

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Philip Lenski, Administrative Law Judge

RECEIVED

JAN 17 2024

SC Court of Appeals

ALJ Docket No.22-ALJ-04-0039

Appellate Case No. 23-001814

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

v.

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

DESIGNATION OF MATTER

TO BE INCLUDED IN THE RECORD ON APPEAL


Appellant proposes the following to be included in the Record on Appeal:

1. Step 1 Prison Grievance dated 10/14/2021.
2. Step 2 Prison Grievance dated 10/14/2021.
3. Notice of Appeal to ALC dated 2/21/2022.
4. Order of Dismissal of October 25, 2023, which is the subject of this Appeal - Docket No. 22-ALJ-04-0039-AP.
5. Appellant's Brief of March 24, 2022.
6. Respondent's Motion To Dismiss Or In The Alternative Hold In Abeyance dated June 20, 2022.
7. Order of July 7, 2023, granting Respondent's Alternative Motion To Hold In Abeyance.

8. Order dated June 5, 2023 in Docket No. 22-ALJ-04-0048-AP, restoring case to docket.
9. Order of October 10, 2023, Dismissing Manning Case, Docket No. 22-ALJ-04-0048-AP.
10. RESPONDENT'S BRIEF AND RENEWED MOTION TO DISMISS in Docket No. 22-ALJ-04-0080-AP dated March 6, 2023.
11. Order dated September 7, 2023, Granting Relief in Docket No. 22-ALJ-04-0080-AP.
12. INMATE PAYROLL APPLICATION dated September 7, 2021.

I William Robert Horton, hereby certify that the Record On Appeal contains all material that I propose to be included in the Record On Appeal and not any other material.

January 12, 2024
Fairfax, South Carolina


William Robert Horton, #109013
Allendale C.I., F3 B-50
1057 Revolutionary Trail
Fairfax, SC 29827
(NO PHONE)
Appellant, Pro Se

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

OCT 15 2021



Inmate Copy

STEP 1

PRD: 9999999

WARDEN'S OFFICE

NO RECEIPTS

INMATE NAME: William Robert Horton
 SCDC NUMBER: # 109013
 INSTITUTION: Alendale
 HOUSING UNIT: F-3-B-50
 WORK ASSIGNMENT: Doorm Worker OCT 22 2021

OFFICE USE ONLY
 Grievance No. ACT-017-21
 Code: General MY/WG
 Policy _____
 Disc. Hear. _____
 Class. _____
 PREA _____
 Date Received 10/5/21
 IGC Initials MS HR/HL

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

I HAVE TRIED ON NUMEROUS OCCASIONS TO RESOLVE this matter. At this time I would like to place into A GRIEVANCE my ENTITLEMENT to Prevailing Wages for working At (P.I.) PRISON INDUSTRIES SERVICE AT LEE CORRECTIONAL INSTITUTION. From 2005 to 2008. PER SE; - 24-3-430 (D).

If you CAN help me RESOLVE this matter, OR CAN show me the APPROPRIATE COURSE OF ACTION, it would BE GREATLY APPRECIATED.

Thank You For Your Time.

Number - 21-02247923

William Robert Horton #109013
 Grievant Signature 10-14-2021
 Date

ACTION REQUESTED: To be paid my Prevailing Wages for services rendered PER SE; 24-3-430 AND 24-3-430 (D).

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

Your grievance has been received. However, it was closed at Alendale Correctional Institution on October 15, 2021, and forwarded to Lee Correctional Institution (location of incident) for processing.

JBP 10/27/21
 IGC Signature Date

(CONTINUE ON REVERSE SIDE)



WARDEN'S DECISION AND REASON:

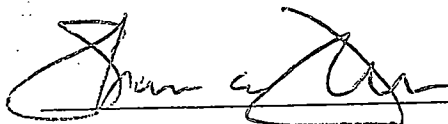
Horton, William Robert # 109013

Lee CI-0506-21

I have reviewed your concern. In your grievance you stated that you would like to place into a grievance your entitlement to prevailing wage for working at (P.I.) Prison Industries Service at Lee Correctional Institution from 2005 to 2008. PER SE; -24-3+430D. You are requesting to be paid your prevailing wage for services rendered PER SE; 24-3-430 and 24-3-430 (D). Pursuant to 2020 SC Code of Laws Title 24-Corrections, Jails, Probations, Paroles and Pardons, Section 24-1-295-Employment of inmates for work involving exportation of products; deductions from wages states in part "The department may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts and export work contracts, and these wages may be less than the prevailing wage for work of a similar nature in the private sector". In the same section it states in part "The Director of the Department of corrections shall deduct the following from the gross earnings of the inmates engaged in prison industry service work in addition to any other required deductions": (1) Restitution to a particular victim (2) 20% percent must be applied to the SC Victim Compensation Fund, (3) 35% used to pay the prisoner's child support (4) 10% must be made available to the inmate during his incarceration for the purchase of incidentals (5) 10% must be held in an interest bearing escrow account for the benefit of the prisoner (6) The remaining balance must be used to pay federal and state taxes required by law. After review, SCDC records show that you were paid prevailing wages during the times that you worked. You have not shown that SCDC staff failed to perform their job duties properly.

Therefore, your grievance is denied.

If you disagree with this Warden's Decision (Decision), you may file an appeal by completing SCDC Inmate Grievance Form 10-5A, provided to you while serving you this Decision, and placing it in the Grievance Box at your local correctional institution within five (5) days of your receipt of this Decision.


Warden Signature 11/2/21
Date

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

William Robert Horton #109013
11-17-21
Grievant Signature Date

JP Purcell 11/3/21
IGC Signature Date
Served By: [Signature]

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. 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, by placing your Step 2 appeal form in the Grievance Box at your institution.

Step 2 due: 11/20/21

RECEIVED

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 2

Office Use Only


DEC 03 2021

INMATE GRIEVANCE
 INMATE NAME: William Robert Horton
 SCDC NUMBER: 109013
 INSTITUTION: Alendale NOV 22 2021
 HOUSING UNIT: F-3-B-50 WARDEN'S OFFICE
 WORK ASSIGNMENT: Dorm Worker ACI 102

Grievance No. 100-65-0506-3
 Code: General M & W/D
 Policy _____
 Disc. Hear. _____
 Class _____
 PREA _____
 Date Received: 11/21/21
 IGC Initials: MS
 Date Received: 12/13/21
 IGA Initials: AW

RECEIVED

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

In the WARDENS' decision he provided me with the deductions. After there is a pay-rate of Prevailing Wages for what I was not paid, that of which the  Legislative compels them to do.

Grievant Signature William Robert Horton Date 11-20-2021

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

See reverse side for final Agency response.

Responsible Official Signature Ronald R. Weil Date 1/20/22

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.

William R. Horton #109013
 Grievant Signature Date 1-31-22

[Signature]
 IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review. No additional pages will be permitted.
3. Submit this completed form with your copy of the Step 1 form by placing in the Grievance Box within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

Horton #109013 LeeCI-0506-21

I have reviewed your concern. In your grievance you stated that you are entitled to receiving prevailing wages for the time you worked in Prison Industries (PI) at Lee Correctional Institution (LeeCI) from 2005 – 2008. You have requested that you be paid prevailing wages for services rendered. The Warden responded to your concern on SCDC Step 1 Inmate Grievance Form 10-5 dated November 2, 2021. I concur with the warden's denial of your grievance, and I conclude SCDC paid you the proper hourly rate of pay for the labor you voluntarily provided to the prison industries project in which you participated. In concurring with the warden's denial, I further conclude that except for any "training wages" you may have been paid, SCDC paid you at an hourly rate that conformed to all applicable state and federal statutes.

I further conclude SCDC paid you at an hourly rate that conform to the federal guideline applicable to the prison industries project in which you participated, specifically the guidelines established by the federal government, specifically the United States Department of Justice's Bureau of Justice Administration (known as "BJA"). BJA published guidelines applicable to the prison industries project in which you participated in the Federal Register, specifically 64 FR 17000, *et seq.* The recent decision by the South Carolina Court of Appeals upon which you relied in your grievance, *Torrence v. S.C. Dep't of Corr.*, 2021 WL 2678920 (S.C. Ct. App. June 30, 2021), is not yet final. Your demands for treble damages and attorneys' fees under S.C. Code Ann. 41-10-80(c), known as the South Carolina Payment of Wages Act, are negated by the South Carolina Supreme Court's decision in *Williams, et al., v. S.C. Dep't of Corr., et al.*, 641 S.E.2d 885 (S.C. 2007), as well as our Court of Appeals' decision in *S.C. Dep't of Corr. v. Cartrette*, 694 S.E.2d 18 (S.C. Ct. App. 2010).

To the extent you claim or assert you were "employed by" or otherwise worked for the private industry sponsor involved in the prison industries project in which you participated, the South Carolina Supreme Court's decision in *Williams*, as well as the South Carolina Court of Appeals' decision in *Cartrette* negates such a claim or assertion. Finally, to the extent you previously filed a grievance concerning your prison industries pay and you either failed to appeal SCDC's denial of your grievance or SCDC's denial of your grievance was affirmed by the South Carolina Administrative Law Court, any circuit court in South Carolina, the South Carolina Court of Appeals, and/or the South Carolina Supreme Court, your current grievance is barred by the doctrines of *res judicata* and/or *collateral estoppel*.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

William Robert Horton

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. -ALJ-04-
GRIEVANCE NO.: LEE CI. -0506-21

Notice is hereby given that William Robert Horton #109013 does hereby appeal the final decision of the South Carolina Department of Corrections dated 1-28-22 and received on 2-4-22, 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)):

Section 24-3-430(D) provides "No inmate participating in the (P.I.) Prison Industries Program may not earn less than the prevailing wages for work of a similar nature in the private sector."

