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MAY 07 2024

State of South Carolina  
IN The Court of Appeals  
Appeal from The Administration Law Court  
Ralph K. Anderson, Administrative Law Judge

Tommie Wells #284236, Appellant

Case NO.: 2024-00066

v.

Respondant  
South Carolina Dept. of Corrections,

### Record on Appeal

This Record of Appeal is to advise this honorable Court that Appellant received written notice of the ~~the~~ order of Dismissal on April 12, 2024. The Judgement was that Appellant's Appeal to the South Carolina Administrative Law Court was being dismissed on the Grounds of failure to exhaust the Administrative Remedies. The required \$250.00 filing fee will be forthcoming in the time limit prescribed.

Respectfully Submitted,

Tommie L Wells Jr.

Tommie L Wells Jr. #284236

Pro-se

Livesay CI

P.O. BOX 580

11000 05 07 2024

## AFFIDAVIT OR DECLARATION

IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, Tommie Wells, Am the petitioner in the Above-entitled Case. In Support of my motion to proceed in forma pauperis, I State that because of my poverty I am unable to pay the costs of this case OR to give Security therefor, and I believe I am entitled to redress.

1. For both you And your Spouse estimate the Average Amount of money received from each of the flowing sources during the past 12 months. Adjust Any Amount that was received weekly, biweekly, quarterly, Semiannually, or Annually to show the monthly rate, USE gross Amounts, that is, amounts before Any deductions for taxes or otherwise.

INCOME Source - Average Monthly Amount during the past 12 months - Amount expected Next month

②

You

Spouse

You

Spouse

Employment \$ NA \$ ~~10~~ \$ — \$ —

Self employment \$ — \$ — \$ — \$ —

Income from \$ — \$ — \$ — \$ —

Real Property

(such as rental income)

Interest and \$ — \$ — \$ — \$ —

dividends

Gifts \$ 50 \$ — \$ — \$ —

Alimony \$ — \$ — \$ — \$ —

Child Support \$ — \$ — \$ — \$ —

Retirement \$ — \$ — \$ — \$ —

(such as Social

Security, Pensions,

Annuities, Insurance)

Disability \$ — \$ — \$ — \$ —

(such as Social Security, Insurance Payments)

Unemployment \$ — \$ — \$ — \$ —

Payments

Public Assistance \$ — \$ — \$ — \$ —

(such as Welfare)

Other (specify) \$ — \$ — \$ — \$ —

Total monthly income: \$ 50 \$ — \$ — \$ —

2. List your employment history for the past two years, most recent first. (Gross monthly Pay)

Employer	Address	Dates of Employment	Gross monthly pay

3. List your spouse's employment history for the past two years, most recent employer first.

(Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NA	NA	NA	NA

4. How much cash do you and your spouse have? None

Below, list any money you or your spouse have in bank accounts or in any other financial institution

Financial institution	Type of Account	Amount you have	Amount your spouse has
NA	NA	\$ NA	\$ NA

5. List the assets, and their values, which you own or your spouse owns. ~~Do~~ Not list clothing and ordinary household

<input type="checkbox"/> Home	<input type="checkbox"/> other real estate	Furnishings
Value <u>NA</u>	Value <u>NA</u>	

<input type="checkbox"/> Motor Vehicle #1	<input type="checkbox"/> Motor Vehicle #2
Year, make & model <u>NA</u>	Year, make & model <u>NA</u>
Value \$ <u>0</u>	Value \$ <u>0</u>

Other Assets  
Description None  
Value \$ 0

(3)



	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 4	\$ 0
Recreation, entertainment, Newspaper, Magazines, etc.	\$ 0	\$ 0
Insurance (not deducted from wages or included in mortgage payments)		
Homeowners' or renters	\$ 0	\$ 0
Life	\$ 0	\$ 0
Health	\$ 0	\$ 0
Motor Vehicle	\$ 0	\$ 0
Other: _____	\$ 0	\$ 0
Taxes (not deducted from wages or included in mortgage payments)		
(Specify): _____	\$ 0	\$ 0
Installment payments	\$ 0	\$ 0
Motor Vehicle	\$ 0	\$ 0
Credit Cards	\$ 0	\$ 0
Department store(s)	\$ 0	\$ 0
Other: _____	\$ 0	\$ 0

