

THE STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS  
APPEAL FROM THE ADMINISTRATIVE LAW COURT

HONORABLE, Crystal M.Rookard, Administrative Law Judge

Appellant Case No: 2024-001910

Steven Harvey, #240138, Appellant

v.

South Carolina Department of  
Corrections, Respondent

RECEIVED  
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SC Court of Appeals

INITIAL BRIEF OF APPELLANT

Steven Harvey, #240138, Pro-Se

Livesay Correctional Inst.  
P.O.Box 580  
Una, SC 29378

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ISSUES ON APPEAL

(1) Did the Administrative Law Court Judge commit error in not considering exceptions of not exhausting Administrative remedies?

(2) Was appellant paid prison industry wages required by law?

STATEMENT OF CASE

This matter appeared before the South Carolina Administrative Law Court pursuant to an appeal filed by Steven Harvey # 240138 ( Appellant ), an inmate incarcerated with the South Carolina Dept. of Corrections (SCDC). In his appeal before the Administrative Law Court, he asserted that the Department did not pay him a prevailing wage under South Carolina Code Ann. § 24-3-40, and 24-3-430, 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 for lack of appellant jurisdiction based upon Appellant's failure to exhaust his administrative remedies.

## PROCEDURAL HISTORY

On July 11, 2023, Appellant filed a step 1 Grievance asserting the Department was paying him less than the prevailing wage required under Torrence v. South Carolina Dept. of Corrections, 433 S.C. 633, 636, 861 S.E. 2d 36,38 ( Ct.App.2021) reh'g denied (Aug. 4, 2021), cert., denied Aug. 3, 2022) and statutory law. He specifically requested to be paid the prevailing wage for the time he worked in PIECP from 2006 to 2023.

Appellant's step 1 Grievance was elevated to the step 2 Grievance level on November 14, 2023, the warden denied Appellant's step 2 Grievance alleging it was untimely pursuant to SCDC Policy ADM-15.13 section 12.1. On November 20, 2023 Appellant filed a notice of appeal with the South Carolina Administrative Law Court, and the case was assigned to the Honorable Judge Crystal M.Rookard. On October 28, 2024 ALC Judge, Crystal M.Rookard entered an order of Dismissal with Prejudice asserting Appellant had failed to exhaust his administrative remedies. On November 19, 2024, Appellant filed his brief.

Issues on Appeal

1.) Did ALC Judge commit error in not considering exceptions of not exhausting Administrative remedies?

RELEVANT FACTS

Appellant presents that up under SCDC Policy number GA-01.12, 13.2 states that in certain cases, informal resolution may not be appropriate or possible (e.g.) when the matter involves allegations of criminal activity). The instant matter before the court involves Theft/Embezzlement not only from the Appellant but also against The Internal Revenue Service as well as The Social Security Administration. S.C. statute 24-3-40 mandates that any deductions from inmates pay participating in the PIP 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. By SCDC reducing the amount remitted by (Shaw Industries ) the Prison Industry Sponsor to \$7.25 per hour and then initiating deductions they are clearly in violation of of statutory law. Up under Policy No:GA-01.12, section 15 Grievances alleging criminal activity mandates that the matter be referred 1st to the Inmate Branch Chief then to the Office of Inspector General for investigation. None of these actions were taken in Appellant's grievance.

Additionally SCDC Policy number GA-01.12,13.10 offers exceptions to the SCDC Policy ADM-15.13 section 12.1 will be made for grievances concerning policies procedures. Torrence v. SCDC, 433 S.C. 633 (Ct.App.) 2021. On remand, the court of Appeals, Huff J., held that: Inmate's grievance involved Department policies and procedures, rather than an isolated incident and thus, 15-day filing rule did not apply.

Also, Appellant clearly displayed in reply brief to notice to dismissal extenuating circumstance for not initiating Prevailing wage claim utilizing the Automated Request to Staff Member System. The previous Inmate Financial staff member here at Livesay Correctional Institution, Ms. Catur as well as the previous Inmate Grievance coordinator, Ms. Anita Hernandez, (who were both terminated for cause), made an announcement over the institution loud speaker for inmates not to place informal resolutions on the Automated Request to staff member system but simply submit our step 1 grievance to the grievance coordinator due to the volume of claims being processed.

Furthermore, Generally the legislature will not require a futile act. Thus, a generally recognized exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of them would be a in vain and futile act. Ward v. State 343 S.C. 14, Robinson v. S.C. Dept. of Employment and Workforce S.C. (Ct.App.S.E 2d(2024)).

