

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appellate Case No.2024-000124

FEB 21 2024

SC Court of Appeals

John Igeneri, #331280, Appellant,

-Vs-

South Carolina Dep't of Crrections, Respondent,

PETITION FOR REHEARING

AND

REHEARING EN BANC

John Igeneri
SCDC# 331280
Tyger River Corr. Inst.
200 Prison Rd.
Enoree, SC. 29335

Appellant, pro-se

COMES NOW, above captioned, Appellant, John Igneri, pro-se respectfully moving this Honorable Court for Rehearing and Rehearing En Banc pursuant to Rule 219, SCACR.

On February 2, 2024 this Court dismissed the appeal stating that the Administrative Law Court's Order remanding to the South Carolina Department of Corrections is not final citing S.C. Code Ann. §1-23-610(A)(1)(Supp.2003); and Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Env'tl Control, 387 S.C. 265, 267, 692 S.E.2d 894 (2010). Appellant received this Court's denial on February 6, 2024 via Institutional Legal Mail. See envelope attached.

Appellant believes this Court may have inadvertently overlooked in reaching it's decision. In the case of Torrence v. South Carolina Dep't of Corr. 433 S.C. 224, 857 S.E.2d 549 (2021) is on all four corners of Appellant's. Torrence just as Appellant was an inmate who participated in the private industries program who alleged he was not paid the wages required by law, who appealed from the decision of the Department of Corrections (DOC), which as with Appellant the DOC denied Torrence's claim at every step of the grievance process.

In Torrence supra, the ALC reversed and remanded to the DOC and Torrence appealed. The S.C. Court of Appeals dismissed Torrence's appeal as interlocutory and writ of cert. was granted. The Torrence Court noted the general proposition that where the ALC order includes a remand to the Administrative Agency, there is no final judgment in the vast majority of situations.

The Torrence Court went on to find that Torrence presents an exception to the typical situation, in that despite the

presence of a remand -- the ALC's decision was in fact, final.

This is so because the ALC as a matter of law on dispositive issues and granted Torrence the very relief Torrence sought.

The remand left the DOC with no further discretion or decision to make. The order merely ordered the Agency to award Torrence a sum-certain amount based on a defined methodology determined by the ALC. The Torrence Court said under these circumstances the remand may be viewed a ministerial, for the ALC determined the rights of the parties with finality. Id

Our Supreme Court in Torrence supra held: The ALC's Order remanding inmates claim to the DOC was final judgment for appeal purposes. The Torrence Court granted cert. and reversed the Court of Appeals dismissal of the appeal and order the case to be heard on the merits.

Appellant's case sits on all four corners of Torrence and Torrence should control here. In the instant matter the ALC's Order remanding to the DOC was very specific and left the DOC with no discretion, for the Order states: the matter is **Remand** to the South Carolina Department of Corrections to calculate the additional pay owed to Appellant under the prevailing wage for two pay periods prior to November 17, 2022.

A stringent review of the Order leaves the DOC with no further discretion or decision to make. The Order merely Ordered the DOC to award Appellant with a sum-certain amount based on a defined methodology determined by the ALC. Clearly the ALC's Order has determined the rights of the parties as a matter of law as there is no further action or approval needed from the Court, i.e. no "act needs to be done".

Appellant respects the ALC's ruling but strongly disagrees with the ALC's reasoning. The ALC's Order Remanding the case is a final order for appeal purposes and rehearing and rehearing should be granted and the appeal reinstated and briefed on the merits.

CONCLUSION

Based on the above, the Rehearing and Rehearing En Banc should be granted and appeal reinstated and heard on the merits.

1st John Igneri

John Igneri

Appellant, pro-se

The South Carolina Court of Appeals

John Igneri, #331280, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2024-000124

ORDER

This appeal arises out of the Administrative Law Court's order remanding to the South Carolina Department of Corrections. Because the underlying order is not final, this appeal is dismissed. *See* S.C. Code Ann. § 1-23-610(A)(1) (Supp. 2023) (providing judicial review may only be sought from a final decision of the Administrative Law Court); *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Env'tl. Control*, 387 S.C. 265, 267, 692 S.E.2d 894 (2010) ("If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory."). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.


_____, J.
FOR THE COURT

Columbia, South Carolina

FILED
Feb 02 2024

cc:

John Igneri, 00331280

Christina Catoe Bigelow, Esquire

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CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed Petition for Rehearing on the persons whose names and addresses appear below by placing the aforesaid in properly addressed, first-class postage affixed envelopes and placed in the U.S. Mail this 15 day of Feb, 2024.

Those Served:

Respectfully Submitted,

Jenny Abbott Kitchings, Clerk /s/
SC. Court of Appeals
P.O. Box 11629
Columbia, SC. 29211

John Ignéri
John Ignéri

Appellant, pro-se

Christina Catoe Bigelow
SCDC
P.O. Box 21787
Columbia, SC. 29211-1787

Sworn to and Subscribed Before

Me This 15 Day Of Feb, 2024

Paul Thomas Cullen
NOTARY PUBLIC

My Comm. Expires Dec. 10, 2024

John Igneri # 331280

Tyger River Ct 6-19B

200 Prison Rd.

Enoree, SC, 29335

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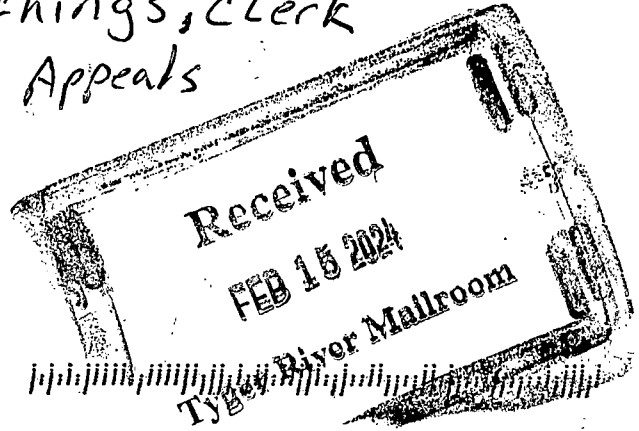
SC Court of Appeals

Jenny Abbott Kitchings, Clerk

South Carolina Court of Appeals

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