Alimony, maintenance, and support paid to \_\_\_\_\_ \$ 0  
 others \_\_\_\_\_ \$ 0

Regular expense for operation of business,  
 Professional, or farm (Attach detailed statement) \$ 0

Others (specify): \_\_\_\_\_ \$ 0

Total monthly expenses: \$ 0

9. Do you expect Any changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes  NO

10. Have you Paid - or will you be Paying - an attorney And money for Services in Connection with this case, including the Completion of this form  Yes  NO

11. Have you Paid - or will you be paying - anyone other than an Attorney (Such as A paralegal or a typist.) Any money for Services in connection with this case, including the completion of this form?  Yes  NO

12. Provide Any other information that will help explain why you cannot pay the cost of this case.

I have No income. I may get a few dollars from friends every Now and then. Maybe 50 to 60 Every other month?

I declare under penalty of perjury that the foregoing is true And correct. Executed on: May 2 2024

Appellate Case No.  
2024-000122

Tommie L Wells Jr.  
(Signature)

State of South Carolina  
In The Court of Appeals  
Appeal From The Administrative Law Court  
Ralph K. Anderson, Administrative Law Court Judge

Tommie Wells Jr #284236 - Appellant  
V. Case NO.: 2024-000662  
South Carolina Dept. of Corrections, - Respondant

### Initial Brief

I am an inmate confined at Livesay CI in UNA, South Carolina, ON This 1<sup>st</sup> Day of May 2024, I am depositing this Initial Brief, in the institutions internal mail system. Notice is being served on all parties, I declare under penalty of perjury that the foregoing is true and correct.

SCDC General Counsel  
4444 Broad River Rd.  
P.O. Box 21787  
Columbia, S.C. 29221-1787

Respectfully Submitted

S.C. Administrative Law Court  
Clerk of Court  
1205 Pendleton St.  
Suite 227  
Columbia, SC. 29201  
(This 1<sup>st</sup> day of May 2024)

S. Tommie Wells Jr.  
Tommie Wells Jr #284236  
Pro se  
Livesay CI  
P.O. Box 580  
UNA SC 29278

The State of South Carolina  
IN THE COURT OF APPEALS  
APPEALS FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson 3, Chief Administrative Law Judge

Appellant Case No: 2024 - 000662

Tommie Wells Jr. #284236, Appellant

V.

South Carolina Dept. of Corrections, Respondent

INITIAL BRIEF OF APPELLANT

Tommie Wells #284236

Pro Se

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Live say Correctional Inst.  
P.O. Box 580  
Una, S.C. 29378

MAY 07 2024  
SC Court of Appeals

## TABLE OF CONTENTS

TABLE OF CONTENTS	.. 1
TABLE OF AUTHORITIES	.. 1, 2
ISSUES ON APPEAL	.. 3, 5, 7
STATEMENT OF CASE	.. 3
PROCEDURAL HISTORY	.. 4
RELEVANT FACTS	.. 5
DISCUSSION	.. 7
CONCLUSION	.. 9
EXHIBIT # 1	
EXHIBIT # 2	

## TABLE OF AUTHORITIES

South Carolina Code Ann. § 24-3-430	.. 3, 7, 8
South Carolina Code Ann. § 24-3-40	.. 3, 5, 8
South Carolina Code Ann. § 1-23-380	.. 8
<u>Torrence v. SCDC</u> , 433 S.C. 633, 861 S.E.2d 36	4, 5, 7
<u>Robinson v. Dept. of Employment and Workforce</u> , S.C. (Ct. App. 9.E (Ct. App. 2021)	
<u>Ward v. State</u> , 343 S.C. 14	.. 6
2d (2024)	.. 6
<u>Carr v. Saul</u> U.S. Supreme Ct 593 U.S. 83 (2021)	.. 6
<u>english v. Andrews</u> , 2014 WL 6969629 Law Key No: 4	.. 7
<u>Ross v. Blake</u> , U.S. Supreme Ct 136 1850	.. 7
<u>Wicker v. SCDC</u> , 360 S.C. 421 (2004)	.. 8
<u>Torrence v. SCDC</u> 373 S.C. 586 (2007)	.. 8
<u>U.S. v. Perry</u> , 757 F.3d. 166, 173 (4th Cir. 2014)	.. 8
U.S. v. ...	0

