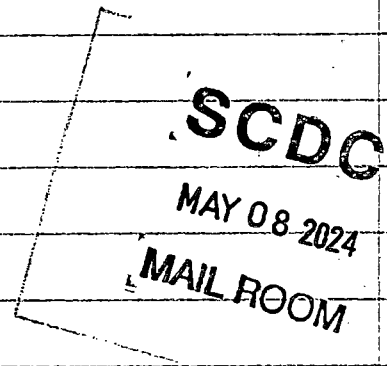


The State Of South Carolina
In The Court Of Appeals
Appeal From The Administrative Law Court

Ralph King Anderson III, Chief Administrative Law Judge

Appellant Case No: 2024-000654

Robert Osbey, # 299910, Appellant



V.

South Carolina Department of Corrections, Respondent

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SC Court of Appeals

Initial Brief Of Appellant

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ISSUES ON Appeal

- (1) Respondent denial of Appellant's grievance based upon ADM-15.13 section 12.1 is erroneous and must fail as a matter of law.
- (2) Appellant asserts exceptions to failing to exhaust Administrative Remedies granting the Administrative Law Court jurisdiction to rule on this matter.

Statement OF Case

I, Robert Osbey (Appellant) an inmate incarcerated in the South Carolina Department of Corrections. On May 26, 2023 appellant filed his step 1 grievance seeking to be paid in accordance with the prevailing wages statute (i.e. S.C. Code Ann. § 24-3-430(D)) for labor performed while working in S.C. Prison Industries Program. Appellant's step 1 grievance was elevated to step 2 on October 25, 2023, the step 2 grievance was denied. This appeal followed. Appellant now move to request this Honorable Court to examine exceptions presented for failure to exhaust Administrative Remedies and Remord this matter back to Respondent.

Issues On Appeal

- (1) Did AHC Judge commit error in not considering exceptions of failing to exhaust Administrative remedies?

Relevant Facts

Appellant presents that under S.C.D.C. policy GA-0112 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 Appellant but against The Internal Revenue Service as well as Social Security Administration. S.C. statute 24-3-40 mandates that any deductions from inmate 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 resolutely reducing the amount remitted by (Shen Industries) the Prison Industry sponsor to \$7.25 per hour and then initiating deductions they are clearly in violation of statutory law. Under Policy No: GA-01-12, section 15 grievance 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 S.C.D.C. Policy no: GA-01-12, 13.10 offers exceptions to the S.C.D.C. Policy ADM-15.13 section 12.1 will be made for grievance concerning policies/procedures, *Torrence v S.C.D.C.*, 433 S.C. 633 (Ct. App.) 2021. On remand, the Court of Appeals Honorable Judge Huff, 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 of Dismissal extenuating circumstances for not initiating Prevailing Wages 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. Hernandez, (who were both terminated for cause) made an announcement over the P.A System for inmate not to place informal resolutions on the ARTSM but simply submit our step 1 grievance to grievance coordinator due to the volume of claims being processed.

Furthermore, Generally the legislature will NOT require a futile act. Thus, generally recognized exception to the requirements of exhaustion of administrative remedies exists when a party demonstrates that pursuit of them would be a vain and futile act. Ward v State 343 S.C. 14 Robinson v S.C. Dept. of Employment and Work Force S.C. (Ct. App. 5. E. 2d (2024)).

Additionally, there is a futility exception to administrative issue-exhausting requirements, since it make little sense to require litigant's to present claims to adjudicators who are powerless to grant the relief requested; such a vain exercise will merely protect administrative agency authority or promote judicial

efficiency, Carr v Saul U.S. Supreme Ct. 593 U.S. 83 (2021) (see exhibit (1)) The Inmate Financial Designee a L.T.W.C. as well as throughout S.C.D.C. has no authority or responsibility towards inmate pay in regards to the Prison Industry Program Payroll. By making the announcement on institution P.A. system Inmate Financial Designee Ms. Ester as well as Inmate Grievance Coordinator Ms. Hernandez they created a unique situation in which the filing of an informal resolution on the ARTSM became unavailable.

Discussion

In conclusion of the matter of failure to exhaust administrative remedies, S.C.D.C. Policy GA-01.12, 13.3 states If inmates failed to provide necessary information, or has not signed or dated the grievance, s/he will be given (5) calendar days to refile a properly filed grievance; this will be noted on the step 1 form with a due back date 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 Inmates fails to attach the completed Request to Staff (informal resolution) the grievance will be returned unprocessed.

The Trustee Grievance Coordinator has committed a Gross dereliction of duty and exception to exhaustion of administrative remedies is warranted in the instant case *Boss v Blake* U.S. Supreme Ct. 136 1850

Issue on Appeal

(2) Was Appellant paid the prevailing wages required by law?

The respondent 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 respondent alleges that the *Torrence* ruling changed the statutory construction of statute 24-3-430 (D). That argument is in direct conflict with the fact on 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 contractor (Show Industries) PIP Sponsor throughout his tenure as a PIP employee and is still statutory law today. Nothing in the record suggest that Appellant was told he would receive the "Prevailing Wage" for his labor or given access to prevailing wage information so he could check his pay rate. Indeed it's SCDC policy to misinform inmates about the wages they are due and give them 15 days to catch the misrepresentation.

Failure to follow their own Policy as prescribed in S.C.D.C.'s grievance steps as listed in GA-01.12, 13.2 (e.g. exceptions for grievance alleging criminal activity Theft/Embezzlement/Swindling) dismisses the necessity to file an informal resolution and absolutely and unequivocally negates the Department's Argument of Failure to exhaust administrative remedies. *Brown v James* 389 S.C. 41. And thus This Honorable Court should dismiss the Respondent's and ABC's ruling of dismissal and remand this matter back to Respondent for tolling of Appellant's prevailing wage hours.

It is hard to imagine a more arbitrary or capricious policy. It would not be in the interest of justice to allow Respondent to litigate their prevailing wages 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 v S.C.D.C.* 360 S.C. 421 (2004), *Terrance v S.C.D.C.* 373 S.C. 586 (2007). Also citing statute 1-23-380 (5)(4)(D)(E)(F) states "The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the ABC findings, inferences, conclusions or decisions are: (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record."

Noting that "statutes of limitation 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 F.3d. 166, 173 (4th Cir. 2014). The time frames of Respondents neglecting to take deductions from gross wages is well within the statute of limitations citing 24-3-40 "All deduction shall be taken from gross wages." Also Respondent is currently operating The PIP without paying the mandated prevailing wage under 24-3-430 (D) and thus there can be no statute of limitation on an act which is presently and continually being committed, U.S. v Ravenel 66 F.4th 472 (2023). Respondent has displayed substantive unconscionability for decades in regards to the following the laws and statutes in regards to PIP. Particularly the Respondent 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 Respondent for tallying of all hours worked applying prevailing wage plus overtime hours. Appellant performed approximately 2008 hours or more of work as a woodworker under the code S17042 and was only paid \$7.25 per hour. This pay rate does not comply with the HIWC 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 PIP including overtime pay with Contractor Shew Industries.

Respectfully Submitted
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Certificate of Service

I Robert Osbey hereby certify that on this day May 9th 2024 in Unga, South Carolina served a copy of my Initial Brief Of Appeal in the United States Mail addressed as follows:

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