

STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

Barrett Bernard Harris<sup>#</sup> 171863

Appellant

V.

South Carolina Department of Corrections

Respondent

APPELLANT CASE NO. 2024-000668

BRIEF OF APPELLANT'S

Barrett Bernard Harris<sup>#</sup> 171863

Livesay Correctional Institution

Post office Box 580

Una, South Carolina 29378

## STATEMENT OF CASE

I, Barrett Bernard Harris, An Inmate in the custody of South Carolina Department of Corrections housed at Livesay Correctional Institution in Una South Carolina, Appellant worked for S.C.D.C. prison industry program at Tiger River from April 29, 2016 until June 7, 2021 at an average rate of 7.36 an hour. See Appellant Brief which would be Exhibit (A). Appellant also submitted a request to staff member regarding the prevailing wage on June 21, 2023.

## ISSUES ON APPEAL

- 1.) Did S.C.D.C.'s fifteen-day filing deadline apply to appellant grievances? And did the Administrative Law Court error in its order that Appellant Failure to Exhaust Administrative Remedies?
- 2.) Can Appellant claim reimbursement for any difference between what he was paid and the prevailing wage for the entire time he worked in the PIECP?

## ISSUE ONE

Did S.C.D.C.'s fifteen-day filing deadline apply to appellant grievances? And did The Administrative Law Court error in its order that Appellant Failure to Exhaust Administrative Remedies?

(Supporting Legal Authority and Argument)

Appellant submitted his request to staff member regarding prevailing wages on the Kiosk June 21, 2023. Reference Number # 23-03151474 Please see Appellant step 2 Grievance form

back side which will be Exhibit (B).

ON March 29, 2024 The Department filed a Motion to Dismiss (Motion) asserting Appellant had failed to exhaust his administrative remedies. On April 4, 2024 Appellant filed a response to the motion.

Appellant would argue that the fifteen-day filing deadline did not apply to him because his grievances did not concern an ("incident") but rather concerned SCDC "policies or procedure" which are exempt from the filing deadline pursuant to 13.9 of policy GA-01.12. Torrence v. SCDC 433 SC 633, 861 S.E.2d 36 (2021).

Appellant claims fell within paragraph 13.9 of the Department policy GA-01.12, which provides exceptions to the (fifteen) day time limit requirement will be made for grievances concerning policies / procedures. Appellant claims involve continuous conditions potentially affecting numerous inmates.

Appellant grievance involved SCDC policies and procedures rather than an isolated incident, and thus, 15-day filing rule did not apply; an inmate grievance challenging a specific pay rate and invoking the prevailing wage statute constitutes a grievance challenging a policy or procedure under paragraph 13.9 rather than a grievance involving a specific incident under paragraph 13.1. It is clear that an incident would be a one time specific event, and a policy would be continuous course of action in Appellant case. It was not a one-time event, in which Appellant was not paid a prevailing wage.

SCDC continuously failed to pay appellant a prevailing wage, therefore the grievance involved is related to a policy or procedure. Ackerman v. SCDC 415 SC 412 782 S.E. 2d 757.

However, Appellant did submit a Request Staff Member

regarding this matter on the Kiosk on June 21, 2023 and also a Grievance Form on June 23, 2023 that was forwarded to the Step 2 level of appeal process.

Therefore Appellant did Exhaust all Administrative Remedies.

### (ISSUE TWO)

Can Appellant claim reimbursement for any difference between what he was paid and the prevailing wage for the entire time he worked in the PIECP.

### (ARGUMENT)

Appellant worked for SCDC prison Industry program at Tyger River from April 29, 2016 until June 7, 2021 at an average rate of \$7.36 an hour. Appellant worked in the prison industry program as a grader for a rate of \$7.36 an hour, ON the (DEW) Department Employment Workforce list a grader as Grinding wood a rate of \$16.63 an hour. See the (DEW) Form.

Appellant worked eight thousand hours at a pay rate of \$7.36, Instead of \$16.63 an hour a difference of \$9.27 on all hours Appellant worked is owed to him. See South Carolina Code section 24-3-430(D) and *Wicker v. South Carolina Department of Corrections*, 360 S.C. 421, 602 S.E.2d 56 (2004). No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector, and none of Appellant claim should be barred under SCDC Policies.

## CONCLUSION

Wherefore, Appellant respectfully requests this Honorable Court to Grant his claim and award Appellant the mean average wage for his occupation.