The hourly rate S.C.D.C. paid me does not conform to the E.S.C, or the D.F.W, the guidelines for obtaining and determines wage rates in South Carolina. This is for services rendered.

William Robert Horton #109013
Appellant's Name
Allendale Correction Inst. (F-3-B-50)
1057 REVOLUTIONARY TRAIL
Mailing Address
Fairfax S.C.
29827
City, State, Zip Code

William Robert Horton #109013
Signed
[Signature]
Dated 2-21-22

CERTIFICATE OF SERVICE

I hereby certify that I, William R. Horton (your name), on the 22 day of February, 2022, in Fairfax (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 SC.D.C.

Address: P.O. Box 21787

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

Print your name: William Robert Horton #109013
(See reverse side for instructions)

Sign your name: William Robert Horton #109013

Instructions for filing an appeal of the final agency decision from the South Carolina Department of Corrections:

- 1) You must complete the **Notice of Appeal** on the reverse side of these instructions and mail it to the Administrative Law Court at the following address:

**Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201**

A copy of the Notice of Appeal must also be forwarded to the Office of General Counsel at the Department of Corrections.

- 2) **In order for your case to be processed by the A.L.C. a copy of the final decision from the Department of Corrections must be attached to the Notice of Appeal.**

William Robert Horton #109013

Appellant,

Vs.

CASE NUMBER: 22C0039

GRIEVANCE NUMBER: L.C.I.-506-21

South Carolina Department
of Corrections, (S.C.D.C.)

Respondent.

"Brief"

Fact:

(1) Am I entitled to prevailing wages per (PI) (PIP) Prison Industries Program that is outlined in the Wage Statute in Section 24-3-430(d)?

(2) Does the hourly rate S.C.D.C. paid me conform to the prevailing wage guidelines of the ESC, or the D.E.W. for determining the wage rates in the State of South Carolina?

STATE OF FACTS / ARGUMENT

Appellant, contends that (S.C.D.C.)
South Carolina Department of Corrections did NOT
DOES NOT ADHERE TO ITS OWN AGENCIES REGULATIONS.

FURTHERMORE, THAT FAILURE TO ADHERE
TO WAGE STATUTE IN SECTION 24-3-430(D), (I
WAS NOT OR NEVER HAVE BEEN PAID PREVAILING WAGES).

At one (1) plant I WAS PAID .35¢
PER HOUR. At the second (2) plant I WAS PAID
PRODUCTION PAY LIKE .20 PER PRODUCTION; SOMETIMES IT
COULD ADD UP TO .29¢ PER HOUR OR \$1.27 PER HOUR
IT DEPENDS ON HOW MUCH PRODUCTION YOU COULD PRODUCE
AS A WHOLE. But it WAS NOT TO MUCH HIGHER THAN THAT.
The third (3) plant paid \$18.25 EVERY TWO (2) WEEKS,
WHICH IS STATE PAY, WHAT'S CALLED INCENTIVE PAY.

THIS DOES NOT CONFORM TO THE
PREVAILING WAGE GUIDELINES OF THE E.S.C., OR THE
D.E.W. FOR DETERMINING THE WAGE RATES FOR THE
WHOLE STATE OF South Carolina.

THE APPELLANT AT ALL TIMES HEREIN
RESPECTFULLY MOVES UNDER THE LIBERAL STANDARD NOTED
IN HAINES VS. KERNER, 404 U.S. 519 (1972) AND THUS
ASK THIS COURT TO APPLY A LESS STRINGENT REVIEW THAT
OF INFORMAL PLEADINGS DRAFTED BY ATTORNEYS.

THAT'S IF THIS COURT CAN UNDERSTAND
THE PLEADINGS TO STATE A VALID CLAIM UPON WHICH
RELIEF CAN BE GRANTED, THIS COURT IS RESPECTFULLY
ASKED TO GRANT SUCH RELIEF IN ACCORDANCE WITH CONTROLLING
(NEXT PAGE) →

Authority, I do, or any other relief that this court
deems just and proper in this matter.

I would like to take this time to
thank this court for your time, understanding and
assistance in this matter and all matters in this case.

Thank You!

Respectfully Submitted By:
William Robert Horton #109013
William Robert Horton #109013

Appellant.

This day 24 of March - 22
Fairfax, South Carolina, 29827.

**STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

William Robert Horton, #109013,)	Docket No.: 22-ALJ-04-0039-AP
)	[<u>Grievance No.: LEECI 506-21</u>]
Appellant,)	
)	<i>Honorable Sebastien Phillip Lenski</i>
v.)	
)	
South Carolina Department of Corrections,)	RESPONDENT’S MOTION TO
)	DISMISS OR IN THE
Respondent.)	ALTERNATIVE HOLD IN
<hr style="width: 40%; margin-left: 0;"/>)	ABEYANCE

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to the appeal of William Robert Horton (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC” or “Department”). Appellant is appealing SCDC’s final agency decision of January 20, 2022, that denied Appellant’s Step 2 grievance.

On October 14, 2021, Appellant filed a Step One grievance seeking to be paid pursuant to the prevailing wage statute (i.e., S.C. Code Ann. § 24-3-430(D)) for the labor he performed at “Prison Industries Service at Lee Correctional Institution. From 2005 to 2008.” On November 2, 2021, the Step One grievance was denied. Thereafter, on November 20, 2021, Appellant filed a Step Two grievance, again requesting the prevailing wage. On January 20, 2022, SCDC denied the Step two grievance. This appeal followed.

Respondent now moves to dismiss Appellant’s appeal on the following grounds: (a) failure to submit an adequate brief; (b) Appellant’s work is not subject to the prevailing wage statute; and (c) Appellant is barred by the doctrine of laches. Should the Court decline to dismiss this appeal in its entirety, Respondent alternatively moves to hold the remaining matters in abeyance.

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived entirely 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 SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Subsequently, the supreme court clarified the ALC's appellate jurisdiction over inmate appeals in *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of *McNeil v. S.C. Dep't of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a *state-created* liberty interest. *See Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding categories (2) and (3), *supra*, the South Carolina Supreme Court has consistently emphasized that the liberty or property interest implicated must be one that is *state created*. *See Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [*i.e.*, in *Wicker*] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that do not implicate an inmate's *state created* liberty or property interest") (emphasis added).

SCDC interprets *Slezak* as encouraging, for the sake of judicial economy, the ALC to summarily dismiss inmate cases that do not involve a state-created liberty or property interest. Recently, the South Carolina Court of Appeals has interpreted *Slezak* to mean that where a state-

created liberty interest is not implicated in a prisoner appeal, a judge of the ALC “should” dismiss the appeal. *Skipper v. S.C. Dep’t of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006).

ARGUMENT

I: **RESPONDENT’S MOTION TO DISMISS.**

A. **APPELLANT HAS FAILED TO ADEQUATELY BRIEF ANY COGNIZABLE CLAIM.**

As an initial matter, Appellant’s claims should be dismissed as he failed to adequately articulate, support, or brief, any cognizable claim on appeal. Rule 60 (B) SCALC, provides in pertinent part provide that “[e]ach brief **shall** contain” (emphasis added) statements of the issues on appeal, “[b]road general statements may be disregarded,” a statement of the case containing a “concise history of the proceedings, insofar as necessary to an understanding of the appeal,” and argument containing a “**discussion** and citation of authority” (emphasis added) addressing the issues. Appellant has not articulated the dates of his participation in the prison industries project in question, the hourly rate(s) at which he was paid by SCDC, the name of the private industry sponsor, or the nature of labor he performed. These are the *essential facts needed* when evaluating a prevailing wage claim. Appellant’s brief is so broad, he used the same brief for three different prevailing wage briefs.¹ Appellant has not provided the Court with the necessary minimum information to evaluate this claim. The Court should dismiss this Appeal. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting an issue is deemed abandoned where appellant fails to provide arguments or supporting authority for his assertion); *see also Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) (“[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.”); SCALC Rule 62 (stating that

¹ Appellant sent the same brief for three cases. See ALC Docket No.: 22-ALJ-04-0008-AP and Docket No. 22-ALJ-04-0048-AP.

an administrative law judge may, upon his or her own motion, dismiss an appeal for failure to comply with any of the ALC Rules of Procedure for appeals).

B. NO STATE CREATED LIBERTY INTEREST IS IMPLICATED IN THIS CASE BECAUSE APPELLANT'S WORK WAS NOT SUBJECT TO THE PREVAILING WAGE STATUTE.

No state created liberty or property interest is implicated in this case because Appellant's work was not subject to the prevailing wage statute. Appellant states in his Step One grievance his claim arises out of prison industries service at Lee Correctional Institution from 2005 to 2008. There are three types of prison industries programs: (1) prison industries enhancement programs ("PIE"); (2) prison industries service projects ("PISP"); and (3) traditional prison industries. Appellant has not worked for a PIE program while at Lee Correctional Institution.

Traditional prison industries programs do not work with private industry sponsors and are not subject to the prevailing wage statute. PIE programs and PISP programs work with private industry sponsors. PIE programs are subject to S.C. Code Ann. § 24-3-315 and § 24-3-430(D) (*i.e.*, the prevailing wage statute). In contrast, PISP programs are governed by separate authority other than PIE programs. The court in *Ackermann* articulated the authority governing PISP as:

the legislature enacted the first of a series of yearly budget provisos, effective for the fiscal year beginning July 1, 2001, permitting SCDC to pay participating inmates less than the prevailing wage for "service work":

The Director of [SCDC] may enter into contracts with private sector entities that would allow for inmate labor to be provided for prison industry service work. The use of such inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Service work is defined as any work such as repair, replacement of original manufactured items, packaging, sorting, labeling, or similar work that is not original equipment manufacturing. The department may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts, and such wages may be less than the prevailing wage for work of a similar nature in the private sector.

