issue in Adkins and Wicker - i.e., the right to a prevailing wage—was granted to inmates in 1995 pursuant to Section § 24-3-430(D). Adkins and Wicker, both of which were published in 2004, simply addressed the appropriate procedure for seeking redress for a denial of that existing right. Accordingly, they did not create new substantive rights. See Atlantic Soft Drink Co. of Columbia, Inc. v. S.C. Nat. Bank, 287 S.C. 228, 336 S.E.2d 876 (1985) (holding that statute that related “only to remedies and modes of procedure” did not affect substantive rights); Hooks v. Southern Bell Tel. & Tel. Co., 291 S.C. 41, 351 S.E.2d 900 (Ct. App. 1986) (holding that the “right to seek review” is procedural, not substantive); cf. Baker v. McCollan, 443 U.S. 137, 145 n.3 (1979) (holding that 42 U.S.C. § 1983 “is not itself a source of substantive rights, but a

method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes”); Harvey v. S.C. Dep’t of Corrections, 338 S.C. 500, 527 S.E.2d 765 (Ct. App. 2000) (holding that the Uniform Declaratory Judgments Act did not create substantive rights or duties because it merely authorized a court action to establish a party’s entitlement to a pre-existing right).

New Grievance Remedies

Adkins and Wicker also did not create new grievance rights. Paragraph 7 of DOC Policy Number GA-01.12, which has existed in some form since May 1, 1996, sets forth the issues that are considered grievable by DOC.⁴ Among other grievable issues, it includes the following: “Department policies/procedures, directives, or conditions which directly affect an inmate.” DOC Policy Number GA-01.12, ¶ 7.1 (emphasis added). Unquestionably, inmates are “directly affect[ed]” by DOC policies that cause them to be paid less than that required by law. Thus, this provision, which is very broad in scope, encompasses prevailing wage claims.⁵

Indeed, an ALJ reached that very conclusion in a 2001 decision that gave rise to, and was ultimately affirmed by, the Supreme Court’s opinion in Wicker. See Wicker v. S.C. Dep’t of Corrections, 00-ALJ-04-00781, 2001 WL 1005574 (S.C. Admin. Law Ct. Aug. 13, 2001). In the case before the ALJ, DOC contended that prevailing wage claims were “non-grievable.” See id. at *1. Upon reviewing DOC’s grievance policies, the ALJ disagreed, holding:

Wicker’s wage dispute falls under the listed issues considered “grievable” under DOC policy at GA-01.12(OP), Specific Procedures, paragraph 7; the first issue listed is “Department policies/procedures, directives, or conditions which directly affect an inmate.” Wicker is directly affected by DOC’s arrangement with private industry to pay inmates less than the “prevailing wage for work of similar nature in the private sector” for the first 320 hours of work. Therefore, Wicker’s wage dispute is grievable under the agency’s grievance system.

⁴ Notably, the existence of DOC’s grievance policies was specifically recognized by the Supreme Court in its 2000 decision, Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), where the Court held that DOC’s grievance procedures were consistent with the standards delineated by the U.S. Supreme Court in Wolff v. McDonnell, 418 U.S. 539 (1974). See Al-Shabazz, 338 S.C. at 371-373, 527 S.E.2d at 751-52.

⁵ In addition to Paragraph 7 of DOC Policy Number GA-01.12, DOC’s policies also include Paragraph 9 of Policy Number GA-01.12, which sets forth the procedure by which grievances concerning questionable issues are determined. This provision, which has existed in all versions and editions of DOC’s inmate grievance policies since at least May 1, 1996, states in pertinent part: “In those cases where a question may arise as to whether an item is grievable, the Institutional Inmate Grievance Coordinator will confer with the Chief, Inmate Grievance Branch, who will make that determination.” Thus, to the extent that inmates were not certain whether or not prevailing wage claims were grievable prior to Adkins and Wicker, they could have utilized this provision to resolve the issue

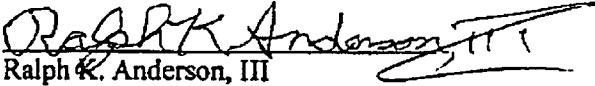
Id. at *1. Thus, as early as 2001, an ALJ held that inmates could grieve prevailing wage claims.⁶

Furthermore, in affirming the ALJ's decision in Wicker, the Supreme Court did not suggest that it was granting inmates "new" grievance rights. For instance, there was no indication by the Court that DOC's grievance procedures were inadequate or that they should be enlarged. Quite the contrary, the Court ruled that "[t]here are numerous issues relating to inmates which, although not giving rise to a private, civil cause of action, are nonetheless grievable through DOC's internal grievance processes" and that Wicker "properly filed a grievance with the DOC." Wicker, 360 S.C. at 423-24, 602 S.E.2d at 57 (emphases added). These statements reflect a conclusion by the Court that DOC's then-existing grievance policies were broad enough to incorporate prevailing wage claims and that the inmate therefore properly filed a grievance with DOC under those grievance policies.

Based upon the foregoing, I conclude that, prior to the Supreme Court's decisions in Adkins and Wicker, inmates could have submitted a grievance relating to their prevailing wage claims. Accordingly, I conclude that Adkins and Wicker did not create new grievance rights, but merely confirmed that prevailing wage claims were grievable under DOC's existing policies. Accordingly, I find that the Appellant failed to file his Step 1 grievance in a timely manner.

IT IS THEREFORE ORDERED that the Department's final decisions in this matter are **AFFIRMED**.

AND IT IS SO ORDERED.


Ralph K. Anderson, III
Chief Administrative Law Judge

April 26, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy herof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 26th day of April 2012
By: [Signature]
Judicial Law Clerk

⁶ Although, as discussed herein, an ALJ's decision does not constitute binding precedent, the ALJ's decision in Wicker nevertheless counteracted DOC's claims that prevailing wage claims were non-grievable.

STATE OF SOUTH CAROLINA
Administrative Law Court

LAW OFFICES

APR 27 2012

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Ralph K. Anderson, III
Chief Judge

Jana E. Cox Shealy
Clerk



April 26, 2012

Terry Keitt, #277284
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P.O. Box 1151
Fairfax, South Carolina 29669

Lake Summers, Esquire
Malone, Thompson, Summers, and Ott, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201

Re: Terry Keitt, #277284 v. SC Department of Corrections, 09-ALJ-04-00519-AP

Dear Mr. Keitt and Mr. Summers:

Enclosed please find the Order in the above-captioned case which is hereby served upon you.

Sincerely,

A handwritten signature in cursive script that reads "E. Harvin Belser Fair".

E. Harvin Belser Fair
Administrative Law Clerk for the Honorable Ralph King Anderson, III

Enclosure

LAW OFFICES

APR 27 2012

MALONE THOMPSON
SUMMERS & OTT, LLC

LAW OFFICES

APR 27 2012

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

MALONE, THOMPSON
SUMMERS & OTT, LLC

David Lampley, #97724,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)

Docket No. 09-ALJ-04-00489-AP

FILED

ORDER

APR 26 2012

SC ADMIN. LAW COURT

This matter comes before the Administrative Law Court (ALC) pursuant to the appeal of David Lampley, an inmate incarcerated with the Department of Corrections (DOC or Department). Appellant claims that his constitutional rights were violated as he received training wages for a period of time he worked in prison industries. Appellant also requested back pay for the difference between his "training wages" and prevailing wages for the period of time he worked in prison industries.

FACTS

The Appellant filed a Step 1 grievance dated October 20, 2008, arguing he worked for prison industries in 1993-1994 when he was housed in Evans Correctional Institute and the Department failed to pay him wages in accordance with S.C. Code 24-3-430 (D). The Warden denied Appellant's grievance on April 24, 2009 stating the Appellant failed to file his grievance in a timely manner. Appellant filed his Step 2 grievance on April 30, 2009. The Department denied the Step 2 grievance on May 4, 2009 and served the Appellant with the decision on May 21, 2009. Appellant filed this appeal on May 29, 2009. The Department filed a Motion to Dismiss on August 10, 2009.

STANDARD OF REVIEW

As set forth above, this case is before the ALC on appeal from a final decisions of the Department pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2010) of the Administrative Procedures Act (APA). As such, the Administrative Law Judge (ALJ) sits in an appellate capacity under the APA rather than as an independent finder of fact. In South Carolina, the

provisions of the APA—specifically Section 1-23-380(A)(5)—govern the circumstances in which an appellate body may reverse or modify an agency decision. That section 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. 2010).

DISCUSSION

Service of the Notice of Appeal

The Department moved to dismiss the Appeal claiming it was not timely served pursuant to ALC Rule 59.¹ ALC Rule 59 provides:

The notice of appeal from the final decision to be heard by the Administrative Law Court shall be filed with the Court and a copy served on each party, including the agency, within thirty (30) days of receipt of the decision from which the appeal is taken.

(emphasis added). Therefore, as set forth in Rule 59, the Department must be served with a copy of the Notice of Appeal within thirty (30) days of the Appellant's receipt of the final decision of the Department.

Here, Appellant's Notice of Appeal indicates he served the Notice of Appeal on the Department's Legal Counsel on May 29, 2009. In addition, Appellant filed a Brief on July 17, 2009 before the record was filed in this case that also claimed he served his Brief on "SCDC Counsel at P.O. Box 21787, Columbia, SC 29221." To the contrary, the Department asserts they

¹ S.C. Code Ann. § 1-23-650 (C) (2011) provides that: "All hearings before an administrative law judge must be conducted exclusively in accordance with the rules of procedure promulgated by the court pursuant to this section. All other rules of procedure for the hearing of contested cases or appeals by individual agencies, whether promulgated by statute or regulation, are of no force and effect in proceedings before an administrative law judge."

did not receive any documents until the attorney for the Department sent someone to look at the file on August 10, 2009. In light of the dispositive issues below, the Court nevertheless elects not to further address this issue. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting that an appellate court need not address remaining issues when a prior issue is dispositive).

Timeliness of Wage Claim

The South Carolina Department of Corrections Policies and Procedures, Paragraph 13.1 of GA-01.12 generally requires that Step 1 grievances be filed "within 15 days of the alleged incident." DOC Policy Number GA-01.12, ¶ 13.1.² The Department's procedure further sets forth a specific time frame to exercise the rights created under those provisions. Therefore, it appears that the Department's regulations require that inmates file their grievance within a specific period of time pursuant to a "statute of creation."

Under South Carolina law, a statute that creates a new liability and affixes the time within which an action may be commenced is a "statute of creation," and commencement within the time affixed is an indispensable condition of the action. Knight Publ'g Co. v. Univ. of S.C., 295 S.C. 31, 33, 367 S.E.2d 20, 22 (1988), overruled on other grounds by McLendon v. S.C. Dep't of Highways and Public Transp., 313 S.C. 525, 443 S.E.2d 539 (1994). Although the failure to timely commence an action pursuant to a statute of creation is not a subject matter jurisdiction defect, such an action "cannot be maintained unless brought within the time allowed by that statute." Simpson v. Sanders, 314 S.C. 413, 415 n.1, 445 S.E.2d 93, 94 n.1 (1994). When a statute both creates a cause of action and includes a time limit for its commencement, compliance with the time limit is a condition precedent to the maintenance of the action. 54 C.J.S. Limitations of Actions § 31 (updated October 2010). "Such a statutory time limit conditions the existence of the right of action, thereby creating a substantive, rather than procedural, limitation on the right. Bringing suit within the prescribed time is a condition of liability itself, not of the remedy alone." Id.

² The Department's prescribed procedures for inmates to seek review of these matters that has been approved by the South Carolina Supreme Court. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) ("We hold that Department's disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in Wolff v. McDonnell, supra. We note that Department also prepared its grievance procedures in compliance with the Civil Rights of Institutionalized Persons Act.").

