

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Deborah Brooks Durden

CASE # ALJ-04-0683-AP

Darren B. Scott #233182

Appellant,

v.

South Carolina Department
of Corrections,

Respondents.

CASE NO. 2024-001892

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SC Court of Appeals

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Appellant

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Allendale Correctional Inst.
1057 - Revolutionary Trail
Fairfax, SC. 29827

APPELLANT'S INITIAL BRIEF

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
THE HONORABLE DEBORAH BROOKS DURDEN

CASE NO. ALJ-04-0683-AP

Darren G. Scott #233182,

Appellant.

South Carolina Department
of Corrections

Respondents.

CASE NO. 2024-CO1892

APPELLANT'S INITIAL BRIEF

Darren G. Scott #233182
Allendale Correctional Inst.
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Fairfax, South Carolina
29827

This 17th day of January 2025

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SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Court of Appeals pursuant to the Order of Dismissal from the Administrative Law Court [ALC] The Honorable Deborah Brooks Durden dated October 22, 2024 Appellant received notice on October 28, 2024 Institutional mail. On October 30, 2024 Appellant filed his notice of Appeal to the South Carolina Court of Appeals. Appeal was received and filed on November 5th, 2024. November 12, 2024 Court of Appeals requested Appellant to correct the deficiency in the case, of the required filing fee of \$ 250.00 dollars. Appellant received notice on November 18, 2024.

November 22nd 2024 Appellant filed an Motion to proceed without payment of Costs, and fees in forma pauperis. December 19, 2024 the Court of Appeals granted Appellant's Motion to proceed in forma pauperis. see Wicker v. S.C. Dept of Corr. 360 S.C. 421, 424, 602 S.E. 2d 56, 57-58 (2004)

[Indicating inmates have a state-created property interest in being paid a prevailing wage].

Appellant received this notice December 23, 2024 that gave Appellant until January 21, 2025 to file and served his Designation of matter and his Initial Brief to the Court of Appeals.

On January 17, 2025 Appellant respectfully submits his Designation of matter and his Appellant's Initial Brief on the Court of Appeals and Counsel of record, therefore this Appeal is properly before this court, and has Jurisdiction to hear Appellant's Appeal.

STATEMENT OF ISSUES ON APPEAL

ARGUMENT - I.

Did the [ALC] err in not seeing the essential terms of the contract?

ARGUMENT - II.

Did the [ALC] err in not applying 24-3-310, with 24-3-410, and 24-3-315 - PIE, PIECP requirement?

ARGUMENT - III

Did the [ALC] err when Appellant submitted his payroll-pay-stubs, for compliance to the prevailing wage of the contract Agreement?

ARGUMENT - IV

Did the [ALC] err in not considering Appellant's Original Brief argument [ET] under misfeasance, misfeasance, and Non-Feasance?

ARGUMENT V

Did the [ALC] err in considering the respondents, Department's motion to Dismiss?

ARGUMENT VI

Did the [ALC] err in not knowing that Appellant has an state created interest?

DID THE LALEI ERR IN NOT SEEING THE ESSENTIAL TERMS OF THE CONTRACT?

ARGUMENT - I

In this case the respondents/SCDC must satisfy the statute as well as the Contract.

If we look at all the contracts that is submitted please see Exhibits page 8 under # 8 Government compliance. SCDC/CRSI collectively agreed to comply with all federal, state and local laws, Executive orders, rules, regulations and ordinances, which may be applicable to the performance of its obligations under this Agreement. Including but not limited to chapter 24 of the Code of laws of the State of South Carolina (including Federal Certification of the private sector/prison industries program). This enforcement is sought in the essential terms of the Contract/Agreement.

Here SCDC/Respondents must satisfy the statute of 24-3-430, 24-3-310, 24-3-315, and 24-3-410. Under the Certification of the program PIE, PIR or PIECP.

In each contract the Respondents/SCDC agreement is to comply with all federal, and state and local laws, including Federal Certification of the private sector/prison industries program. Please see Exhibits G, H, & I under G-page H-page & I-page

Appellant contends that this was not irreparable harm, truly it can be remedied at a later time with money damages. See → Prismian cables & Sys. USA, LLC v Szumanski, 573 F. Supp. 3d 1021, 1034 (D.S.C. 2021).

The respondent's failure to comply with the contract and/or subcontractor in good faith with the clause of the contract. It shall be a material breach of the contract.

Federal Compliance with programs:
Requirements the United States Department of Justice's private Sector/Prison Industries Enhancements Certificate program (commonly know as the "PIE" program) as provided by sections 609 B(G) and 609 K of the Justices Assistance Act of 1984, Pub. Law 98-173, Title II, Chapter VI, Section 609 B(G) amends section 819 of the Omnibus Crime Control and Safe Streets Act of 1988, 42 U.S.C. 3701, as amended and section 609 K amends 18 U.S.C. 178 → as outlined in the contract please see → All contracts under federal compliance

DID THE [ALC] ERR IN NOT APPLYING 24-3-310, with ?
24-3-410, and 24-3-315 - PIE, PIECP REQUIREMENTS ?

