

THE STATE OF SOUTH CAROLINA

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In The Court Of Appeals

JAN 17 2024

APPEAL FROM THE ADMINISTRATIVE LAW COURT

SC Court of Appeals

S. Philip Lenski, Administrative Law Judge

ALC Docket No.22-ALJ-04-0039
Appellate Case No. 2023-001814

William Robert Horton, #109013.....Appellant,

v.

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

INITIAL BRIEF OF APPELLANT

January 11, 2024
Fairfax, South Carolina

William Robert Horton, #109013
Allendale C.I., F3 B-50
1057 Revolutionary Trail
Fairfax, SC 29827

Appellant, Pro Se

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STATEMENT OF ISSUES ON APPEAL

1. WAS APPELLANT DENIED DUE PROCESS WHEREIN THE ALC DISMISSED THIS CASE AFTER IT WAS HELD IN ABEYANCE AT THE REQUEST OF RESPONDENT PENDING THE OUTCOME OF THE TORRENCE CASE (TORRENCE II) AND THE APPELLANT HAD NO NOTICE OR OPPORTUNITY TO BE HEARD WHEN THE CASE WAS RESTORED TO THE DOCKET AND DISMISSED?
2. WAS THE DECISION OF THE ALC ARBITRARY AND CAPRICIOUS AND BASED ON AN ERRONEOUS FACTUAL DETERMINATION WHERE THE COURT DISMISSED THIS CASE AS BEING A DUPLICATE OF THE FINAL DECISION IN THE MANNING CASE [23-ALJ-04-0048-AP] WHEN THIS CASE IS NOT A DUPLICATE OF THE MANNING CASE?

STATEMENT OF THE CASE

This matter is before this Court on an Appeal Filed by William R. Horton ("Appellant" or "Horton"), an Inmate in the custody of the South Carolina Department of Corrections (SCDC or Department)

This Court has jurisdiction of this matter pursuant to S.C. Code Ann. § 1-23-600(b); § 14-8-200(a); and § 14-3-330.

Appellant seeks to be paid the difference between the amount he has already been paid for labor he performed in the Prison Industries Program at Lee C.I. from 2005 - 2008 and the actual prevailing wage for that labor during that specified time as he is entitled to pursuant to S.C. Code Ann. § 24-3--315 and § 24-3-430.

Appellant filed a Step 1 Grievance in this matter on October 14, 2021. That Grievance was denied on November 2, 2021 and received by Appellant on November 17, 2021. ROA., p. 1. He timely filed his Step 2 Grievance on or about November 20, 2021, which was denied on January 20, 2022 and received by Appellant on January 31, 2022. ROA., p. 2.

Appellant then timely filed an appeal with the Administrative Law Court (ALC) on February 22, 2022. ROA., p. 3.

On March 3, 2022, his appeal was assigned to the Honorable S. Philip Lenski, Administrative Law Judge.

Appellant filed his Initial Brief with the ALC on or about March 24, 2022. ROA, p. 4. On or about June 20, 2022, Respondent filed "RESPONDENT'S MOTION TO DISMISS OR IN THE ALTERNATIVE HOLD IN ABEYANCE." ROA, p. 5.

Appellant did not reply to the Motion, in that he believed the case would be held in abeyance, as two other "Prevailing Wage" cases of which he was a an Appellant, were also held in abeyance.

On July 27, 2022, the ALC, finding that a case with a similar issue was granted certiorari by the South Carolina Supreme Court and had a decision pending, granted Respondent's Motion To Hold In Abeyance pending the decision in Torrence. ROA, p. 6.

Appellant's two other cases that had been held in abeyance pending the decision in Torrence v. S.C. Dep't of Corrs., 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021), were (22-ALJ-04-0048-AP, "Manning Case"), and, (22-ALJ-04-0008-AP, "Allendale Case").

The Honorable Judge S. Philip Lenski, Administrative Law Judge, dismissed the this case with prejudice in a one page Order dated October 25, 2023. ROA., p. 7. This appeal follows.