H. 3687, Appropriation Bill 2001–2002, Part IB § 37.31 (Act No. 66, 2001 S.C. Acts 738) (emphasis added). The legislature enacted identical, or nearly identical, provisos for each following fiscal year until the 2007–2008 fiscal year. On August 1, 2007, section 24–1–295 of the South Carolina Code, which codified the language in the provisos, became effective.

Ackermann v. South Carolina Department of Corrections, 415 S.C. 412, 415, 782 S.E.2d 757, 758-59 (Ct. App. 2016).

According to SCDC records, Appellant has not participated in a PIE program while incarcerated at Lee Correctional Institution. Appellant participated in prison industries from April 18, 2005 to September 6, 2006; and from January 31, 2008, to April 15, 2008; and again from April 22, 2008 to August 18, 2018.² The time frame Appellant participated in PISP is governed by the budget provisos. Traditional prison industries are not subject to as the prevailing wage statute as there is no private industry sponsor.

Accordingly, none of the Appellant’s labor subject to this appeal was governed by the prevailing wage statute. Because Appellant’s labor does not fall under the prevailing wage statute, no state created liberty or property interest is implicated in this case, the Court should dismiss this appeal.

C. APPELLANT IS BARRED BY THE DOCTRINE OF LACHES.

Appellant is now attempting to litigate a claim dating back to 2005, and his claim should be barred by the doctrine of laches. “Laches is the neglect for an unreasonable and unexplained length of time, under circumstance affording opportunity for diligence, to do what in law should have been done.” *Queen’s Grant II Horizontal Property Regime v. Greenwood Development Corp.*, 368 S.C. 342, 359, 628 S.E.2d 902, 912 (Ct. App. 2006) (citations omitted). “Delay alone is not enough to constitute laches; it must be unreasonable, and the party asserting laches must

² See attached History of EWC Assignments which shows Appellant’s work history from April 2005 to August 2008. Respondent, upon information and belief, believes Appellant worked for PISP from April 18, 2005 to September 6, 2006; and for traditional prison industries from January 31, 2008 to April 15, 2008, and April 22, 2008 to April 15, 2008. Appellant was not working for a PIE program.

show prejudice.” *Ibid* (quoting *Gordon v. Drews*, 358 S.C. 598, 612, 595 S.E.2d 864, 871 (Ct. App. 2004)). The elements for laches are:

- (1) Delay by one party;
- (2) Unreasonable or unexplained length of time;
- (3) Knowledge of rights by the party;
- (4) Reliance on non-assertion by other party;
- (5) And prejudice to that other party if the right is now asserted.

12 S.C. Jur. Equity § 25.

Respondent asserts that Appellant’s claims are barred by the doctrine of laches. Unlike the plaintiff in *Torrence vs SCDC*, 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021), who diligently pursued his claim (and participated in a PIE program), Appellant slept on his rights and waited until a ruling from the Court of Appeals in *Torrence* to first make any assertions he is entitled to back pay. Appellant filed his Step One grievance on October 14, 2021. There is no reasonable explanation for the excessive delay. If Appellant was unhappy with the rate at which SCDC paid him for his prison industries labor, he should have known to challenge the same just as Inmate Torrence did. Appellant could have chosen not to participate the prison industries program. By him continuing to participate in the project, Respondent relied on Appellant’s satisfaction with the rate at which it paid him for his labor. Now, Appellant wants to litigate claims dating back to 2005. Respondent should not be forced to litigate matters that are nearly 17 years old. This would, and already has, opened the flood gates to numerous “prevailing wage” claims and prejudices Respondent. Therefore, Respondent respectfully requests this Court dismiss this Appeal.

Therefore, Respondent respectfully asserts Appellant’s claims are barred by the doctrine of laches.

II: SHOULD THIS COURT DECLINE TO DISMISS THIS APPEAL, RESPONDENT RESPECTFULLY REQUESTS THIS MATTER BE HELD IN ABEYANCE.

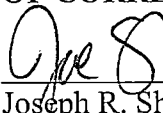
If the Court is not inclined to dismiss all or part of this Appeal, Respondent requests any remaining matters be held in abeyance. Appellant is challenging the rate at which SCDC paid him while he allegedly participated in the Prison Industries Program. Appellant contends SCDC did not pay him at an hourly rate that conformed to state and federal law, and he seeks back pay. A similar issue is currently awaiting cert by the South Carolina Supreme Court. *Torrence v. S.C. Dep't of Corr.*, 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021), reh'g denied (Aug. 4, 2021). Respondent requests that this case be held in abeyance until there is a final ruling in *Torrence*.

CONCLUSION

WHEREFORE, the Respondent respectfully requests that this Court dismiss this appeal for the above stated reasons, or in the alternative, hold the matters remaining in abeyance.

Respectfully Submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



Joseph R. Shakibanasab, SC Bar # 102825
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
Phone: (803) 896-1278
Email: Shakibanasab.joseph@doc.sc.gov

June 20, 2022
Columbia, South Carolina

COPY

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

William Robert Horton, #109013)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)
)
_____)

Docket No. 22-ALJ-04-0039-AP

ORDER GRANTING
RESPONDENT'S MOTION

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed by William Robert Horton (Appellant), an inmate in the custody of the South Carolina Department of Corrections (Department or Respondent). After the Appellant's Step 1 and Step 2 grievances were filed and denied, he filed a Notice of Appeal with this court on February 22, 2022 appealing the denial of his grievance in which he claims that he was not paid the prevailing wages when he was working at Prison Industries Services while at Lee Correctional Institution.

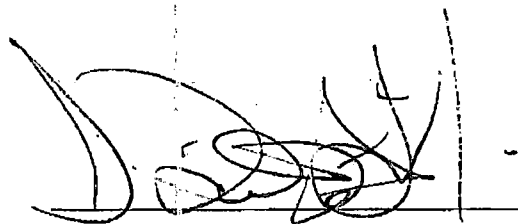
On June 21, 2022, the Department filed a Motion to Dismiss or in the Alternative to Hold in Abeyance. The Department filed a Motion to Dismiss due to the Appellant's failure to submit an adequate brief, because the Appellant's work is not subject to the prevailing wage statute, and because the Appellant is barred by the doctrine of laches. The Department's Motion to Hold in Abeyance is predicated upon the fact that a case with a similar issue has been granted certiorari by the South Carolina Supreme Court, and a decision is pending. *Torrence v. S.C. Dep't of Corr.*, 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021), *re'g denied* (Aug. 4, 2021). Therefore, the Department requests that this court hold this matter in abeyance until there is a final ruling in *Torrence*. As of the date of this Order, the Appellant has not filed a response to the Department's Motions nor a request for an extension of time to do so. Therefore, based on the foregoing,

The State of South Carolina
FILED
JUL 07 2022
Administrative Law Court

COPY

IT IS HEREBY ORDERED that the Department's Motion to Hold in Abeyance is
GRANTED.

AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

July 7, 2022
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 7th day of July 2022

Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

RECEIVED
NOV 20 2023
SC Court of Appeals

William Robert Horton, #109013,)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)

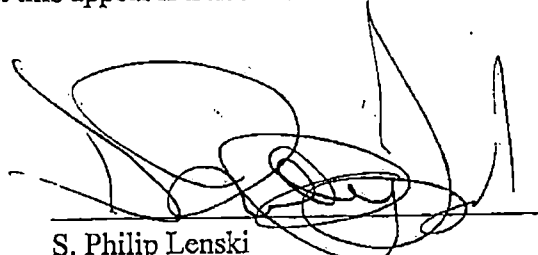
Docket No. 22-ALJ-04-0039-AP

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on February 22, 2022 by William Robert Horton (Appellant) an inmate in the custody of the South Carolina Department of Corrections (Department or Respondent.) The Appellant is seeking to be paid the prevailing wages for the time he worked in Prison Industries at Lee Correctional Institution from 2005 – 2008.

On March 3, 2022, this appeal was assigned to the undersigned, however, this appeal is a duplicate of the final decision that is the subject of appeal in Docket Number 22-ALJ-04-0048-AP, initially assigned on March 3, 2022 to Judge Shirley Robinson and upon Judge Robinson's retirement, was reassigned to Judge Crystal Rookard and then to Judge Robert Reibold. On October 10, 2023, Judge Reibold issued an Order Granting Motion to Dismiss, dismissing the case with prejudice. Therefore, since this case is a duplicate of a final decision on which the court has issued an Order,

IT IS HEREBY ORDERED that this appeal is **DISMISSED WITH PREJUDICE.**
AND IT IS SO ORDERED.

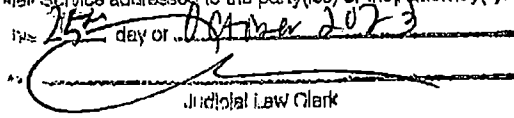


S. Philip Lenski
Administrative Law Judge

October 25, 2023
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).

On 25th day of October 2023

Judicial Law Clerk

The State of South Carolina
FILED
OCT 25 2023
Administrative Law Court

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

RECEIVED
NOV 20 2023
SC Court of Appeals

William Robert Horton, #109013,)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)

Docket No. 22-ALJ-04-0048-AP
ORDER GRANTING MOTION
TO DISMISS

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by William Robert Horton (Appellant), an inmate incarcerated by the South Carolina Department of Corrections (SCDC or the Department). See *Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 170, 886 S.E.2d 671, 674 (2023); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331 605 S.E.2d 506, 507 (2004); and *Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000).

