

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
RALPH KING ANDERSON, III, ADMINISTRATIVE LAW JUDGE

APPELLATE CASE No. 2024-001076

BOBBY GIBSON, JR., #171440,

APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RESPONDENT.

INITIAL BRIEF OF APPELLANT

RECEIVED
JUL 05 2024
SC Court of Appeals

TABLE OF CONTENTS

TABLE OF CONTENTS.....1
TABLE OF AUTHORITIES.....2
ISSUE ON APPEAL.....2
STATEMENT OF CASE.....2
PROCEDURAL HISTORY.....3
RELEVANT FACTS.....4
DISCUSSION.....5
CONCLUSION.....7

TABLE OF AUTHORITIES

pg

Commonwealth v. Goodco Mechanical, INC., 291 A3d 378(PA Super 2023). 7

Long V. Adams, 280 S.C. 401, 312 S.E.2d 262(1984). 7

Paul v. Wingard, 2022 WL1057175. 7

Torrence v. South Carolina Department of Corrections, 433 S.C. 633, 861 S.E.2d 36(Ct.App.2021). 2

Wilson v. South Carolina Department of Corrections, 2018 WL6071103. 7

South Carolina Code Ann. §24-3-430(D) 4, 5

South Carolina Department of Corrections Policy ADM-15.13§12.1 4, 5, 6,

South Carolina Department of Corrections Policy GA-01.12§13.2 . . 6, 7

South Carolina Department of Corrections Policy GA-01.12§15. 7

ISSUES ON APPEAL

DID THE ADMINISTRATIVE LAW JUDGE ERR IN HIS FINDINGS THAT APPELLANT IS ONLY ENTITLED TO ADDITIONAL PAY OWED FOR THE PREVIOUS TWO (2) PAY PERIODS PRIOR TO NOTIFYING THE DEPARTMENT OF THE PROBLEM WITH HIS PAY THROUGH THE ARTSM ON JUNE 28, 2023, PURSUANT TO SCDC POLICY ADM-15.13§12.1?

STATEMENT OF CASE

This matter appeared before the South Carolina Administrative Law Court pursuant to an appeal filed by Bobby Gibson, Jr. (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC). In his appeal before the Administrative Law Court, he asserted that the Department was paying him less than the prevailing wage as required under Torrence v. South Carolina Department of Corrections, 433 S.C. 633, 861 S.E.2d 36(Ct.App.2021), and South Carolina Code

§24-3-430, and is seeking to be paid back pay for work performed in the prison industries program. The Administrative Law Court found that Appellant is entitled to the statutory prevailing wage under section 24-3-430(D) of the South Carolina Code as defined in Torrence, but that he is only entitled to receive back pay for the previous two pay periods before June 28, 2023, in accordance with SCDC Policy ADM-15.13 section 12.1. The Court remanded the matter back down to the Department and gave it a ninety (90) day deadline to calculate and remit to appellant the additional pay owed under the prevailing wage statute S.C.Code Ann. §24-3-430(D) for the two pay periods prior to June 28, 2023.

PROCEDURAL HISTORY

On June 28, 2023, Appellant filed an Automated Request To Staff Member (ARTSM) asking why he did not receive prevailing wages for his work in the program. On June 29, 2023, Appellant filed a Step 1 Grievance asserting more specifically that the Department was paying him less than the prevailing wage as required under Torrence v. South Carolina Department of Corrections, (2021), and S.C.Code Ann. §24-3-430. Appellant's Step 1 Grievance was elevated to the Step 2 level. On October 25, 2023, the Department denied Appellant's Step 2 Grievance, finding it was untimely pursuant to SCDC Policy ADM-15.13 section 12.1 because it was filed more than two years after Torrence was issued.

On November 7, 2023, Appellant filed a Notice of Appeal with the Administrative Law Court, and the case was assigned to the Honorable Ralph King Anderson, III, on December 1, 2023. Appellant filed his brief on January 9, 2024. On February 9, 2024, the day

the Record on Appeal was due, the Department filed a Motion for Extension of Time to file the Record. On February 13, 2024, the Court issued an Order, providing the Department with a forty-five (45) day extension to file the Record. The Court also gave Appellant the opportunity to file a supplemental brief and then Ordered the Department to file its brief thirty days from the date Appellant filed his brief. On April 3, 2024, the Department filed the Record. On April 25, 2024, Appellant filed a supplemental brief. As of the date of Judge Anderson's Order, which is more than thirty (30) days after Appellant filed his brief, the Department has not filed its brief.

On June 13, 2024, the Court found that Appellant is entitled to the statutory prevailing wage under section 24-3-430(D) as defined in Torrence, but that he is only entitled to receive back pay for the previous two pay periods before June 28, 2023, in accordance with SCDC Policy ADM-15.13 section 12.1. The matter was remanded back down to the Department with a ninety (90) day timeline to calculate and remit to appellant the additional pay for the two pay periods prior to June 28, 2023. This appeal follows.

