

STATE OF SOUTH CAROLINA )

\_\_\_\_\_ )

APPELLANT, )

TERRANCE D.McCALL )

vs. )

RESPONDENT, )

SOUTH CARLOINA DEPT, )  
OF CORRECTIONS. )

\_\_\_\_\_ )

IN THE ADMINISTRATION LAW COURT

CASE NO: 23C0451

INITIAL BRIEF OF APPELLANT

**RECEIVED**

JUN 26 2024

SC Court of Appeals

This matter is before the South Carolina administration law court (ALC or Court) pursuant to a notice of appeal filed by the appellant, Terrance D.McCall, an inmate that is incarcerated in the South Carolina Department Of Correction. Appellant appeals the Department's decision denying his step (2) grievance because the respondent dose not include its calculation of wages pursuant to S.C. code § 24-3-430 (d), the (Occupational code) of the department of employment and workforce, as required by law for inmates participating in the prison industries program.

( BACKGROUND )

On 7-25-2023, the appellant filed a step (1) grievance contending that he was denied wages pursuant to the respondent's failure to calculate the rate of pay pursuant to S.C. code § 24-3-430 (d), is base upon the Federal minimal wage that South Carolina has no "prevailing wage.

Appellant filed a step (2) grievance on 7-26-2023, appealing that decision which was denied on 10-24-2023. Thereafter the appellant filed his notice of appeal with this Honorable Court.

( Jurisdiction )

The court's jurisdiction to review the department's final decision in a non-collateral or administrative matter stems from Al-Shabazz v. State, 338 S.C. 345, 527 S.E 2d 742 (2000). Typically, these matters arise in two ways: (1) When an inmate is disciplined and punishment impose. #(2) When an inmate believes prison officials have erroneously calculated his sentence, sentence related credit, or custody status. Id. At 369,527 S.E 2d 750. Pose Al-Shabazz decision have determined that a matter is reviewable by the ALC where an inmate's appeals implicates a states created liberty interest or property interest. Howard v. S.C. Dept. of Corr. 399 S.C. 618, 630, 733 S.E.2d 211,218,(2012): Also, Wicker v. S.C dept of corr. 360 S.C. 421, 424, 602 S.E.2d 56,57-58 (2004) Holding that inmates have the rights to procedural due process in matters involving a state created right to property such as the state's mandate that inmate be paid the prevailing wage.

In Torrence v. South Carolina Department of Correction, 373 S.C. 586, 646, S.E. 2d 866 (2007), our Supreme Court held: "Legislature specifically authorized inmates labor in private industry Via S.C. code § 24-3-430. This statute provides [n]o inmate participating in the program may earn less than the prevailing wage for work similar nature in the private sector. See S.C. code § 24-3-430 (d), see also, § 24-3-315 (for a prison industry project, the DOC must determine " that rates of pay and other conditions of employment are not less than those paid and provided for work similar nature in the locality in which the work is performed).

Based upon Torrence, therefore, appellant's claim that the Department has not paid him a prevailing wage that includes calculation of the data of the Department of employment and work force occupational codes within the locality of similar work performed in the private sector is property before this court and not subject to dismissal.

( Legal Analysis )

Statutory Language § 24-3-430 (d) states:

" NO inmate participating in the program may earn less than prevailing wage for work of a similar nature in the private sector."

Section § 24-3-430 (d) is the controlling authority, as it directly addresses the rate of inmate wages. Burning v. S.C. of Health and Env't control, 418 S.C. 537, 545, 795, S.E. 2d 290, 294 (2016) " Generally [a] specific statutory provision prevails over a more generally one'. Precedent has primarily addressed inmate wage within the context of §24-3-430 (d). S.C Dept. of Corr. v. Cartrette, 387 S.C 640, 646, 694 S.E. 2d 18, 21 (2010); " finding 24-3-430 (d) compels the Department to ensure inmates workers who are employed under this section receive the same rate and employment conditions as non-inmates peers. Base on the language of section 24-3-430 (d) and its legislative intent to determine the prevailing average wage for an occupation at issue using records and data from the Department of Employment and work force; Torrence v. South Carolina of Correction, 443 S.C. 633, 861 S.E. 2d 36 (2021).