On October 11, 2021 at 22:10, Appellant submitted an inmate request (Ref. No. 21-02247923) concerning a financial concern and it provided in full:

Ms. Greer, Please forward this Request; To: Headquarters-Financial Accounting Office. To Whom it May Concern, I William Robert Horton#109013, Allendale Correctional Inst. F-3- B-50. I have tried several times to resolve this matter on several Request to Staff, To members of each Business Office to said, "Institutions: Manning Correctional Inst. Worked: Central Laundry & Switchboard Operator..... Between: 1982 to 1984, and again in 1992 to 1994. Kirkland Correctional Inst. Worked: Upholstery & AT&T..... Between: 1984 to 1987. Allendale Correctional Inst. Worked: Penguin Book Company, Plus other jobs.....Between: 1996 to 2000. Lee Correctional Inst. Worked: West P.I., Ind.Group/Section Lead..... East P.I., Machine operator..... Between: 2005 to 2008, Between the years above and Institutions. I have worked at these Institutions P.I.'s, Plus the Big Central Laundry at Manning. And I was not payed prevailing wages. Your Staff at each of these institutions was improper for failure to pay me prevailing wages. Each job was punched and entered in by a time card. If you would help me with this matter it would be most appreciated. Thank you. William Robert Horton#109013- F-3B-50, Allendale. Date 10-11-21.

On October 12, 2012 at 09:01, the Department responded, "After review, SCDC records show that you were paid prevailing wages during the time you were working."

On October 14, 2021, Appellant submitted a Step 1 grievance complaining that the Department failed to pay prevailing wages pursuant to S.C. Code § 24-3-430 (2007) for work performed in the "Big Central Laundry" and as "Switchboard Operator" from 1982 to 1984 and



1992 to 1994¹. By decision dated November 3, 2021, the warden denied the grievance because the warden asserted that “[Appellant’s] interpretation of the legal case that you cited in your grievance does not comply with our reading of the same. You have been provided with wages that have been approved by the governing authority of South Carolina.” Appellant received the Warden’s decision on November 17, 2021.

Appellant submitted a Step 2 grievance on November 20, 2021 and stated that his grievance was over non-payment of a prevailing wage, not that he was unpaid. The responsible official denied the Step 2 on January 20, 2022 with an explanation that the payments made during the claimed years conformed to the applicable federal and state statutory requirements. Appellant received the denial on January 31, 2022.

Appellant filed his notice of appeal on February 24, 2022. The matter was originally assigned to the Honorable Shirley Robinson. Appellant filed his brief on March 21, 2022. On April 29, 2022, the Department filed the record on appeal. The record consists of the October 11, 2021 inmate request (Ref. No. 21-02247923) and Step 1 and 2 grievances including Department responses. The Department filed a Motion to Dismiss or in the Alternative Hold in Abeyance on June 21, 2022. Judge Robinson did not expressly rule on the motion to dismiss and instead held the matter in abeyance beginning July 19, 2022. The matter was held in abeyance pending resolution of *Torrence v. S.C. Dep’t of Corr.*, 433 S.C. 633, 861 S.E.2d 36 (2021). This appeal was restored to the active docket on June 5, 2023.

Upon Judge Robinson’s retirement, the appeal was reassigned to the Honorable Crystal Rookard. The Department filed Respondent’s Brief and Motion to Dismiss, and a motion to supplement the record on August 4, 2023. Appellant did not file a specific response to the Department’s motions but did conclude his Reply Brief with a request for denial of the Department’s motions for the reasons set forth in the brief. On August 21, 2023, Appellant filed a Motion for Enlargement of Time in Which to File Reply Brief and his reply brief. The Department did not file a response directly to the Appellant’s motion.

This matter was re-assigned to the undersigned on September 21, 2023. The Court issued, on September 28, 2023, an order granting the Department’s August 4, 2023 motion to supplement the record and the Appellant’s August 21, 2023 motion for enlargement of time in which to file a

¹ Despite the breadth of employment described by Appellant in his October 11, 2021 request, the work and years raised in the subsequent Step 1 are more narrow and, thus, limit the scope of this appeal.

reply brief. The Department's motion to dismiss, contained in its brief, is presently before the Court.

DISCUSSION

In the Department's August 4, 2023 Motion to Dismiss, the Department asserts that Appellant's claim does not implicate a state-created liberty or property interest for which relief can be granted. Specifically, the Department highlights that section 24-3-430 was not enacted until July 1, 1995 and would not support Appellant's claims for prevailing wages from the periods of 1982-1984 and 1992-1994. Finally, the Department noted that the Appellant never worked for the specific program – "Prison Industries Enhancement Programs" – to which the prevailing wage statute² applies.

Treating the Appellant's Reply Brief as his response to the Department's motion, the Court is willing to consider and address Appellant's arguments. First, the Appellant asserts the Department is procedurally barred from claiming in the context of this appeal that the prevailing wage claim fails as a matter of law because the prevailing wage statute did not exist when the work was performed. He argues that the Department cannot raise an issue on appeal that was not ruled on below. *See, e.g., Carson v. S.C. Dept. of Natural Resources*, 371 S.C. 114, 120, 638 S.E.2d 45, 48 (2002) (court sitting in appellate capacity may not consider issues not raised to or ruled upon by an administrative agency). Appellant is certainly correct that the Department did not raise this argument below, but the doctrine of error preservation does not operate as Appellant suggests.

It is well-settled that an issue cannot be raised for the first time on appeal but must have been raised to and ruled upon by the trial court to be preserved for appellate review. *E.g., Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997). Appellate review is the examination of a lower court's decision by a higher court, which can affirm,

² The "prevailing wage statute" is commonly used to describe section 24-3-430, as it is being used herein, although other statutory provisions may relate to wage payments for inmate. Section 24-3-430(D) applies to for profit partnerships with private industry. In contrast and for example, Section 24-3-315 was enacted to allow the State of South Carolina to participate in the federal Prison Industry Enhancement Certification Program (PIECP), a non-profit program allowing the federal government to purchase goods manufactured by federal inmates. This program was expanded by the Justice Assistance Act of 1984. The Justice Assistance Act allowed states to sell goods and materials made by state prison inmates to federal agencies as well as state agencies and others, provided that the director of prisons in a particular state made certain determinations to qualify for admission into the federal program. Section 24-3-315 is associated with programs administered under the Justice Assistance Act and a determination is required of the Department's Director to make the same determinations that the PIECP program requires for admission to the program.

reverse, modify, or vacate the decision. REVIEW, Black's Law Dictionary (11th ed. 2019). "Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000). Stated differently, error preservation requirements ensure that when an appellate court is asked to affirm, reverse, modify or vacate a decision below, there is in fact a decision from the lower court to evaluate.

Here, however, the Court is not being asked to affirm, reverse, modify or vacate the lower decision. The question before the Court in this instance is instead whether the appeal should be summarily dismissed because it does not involve a state created liberty or property interest.³ This issue was raised by motion. Indeed, it would have been impossible for the Department to raise this issue below. The argument that an appeal should be dismissed for lack of a state-created liberty or property interest below cannot, of course, exist *before* an inmate has appealed to the Administrative Law Court. The Court concludes that the Department is permitted to raise its argument in the context of a motion to dismiss.⁴

Next, Appellant invites the Court to view section 24-3-430 as remedial thus allowing retrospective application for work performed prior to its adoption in 1995. Such a position is in contrast with the Department's position that the statute clearly lacks a legislative mandate for retroactive application.

Unless section 24-3-430(D) operates retroactively, Appellant has no claim for additional wages for periods of time prior to July 1, 1995. "[A]bsent a specific provision or clear legislative intent to the contrary, statutes are to be construed prospectively rather than retroactively, unless the statute is remedial or procedural in nature." *Edwards v. State L. Enforcement Div.*, 395 S.C. 571, 579, 720 S.E.2d 462, 466 (2011). "A statute is remedial where it creates new remedies for

³ The Court is careful to distinguish between the Department's two arguments. In the motion to dismiss, the Department argues that the case should be summarily dismissed because Appellant possesses no state-created property interest in the prevailing wages claimed on appeal. In other words, there can be no state-created property right to prevailing wages before the state created the prevailing wage act. In the brief, the Department argues that its denial of additional wage relief to Appellant should be affirmed because Appellant lacks any entitlement to a prevailing wage for time periods prior to the enactment of the prevailing wage act. These two arguments are similar, but not identical.

⁴ Appellant's argument is better suited to precluding consideration of the Department's argument that its denial of additional wage relief to Appellant should be affirmed because Appellant lacks any entitlement to a prevailing wage for time periods prior to the enactment of the prevailing wage act. However, even there, Appellant's objection fails. The Department is the Respondent and is authorized by rule to raise arguments for affirmance which were not asserted below as long as the basis for the argument appears in the record. SCALC Rule 65.

existing rights or enlarges the rights of persons under disability." *State v. Hilton*, 406 S.C. 580, 585, 752 S.E.2d 549, 551-52 (Ct. App. 2013) (quoting *Edwards*, 395 S.C. at 579, 720 S.E.2d at 466). Where, however, "a statute creates a new obligation or imposes a new duty, courts generally consider the statute prospective only." *Id.* (quoting *Edwards*, 395 S.C. at 579, 720 S.E.2d at 466); *see also* 82 C.J.S. *Statutes* § 568 (Oct. 2023 Update) ("In the absence of an express legislative statement or clear intent to the contrary, a statute will not be given a retroactive construction by which it will impose liabilities not existing at the time of its passage" (footnotes omitted)).

Application of these standards reveals that the prevailing wage statute, section 24-3-430, created a new obligation on the Department in subsection D and nothing in the statute evidences any intent that the statute applies retroactively. Therefore, there is no basis to conclude that section 24-3-430 was intended or should apply retroactively to provide the remedy sought by Appellant.