Respectfully Submitted  
Barnett Bernard Harris #171863

Barnett Bernard Harris #171863

Livesay Correctional Institution

P. O. Box 580

Una, South Carolina 29378

MAY 9, 2024



must fail as a matter of law.

Appellant grievance alleging that the SCDC failed to pay him the prevailing wages for his labor under prison industry program involves department policies and procedures, rather than an isolated incident, and thus, the 15 day filing rule does not apply. Appellant's claim involves a topic governed by statute that reflected the department's expression of the legislatures policy on inmate pay, and involved continuous conditions that effect numerous other inmates. See Torrence v. South Carolina Department of Corrections, 433 S.C. 633,861 S.E.2d 36(Ct.App.2021).

Also, SCDC reliance on its policy must fail due to the employment entered into with appellant being void due to the department's failure to inform him of the conditions of his employment. Pursuant to statutory law, an inmate employment in prison industries must be made on a voluntary and informed basis. See S.C.Code Section 24-3-430(C); "An inmate may participate in the program established pursuant to this section only on a voluntary basis and only after he has been informed of the conditions of his employment" As a law the department of corrections has a duty, an obligation, and a responsibility to inform appellant of the prevailing wages but failed to do so. "The director must do so." The director must determine prior to using inmate labor in a prison industry project that....the rate of pay and other conditions of employment are not less than those paid and provided for work of similar nature in the locality in which the work is performed. See S.C Code section 24-3-315. As part of the conditions of his employment, appellant was not informed by the SCDC that it was required to pay him the prevailing wages that it was in fact receiving for his labor but would not be doing so. Instead, SCDC used Appellant's ignorance to withhold from him his lawful wages. That failure to inform appellant violated both 430(C) and (D) as nothing in the statutory scheme creating prison industries program authorized the department to pay a wage less than the prevailing wage. See S.C. Code section 24-3-430(D) and Wicker v. South Carolina Dept. of Corrections, 360 S.C. 421,602 S.E.2d 56(2004).

S.C.D.C.'s actions violates S.C Code section 24-3-40's mandate on the disposition of prisoner wages. See Gatewood v. South Carolina Dept. of Corrections, 416 S.C. 304,785 S.E. 2d 600(S.C.App.2016). It also amounts to a constructive breach of trust. See Brown v. Odom, 425 S.C. 420,823 S.E.2d 183(S.C.App.2019)( Constructive breach of trust arises when a party obtains a benefit which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it.)

What's more, is that SCDC has been well aware of its unlawful actions through the many court ruling throughout the last twenty (20) years concerning this matter. See Adkins v. South Carolina Dept. of Corrections,360 S.C. 413,602 S.E.2d 51(S.C. 2004); Williams v. South Carolina Dept. of Corrections, 372 S.C. 255,641 S.E.2d 885(S.C.2007); and Torrence v. South Carolina Dept. of Corredtions, 433 S.C. 633,861 S.E.2d 36(S.C.APP.2021). Therefore, it can not now scream "foul" and attempt to use its policy or the court's ruling in Torrence as a time bar to prevent its victims from recovery. Besides, SCDC committed the offense of theft for failure to make required disposition of funds received which criminalize the act of failing to properly distribute another's property in accordance with either an agreement or a legal obligation. See Commonwealth v. Goodco Mechanical INC, 291 A3d 378(PA Super 2023). Being that appellant just recently became aware of SCDC's unlawful act, his claim would be allowed to go forward under Rule 60(B) of the South Carolina Rule of Civil Procedure, as newly discovered evidence.

#### CONCLUSION

The South Carolina Department of Corrections order should be reversed and they should be required to pay appellant double his losses as required under S.C. Code Section 16-13-320's mandate for swindling.

Date: February 2, 2024

Respectfully Submitted

Barrett B. Harris

Barrett B. Harris

DECLARATION

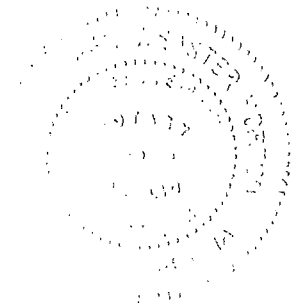
I, Barrett B. Harris # 171863, being duly sworn upon my oath declare under penalty of perjury, depose and say that I have subscribed to the foregoing brief, that I know the contents thereof is true and correct.

SWORN to and subscribed to before me this 2 day of February 2024.

