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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

APPELLATE CASE No.2024-001076
ALC Case No.23-ALJ-04-0526-AP

BOBBY GIBSON, JR., #171440,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

RESPONSE TO RESPONDENT'S MOTION
TO DISMISS APPEAL AS MOOT

In its motion, the Respondent is alleging that because Appellant has rejected a final settlement offer from the Department to pay all of his back pay wages, that that constitutes a final decision that requires him to re-litigate the matter in the Administrative Law Court (ALC).

The motion should be denied as moot as it seeks to force appellant to go back down to the ALC and rehash an issue that the court has already ruled on. In its order, the ALC ruled that appellant is entitled to backpay, but only for two weeks in accordance with Department policy ADM-15.13, section 12.1. The court even addressed the failure of this Court of Appeals to analyze the implications of the ADM policy on the issue in its ruling in Torrence v. South Carolina Department of Corrections, 433 S.C. 633, 861 S.E.2d 36 (Ct.App.2021), and went on to find the following, "Because section 12.1 of Policy ADM-15.13

specifically directly addressed when and how an inmate may question their inmate pay, including wages earned through PIECP, I find no need to resort to the exception to the general grievance timeframe utilized by the court of appeals".see Order, Page 5, Dated June 13, 2024.

Based on the fact that no higher court has reversed the ALC's ruling, and no new information has been presented to warrant a change in it's perspective, there is no reason to believe that its ruling will change. And even if it did change, at most, it would be for the amount of the Department's settlement offer, which has been rejected twice, due to being substantially less than what S.C.Code Ann. §24-3-430(D) mandates be paid.

Specifically, the Department acknowledges that it owes Appellant a gross total of Seventy thousand eight hundred sixty-six dollars and fifty-five cents (\$70,866.55). It says that after all statutory deductions, (twenty percent (20%) Victim Restitution: \$14,173.31; Twenty-five percent (25%) Room and Board: \$17,716.63; and Ten percent (10%) Long Term: \$7,086.65), that Appellant will receive the left over Net total: \$31,889.96. see Unredacted "FINAL AGENCY DECISION/SETTLEMENT OFFER (EXHIBIT A). The breakdown in the negotiations is that the department is saying that it will not actually put the Long Term amount of \$7,086.65 into Appellant's long term account for him to receive upon his release. That instead, the department would be keeping it.

Clearly, this violates S.C.Code Ann. §24-3-40(A)(5), which is mandatory on the Department. see Adkins v. South Carolina Dept. of

Corrections, 360 S.C. 413, 602 S.E.2d 51 (S.C.2004) (Inmates, who did not have private civil cause of action under prevailing wage statutes to maintain action against state Department of Corrections (DOC)...could seek remedy by filing inmate grievance to protest DOC's failure to pay wages in accordance with mandatory statutory provisions.). Any settlement agreement that does not comply with statutory mandates must be deemed void and cannot be enforced by the courts. see McConnell v. Kitchens, 20 S.C. 430 (S.C.1884) (a contract to do an act which is prohibited by statute, or which is contrary to public policy is void, and cannot be enforced in a court of justice).

That in itself should give the court pause in granting Respondent's motion, as any settlement reached, that missed any aspect of what the statute calls for will be legally void. That then will allow for appellant, and all others similarly situated, to re-file actions on the same identical claim. In essence, the court will only be kicking the can down the road.

What's more, is that the court's granting of respondent's motion sending the issue back down in order to facilitate a settlement, could end up violating article 1 sections 7 and 8's, suspension of law and separation of powers act.

No where in the prevailing wage statute does it make provisions that allows for the court, the department or appellant, to authorize, negotiate or agree to any settlement for an amount or action, less or contrary to, the mandates of the statute. Any settlement that does as much, effectively suspends or amends the law, which violates the separations of powers act. see South

Carolina Public Interest Foundation v. South Carolina
Transp. Infrastructure Bank, 403 S.C. 640, 744 S.E.2d
521(S.C.2013)(Under a separations of powers, the legislative
department makes the laws, the executive department carries the
laws into effect, and the judicial department interprets and
declares the laws); also see Hampton v. Haley, 403 S.C. 395, 743
S.E.2d 258(S.C.2013)(The "nondelegation doctrine", which is a
component of the separations of powers doctrine, prohibits the
delegation of one branch's authority to another branch).

So, out of an abundance of caution and judicial economy, the
motion should be denied and the appeal allowed to go forward.