RELEVANT FACTS

In his Order, the Administrative Law Judge stated that, "Regarding the issue that is before the court, Appellant requests to be paid the prevailing wage under section 24-3-430(D) for his work in the program from approximately July 2016 to March 2017 and September 2019 to June 2023. There is no dispute that Appellant is entitled to the statutory prevailing wage under

section 24-3-430(D) of the South Carolina Code, as it was defined in Torrence, for any work in the program going forward. Rather, the question is whether Appellant can claim reimbursement for any difference between what he was paid and the prevailing wage for the entire time he worked in the program or whether some of his claim is barred under SCDC policies"...The Department denied Appellant's grievance as untimely pursuant to SCDC Policy ADM-15.13. Specifically, the Department found Appellant failed to file his prevailing wage claim within fifteen days of the date Torrence was decided. I conclude the Department has improperly determined timeliness from the date Torrence was issued instead of using the date of the payroll error as directed in SCDC Policy ADM-15.13 section 12.1."..."Although the Department erred in finding Appellant's entire claim was untimely, Appellant is nevertheless not entitled to back pay for the entire time he worked in the program under SCDC Policy ADM-15.13. This policy only allows an inmate to claim "additional pay owed for the previous two (2) pay periods", SCDC Policy ADM-15.13 section 12.1. Appellant filed his ARTSM on June 28,2023. Therefore, he is entitled to receive back pay to bring his pay rate up to the prevailing wage under section 24-3-430(D) for the previous two pay periods before June 28,2023."see ORDER OF REMAND, DATED JUNE 13,2024.

DISCUSSION

Appellant contends that the Administrative Law Judge's findings that Apellanat is only entitled to back pay for the previous two pay periods before June 28,2023, in accordance with

SCDC Policy ADM-15.13 section 12.1, is procedurally improper, as it conflicts with superseding SCDC Policy GA-01.12 section 13.2.

On September 1, 2023, the South Carolina Department of Corrections Responsible Authority (General Counsel), issued an updated Inmate Grievance Policy GA-01.12, that supersedes: GA-01.12-May 12, 2014; GA-01.12(Change 2, dated March 15, 2013); (Change 1, dated August 2, 2012); (October 1, 2010); ((September 1, 2009)); (July 1, 2008); (January 1, 2006).

In that updated Grievance Policy GA-01.12 section 13.2, the Department installed new language that governs prison industries pay. There, the department added the following language: "Unless a separate SCDC policy requires filing a grievance within a shorter period of time, any and all grievances that involve a continuous matter (Prison industries pay) must be filed within two (2) years of when the issue arose, or the grievant should have known about it. If the issue is older than two (2) years but has continued to be an issue that is grievable, only the two (2) year portion immediately prior to filing of the grievance will be considered. This section does not apply to grievances pertaining to PREA (Prison Rape Elimination Act) or criminal matters."

That updated language lays out new requirements on the time frame for filing grievances (2 Years) on prison industries pay, and for the time frame for the period of back pay (2 Years) that can be remitted. This updated language conflicts with SCDC Policy ADM-15.13 section 12.1's mandate that requires that problems with prison industries pay be reported within 15 days, and that the inmate can only receive back pay for two pay periods prior to

filing his complaint.

Even though the updated grievance policy doesn't specifically list Policy ADM-15.13 section 12.1 as being superseded as far as prison industries pay goes, it can reasonable be interpreted to do so. That then creates a controversy and ambiguity. If viewed by a an intelligent objective person, it is reasonable to believe that they could come to more than one conclusion. Paul v. Wingard, 2022 WL1057175.

What's more, is that if both policies are allowed to jointly stand in governanace of prison industries pay, they would be procedurally arbitrary and capricious as they would allow the Department and or the reviewing courts, to pick and choose which policy standard they wish to apply to any particular situation. see Wilson v. South Carolina Department of Corrections, 2018 WL6071103.

Because both policies are ambiguous, arbitrary and capricious, the latter policy (GA-01.12 section 13.2) must prevail. see Long v. Adams, 280 S.C. 401, 312 S.E.2d 262(1984). Based on that point, at the very least, Appellant is entitled to two (2) years of back pay in accordance with GA-01.12 section 13.2 .. But because both policies only serve as a means to prevent recovery from a criminal act of theft, Commonwealth v. Goodco Mechanical, INC., 291 A3d 378(PA Super 2023), neither policy should prevail. see SCDC Policy GA-01.12§13.2 and 15. Appellant should be eligible to receive all back pay for the entirety of his employment in prison industries that was withheld.

CONCLUSION

The Administrative Law Court's Order should be reversed and the Department should be Ordered to pay Appellant all back pay.

This 3 day of July, 2024,

BY: Bobby T. Wilson Jr.
PRO SE
POST OFFICE BOX 580
UNA, S.C. 29378

CERTIFICATE OF SERVICE

I, Bobby Gibson, Jr. (Appellant), do hereby certify that I did serve the "INITIAL BRIEF OF APPELLANT" and the "DESIGNATION OF MATTER" on the Respondent, by depositing one copy of the same in the U.S. mail, postage prepaid, and addressed as follows:

OFFICE OF GENERAL COUNSEL
POST OFFICE BOX 21787
COLUMBIA, S.C. 29221-1787

This 3 day of _____, 2024,

BY: Bobby Gibson Jr.
PRO SE
POST OFFICE BOX 580
UNA, S.C. 29378

RECEIVED

MAY 05 2024

SC Court of Appeals

TO:CLERK OF COURT

FROM:BOBBY GIBSON, JR.
171440

July 3, 2024

Dear Clerk,

Please find enclosed one "INITIAL BRIEF OF APPELLANT" and
"DESIGNATION OF MATTER", to be filed with your office.

Truly

Bobby Gibson Jr.

RECEIVED

JUL 05 2024

SC Court of Appeals

Bobby Gibson #711410
Livesay B - 6-24-B
P.O. Box, 580
UNA, S.C. 29378

US POSTAGE - METRO NETWORK
FIRST CLASS
\$ 001.87⁰
JUL 03 2024

RECEIVED

JUL 05 2024
SC Court of Appeals

S.C. COURT OF APPEALS
Jenny Abbott Kitchings, Clerk
P.O. Box, 11629
Columbia, S.C. 29211

SCDC

JUL 03 2024

MAIL ROOM