The reason for a specific time frame to seek review of these matters is much like statutes of limitations. Notably, the South Carolina courts have held that “[s]tatutes of limitations are not simply technicalities,” but rather are “fundamental to a well-ordered judicial system.” Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). “The purpose of statutes of limitation is to ensure litigation is ‘brought within a reasonable time in order that evidence be reasonably available and there be some end to litigation.’” Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (quoting Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct. App. 2008)). “Statutes of limitation embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690 (quoting Moates, 322 S.C. at 176, 470 S.E.2d at 404). Moreover, statutes of limitations relieve courts of the burden of trying stale claims of those who have “slept on their rights.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690.

Because the Department has a legitimate interest in investigating grievances while they are still new, public policy calls for the application of some limitations period to Appellant’s prevailing wage claim. See Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004) (noting that the prison system has a legitimate interest in investigating complaints while they are still fresh); see also Woodford v. Ngo, 548 U.S. 81, 95 (2006) (“When a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved.”). Here, the fifteen-day filing deadline from Paragraph 13.1 is the only limitations period applicable to this claim.³ Therefore, ruling in favor of Appellant would mean that inmates would not be required to file prevailing wage grievances within any set time period. Due in part to public policy concerns over such a result, this court has consistently held that prevailing wage claims do not involve the Department’s “policies or procedures.” See, e.g., Lawson v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 12, 2007); Wright v. S.C. Dep’t of Corr., 06-ALJ-04-00114-AP, 2006 WL 1430140 (S.C. Admin. Law Ct. Apr. 28, 2006).

³ The statutory provisions upon which Appellant bases his pay claim does not create a private right of action. See Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Therefore, statutes of limitations derived from state law do not apply to Appellant’s claim.

The importance of filing deadlines is underscored by the facts of this case. The record demonstrates the Appellant filed his Step 1 regarding his wage claims on October 20, 2008. The Appellant acknowledges in his grievance that he is seeking wages for employment in 1993-1994. Thus, approximately fifteen years passed between when Appellants began participating in the project and when he filed his Step 1 challenging his pay. Clearly, the passage of fifteen years could significantly affect the Department's ability to defend Appellants' claims.⁴

Additionally, South Carolina Code Section 24-3-430 was enacted and became effective on July 1, 1995. In his Step 1 grievance, Appellant states he is seeking wages for employment from June 13, 1993-1994. Thus, this statute does not apply to any wages owed prior to July 1, 1995.

New Substantive Rights

Appellant also argues that his grievance was timely filed as he filed within fifteen days of being notified of Adkins v. S.C. Department of Corrections, 360 S.C. 413, 602 S.E.2d 51 (2004) and Wicker v. S.C. Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004). However, a "substantive right" is "[a] right that can be protected or enforced by law," and it is "a right of substance rather than form." Black's Law Dictionary 1324 (7th ed. 1999). It is distinguishable from a procedural right, which is "a right that derives from legal or administrative procedure" and which "helps in the protection or enforcement of a substantive right." Black's Law Dictionary 1323 (7th ed. 1999). A substantive right can be created by statute or by judicial decision. See, e.g., Lawson v. S.C. Dep't of Corrections, 340 S.C. 346, 350, 532 S.E.2d 259, 261 (2000) (holding that the whistleblower statute created new substantive rights); McCaskey v. Shaw, 295 S.C. 372, 375, 368 S.E.2d 672, 673 (Ct. App. 1988) (holding that a prior Supreme Court decision "created a new substantive right"). A court creates a new substantive right when it recognizes a new cause of action that did not previously exist. See Toth v. Square D Co., 298 S.C. 6, 8, 377 S.E.2d 584, 585-86 (1989).

In Adkins, our Supreme Court held that Section 24-3-430 and the accompanying prison industries statutes did not provide inmates with the right to bring a private cause of action against DOC. Adkins, 360 S.C. at 419, 602 S.E.2d at 55. More relevant to the case at hand, the Court further held that:

⁴ The court notes in this regard that the statutory deadline for filing wage recovery claims under South Carolina's Payment of Wages Act is three years. See S.C. Code Ann. § 41-10-80(C) (Supp. 2010) ("Any civil action for the recovery of wages must be commenced within three years after the wages become due.").

[N]otwithstanding our holding that inmates have no private civil cause of action, they are not without a remedy. In accordance with the companion case of Wicker v. South Carolina Dept. of Corrections, 360 S.C. 421, 602 S.E.2d 56, 2004 WL 1877947 (2004), we hold inmates may file an inmate grievance to protest DOC's failure to pay wages in accordance with the mandatory statutory provisions.

Id.

In Wicker, the Supreme Court fleshed out this latter holding. It explained that “where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law.” Wicker, 360 S.C. at 424, 602 S.E.2d at 57. The Court thus held that inmates' prevailing wage claims were grievable through DOC's internal grievance processes and that DOC's denial of those claims could be appealed to the ALC. Id. at 423-25, 602 S.E.2d at 57-58.

I therefore find that Adkins and Wicker did not create new substantive rights. The substantive right at issue in Adkins and Wicker—i.e., the right to a prevailing wage—was granted to inmates in 1995 pursuant to Section § 24-3-430(D). Adkins and Wicker, both of which were published in 2004, simply addressed the appropriate procedure for seeking redress for a denial of that existing right. Accordingly, they did not create new substantive rights. See Atlantic Soft Drink Co. of Columbia, Inc. v. S.C. Nat. Bank, 287 S.C. 228, 336 S.E.2d 876 (1985) (holding that statute that related “only to remedies and modes of procedure” did not affect substantive rights); Hooks v. Southern Bell Tel. & Tel. Co., 291 S.C. 41, 351 S.E.2d 900 (Ct. App. 1986) (holding that the “right to seek review” is procedural, not substantive); cf. Baker v. McCollan, 443 U.S. 137, 145 n.3 (1979) (holding that 42 U.S.C. § 1983 “is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes”); Harvey v. S.C. Dep't of Corrections, 338 S.C. 500, 527 S.E.2d 765 (Ct. App. 2000) (holding that the Uniform Declaratory Judgments Act did not create substantive rights or duties because it merely authorized a court action to establish a party's entitlement to a pre-existing right).

New Grievance Remedies

Adkins and Wicker also did not create new grievance rights. Paragraph 7 of DOC Policy Number GA-01.12, which has existed in some form since May 1, 1996, sets forth the issues that

are considered grievable by DOC.⁵ Among other grievable issues, it includes the following: "Department policies/procedures, directives, or conditions which directly affect an inmate." DOC Policy Number GA-01.12, ¶ 7.1 (emphasis added). Unquestionably, inmates are "directly affect[ed]" by DOC policies that cause them to be paid less than that required by law. Thus, this provision, which is very broad in scope, encompasses prevailing wage claims.⁶

Indeed, an ALJ reached that very conclusion in a 2001 decision that gave rise to, and was ultimately affirmed by, the Supreme Court's opinion in Wicker. See Wicker v. S.C. Dep't of Corrections, 00-ALJ-04-00781, 2001 WL 1005574 (S.C. Admin. Law Ct. Aug. 13, 2001). In the case before the ALJ, DOC contended that prevailing wage claims were "non-grievable." See id. at *1. Upon reviewing DOC's grievance policies, the ALJ disagreed, holding:

Wicker's wage dispute falls under the listed issues considered "grievable" under DOC policy at GA-01.12(OP), Specific Procedures, paragraph 7; the first issue listed is "Department policies/procedures, directives, or conditions which directly affect an inmate." Wicker is directly affected by DOC's arrangement with private industry to pay inmates less than the "prevailing wage for work of similar nature in the private sector" for the first 320 hours of work. Therefore, Wicker's wage dispute is grievable under the agency's grievance system.

Id. at *1. Thus, as early as 2001, an ALJ held that inmates could grieve prevailing wage claims.⁷

Furthermore, in affirming the ALJ's decision in Wicker, the Supreme Court did not suggest that it was granting inmates "new" grievance rights. For instance, there was no indication by the Court that DOC's grievance procedures were inadequate or that they should be enlarged. Quite the contrary, the Court ruled that "[t]here are numerous issues relating to inmates which, although not giving rise to a private, civil cause of action, are nonetheless grievable through DOC's internal grievance processes" and that Wicker "properly filed a

⁵ Notably, the existence of DOC's grievance policies was specifically recognized by the Supreme Court in its 2000 decision, Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), where the Court held that DOC's grievance procedures were consistent with the standards delineated by the U.S. Supreme Court in Wolff v. McDonnell, 418 U.S. 539 (1974). See Al-Shabazz, 338 S.C. at 371-373, 527 S.E.2d at 751-52.

⁶ In addition to Paragraph 7 of DOC Policy Number GA-01.12, DOC's policies also include Paragraph 9 of Policy Number GA-01.12, which sets forth the procedure by which grievances concerning questionable issues are determined. This provision, which has existed in all versions and editions of DOC's inmate grievance policies since at least May 1, 1996, states in pertinent part: "In those cases where a question may arise as to whether an item is grievable, the Institutional Inmate Grievance Coordinator will confer with the Chief, Inmate Grievance Branch, who will make that determination." Thus, to the extent that inmates were not certain whether or not prevailing wage claims were grievable prior to Adkins and Wicker, they could have utilized this provision to resolve the issue.

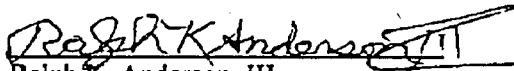
⁷ Although, as discussed herein, an ALJ's decision does not constitute binding precedent, the ALJ's decision in Wicker nevertheless counteracted DOC's claims that prevailing wage claims were non-grievable.

grievance with the DOC." Wicker, 360 S.C. at 423-24, 602 S.E.2d at 57 (emphases added). These statements reflect a conclusion by the Court that DOC's then-existing grievance policies were broad enough to incorporate prevailing wage claims and that the inmate therefore properly filed a grievance with DOC under those grievance policies.

Based upon the foregoing, I conclude that, prior to the Supreme Court's decisions in Adkins and Wicker, inmates could have submitted a grievance relating to their prevailing wage claims. Accordingly, I conclude that Adkins and Wicker did not create new grievance rights, but merely confirmed that prevailing wage claims were grievable under DOC's existing policies. Accordingly, I find that the Appellant failed to file his Step 1 grievance in a timely manner.

IT IS HEREBY ORDERED that the Department's final decisions in this matter are **AFFIRMED**.

AND IT IS SO ORDERED.


Ralph K. Anderson, III
Chief Administrative Law Judge

April 26, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 26th day of April, 2012

By: L. Harris Belau
Judicial Law Clerk

STATE OF SOUTH CAROLINA
Administrative Law Court

Ralph K. Anderson, III
Chief Judge

Jana E. Cox Shealy
Clerk



PHONE: (803) 734-0550
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WEB: WWW.SCALC.NET

David G. Lampley
201 North Warren Street
Timmonsville, South Carolina 29161

Lake E. Summers, Esq.
339 Heyward Street, Suite 200
Columbia, South Carolina 29201

Re: David Lampley, #97724 v. South Carolina Department of Corrections, 09-ALJ-04-00489-AP

Dear Mr. Lampley and Mr. Summers,

Enclosed please find the Order in the above-captioned case which is hereby served upon you.

Thank you for your attention to this matter.

Sincerely,

E. Harvin Belser Fair
Law Clerk to the Honorable Ralph King Anderson, III

enclosure

LAW OFFICES

APR 27 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

LAW OFFICES

SEP 10 2009

MALONE, THOMPSON
SLIMM, FESS & POTT, LLC

Tony Larrimore. # 238126.)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No. 09-ALJ-04-00478-A1

ORDER

FILED

SEP 09 2009

SC ADMIN. LAW COURT

STATEMENT OF THE CASE

In the above-captioned matter, Appellant Tony Larrimore ("Larrimore") appeals the decision of Respondent South Carolina Department of Corrections ("Department") to deny his grievance concerning payment of the "prevailing wage" which he argues is owed to him for work performed in the Department's prison industries private sector program ("prison industries program"). In response, the Department contends that, pursuant to SCDC Inmate Grievance System Policy Number GA-01.12, ¶ 13.1, Inmate Larrimore failed to file a grievance within fifteen (15) days of the occurrence of the alleged incident. Based upon the record, the parties' briefs, and applicable law, the Department's decision denying Larrimore's grievance must be affirmed.