This ___ day of December, 2024,

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

UNREDACTED "FINAL AGENCY DECISION
/SETTLEMENT OFFER(EXHIBIT A)

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFICE OF GENERAL COUNSEL
INMATE CORRESPONDENCE**

FOR SETTLEMENT PURPOSES ONLY

TO: Bobby Gibson
SCDC #: 171440
INSTITUTION: Livesay - N6-0024
FROM: Office of General Counsel
DATE: August 6, 2024
RE: Settlement Offer for PI Pay Issues

Dear Mr. Gibson:

The Office of General Counsel would like to extend an offer to you to settle all issues related to your inmate pay complaints. **This offer is supported by the attached calculations.** Enclosed is a Final Release and Settlement Agreement. Please review and, if you agree with it, sign the Final Release and Settlement Agreement on both pages and return the original. Once the Final Release and Settlement Agreement is fully executed, a copy will be sent to you for your records. SCDC will then request a check from the State Treasurer's Office. It may take up to sixty days for the check to be issued. Once we receive the check, we will send it to you for endorsement. Once endorsed, you will need to send the check back to be deposited into your account. Alternatively, you could have the check sent elsewhere for deposit if you so choose. **The required statutory deductions have already been subtracted from the total amount we are offering and will NOT be taken out of these funds if you choose to have the funds deposited into your E.H. Cooper Account. The settlement amount listed in the Final Release and Settlement Agreement is the total amount you will receive, and no additional funds will be paid for child support or placed into long-term savings.** The only deductions not taken are any applicable taxes, for which you will be responsible. If you have any questions, concerns, or comments, please send a request to the Legal workflow on the tablet or kiosk. Thank you for your attention to this matter.

FINAL SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

I, Bobby Gibson, # 171440, hereby voluntarily enter into this Final Release of All Claims.

Bobby Gibson, # 171440 (hereinafter "Inmate") for and in consideration of the promise and agreement hereby made on behalf of the South Carolina Department of Corrections ("SCDC") to pay a total of \$31,889.96 to Inmate, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Inmate does hereby release, acquit, and forever discharge SCDC, its agents, successors and assigns, current and former employees, current and former elected officials, or attorneys and any and all other firms, persons, associations, corporations, or entities, whether herein named or referred to or not, from any and all claims, grievances, Administrative Law Court cases, appeals, demands, causes of actions, actions or suits of any kind or nature whatsoever, including, but not limited to, all claims, known or unknown, up to and including the date of this Release relating in any way to the monies of any kind paid to Inmate, including but not limited to claims that inmate was not paid the "prevailing wage" pursuant to S.C. Code Ann. § 24-3-430 (d). This Release specifically includes any claim relating to remittances of monies, back payment of wages, and any other damages of any kind whatsoever, whether in tort or contract or any other basis, on account of or arising out of or in any way relating to Inmate's participation in the Prison Industries Program, including any Prison Industries Enhancement Program ("PIE" or "PIECP") while incarcerated at the South Carolina Department of Corrections. This Release specifically includes any matters currently pending in any South Carolina or Federal court, including any appellate court. Inmate agrees that any pending court matter shall be ended and/or dismissed with prejudice and Inmate shall sign any necessary documents to effectuate dismissal.

Inmate hereby declares that the terms of this Final Release have been completely read, fully understood, and voluntarily accepted for the purpose of making a full and final compromise and settlement of any and all claims and or losses against SCDC and any and all firms, persons, or corporations liable or who might be claimed to be liable. Inmate understands that the express purpose of this Release is to forever preclude any further or additional claims by or on behalf of Inmate arising out of or in any way related to Inmate's participation in the Prison Industries Program, including any Prison Industries Enhancement Program ("PIE" or "PIECP"), and it is further understood and agreed that this Final Release may be plead as a bar to any claim of any kind whatsoever which may be asserted by Inmate or on his behalf in connection with the aforementioned participation in the Prison Industries Program.

This Final Release of All Claims shall be interpreted and governed in accordance with the laws of the State of South Carolina.

Inmate agrees that he has not assigned, transferred, or conveyed in any manner all or any part of his legal claims or legal rights against the other in connection with the matters described above related to claims related to Prison Industries or pay.