Audrey Aileen Webster Horton  
Audrey Aileen Webster Horton  
NOTARY PUBLIC

My Commission Expires: 02/01/2024

S/ Barrett B. Harris  
Petitioner



STATE OF SOUTH CAROLINA  
IN THE ADMINISTRATIVE LAW COURT

APPEAL OF FINAL DECISION  
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Barrett Harris # 171863                      APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS                      RESPONDENT,

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BRIEF OF APPELLANT

*Barrett B Harris # 171863*

Barrett B. Harris # 171863

Appellant

LIWC

P.O.Box 580

Una, S.C. 29378

STATEMENT OF ISSUE ON APPEAL

IS APPELLANT ENTITLED TO RECEIVE PREVAILING WAGE AFTER SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FAILED TO INFORM HIM OF THE CONDITIONS OF HIS EMPLOYMENT AND TO PAY HIM THE PREVAILING WAGES.

STATE OF SOUTH CAROLINA  
IN THE ADMINISTRATIVE LAW COURT  
CASE # 23C0536

APPEAL OF THE FINAL DECISION  
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Barrett B. Harris # 171863...Appellant

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS...Respondent

Certificate of Service

I, Barrett B. Harris, # 171863 hereby certify that I have served the within Brief of Appeal and dated Feb 2, 2024, on Respondent by depositing a copy of same in the United States mail, postage prepaid, address to:

General Counsel  
S.C.D.C  
P.O.Box 21787  
Columbia, S.C. 29221-1787

Hon. Anderson, Judge  
Administrative Law Court  
1205 Pendleton St. Ste. 224  
Columbia, S.C. 29201

I further certify that all parties required by rule to be served have been served.

This 2 day of February 2024.  
at Una, South Carolina.

*Barrett B Harris # 171863*  
Barrett B. Harris 171863  
P.O.Box 580  
Una, SC 29378

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 2

Office Use Only

|                                    |                                   |
|------------------------------------|-----------------------------------|
| INMATE NAME: <u>Barrett Harris</u> | Grievance No: <u>LINE-0083-23</u> |
| SCDC NUMBER: <u>171863</u>         | Code: General <u>MYLWS</u>        |
| INSTITUTION: <u>LINE</u>           | Policy _____                      |
| HOUSING UNIT: _____                | Disc. Hear. _____                 |
| WORK ASSIGNMENT: _____             | Class _____                       |
| <b>JUL 10 2023</b>                 | PREA _____                        |
| <b>INMATE GRIEVANCE</b>            | Date Received: _____              |
|                                    | IGC Initials: _____               |
|                                    | Date Received: <u>7/10/23</u>     |
|                                    | IGA Initials: <u>IGB</u>          |

**INMATE'S REASON FOR APPEAL (state specific dissatisfaction):**

In accordance with SCDC Policy GA-01.12, "Inmate Grievance System," due to the nature of allegations you have raised in your Grievance, it has been forwarded to the Inmate Grievance Branch Central Office and Office of General Counsel for a response. Inmate's signature has been adopted from SCDC 10-5, Step 1 Inmate Grievance Form.

Grievant Signature N/A Date N/A

**RESPONSIBLE OFFICIAL'S DECISION AND REASON:**

SEE REVERSE SIDE FOR RESPONSIBLE OFFICIAL'S DECISION & REASON

Responsible Official Signature Barton Vincent Date 10-25-23

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

|                          |                        |
|--------------------------|------------------------|
| Grievant Signature _____ | K. Coward _____        |
| Date _____               | IGC Signature _____    |
|                          | Date <u>11/02/2023</u> |

# Exhibit (B)

## INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review. No additional pages will be permitted.
3. Submit this completed form with your copy of the Step 1 form by placing in the Grievance Box within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

### **Harris, Barrett 171863, LIWC-0083-23**

In your grievance, you are requesting adjustments to your inmate pay pursuant to Torrence v. South Carolina Department of Corrections (2021). The South Carolina Court of Appeals' opinion in Torrence was filed on June 30, 2021. You submitted your Request to Staff Member regarding this matter on June 21, 2023, approximately two years after the Court of Appeals issued its opinion. Accordingly, your grievance is untimely under SCDC Policy ADM-15.13, section 12.1. This policy states as follows:

#### **12. PROBLEMS WITH PAY:**

12.1 Inmates must report any problems in their pay to their institution's inmate pay designee utilizing the Automated Request to Staff Member (ARTSM) within 15 days of the payroll date error. The inmate should maintain a record of the ARTSM reference number. The inmate pay designee will review the case and determine whether any additional pay is owed. Payroll corrections will be limited to the following:

- If the inmate fails to notify the Agency in writing and within 15 days, no back pay will be given.
- The pay rate will be adjusted to the proper rate amount for future payrolls in accordance with these procedures.
- The inmate may receive additional pay owed for the previous two (2) pay periods only.