STANDARD OF REVIEW

The Administrative Procedures Act (APA) establishes the standard of review in appeals from the Administrative Law Court (ALC). S.C. Code Ann. § 1-23-610(B) (Supp. 2020); 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). S.C. Code Ann. § 1-23-610 (Supp. 2020), 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. See S.C. Dep't of Corr. v. Mitchell, 377 S.C. 56, 258, 659 S.E.2d 233, 234 (Ct. App. 2008). "The review of the [ALC's] order must be confined to the record." S.C. Code Ann. § 1-23-610(B) (Supp. 2020). "This court may not substitute it's judgment for judgment of the ALC as to the weight of the evidence on questions of fact." Id. In determining whether the ALC's decision is supported by substantial evidence this Court need only find evidence from which reasonable minds could reach the same conclusion as the ALC. See Kiawah, 411 S.C. at 28, 766 S.E.d at 715. However, when the issue on review raises a question of law, this court

may reverse the decision of the ALC whee it is in violation of a statutory provision or it is affected by an error of law. Id.

An Appellate Court may reverse or modify a decision if the ALC's findings or conclusions 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.

Id.

ARGUMENTS

- I. WAS APPELLANT DENIED DUE PROCESS WHEREIN THE ALC DISMISSED THIS CASE AFTER IT WAS HELD IN ABEYANCE AT THE REQUEST OF RESPONDENT PENDING THE OUTCOME OF THE TORRENCE CASE (TORRENCE II) AND THE APPELLANT HAD NO NOTICE OR OPPORTUNITY TO BE HEARD WHEN THE CASE WAS RESTORED TO THE DOCKET AND DISMISSED?

Appellant repeats herein, the facts stated under the "Statement Of The Case" as if repeated verbatim herein.

Appellant possesses a right to be heard at a meaningful time and in a meaningful manner by virtue of Art. I, § 3 and Art. I, § 22 of the South Carolina Constitution. Appellant was denied due process when this case was dismissed with prejudice whereas he was not provided any reasonable Notice that the case was subject to being dismissed after the decision in the Torrence case was made and after he sent a letter to the Court inquiring into the status of his case. There was no Order that the case was being restored to the docket, no filing of a renewed Motion To Dismiss by the Respondent and no Order granting either party time to file a brief, as there was in Appellant's two other cases. See ROA., p. 8; ROA., p. 9; and ROA., 10.

Appellant sent a letter to the ALC Court in September or October and inquired into the status of his case. The Honorable Judge S. Philip Lenski, Administrative Law Judge, after apparently receiving Appellant's letter simply dismissed the case with prejudice in a one page Order dated October 25, 2023. ROA., p. 7. The Court's dismissal was predicated on a finding that this case is a "duplicate" of the Final Decision in the Manning case.

Appellant argues here, that when the Court Granted Respondent's Motion To Hold In Abeyance pending the decision in the Torrence case, that the Court had implicitly denied that part of Respondent's Motion that sought to have the case dismissed. ROA. p. 5. Appellant reasonably believed that he would receive some "notice" when the case was restored to the docket and be given an opportunity to brief his case further, based on the decision in Torrence, the same as he was given NOTICE in the Allendale and Manning cases (ROA., p. 9 & ROA., p. 10, respectively). Even in the Allendale case, Appellant received notice that the case was restored to the docket.

This case was held in abeyance pending the decision in Torrence and that decision must mean something, otherwise, Respondent would not have made such a request.

Appellant is unable to find any cases directly on point, but still argues that he should have been given Notice in the form of an Order restoring the case to the docket and an Order providing both parties with a reasonable opportunity to Brief the issues. In addition, Respondent should have been required to file a second motion to dismiss since the first one was denied. See e.g., In re Vora, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003) (The requirements of procedural due process, usually deemed to apply in a contested case, or hearing which affect an individual's property or liberty interest, generally include adequate notice, the opportunity to be

heard at a meaningful time and in a meaningful way, the right to introduce evidence, the right to confront and cross-examine witnesses whose testimony is used to establish facts, and the right to meaningful judicial review).