Inmate understands that SCDC is not withholding any amount or paying any amount on behalf of Inmate for taxes. Inmate specifically agrees that, to the extent any tax liability (state,

federal or otherwise) may now or hereafter become due because of the payment of any sums pursuant to this Agreement or claims against SCDC, such liabilities shall be his sole responsibility, and he shall pay any taxes, penalties or interest which may be due and payable. Moreover, if, for any reason, at any time, a claim is made against SCDC for taxes of any kind on the payments made hereunder, Inmate agrees within thirty (30) days of being notified of such claim(s) to indemnify SCDC, its officers, directors, and/or agents and to hold them harmless against such claims, including any penalties and/or interest.

In consideration of the above payment, the undersigned also agree(s) that this settlement is the compromise of a disputed claim and that the payment made in settlement thereof is not to be construed as an admission of liability on the part of SCDC and SCDC denies liability of any nature or kind to Inmate. **The above stated amount represents the total settlement which will be placed in Inmate's E.H. Cooper Inmate Account. The required statutory deductions have already been subtracted and no additional funds will be deducted from the above stated amount. The above stated amount is the total settlement and no additional funds will be paid for child support or placed into long-term savings.**

The undersigned further declares and represents that no promise, inducement, or agreement not herein expressed has been made to the undersigned and that this release contains the entire agreement between the parties hereto, and the terms of this release are contractual and not a mere recital.

I HAVE READ THE FOREGOING RELEASE.

Bobby Gibson, # 171440

Signature for SCDC

Date:

Date:

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFICE OF GENERAL COUNSEL
INMATE CORRESPONDENCE**

FOR SETTLEMENT PURPOSES ONLY

TO: Bobby Gibson
SCDC #: 171440
INSTITUTION: Livesay - N6-0024
FROM: Office of General Counsel
DATE: October 2, 2024
RE: Settlement Offer for PI Pay Issues

Dear Mr. Gibson:

The Office of General Counsel would like to re-extend an offer to you to settle all issues related to your inmate pay complaints. **The amount in the settlement agreement is supported by the attached calculations. Please also note the language regarding the additional payment that has been made to your account pursuant to an Order of the Administrative Law Court. Adding the two sums together equals a total of \$32,460.29.**

Enclosed is a Final Settlement Agreement and Release of All Claims. Please review and, if you agree with it, sign the Final Settlement Agreement and Release of All Claims and return the original. The agreement will be then signed/finalized by a designated representative from the Office of General Counsel at Headquarters. SCDC will then request a check from the State Treasurer's Office. It may take up to sixty days for the check to be issued. The amount in the agreement represents the total settlement which will be placed in your E.H. Cooper Account. The deductions have already been subtracted (not deducted) from the total settlement amount. No additional funds will be deducted from the total settlement amount because it is being paid as a settlement. The amount listed in the agreement is the total settlement amount and no additional funds will be paid for child support or placed into long-term savings. The only deductions not taken are any applicable taxes, for which you will be responsible.

If you have any questions, concerns, or comments, please send a request to the Legal workflow on the tablet or kiosk. Thank you for your attention to this matter.

FINAL SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

I, Bobby Gibson, # 171440, hereby voluntarily enter into this Final Release of All Claims.

Bobby Gibson, # 171440, (hereinafter "Inmate") for and in consideration of the promise and agreement hereby made on behalf of the South Carolina Department of Corrections ("SCDC") to pay a total of \$31,889.96 to Inmate, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged. Additionally, pursuant to the Order of the Administrative Law Court dated June 13, 2024, an additional payment has been made to Inmate's account in the gross amount of \$2,279.25. Taxes and deductions have been taken out of the gross amount per usual procedure because this amount (\$2,279.25) has been paid as backpay pursuant to the Order of the ALC. The amount actually deposited into Inmate's E.H. Cooper Account was \$570.33.

Inmate does hereby release, acquit, and forever discharge SCDC, its agents, successors and assigns, current and former employees, current and former elected officials, or attorneys and any and all other firms, persons, associations, corporations, or entities, whether herein named or referred to or not, from any and all claims, grievances, Administrative Law Court cases, appeals, demands, causes of actions, actions or suits of any kind or nature whatsoever, including, but not limited to, all claims, known or unknown, up to and including the date of this Release relating in any way to the monies of any kind paid to Inmate, including but not limited to claims that inmate was not paid the "prevailing wage" pursuant to S.C. Code Ann. § 24-3-430 (d). This Release specifically includes any claim relating to remittances of monies, back payment of wages, and any other damages of any kind whatsoever, whether in tort or contract or any other basis, on account of or arising out of or in any way relating to Inmate's participation in the Prison Industries Program, including any Prison Industries Enhancement Program ("PIE" or "PIECP") while incarcerated at the South Carolina Department of Corrections. This Release specifically includes any matters currently pending in any South Carolina or Federal court, including any appellate court. Inmate agrees that any pending court matter shall be ended and/or dismissed with prejudice and Inmate shall sign any necessary documents to effectuate dismissal.