BACKGROUND

On November 11, 2008, Larrimore filed a Step 1 grievance with the Department and argued that the Department owed him back wages consisting of the difference between the "training wage" SCDC paid him and the "prevailing wage" of \$5.25 per hour for the first 320 hours of labor he provided to the prison industries program operated by the Department at Evans

Correctional Institution ("Evans CI"), in which ESCOD, Inc. participated as the private industry sponsor.

On April 10, 2009, the Warden at Evans CI denied Larrimore's Step 1 grievance because he failed to file his grievance within the fifteen (15) day time period required by SCDC Inmate Grievance Policy Number GA-01.12. On April 22, 2009, Larrimore filed a Step 2 appeal in which he challenged the Department's denial of his Step 1 grievance. On May 15, 2009, the Department issued its final decision and denied Larrimore's Step 2 appeal. Based on the Department's final decision, Larrimore filed two (2) Notices of Appeal with the Administrative Law Court ("ALC" or "Court") on May 21, 2009 and June 9, 2009 respectively by which he challenged the Department's final decision.

DISCUSSION

This appeal is before this Court pursuant to Wicker v. S.C. Dep't of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) as well as Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), Sullivan v. S.C. Dep't of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003).

Pursuant to Al-Shabazz, an inmate is permitted to seek judicial review with the ALC of final decisions issued by the Department concerning non-collateral or administrative matters, and the ALC sits in an appellate capacity when reviewing such decisions. Al-Shabazz, 338 S.C. at 376, 527 S.E.2d at 754.

In this matter, Larrimore complains that he was not paid the "prevailing wage" for the first 320 hours of labor he voluntarily provided to the prison industries project operated by the Department at Evans CI in which ESCOD, Inc. participated as the private industry sponsor. Specifically, Larrimore invoked S.C. Code Ann. § 24-3-430(D) which provides that "[n]o inmate

participating in the [prison industries] program may earn less than the prevailing wage for work of similar nature in the private sector." Id.

The Supreme Court of South Carolina previously held in Wicker that: (1) an inmate is entitled to file a grievance via SCDC's Inmate Grievance System Policy Number GA-01.12 to allege he was not paid the "prevailing wage;" (2) the ALC has jurisdiction to review the Department's alleged failure to pay the "prevailing wage;" and, (3) an inmate is entitled to be paid the "prevailing wage" while working in certain private sector prison industries projects operated by the Department. Id. at 421, 602 S.E.2d at 56.

Nonetheless, Larrimore is still required to timely file his grievance with the Department concerning whether the Department paid him the "prevailing wage" for his prison industries labor. Larrimore began participating in the prison industries project operated by the Department at Evans CI on or about March 3, 1997, yet he did not file his Step 1 grievance until November 11, 2008, over 11 years later. Thus, Larrimore clearly filed his grievance outside of the required fifteen (15) day timeframe mandated by Policy Number GA-01.12 ¶ 13.1.

Larrimore, however, contends that the fifteen (15) day deadline does not apply to his Step 1 grievance because his grievance falls within one of the exceptions to the fifteen (15) day deadline as outlined in SCDC's Policy Number GA-01.12 ¶ 13.11. Paragraph 13.11 provides exceptions to the fifteen (15) day deadline for grievances that concern policies or procedures or for incident grievances when the inmate can show reasonable cause. Larrimore does not specify which of these exceptions purportedly applies to his Step 1 grievance.

Rather, Larrimore contends that he was not required to file his Step 1 grievance until he had notice of our Supreme Court's decisions in Wicker and Adkins, et al. v. S.C. Dep't of Corrections, 360 S.C. 413, 602 S.E.2d 51 (2004), and that the Department did not provide him

notice until October 2008 when the Department posted a "notice flyer" throughout its institutions. The "notice flyer" referenced by Larrimore is a two (2) page document the Department posted in October 2008 throughout its institutions pursuant to the order of dismissal issued by the circuit court in Williams, et. al. vs. S.C. Dep't of Corrections and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). This posting stated that the information and deadline appearing on the notice applied only to inmates who participate or at one time participated in the prison industries project operated by the Department at Lieber Correctional Institution ["Lieber CI"] in which Williams Technologies participated as the private industry sponsor.

However, as Larrimore's grievance concerns his participation in the prison industries project operated by the Department at Evans CI in which ESCOD, Inc. participated as the private industry sponsor, nothing in the two (2) page document posted by the Department in October 2008 throughout its institutions applies to the "prevailing wage" claim articulated by Larrimore in his grievance. Moreover, our Supreme Court's decisions in Wicker, Williams, and Al-Shabazz negate Larrimore's argument that the 15 day filing deadline does not apply to his grievance.

In Wicker, our Supreme Court held that although inmates may not file a private, civil cause of action to dispute their prison industries pay, inmates may file grievances through the Department's internal grievance policy in order to challenge their pay. The Department's inmate grievance policy referenced in Wicker, Policy Number GA-01.12, requires inmates to file their initial or Step 1 grievances within 15 days of the alleged incident. No interpretation of Wicker supports the notion that grievances in which inmates articulate prison industries back pay claims are exempt from the provisions of this 15 day filing deadline or that these types of grievances are

subject to any of the exceptions listed in Policy Number GA-01.12 ¶ 13.11. In addition, our Supreme Court in Williams recognized that Policy Number GA-01.12 provides the proper forum in which inmates may challenge the Department's prison industries pay practices.

In Al-Shabazz, our Supreme Court considered whether an inmate incarcerated by the Department may challenge an internal disciplinary action through a post conviction relief proceeding. The Al-Shabazz Court found that rather than filing a post conviction relief proceeding to challenge the Department's internal disciplinary actions, inmates must file an appeal within 15 days of receiving the written notice of the disciplinary action and, further, inmates may appeal decisions rendered against them under the Department's Inmate Disciplinary System decisions by initiating an administrative grievance under the provisions of Policy Number GA-01.12. The Al-Shabazz Court also found that the Department's "grievance procedures [were] in compliance with the Civil Rights of Institutionalized Persons Act." Al-Shabazz, 527 S.E.2d at 752.

The edition of the Department's Inmate Grievance System Policy at issue in Al-Shabazz reflected the very same 15 day deadline as appears in the edition of the Department's Inmate Grievance System Policy at issue here. Therefore, when Al-Shabazz and Wicker are read together, the 15 day deadline established in ¶ 13.1 of Policy Number GA-01.12 is valid, and, further, the 15 day filing deadline applies to prison industries back pay disputes such as the instant dispute raised by Larrimore.

Therefore, Larrimore was required to present his grievance within fifteen (15) days of the time that the event complained of occurred. He was not entitled to wait until Wicker was decided, or until the Department posted a two (2) page document concerning our Supreme Court's decisions in Adkins or Wicker. The grievance existed when it occurred. Larrimore

failed to file a grievance within the fifteen (15) day time period as provided by Policy Number GA-01.12, and this court has no authority to expand the time in which the request for a hearing must be filed. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).

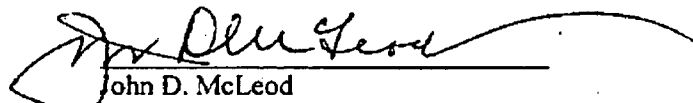
Moreover, Larrimore's claim is barred under the principle of laches. "Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). Larrimore filed a grievance approximately 11 years after the Department remitted the disputed pay to him. The delay in filing his claim is unreasonable and obviously prejudices the Department. See Brown v. Butler, 347 S.C. 359, 265, 554 S.E.2d 431, 434 (Ct. App. 2001).

Accordingly, Larrimore did not timely file his grievance, and the Department's decision must be **AFFIRMED**.

ORDER

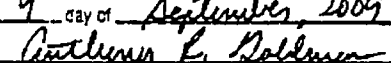
IT IS HEREBY ORDERED that the Department's decision in this matter is **AFFIRMED**.

AND IT IS SO ORDERED.


John D. McLeod
Administrative Law Judge

September 9, 2009
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 9 day of September 2009
By: 
Judicial Law Clerk

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and Furtick v. South Carolina Department of Corrections, 649 S.E.2d 35 (S.C. 2007). Pursuant to Al-Shabazz, an inmate is permitted to seek judicial review with the ALC of Department decisions concerning non-collateral or administrative matters, and the ALC sits in an appellate capacity when reviewing such Department decisions. Al-Shabazz, 338 S.C. at 376, 527 S.E.2d at 754.

In this matter, Manigault complains that he was not paid the prevailing wage for work performed in the private sector program, as mandated by S.C. Code Ann. § 24-3-430. Specifically, Section 24-3-430(D) clearly provides that "[n]o inmate participating in the [prison industries] program may earn less than the prevailing wage for work of similar nature in the private sector." Id.

The Supreme Court of South Carolina has unequivocally held in Wicker v. South Carolina Dep't of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) that: (1) an inmate is entitled to file a grievance when not being paid the prevailing wage; (2) the ALC has jurisdiction to review the Department's failure to pay the prevailing wage; and, (3) an inmate is entitled to be paid the prevailing wage while working in the private sector program. Id. at 421, 602 S.E.2d at 56.

Nonetheless, Manigault is required to timely file his grievance with the Department concerning the payment of prevailing wages. Manigault began working in the prison industries program on or about August 16, 2002, yet did not file his grievance until February 21, 2005, approximately two and a half years later. Manigault's grievance was clearly filed outside of the required fifteen day timeframe as mandated by Department policy. The inmate is required to present his grievance within 15 days of the time that the event complained of occurred. He was not entitled to wait until Wicker v. South Carolina Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004), was decided. The grievance existed when it occurred. Manigault failed to file a grievance as provided by GA-01.12, and this court has no authority to expand the time in which the request for a hearing must be filed. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).


Moreover, Manigault's claim is barred under the principle of laches. "Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). Manigault filed a grievance approximately two and a half years after the disputed wages were paid to him. The delay in filing his claims is unreasonable and obviously prejudices the Department. See Brown v. Butler, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct. App. 2001).

Accordingly, Manigault did not timely file his grievance, and the Department's decision

must be **AFFIRMED**.

ORDER

IT IS HEREBY ORDERED that the Department's decision in this matter is **AFFIRMED**.
AND IT IS SO ORDERED.

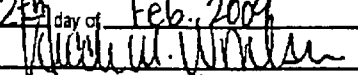

Marvin F. Kittrell
Chief Judge

February 11, 2009
Columbia, South Carolina

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 12th day of Feb. 2009
By: 
Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

John McLemore. # 127966.)
)
 Appellant.)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No. 09-ALJ-04-00023-AP

ORDER

FILED

SEP 21 2009

SC ADMIN. LAW COURT

STATEMENT OF THE CASE

In the above-captioned matter, Appellant John McLemore ("McLemore") appeals the decision of Respondent South Carolina Department of Corrections ("Department") to deny his grievance concerning payment of the "prevailing wage" which he argues is owed to him for work performed in the Department's prison industries private sector program ("prison industries program"). In response, the Department contends that, pursuant to SCDC Inmate Grievance System Policy Number GA-01.12, ¶ 13.1, Inmate McLemore failed to file a grievance within 15 days of the occurrence of the alleged incident. Based upon the record, the parties' briefs, and applicable law, the Department's decision denying McLemore's grievance must be affirmed.

BACKGROUND

On December 20, 2006, McLemore filed a Step 1 grievance with the Department and argued that the Department owed him back wages consisting of the difference between the "training wage" SCDC paid him and an unspecified "prevailing wage" for the first 300 hours of labor he provided to the prison industries project operated by the Department at Lee Correctional

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Institution ("Lee CI"), in which WESEW, Inc. ["WESEW"] participated as the private industry sponsor.

