

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph King Anderson III, Administrative Law Judge

**RECEIVED**  
JUL 17 2024  
SC Court of Appeals

Appellant's Case No: 2024--001077

Terrance McCall, #339911, Appellant,

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v.

South Carolina Department  
of Corrections, Respondent,

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- 1) Did the Administrative Law Court Judge error in his order of dismissal?
  
- 2) Did the Administrative Law Court Judge error by not accepting second brief into record. The brief that was mailed 4 days after appellant received his record on appeal?
  
- 3) Did the Department of General Counsel and the Administrative Law Court error by not accepting appellant's brief that was notarized and placed in the prison mail system and mailed to all parties?
  
- 4) Did the Department of General Counsel and the Administrative Law Court error by not including appellant's second brief into the record. The brief that was mailed out 4 days after appellant received his record on appeal?
  
- 5) Was the General Counsel clerk of courts and the Administrative Law Court clerk of courts neglectful for not giving appellant notice that his brief was mailed to early? (Before appellant received his record on appeal)

STATEMENT OF ISSUES ON APPEAL #2

Was appellant paid prison industry wages required by law?

The department is attempting to bar appellant from claiming prevailing wages for work done prior to the court of appeals decision in Torrence v. SCDC (2021). The department alleges that the torrence ruling changed the statutory construction of statute 24-3-430(d). That argument is in direct conflict with the fact that the court's ruling in Torrence (2021) held that the inmate was due wages e 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 employment with contractor (Shaw Industries) PIP Sponsor throughout his tenure as a Prison Industry worker and is still statutory law today.

#### STATEMENT OF CASE

This matter appeared before the South Carolina Administrative pursuant to an appeal filed by Terrance McCall, (Appellant). An inmate incarcerated in S.C. Dept. of Corr. (SCDC). In appellant's appeal before the Administrative Law Court, appellant asserted that the Department did not pay him a prevailing wage under S.C. code 24-3-40(d), and 24-3-315, and is seeking to be paid back pay and all over time pay for work performed in the Prison Industries Program.

The Administrative Law Court dismissed the appeal based upon appellant's failure to comply with any time limits of failure to comply with procedure for appeals.

## PROCEDURAL HISTORY

On 7/25/2023 appellant filed his step 1 grievance asserting the department was paying him less than the prevailing wage required under Torrrence v. SCDC, 433 S.C. 633, 861 S.E. 2d 36 (2021).

Due to the appellant's appeal it was forward to the step (2) level of appeal process.

On 7/27/2023, appellant step (2) grievance was denied. Thereafter after appellant filed his appeal.

## RELEVANT FACTS

Statutory language §24-3-430(d) states: NO inmate participating in the program may not earn less than prevailing wages for work of a similar nature in the private sector. Additionally, section 24-3-430(d) is the controlling authority, as it directly addresses the rate of inmates 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. Based 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; Torrrence V. SCDC, 443 S.C. 633, 861. S.E. 2d 36 2021.

The department is not authorized under the statutory scheme to

to pay wage less than " prevailing wage" as provided by section 24-3-430(d), Wicker v. SCDC, 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 ect, pays each inmate a federal minimal wage of \$7.25 an hour, however, doesn't included the data from the Department of Employment and Work Force. This present scheme of payment is contrary in Torrence, Supra of S.C. code §24-3-403(d), as determined in Torrence, Supra.

Ackerman v. SCDC, 415 S.C. 412 782 S.E 2d (2016).

On 11/27/2023 judge Anderson was assigned as appellant's judge in this matter.

On 12/5/2023 appellant mailed his notarize brief to the Administrative Law Court and to the General Counsel.

On 2/8/2024 appellant received a letter from the Administrative Law Court putting appellant on notice about the department having 45 days to file its record on appeal. In that letter appellant notice the bold letters on page 3 (IT IS FURTHER ORDER THAT APPELLANT SHALL FILE HIS BRIEF WITHIN 30 DAYS FROM DATE OF RECORD ON APPEAL). 4 days after receiving the record on appeal appellant mailed 2 copies of the same brief that was mailed on 12/5/2023. (To all parties)

On 6/20/2024 appellant received an order of dismissal from the Administrative Law Court, the Honorable Judge Ralph King Anderson, 3, stating that appellant failure to comply with rules of procedure for appeals or for failure to comply any time limit set forth in an appeal.

The Honorable Judge Anderson error in his order of dismissal because appellant did in-fact mail off his brief in a timely manner. Appellant has copies of notarize briefs that clearly shows that the appellant placed his briefs in the prison mail room.

On 7/3/2024 appellant received a stamped copy of his brief from the General Counsel which prove that appellant did mail off his briefs even thou the order of dismissal was based on the fact that appellant did not file his brief.

Rule 67, Clerical Mistakes. In clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Administrative Law Court at any of his own initiative or on the motion of any party and after such notice, if any, as the Administrative Law Court Judge order. During the pendency of an appeal from the decision of an administrative law judge, leave to correct the mistake must be obtained from the appellant court.

