

STATE OF SOUTH CAROLINA,
COUNTY OF RICHLAND,

THE SOUTH CAROLINA COURT
OF APPEALS

ANDREW DURHAM,
APPELLANT,

CASE NO: 2024-000421

V.

SOUTH CAROLINA DEPT. OF CORRECTIONS,
RESPONDENT,

INITIAL BRIEF OF
APPELLANT

RECEIVED

JUN 27 2024

SC Court of Appeals

COMES NOW, APPELLANT, PRO-SE, HEREBY RESPECTFULLY
OFFERS HIS INITIAL BRIEF FOR THE HONORABLE COURTS
REVIEW AND OFFERS FOR CONSIDERATION THE FOLLOWING;

DESIGNATION OF MATTERS
FOR REVIEW

(1) S.C.D.C. GRIEVANCE Policy GA-01.12, SECTION [5]
13.2, 13.3, 13.10, AND SECTION 15., AND;

(2) COMPLAINT; S.C.D.C. 15-DAY FILING RULE FOR
WAGE CLAIMS DOES NOT APPLY TO PREVAILING WAGE
CLAIMS.

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ISSUE ON APPEAL.

- (1) RESPONDENTS' DENIAL OF APPELLANT'S GRIEVANCE BASED UPON ADM-15-13 SECTION 12.1 IS ERRONEOUS AND MUST FAIL AS A MATTER OF LAW.
- (2) DID THE ALC JUDGE COMMIT ERROR IN NOT CONSIDERING EXCEPTIONS OF FAILING TO EXHAUST ADMINISTRATIVE REMEDIES

STATEMENT OF CASE.

ON, OR ABOUT JUNE, 26TH, 2023, APPELLANT FILED HIS STEP 1 GRIEVANCE (SEE EXHIBIT ONE (1)) SEEKING TO BE REIMBURSED PAY IN ACCORDANCE WITH THE PREVAILING WAGES STATUTE [S] S.C. CODE ANN § 24-3-40, AND §24-3-430 (D) FOR LABOR PERFORMED WHILE WORKING IN S.C. PRISON INDUSTRIES PROGRAM.

APPELLANT'S STEP 1 GRIEVANCE WAS ELEVATED ON, OR ABOUT JUNE, 28TH, 2023 TO A STEP 2 GRIEVANCE, SEE, EXHIBIT 1

ON, OR ABOUT JULY, 11, 2023 FILED HIS STEP 2 GRIEVANCE (SEE EXHIBIT 2)

ON, OR ABOUT 10/25/23 THE SCDL DENIED APPELLANT'S GRIEVANCE AS UNTIMELY UNDER SCDL Policy ADM 15.13, SECTION 12.1

ON, OR ABOUT 11/3/23 APPELLANT FILED AN APPEAL TO THE ALJ. AND ADDED HIS INITIAL BRIEF IN SUPPORT ON, OR ABOUT 1/26/24

ON, OR ABOUT 1/30/24 RESPONDANT FILE A MOTION FOR EXTENSION OF TIME. THIS MOTION WAS DENIED 2/6/24, SEE EXHIBIT (3)

ON, OR ABOUT 3/5/24 HONORABLE JUDGE REIBOLD ISSUED HIS ORDER TO DISMISS ON GROUNDS THE COURT LACKED JUDICIAL AUTHORITY TO ADDRESS APPELLANT'S CLAIM. SEE EXHIBIT (4)

ON, OR ABOUT 4/20/24 APPELLANT FILED HIS BRIEF IN RESPONSE TO THE COURT'S CAUSE TO DISMISS. APPELLANT SHARED WITH THE COURT THE NEW INMATE GRIEVANCE PROCEDURES IMPLEMENTED 9/1/2023, WHICH READ IN PERTINENT PART;

"
... UNLESS A SEPARATE SCDL POLICY REQUIRES FILING A GRIEVANCE WITHIN A SHORTER PERIOD OF TIME, ANY AND ALL GRIEVANCES THAT INVOLVE A CONTINUOUS MATTER, (I.E., PRISON INDUSTRIES PAY) MUST BE FILED WITHIN TWO (2) YEARS OF WHEN THE ISSUE AROSE, OR THE GRIEVANT SHOULD HAVE KNOWN ABOUT IT ..."

APPELLANT NOW MOVES THIS COURT TO EXAMINE EXCEPTIONS PRESENTED FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES AND REMAND THIS MATTER BACK TO THE ALC FOR A RULING ON THE MATTER.