Appellant's Allendale Appeal, which was also held in abeyance and is similar to this case was restored to the docket on September 15, 2022 and was Granted on September 7, 2022 by the Honorable Deborah B. Durden, Judge, Administrative Law Court. ROA, p.10. However, Appellant's Manning case was dismissed with prejudice on or about October 10, 2023. ROA., p.9.

This case is not a duplicate of the Manning case and Appellant should have been given an opportunity to refute that finding.

Appellant was prejudiced in that he has lost his wages, of which he has a property interest, and decisions were made which permit the SCDC to escape liability for knowingly depriving him of his statutory right to prevailing wages, and depriving him of same without due process of law.

Appellant requests that this Court vacate or reverse the Order of the ALC for the reasons stated above, and/or that this Honorable Court grant such other relief as it deems fair and just.

II. WAS THE DECISION OF THE ALC ARBITRARY AND CAPRICIOUS AND BASED ON AN ERRONEOUS FACTUAL DETERMINATION WHERE THE COURT DISMISSED THIS CASE AS BEING A DUPLICATE OF THE FINAL DECISION IN THE MANNING CASE [23-ALJ-04-0048-AP] WHEN THIS CASE IS NOT A DUPLICATE OF THE MANNING CASE?

Appellant repeats herein, the facts stated under the "Statement Of The Case" as if repeated verbatim herein.

In 1995, the South Carolina Legislature enacted S.C. Code § 24-3-430 (2007) to authorize the expansion of the Prison Industries into the private sector. This expansion allowed the qualified private companies or entities to use Inmate Labor, but required that wages being paid to the Inmates who

participated in the Prison Industries Program to be paid "the prevailing wage for work of a similar nature in the private sector. § 24-3-430 became effective on July 1, 1995.

As stated above, Appellant exhausted his administrative remedies with respect to this case and appealed to the ALC. His case was held in abeyance at the request of the Respondent, as were his other two cases.

Appellant filed his Initial Brief on or about March 24, 2022. ROA, p.4. Respondent filed "RESPONDENT'S MOTION TO DISMISS OR IN THE ALTERNATIVE HOLD IN ABEYANCE" on or about June 20, 2022. ROA, p.5

Respondent's Motion sought dismissal asserting that Appellant failed to submit an adequate Brief and Cognizable Claim, that his work at Lee is not subject to the prevailing wage statute, and that Appellant's claims are barred by Laches. ROA., p. 5.

The ALC implicitly denied the Motion To Dismiss but GRANTED that part of Respondent's request to hold the case in abeyance pending the decision in Torrence v. S.C. Dep't of Corr., 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021), re'g denied (august 4, 2021), in an Order dated July 7, 2022. ROA, p.6

Appellant's Manning case was also being held in abeyance. But the Manning case involved Appellant's claim that he was entitled to be paid the prevailing wage for labor performed at the Manning Institution from 1982 - 1984 and 1992 to 1994. ROA, p. 8.

The Manning case was dismissed on October 10, 2023, by the Honorable Judge Riebold, Administrative Law Judge. (ROA., p.8). The reason for dismissal of Appellant's Manning Complaint was because he sought to be paid the prevailing wage for work performed prior to the date that the statute was enacted that gave an Inmate a statutory right to be paid the prevailing

wage. See S.C. Code Ann. § 24-3-430 (1995). Appellant had specifically based his claim on that statute. (ROA., p.7).

Thus, this case was not a duplicate of the Manning case which was dismissed.

Appellant did not appeal that case because it was reasonable to believe that Appellant could not be entitled to prevailing wages for work performed prior to the date of the enactment of the statute that conferred the right to be paid the prevailing wages.

This case ("Lee Case") involves labor he performed in the Prison Industries at Lee C.I. from 2005 - 2008, which was after the enactment of S.C. Code Ann. § 24-3-430(D). Although the parties are the same and the issue and grounds are similar, the Institution Appellant worked at, the companies that he worked for and the years he worked at Lee C.I., are not the same as when he worked at Manning C.I. Naturally Appellant is entitled to be paid the prevailing wage for Labor performed in the PIP at Lee C.I., for various companies, the same as he was entitled to be paid the prevailing wage for the company he worked for when working in the Allendale Prison Industry. See ROA., p. 10.