South Carolina Dept. of Corrections Policy GA-01.12,13,2...5  
South Carolina Dept. of Corrections Policy GA-01.12,15...5  
South Carolina Dept. of Corrections Policy ADM-15,13,12.1...4,5  
South Carolina Dept. of Corrections Policy GA-01.12,13,3...7  
South Carolina Dept. of Corrections Policy GA-01.12,13.10...5

## ISSUES ON APPEAL

- (1) Did the Administrative Law Judge commit error in not considering exceptions of not exhausting Administrative remedies?
- (2) Was Appellant paid prison industry wages required by LAW?

## STATEMENT OF CASE

This matter appeared before the South Carolina Administrative Law Court pursuant to an appeal filed by Tommie Wells #284236 (Appellant), an inmate incarcerated with the South Carolina Dept. of Corrections (SCDC). In his appeal before the Administrative Law Court, he asserted that the Department did not pay him a prevailing wage under South Carolina Code ANN. § 24-3-40, and 24-3-430, and is seeking to be paid back pay and all over time pay for work performed in the prison industries program.

The Administrative Law Court dismissed the appeal for lack of Appellant jurisdiction based upon Appellant's failure to exhaust his administrative remedies.

## PROCEDURAL HISTORY

On June 27, 2023, Appellant filed a Step 1 grievance asserting the Department was paying him less than the prevailing wage required under Torrence v. South Carolina Dept. of Corrections, 433 S.C. 633, 636, 861 S. E2d 36, 38 (Ct. App. 2021) reh'g denied (Aug. 4, 2021), cert. denied Aug. 3, 2022) and Statutory law. He specifically requested to be paid the prevailing wage for the time he worked in PIECP until ~~12-16-2022~~.

Appellant's Step 1 Grievance was elevated to Step 2 level. On October 25, 2023, the

Warden denied Appellant's Step 2 Grievance because it was untimely pursuant to SCD

Policy ADM-15.13 Section 12.1. On November 7, 2023 Appellant filed a Notice of Appeal

with the South Carolina Administrative Law Court, and the case was assigned Judge Ralph K.

Anderson, on March 29, 2024. The Department filed a Motion to Dismiss asserting Appellant

had failed to exhaust his administrative

remedies. On April 4, 2024, Appellant filed

his brief.

## ISSUES ON Appeal

1.) Did ALC Judge commit error in not considering exceptions of not exhausting Administrative remedies?

## ReLEVANT FACTS

Appellant presents that up under SCDC Policy Number GA-01, 12, 13.2 States that in certain cases, informal resolution may not be appropriate or possible (e.g.) when the matter ~~is~~ involves Allegations of Criminal activity). The instant matter before the court involves theft/Embezzlement not only from the Appellant but also against the Internal Revenue Service as well as the Social Security Administration. S.C. Statute 24-3-40 mandates that any deductions from inmates pay participating in the PIP must be made from Gross wages. Subsection (A) (6) States the remaining balance must be used to pay Federal and State taxes required by law. By SCDC reducing the amount remitted by (Shaw Industries) the Prison Industry Sponsor to \$7.25 per hour and then initiating deductions they are clearly in violation of Statutory law.

up under Policy NO: GA-01.12, Section 15 Grievances Alleging Criminal Activity mandates that the matter be Referred 1st to the Inmate Branch Chief then to the Office of Inspector General for investigation. None of these actions were taken in Appellant's grievance.