Inmate hereby declares that the terms of this Final Release have been completely read, fully understood, and voluntarily accepted for the purpose of making a full and final compromise and settlement of any and all claims and or losses against SCDC and any and all firms, persons, or corporations liable or who might be claimed to be liable. Inmate understands that the express purpose of this Release is to forever preclude any further or additional claims by or on behalf of Inmate arising out of or in any way related to Inmate's participation in the Prison Industries Program, including any Prison Industries Enhancement Program ("PIE" or "PIECP"), and it is further understood and agreed that this Final Release may be plead as a bar to any claim of any kind whatsoever which may be asserted by Inmate or on his behalf in connection with the aforementioned participation in the Prison Industries Program.

This Final Release of All Claims shall be interpreted and governed in accordance with the laws of the State of South Carolina.

Inmate agrees that he has not assigned, transferred, or conveyed in any manner all or any part of his legal claims or legal rights against the other in connection with the matters described above related to claims related to Prison Industries or pay.

Inmate understands that SCDC is not withholding any amount or paying any amount on behalf of Inmate for taxes. Inmate specifically agrees that, to the extent any tax liability (state, federal or otherwise) may now or hereafter become due because of the payment of any sums pursuant to this Agreement or claims against SCDC, such liabilities shall be his sole responsibility, and he shall pay any taxes, penalties or interest which may be due and payable. Moreover, if, for any reason, at any time, a claim is made against SCDC for taxes of any kind on the payments made hereunder, Inmate agrees within thirty (30) days of being notified of such claim(s) to indemnify SCDC, its officers, directors, and/or agents and to hold them harmless against such claims, including any penalties and/or interest.

In consideration of the above payment, the undersigned also agree(s) that this settlement is the compromise of a disputed claim and that the payment made in settlement thereof is not to be construed as an admission of liability on the part of SCDC. **The above stated amount (\$31,889.96) represents the total settlement which will be placed in Inmate's E.H. Cooper Inmate Account. The deductions have already been subtracted (not deducted) from the total settlement amount. No additional funds will be deducted from the total settlement amount because it is being paid as a settlement. The above stated amount is the total settlement amount and no additional funds will be paid for child support or placed into long-term savings. However, as stated on page 1, the gross amount of \$2,279.25 has been paid separately as backpay pursuant to an Order of the ALC and taxes and deductions have been taken out of that separate amount.**

The undersigned further declares and represents that no promise, inducement, or agreement not herein expressed has been made to the undersigned and that this release contains the entire agreement between the parties hereto, and the terms of this release are contractual and not a mere recital.

I HAVE READ THE FOREGOING RELEASE.

Bobby Gibson, # 171440

Signature for SCDC (to be completed at Headquarters)

Date:

Date:

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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

APPELLATE CASE No.2024-001076
ALC Case No.23-ALJ-04-0526-AP

BOBBY GIBSON, JR., #171440,

APPELLATE,

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

PROOF OF SERVICE

I, Bobby Gibson, Jr. (Appellant), do hereby certify that I did serve the "RESPONSE TO RESPONDENT'S MOTION TO DISMISS APPEAL AS MOOT" on the Respondent, by depositing one copy of the same, in the U.S. Mail, postage prepaid, on December 20, 2024, addressed to her office, CHRISTINA CATOE BIGELOW, P.O. BOX 21787/4444 BROADRIVER ROAD, COLUMBIA, SOUTH CAROLINA 29221-1787.

BY: Bobby Gibson Jr.

PRO SE
POST OFFICE BOX 580
UNA, S.C. 29378

Dear Clerk,

December 20, 2024

Please find enclosed one RESPONSE TO RESPONDENT'S MOTION TO DISMISS APPEAL AS MOOT" to be filed with your office.

Respectfully submitted

cc:

Christina Catoe Bigelow

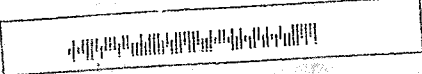
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SC Court of Appeals

Bobby Gibson Jr.
#171440-6-24-B
Luesay - B
P.O. Box 580
UNA, S.C. 29378

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SC Court of Appeals

South Carolina Court of Appeals
Jenny Abbott Kitchings Clerk
P.O. Box 11629
Columbia, S.C. 29211