Having concluded that the Department's argument is one which the Court may properly consider, the Court next considers the merits of the Department's argument. Appellant's claim is expressly based on S.C. Code section 24-3-430. Appellant's Step 1 grievance complains that Department failed to pay prevailing wages pursuant to S.C. Code § 24-3-430 (2007) for work performed in the "Big Central Laundry" and as "Switchboard Operator" from 1982 to 1984 and 1992 to 1994. The relief Appellant requested was "[t]o be paid my prevailing wages for services rendered *per Sec 24-3-430 and 24-3-430(D).*" (Step 1 grievance) (emphasis added). In his Step 2 grievance, Appellant again requests that he be paid prevailing wages for services rendered in accordance with the legislative intent "behind the statute governing Prison Industries Services."⁵ Appellant's notice of appeal again expressly refers to Section 24-3-430(D). It states that "*Section 24-3-430(D)* provides 'No inmate participating in the (PI) Prison industries program may not earn less than the prevailing wage for work of a similar nature in the private sector.'⁶ (Notice of Appeal) (emphasis added). Finally, the only statute mentioned in Appellant's brief is section 24-3-430(D).⁷

⁵ The Court construes Appellant's reference to "the statute governing Prison Industries Services" as a reference to Section 24-3-430(D). The reference to a statute is in the singular, not the plural. It also comes immediately after the Step 1 grievance, which expressly refers to Section 24-3-430(D). Finally, Appellant's Step 2 grievance refers to "prevailing wages," a term taken from Section 24-3-430(D). That section provides that "[n]o inmate participating in the program may earn less *the prevailing wage* for work of similar nature in the private sector." S.C. Code Ann. § 24-3-430(D) (emphasis added). While other statutes, such as Section 24-3-315 existed prior to 1995 and contain a similar wage requirement, these statutes did not use the term "prevailing wage."

⁶ Appellant has not accurately transcribed section 24-3-430(D).

Section 24-3-430(D) was not enacted until July 1, 1995. Therefore, this section could not have conferred a state created property right to prevailing wages upon inmates prior to that date. Appellant's claim for prevailing wages is for the following years: (i) 1982 to 1984; and (ii) 1992 to 1994. (Step 1 grievance). These time periods predate July 1, 1995. The Department therefore correctly concludes that Appellant has no state created property right to prevailing wages under section 24-3-430(D).

For these reasons, the Court concludes that summary dismissal is appropriate, and GRANTS the Department's motion to dismiss.⁸

ORDER

IT IS THEREFORE ORDERED that the Department's motion to dismiss is **GRANTED WITH PREJUDICE**.

AND IT IS SO ORDERED.



The Honorable Robert L. Reibold
Administrative Law Judge

October 10, 2023
Columbia, South Carolina

⁷ The first mention of section 24-3-315 by Appellant comes in his reply brief. Appellant attempts to rebut the Department's argument that the prevailing wage statute did not exist prior to July 1, 1995. Even then, it is not clear that Appellant is relying on Section 24-3-315 as a source of his right to payment. Appellant seems to be arguing that Section 24-3-315 supports his argument that Section 24-3-430(D) is remedial in nature and should apply retroactively. Assuming, arguendo, that the discussion in Appellant's reply brief should be construed as arguing that the Section 24-3-315 was the source of Appellant's right to prevailing wages, it would be improper for the Court to consider this argument. *See ABB, Inc. v. Integrated Recycling Group of SC, LLC*, 432 S.C. 545, 553, 854 S.E.2d 171, 175 (Ct.App. 2021) (a party cannot raise an issue for the first time in an appellate reply brief).

⁸ The Court need not address the Department's secondary basis for dismissal because the Court's analysis of the Department's primary basis is dispositive. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

Dismiss and placed this appeal in abeyance. Thereafter, on September 15, 2022, this Court issued an Order Reinstating the case to the Active Docket and a Scheduling Order.

STANDARD OF REVIEW

The ALC's jurisdiction to hear this matter is derived entirely 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 SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754. Subsequently, the supreme court clarified the ALC's appellate jurisdiction over inmate appeals in *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of *McNeil v. S.C. Dep't of Corr.*, 02-ALJ-04-00336-AP (September 5, 2001), the supreme court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's *state-created* liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a *state-created* liberty interest. *See Sullivan*, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding categories (2) and (3), *supra*, the South Carolina Supreme Court has consistently emphasized that the liberty or property interest implicated must be one that is *state created*. *See Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [*i.e.*, in *Wicker*] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that do not implicate an inmate's *state created* liberty or property interest") (emphasis added).

SCDC interprets *Slezak* as encouraging, for the sake of judicial economy, the ALC to summarily dismiss inmate cases that do not involve a state-created liberty or property interest. Recently, the South Carolina Court of Appeals has interpreted *Slezak* to mean that where a state-created liberty interest is not implicated in a prisoner appeal, a judge of the ALC “should” dismiss the appeal. *Skipper v. S.C. Dep’t of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006).

Furthermore, the ALC should not disturb findings of an administrative agency if those findings are supported by substantial evidence on the record as a whole. *Pearson v. JPS Converter & Ind. Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). Stated differently, an Administrative Law Judge may not substitute his judgment for that of an agency “as to the weight of the evidence on questions of fact.” S.C. Code Ann. § 1-23-380(5) (amended by 2008 Act No. 334, § 5, eff. June 16, 2008). Additionally, Courts may not substitute their judgement for that of the agency in terms of the weight of the evidence but may modify an agency’s decision if it is “clearly erroneous in view of the substantial evidence on the whole record, in violation of a constitutional or statutory provision or arbitrary.” *Marietta Garage, Inc. v. S.C. Dep’t of Pub. Safety*, 337 S.C. 133, 136-37, 522 S.E.2d 605, 607 (1999); *see* S.C. Code Ann. § 1-23-380(5)(e); *see also* *S.C. Dep’t of Labor, Licensing & Regulation v. Girgis*, 332 S.C. 162, 503 S.E.2d 490 (1998).

“Substantial evidence” is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that the administrative agency reached. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded

wide latitude in making decisions, as shown in the deferential standard of appellate review. *Heater of Seabrook, Inc. v. Pub. Svc. Comm'n of S.C.*, 332 S.C. 20, 503 S.E.2d 739 (1998).

ARGUMENT

This case is analogous to litigating to determine whether dinosaurs had feathers or if they were reptilian. Appellant's claim is archaic, and the information needed to evaluate it does not exist. Appellant's appeal should, therefore, be denied.

Appellant attempts to couch his prison industries pay claim as one under *Torrence, supra*, but it is not such a claim. In *Torrence*, the parties never disputed SCDC operated the project at issue under the federal government's Prison Industries Enhancement Program, commonly referred to as a PIECP or PIE. Instead, the operative issue in *Torrence* was the definition of the term "prevailing wage" under § 24-3-430(D).

Here, however, Appellant did not participate in a PIECP or PIE project, and consequentially, his claim is more akin to those claims asserted in *Ackerman vs. S.C. Dep't of Corr.*, 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016) and *Gatewood vs. S.C. Dep't of Corr.*, 416 S.C. 304, 785 S.E.2d 600 (Ct. App. 2016).

Specifically, Appellant is seeking to have the labor he provided to a non-PIECP project subjected to the "prevailing wage" statute (i.e., § 24-3-430(D)). Appellant's prison industries pay claim is profoundly problematic, as he allegedly began participating in the project SCDC operated at ACI nearly 30 years ago (i.e., in 1996), and the records needed to evaluate his pay claim, or even grant the relief Appellant requests, do not exist.

A. STATUTORY HISTORY

Our legislature enacted § 24-3-430 in 1995,¹ and before its enactment, §§ 24-3-315 and

¹ 1995 Act No. 7, Part II, § 43.

24-3-410 served as the controlling authorities for the pay attributable to inmate labor in prison industries projects operated by SCDC. Section 24-3-410 only prohibited the sale of articles or products *manufactured* or *produced* by inmates; it did not prohibit inmates from participating in prison industries projects in which they performed “service work.”

SCDC’s 1991 contract with Penguin Books,² the private industry sponsor for the prison industries project in which Appellant participated at ACI, reflects the reality that Appellant performed “service work.” Based upon the contract and available evidence, Appellant did not produce or manufacture any goods or merchandise when he participated in the Penguin Books project. More specifically, Appellant did not author any books, illustrate any book covers, publish any books, operate a printing press, or bind the pages of any books.

Instead, Appellant sorted books according to whether they were hardcover adult books, paperback adult books, or juvenile books, and he checked the books for any damage. *See* Contract, p. 2, ¶2.2.1; p. 3, ¶3.0; and pp. 12 – 13, Appendix C.

Appellant’s own proffered exhibits, specifically Appellant’s Exhibits 3 and 4, show that the project in which he participated at ACI was called “Book Sorting Plant,³” and in his Step One grievance dated October 21, 2021, Appellant characterized the project in which he participated as “the (P.I.) **Prison Industries Service** at [ACI].” [emphasis supplied].

Inmates who voluntarily participated in the prison industries project at issue in *Ackerman* and *Gatewood* stripped down and disassembled defective automotive transmissions, which constituted “service work” rather than production or manufacturing work. *See Ackerman*, 415 S.C. at 413, 782 S.E.2d at 758, *and Gatewood*, 416 S.C. at 309, 785 S.E.2d at 603.

² A copy of the contract accompanied SCDC’s December 28, 2022 Motion to Supplement the Record.

³ Appellant’s Exhibits 3 and 4 are attached to his “Motion for Additional Documents for Inclusion into the Record.”
Horton Docket No.: 22-ALJ-04-0008-AP

Thus, like the inmates in the prison industries project at issue in *Ackerman* and *Gatewood*, Appellant did not manufacture or produce any articles, goods, or products.