Additionally SCDC Policy Number GA-01.12, 13.10 offers exceptions to the SCDC Policy ADM-15.13 Section 12.1 will be made for grievances concerning policies procedures. Torrence v. SCDC, 433 S.C. 633 (ct. App.) 2021. on remand, the Court of Appeals, Huff J., held that: Inmate's grievance involved Department policies and procedures, rather than an isolated incident and thus, 15-day filing rule did not apply.

Also, Appellant clearly displayed in reply brief to Notice to Dismissal extenuating circumstance for not initiating prevailing wage claim utilizing the Automated Request to Staff Member System. The previous Inmate Financial Staff member here at Livesay Correctional Institution, Ms. Catur as well as the previous Inmate Grievance Coordinator, Ms. Anita Hernandez, (who were both terminated for cause), made an announcement over the institutional loud speaker for inmates not to place informal resolutions on the Automated Request to Staff Member System but simply submit our Step 1 grievance to the grievance coordinator due to the volume of claims being processed. Furthermore, Generally the Legislature will not require a futile act. Thus, a generally recognized exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of them would be a in vain and futile act. Ward v. State 343 S.C. 14, Robinson v. S.C. Dept. of Employment and Workforce S.C. (ct. App. S.E. 2d/2024)

Additionally there is a futility exception to Administrative issue-exhaustion requirements, since it makes little sense to require litigants to present claims to Adjudicators who are powerless to grant the relief requested; such a vain exercise will rarely protect administrative agency Authority or promote judicial efficiency. See Carr v. Saul U.S. Supreme Ct. 593 U.S. 83 (2021). see exhibit #1 the inmate Financial Designee here at Livesay C.I. as well as throughout SCDC has no Authority or responsibility towards inmate pay in regards to the Prison Industry Program Payroll. By making the Announcement on the institution loud speaker (Inmate - Financial Designee Ms. Catur as well as Inmate Grievance Coordinator Ms. Anita Hernandez) they created a unique Situation in which the filing of an informal resolution on the Automated request to Staff System ~~was~~ became unavailable.

## DISCUSSION

IN conclusion of the matter of failure to exhaust administrative remedies, SCDC Policy GA-01.12, 13.3 States IF the inmate has failed to provide necessary information, or has not signed or dated the grievance, (she/he) will be given (5) calendar days to refile a properly filled out grievance. This information will also be entered into the CRT Narrative when the grievance is closed as Unprocessed (reviewed but returned). The Inmate Grievance Coordinator in the instant matter processed Appellant's Step 1 grievance and instructed him to proceed with his Step 2 grievance, see exhibit #2 (Unprocessed Grievance), Emphasis Added English v. Andrews 2014 WL 6969629 Law Key No. 4" IF a inmate fails to Attach the Completed Request to Staff, (informal resolution. The grievance will be returned unprocessed.) The Inmate Grievance Coordinator has committed a Gross dereliction of Duty and exception to exhaustion of Administrative remedies is Warranted in the instant case, Ross v. Blake U.S. Supreme Ct. 136, 185

## Issue on Appeal (a)

Was Appellant paid prison industry wages required by law?

The Department is Attempting to bar Appellant from Claiming Prevaling wages for work done prior to the Court of Appeals decision in Torrence v. SCDL 433 S.C. (2021). The Department Alleges that the Torrence ruling changed the Statutory construction of Statute 24-3-430(D). That Argument is in direct conflict with the fact that the Court's ruling in Torrence (2021) held that the inmate was due wages earned in the twenty years prior to the date the court issued its decision based on the statute existing at the time wages were earned. Statute 24-3-430(D) was controlling law at the inception of Appellant's employment with controlling law at the inception of Appellant's employment with Contractor (Shaw Industries) PIP Sponsor throughout his tenure as a Prison Industry worker and is still Statutory law Today. (7)

Nothing in the record suggest that Appellant was told that he would receive the "Prevailing wages" for his labor or given access to prevailing wage information so he could check his pay rate. Indeed it's SCDC's policy to misinform inmates about the wages they are due and give them 15-days to catch the misrepresentation, it is hard to imagine a more arbitrary or capricious policy. It would not be in the interest of justice to allow SCDC to litigate 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 or unexplained length of time. Wicker vs SCDC 360 S.C. 421 (2004), Torrence v. SCDC 373 S.C. 586 (2007). Also citing Statute 1-23-380(5)(e) states "The court may reverse or modify the decisions if substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are (e) clearly erroneous in view of the reliable, probative,

and Substantial evidence on the whole record." Nothing that "Statute of limitations Normally begin to run when the crime is Complete" but that Criminal acts over an extended period may be treated as a Continuing offense for limitations purposes."