On December 1, 2008, the Warden at Lee CI denied McLemore's Step 1 grievance, because he failed to file his grievance within the 15 day time period required by SCDC Inmate Grievance Policy Number GA-01.12. On December 5, 2008, McLemore filed a Step 2 appeal in which he challenged the Department's denial of his Step 1 grievance. On December 15, 2008, the Department issued its final decision and denied McLemore's Step 2 appeal. Based on the Department's final decision, McLemore filed a Notice of Appeal with the Administrative Law Court ("ALC" or "Court") on January 9, 2009 by which he challenged the Department's final decision.

DISCUSSION

This appeal is before this Court pursuant to Wicker v. S.C. Dep't of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) as well as Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), and Sullivan v. S.C. Dep't of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003).

Pursuant to Al-Shabazz, an inmate is permitted to seek judicial review with the ALC of final decisions issued by the Department concerning non-collateral or administrative matters, and the ALC sits in an appellate capacity when reviewing such decisions. Al-Shabazz, 338 S.C. at 376, 527 S.E.2d at 754.

In this matter, McLemore complains that he was not paid an unspecified "prevailing wage" for the first 300 hours of labor he voluntarily provided to the prison industries project operated by the Department at Lee CI in which WESEW, Inc. participated as the private industry sponsor. Specifically, McLemore invoked S.C. Code Ann. § 24-3-430(D) which provides that

"[n]o inmate participating in the [prison industries] program may earn less than the prevailing wage for work of similar nature in the private sector." Id.

The Supreme Court of South Carolina previously held in Wicker that: (1) an inmate is entitled to file a grievance via SCDC's Inmate Grievance System Policy Number GA-01.12 to allege he was not paid the "prevailing wage;" (2) the ALC has jurisdiction to review the Department's alleged failure to pay the "prevailing wage;" and, (3) an inmate is entitled to be paid the "prevailing wage" while working in certain private sector prison industries projects operated by the Department. Id. at 421, 602 S.E.2d at 56.

Nonetheless, McLemore is still required to timely file his grievance with the Department concerning whether the Department paid him the "prevailing wage" for his prison industries labor. McLemore began participating in the prison industries project operated by the Department at Lee CI on or about March 1, 1996, yet he did not file his Step 1 grievance until December 20, 2006, over 10½ years later. Thus, McLemore clearly filed his grievance outside of the required 15 day timeframe mandated by Policy Number GA-01.12 ¶ 13.1.

McLemore, however, contends that the 15 day deadline does not apply to his Step 1 grievance because his grievance falls within one of the exceptions to the 15 day deadline as outlined in the January 1, 2006 edition of SCDC's Policy Number GA-01.12 ¶ 13.10. Paragraph 13.10 provides exceptions to the 15 day deadline for grievances that concern policies or procedures or for incident grievances when the inmate can show reasonable cause for not complying with the 15 day deadline.

Specifically, McLemore contends that his Step 1 grievance falls within the "policies or procedures" exception to the 15 day deadline, because his Step 1 grievance challenges the Department's policies and procedures of paying inmates less than the "prevailing wage."

McLemore also contends that he filed his Step 1 grievance within 15 days of learning about the "prevailing wage" statute (i.e. § 24-3-430(D)) and that our Supreme Court's decision in Wicker supports his arguments.

However, our Supreme Court's decisions in Wicker, Al-Shabazz, and Williams, et. al. vs. S.C. Dep't of Corrections and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007), negate McLemore's argument that the 15 day filing deadline does not apply to his grievance.

In Wicker, our Supreme Court held that although inmates may not file a private, civil cause of action to dispute their prison industries pay, inmates may file grievances through the Department's internal grievance policy in order to challenge their pay. The Department's inmate grievance policy referenced in Wicker, Policy Number GA-01.12, requires inmates to file their initial or Step 1 grievances within 15 days of the alleged incident. No interpretation of Wicker supports the notion that grievances in which inmates articulate prison industries back pay claims are exempt from the provisions of this 15 day filing deadline or that these types of grievances are subject to any of the exceptions listed in the January 1, 2006 edition of Policy Number GA-01.12 ¶ 13.10. In addition, our Supreme Court in Williams recognized that Policy Number GA-01.12 provides the proper forum in which inmates may challenge the Department's prison industries pay practices.

In Al-Shabazz, our Supreme Court considered whether an inmate incarcerated by the Department may challenge an internal disciplinary action through a post conviction relief proceeding. The Al-Shabazz Court found that rather than filing a post conviction relief proceeding to challenge the Department's internal disciplinary actions, inmates must file an appeal within 15 days of receiving the written notice of the disciplinary action and, further,

inmates may appeal decisions rendered against them under the Department's Inmate Disciplinary System decisions by initiating an administrative grievance under the provisions of Policy Number GA-01.12. The Al-Shabazz Court also found that the Department's "grievance procedures [were] in compliance with the Civil Rights of Institutionalized Persons Act." Al-Shabazz, 527 S.E.2d at 752.

The edition of the Department's Inmate Grievance System Policy at issue in Al-Shabazz reflected the very same 15 day deadline as appears in the edition of the Department's Inmate Grievance System Policy at issue here. Therefore, when Al-Shabazz and Wicker are read together, the 15 day deadline established in ¶ 13.1 of the January 1, 2006 edition of Policy Number GA-01.12 is valid, and, further, the 15 day filing deadline applies to prison industries back pay disputes such as the instant dispute raised by McLemore.

Therefore, McLemore was required to present his grievance within 15 days of the time that the event complained of occurred. He was not entitled to wait until Wicker was decided, or until he became aware of the prevailing wage statute. The grievance existed when it occurred. McLemore failed to file a grievance within the 15 day time period as provided by Policy Number GA-01.12, and this court has no authority to expand the time in which the request for a hearing must be filed. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).

Moreover, McLemore's claim is barred under the principle of laches. "Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). McLemore filed a grievance approximately 10½ years after the Department remitted the disputed pay to him. The delay in filing his claim is unreasonable

and obviously prejudices the Department. See Brown v. Butler, 347 S.C. 359, 265, 554 S.E.2d 431, 434 (Ct. App. 2001).

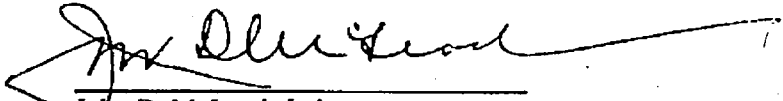
Finally, McLemore contends that, during the time he participated in the prison industries project operated by the Department at Lee CI, he was "employed" by WESEW, the private industry sponsor. However, under our Supreme Court's decision in Williams, 372 S.C. at 258 – 59, 641 S.E.2d at 887, McLemore was simply never an employee of WESEW or, for that matter, SCDC. Id., at footnote 3.

Accordingly, the Department's decision must be **AFFIRMED**.

ORDER

IT IS HEREBY ORDERED that the Department's decision in this matter is **AFFIRMED**.

AND IT IS SO ORDERED.



John D. McLeod, Judge
S.C. Administrative Law Court

September 9, 2009
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Emergency Mail Service addressed to the party(ies) or their attorney(s).

This 21 day of September, 2009
By: Anthony K. Goldman

JUN 28 2012

MALONE, THOMPSON
SUMMERS & OTT, LLC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Willie Parker, #291769

Docket No. 07-ALJ-04-0770-AP

Appellant,

ORDER

vs.

South Carolina Department of Corrections,

Respondent.

This matter comes before the Administrative Law Court (ALC) pursuant to the appeal of Willie Parker, an inmate incarcerated with the Department of Corrections (DOC or Department). Appellant claims that his constitutional rights were violated because the training wages he received when he worked in prison industries were less than "prevailing wages" required under S.C. Code Ann. §24-3-430(D). Appellant requested back pay for the difference between his "training wages" and prevailing wages for the period of time he worked in prison industries.¹

BACKGROUND

The Appellant filed a Step 1 grievance dated May 2, 2007, stating he worked for prison industries from 1999 to present and was not paid prevailing wages under South Carolina Code 24-3-430. He thus asserted he was entitled to back wages from 1999 to present. The Warden denied Appellant's grievance and served the Appellant with the denial on June 11, 2007.

¹ In the Notice of Appeal, Appellant also contends the Department violated constitutional protections in issuing its decision. Appellant did not raise the issues of violation of constitutional protections below. An inmate cannot sit silently during a hearing, raising no objections, and then raise issues such as these for the first time on appeal. See Kiawah Resort Associates v. South Carolina Tax Com'n, 318 S.C. 502, 458 S.E.2d 542 (1995) (In reviewing a final decision of an administrative agency, the Administrative Law Judge "has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency."). Our law is also clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review. State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). This rule also applies to constitutional arguments. See State v. Owens, 378 S.C. 636, 638, 664 S.E.2d 80, 81 (2008) (finding constitutional claims not preserved for review without a contemporaneous objection at trial). State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). Furthermore, all of the arguments raised by Appellant were merely conclusory statements. Consequently, Appellant abandoned these issues on appeal, and they need not be considered. See Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004) (failure to provide arguments or supporting authority for an issue renders it abandoned); Muir v. C.R. Bard, Inc., 336 S.C. 266, 298-99, 519 S.E.2d 583, 600 (Ct. App. 1999) (conclusory arguments may be treated as abandoned).

FILED

June 27, 2012

SC ADMIN. LAW COURT

Appellant timely filed his Step 2 grievance dated July 20, 2007. After Appellant's Step 2 grievance was denied on August 7, 2007, Appellant filed this appeal on August 13, 2007.

Appellant has not filed a brief in this case. Pursuant to ALC Rule 38, an Administrative Law Judge may dismiss an appeal for failure to comply with the rules of procedure for appeals or for failure to comply with any time limits set forth in an appeal. This delay is well beyond the time period set forth in the Rules of Procedure for the Administrative Law Court. As the Appellant has been afforded ample time to file his Brief and has not notified the ALC of any extenuating circumstances regarding his failure to file, I conclude that this matter should be dismissed sua sponte.²

STANDARD OF REVIEW

This case is before the ALC on appeal from a final decisions of the Department pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2010) of the Administrative Procedures Act (APA). As such, the Administrative Law Judge (ALJ) sits in an appellate capacity under the APA rather than as an independent finder of fact. In South Carolina, the provisions of the APA—specifically Section 1-23-380(A)(5)—govern the circumstances in which an appellate body may reverse or modify an agency decision. That section 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. 2010).

² Though Appellant's failure to file a brief warrant dismissal of this case, for sake of judicial expediency I also address the issue of timeliness of the grievance.

DISCUSSION

Timeliness of Wage Claim

The South Carolina Department of Corrections Policies and Procedures, Paragraph 13.1 of GA-01.12 generally requires that Step 1 grievances be filed "within 15 days of the alleged incident." DOC Policy Number GA-01.12, ¶ 13.1.³ The Department's procedure further sets forth a specific time frame to exercise the rights created under those provisions. Therefore, it appears that the Department's regulations require that inmates file their grievance within a specific period of time pursuant to a "statute of creation."

Under South Carolina law, a statute that creates a new liability and affixes the time within which an action may be commenced is a "statute of creation," and commencement within the time affixed is an indispensable condition of the action. Knight Publ'g Co. v. Univ. of S.C., 295 S.C. 31, 33, 367 S.E.2d 20, 22 (1988), overruled on other grounds by McLendon v. S.C. Dep't of Highways and Public Transp., 313 S.C. 525, 443 S.E.2d 539 (1994). Although the failure to timely commence an action pursuant to a statute of creation is not a subject matter jurisdiction defect, such an action "cannot be maintained unless brought within the time allowed by that statute." Simpson v. Sanders, 314 S.C. 413, 415 n.1, 445 S.E.2d 93, 94 n.1 (1994). When a statute both creates a cause of action and includes a time limit for its commencement, compliance with the time limit is a condition precedent to the maintenance of the action. 54 C.J.S. Limitations of Actions § 31 (updated October 2010). "Such a statutory time limit conditions the existence of the right of action, thereby creating a substantive, rather than procedural, limitation on the right. Bringing suit within the prescribed time is a condition of liability itself, not of the remedy alone." Id.

