



RECEIVED

NOV 14 2022

SC Court of Appeals

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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

October 12, 2022

Mr. Lake Eric Summers, Esquire
339 Heyward St.
Ste. 100
Columbia SC 29201

James Nathaniel Allen, 171214
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669

Re: James Nathaniel Allen #171214 v. SCDC
Appellate Case No. 2018-001321

Dear Mr. Allen and Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen

CLERK

cc: The Honorable Harold W. Funderburk, Jr.

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

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

James Nathaniel Allen, Respondent,

v.

South Carolina Department of Corrections, Appellant.

Appellate Case No. 2018-001321

Appeal From The Administrative Law Court
Harold W. Funderburk, Jr., Administrative Law Judge

Unpublished Opinion No. 2022-UP-376
Submitted September 21, 2022 – Filed October 12, 2022

AFFIRMED

Lake Eric Summers, of Malone Thompson Summers &
Ott, LLC, of Columbia, for Appellant.

James Nathaniel Allen, pro se.

PER CURIAM: The South Carolina Department of Corrections (SCDC) appeals an order of the Administrative Law Court (ALC) reversing and remanding SCDC's final decision regarding James Nathaniel Allen's inmate pay. On appeal, SCDC argues (1) the procedure by which the ALC fashioned its ruling was imbued with evidentiary error because the ALC erroneously found the contract between SCDC and the private industry sponsor was not properly included in the record but then

contradictorily relied upon the contract when it ruled on Allen's claim; (2) the procedure by which the ALC fashioned its ruling was imbued with evidentiary error because Allen did not meet the burden mandated by our supreme court in *Torrence v. South Carolina Department of Corrections*¹; (3) the procedure by which the ALC fashioned its ruling was imbued with evidentiary error because the ALC erroneously failed to remand Allen's back pay claim to SCDC; (4) the ALC erroneously relied on dicta from *Torrence* when reversing its denial of Allen's back pay claim; (5) the ALC erroneously found the workers' compensation premium that SCDC charged the private industry sponsor was part of Allen's gross wages; (6) the ALC erroneously found the social security withholding payment that SCDC charged the private industry sponsor was part of Allen's gross wages; and (7) the ALC erroneously found the "SCDC/Prison Industries Administrative Cost" that SCDC charged the private industry sponsor was part of Allen's gross wages. We affirm.²

As to issues 2, 3, 5, 6, and 7, we hold the ALC did not err in finding the money SCDC received from the private industry sponsor, including the social security withholding payment, workers' compensation premium, and the "SCDC/Prison Industries Administrative Cost," constituted Allen's gross wages. See *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014) ("In an appeal from an ALC decision, the Administrative Procedures Act provides the appropriate standard of review."); *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (Ct. App. 2008) ("Section 1-23-610 of the South Carolina Code ([Supp. 2021]) sets forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency."); § 1-23-610(B) ("[An appellate] court may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact."); *id.* (stating, however, when reviewing an ALC decision, an appellate court "may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion"); *Torrence*, 373 S.C. at 594 n.4, 646 S.E.2d at 870 n.4 ("[I]f [inmates] prove true their allegation that [SCDC] removes any of the money

¹ 373 S.C. 586, 594 n.4, 646 S.E.2d 866, 870 n.4 (2007).

² The facts of the case are not in dispute.

remitted by the private industry sponsor and then disburses the percentages listed in section 24-3-40 [of the South Carolina Code (Supp. 2021)] based on the lower rate, [SCDC] would be in violation of the plain language of the statute which directs it to disburse the money based on the gross wages."); *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 317 n.8, 785 S.E.2d 600, 607 n.8 (Ct. App. 2016) (noting our supreme court addressed "gross wages" as used in section 24-3-40 in the footnote in *Torrence* and finding our supreme court "viewed the amount paid by the industry sponsor to SCDC as the gross wages").

As to issue 4, we hold the ALC properly relied on the footnote in *Torrence* when determining whether the workers' compensation premium, social security withholding payment, and "SCDC/Prison Industries Administrative Cost" were part of Allen's gross wages. See *Sherlock Holmes Pub, Inc. v. City of Columbia*, 389 S.C. 77, 82, 697 S.E.2d 619, 621 (Ct. App. 2010) (expressing reluctance to disregard rulings that were dicta when the rulings were directly on point); *id.* (noting "those who disregard dictum, either in law or in life, do so at their peril" (quoting *Yaeger v. Murphy*, 291 S.C. 485, 490 n.2, 354 S.E.2d 393, 396 n.2 (Ct. App. 1987))).

As to issue 1, we hold SCDC failed to show prejudice from any potential error in the ALC finding the contract was not properly included in the record but subsequently relying on it when ruling on Allen's claim because SCDC attached the contract to its brief to the ALC as support for its arguments. See *Synder's Auto World, Inc. v. George Coleman Motor Co.*, 315 S.C. 183, 186, 434 S.E.2d 310, 312 (Ct. App. 1993) (stating an appellant is required to show both error and prejudice in order for an appellate court to reverse a court's ruling); see also *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 476, 629 S.E.2d 653, 670 (2006) ("[A] party may not complain on appeal of error . . . which his own conduct has induced.").

AFFIRMED.³

GEATHERS, MCDONALD, and HILL, JJ., concur.

³ We decide this case without oral argument pursuant to Rule 215, SCACR.



South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS, CLERK
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

Hasler

FIRST-CLASS MAIL

10/12/2022

US POSTAGE

\$00.57⁰



ZIP 29201
011D12602824

**Return TO
RECEIVED
SENDER**

NOV 14 2022

SC Court of Appeals

JAMES NATHANIEL ALLEN, 171214
PERRY CORRECTIONAL INSTITUTION
430 OAKLAWN ROAD
PELZER SC 29669

**Amade
2/2/20**

NOV 14 2022 10 12 AM
RETURN TO SENDER
NO SUCH NUMBER
UNABLE TO FORWARD
NOV 14 2022 10 12 AM
9504-8838117-01

957755555415548

NSN

29211-1529
28538704 0