U.S. v. Perry 757 F3d, 166, 173 (4th Cir 2014). The Time frames of SCDC neglecting to take Deductions from gross wages is well within the Statute of limitations citing 24-3-40

"All deductions shall be taken from gross wages."

Also, SCDC is currently operating the Prison Industry Program without paying the mandated Prevailing wages up under 24-3-430(D) and

thus there can be no statute of limitations on an act which is presently and continually being committed, U.S. v. Ravenel 66 4th 472

(2023) SCDC has displayed substantive unconscionability for decades in regards to following the laws and Statutes in regards to the Prison Industry Program. Particularly the Dept. has and is continually violating Statutes 24-3-40 and 24-3-430 (D)

## Conclusion

Appellant respectfully request this matter be remanded back to the Department for tolling of all hours worked applying prevailing wage plus overtime hours. Appellant performed approximately 6749 hours of work as a woodworker under code 517042, and was ~~only~~ only paid \$7.25 per hour. This pay rate does not comply with the Livesay C.I. wage certification provided by the S.C. Department of Employment and Workforce Appellant is seeking the mean average prevailing wages of \$16.36 per hour for all hours worked in the Prison Industry Program including overtime pay with Contractor Shaw Industries.

Respectfully  
Submitted,

Pro se

Livesay

P.O. Box 580

Una, S.C. 29378

x Tommie Wells

Tommie Wells # 284236

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

**CONFIDENTIAL**

INMATE GRIEVANCE FORM

**INMATE COPY**

STEP 1

INMATE NAME: <u>JAMES J GENTY JR</u>	OFFICE USE ONLY
SCDC NUMBER: <u>261188</u>	Grievance No. <u>LW00037-24</u>
INSTITUTION: <u>LIVE OAK APR 0 3 11</u>	Code: General <u>IC/ES</u>
HOUSING UNIT: <u>6-16-B</u>	Policy _____
WORK ASSIGNMENT: <u>Dorm worker</u>	Disc. Hear. _____
	Class. _____
	PREA _____
	Date Received <u>04/03/24</u>
	IGC Initials <u>(W)</u>

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 would like to put a GRIEVANCE in on why the water fountain, don't get cold, I've been down here over a year and a half, could someone please fix the water fountain.

05/01/24 08:13 AM

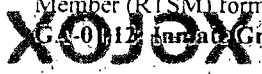
STC.DRS.STC21511.D00008728.?  
James J Genty Jr  
Grievant Signature Date

DC018213

ACTION REQUESTED:  
Fix water fountain

ACTION TAKEN BY IGC:  PROCESSED  UNPROCESSED  OTHER

Your grievance has been received. However, it is being returned to you for the following reason (s): 1.) You have failed to provide an answered RTSM. You must first seek an informal resolution prior to filling a Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk Request to the appropriate supervisor. You are advised to review Grievance policy & procedures GA-012 Inmate Grievance System.



K. Cowan  
IGC Signature Date

**WARDEN'S DECISION AND REASON:**

CONFIDENTIAL

\_\_\_\_\_  
Warden Signature

\_\_\_\_\_  
Date

I accept the Warden's decision and consider the matter closed.

I do not accept the Warden's decision and wish to appeal.

\_\_\_\_\_  
Grievant Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
IGC Signature

\_\_\_\_\_  
Date

**INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM**

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.

Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.

Only one (1) issue is to be addressed on each form.

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.

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.

The following email's from other inmates are evidence that sending a ARTSM to Inmate financial was futile in obtaining the prevailing wage.

23-03125091 "you must contact General Council"

23-02998897 "I do not handle this issue"

21-02319820 "Ask control room for grievance form"