The reason for a specific time frame to seek review of these matters is much like statutes of limitations. Notably, the South Carolina courts have held that "[s]tatutes of limitations are not simply technicalities," but rather are "fundamental to a well-ordered judicial system." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "The purpose of statutes of limitation is to ensure litigation is 'brought within a reasonable time in order that evidence be

³ The Department's prescribed procedures for inmates to seek review of these matters that has been approved by the South Carolina Supreme Court. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) ("We hold that Department's disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in Wolff v. McDonnell, supra. We note that Department also prepared its grievance procedures in compliance with the Civil Rights of Institutionalized Persons Act.").

reasonably available and there be some end to litigation.” Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (quoting Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct. App. 2008)). “Statutes of limitation embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690 (quoting Moates, 322 S.C. at 176, 470 S.E.2d at 404). Moreover, statutes of limitations relieve courts of the burden of trying stale claims of those who have “slept on their rights.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690.

Because the Department has a legitimate interest in investigating grievances while they are still new, public policy calls for the application of some limitations period to Appellant’s prevailing wage claim. See Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004) (noting that the prison system has a legitimate interest in investigating complaints while they are still fresh); see also Woodford v. Ngo, 548 U.S. 81, 95 (2006) (“When a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved.”). Here, the fifteen-day filing deadline from Paragraph 13.1 is the only limitations period applicable to this claim.⁴ Therefore, ruling in favor of Appellant would mean that inmates would not be required to file prevailing wage grievances within any set time period. Due in part to public policy concerns over such a result, this court has consistently held that prevailing wage claims do not involve the Department’s “policies or procedures.” See, e.g., Lawson v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 12, 2007); Wright v. S.C. Dep’t of Corr., 06-ALJ-04-00114-AP, 2006 WL 1430140 (S.C. Admin. Law Ct. Apr. 28, 2006).

The importance of filing deadlines is underscored by the facts of this case. The record demonstrates the Appellant filed his Step 1 regarding his wage claims on May 2, 2007. The Appellant acknowledges in his grievance that he is seeking wages for employment from 1999. Thus, over seven years passed between when Appellants began participating in the project and when he filed his Step 1 challenging his pay.

⁴ The statutory provisions upon which Appellant bases his pay claim does not create a private right of action. See Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Therefore, statutes of limitations derived from state law do not apply to Appellant’s claim. See Talford v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 14, 2007).

Implication of *Wicker* and *Adkins*

New Substantive Rights

Appellant also argues that his grievance was timely filed as he filed within a reasonable time of being notified of *Adkins v. S.C. Department of Corrections*, 360 S.C. 413, 602 S.E.2d 51 (2004) and *Wicker v. S.C. Department of Corrections*, 360 S.C. 421, 602 S.E.2d 56 (2004). However, *Wicker* and *Adkins* did not create new substantive rights. A "substantive right" is "[a] right that can be protected or enforced by law," and it is "a right of substance rather than form." *Black's Law Dictionary* 1324 (7th ed. 1999). It is distinguishable from a procedural right, which is "a right that derives from legal or administrative procedure" and which "helps in the protection or enforcement of a substantive right." *Black's Law Dictionary* 1323 (7th ed. 1999). A substantive right can be created by statute or by judicial decision. See, e.g., *Lawson v. S.C. Dep't of Corrections*, 340 S.C. 346, 350, 532 S.E.2d 259, 261 (2000) (holding that the whistleblower statute created new substantive rights); *McCaskey v. Shaw*, 295 S.C. 372, 375, 368 S.E.2d 672, 673 (Ct. App. 1988) (holding that a prior Supreme Court decision "created a new substantive right"). A court creates a new substantive right when it recognizes a new cause of action that did not previously exist. See *Toth v. Square D Co.*, 298 S.C. 6, 8, 377 S.E.2d 584, 585-86 (1989).

In *Adkins*, our Supreme Court held that Section 24-3-430 and the accompanying prison industries statutes did not provide inmates with the right to bring a private cause of action against DOC. *Adkins*, 360 S.C. at 419, 602 S.E.2d at 55. More relevant to the case at hand, the Court further held that:

[N]otwithstanding our holding that Inmates have no private civil cause of action, they are not without a remedy. In accordance with the companion case of *Wicker v. South Carolina Dept. of Corrections*, 360 S.C. 421, 602 S.E.2d 56, 2004 WL 1877947 (2004), we hold Inmates may file an inmate grievance to protest DOC's failure to pay wages in accordance with the mandatory statutory provisions.

Id.

In *Wicker*, the Supreme Court fleshed out this latter holding. It explained that "where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law." *Wicker*, 360 S.C. at 424, 602 S.E.2d at 57. The Court thus held that inmates' prevailing wage claims were grievable through DOC's internal grievance processes and that DOC's denial of those claims could be appealed to the ALC. *Id.* at 423-25, 602 S.E.2d at 57-58.

I find that Adkins and Wicker did not create new substantive rights. The substantive right at issue in Adkins and Wicker - i.e., the right to a prevailing wage—was granted to inmates in 1995 pursuant to Section § 24-3-430(D). Adkins and Wicker, both of which were published in 2004, simply addressed the appropriate procedure for seeking redress for a denial of that existing right. Accordingly, they did not create new substantive rights. See Atlantic Soft Drink Co. of Columbia, Inc. v. S.C. Nat. Bank, 287 S.C. 228, 336 S.E.2d 876 (1985) (holding that statute that related “only to remedies and modes of procedure” did not affect substantive rights); Hooks v. Southern Bell Tel. & Tel. Co., 291 S.C. 41, 351 S.E.2d 900 (Ct. App. 1986) (holding that the “right to seek review” is procedural, not substantive); cf. Baker v. McCollan, 443 U.S. 137, 145 n.3 (1979) (holding that 42 U.S.C. § 1983 “is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes”); Harvey v. S.C. Dep’t of Corrections, 338 S.C. 500, 527 S.E.2d 765 (Ct. App. 2000) (holding that the Uniform Declaratory Judgments Act did not create substantive rights or duties because it merely authorized a court action to establish a party’s entitlement to a pre-existing right).

New Grievance Remedies

Adkins and Wicker also did not create new grievance rights. Paragraph 7 of DOC Policy Number GA-01.12, which has existed in some form since May 1, 1996, sets forth the issues that are considered grievable by DOC.⁵ Among other grievable issues, it includes the following: “Department policies/procedures, directives, or conditions which directly affect an inmate.” DOC Policy Number GA-01.12, ¶ 7.1 (emphasis added). Unquestionably, inmates are “directly affect[ed]” by DOC policies that cause them to be paid less than that required by law. Thus, this provision, which is very broad in scope, encompasses prevailing wage claims.⁶

⁵ Notably, the existence of DOC’s grievance policies was specifically recognized by the Supreme Court in its 2000 decision, Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), where the Court held that DOC’s grievance procedures were consistent with the standards delineated by the U.S. Supreme Court in Wolff v. McDonnell, 418 U.S. 539 (1974). See Al-Shabazz, 338 S.C. at 371-373, 527 S.E.2d at 751-52.

⁶ In addition to Paragraph 7 of DOC Policy Number GA-01.12, DOC’s policies also include Paragraph 9 of Policy Number GA-01.12, which sets forth the procedure by which grievances concerning questionable issues are determined. This provision, which has existed in all versions and editions of DOC’s inmate grievance policies since at least May 1, 1996, states in pertinent part: “In those cases where a question may arise as to whether an item is grievable, the Institutional Inmate Grievance Coordinator will confer with the Chief, Inmate Grievance Branch, who will make that determination.” Thus, to the extent that inmates were not certain whether or not prevailing wage claims were grievable prior to Adkins and Wicker, they could have utilized this provision to resolve the issue.

Indeed, an ALJ reached that very conclusion in a 2001 decision that gave rise to, and was ultimately affirmed by, the Supreme Court's opinion in Wicker. See Wicker v. S.C. Dep't of Corrections, 00-ALJ-04-00781, 2001 WL 1005574 (S.C. Admin. Law Ct. Aug. 13, 2001). In the case before the ALJ, DOC contended that prevailing wage claims were "non-grievable." See id. at *1. Upon reviewing DOC's grievance policies, the ALJ disagreed, holding:

Wicker's wage dispute falls under the listed issues considered "grievable" under DOC policy at GA-01.12(OP), Specific Procedures, paragraph 7; the first issue listed is "Department policies/procedures, directives, or conditions which directly affect an inmate." Wicker is directly affected by DOC's arrangement with private industry to pay inmates less than the "prevailing wage for work of similar nature in the private sector" for the first 320 hours of work. Therefore, Wicker's wage dispute is grievable under the agency's grievance system.

Id. at *1. Thus, as early as 2001, an ALJ held that inmates could grieve prevailing wage claims.⁷

Furthermore, in affirming the ALJ's decision in Wicker, the Supreme Court did not suggest that it was granting inmates "new" grievance rights. For instance, there was no indication by the Court that DOC's grievance procedures were inadequate or that they should be enlarged. Quite the contrary, the Court ruled that "[t]here are numerous issues relating to inmates which, although not giving rise to a private, civil cause of action, are nonetheless grievable through DOC's internal grievance processes" and that Wicker "properly filed a grievance with the DOC." Wicker, 360 S.C. at 423-24, 602 S.E.2d at 57 (emphases added). These statements reflect a conclusion by the Court that DOC's then-existing grievance policies were broad enough to incorporate prevailing wage claims and that the inmate therefore properly filed a grievance with DOC under those grievance policies.

Based upon the foregoing, I conclude that, prior to the Supreme Court's decisions in Adkins and Wicker, inmates could have submitted a grievance relating to their prevailing wage claims. Accordingly, I conclude that Adkins and Wicker did not create new grievance rights, but merely confirmed that prevailing wage claims were grievable under DOC's existing policies. Accordingly, I find that the Appellant failed to file his Step I grievance in a timely manner.

IT IS THEREFORE ORDERED that the Department's final decisions in this matter are **AFFIRMED**.

⁷ Although, as discussed herein, an ALJ's decision does not constitute binding precedent, the ALJ's decision in Wicker nevertheless counteracted DOC's claims that prevailing wage claims were non-grievable.

AND IT IS SO ORDERED.

Ralph K. Anderson III

Ralph K. Anderson, III
Chief Administrative Law Judge

June 27, 2012
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

June 27, 2012
Columbia, South Carolina

and Furtick v. South Carolina Department of Corrections, 649 S.E.2d 35 (S.C. 2007). Pursuant to Al-Shabazz, an inmate is permitted to seek judicial review with the ALC of Department decisions concerning non-collateral or administrative matters, and the ALC sits in an appellate capacity when reviewing such Department decisions. Al-Shabazz, 338 S.C. at 376, 527 S.E.2d at 754.

In this matter, Pipkin complains that he was not paid the prevailing wage for work performed in the private sector program, as mandated by S.C. Code Ann. § 24-3-430. Specifically, Section 24-3-430(D) clearly provides that “[n]o inmate participating in the [prison industries] program may earn less than the prevailing wage for work of similar nature in the private sector.” Id. The Supreme Court of South Carolina has unequivocally held in Wicker v. South Carolina Dep’t of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) that: (1) an inmate is entitled to file a grievance when not being paid the prevailing wage; (2) the ALC has jurisdiction to review the Department’s failure to pay the prevailing wage; and, (3) an inmate is entitled to be paid the prevailing wage while working in the private sector program. Id. at 421, 602 S.E.2d at 56.

