

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Nicholas Boan, #302151,)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)

Docket No.: 16-ALJ-04-0317-AP

FINAL ORDER
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SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed by Nicholas Boan (Appellant), an inmate in the custody of the South Carolina Department of Corrections (Respondent or Department). The Appellant is appealing the Department's final decision finding that the Appellant was correctly paid while working in the Prison Industries Service Projects (PISP) program operated at Lee Correctional Institution from September 2005 to January 2007 for the private industry sponsor U.S. Textiles.

The Appellant filed a Step 1 Grievance on November 3, 2008 asserting that the Department failed to pay him the prevailing wage required under *Wicker v. South Carolina Department of Corrections*, *Torrence v. South Carolina Department of Corrections*, and statutory law when he worked in the prison industries program from September 2005 to January 2007.¹ Due to the length of time it took for the Department to respond, the Appellant's grievance was elevated to a Step 2 Grievance. The Department then denied the Appellant's Step 2 Grievance, stating that the South Carolina Legislature enacted budget provisos and statutes which authorize the Department to pay inmates a wage that is less than the prevailing wage for work of a similar nature in the private sector.

¹ *Wicker v. South Carolina Department of Corrections*, 360 S.C. 421, 602 S.E.2d 56 (2004); *Torrence v. South Carolina Department of Corrections*, 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021), *reh'g denied* (Aug. 4, 2021), *cert. denied* (Aug. 3, 2022). And "[i]n 1995, the South Carolina legislature enacted section 24-3-430 of the South Carolina Code (2007) to authorize the expansion of the Prison Industries program into the private sector. This expansion allowed qualified private entities to use inmate labor but required the wages for participating inmates to be no less than 'the prevailing wage for work of [a] similar nature in the private sector.' Act No. 7, 1995 S.C. Acts 7. Section 24-3-430 became effective on July 1, 1995. *Id.* at 102." *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 309, 785 S.E.2d 600, 603 (Ct. App. 2016).

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On April 14, 2016 the Appellant filed a Notice of Appeal with this court and on April 20, 2016 this case was assigned to a different Administrative Law Judge. On June 7, 2016, the Appellant filed his brief. On July 25, 2016 the Department filed a Motion to Dismiss and on August 2, 2016 the Appellant filed his response. On August 4, 2016 the court denied the Department's Motion to Dismiss. On August 16, 2016 the Department filed a Motion to Hold in Abeyance and on September 1, 2016 the court granted the Department's motion. On April 12, 2018 the court granted the Department's Renewed Motion to Hold in Abeyance. On October 22, 2022, the Appellant filed a Motion for Default Order and on November 2, 2022, the Department filed a response to the Appellant's motion and a Request for Scheduling Order.

On November 10, 2022, the court reinstated the appeal to the active docket and gave the Department sixty (60) days to file a brief. On May 26, 2023, the court issued a subsequent Order giving the Department thirty (30) days to file a brief. On June 27, 2023 the Department filed a Motion to Dismiss and Brief in the Alternative and Motion to Supplement the Record. In its motion, the Department asks the court to supplement the record with a print-out of the Appellant's Prison Industry Private Sector Accounting Account Summary, U.S. Textiles Contract dated April 5, 2005, U.S. Textiles Contract dated September 1, 2006, with certifications from S.C. Employment Security Commission and S.C. Department of Commerce, and Letter from Tony Ellis to Sam McClary. On June 30, 2023 the Appellant filed Appellant's Motion to grant asking the court to award him \$150,000 tax free for back pay, overtime pay, pain and suffering, seventeen years of interest on the money, for withholding payment, and wrongful termination under worker's compensation.

Upon the retirement of the presiding judge, the case was reassigned to another Administrative Law Judge on the court. On September 21, 2023 this appeal was reassigned to the undersigned.

DISCUSSION

The court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). The court's appellate jurisdiction in inmate appeals is limited to cases involving denial of state created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious

rule violation. *Id.* Later, the Supreme Court held that this court has jurisdiction to hear inmate wage claim grievances in the limited circumstance where the state has created a statutory right to that wage. *Wicker v. S.C. Department of Corrections*, 360 S.C. 421, 423–24, 602 S.E.2d 56, 57 (2004) (“We find that where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law.”).

However, beginning July 1, 2001 the legislature enacted the first of a series of yearly budget provisos permitting the Department to pay participating inmates less than the prevailing wage for service work. *Ackerman v. South Carolina Department of Corrections*, 415 S.C. 412, 415, 782 S.E.2d 757, 758-759 (Ct. App. 2016). The legislature eventually codified the yearly budget proviso in subsection 24-1-295 of the South Carolina Code effective August 1, 2007. *Id.* Pursuant to subsection 24-1-295 of the South Carolina Code, service work is defined as any work that includes repair, replacement of original manufactured items, packaging, sorting, recycling, labeling, or similar work that is not original equipment manufacturing. *Id.*

The South Carolina Supreme Court recently clarified that “[a] claim that implicates a state-created liberty or property interest is not required for the ALC to have subject matter jurisdiction over the appeal...however, the ALC...may summarily dismiss an inmate’s grievance if it does not implicate a state-created liberty or property interest sufficient to trigger procedural due process guarantees.” *Allen v. South Carolina Department of Corrections*, 439 S.C. 164, 170-171, 886 S.E.2d 671, 674 (2023).

In this case, the Appellant is requesting backpay from the Department for his participation from September 2005 to January 2007 in the Prison Industries Service Project for the private industry sponsor U.S. Textiles operated at Lee Correctional Institution. The Department asserts that this project operated by U.S. Textiles, whereby hosiery was packaged, was a service project governed by the budget provisos which authorized service work and permitted the Department to pay participating inmates less than the prevailing wage for service work. Therefore, because the U.S. Textiles project was a service project governed by the budget provisos, the Appellant is not entitled to be paid pursuant to the prevailing wage statute.

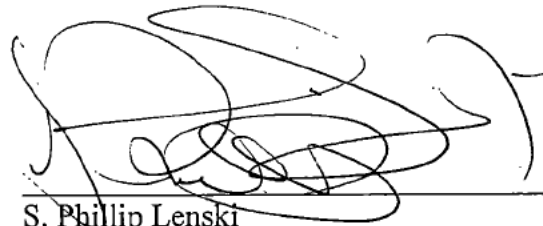
When reviewing the Department's decisions in inmate grievance matters, the court sits in an appellate capacity. *SCDC v. Mitchell*, 377 S.C. 256, 659 S.E.2d 233 (Ct. App. 2008). Consequently, the review in these inmate grievance cases is limited to the record before the court. Pursuant to *Slezak*, the court is to have jurisdiction over all properly perfected inmate appeals, but

"[s]ummary dismissal may be appropriate where the inmate's grievance does not implicate a state-created liberty or property interest." See *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E. 2d 506, 508 (2004). Because the yearly budget provisos enacted by the legislature for the years 2001-2007 specifically authorized the Department to pay inmates less than the prevailing wage for service work, there is no state-created liberty or property interest implicated here. Based on the foregoing,

IT IS HEREBY ORDERED that the Department's Motion to Supplement the Record is **GRANTED**.

IT IS FURTHER ORDERED that the Department's Motion to Dismiss is **GRANTED** and this appeal is hereby **DISMISSED**.

AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

December 4, 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).

This 4th day of December 2023

Judicial Law Clerk