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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FOR ADMINISTRATIVE LAW COURT
ROBERT L. REIBOLD, ADMINISTRATIVE LAW JUDGE

APPELLATE CASE No. 2024-000471

Randy Murphy, #176259

Appellant

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Respondent

BRIEF OF APPELLANT

RANDY MURPHY, #176259

BY:

Randy Murphy
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STATEMENT OF ISSUES ON APPEAL

1. DID THE SOUTH CAROLINA DEPARTMENT OF CORRECTION'S NEW GRIEVANCE POLICY GA-01.12§13.2 and 13.10 SUPERSEDE ADM-15.13§12.1?
2. DID APPELLANT FAIL TO INITIATE HIS PREVAILING WAGE CLAIM IN ACCORDANCE WITH S.C.D.C. POLICY ADM-15.13§12.1?
3. DID THE LIVESAY INSTITUTION FAIL TO PROCESS APPELLANT'S GRIEVANCE UNDER THE PROPER PROCEDURE FOR GRIEVANCES ALLEGING CRIMINAL ACTIVITY?

STATEMENT OF CASE

This matter is pending before this South Carolina Court of Appeals pursuant to an appeal filed by Randy Murphy (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). In the present appeal, Appellant appeals the Administrative Law Judge's dismissal of his appeal claiming a lack of jurisdiction based upon Appellant's failure to exhaust his administrative remedies.

PROCEDURAL HISTORY

On 12-31-2022, Appellant wrote to Inmate Financial on the institutional kiosk machine and complained about the department's failure to pay him prevailing wages during his employment in the prison industries program. On 2-14-2023, the Financial Coordinator responded stating that "This is not handle by me". On January 2, 2023, Appellant filed a Step 1 grievance contending that he was not paid a prevailing wage and seeking "to be paid all my back pay and overtime since I started work till Sep. 2022. The Warden reviewed the grievance and denied it, explaining in part that the Department disagreed with Appellant's view of legal cases cited and that he had been paid wages approved by the

governing authority of South Carolina. Appellant received that decision on January 4, 2023.

Also on January 4, 2023, Appellant submitted a Step 2 Grievance to the Department restating his claim and also stating "I would like to be paid all my back pay and overtime". The Responsible official denied the step 2 grievance on October 24, 2023, explaining that Appellant's grievance was untimely under SCDC Policy ADM-15.13§12.1, which governs problems with inmate pay.

On November 3, 2023, Appellant filed an appeal to the Administrative Law Court. ON November 20, 2023, it was assigned to the Honorable Robert L. Reibold, Administrative Law Judge. Appellant filed his initial brief on January 23, 2024, prior to the date on which the record on appeal was due. Appellant's brief declared the issue on appeal to be: DID THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS VIOLATE STATE STATUTE S.C.CODE 430(C) and (D) BY FAILING TO INFORM APPELLANT OF THE CONDITIONS OF HIS EMPLOYMENT AND TO PAY HIM THE PREVAILING WAGES? Elsewhere in his brief, Appellant also referenced section 24-3-40(Supp.2023) and raised a claim for payment based upon a "constructive breach of trust".

The department subsequently sought, on February 1, 2024, an extension of time in which to file the record on appeal. While the extension was denied, the filing of the motion itself resulted in a change to the timeline for service of the record on appeal. As of the date of this initial brief, the record has not been filed.

On March 11, 2024, the Honorable Robert L. Reibold dismissed the appeal stating that "Because Appellant failed to exhaust his

administrative remedies, and this failure deprives the court of jurisdiction, dismissal is appropriate". This appeal follows.

FACTUAL BACKGROUND

Appellant is incarcerated in the custody of the Department. He is asserting that he worked in the Prison Industries Program from July 2, 2016 through September 10, 2022, and was paid an average pay of \$7.36 per hour.