Nonetheless, Pipkin is required to timely file his grievance with the Department concerning the payment of prevailing wages. Pipkin began working in the prison industries program on or about August 16, 2002, yet did not file his grievance until February 5, 2005, approximately two and a half years later. Pipkin’s grievance was clearly filed outside of the required fifteen day timeframe as mandated by Department policy. The inmate is required to present his grievance within 15 days of the time that the event complained of occurred. He was not entitled to wait until Wicker v. South Carolina Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004), was decided. The grievance existed when it occurred. Pipkin failed to file a grievance as provided by GA-01.12, and this court has no authority to expand the time in which the request for a hearing must be filed. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).


Moreover, Pipkin’s claim is barred under the principle of laches. “Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). Pipkin filed a grievance approximately two and a half years after the disputed wages were paid to him. The delay in filing his claims is unreasonable and obviously prejudices the Department. See Brown v. Butler, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct. App. 2001).

Accordingly, Pipkin did not timely file his grievance, and the Department’s decision must

be **AFFIRMED**.

ORDER

IT IS HEREBY ORDERED that the Department's decision in this matter is **AFFIRMED**.
AND IT IS SO ORDERED.


Marvin F. Kittrell
Chief Judge

February 11, 2009
Columbia, South Carolina

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this _____ in the above entitled action upon all parties to this cause by depositing a copy thereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 12th day of Feb., 2009
By: Valerie M. Winkler
Judicial Law Clerk

and Furtick v. South Carolina Department of Corrections, 649 S.E.2d 35 (S.C. 2007). Pursuant to Al-Shabazz, an inmate is permitted to seek judicial review with the ALC of Department decisions concerning non-collateral or administrative matters, and the ALC sits in an appellate capacity when reviewing such Department decisions. Al-Shabazz, 338 S.C. at 376, 527 S.E.2d at 754.

In this matter, Sapp complains that he was not paid the prevailing wage for work performed in the private sector program, as mandated by S.C. Code Ann. § 24-3-430. Specifically, Section 24-3-430(D) clearly provides that “[n]o inmate participating in the [prison industries] program may earn less than the prevailing wage for work of similar nature in the private sector.” Id. The Supreme Court of South Carolina has unequivocally held in Wicker v. South Carolina Dep’t of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) that: (1) an inmate is entitled to file a grievance when not being paid the prevailing wage; (2) the ALC has jurisdiction to review the Department’s failure to pay the prevailing wage; and, (3) an inmate is entitled to be paid the prevailing wage while working in the private sector program. Id. at 421, 602 S.E.2d at 56.

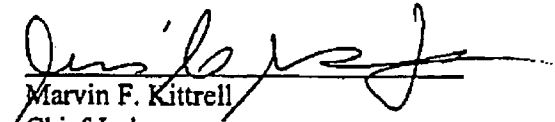
Nonetheless, Sapp is required to timely file his grievance with the Department concerning the payment of prevailing wages. Sapp began working in the prison industries program on or about November 16, 1998, yet did not file his grievance until January 28, 2005, approximately seven years later. Sapp’s grievance was clearly filed outside of the required fifteen day timeframe as mandated by Department policy. The inmate is required to present his grievance within 15 days of the time that the event complained of occurred. He was not entitled to wait until Wicker v. South Carolina Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004), was decided. The grievance existed when it occurred. Sapp failed to file a grievance as provided by GA-01.12, and this court has no authority to expand the time in which the request for a hearing must be filed. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).

Moreover, Sapp’s claim is barred under the principle of laches. “Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). Sapp filed a grievance approximately seven years after the disputed wages were paid to him. The delay in filing his claims is unreasonable and obviously prejudices the Department. See Brown v. Butler, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct. App. 2001).

Accordingly, Sapp did not timely file his grievance, and the Department’s decision must be **AFFIRMED.**

ORDER

IT IS HEREBY ORDERED that the Department's decision in this matter is **AFFIRMED**.
AND IT IS SO ORDERED.


Marvin F. Kittrell
Chief Judge

February 11, 2009
Columbia, South Carolina

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 12th day of Feb., 2009
By: Walter W. Wirth
Judicial Law Clerk

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

GENERAL COUNSEL

Julius Smiley, #262734,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

) Docket No. 08-ALJ-04-00571-AP
) Grievance No. BRCI 0022-08/BRCI 0595-07
)
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ORDER

STATEMENT OF THE CASE

In the above-captioned matter, Appellant Julius Smiley ("Smiley") appeals the decision of Respondent South Carolina Department of Corrections ("Department") to deny his grievance concerning payment of the prevailing wage he argues is owed to him for work performed in the Prison Industries private sector program ("prison industries program"). In response, the Department contends that, pursuant to Department Policy Number GA-01.12, ¶ 13.1, he failed to file a grievance within fifteen (15) days of the occurrence of the alleged grievance. Based upon the record, the parties' briefs, and applicable law, the Department's decision to deny Appellant's grievance must be affirmed.

10

BACKGROUND

On April 26, 2007, Smiley submitted a Step One Grievance to the Department and argued that he was entitled to payment of the prevailing wage for work he performed in the prison industries program. The Department forwarded his grievance to the Inmate Grievance Branch for investigation and response on February 25, 2008. The Department issued its final agency decision on June 11, 2008 denying his grievance. Based upon this final decision of the Department, Smiley filed a Notice of Appeal with the Administrative Law Court ("ALC" or "Court") on July 7, 2008 to challenge the Department's determination.

DISCUSSION

This appeal is before this Court pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), Sullivan v. South Carolina Department of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003), Slezak v. South Carolina Department of Corrections, 361 S.C. 327, 605 S.E.2d 506 (2004), and Furtick v. South Carolina Department of Corrections, 649 S.E.2d

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SC ADMIN. LAW COURT

Al-Shabazz, an inmate is permitted to seek judicial review with the ALC of Department decisions concerning non-collateral or administrative matters, and the ALC sits in an appellate capacity when reviewing such Department decisions. Al-Shabazz, 338 S.C. at 376, 527 S.E.2d at 754.

In this matter, Smiley complains that he was not paid the prevailing wage for work performed in the private sector program, as mandated by S.C. Code Ann. § 24-3-430. Specifically, Section 24-3-430(D) clearly provides that "[n]o inmate participating in the [prison industries] program may earn less than the prevailing wage for work of similar nature in the private sector." Id. The Supreme Court of South Carolina has unequivocally held in Wicker v. South Carolina Dep't of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) that: (1) an inmate is entitled to file a grievance when not being paid the prevailing wage; (2) the ALC has jurisdiction to review the Department's failure to pay the prevailing wage; and, (3) an inmate is entitled to be paid the prevailing wage while working in the private sector program. Id. at 421, 602 S.E.2d at 56.


Nonetheless, Smiley is required to timely file his grievance with the Department concerning the payment of prevailing wages. Smiley began working in the prison industries program on or about October 16, 2003, yet did not file his grievance until April 26, 2007, approximately four years later. Smiley's grievance was clearly filed outside of the required fifteen day timeframe as mandated by Department policy. The inmate is required to present his grievance within 15 days of the time that the event complained of occurred. He was not entitled to wait until Wicker v. South Carolina Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004), was decided. The grievance existed when it occurred. Smiley failed to file a grievance as provided by GA-01.12, and this court has no authority to expand the time in which the request for a hearing must be filed. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).

Moreover, Smiley's claim is barred under the principle of laches. "Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). Smiley filed a grievance approximately 4 years after the disputed wages were paid to him. The delay in filing his claims is unreasonable and obviously prejudices the Department. See Brown v. Butler, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct. App. 2001).

Accordingly, Smiley did not timely file his grievance, and the Department's decision must be **AFFIRMED**.

ORDER

IT IS HEREBY ORDERED that the Department's decision in this matter is **AFFIRMED**.
AND IT IS SO ORDERED.


Marvin F. Kittrell
Chief Judge

March 4, 2009
Columbia, South Carolina

(3)
MS

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 4th day of Mar, 2009
By: Wanda M. Williams
Judicial Law Clerk

JUN 28 2012

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

MALONE, THOMPSON
SUMMERS & OTT, LLC

Michael Sullivan, #265327)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No. 07-ALJ-04-0782-AP

ORDER

This matter comes before the Administrative Law Court (ALC) pursuant to the appeal of Michael Sullivan, an inmate previously incarcerated with the Department of Corrections (DOC or Department). Appellant claims that his constitutional rights were violated because the training wages he received when he worked in prison industries were less than "prevailing wages" required under S.C. Code Ann. §24-3-430(D). Appellant requested back pay for the difference between his "training wages" and prevailing wages for the period of time he worked in prison industries.¹

BACKGROUND

The Appellant filed a Step 1 grievance dated October 8, 2004, stating he worked for prison industries from 1999 to 2007 and was not paid prevailing wages under South Carolina Code 24-3-430. He thus asserted he was entitled to back wages from 1999 to 2007. The Warden denied Appellant's grievance and served the Appellant with the denial on May 22, 2007.

¹ In the Notice of Appeal, Appellant also contends the Department violated constitutional protections in issuing its decision. Appellant did not raise the issues of violation of constitutional protections below. An inmate cannot sit silently during a hearing, raising no objections, and then raise issues such as these for the first time on appeal. See Kiawah Resort Associates v. South Carolina Tax Com'n, 318 S.C. 502, 458 S.E.2d 542 (1995) (In reviewing a final decision of an administrative agency, the Administrative Law Judge "has a limited scope of review, and cannot ordinarily consider issues that were not raised to and ruled on by the administrative agency."). Our law is also clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review. State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). This rule also applies to constitutional arguments. See State v. Owens, 378 S.C. 636, 638, 664 S.E.2d 80, 81 (2008) (finding constitutional claims not preserved for review without a contemporaneous objection at trial). State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011). Furthermore, all of the arguments raised by Appellant were merely conclusory statements. Consequently, Appellant abandoned these issues on appeal, and they need not be considered. See Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004) (failure to provide arguments or supporting authority for an issue renders it abandoned); Muir v. C.R. Bard, Inc., 336 S.C. 266, 298-99, 519 S.E.2d 583, 600 (Ct. App. 1999) (conclusory arguments may be treated as abandoned).

FILED

June 27, 2012

SC ADMIN. LAW COURT

Appellant timely filed his Step 2 grievance dated May 22, 2007. After Appellant's Step 2 grievance was denied on August 2, 2007, Appellant filed this appeal on August 17, 2007.

Appellant has not filed a brief in this case. Pursuant to ALC Rule 38, an Administrative Law Judge may dismiss an appeal for failure to comply with the rules of procedure for appeals or for failure to comply with any time limits set forth in an appeal. This delay is well beyond the time period set forth in the Rules of Procedure for the Administrative Law Court. As the Appellant has been afforded ample time to file his Brief and has not notified the ALC of any extenuating circumstances regarding his failure to file, I conclude that this matter should be dismissed sua sponte.²

STANDARD OF REVIEW

This case is before the ALC on appeal from a final decisions of the Department pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2010) of the Administrative Procedures Act (APA). As such, the Administrative Law Judge (ALJ) sits in an appellate capacity under the APA rather than as an independent finder of fact. In South Carolina, the provisions of the APA—specifically Section 1-23-380(A)(5)—govern the circumstances in which an appellate body may reverse or modify an agency decision. That section 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. 2010).

² Though Appellant's failure to file a brief warrant dismissal of this case, for sake of judicial expediency I also address the issue of timeliness of the grievance.

DISCUSSION

Timeliness of Wage Claim

The South Carolina Department of Corrections Policies and Procedures, Paragraph 13.1 of GA-01.12 generally requires that Step 1 grievances be filed "within 15 days of the alleged incident." DOC Policy Number GA-01.12, ¶ 13.1.³ The Department's procedure further sets forth a specific time frame to exercise the rights created under those provisions. Therefore, it appears that the Department's regulations require that inmates file their grievance within a specific period of time pursuant to a "statute of creation."

