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OCT 23 2024
SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

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

**ALC Case No. 23-ALJ-04-0544-AP
Appellate Case No. 2024-000718**

James A. Tucker # 260993 Appellant,

v.

S.C. Department of Corrections..... Respondent,

OBJECTION TO RESPONDENT'S MOTION TO DISMISS APPEAL

Respondent's filed a motion to dismiss appeal on October 10, 2024., Appellant James A. Tucker # 260993, received the motion to dismiss appeal on October 17, 2024.

Appellant objection to Respondent's, because Respondent's claim, Appellant filed an appeal challenging an order of the Administrative Law Court (ALC), which dismissed Appellant's request to be paid the prevailing wage for his work in Prison Industries. Appellants Objection to the false claims of this record on appeal, and Fraud upon the Court by the Respondent's.

On July 18, 2024., Appellant filed a Motion To Correct a Clerical Error, Court filed July 23, 2024. On September 10, 2024., the court abused it's discretion and violating the Constitution of the State of South Carolina, Article 1, Section

3 & 22, by denying Appellant's Motion To Correct a Clerical Error of the Administrative Law Court Order, and issuing an order remanding the matter to ALC, with instructions to further remand the matter to the Department (SCDC) for issuance of a corrected Step 2, grievance response.

Appellant argues the motion to correct a clerical error does not in any way claim an error was with the Step 2, grievance of the Department's final agency decision., SCDC Policy/Procedure GA-01.12.

Appellant's Motion To Correct Clerical Error, specifically set-forth the only correction to be was the institution Appellant worked/labored in the prison industries (PIP)(PI). The order of the Administrative Law Court dated April 10, 2024., indicated Appellant worked/labored out of Liversay Correctional Institution was the clerical error, and that it should have read, Appellant worked/labored out of Broad River Correctional Institution, and that was all the motion requested, Not the agency final response to the Step 2, grievance.

On september 19, 2024., Appellant filed an objection to the order filed September 10, 2024, Court filed September 24, 2024., On October 9, 2024., Respondent's changed their response of the Departments final response that was already apart of the record Step 2, grievance dated October 25, 2023., and served on the Appellant on or about October 31, 2023., To another Step 2, grievance using the same grievance number: (ACI-0239-23), Claiming that the Department had performed wage calculations for the Appellant work/labor in the prison industries at prevailing wages. Appellant, objects to that calculation due to Department is not trustworthy, The Department stole Appellant's prevailing wages from the start, Department disregards the laws and statues of the State of of South Carolina, Department ignore the court's order twice to file the record on appeal, Department admits it owes Appellant prevailing wages and yet will not pay

Appellant, Department fail to acknowledge Appellant's work/labor in the prison industries for King of karts, Department has fail to provide the court with a complete record of data of Occupational Employment statistics (OES) or OCC by ESC/DEW that would confirm the rejected offer of full net amount for both prison industries.

Therefore, Appellant respectfully request the court to order the Department (SCDC) to provide the court and Appellant with a complete record of James A. Tucker # 256638, and the data of Occupational Employment Statistics (OES) or OCC by ESC/DEW.

Accordingly, since the instant case regarding Appellant's prevailing wage is held in abeyance, Appellant, respectfully request that the appeal not be dismissed.

Respectfully submitted.



James A, Tucker # 260993
Allendale Corr. Inst.
1057 revolutionary Trail
FairFax, South Carolina -
29827

October 21, 2024.



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Division of Legal Counsel & Compliance

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

October 10, 2024

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: James A. Tucker, # 260993 v. South Carolina Department of Corrections
Appellate Case No. 2024-000718

Dear Ms. Kitchings:

Enclosed please find Respondent's **Motion to Dismiss Appeal** in the above referenced matter, along with **Proof of Service**. A copy of the same is being mailed to Appellant today.

Thank you for your attention to this matter, and please do not hesitate to contact me should there be any questions or concerns.

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections
S.C. Bar No. 73562

cc: James A. Tucker, # 260993
Allendale Correctional Institution
HAA-0012
1057 Revolutionary Trail
Fairfax, South Carolina 29827