DISCUSSION

Appellant contends that the Administrative Law Court's ruling that it lacked jurisdiction because Appellant failed to exhaust his administrative remedies is in error based on three (3) grounds. 1. SCDC Policy ADM-15.13§12.1 has been superseded by the new SCDC Policy GA-01.12§13.2 and 13.10; 2. his Honor incorrectly finds that Appellant failed to initiate his claim by first filing an Automated Request To Staff Member on the Kiosk; and 3. That Appellant's grievance contained allegations of criminal activity which if properly filed would have exempted him from having to seek an informal resolution on the kiosk.

GROUND 1: SUPERSEDE

On September 1, 2023, the South Carolina Department of Corrections, through its Responsible Authority (General Counsel) updated the department Grievance Policy GA-01.12 and stated that it "Supersedes: GA-01.12-May 12, 2014. It then added the following language to section 13.2: "Unless a separate SCDC Policy requires filing a grievance within a shorter period of time, any and all grievances that involve a continuous matter (Prison Industries Pay) must be filed within two (2) years of when the issue arose, or the

grievant should have known about it. If the issue is older than two(2) years but has continued to be an issue that is grievable, only the two(2) years portion immediately prior to filing of the grievance will be considered. This section does not apply to grievances pertaining to PREA(Prison Rape Elimination Act) or criminal matters".

Here, that new language specifically addresses the prison industries pay dispute and concedes that the matter is governed by the grievance policy. It also concedes that the P.I.P. issue is a continuing matter, which confirms this Honorable Court of Appeal's findings that this is a policy and procedure issue. Torrence v. South Carolina Department of Corrections, 433 S.C. 224, 857 S.E.2d 549(S.C.App 2021). In §13.10 of the new grievance policy, it states the following: "13.10 Exemptions to the eight (8) working daytime limit requirement will be made for grievances concerning policies/procedures, and PREA allegations. Exceptions may also be made for incident grievances, provided that the inmate can show reasonable cause. i.e., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc. All exceptions will be determined by the Agency inmate Grievance Coordinator/Designee of the Inmate Grievance Branch".

Under this new language in section 13.10, it is speaking in concerns to the eight (8) day time limit to file an informal resolution on the Automated Request To Staff Member on the Kiosk in accordance with section 13.2 of this grievance policy, which governs the steps in filing a grievance. Clearly, it lists policy and procedure matters as exempt from filing informal resolutions

on the kiosk before filing a grievance. And because this new grievance policy clearly governs the P.I.P issue, it clearly supersedes the ADM-15.13§12.1 mandate concerning the 15 day time limit to file the ARTSM on the kiosk. The Department is currently using this new policy in limiting its settlement offers to a two (2) year limit in several pending actions before the Administrative Law Court.

GROUND 2: AUTOMATED REQUEST TO STAFF MEMBER

In his Order, his honor states that, "Appellant initiated the claim using the standard internal grievance procedure rather than the automated kiosk".see Order, Footnote 3, page 4. This is incorrect. On 12-31-2022, Appellant wrote the following to "Inmate Financial" on the institutional kiosk machine: "Forward to headquarters prevailing wage claim. I participated in Prison Industries Program and was not paid the wages required by law section 24-3-430 of the South Carolina Code 2007 provides that inmates must receive the prevailing wage for their salaries while employed with any private sector prison industries the federal framework which our state law is based on I would like to be paid all my back pay and overtime for the time that I have worked in prison industries under Torrence vs SC 433 SC 224 857 se2d 549 and al shabazz vs state 338 sc 354 se2d 742 2000".see Inmate Kiosk Number 22-02950117. On 2-14-23, the Financial Coordinator (Mrs. Catour) responded stating that, "This is not handle by me."

Clearly, Appellant did seek to institute a proper complaint under the ADM policy by writing to the "Inmate Finance" designation on the kiosk. While the department has several different policy designations that deal with inmate pay

(i.e. OP-21.04§56, ADM-15.13, ADM-15.10, etc.) there is only one (1) designated spot on the kiosk (Inmate Finances) to address inmate pay.