B. THE CONTRACT BETWEEN SCDC AND THE PRIVATE INDUSTRY SPONSOR NEVER CONTEMPLATED THE PREVAILING WAGE

SCDC's 1991 contract with Penguin Books, which pre-dated the enactment of § 24-3-430(D), never contemplated the prevailing wage, and the project was never intended to operate under the PEICP or PIE program. *See* June 10, 1991 Letter from Tony Ellis, former Director of SCDC's Division of Industries, to a Representative of Penguin Books.⁴

Given the nature of the project in which he participated, SCDC remitted "incentive pay" or "state pay" to Appellant. *See* December 22, 2022 Affidavit of Richard Hodgkiss, Director of SCDC's Division of Support Services and Industries, supported by Appellant's Inmate Payroll History.⁵ *See also* "DISPLAY INMATE'S RATE OF PAY" Print Outs for Appellant dated December 28, 2022.⁶

The other available evidence corroborates the reality that Appellant never participated in one of SCDC's PIECP projects. Unlike inmates who participated or who currently participated in PEICP projects operated by SCDC, Appellant did not have a Private Sector Account into which SCDC remitted his prison industries pay.

To properly evaluate Appellant's pay claim, it would also be helpful, if not essential, to review SCDC's contract with Penguin Books for the time during which Appellant claims to have participated in the prison industries project SCDC operated at ACI (i.e., 1996 to 2000). However,

⁴ Mr. Ellis' letter accompanied SCDC's December 28, 2022 Motion to Supplement the Record.

⁵ Mr. Hodgkiss' single-page affidavit, supported by Appellant's Inmate Payroll History, accompanied SCDC's December 28, 2022 Motion to Supplement the Record.

⁶ Two (2) pages of these print outs accompanied SCDC's December 28, 2022 Motion to Supplement the Record. After the label reading "EMPLOYMENT TYPE," the entry "IP REGULAR INCENTIVE" appears. The initials "IP" designed "incentive pay."

no copies of any contracts between SCDC and Penguin Books, aside from their 1991 contract and subsequent amendments of specific provisions thereof,⁷ have been located. Moreover, it's quite possible SCDC operated its project at ACI without any contracts with Penguin Books other than the 1991 contract on "a course of dealings" basis.

Appellant's "Earned Work Credit Assignment" records show neither the dates during which he participated in the prison industries project at issue, nor an accounting of any labor hours he performed while he participated in the project. *See* "HISTORY OF EWC ASSIGNMENTS" and "EWC INQUIRY" Print Outs for Appellant dated December 28, 2022.⁸ It only shows the dates Appellant was assigned to the project for earned work credit purposes.

Appellant has only estimated the number of labor hours he performed in the project at issue, and as he phrased it, "guesstimated," the overtime hours, and SCDC respectfully asserts the estimation and "guesstimate" offered by Appellant are self-serving.⁹ Additionally, there is no evidence to support Appellant's assertion that the D.E.W. determined the rate of pay to be \$11.10 and \$13.00 for the time periods in question for the book sorting project operated at Allendale Correctional Institution.¹⁰

SCDC's 1991 contract with Penguin Books provided that "[t]he Contractor will pay one dollar (\$1.00) per carton shipped by SCDC." *See* Contract, p. 4, ¶5. Thus, the pay SCDC remitted to Appellant and other inmates under this contract was clearly incentive based rather than at a fixed hourly rate, and there may never have been records generated which accounted for

⁷ These amendments accompanied SCDC's December 28, 2022 Motion to Supplement the Record.

⁸ Four (4) pages of these print outs accompanied SCDC's December 28, 2022 Motion to Supplement the Record.

⁹ *See* "Appellant Horton's Estimations and Calculations," Exhibit 20 to Appellant's December 6th, 2022, filing Additional Documents for Inclusion to the Record and Multiple Requests.

¹⁰ *See* "Appellant Horton's Estimations and Calculations," Exhibit 20 to Appellant's December 6th, 2022, filing Additional Documents for Inclusion to the Record and Multiple Requests.

the number of labor hours Appellant performed while he participated in this project.

Succinctly stated, no records exist by which anyone may to determine the dates upon which Appellant participated in the project SCDC operated at ACI in which Penguin Books participated at the private industry sponsor, let alone the number of labor hours he performed on such dates. *See* Hodgkiss Affidavit.

The materials SCDC included in its December 28, 2022 Motion to Supplement the Record conclusively establish its final agency decision is supported by the “substantial evidence on the whole record.” Under *Porter v. Public Service Comm’n*, 333 S.C. 12, 507 S.E.2d 328 (1998), Appellant has the burden of proving SCDC’s final agency decision is clearly erroneous, arbitrary or capricious, or constitutes an abuse of discretion, and SCDC respectfully asserts he failed to meet his burden.

C. THE APPLICABLE STATUTES OF LIMITATIONS BAR APPELLANT’S PRISON INDUSTRIES PAY CLAIMS

SCDC also respectfully asserts Appellant’s prison industries pay claims are time-barred, and as such, SCDC respectfully urges this Court to dismiss his appeal.

If, contrary to SCDC’s above-provided analysis, § 24-3-430(D) applied to Appellant’s prison industries pay claims, all other provisions of § 24-3-430 would likewise apply. As our Supreme Court recognized in *Adkins*, 360 S.C. at 418, 602 S.E.2d at 54, our legislature did not enact § 24-3-430(D) for the benefit of inmates, as it enacted § 24-3-430(D) and, by extension, the entirety of § 24-3-430, to prevent unfair competition and to aid the public in general. “South Carolina law requires that inmate workers in [prison industries projects] enjoy pay and working conditions comparable to those enjoyed by non-inmate workers.” *South Carolina Dep’t of Corr.*

v. Tomlin, 687 S.C. 652, 694 S.E.2d 25 (Ct. App. 2010) (*overruled on other grounds by Allison v. W.L. Gore & Associates*, 394 S.C. 185, 714 S.E.2d 547 (2011)).

The concept of “comparable pay and working conditions” operates both ways. Regular non-inmate workers would not be able to pursue archaic claims for retroactive backpay with absolutely no limit upon how long they could do so after their employment ended, and Appellant should likewise not be allowed to do so.

Section 24-3-430(A)’s final sentence states “[i]nmates participating in such labor shall not benefit in any manor contradictory to existing statutes.” This language reflects our legislature’s intent that inmates’ prison industries pay claims are subject to any applicable statute of limitations, as well as the doctrine of laches,¹¹ in the same manner as pay claims heled by regular non-inmate workers.

The statute of limitations for governmental entities is, generally, two (2) years. *See* § 15-78-110.¹² The statute of limitations for “an action concerning or in any manner relating to wages claimed under a federal statute or regulation” is one year. *See* § 15-3-560(1).

As, by his own admission, his participation in the prison industries project SCDC operated at ACI in which Penguin Books participated as the private industry sponsor ended in 2000, Appellant’s prison industries pay claims are barred under both the above-referenced statutes of limitations.

CONCLUSION AND SIGNATURE PAGE TO FOLLOW

¹¹ SCDC incorporates by reference, and preserves for appellate review, the argument and analysis it offered in its June 27, 2022, in which it asserted the doctrine of laches barred Appellant’s prison industries pay claim(s).

CONCLUSION

WHEREFORE, SCDC respectfully requests this Court to affirm the final agency decision or dismiss this appeal.

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**



Joseph R. Shakibanasab, SC Bar # 102825
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
Phone: (803) 896-1278
Email: Shakibanasab.joseph@doc.sc.gov

March 6, 2023
Columbia, SC


¹² In § 15-78-20(a), "... [i]t is declared to be the public policy of the State of South Carolina that the State, and its political subdivision are only liable for torts within the limitations of this chapter and in accordance with the principles established herein."

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Robert William Horton, a/k/a William Robert)
Horton, #109013,)
)
Appellant,) **Certificate of Service**
)
vs.) Docket# 22-ALJ-04-0008-AP
)
South Carolina Department of Corrections,)
)
Respondent.)

I hereby certify that a copy of the foregoing *Respondent's Brief and Renewed Motion to Dismiss* was, this date, served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate Robert William Horton
Inmate Number: 109013
Allendale Correctional Institution
Dorm-Room-Bunk: HAB-0050-B


Cheron Hess
Administrative Coordinator
Office of General Counsel
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, South Carolina 29221-1787
(803) 896-3922

March 6, 2023

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Robert William Horton, AKA William Robert Horton, #109013,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

Docket No. 22-ALJ-04-0008-AP
Grievance No. ACI 0181-21

ORDER

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Robert William Horton, AKA William Robert Horton (Appellant or Horton), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant filed an appeal on January 18, 2022 seeking review of the Department's final decision regarding the wages he earned performing labor at Allendale Correctional Institution (Allendale) between 1996 and 2000. On July 26, 2022, this Court issued an Order granting Respondent's motion to hold the case in abeyance pending a South Carolina Supreme Court ruling on related issues in an appeal of this Court's January 20, 2016 decision in Torrence v. South Carolina Dept. of Corrections (Torrence II). On August 3, 2022, the Supreme Court issued an order denying certiorari in Torrence II, making the South Carolina Court of Appeals ruling in the case the final ruling concerning the prevailing wage issues litigated in that case. On September 15, 2022, this Court issued an order reinstating this case to its active docket. Subsequently, both Appellant and Respondent have filed briefs making this case ripe for a decision on the merits.

In addition, both Appellant and Respondent have submitted documents and motions seeking to have those exhibits included in the record on appeal. Respondent objects to certain documents proffered by Appellant. Because the Department refused to hold a hearing or accept and consider any evidence when this grievance was before the agency, this matter is now before me on appeal without a meaningful agency decision to review. Both parties are seeking to introduce into "the record on appeal" new matter that was not part of the review process before the agency.

