

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT
Crystal M. Rookard, Administrative Law Judge

SC Court of Appeals

Appellant Case. No. 2024-000603

South Carolina Department of Corrections,

Respondent,

v.

Robert Lee, #348833

Appellant.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Robert Lee

Robert Lee #348833
Allendale Corr. Inst. F4-B61
1057 Revolutionary Trail
Fairfax, S.C. 29827

Appellant, Pro se

APPELLANT'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

This motion is before this Court pursuant to Rule 240, SCACR where Appellant seeks leave to proceed without payment of costs on the above-captioned appeal from the Administrative Law Court affirming the final agency decision of the South Carolina Department of Corrections ("DOC") denying Appellant's claim to be paid the prevailing wage for his labor.

Appellant participated in the private sector prison industries project at Perry Corr. Inst. from 2019-2021, and at Tyger River Corr. Inst. from 2021-2023, with the private industry sponsor Shaw. Appellant performed labor at Shaw from 2019 to 2023. Upon leaving Tyger River Corr. Inst. in 2023, Appellant filed a Step 1 Grievance. Steps 1 and 2 were denied and Appellant proceeded to the Administrative Law Court ("ALC"). Appellant's case was placed in abeyance in 2022, pending the outcome of *Torrence v. S.C. Dept. of Corr.*, 433 S.c. 633, 861 S.E.2d 36 (Ct. App. 2021).

Appellant here was deprived the prevailing wage prescribed by 18 USC §1761(c), S.C. Code §§24-3-315 and 24-3-430(D) for all regular and overtime labor performed during that period.

Identical to *Wicker* and *Torrence*, Appellant has a due process right and property interest in the prevailing wage. Both precedents held that it is an error of law to be paid less than the prevailing wage for labor in those programs.

Appellant is indigent and has submitted an affidavit in support. This motion is made in good faith and should not be considered frivolous. Due process requires that absent a countervailing state interest of overriding significance, persons forced to

settle their claims of right and duty must be given a meaningful opportunity to be heard.

In *Lakes v. State*, 333 S.C. 382, 510 S.E.2d 228 (Ct. App. 1998) this court found the order to deny the request to proceed in forma pauperis effectively discontinued the action because it was the prisoner's only means of bringing the action.

Where certain fundamental right are involved, the Court requires that an indigent be allowed access to the Courts. e.g. *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780 (1971).

Appellant submits that he has a property interest in the prevailing wage for the labor he performed and believes based on the holding in *Torrence* that he will prevail.

Based upon the above facts Appellant prays this Honorable Court grant leave to proceed in forma pauperis in this appeal to pursue his rights.

Respectfully Submitted,

Robert Lee

Dated 25th of April, 2024

Robert Lee #348833
Allendale Corr. Inst. F4-B-61
1057 Revolutionary Trail
Fairfax, S.C. 29827

Appellant, Pro Se

7. That I presently have \$0.00 in my E.H. Cooper Trust Fund Account.
8. That this appeal is filed in good faith, is not frivolous, and is based on the Court of Appeals decision in Torrence v. S.C. Dept of Corr., 433 S.C. 633, 861 S.E.2d 36 (S.C. Ct. App. 2021) cert. denied August 3, 2022, and
9. That I have no other avenue of redress for the denial of my due process and property interest rights.

FURTHER AFFIANT SAYETH NOT.

Robert Lee

Robert Lee #348833
Allendale Corr. Inst. F4-B-61
1057 Revolutionary Trail
Fairfax, S.C. 29827

SWORN TO AND SUBSCRIBED before me
this 25th day of April, 2024.

Ashley Vanacore
Notary Public for South Carolina
My Commission expires : 9/9/32



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APPEAL FROM THE ADMINISTRATIVE LAW COURT
Crystal M. Rookard, Administrative Law Judge

Appellate Case No. 2024-000603

South Carolina Department of Corrections,

Respondent,

v.

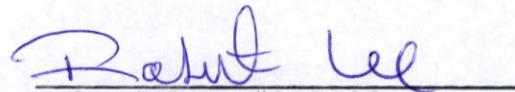
Robert Lee #348833

Appellant,

CERTIFICATE OF SERVICE

I certify that I have served APPELLANT'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS on counsel for Respondent by placing a copy in the U.S. Mail, prepaid postage, this 25th day of April, 2024, addressed as follows:

Joseph R. Shakibanasab
Office of General Counsel
S.C. Department of Corrections
4444 Broad River Road / P.O. Box 21787
Columbia, S.C. 292211787


Robert Lee #348833
Allendale Corr. Inst.
F4-B-61
1057 Revolutionary Trail
Fairfax, S.C. 29827

Pro Se Appellant

Robert Lee #348833
Allendale Corr. Inst. (F4-B-61)
1057 Revolutionary Trail
Fairfax, S.C. 29827

April 24, 2024

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SC Court of Appeals

Honorable Jenny A. Kitchings
Clerk of Court
S.C. Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

RE: Robert Lee #348833, Appellant v. S.C. Dept. of Corrections,
Respondent, Appellate Case No. 2024-000603

Dear Ms. Kitchings,

Please find enclosed the original and six copies, pursuant to Rule 240, SCACR, of Appellant's Motion for Leave to Proceed In Forma Pauperis, with supporting affidavit, and a certificate of service on counsel for Respondent in the above-referenced appeal from the Administrative Law Court. Again, if this pleading does not comply with court rules, please advise so I may correct.

Sincerely,

Robert Lee
Pro Se Appellant

cc: Joseph Shakibanasab
Counsel for Respondent Dept. of Corrections

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Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax SC 29827

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