In each of those policy designations, they all speak on the warden of each institution assigning one employee over inmate finances (i.e. OP-21.04§56, ADM-10.13§1.2 and ADM-15.13§5). Here at Livesay, the designated financial official is Mr. Catour who serves as the Inmate Financial Coordinator. The majority of inmates complaining of prevailing wage issues sought help out on the kiosk machine. So much so, that both Mrs. Catour and Mrs. Hernandez (Grievance Coordinator), made an announcement on the institutional intercom for all inmates to stop writing on the kiosk concerning the prevailing wages issue. They instructed everyone to file the Step 1 grievance instead. Therefore, even if appellant had not pursued the claim through ADM policy as his honor alleged, that avenue was not available to Livesay inmates.

GROUND 3. GRIEVANCE ALLEGING CRIMINAL ACTIVITY

Appellant contends that because his step 1 grievance included criminal activity, he was not required to submit an ARTSM on the kiosk, and the department was not procedurally allowed to process the grievance under the standard procedures. Under SCDC Policy GA-01.12 section 13.2, it states the following in pertinent part: "Inmates must make an effort to informally resolve a grievance by submitting a Request To Staff Member form to the appropriate supervisor/staff within eight (8) working days of the incident. However, in certain cases, informal resolution may not be appropriate or possible (e.g. when the matter involves allegations

of criminal activity)...see Procedure 15., below for more information on processing a grievance alleging criminal activity."

In the instant case, Appellant is alleging that the department intentionally failed to pay him prevailing wages in violation of S.C.Code §24-3-430(D); failed to inform him of the conditions of his employment in violation of S.C.Code §24-3-430(C); and failure to comply with S.C.Code §24-3-40's mandate on the disposition of prisoner wages.see Order of Dismissal, Page 5.

Those violations constitute the acts of breach of trust, Brown v. Odom, 425 S.C. 420, 823 S.E.2d 183 (S.C.App.2019), theft, Commonwealth v. Goodco Mechanical, INC., 291 A3d 378 (PA Super 2023), and fraud, Gatewood v. South Carolina Dept. of Corrections, 416 S.C. 304, 785 S.E.2d 600 (S.C.App.2016).

Under Departmental policy, GA-01.12 section 15, grievances alleging criminal activity are not processed in the same manner as regular grievances. Those grievances are immediately sent to the Agency Inmate Grievance Coordinator/designee, Inmate Grievance Branch, who must consult with the Office of the Inspector General to determine if a criminal investigation would be appropriate.

The department failed to immediately send Appellant's step 1 grievance to the Agency Inmate Grievance Branch Coordinator, or to the Inspector General's office. Instead, the department skipped that step in the grievance procedure and processed the grievance in the standard process.

Whatever the reason for doing so, (self serving, to prevent criminal investigation) the department committed a procedural

misstep that deprived appellant a crucial step in receiving a meaningful remedy in the recovery of the stolen funds that were gained by the department through the P.I.P. scheme. Therefore, the Administrative Law Judge lacked subject matter jurisdiction to consider the issue of whether or not appellant exhausted his administrative remedies by failing to comply with SCDC Policy ADM-15.13 section 12.1. Instead, the Court's review should have been limited to whether the department's procedural misstep defaulted it from raising the ADM policy issue.

CONCLUSION

The Order of Dismissal should be reversed and this matter be remanded back down for a determination on the merits of Appellant's issues.

This 9 day of April 2024,

BY: Randy Murphy
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CERTIFICATE OF SERVICE

I, Randy Murphy (Appellant), do hereby certify that I did serve the "INITIAL BRIEF OF APPELLANT" on the Respondent by depositing one copy of the same in the U.S. mail, postage prepaid, and address as follows:

GENERAL COUNSEL
P.O. BOX 21787
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This 9 day of April 2024.

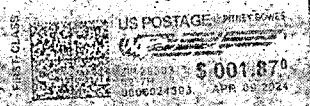
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