FILED

09/07/2023

SC Admin. Law Court

The Court is aware of the long history of litigation regarding the issue of paying inmates a prevailing wage pursuant to statutory requirements.¹ Therefore, in the interest of judicial economy, the Court will address the pending motions concerning the record as well as the legal issues presented on the merits in this order.

ISSUES

1. Whether the Court should grant Appellant's motion to supplement the record.
2. Whether the Court should grant Respondent's motion to supplement the record.
3. Whether an inference should lie against the Department for failure to maintain records.
4. Whether Appellant's claims are barred by the Statute of Limitations or Laches.
5. Whether SCDC was required to pay Horton pursuant to Code Section 24-3-430(D) for the work he performed as an inmate from 1996 to 2000.
6. Whether the hourly wages paid to Appellant from 1996 to 2000 conform to the prevailing wage mandate of Section 24-3-430(D).

BACKGROUND

Appellant earned wages for work performed while incarcerated at the Department. Specifically, Appellant's grievance from which this appeal arises is related to work performed at Allendale between 1996 and 2000. Appellant's Step One Grievance number ACI-0181-21 states "Respectfully Requesting Prevailing Wages for working in the (P.I.) Prison Industries Service at Allendale Correctional Institution. Between 1996 to 2000." The Department denied Appellant's Step One and Step Two grievances, finding Appellant was "paid prevailing wages" during the times he was working. On appeal, Appellant submitted evidence and argument relating to work he performed and wages he was paid at Allendale from 1996 to 2000.

¹ The most relevant appellate cases demonstrating the history of litigation seeking to enforce inmates' rights to prevailing wages can be found at:

Torrence v. S.C. Dep't of Corrs., 373 S.C. 586, 646 S.E.2d 866 (2007)(Torrence I).

S.C. Dep't of Corrs. v. Cartrette, 387 S.C. 640, 694 S.E.2d 18 (Ct. App. 2010).

S.C. Dep't of Corrs. v. Tomlin, 387 S.C. 652, 694 S.E.2d 25 (Ct. App. 2010).

Ackerman v. S.C. Dep't of Corrs., 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016).

Torrence v. S.C. Dep't of Corrs., 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021)(cert denied 2023)(Torrence II).

DISCUSSION

Record On Appeal

The Department moves to strike the following exhibits submitted by Appellant with his appellate brief:

- a) Exhibits 5 and 6 (Summary of PI Payroll Hours Screens from 2005 to 2008);
- b) Exhibit 7 (Grievance Lee CI 0506-21 Step One);
- c) Exhibit 8 (Grievance Lee CI 0506-21 Step Two);
- d) Exhibit 9 (Motion to Supplement Record in separate matter 22-ALJ -04-0039);
- e) Exhibit 10 (RTSM for separate matter);
- f) Exhibit 11 (Grievance MRWRC 0091-21 Step One);
- g) Exhibit 12 (Grievance MRWRC 0091-21 Step Two);
- h) Exhibit 13 (Order for separate matter 22-ALJ-04-0048-AP);
- i) Exhibit 14 (A Request to Court & Judge Durden regarding separate grievance);
- j) Exhibit 15 (RTSM for years 1984 to 1987);
- k) Exhibit 16 (Grievance ACI-0176-21 for years 1984-1987);
- l) Exhibit 17 (Correspondence to Ms. McKie);
- m) Exhibit 18 (Return correspondence from Ms. McKie);
- n) Exhibit 19 (Return correspondence from Ms. McKie);
- o) Exhibit 20 (Appellant's calculation of estimated pay owed);
- p) Exhibit 21 (Request to Court for documents);
- q) Exhibit 22 (Appellant's recitation of Automated Requests to Staff); and
- r) Exhibit 23 (Respondent's motion in a separate matter).

The Department argues these exhibits should not be considered by the Court because they are being raised for the first time on appeal and are irrelevant to the issues in this case. "It is axiomatic that an issue cannot be raised for the first time on appeal but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). However,

If a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its

findings and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court.

S.C. Code Ann. § 1-23-380(3). Here, part of Appellant's argument is that he could not produce evidence related to the matter because the Department lost or destroyed evidence of Appellant's wages at Allendale from 1996 to 2000. Appellant moves to supplement the record with the information Appellant asserts the Department lost and additional information supporting his position.

After reviewing the exhibits, the Court finds Exhibits 5 through 18 and Exhibits 22 through 23 do not relate to the matter on appeal, which is Appellant's wages from labor performed at Allendale from 1996 to 2000. These exhibits do not relate to the matter on appeal and were not raised in Appellant's grievances with the Department. Therefore, the Court grants the Department's motion to strike with respect to these exhibits. The remaining exhibits contain portions that relate to the instant grievance. Exhibit 19 states "Grievance[] ACI-0181-21 . . . will not be reopened." Grievance ACI-0181-21 is the grievance from which this appeal arises. Exhibit 20 contains Appellant's calculation of his wages earned at Allendale from 1996 to 2000, among calculations relating to separate matters. Exhibit 21 is Appellant's request for pay statements and time cards from 1982 through 2008 and all of his account records from 1994 to 2008. Appellant's request also contains Appellant's claim that the Department lost these records in 2003. These three exhibits will be considered by the Court insofar as they relate to Appellant's wages at Allendale from 1996 to 2000 and Appellant's motion to supplement the record.

The Department has submitted eight documents with a motion to supplement the record. Exhibits 1-4 relate to a contract with Penguin Books dated from 1991 to 1993. These documents are not direct evidence related to the time period at issue in this matter. The Department argues that they are relevant to show the course of dealing with the employer involved here. Appellant objects to the documents on the basis of relevance from both a factual and legal standpoint. I will grant the motion to supplement the record with these documents, although I recognize that their relevance is tenuous. Appellant has not objected to SCDC's Exhibits 5-8. Therefore, the record is also supplemented with those documents.

Inference Against Party Who Destroys or Fails to Maintain Records

The final issue to be addressed with respect to the record is Appellant's request for documents in the control of SCDC that he argues are necessary to prove his case. The Department objects on the grounds that there is no mechanism for discovery in appeals such as this one. That

is indeed true, as this case is pending before me as an appeal on the record of the decision before the agency. Here, the Department did not hold a hearing or otherwise provide Appellant with an opportunity to present testimony concerning his wage claims before the agency, but summarily denied his grievance with a statement that he had received the prevailing wage. However, in its brief submitted in this appeal, the Department does not argue that Appellant received the prevailing wage, but rather that he was not entitled to the prevailing wage. Thus, the Department seems to have conceded that its decision, on appeal here, is in error. Both parties are seeking to supplement the record with materials that were not considered by the agency in reaching that decision. Therefore, it is appropriate to remand this matter back to SCDC with instructions to provide Appellant with a meaningful review and due process in reconsidering its agency decision. Essential to that process is an opportunity for Appellant to be given access to any and all records in the control of SCDC that touch upon this claim. The Department has (or had) custody and control of the records that would refute or substantiate Appellant's claims. Appellant avers that the payroll records that he had personally saved were not returned to him by the Department when he was transferred between institutions in 2003. SCDC has issued the sworn affidavit of its Director of Support Services and Industries stating that the Department has no records of the days and hours Appellant worked during the relevant period. However, it is clear from the materials before me that there are records available from which a fair estimate could be made of the hours likely worked by Appellant during the relevant period.

While it is true that a person bringing a claim such as this one has the burden of proving his case, a refusal on the part of the Department to produce the relevant records will be viewed by this Court as creating an inference that those documents would be favorable to Appellant's claim. South Carolina courts have long recognized that a party is entitled to a favorable presumption about the contents of missing evidence when an opponent is responsible for the destruction of evidence that might otherwise be expected to have been relevant. Kevin Eberle, Spoliation in South Carolina, 19-SEP S.C. Law., Sept. 2007, 26, 32.). In Kershaw County Board of Education v. U.S. Gypsum Co., 302 S.C. 390, 394, 396 S.E.2d 369, 372 (1990), the Supreme Court upheld a jury charge stating "When evidence is lost or destroyed by a party an inference may be drawn by the jury that the evidence which was lost or destroyed by that party would have been adverse to that party." Therefore, on remand the Department is instructed to provide Horton with access to

all documents in its custody and control that he seeks and which have any bearing on creating an estimate of the pay due to Horton.

Are Appellant's claims barred by the Statute of Limitations or Laches?

The Department argues Appellant's claim is barred under the statute of limitations generally applicable to governmental entities. S.C. Code Ann. § 15-78-110 (2005) states "any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered." Additionally, S.C. Code Ann. § 15-3-560(1) (2005) provides the statute of limitations for "[a]n action concerning or in any manner relating to wages claimed under a Federal statute or regulation" is one year. S.C. Code Ann. § 24-3-430(A) (2007) provides that inmates participating in a labor program "shall not benefit in any manner contradictory to existing statutes." Therefore, the Department argues either the two-year statute of limitations under section 15-78-110 or, alternatively, the one-year statute of limitations under section 15-3-560(1) applies.

Both above-cited statutes of limitations are part of the South Carolina Tort Claims Act. See S.C. Code Ann. § 15-78-10 (2005). However, a claim brought pursuant to S.C. Code 24-3-430(D) does not give rise to a private, civil cause of action. Wicker v. S.C. Dep't of Corr., 360 S.C. 421, 423, 602 S.E.2d 56, 57 (2004). "DOC's failure to pay a certain wage simply does not constitute a tort so as to be cognizable under the Tort Claims Act." Adkins, 360 S.C. at 417-18, 602 S.E.2d at 54. "In any event, we agree with the circuit court that the statutes relied upon by Inmates do not give rise to a private, civil cause of action." Id. at 418, 602 S.E.2d at 54. Since section 24-3-430(D) does not give rise to a private action cognizable under the Tort Claims Act, the statutes of limitations delineated by sections 15-78-110 and 15-3-560(1) do not apply to section 24-3-430(D). Moreover, in Torrence II, the court allowed Torrence to claim the difference between the wage he was paid and the prevailing wage where his grievance was filed ten years after the first wages he was challenging. Torrence, 433 S.C. at 637. That decision suggests that an inmate is not bound by time limits to initiate a grievance, such as the one here, implicating a Department policy or procedure. Therefore, no statute of limitations bars Appellant's claim in this matter.