Under South Carolina law, a statute that creates a new liability and affixes the time within which an action may be commenced is a "statute of creation," and commencement within the time affixed is an indispensable condition of the action. Knight Publ'g Co. v. Univ. of S.C., 295 S.C. 31, 33, 367 S.E.2d 20, 22 (1988), overruled on other grounds by McLendon v. S.C. Dep't of Highways and Public Transp., 313 S.C. 525, 443 S.E.2d 539 (1994). Although the failure to timely commence an action pursuant to a statute of creation is not a subject matter jurisdiction defect, such an action "cannot be maintained unless brought within the time allowed by that statute." Simpson v. Sanders, 314 S.C. 413, 415 n.1, 445 S.E.2d 93, 94 n.1 (1994). When a statute both creates a cause of action and includes a time limit for its commencement, compliance with the time limit is a condition precedent to the maintenance of the action. 54 C.J.S. Limitations of Actions § 31 (updated October 2010). "Such a statutory time limit conditions the existence of the right of action, thereby creating a substantive, rather than procedural, limitation on the right. Bringing suit within the prescribed time is a condition of liability itself, not of the remedy alone." Id.

The reason for a specific time frame to seek review of these matters is much like statutes of limitations. Notably, the South Carolina courts have held that "[s]tatutes of limitations are not simply technicalities," but rather are "fundamental to a well-ordered judicial system." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "The purpose of statutes of limitation is to ensure litigation is 'brought within a reasonable time in order that evidence be

³ The Department's prescribed procedures for inmates to seek review of these matters that has been approved by the South Carolina Supreme Court. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) ("We hold that Department's disciplinary and grievance procedures are consistent with the standards delineated by the Supreme Court in Wolff v. McDonnell, supra. We note that Department also prepared its grievance procedures in compliance with the Civil Rights of Institutionalized Persons Act.").

reasonably available and there be some end to litigation.” Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (quoting Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct. App. 2008)). “Statutes of limitation embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690 (quoting Moates, 322 S.C. at 176, 470 S.E.2d at 404). Moreover, statutes of limitations relieve courts of the burden of trying stale claims of those who have “slept on their rights.” Transp. Ins. Co., 389 S.C. at 428, 699 S.E.2d at 690.

Because the Department has a legitimate interest in investigating grievances while they are still new, public policy calls for the application of some limitations period to Appellant’s prevailing wage claim. See Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004) (noting that the prison system has a legitimate interest in investigating complaints while they are still fresh); see also Woodford v. Ngo, 548 U.S. 81, 95 (2006) (“When a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved.”). Here, the fifteen-day filing deadline from Paragraph 13.1 is the only limitations period applicable to this claim.⁴ Therefore, ruling in favor of Appellant would mean that inmates would not be required to file prevailing wage grievances within any set time period. Due in part to public policy concerns over such a result, this court has consistently held that prevailing wage claims do not involve the Department’s “policies or procedures.” See, e.g., Lawson v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 12, 2007); Wright v. S.C. Dep’t of Corr., 06-ALJ-04-00114-AP, 2006 WL 1430140 (S.C. Admin. Law Ct. Apr. 28, 2006).

The importance of filing deadlines is underscored by the facts of this case. The record demonstrates the Appellant filed his Step I regarding his wage claims on October 8, 2004. The Appellant acknowledges in his grievance that he is seeking wages for employment from 1999. Thus, over five years passed between when Appellants began participating in the project and when he filed his Step I challenging his pay.

⁴ The statutory provisions upon which Appellant bases his pay claim does not create a private right of action. See Adkins, 360 S.C. at 416-419, 602 S.E.2d at 53-55. Therefore, statutes of limitations derived from state law do not apply to Appellant’s claim. See Talford v. S.C. Dep’t of Corr., 06-ALJ-04-00823-AP (S.C. Admin. Law Ct. Feb. 14, 2007).

Implication of *Wicker* and *Adkins*

New Substantive Rights

Appellant also argues that his grievance was timely filed as he filed within a reasonable time of being notified of *Adkins v. S.C. Department of Corrections*, 360 S.C. 413, 602 S.E.2d 51 (2004) and *Wicker v. S.C. Department of Corrections*, 360 S.C. 421, 602 S.E.2d 56 (2004). However, *Wicker* and *Adkins* did not create new substantive rights. A "substantive right" is "[a] right that can be protected or enforced by law," and it is "a right of substance rather than form." *Black's Law Dictionary* 1324 (7th ed. 1999). It is distinguishable from a procedural right, which is "a right that derives from legal or administrative procedure" and which "helps in the protection or enforcement of a substantive right." *Black's Law Dictionary* 1323 (7th ed. 1999). A substantive right can be created by statute or by judicial decision. See, e.g., *Lawson v. S.C. Dep't of Corrections*, 340 S.C. 346, 350, 532 S.E.2d 259, 261 (2000) (holding that the whistleblower statute created new substantive rights); *McCaskey v. Shaw*, 295 S.C. 372, 375, 368 S.E.2d 672, 673 (Ct. App. 1988) (holding that a prior Supreme Court decision "created a new substantive right"). A court creates a new substantive right when it recognizes a new cause of action that did not previously exist. See *Toth v. Square D Co.*, 298 S.C. 6, 8, 377 S.E.2d 584, 585-86 (1989).

In *Adkins*, our Supreme Court held that Section 24-3-430 and the accompanying prison industries statutes did not provide inmates with the right to bring a private cause of action against DOC. *Adkins*, 360 S.C. at 419, 602 S.E.2d at 55. More relevant to the case at hand, the Court further held that:

[N]otwithstanding our holding that Inmates have no private civil cause of action, they are not without a remedy. In accordance with the companion case of *Wicker v. South Carolina Dept. of Corrections*, 360 S.C. 421, 602 S.E.2d 56, 2004 WL 1877947 (2004), we hold Inmates may file an inmate grievance to protest DOC's failure to pay wages in accordance with the mandatory statutory provisions.

Id.

In *Wicker*, the Supreme Court fleshed out this latter holding. It explained that "where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law." *Wicker*, 360 S.C. at 424, 602 S.E.2d at 57. The Court thus held that inmates' prevailing wage claims were grievable through DOC's internal grievance processes and that DOC's denial of those claims could be appealed to the ALC. *Id.* at 423-25, 602 S.E.2d at 57-58.

I find that Adkins and Wicker did not create new substantive rights. The substantive right at issue in Adkins and Wicker - i.e., the right to a prevailing wage—was granted to inmates in 1995 pursuant to Section § 24-3-430(D). Adkins and Wicker, both of which were published in 2004, simply addressed the appropriate procedure for seeking redress for a denial of that existing right. Accordingly, they did not create new substantive rights. See Atlantic Soft Drink Co. of Columbia, Inc. v. S.C. Nat. Bank, 287 S.C. 228, 336 S.E.2d 876 (1985) (holding that statute that related “only to remedies and modes of procedure” did not affect substantive rights); Hooks v. Southern Bell Tel. & Tel. Co., 291 S.C. 41, 351 S.E.2d 900 (Ct. App. 1986) (holding that the “right to seek review” is procedural, not substantive); cf. Baker v. McCollan, 443 U.S. 137, 145 n.3 (1979) (holding that 42 U.S.C. § 1983 “is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes”); Harvey v. S.C. Dep’t of Corrections, 338 S.C. 500, 527 S.E.2d 765 (Ct. App. 2000) (holding that the Uniform Declaratory Judgments Act did not create substantive rights or duties because it merely authorized a court action to establish a party’s entitlement to a pre-existing right).

New Grievance Remedies

Adkins and Wicker also did not create new grievance rights. Paragraph 7 of DOC Policy Number GA-01.12, which has existed in some form since May 1, 1996, sets forth the issues that are considered grievable by DOC.⁵ Among other grievable issues, it includes the following: “Department policies/procedures, directives, or conditions which directly affect an inmate.” DOC Policy Number GA-01.12, ¶ 7.1 (emphasis added). Unquestionably, inmates are “directly affect[ed]” by DOC policies that cause them to be paid less than that required by law. Thus, this provision, which is very broad in scope, encompasses prevailing wage claims.⁶

⁵ Notably, the existence of DOC’s grievance policies was specifically recognized by the Supreme Court in its 2000 decision, Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), where the Court held that DOC’s grievance procedures were consistent with the standards delineated by the U.S. Supreme Court in Wolff v. McDonnell, 418 U.S. 539 (1974). See Al-Shabazz, 338 S.C. at 371-373, 527 S.E.2d at 751-52.

⁶ In addition to Paragraph 7 of DOC Policy Number GA-01.12, DOC’s policies also include Paragraph 9 of Policy Number GA-01.12, which sets forth the procedure by which grievances concerning questionable issues are determined. This provision, which has existed in all versions and editions of DOC’s inmate grievance policies since at least May 1, 1996, states in pertinent part: “In those cases where a question may arise as to whether an item is grievable, the Institutional Inmate Grievance Coordinator will confer with the Chief, Inmate Grievance Branch, who will make that determination.” Thus, to the extent that inmates were not certain whether or not prevailing wage claims were grievable prior to Adkins and Wicker, they could have utilized this provision to resolve the issue.

Indeed, an ALJ reached that very conclusion in a 2001 decision that gave rise to, and was ultimately affirmed by, the Supreme Court's opinion in Wicker. See Wicker v. S.C. Dep't of Corrections, 00-ALJ-04-00781, 2001 WL 1005574 (S.C. Admin. Law Ct. Aug. 13, 2001). In the case before the ALJ, DOC contended that prevailing wage claims were "non-grievable." See id. at *1. Upon reviewing DOC's grievance policies, the ALJ disagreed, holding:

Wicker's wage dispute falls under the listed issues considered "grievable" under DOC policy at GA-01.12(OP), Specific Procedures, paragraph 7; the first issue listed is "Department policies/procedures, directives, or conditions which directly affect an inmate." Wicker is directly affected by DOC's arrangement with private industry to pay inmates less than the "prevailing wage for work of similar nature in the private sector" for the first 320 hours of work. Therefore, Wicker's wage dispute is grievable under the agency's grievance system.

Id. at *1. Thus, as early as 2001, an ALJ held that inmates could grieve prevailing wage claims.⁷

Furthermore, in affirming the ALJ's decision in Wicker, the Supreme Court did not suggest that it was granting inmates "new" grievance rights. For instance, there was no indication by the Court that DOC's grievance procedures were inadequate or that they should be enlarged. Quite the contrary, the Court ruled that "[t]here are numerous issues relating to inmates which, although not giving rise to a private, civil cause of action, are nonetheless grievable through DOC's internal grievance processes" and that Wicker "properly filed a grievance with the DOC." Wicker, 360 S.C. at 423-24, 602 S.E.2d at 57 (emphases added). These statements reflect a conclusion by the Court that DOC's then-existing grievance policies were broad enough to incorporate prevailing wage claims and that the inmate therefore properly filed a grievance with DOC under those grievance policies.

Based upon the foregoing, I conclude that, prior to the Supreme Court's decisions in Adkins and Wicker, inmates could have submitted a grievance relating to their prevailing wage claims. Accordingly, I conclude that Adkins and Wicker did not create new grievance rights, but merely confirmed that prevailing wage claims were grievable under DOC's existing policies. Accordingly, I find that the Appellant failed to file his Step 1 grievance in a timely manner.

IT IS THEREFORE ORDERED that the Department's final decisions in this matter are **AFFIRMED**.

⁷ Although, as discussed herein, an ALJ's decision does not constitute binding precedent, the ALJ's decision in Wicker nevertheless counteracted DOC's claims that prevailing wage claims were non-grievable.

AND IT IS SO ORDERED.

Ralph K. Anderson III

Ralph K. Anderson, III
Chief Administrative Law Judge

June 27, 2012
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

June 27, 2012
Columbia, South Carolina

and Furtick v. South Carolina Department of Corrections, 649 S.E.2d 35 (S.C. 2007). Pursuant to Al-Shabazz, an inmate is permitted to seek judicial review with the ALC of Department decisions concerning non-collateral or administrative matters, and the ALC sits in an appellate capacity when reviewing such Department decisions. Al-Shabazz, 338 S.C. at 376, 527 S.E.2d at 754.