Additionally there is a futility exception to administrative issue-exhaustion requirements, since it makes little sense to require litigants to present claims to adjudicators who are powerless to grant the relief requested; such a vain exercise will rarely protect administrative agency authority or promote judicial efficiency. See. Carr v. Saul U.S. Supreme Ct. 593 U.S. 83(2021). See exhibit #1 The Inmate Financial Designee here at Livesay C.I. as well as throughout SCDC has no authority or responsibility towards inmate pay in regards to the Prison Industry Program Payroll. By making the announcement on the institution loud speaker(Inmate Financial Designee Ms.Catur as well as Inmate Grievance Coordinator Ms.Anita Hernandez) they created a unique situation in which the filing of an informal resolution on the Automated Request to Staff system became unavailable.

## DISCUSSION

In conclusion of the matter of failure to exhaust administrative remedies, SCDC Policy GA-01.12,13.3 states If the inmate has failed to provide necessary information, of has not signed or dated the grievance, (She/He) will be given (5) calendar days to refile a properly filled out grievance; this will be noted on the step 1 form with a due back dated included. This information will also be entered into the CRT narrative when the grievance is closed as unprocessed( reviewed but returned). The Inmate Grievance Coordinator in the instant matter processed Appellant's step 1 grievance and instructed him to proceed with his step 2 grievance. See exhibit #2 ( Unprocessed Grievance), Emphasis added English v. Andrews 2014 WL 6969629 Law Key No:4 " If a inmate fails to attach the completed Request to staff, (informal resolution) the grievance will be returned unprocessed.)

The Inmate Grievance Coordinator has committed a Gross dereliction of duty and exception to exhaustion of administrative remedies is warranted in the instant case. Ross v. Blake U.S. Supreme Ct.136 1850.

### Issue 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 433 S.C. (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 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 Prison Industry worker and is still statutory law today.

Nothing in the record suggests that Appellant was told that he would receive the " Prevailing wages " for his labor or given access to prevailing wage information so he could check his pay rate. Indeed it's SCDC's policy to misinform inmates about the wages they are due and give them 15-days to catch the misrepresentation. It is hard to imagine a more arbitrary or capricious policy. It would not be in the interest of justice to allow SCDC to litigate these Prevailing Wage claims for over two decades and then find that inmate's claims raised at the conclusion of that litigation were neglected for an unreasonable or unexplained length of time. Wicker v. SCDC 360 S.C. 421 (2004), Torrence v. SCDC 373 S.C. 586 (2007). Also citing statute 1-23-380(5)(e) states " The court may reverse or modify the decisions if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:(e) clearly erroneous in view of the reliable, probative , and substantial evidence on the whole record."

Noting that " Statute of limitations 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 F3d.166,173 (4th Cir 2014 ). The time frames of SCDC 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."

Also. SCDC is currently operating The Prison Industry Program without paying the mandated Prevailing wages up under 24-3-430(D) and thus there can be no statute of limitations on an act which is presently and continually being committed. U.S. v. Ravenel 66 4th 472 (2023).

SCDC has displayed substantive unconscionability for decades in regards to following the laws and statutes in regards to the Prison Industry Program. Particularly The Dept. has and is continually violating statutes 24-3-40 and 24-3-430(D).

CONCLUSION

Appellant respectfully request this matter be remanded back to the Department of Corrections for tolling of all hours worked applying prevailing wages plus overtime hours. Appellant performed 19,653.5 Regular hours ( 19,653.5 x \$13.66 an hour = \$268,466.81) and 880.85 overtime hours ( 880.85 x \$16.86 = \$14,851.13). These figures reflect the mean average prevailing wages. Combined they equal \$268,466.81(Reg. hrs). + \$14,851.13 (OT hours) = \$283,317.94-\$127,493.07(45% applicable deductions up under statute 24-3-40 for victims (20%) room & board (25%) and long term saving (10%) = a total of \$155,824.87 owed to Appellant who worked in Prison Industries up under Contractors Anderson Flooring as well as Shaw Industries for over 17 years. Therefore, Appellant is seeking the mean average prevailing wage for all hours worked including overtime hours.

Respectfully Submitted,

  
\_\_\_\_\_

## Exhibit 1

The following emails from other inmates are evidence that sending a ARTSM to Inmate Financial was futile in obtaining the prevailing wage.

23-03125091 " you must contact General Council  
23-02998997 " I do not handle this issue"  
21-02319820 " ASK control room for grievance form

## South Carolina Prison Industry Program Problematic, Audit Finds

by Michael Rigby

The prison industries program of the South Carolina Department of Corrections (SCDC) is improperly managed, likely displaces workers in the surrounding community, and creates an unfair advantage in the marketplace, according to a review performed by the Legislative Audit Council of the state's General Assembly. A report of the audit's findings, which covered a period from July 2001 to June 2003, was released in October 2003.