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph King Anderson, III

ALC Case No. 23-ALJ-04-0544-AP
Appellate Case No. 2024-000718

JAMES TUCKER, # 260993,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

MOTION TO DISMISS APPEAL

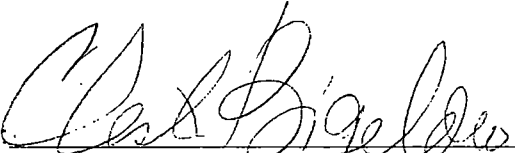
Appellant filed an appeal challenging an order of the Administrative Law Court (ALC) which dismissed his request to be paid the prevailing wage for his work in Prison Industries. On September 10, 2024, this Court issued an Order remanding the matter to the ALC with instructions to further remand the matter to the Department of Corrections for issuance of a corrected Step Two Grievance response. The Order stated that the Department was to provide the Court of Appeals status with updates every thirty days. On September 26, 2024, the ALC issued an Order remanding the matter back to the Department. On October 9, 2024, Appellant was served with a corrected Step Two Grievance response (attached). The Step Two response

explained that the Department had performed wage calculations for Appellant's work in Prison Industries at the prevailing wage rate and noted that Appellant had twice rejected an offer for the full net amount. The Step Two response also provided that that if Appellant wished to dispute the Department's calculations or the time period of the calculations, he could file a new Notice of Appeal.

Accordingly, since the instant matter regarding Appellant's inmate pay is now moot, Respondent respectfully requests that the appeal be dismissed.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY: 

CHRISTINA C. BIGELOW

Deputy General Counsel

Office of General Counsel

S.C. Department of Corrections

Post Office Box 21787

Columbia, South Carolina 29221

(803) 896-8508

ATTORNEY FOR RESPONDENT

October 10, 2024

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph King Anderson, III

ALC Case No. 23-ALJ-04-0544-AP
Appellate Case No. 2024-000718

JAMES TUCKER, # 260993,

APPELLANT,

v.

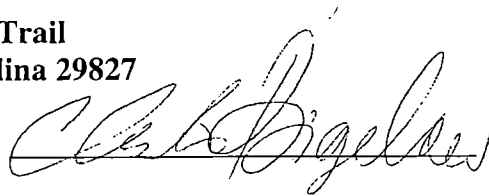
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on this date, she mailed a copy of the **Motion to Dismiss Appeal** to Appellant, addressed as follows:

James Tucker, # 260993
Allendale Correctional Institution
HAA-0012
1057 Revolutionary Trail
Fairfax, South Carolina 29827



Christina Catoe Bigelow
Deputy General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

October 10, 2024

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only

INMATE NAME: James Tucker
SCDC NUMBER: 260993
INSTITUTION: ACI
HOUSING UNIT: _____
WORK ASSIGNMENT: _____

Grievance No. ACI-0239-23
Code: General my/WS
Policy _____
Disc. Hear. _____
Class _____
PREA _____
Date Received: _____
IGC Initials: _____
Date Received: 6/8/23
IGA Initials: IGB

RECEIVED
JUN 08 2023
INMATE GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

In accordance with SCDC Policy GA-01.12, "Inmate Grievance System," due to the nature of allegations you have raised in your Grievance, it has been forwarded to the Inmate Grievance Branch Central Office and Office of General Counsel for a response. Inmate's signature has been adopted from SCDC 10-5, Step 1 Inmate Grievance Form.

Grievant Signature _____ Date _____

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE REVERSE SIDE FOR RESPONSIBLE OFFICIAL'S DECISION & REASON

Responsible Official Signature [Signature] Date 10-25-23

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature [Signature] Date 10-31-23

IGC Signature [Signature] Date 10.31.2023

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review. No additional pages will be permitted.
3. Submit this completed form with your copy of the Step 1 form by placing in the Grievance Box within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

Tucker, James 260993, ACI-0239-23

In your grievance, you are requesting adjustments to your inmate pay pursuant to Torrence v. South Carolina Department of Corrections (2021). The South Carolina Court of Appeals' opinion in Torrence was filed on June 30, 2021. You submitted your Request to Staff Member regarding this matter on August 2, 2023, approximately two years and two months after the Court of Appeals issued its opinion. Accordingly, your grievance is untimely under SCDC Policy ADM-15.13, section 12.1. This policy states as follows:

12. PROBLEMS WITH PAY:

12.1 Inmates must report any problems in their pay to their institution's inmate pay designee utilizing the Automated Request to Staff Member (ARTSM) within 15 days of the payroll date error. The inmate should maintain a record of the ARTSM reference number. The inmate pay designee will review the case and determine whether any additional pay is owed. Payroll corrections will be limited to the following:

- If the inmate fails to notify the Agency in writing and within 15 days, no back pay will be given.
- The pay rate will be adjusted to the proper rate amount for future payrolls in accordance with these procedures.
- The inmate may receive additional pay owed for the previous two (2) pay periods only.

SCDC Policy ADM-15.13 (12.1) (Issue Date June 3, 2014).

Therefore, your grievance is denied.

