

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson 3, Chief Administrative Law Judge

Appellant Case No: 2024-000670

Terry W. Dawkins #312067, Appellant

v.

South Carolina Dept. of
Corrections, Respondent

RECEIVED
MAY 13 2024
SC Court of Appeals

INITIAL BRIEF OF APPELLANT

Terry W. Dawkins #312067 Pro Se

Livesay Correctional Inst.
P.O.Box 580
Una, SC 29378

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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 Terry W. Dawkins #312067 (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 July 17, 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 2021 to 2022. Appellant's step 1 Grievance was elevated to the step 2 level. On October 25, 2023, the Warden denied Appellant's step 2 Grievance because it was untimely pursuant to SCDC 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 April 1, 2024, the Department filed a Motion to Dismiss asserting Appellant had failed to exhaust his administrative remedies. On April 5, 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 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 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 institution 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 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 will be noted on the step 1 form with a due back dated included. 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 1850.

Issue on Appeal (2)

Was Appellant paid prison industry wages required by law?

The Department is attempting to bar Appellant from claiming Prevailing wages for work done prior to the Court of Appeals decision in Torrence v. SCDC 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 it's 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 contractor (Shaw Industries) PIP Sponsor throughout his tenure as a Prison Industry worker and is still statutory law today.

Nothing in the record suggests 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 inmate's claims raised at the conclusion of that litigation were neglected for an unreasonable or unexplained length of time. Wicker v. 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."

Noting 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."

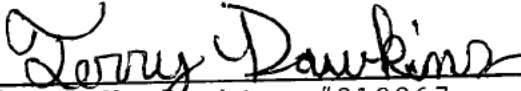
Also. SCDC is currently operating The Prison Industry Program without paying the mandated Prevailing wages up under 24-3-430(D) and thus there can be no statute of limitations on an act which is presently and continually being committed. U.S. v. Ravenel 66 4th 472 (2023).

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 2094 hours of work as a woodworker under code 517042 and was only paid \$7.25 per hour. This pay rate does not comply with the Livesay C.I wage certification provided by the SC 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,



Terry W. Dawkins #312067

pro se

Livesay CI

PO Box 580

Una, SC 29378

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

CONFIDENTIAL

INMATE GRIEVANCE FORM

INMATE COPY

STEP 1

INMATE NAME: Terry Dawkins
 SCDC NUMBER: 312067
 INSTITUTION: Livesay APR 22, 2024 AIT
 HOUSING UNIT: 6-29-B
 WORK ASSIGNMENT: Dorm worker

OFFICE USE ONLY
 Grievance No. LIW C0048-24
 Code: General IC 15
 Policy _____
 Disc. Hear. _____
 Class. _____
 PREA _____
 Date Received 4/22/24
 IGC Initials (W)

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.)

My Reason for writing this grievance is that the water on B side shower not staying hot long enough in the evening time so that people getting off work.

Terry Dawkins 4/19/24
 Grievant Signature Date

ACTION REQUESTED:

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-01.12: Inmate Grievance System.

K. Cewas 04-22-24
 IGC Signature Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

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

1. 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.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. 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.
5. 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 "

23-02998997 " I do not handle this issue "

21-02317820 " Ask control room for grievance form "

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Initial Brief

I am an inmate confined at Livesay CI in Una, South Carolina. On this 30th Day of April 2024, I am depositing this Initial Brief in the institution's internal mail system. First class postage is being prepaid by me. Notice is being served on all parties. I declare under penalty of perjury that the foregoing is true and correct.

SCDC General Counsel
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Columbia, SC
29221-1787

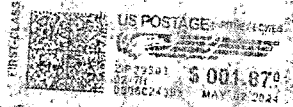
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Respectfully Submitted,

s/ 
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This 30th day of April 2024

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