According to the report, as of August 2003 the SCDC employed over 1,900 prisoners in its Prison Industries Program (PIP). More than 1,200 worked manufacturing goods and providing services for private companies (making it the largest private exploitation of prison labor in the country). These companies compensate the SCDC for the prisoner-labor; the SCDC, in turn, pays the prisoners between 35 cents and \$6.50 per hour. The other 700 plus prisoners make products or provide services that the SCDC sells to other government entities. These prisoners are paid slave wages ranging from nothing to 60 cents per hour.

The PIP does not have adequate goals or performance measures, according to the report. For instance, auditors found that the PIP generally employs better educated prisoners and those with longer sentences, rather than prisoners who could most benefit from the program—those with poor education and work skills and those slated for release within a few years. Notably, recidivism rates for prisoners in the PIP were no better than for those in the general population.

The PIP is probably not self sustaining either, noted a 1998 audit. The audit recommended that the SCDC use a true cost analysis system. Not surprisingly, the SCDC has yet to implement such a system. Currently, the SCDC annually reports information on product sales and deductions from prisoner wages. According to the report, this procedure is inadequate and does not "accurately reflect the degree to which the program has met its goals."

In addition, the SCDC has inadequate methods for collecting child support, victim restitution, and room and board from prisoners wages, according to the report. For instance, the SCDC determines child support by asking prisoners to disclose this information when they're hired. The report noted, however, that this "may not be a reliable method of collecting such information." For example, although a sampling of 22 prisoners revealed that two owed victim restitution, auditors found that only one actually had money deducted from his wages.

The PIP also creates an unfair advantage in the marketplace, according to the report. This is because companies that employ prisoners can pay lower wages, forego fringe benefits, and are typically provided with subsidized rent (the SCDC charges most companies \$1 a month for a minimum of 176,000 sq. ft. of space), subsidized utilities (one company lowered its electric bill from 7 cents per kilowatt hour to 4 cents by reimbursing the SCDC directly), and other perks (the SCDC illegally pays half the cost of prisoner training, an arrangement that saved one company \$50,000).

This training arrangement caught the attention of U.S. Justice Department officials who wrote in a May 14, 2003, letter that "sharing the cost of training does not meet the spirit of the fair competition requirement since competitor manufacturers in the community are not provided with the same support."

The report further found that SCDC saves these companies money through improper billing. In two instances, according to the report, the SCDC failed to bill companies for more than 8,700 prisoner hours, which amounted to \$29,000. In another instance, a company was billed \$2.06 an hour for prisoner labor rather than the \$7.06 per hour it should have been billed. The report noted that there is no independent review of SCDC invoicing.

More importantly, the PIP probably displaces private sector workers in violation of federal law. 18 U.S.C. 1761(a) provides that prisoners employed by private companies involved in interstate commerce must be paid a wage comparable to that for similar work in the local community and may not displace private sector workers. The SCDC, however, fails to adequately assess whether private sector workers are displaced. Auditors found, for instance, "four counties with above average

unemployment rates in which private companies employ inmates." The report noted that the SCDC generally started prisoners at the Federal Minimum Wage (FMW) even when comparable wages in the community might be higher, further increasing the likelihood of displacing workers in the community.

But the FMW is still apparently less than the SCDC wants to pay. Auditors noted one example in which SCDC sends manufactured shirts directly overseas with crossing state lines in order to circumvent the FMW. Even worse, the SCDC maintains many contracts that do not involve interstate commerce. Under these contracts the SCDC may pay prisoners substantially less than the FMW. Notes the report: "Allowing certain industries to pay less than minimum wage can result in a significant competitive advantage."

South Carolina law goes even farther than federal law, mandating that no prisoner participating in the PIP "may earn less than the prevailing wage for work of similar nature to the private sector." South Carolina Code Laws 24-3-430(D). However, each year beginning with fiscal year 02-03, according to the report, the General Assembly has overridden the requirement, allowing prisoners to be paid less than the prevailing wage.

As if all this weren't enough, South Carolina law also gives the SCDC "a legal mandated competitive advantage over private sector vendors when selling goods and services...to state agencies," notes the report. To begin with, state agencies are not required "to solicit competitive bids, quotes, or proposals when purchasing items from SCDC. What's more, the law actually requires state agencies to purchase SCDC goods and services when its prices are equal to or lower than those of private vendors. Even when SCDC prices are higher, notes the report, state agencies are still allowed to purchase its goods and services. Consequently "SCDC's competitive advantage over private vendors gives it the ability to increase its revenue by charging higher prices to state agencies."

A free copy of the report can be obtained online at [www.state.sc.us/scla.c](http://www.state.sc.us/scla.c). See *PLN* indexes for more on the exploitation of prison labor. These complaints mirror the reality of prison slave labor across the country. ■

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