The department is not authorized under the statutory scheme to pay wage less than " prevailing wage " as provided by section 24-3-430 (d), Wicker V. South Carolina Department of Correction, 360 S.C. at 425, 602 S.E. 2d at 58 (2004). The Department labels all inmates who participate in the program under contract with Shaw Industries as machine operators etc, pays each inmate a federal minimal wage of \$7.25 an hour, however doesn't included the date from the department of employment and work force in it's calculation of inmates wages, while billing Shaw Industries \$10.30 an hour or more for each hour of inmates labor performed. This present scheme of payment is contrary in Torrence, Supra of S.C. code § 24-3-430 (d), as determined in Torrence, Supra.

Ackerman v. South Carolina Department Of Correction, 415 S.C. 412 782 S.E.2d 757 (2016).

( Conclusion )

Appellant asserts that he has worked at a pay rate and wage less than the prevailing wage from 11-5-2018,4-13-2023 through present date, under the present scheme of payment that is contrary to S.C. code 24-3-430 (d): and that the department must include in it's calculation of his hourly wages the means average pay for his locality that incorporates this date for machine operator etc, in accordance to Torrence v. South Carolina Department Of Correction, 433 S.C. 633, 864, S.E. 2d 36 (2021).

Further, that he is entitled to back wages from 11-5-2018 to 2023 through present day date for work performed that did not include the calculations of Department of Employment and work force occupational code for machine operator etc, in determining a prevailing wage as required by S.C. code 24-3-430 (d).

Wherefore, the appellant prays this Honorable Court grant relief by ordering the Department to include in it's calculation of appellant's wage rate the Department of Employment and work force date and occupational code for locality an hourly wage for machine operator, etc. And further order to pay for work performed that did not include the prevailing wage rate as required by S.C. code § 24-3-430 (d).

s/ Terrence McCall

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SC Court of Appeals

CERTIFICATE OF SERVICE

I hereby certify that I, Terrance D. McCall <sup>SCOC#</sup> 339911, on this 5 day of December, 2023, in Spartanburg South Carolina, served a copy of the foregoing Brief on all parties to this matter by depositing the same in the United States mail, postage paid, or in the mailroom of the undersigned institution and address as followed:

Name of person/ Agency served: Dept. of General Counsel, SCOC Corrections.

Address: P.O. Box 21787

City, State, Zip Code. Columbia, SC 29221

Print your name: Terrance D. McCall

Sign your name: Terrance McCall

**SWORN TO AND SUBSCRIBED**  
**BEFORE ME THIS** 5 **DAY OF** December, 2023,  
**AUDREY AILEEN WEBSTER HORTON**  
Audrey Aileen Webster Horton  
**NOTARY PUBLIC, STATE OF SOUTH CAROLINA**  
**My Commission Expires 02/07/2024**



CERTIFICATE OF SERVICE

I hereby certify that I, Terrance O. McCall <sup>SCDC# 339911</sup>, on the 5 day of December, 2023, in Spartanburg, South Carolina, served a copy of the foregoing Brief on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and address as follows:  
Name of person/ Agency served: The Honorable Judge Anderson  
Address: EDGAR A. BROWN BUILDING, 1205 PENDLETON STREET, SUITE 224  
City, State, Zip Code: Columbia, S.C. 29201

Print your name: Terrance O. McCall  
Sign your name: Terrance McCall



**SWORN TO AND SUBSCRIBED**  
**BEFORE ME THIS** 5 **DAY OF** December, 2023  
**AUDREY AILEEN WEBSTER HORTON**  
*Audrey Aileen Webster Horton*  
**NOTARY PUBLIC, STATE OF SOUTH CAROLINA**  
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