In an order issued July 26, 2022, this Court denied the Department's motion to dismiss Horton's claims under the doctrine of laches. Laches is an equitable doctrine. Jones v. Leagan, 384 S.C. 1, 19, 681 S.E.2d 6, 16 (Ct. App. 2009). "Courts have the inherent power to do all things

reasonably necessary to ensure that just results are reached to the fullest extent possible.” Id. (citing Ex Parte Dibble, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983)). “Under the doctrine of laches, if a party, knowing his rights, does not timely assert them, but by unreasonable delay causes his adversary to incur expenses or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce these rights.” Muir v. C.R. Bard, Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 599 (Ct. App. 1999). “The burden of proof is upon the person claiming laches.” Id. at 297, 519 S.E.2d at 599. “[W]hether laches applies in a particular situation is highly fact-specific, so each case must be judged on its own merits.” Id. “Laches is the neglect for an unreasonable and unexplained amount of time, *under circumstances permitting diligence*, to do what in law should have been done.” Mid-State Trust, II v. Wright, 323 S.C. 303, 307, 474 S.E.2d 421, 423 (1996) (emphasis added); see also Muir, 336 S.C. at 296, 519 S.E.2d at 598 (“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.”). “Importantly, delay in the assertion of a right does not, in and of itself, constitute laches; rather, ‘[s]o long as there is no knowledge of the wrong committed and no refusal to embrace opportunity to ascertain facts, there can be no laches.’” Mid-State Trust, II, 323 S.C. at 307, 474 S.E.2d at 423. It is not apparent that Appellant has unduly delayed bringing this claim for prevailing wages. For laches to attach, the circumstances must be such as to import that the complainant has abandoned or surrendered the claim or right which he now asserts. Jones, 384 S.C. at 20, 681 S.E.2d at 16. Here, SCDC has taken the position that inmates are not due additional wages and has refused to provide a forum for bringing such claims. The issues of how such claims may be presented and whether there are rights to back pay have been contested by the Department with several cases going to the South Carolina Supreme Court. The recent South Carolina Supreme Court decision denying *certiorari* in Torrence II settled many of the remaining issues. Under the circumstances, the Court finds that four of the five elements necessary for establishing laches are not met here. The delay is not unreasonable nor for an unexplained length of time. Appellant had no assurance of his rights prior to the Court of Appeals ruling in Torrence II. There has been no reliance on non-assertion by the Department and no prejudice to the Department due to delay. It would not be equitable to allow SCDC to litigate the validity of these prevailing wage claims for over two decades and then find that inmates’ claims raised at the conclusion of that litigation were neglected for an unreasonable and unexplained length of time. Such a ruling would be tantamount to a finding that SCDC’s positions in litigation

were so frivolous that inmates should have known what the eventual ruling of our Supreme Court would be.

Whether SCDC was required to pay Horton pursuant to Code Section 24-3-430(D) for the work he performed as an inmate from 1996 to 2000.

In Gatewood v. S.C. Dep't. of Corr., 416 S.C. 304, 319-20, 785 S.E.2d 600, 609 (Ct. App 2016)(cert. denied 2017), the Court of Appeals held that it is a violation of due process to retroactively apply statutes to divest an inmate of the right to wages that vested at the time they were earned. Therefore, the first inquiry in determining if additional wages are due to Appellant is to determine what version of the law was effective at the time the wages were earned. In its brief the Department acknowledges that section 24-3-430 was enacted in 1995. This court's review of amendments to the statute reflects that section 430(D) was enacted in 1995 and was not amended during the period relevant to these claims. It states, "No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector."

SCDC makes two arguments as to why the requirement of Section 430(D) does not apply to the claim at issue here. First, the Department argues that, because its contract with Penguin Books (providing for the work Horton was employed to perform) predated the enactment of the statute, the statute does not apply. The Department argues that "service work" was performed pursuant to this contract and that because such work was allowed prior to the enactment of section 24-3-430(D), it is not subject to the statute. This argument directly contravenes the Court of Appeals' decision in Ackerman v. S.C. Dep't. of Corr., 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016). S.C. Code Ann. § 24-1-295 (Section 295), enacted in 2007, allows the Department to pay an inmate less than the prevailing wage under service work contracts. In Ackerman, the court held that Section 295 may not be applied retroactively. The Ackerman court engaged in a lengthy discussion of the legislative history of budget provisos dealing with this issue and the enactment of Section 295. Language substantially similar to Section 295 was enacted in annual budget provisos for the fiscal years 2001-02 to 2007-08. However, there was a lapse between the 2006-07 budget proviso and the effective date of Section 295. The Ackerman court noted, "[F]rom July 1, 2007 to August 1, 2007, there existed no authorization for SCDC to pay participating inmates below the prevailing wage." Id. at p. 415 n.3. Likewise, there was no authorization for SCDC to pay less than the prevailing wage from the time section 24-3-430(D) was effective in 1995 until the first budget proviso was effective on July 1, 2001. The entirety of Horton's claim at issue in this matter falls within the period after the enactment of section 24-3-430(D) and prior to the

enactment of the first budget proviso making an exception to the prevailing wage requirement for service work. Therefore, Horton's right to be paid the prevailing wage for his work at issue is established both by the statutory language and the rulings of the appellate courts of this state.

The Department next asserts that the contract with Penguin Books did not contemplate paying the prevailing wage. However, the Department is not able to produce a contract that covers the period in question. More importantly, the Department offers no legal authority whatsoever to support the idea that its course of dealings or agreement with Penguin Books overrides the mandate of the statute. This Court will not consider arguments not supported by citation to legal authority. Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc., 360 S.C. 473, 480 n. 4, 602 S.E.2d 83, 87 n. 4 (Ct. App. 2004) ("It is not necessary for this court to address Appellants' remaining issues because Appellants fail to provide legal authority to support their arguments.")

Did the hourly wages paid to Appellant from 1996 to 2000 conform to the prevailing wage mandate of Section 24-3-430(D)?

South Carolina's Private Sector Prison Industries Program is authorized as part of the federal Prison Industries Enhancement Certification Program under 18 U.S.C.A. § 1761(c) (Westlaw Edge through Publ. L. No. 118-10). Guidelines for programs such as these are found at 64 Fed. Reg. 17000-14 (Apr. 7, 1999) ("PIECP Guideline"). The PIECP Guideline states that the prevailing wage must be obtained from the state agency that determines wage rates. PIECP Guideline at 17010. The PIECP Guideline states that this agency is usually the "Department of Economic Security." In South Carolina, this agency would have been the Employment Security Commission (ESC) at the times relevant to this case, but would now be the Department of Employment and Workforce (DEW).

The record before me does not contain a determination by DEW as to what the prevailing wage was for the labor that Horton performed sorting books from 1996 to 2000. On remand, the Department must obtain the data to determine this wage from DEW. The record does contain information from which a fair estimate can be made as to the hours worked by Horton and the wages he was paid. Therefore, on remand SCDC shall determine the prevailing wage for the job of Shipping and Receiving Clerk and Group/Section Lead during the periods Horton performed those jobs. From that information and the estimate of the hours worked by Horton, the proper wages can be calculated. The Department shall remit to Horton any difference between the wages actually paid and those that should have been paid if a prevailing wage rate had been paid.

ORDER

IT IS THEREFORE ORDERED that the Department's Motion to Strike is **GRANTED** with respect to Appellant's Exhibits 5 through 18, 22 and 23 insofar as those exhibits relate to matters other than the appeal of Grievance ACI-0181-21. Only those portions of exhibits 19 through 21 that relate to Grievance ACI-0181-21 and Appellant's motion to supplement the record are made part of the record for consideration on remand. The motions of the parties to supplement the record are otherwise **GRANTED**.

IT IS ALSO ORDERED that this matter is **REMANDED** to the Department of Corrections with instructions to determine what wages are due to Appellant in keeping with this Order.

IT IS ALSO ORDERED that the Department determine the prevailing wage from the Department of Employment and Workforce for all hours of regular and overtime labor performed by Appellant from September, 1996, to September, 2000.

IT IS FURTHER ORDERED that the Department disburse, in accordance with S.C. Code Ann. §24-3-40 (Supp. 2022), the difference between the amounts previously disbursed and the prevailing wage.

AND IT IS SO ORDERED.



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

September 7, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, 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, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

September 7, 2023
Columbia, South Carolina

FILED

09/07/2023

SC Admin. Law Court

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

RECEIVED

JAN 17 2024

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

William R. Horton
William Robert Horton, #109013
Allendale C.I., F3 B-50
1057 Revolutionary Trail
Fairfax, SC 29827
(NO PHONE)

Appellant, Pro Se

William R. Horton, #109013
Allendale Corr., Inst., F3 B-50
1057 Revolutionary Trail
Fairfax, SC 29827

January 12, 2024

RECEIVED

JAN 17 2024
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.

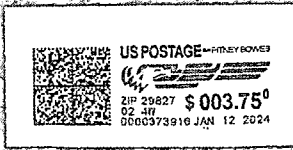
Respectfully,



William R. Horton

cc: FILE

William R. Horton #109013
Allendale Corr. Inst. F3-650
1057 Revolutionary Trail
Furlex, SC 29827



Jenny A. Kitchings, Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
JAN 17 2024
SC Court of Appeals

LEGAL MAIL