DISCUSSION

APPELLANT RESPECTFULLY MOVES THIS COURT TO VIEW HIS PLEADINGS IN A LIBERAL SENSE TO ALLOW THE DEVELOPMENT OF A POTENTIALLY MERITORIOUS CASE SEE; TUCKER V. RUSHTON, UNITED STATES DISTRICT COURT, D. SOUTH CAROLINA,

" A PRISONER'S PRO-SE CIVIL RIGHTS COMPLAINT IS HEID LESS STRINGENT STANDARD THAN A COMPLAINT DRAFTED BY ATTORNEYS AND A FEDERAL DISTRICT COURT IS CHARGED WITH LIBERALLY CONSTRUING THE PRISONER'S COMPLAINT TO ALLOW THE DEVELOPEMENT OF A POTENTIALLY MERITORIOUS CLAIM."

SEE ALSO; ESTELLE V. GAMBLE 97 S. CT 285, (1976)

APPELLANT PRESENTS THAT UNDER S.C.D.C POLICY G-A-0112, 13.2 STATES THAT IN CERTAIN CASES INFORMAL RESOLUTION MAY NOT BE APPROPRIATE OR POSSIBLE, (I.E. WHEN THE MATTER INVOLVES ALLEGATIONS OF CRIMINAL ACTIVITY), THE INSTANT MATTER BEFORE THE COURT INVOLVES THEFT AND/OR EMBEZZLEMENT NOT ONLY FROM THE APPELLANT BUT AGAINST

THE INTERNAL REVENUE SERVICE AS WELL AS THE SOCIAL SECURITY ADMINISTRATION,

S.C. STATUTE § 24-3-40 MANDATES THAT ANY DEDUCTIONS FROM INMATE PAY PARTICIPATING IN THE P.I.P. 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. THUS, BY RESPONDENT REDUCING THE AMOUNT REMITTED BY (SHAW INDUSTRIES) THE PRISON INDUSTRY SPONSOR TO SEVEN DOLLARS AND TWENTY FIVE CENT (\$7.25) PER HOUR AND THEN INITIATING DEDUCTIONS THEY ARE CLEARLY IN VIOLATION OF STATUTORY LAW.

UNDER POLICY NO: GA-01-12 SECTION 15, GRIEVANCES ALLEGING CRIMINAL ACTIVITY MANDATES THAT THE MATTER BE REFERRED FIRST TO THE INMATE BRANCH CHIEF, THEN TO THE OFFICE OF INSPECTOR GENERAL FOR AN INVESTIGATION, NONE OF THESE ACTIONS WERE TAKEN IN APPELLANTS' GRIEVANCES,

ADDITIONALLY, S.C.D.C. POLICY NO: GA-01-12, 13.10 OFFERS EXCEPTIONS TO S.C.D.C. POLICY ADM 15-13 SECTION 12.1 WILL BE MADE FOR GRIEVANCE CONCERNING POLICIES / PROCEDURES, SEE: TORRENCE V. S.C.D.C., 433 S.C. 633 (C.T. APP.) 2021

ON THE TORRENCE MATTER ON REMAND, THE COURT OF APPEALS HONORABLE JUDGE HUFFHEID THAT:

“
INMATES GRIEVANCE INVOLVED DEPARTMENT POLICIES AND PROCEDURES RATHER THAN AN ISOLATED INCIDENT, AND
THUS, A 15-DAY FILING RULE DID NOT APPLY.”

FURTHERMORE, APPELLANT BELIEVES HE CLEARLY DISPLAYED IN HIS REPLY BRIEF TO THE ALC ORDER OF DISMISSAL EXTENUATING CIRCUMSTANCES FOR NOT INITIATING PREVAILING WAGES CLAIM UTILIZING THE AUTOMATED REQUEST TO STAFF MEMBER HERE AT LIVESAY CORRECTIONAL INSTITUTION.

MS CATUR, AS WELL AS THE PREVIOUS INMATE GRIEVANCE COORDINATOR MS. HERNANDEZ, [WHO WERE BOTH TERMINATED FOR UNKNOWN CAUSE BY APPELLANT] MADE AN ANNOUNCEMENT OVER THE PA. SYSTEM FOR INMATES NOT TO PLACE INFORMAL RESOLUTIONS ON THE ARTSM, BUT SIMPLY SUBMIT YOUR STEP ONE (1) GRIEVANCE TO GRIEVANCE COORDINATOR DUE TO THE VOLUME OF CLAIMS BEING PROCESSED,