In Capital City Insurance Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524 (Ct. App. 2009), the South Carolina Court of Appeals stated: "the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate." Id. at 106, 674 S.E.2d at 532.

This case involves Appellant's Labor performed at a different SCDC Facility than the Manning case, performing different types of jobs than those performed at Manning, and, at different times. There is a difference

in working for a company when no statutory right existed that required the agency to pay prevailing wages and working for a company when there is a statutory right to be paid the prevailing wages.

Appellant was prejudiced in that he was unlawfully deprived of wages of which he has already earned, and deprived of those wages without due process of law. Appellant was made to appeal this case based on arbitrary decisions of the SCDC's General Counsel, so as to allow that agency to take advantage of Appellant's (and other Inmates) lack of legal experience and lack of ability to fulfill Court Of Appeals procedural requirements while having to deal with the conditions of confinement. In other words, the SCDC simply provided the same decision to most all Inmates who seek to be paid the prevailing wage, so as to discourage those who cannot litigate their case or have their case dismissed on procedural grounds.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Administrative Law Court and remand this case with instructions to:

1. Determine what wages are due to Appellant for the labor he performed while working in the Prison Industries at Lee C.I. for the years specified, records of which SCDC still possesses, but is denying same;

2. Determine the prevailing wage from the Department of Employment and Workforce for all hours of regular and over time labor performed by Appellant from 2005 to 2008 while working in Prison Industries at Lee C.I.;

3. Order the Department to disburse, in accordance with S.C. Code Ann. § 24-3-40 (Supp. 2022), the difference between the amounts previously disbursed to Appellant and the prevailing wage;

4. Or in the alternative, Remand this case to the ALC with instructions to provide Appellant with Due Process in the form of Notice

that the case has been restored to the docket and the opportunity to be heard concerning the SCDC's grounds for dismissal; and,

5. That this Court GRANT any such other and further relief this Court deems fair and just under the circumstances.

January 12, 2024
Fairfax, South Carolina

Respectfully Submitted,

William R. Horton

William Robert Horton, #109013
Allendale Corr., Inst., F3 B50
1057 Revolutionary Trail
Fairfax, SC 29827

Appellant, Pro Se

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Philip Lenski, Administrative Law Judge

Case No. 22-ALJ-04-0039-AP
Appellate Case No. 2023-001814

William Robert Horton, #109013.....Appellant,

v.

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

CERTIFICATE OF SERVICE

I, William R. Horton, hereby CERTIFY under penalty of perjury that I have on this date, served a True copy of Appellant's Initial Brief and Designation Of Matter To Be Included in Record On Appeal, in this matter, upon the above Respondent by depositing same into the United States Mail, First Class Postage prepaid, addressed to:

South Carolina Dept. of Corrections
Office of General Counsel
4444 Broad River Rd.
P.O. Box 21787
Columbia, Sc 29221-1787

January 12, 2024
Fairfax, South Carolina

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SC Court of Appeals

Honorable Jenny A. Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: William Robert Horton, #109013 v.
South Carolina Department of Corrections
Case No. 23-001814

Dear Ms. Kitchings:

Enclosed for filing in the above referenced case, please find APPELLANT's INITIAL BRIEF, the DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL, and a Certificate of Service of same upon Respondent's General Counsel.

Also enclosed, please find an additional copy of each of those documents that I ask that you please file stamp and return to me for my records.

I have enclosed a self-addressed, postage prepaid envelope.

As always, I thank you in advance for your assistance in this matter.

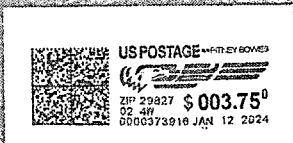
Respectfully,



William R. Horton

cc: FILE

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LEGAL MAIL

