

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Robert L. Reibold, Administrative Law Judge

Order (S.C. Ct. App. filed May 15, 2024)

South Carolina Department of Corrections . . . Respondent,

v.

Willie M. Knox, #153719 Petitioner.

PETITION FOR A WRIT OF CERTIORARI

Willie M. Knox
#153719
Allendale C.I. F1A-19
1057 Revolutionary Trail
Fairfax, SC 29827

Petitioner, Pro Se

Other Counsel of Record:

Joseph R. Shakibanasab
Office of General Counsel
S.C. Department of Corrections
4444 Broad River Road / P.O. Box 21787
Columbia, SC 29221-1787

CERTIFICATE OF COUNSEL

Petitioner, pro se, certifies that the Petition for Reinstatement was made and finally ruled on by the Court of Appeals on May 15, 2024.

QUESTION PRESENTED

1. Did the Court of Appeals err in failing to grant the reinstatement of appeal where substantial constitutional issues existed?

STATEMENT OF THE CASE

Petitioner filed a Step 1 Grievance with the South Carolina Department of Corrections (Department) on October 27, 2011 raising prevailing wage claims while participating in the Department's private sector prison industries program from 1992 until 2011. Department denied the Step 1 on December 3, 2012. On December 10, 2012 Petitioner filed a Step 2. Department denied Step 2 on March 28, 2016. On April 28, 2016 Petitioner filed a notice of appeal in the Administrative Law Court (ALC). Following an abeyance period the ALC issued an order on October 6, 2023 affirming the Department's decision.

Petitioner filed a Notice of Appeal in the Court of Appeals on November 3, 2023. A motion to proceed in forma

pauperis was filed within 10 days thereof. Following a period of correspondence where the Court stated it had not received a Notice of Appeal, Petitioner submitted a second notice of Appeal.. The Court of Appeals found the second Notice of Appeal untimely and dismissed the appeal by order on February 23, 2024. Petitioner filed a motion to reinstate the appeal in the Court of Appeals.

The Court of Appeals construed the motion to reinstate as a petition to rehear the dismissal of this appeal. The Court of Appeals denied the petition, Willie M. Knox #153719 v. S.C. Department of Corrections, Appellate Case No 2023-001881 (filed May 15, 2024). Petitioner seeks a writ of certiorari to review that decision.

ARGUMENT

1. THE COURT OF APPEALS FAILED TO REINSTATE THE APPEAL WHERE SUBSTANTIAL CONSTITUTIONAL ISSUES EXISTED TO JUSTIFY REINSTATEMENT.

This petition for writ of certiorari is before the Court pursuant to Rule 242, SCACR, to reverse and remand the May 15, 2024 Order of the Court of Appeals denying Petitioner's motion for reinstatement of the February 23, 2024 Order dismissing the appeal for timeliness of the Notice of Appeal.

On November 3, 2023, Petitioner timely filed a Notice of Appeal and required documents pursuant to rule 203, SCACR

(App. pp. 11-14). This included service upon Counsel for Department and the Clerk of the Administrative Law Court (ALC). Petitioner suggests that this Court may easily verify with the ALC and Department's Counsel receipt of the November 3, 2023 Notice of Appeal package that demonstrates Petitioner's diligence and intent to pursue the appeal. Petitioner believed the appeal filed and submitted a motion for leave to proceed in forma pauperis.

On December 15, 2023 the Clerk for the Court of Appeals notified Petitioner that no Notice of Appeal had been filed (App. pp. 15-16). On December 27, 2023 (due to holiday staffing), Petitioner wrote the Clerk's office to insist a Notice of Appeal had been filed and requested further clarification (App. pp. 17-18). The Clerk's office again notified Petitioner on January 4, 2024 that no Notice had been filed. On January 11, 2024 Petitioner filed a new Notice of Appeal package (App. pp. 21-24).

Between January 15-30, 2024 Petitioner's original Notice of Appeal was returned to Petitioner marked as "Undeliverable." Petitioner then noted the incorrect Post Office Box number on the envelope. That envelope bears the original postmark date and the "Received" date upon return to the institution. Petitioner immediately submitted that envelope to the Court of Appeals Clerk with a letter of explanation and apology.

Petitioner believes he demonstrated good cause for the appeal to be reinstated. The Court of Appeals recently weighed the question of good cause in the context of calendaring in Jordan v. Hartford Financial Group, Inc., 435 S.C. 501, 868 S.E.2d 400 (Ct. App. 2021). Petitioner acknowledges that an honest human mistake does not spring a trap door for good cause. The incorrect Post Office Box number is not a missed date but was an "honest, harmless human mistake".

Under SCACR 242(b)(4) a consideration for a writ of certiorari to be granted are special and important reasons where substantial constitutional issues are directly involved.

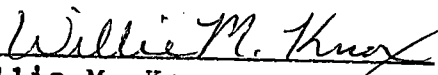
Petitioner suggests that Wicker v. S.C. Dep't of Corr., 360 S.C. 424, 602 S.E.2d 56 (2004) and Torrence v. S.C. Dep't of Corr., 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021) reh'g denied (Aug. 4, 2021), cert. denied (Aug. 3, 2022) recognize a state-created property interest in the payment of a prevailing wage and thus meet the criteria for consideration as a substantial constitutional issue. As this Court recognizes, the prevailing wage issue in the Department's private sector prison industry program has been a matter of concern.

CONCLUSION

For the reasons stated, petitioner asks the Court to grant the petition for writ of certiorari.

Respectfully submitted,

June 12, 2024


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Petitioner, pro se

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SC Court of Appeals

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PROOF OF SERVICE

I certify that I have served the Petitioner for Writ of Certiorari and Appendix by depositing a copy in the U.S. Mail, postage prepaid, on June 13, 2024, addressed to its attorney of record, Joseph R. Shakibanasab, Office of General Counsel, S.C. Department of Corrections, 4444 Broad River Road / P.O. Box 21787, Columbia, SC 29221-1787.

June 12, 2024

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SC Court of Appeals

June 12, 2024

Honorable Patricia A. Howard
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: Willie M. Knox v. SCDC
Petition for Writ of Certiorari

Dear Clerk,

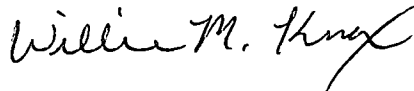
Please find enclosed for filing in the above-reference certiorari matter:

1. Petitioner for Writ of Certiorari
2. Appendix
3. Motion for Leave to Proceed In Forma Pauperis; and
4. Proof of Service

If this filing does not conform to SCACR, please notify me so that I may correct any deficiency.

With kindest regards, I am

Sincerely,



Willie M. Knox
Petitioner, pro se

Cc: ~~Honorable Jenny Kitchings (all documents)~~

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Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
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