MORESO, THE LEGISLATURE WILL NOT GENERALLY REQUIRE A FUTILE ACT, THUS, GENERALLY RECANALIZED EXCEPTION TO THE REQUIREMENTS OF EXHAUSTION OF ADMINISTRATIVE REMEDIES EXISTS WHERE PARTY DEMONSTRATES THAT SUCH PURSUIT OF THEM WOULD BE INVAIN AND FUTILE ACT. SEE WARD V. STATE, 343 S.C. 14 + ROBINSON V. S.C. DEPT OF EMPLOYMENT AND WORK FORCE, S.C. (CT. APPE, 2d) 2024

THERE IS ALSO A FUTILITY EXCEPTION TO ADMINISTRATIVE ISSUE EXHAUSTING REQUIREMENTS, SINCE IT MAKES LITTLE SENSE TO REQUIRE LITIGANTS TO PRESENT CLAIMS TO ADJUDICATORS WHO ARE POWERLESS TO GRANT RELIEF REQUESTED. SUCH A VAIN EXERCISE WILL MERELY PROTECT ADMINISTRATIVE AGENCY AUTHORITY, OR PROMOTE JUDICIAL EFFICIENCY. SEE: CARR V. SAUL, U.S. SUPREME CT, 593 U.S. 83 (2021).

THE INMATE FINANCIAL DESIGNEE AT LIVESAY CORR. INST. AS WELL AS THROUGHOUT S.C.D.C. HAS NO AUTHORITY OR RESPONSIBILITY TOWARDS INMATE PAY IN REGARDS TO THE PRISON INDUSTRY PROGRAM PAYROLL.

THUS, BY MAKING THE ANNOUNCEMENT ON INSTITUTION PA SYSTEM INMATE FINANCIAL DESIGNEES MS. CATUR, 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.

IN CONCLUSION OF THE MATTER OF FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES, S.C.D.C. Policy GA-01.12, 13.3 STATES " IF INMATE FAILED TO PROVIDE NECESSARY INFORMATION, OR HAS NOT SIGNED, OR DATED THE GRIEVANCE SHE/HIS WILL BE GIVEN (5) 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 I.E. REVIEWED BUT RETURNED,

THE INMATE GRIEVANCE COORDINATOR IN THE MATTER PROCESSED APPELLANT'S STEP 1 GRIEVANCE AND INSTRUCTED HIM THAT " " IT HAS FORWARDED HIS GRIEVANCE TO THE STEP 2 LEVEL OF APPEAL PROCESS, SEE EXHIBIT 1 " INMATES STEP 1 GRIEVANCE,"

IN THE CASE AT HAND, THE INMATE GRIEVANCE COORDINATOR HAS COMMITTED A GROSS DERELICTION OF DUTY AND AS SUCH THE EXCEPTION TO EXHAUSTION OF ADMINISTRATIVE REMEDIES IS WARRANTED IN THE INSTANT CASE, SEE ROSS V. BLAKE, U.S. SUPREME CT. 136 1850

IN ALL, THE APPELLANT RESPECTFULLY ASSERTS THE RESPONDANT'S ACTION IS TO KNOWINGLY AND WILLFULLY BAR APPELLANT FROM CLAIMING PREVAILING WAGES FOR WORK DONE PRIOR TO AND/OR AFTER THE COURT OF APPEALS DECISION IN TORRENCE V. SCDC, 433 S.C. (2021)

THE RESPONDANT ALLEGES THAT THE TORRENCE RULING CHANGED THE STATUTORY CONSTRUCTION OF STATUTE 24-3-430 (D) THAT ARGUMENT IS IN DIRECT CONFLICT WITH THE FACTS ON THE COURT'S RULING IN TORRENCE 2021

IN TORRENCE, THE COURTS HEID;

"
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 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 THAT
HE COULD CHECK HIS PAY RATE, INDEED IT'S SCDC POLICY
TO MISINFORM, OR NOT INFORM AT ALL, INMATES ABOUT WAGES
THEY ARE DUE AND GIVE THEM 15-DAYS TO CATCH THE
MISREPRESENTATION.

A FAILURE TO FOLLOW THEIR OWN POLICY AS PRESCRIBED IN
SCDC'S GRIEVANCE STEPS AS LISTED IN GA-0612,13.2 (i.e.
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, SEE; BROWN V. JAMES, 389 S.C. 41

THEREFORE, THIS HONORABLE COURT SHOULD DISMISS THE RESPONDENTS' AND ALC'S RULING OF DISMISSAL AND REMAND THIS MATTER BACK TO THE RESPONDENT FOR A TOLLING OF APPELLANTS' PREVAILING WAGES HOURS.