In this matter, Sumter complains that he was not paid the prevailing wage for work performed in the private sector program, as mandated by S.C. Code Ann. § 24-3-430. Specifically, Section 24-3-430(D) clearly provides that “[n]o inmate participating in the [prison industries] program may earn less than the prevailing wage for work of similar nature in the private sector.” Id. The Supreme Court of South Carolina has unequivocally held in Wicker v. South Carolina Dep’t of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) that: (1) an inmate is entitled to file a grievance when not being paid the prevailing wage; (2) the ALC has jurisdiction to review the Department’s failure to pay the prevailing wage; and, (3) an inmate is entitled to be paid the prevailing wage while working in the private sector program. Id. at 421, 602 S.E.2d at 56.

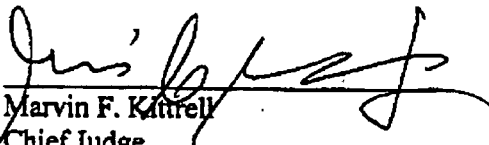
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Nonetheless, Sumter is required to timely file his grievance with the Department concerning the payment of prevailing wages. Sumter began working in the prison industries program on or about October 31, 2003, yet did not file his grievance until February 19, 2005, approximately one year and a half later. Sumter’s grievance was clearly filed outside of the required fifteen day timeframe as mandated by Department policy. The inmate is required to present his grievance within 15 days of the time that the event complained of occurred. He was not entitled to wait until Wicker v. South Carolina Department of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004), was decided. The grievance existed when it occurred. Sumter failed to file a grievance as provided by GA-01.12, and this court has no authority to expand the time in which the request for a hearing must be filed. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).

Moreover, Sumter’s claim is barred under the principle of laches. “Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). Sumter filed a grievance approximately a year and half after the disputed wages were paid to him. The delay in filing his claims is unreasonable and obviously prejudices the Department. See Brown v. Butler, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct. App. 2001).

Accordingly, Sumter did not timely file his grievance, and the Department’s decision must be **AFFIRMED**.

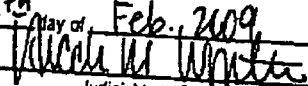
ORDER

IT IS HEREBY ORDERED that the Department's decision in this matter is **AFFIRMED**.
AND IT IS SO ORDERED.


Marvin F. Kittrell
Chief Judge

February 11, 2009
Columbia, South Carolina

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CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 12th day of Feb., 2009
By: 
Judicial Law Clerk

MAR 05 2012

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

LAW OFFICES

John Harvey Timmons, 280769.)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No. 09-ALJ-04-1156-AP

ORDER

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the Notice of Appeal filed December 30, 2009 by John Harvey Timmons ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("Respondent" or "Department"). Appellant appeals the decision of the Department denying his grievance in which Appellant complains he was wrongfully denied payment of the "prevailing wage" which is owed to him for work that he performed in the Department's prison industries program. On February 26, 2010, the Respondent filed a Motion seeking dismissal of the appeal. Respondent contends in its Motion that the Appellant failed to file his grievance within 15 days of the alleged incident as mandated in the Department's policy governing inmate grievances. Appellant conversely contends that his grievance falls under an exception to the 15-day deadline.

BACKGROUND

On November 10, 2008, Appellant filed a Step 1 Grievance with the Department asserting a claim for back pay associated with labor he provided to the Department's prison industries project at Evans Correctional Institution ("Evans CI") in 1992. In the grievance, Appellant requested "that SCDC pay [him] the balance of the minimum wages [he] should have received during [his] employment in accordance with Section 24-3-430(D)." On April 2, 2009, the Warden at Evans CI denied Appellant's Step 1 Grievance. Appellant filed a Step 2 Grievance on June 18, 2009 in which he challenged the Department's denial of his Step 1 Grievance. On November 24, 2009, the Department issued its final decision denying Appellant's Step 2 Grievance. The reason given for the denial of both grievances was

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to file the grievance within 15 days of the alleged incident. Specifically, Respondent contends that Appellant's grievance should have been filed in accordance with SCDC's Inmate Grievance System Policy Number GA-01.12, which states in relevant part:

If informal resolution is not possible, the grievant will complete Form 10-5, Step 1 ... and will submit the Form to an employee designated by the Warden (not the Inmate Grievance Coordinator) within 15 days of the alleged incident....
[emphasis added]

Appellant filed a Notice of Appeal with this Court on December 30, 2009 challenging the Department's final decision. In his Step 1 and Step 2 grievances, as well as in the Appeal, the Appellant contends that his grievance falls under the exception to the 15-day deadline found in Inmate Grievance System Policy GA-01.12, which states that:

Exceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures. Exceptions may also be made for incident grievances provided that the inmate can show reasonable cause, i.e., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc.

In essence, the Appellant contends that he did not realize he could file a grievance relative to the payment of prevailing wages for inmates participating in the prison industries program until notices summarizing the South Carolina Supreme Court's ruling in Adkins, et al. v. S.C. Dep't of Corrections, 360 S.C. 413, 602 S.E.2d 51 (2004) and Wicker v. S.C. Dep't of Corrections were posted in the dorms.

JURISDICTION

The Court has jurisdiction to hear this matter pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), Sullivan v. S.C. Dep't of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003).

Pursuant to Al-Shabazz, an inmate is permitted to seek judicial review with the ALC of final decisions issued by the Department concerning non-collateral or administrative matters, and the ALC sits in an appellate capacity when reviewing such decisions. Al-Shabazz, 338 S.C. at 376, 527 S.E.2d at 754.

LAW/ ANALYSIS

In this matter, Appellant complains that he was not paid the "prevailing wage" for the labor he voluntarily provided to the prison industries project operated by the Department at Evans CI in 1992. Specifically, the Appellant invoked S.C. Code Ann. § 24-3-430(D) which

provides that “[n]o inmate participating in the [prison industries] program may earn less than the prevailing wage for work of similar nature in the private sector.” Id.

The Supreme Court of South Carolina held in Wicker that: (1) an inmate is entitled to file a grievance via the Department’s Inmate Grievance System to allege he was not paid the “prevailing wage;” (2) the ALC has jurisdiction to review the Department’s alleged failure to pay the “prevailing wage;” and, (3) an inmate is entitled to be paid the “prevailing wage” while working in certain private sector prison industries projects operated by the Department. Id. at 421, 602 S.E.2d at 56.

Hence, the Appellant can properly file a grievance with the Department concerning whether the Department paid him the “prevailing wage” for his prison industries labor. However, Appellant indicates in his Step 1 Grievance that he participated in the prison industries project operated by the Department at Evans CI “in the year of 1992,” which was approximately (16) years prior to the time he filed his Step 1 Grievance on November 10, 2008. Thus, the Appellant filed his grievance outside of the required fifteen (15) day timeframe mandated by Inmate Grievance Policy Number GA-01.12 ¶ 13.1.

Appellant, however, contends that the fifteen (15) day deadline does not apply to his Step 1 Grievance because his grievance falls within one of the exceptions to the fifteen (15) day deadline as outlined in SCDC’s Policy Number GA-01.12 ¶ 13.11. Paragraph 13.11 provides exceptions to the fifteen (15) day deadline for grievances that concern policies or procedures, incident grievances, or when the inmate can show reasonable cause. Notably, Appellant does not specify which of these exceptions purportedly applies to his Step 1 Grievance.

Rather, the Appellant contends that he was not required to file his Step 1 Grievance until he had notice of the Supreme Court’s decisions in Wicker and Adkins, and that the Department did not provide him notice until October of 2008 when the Department posted “summaries” of these cases in his dormitory. The “summaries” referenced by the Appellant is a two (2) page document the Department posted in October of 2008 throughout its institutions pursuant to the Order of Dismissal issued by the Circuit Court in Williams, et. al. vs. S.C. Dep’t of Corrections and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). This posting stated that the information and deadline appearing on the notice applied only to “all inmates who currently participate or at one time participated in the SCDC/Williams Technologies, Inc. prison industries project at Lieber [Correctional Institution].”

In Wicker, our Supreme Court held that although inmates may not file a private, civil cause of action to dispute their prison industries pay, inmates may file grievances through the Department's internal grievance policy in order to challenge their pay. The Department's Inmate Grievance Policy referenced in Wicker, Policy Number GA-01.12, requires inmates to file their initial or Step 1 Grievances within fifteen (15) days of the alleged incident. No interpretation of Wicker supports the notion that grievances in which inmates articulate prison industries back pay claims are exempt from the provisions of this fifteen (15) day filing deadline or that these types of grievances are subject to any of the exceptions listed in Policy Number GA-01.12 ¶ 13.11. In addition, our Supreme Court in Williams recognized that Policy Number GA-01.12 provides the proper forum in which inmates may challenge the Department's prison industries pay practices.

In Al-Shabazz, our Supreme Court considered whether an inmate incarcerated by the Department may challenge an internal disciplinary action through a post-conviction relief proceeding. The Al-Shabazz Court found that rather than filing a post-conviction relief proceeding to challenge the Department's internal disciplinary actions, inmates must file an appeal within fifteen (15) days of receiving the written notice of the disciplinary action. And the Court further found that inmates may appeal decisions rendered against them under the Department's Inmate Disciplinary System decisions by initiating an administrative grievance under the provisions of Policy Number GA-01.12. The Al-Shabazz Court also found that the Department's "grievance procedures [were] in compliance with the Civil Rights of Institutionalized Persons Act." Al-Shabazz, 527 S.E.2d at 752.

The edition of the Department's Inmate Grievance System Policy at issue in Al-Shabazz reflected the very same fifteen (15) day deadline as appears in the edition of the Department's Inmate Grievance System Policy at issue here. Therefore, when Al-Shabazz and Wicker are read together, the fifteen (15) day deadline established in ¶ 13.1 of Policy Number GA-01.12 is valid, and, further, the fifteen (15) day filing deadline applies to prison industries back pay disputes such as the instant dispute raised by the Appellant.

Therefore, Appellant was required to present his grievance within fifteen (15) days of the time that the event complained of occurred. He was not entitled to wait until Wicker was decided, or until the Department posted a two (2) page notice concerning our Supreme Court's decisions in Adkins or Wicker. The grievance existed when it occurred. Appellant failed to file a grievance within the fifteen (15) day time period as provided by Policy Number GA-01.12, and

this Court has no authority to expand the time in which the request for review must be filed. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).

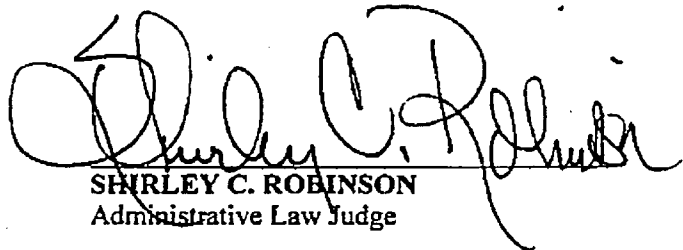
Moreover, Appellant's claim is barred under the principle of laches. "Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). Appellant filed his grievance approximately sixteen (16) years after the Department remitted the disputed pay to him. The delay in filing his claim is unreasonable and prejudices the Department. See Brown v. Butler, 347 S.C. 359, 265, 554 S.E.2d 431, 434 (Ct. App. 2001).

Accordingly, Appellant did not timely file his grievance, and therefore the Department's Motion to Dismiss the Appellant's Appeal must be granted.

ORDER

IT IS HEREBY ORDERED that the Department's Motion to Dismiss the Appeal is **GRANTED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

March 2nd 11, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has on this date served this order on all above entitled parties or upon all parties to this cause by depositing a copy hereof, in the United States mail postage paid or in the emergency Mail Service addressed to the party(ies) or to their attorney(s).
This 2 day of March 2012
By J. Henderson
Judicial Law Clerk