SCDC Policy ADM-15.13 (12.1) (Issue Date June 3, 2014).

Therefore, your grievance is denied.

You may appeal this decision under the South Carolina Administrative Procedures Act to the South Carolina Administrative Law Court. In order to appeal, you must complete the attached Notice of Appeal Form (Form) and submit it as instructed on the Form within 30 days of receipt.



## Tyger River Correctional Institution Wage Certification

### Wages for Selected Projects with Candidates and Openings

| Code                   | Occupation Title   | 10 <sup>th</sup> Percentile (\$) | 25 <sup>th</sup> Percentile (\$) | Available Candidates<br>(as of 4.25.2022) | Job Openings<br>(as of 4.25.2022) | Estimated Employment |
|------------------------|--|----------------------------------|----------------------------------|---|-----------------------------------|----------------------|
| 49-9071 <sup>1</sup>   | Maintenance & Repair Worker, General                               | 11.89                            | 16.50                            | 157                                       | 173                               | 2,270                |
| 43-9061                | Office Clerks  | 9.73                             | 12.57                            | 337                                       | 30                                | 3,700                |
| 51-7042 <sup>2,3</sup> | Woodworking Machine Setters, Operators, and Tenders, Except Sawing | 11.24                            | 13.86                            | 4   | 2                                 | 790                  |
| 51-9022 <sup>3</sup>   | Grinding & Polishing Workers, Hand                                 | 14.43                            | 16.63                            | 9   | 0                                 | 180                  |
| 51-9061                | Inspectors, Testers, Sorters, Samplers, and Weighers               | 11.81                            | 13.98                            | 229                                       | 50                                | 1,870                |
| 53-7051 <sup>4</sup>   | Forklift Operators   | 12.38                            | 15.14                            | 201                                       | 51                                | 1,170                |
| 51-7041 <sup>3</sup>   | Sawing   | 11.24                            | 13.73                            | 1   | 4                                 | 810                  |

<sup>1</sup> The Standard Occupational Classification (SOC) code for Maintenance and Repair Worker, General has changed from 49-9042 to 49-9071.

<sup>2</sup> The Standard Occupational Classification (SOC) code for Woodworking Machine Setters, Operators, and Tenders, Except Sawing has changed to 51-7042.

<sup>3</sup> Employment and wages shown are for the State of South Carolina and not the Upstate Workforce Development Area (WDA). Data for the Upstate WDA were not available.

<sup>4</sup> The Standard Occupational Classification (SOC) code for Forklift Operators was unable to be found. Using analyst experience, the occupation most closely related was determined to be 53-7051 Industrial Truck and Tractor Operators and used for data purposes.

The "tenth percentile" represents a range of hourly wages beginning at the Federal Minimum wage (currently \$7.25 per hour) up to and including the actual hourly wage figure determined as the tenth percentile of the Occupational Employment and Wage Statistical survey for the occupation specified.

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

MAY 13 2024

SC Court of Appeals

APPELLANT CASE NO. 2024-D00668

Certificate of Service

I, Barrett Bernard Harris #171863 hereby certify that I have served the within BRIEF dated May 9, 2024 on Respondent by depositing a copy of same in the United States mail postage pre paid address to:

S. C. D. C.  
General Counsel office  
Kensley B. Evans  
P.O. Box 21787  
Columbia, S.C 29221

The South Carolina Court  
of Appeals  
P.O. Box 11629  
Columbia, S.C 29211

I further certify that all parties required by rule to be served have been served.

This 9 day of May 2024  
at Una, South Carolina

Barrett Bernard Harris  
Barrett Bernard Harris  
P.O. Box 580  
Una, S.C 29378

Barrett Bernard Harris<sup>FR</sup> 171863

Livesay C.I. A-11

P.O. Box 580

Una, S.C. 29378

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SC Court of Appeals

Honorable Kitchings:

Please find enclosed Appellant Brief for filing in your office, along Certificate of Service for proof of same.

Thank you for your attention and service in regard to this matter.

Sincerely,

May 9, 2024

Barrett B. Harris 171863

Barrett B. Harris #171863  
LiveSay C.I. A-11  
P.O. Box 580  
Una, S.C. 29378



**RECEIVED**  
MAY 13 2024  
SC Court of Appeals

**SCDC**  
MAY 08 2024  
MAIL ROOM

The South Carolina Court  
of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