You may appeal this decision under the South Carolina Administrative Procedures Act to the South Carolina Administrative Law Court. In order to appeal, you must complete the attached Notice of Appeal Form (Form) and submit it as instructed on the Form within 30 days of receipt.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
OCT 23 2024
SC Court of Appeals

James A. Tucker # 260993)
Appellant,)
)
)
v.)
)
)
S.C. Dept. of Corr.)
Respondent,)

Docket No. 2024-00071
Grievance No. 0239-23

AFFIDAVIT

OF

JAMES A. TUCKER

I James A. Tucker # 260993 under penalty of perjury states the following:

I make this affidavit based on personal knowledge unless stated otherwise. I am over the age of (21) years old, and a competent adult and a resident of the South Carolina Department of Corrections.

1. I James A. Tucker # 260993 states the Administrative Law Court order dated April 10, 2024., Respondent's referring to in its Motion To Dismiss Appeal, dated October 10, 2024., states Appellant appeals the Department final decision finding that I was correctly paid the statutory prevailing wage while working in the prison industries enhancement certification program (PIECP out of Livesay Correctional Institution is false, and the Department (Respondent's) misled the court in asserting the Step 2 Grievance had the clerical error, Appellant is seeking to correct was and still is false.

2. I James A. Tucker # 260993, was incarcerated at Broad River Correctional Institution during the years of April **2014** through September 2015, and June 2016 through February 2023, while work/ laboring in the Prison Industries Program (PIE).

3. In James A. Tucker # 260993, (Appellant) Step 1, Grievance

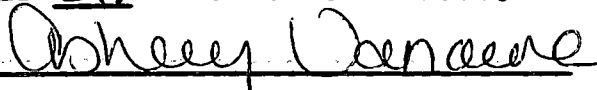
dated August 3, 2023. It specifically states the dates and the location as being Broad River Correctional Institution. In the Step 2, Grievance dated June 8, 2023, the Office of General Counsel denied the grievance based on SCDC Policy/Procedures ADM-15.13 (12.1)., The Court's oversight or omission, allowing the Department to change the original grievance final agency decision of the agency, after over a year, from the final agency decision of the original Step 2, Grievance had already been decided, denied Appellant due process, violates the Constitution of the State of South Carolina, Article 1, Section 3 & 22 an other law of this state.

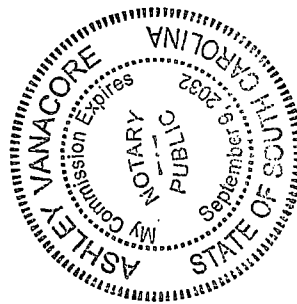
4. The South Carolina Department of Corrections, owes James A. Tucker # 260993 more than \$ 2,395.68 cents that was offered in July 2024. The Department fail to file the record on Appeal that was **ordered by the court**, Department failed to file record on appeal in the Administrative Law Court with complete data from Occupational Employment statistics (OES) or by ESC/DEW, and Payrol Detail Record For James A. Tucker # 260993

October 21, 2024.


James A. Tucker # 260993

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 21 DAY OF OCTOBER 2024.


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPRIES: 9/9/32





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SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS

Office of General Counsel

4444 Broad River Road - P.O. Box 21787 - Columbia, SC 29221-1787

James A. Tucker, # 260993
Allendale Correctional Institution
HAA-0012
1057 Revolutionary Trail
Fairfax, South Carolina 29827

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CERTIFICATE OF SERVICE

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OCT 23 2024
SC Court of Appeals

Case No. 23-ALJ-04-0544-AP
Appellant Case No. 2024-000718

I do hereby certify that on this date i serve the following counsels of record, with a copy of Appellant objection to Respondent's motion to dismiss appeal by placing in the United States mail with sufficient postage affixed thereto to Respondent addressed as follows: Affidavit of James A. Tucker, attached.

Enclosures

CC:

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina - 29211

Christina Catoe Biglow
Deputy General Counsel
South Carolina Department of Corrections
S.C. Bar No. 73562

October 21, 2024.


James A. Tucker # 260993

james A. Tucker # 260993
Allendale Corr, Inst. F-3, A-12
1057 Revolutionary Trail
FairFax, South Carolina - 29827

October 21, 2024.

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OCT 23 2024
SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. of Appeals
Post Office Box, 11629
Columbia, South Carolina - 29211

Re: Tucker # 260993 v. S.C. Dept. of Corrections
Appellate Case No. 2024-000718

Dear Ms. Kitching:

Enclosed you will find the original and a copy of the Appellant's Objection to Respondent's Motion to Dismiss Appeal for your filing. Please file the motions and return a filed copy to me for my record in the self addressed envelope I have provided for the return. Affidavit of James A. Tucker attached.

Thank you very much.

Sincerely,



Enclosures

CC: Deputy Catoe Biglow
Deputy General Counsel
SCDC, SC. Bar No. 73562

James A. Tucker # 260993
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Fairfax, South Carolina - 29827

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"
Inter Agency mail"
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