IT IS HARD TO IMAGINE A MORE ARBITRARY AND CAPRICIOUS POLICY. IT WOULD NOT BE IN THE INTEREST OF JUSTICE TO ALLOW RESPONDENT TO LITIGATE THEIR PREVAILING WAGES CLAIM FOR OVER TWO DECADES AND THEN FIND THAT INMATE CLAIMS RAISED AT THE CONCLUSION OF THAT LITIGATION WERE NEGLECTED FOR AN UNREASONABLE, OR UNEXPLAINED ~~LEAF~~ LENGTH OF TIME. SEE: WICKER V. SCDC, 360 S.C. 421 (2004), TORRENCE V. SCDC. 373 S.C. 586 (2007). SEE ALSO, STATUTE 1-23-380 (5)(A)(D)(E) AND (F). STATES

"THE COURT MAY REVERSE, OR MODIFY THE DECISION IF SUBSTANTIAL RIGHTS OF THE APPELLANT HAVE BEEN PREJUDICED BECAUSE THE ALC 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 DEDUCTIONS SHALL BE TAKEN FROM GROSS WAGES".

ADDITIONALLY, RESPONDENT IS CURRENTLY OPERATING THE PIP WITHOUT PAYING THE "MANDATED" PREVAILING WAGE UNDER § 24-3-340 (D) AND THUS THERE CAN BE NO ~~CERTAINTY~~ 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 LAWS AND STATUES IN REGARDS TO PIP. PARTICULARLY, THE RESPONDENT HAS AND CONTINUALLY VIOLATING STATUTES 24-3-40 AND 24-3-430 (D)

CONCLUSION

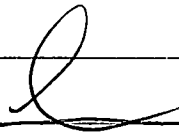
APPELLANT RESPECTFULLY REQUEST THIS MATTER BE REMANDED TO THE RESPONDENT FOR TOLLING OF ALL HOURS WORKED ~~AND~~ APPLYING PREVAILING WAGE PLUS OVERTIME HOURS. APPELLANT PERFORMED APPROXIMATELY 2991 HOURS, OR MORE OF WORK AS A WOODWORKING UNDER THE CODE 517042 AND WAS ONLY PAID 7.25 PER HOUR. THIS PAY RATE DOES NOT COMPLY WITH THE LINC WAGE CERTIFICATION PROVIDED BY THE S.C. DEPT. OF EMPLOYMENT AND WORKFORCE

RELIEF SOUGHT

WHEREFORE, APPELLANT APPEARING PRO-SE HEREBY PRAYS
THAT THIS HONORABLE COURT WILL HEAR THIS BRIEF AND
ITS ORDER AS FOLLOWS:

1. THAT THIS CASE BE REMANDED BACK TO THE RESPONDENT
WITH AN ORDER TO TOLL APPELLANT'S HOURS AND WAGES.
2. ANY OTHER RELIEF DEEMED APPROPRIATE IN FAVOR
OF THE APPELLANT.

Respectfully

x 

ANDREW DURHAM, 274498

LIVESAY PRE-RELEASE

P.O. Box 580

UNA, SC 29378

STATE OF SOUTH CAROLINA,
COUNTY OF RICHLAND

THE SOUTH CAROLINA
COURT OF APPEALS

ANDREW DURHAM,
APPELLANT,

CASE NO: 2024-C00421

VI.
SOUTH CAROLINA DEPT. OF CORRECTION,
RESPONDENT,

CERTIFICATE OF MAILING

I ANDREW DURHAM, HEREBY SWEARS UNDER PENALTY
OF PERJURY THAT A TRUE AND CORRECT COPY OF APPELLANT
INITIAL BRIEF WAS PLACED IN THE OUTGOING MAIL,
POSTAGE PRE-PAID AT THE LIVESAY CORRECTIONAL FACILITY
THIS 25TH DAY OF JUNE, 2024 TO THE FOLLOWING:

1. SOUTH CAROLINA DEPT. OF CORRECTIONS
ATTN: GENERAL COUNSEL
444 BROAD RIVER ROAD
P.O. BOX 21787
COLUMBIA, SC 29221

RECEIVED

JUN 27 2024

SC Court of Appeals

RESPECTFULLY SUBMITTED THIS 25TH DAY OF JUNE, 2024

x. 

ANDREW DURHAM, 274498

LIVESAY PRE-RELEASE

P.O. BOX 580

LINA, SC 29378

DREW DURHAM, 274498
F. DORM 2, BED 16B
Box 580
A, SC 29378.

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SC Court of Appeals

THE SOUTH CAROLINA COURT OF APPEALS
P.O. Box 11629
COLUMBIA, SOUTH CAROLINA
29211