The clerk of courts from both departments could of sent the appellant's briefs that was mailed on 12/5/2023 back to the appellant so the misunderstanding could be corrected, or they could of added the second brief to the record as timely filed.

#### ARGUMENT

Appellant vehemently disagree with the Administrative Law Court, Judge Ralph King Anderson III, order of dismissal for not complying with rules of an appeal or complying with time limits in an appeal.

Evidently the Honorable Judge Anderson has decided to show favor towards the General Counsel over the appellant. The honorable judge signed an order of dismissal on the appellant for failure to comply with rules of an appeal but when it comes to the Department who have to follow the same rules of an appeal. I guess it is okay if they do not comply. [ EXHIBIT 1 ]. The Department did not follow ( SCALC RULES ). But, the honorable judge Anderson still allowed the Department to file a motion for an extension of time. Not only was the Department granted the extension but for a reason the Department anticipated that the legislation would introduce a new wage statute so the Department would not have to pay back the large amounts

of money they EMBEZZLE from inmates over the last 20 to 30 years.

The appellant's order of dismissal is partly based on clerical mistakes. (SEE) Rule 67. Clerical mistakes will be made but the appellant shouldn't be punish for another mistakes. In EXHIBIT 2, ON the order of dismissal it states that appellant filed his appeal on 10/31/23 when in-fact the appellant filed his appeal on 7/25/23, SEE EXHIBIT 3. Also within rule 67 there is clearly a clerical mistake when it comes to appellant filing his briefs in a timely manner.

Appellant filed his briefs twice. Once on 12/5/23, to all Departments before appellant received his record on appeal. The second time appellant filed his briefs was 3/29/24, (4) days after receiving his record on appeal.

Appellant wrote the ALC clerk of courts requesting a stamped copy of all briefs they had received from the appellant. The ALC did not respond to appellant's request as of this date.

Appellant did the same with the General Counsel. The General Counsel sent appellant a stamped copy of a brief that was mailed to the department on 12/5/23. SEE EXHIBIT 4. Also SEE EXHIBIT 5 and 6. Two certificate of service that has been notarize by the prison notary then thereafter placed in the prison mailing system.

One Department refuse to send stamped copy and another Department send a stamped copy but both Department claims they did not receive a brief after the record on appeal.

With the overwhelming volume of prevailing cases, and the overwhelming amount of clerks and lawyers tending to these matters there is 100% no way these processes can go without any clerical mistakes.

Was it NEGLECTFUL when the clerks in both departments fail to return appellant's early filed brief? Or, was it NEGLECTFUL of the clerks in both Departments to not add appellant's second brief to the record as timely filed?

Appellant can not prove what was neglectful or what was an clerical mistake but appellant can prove that he did in-fact mail

out his briefs to all Departments. SEE S26-1-90. (POWER OF A NOTARY PUBLIC). A public notary may perform the following acts:

- 1) Acknowledgments.
- 2) Oaths and affirmations.
- 3) Attestations and Jurats.
- 4) Signature Witnessing.
- 5) Verifications of facts and any other acts authorized by (LAW).

Here at Livesay Correctional our notary takes her notary service serious. After notary has been done the inmate has to give up a finger print to go on record then mail is placed in the prison mailing system.

The appellant may not be able to prove that the Departments did receive his briefs but the appellant can prove that his briefs was mailed to each Department. SEE ( Notary Records ).

PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS

Terrance McCall, #339911

v.

Case No: 2024-001077

South Carolina Department  
of Corrections,

I am an inmate at Livesay Correctional Institution. Today, I am depositing this Initial Brief in the institution mail system, first-class postage is being paid by either me or the institution on my behalf.

I hereby certify that I have served a copy of my initial brief to the following:

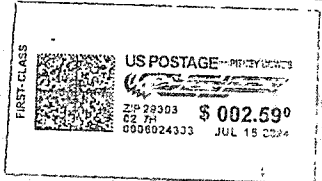
- 1) Administrative Law Court/Clerk of Court.  
1205 Pedleton St. Suite # 224  
Columbia, SC 29201
- 2) General Counsel  
4444 Broad River rd.  
P.O.Box 29221-1787
- 3) South Carolina Court of Appeals  
Jenny Abbott Kitchings/Clerk  
P.O.Box 11629  
Columbia, SC 29211

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I declare under penalty of perjury that the foregoing is true and correct.

Signed By: Terrance McCall on this 15 day of July, 2024.

SC# 339911  
Terrance McCall  
Livesay Correctional Inst.  
P.O. Box 580  
LINA, S.C. 29378  
Unit 6-10-B



South Carolina Court of Appeals  
(Att) Jenni Abbott Kitchings (Clerk)  
P.O. Box 11629  
Columbia, SC 29211



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