ARGUMENT III II

The Department explained in several of its cases that SCDC - Operates three (3) types of projects within its prison industries program. (1) Traditional projects under Sections 24-3-320 and 24-3-330; (2) Service-Work project under Sections 24-1-20-295 and (3) Subsection 24-3-310 and projects certified by the Federal government under its prison Industries Enhancement Certification program also known as PIECP or PIE. Furthermore the programs (1 & 2) Traditional & Service programs do not require private sector CO. According to the Respondents/Department, the (3) third program, for which Appellant participated in 24-3-310, PIECP or PIE must comply with Subsection 24-3-430(d) in which requires inmates to be paid the "prevailing wage rate" for work of a similar nature in the private sector.

The statute under which Appellant seeks relief is part of a statutory scheme creating a prison industries program to provide for employment of convicts and utilize their labor for self-maintenance and reimbursement of expenses → see S.C. Code Ann 24-3-310 (Supp. 2003) also see the contracts with the both private sector CO. Carolina Textile and WTI / Caterpillar stating that they will comply with the federal certification of the private sector / prison industries program. See → exhibits

Appellant contends that this is the same statutory scheme, that of in Bennie Wicker vs. South Carolina Dept. of Corrections, 360 S.C. 421, 423-24 602 S.E. 2d 56 57 (2004), Billy Joe Cartrette v South Carolina Dept. of Corr., Court of Appeals, 387 S.C. 640 694 S.E. 2d 18 (2010) WL-2178782 and Torrence v. SCDC, 433 S.C. 633 861 S.E. 2d 36 (Ct. of App)

Appellant contends that, where the state has established, by statute, a right of inmates to compensation per work performed for private parties, it cannot deny that right after they earned the wage, under state or federal statute.

DID THE [ALC] ERR WHEN APPELLANT SUBMITTED HIS PAYROLL-PAY-STUBS, FOR COMPLIANCE TO THE PREVAILING WAGE OF THE CONTRACT/AGREEMENT ?
ARGUMENT-III

Appellant Contents that he Submitted his payroll-pay-stubs, for Compliance to 24-3-430(D) to the Administrative Law Court, (ALC) to show that (some) Department/ Respondents are not in Compliance with the prevailing wage under 24-3-430(D) or with 24-1-295 the negotiated wage of \$ 4. within the Contract/Agreement with the private Sector Williams Technologies Inc. (WTI)/Caterpillar. At this time Appellant Challenges the indication that he participated under service pursuant to 24-1-295 as the respondents may want this Court to believe. IF we look at the plain language of 24-1-295, Appellant Contents that the respondents still did not pay-Appellant the proper wage, for the negotiated wage was \$ 4. per hour per inmate and there is on mention of any base rate in the Contract/Agreement → Please see all the Contracts Exhibits

The plain language of 24-1-295 it states that the "Department/ Respondents may enter into contracts with private sector entities that allow inmates labor". It also states that "The Department may negotiate the wage to be paid for inmate labor provided under prison industry service work contract and export work contracts, and these wages may be less than the prevailing wage for work of a similar nature". Reasonable minds could reach the same conclusion that (1) that the negotiated wage with the private sector (WTI)/Caterpillar and the Department was \$ 4. per hour per inmate - Please see Contract/Agreement. This is the amount to be paid to each inmate per. hour. The Respondents negotiated this wage / rate at \$4. per hour, for there is no other mentioned in the Contract/Agreement. Appellant Submitted his pay-stubs to show this Court that his start pay was .40¢ per hour not the negotiated pay rate. IF this was service work, Respondents still did not pay the proper rate, as provided by 24-1-295.

DID THE [ALC] ERR IN NOT CONSIDERING
APPELLANT'S ORIGINAL BRIEF ARGUMENT - E
UNDER MALFEASANCE, MISFEASANCE, & NON-FEASANCE?
ARGUMENT - IV

In Appellant's Original Brief see Exhibit M page [7]
Line 24-28, and page #4. he states that the
October 17, 2002 letter from Mr. Robert D. Cook
Assistant Deputy Attorney General, stating that,
it is clear that, provided the other requirements of
24-3-430 are met the legislature intended "Service
Contracts" to be so included.

Inmates participating in the performance of Service
Contracts for private industry as provided in 24-3-430
thus must be paid the prevailing wage.
Appellant contends that all of the requirements were
met under 24-3-430, but [D], the prevailing wage,
and the respondents deducted wages per 24-3-40
Appellant also contends that the [ALC] erred in not
considering that Service Contracts or all prison contracts
are to be paid the prevailing wage rate.
Appellant contends that he participated under the
requirements of 24-3-430, 24-3-40, 24-3-410, is
exception to the general rule set forth in section
24-3-410, and code 1976-24-3-315, the determinations
prerequisite selecting prison industry project please
see \rightarrow exhibit (F) of the locality and there determination.
Appellant has met all requirements of the following
statutes 24-3-430, 24-3-315, 24-3-410, 24-3-310.
is entitled to prevailing wages.

In general what ever conditions the respondents
submitted to the SCESC-Workforce Center their
determination was it was an enhancement program,
and that it would not result in the displacement
of workers/employers in the area at Lieber (LCI).
24-3-315 and 24-3-430 still governs prison industry

This was the data necessary to determine the
respondents to use the statutes of 24-3-315,
24-3-430 and the federal guidelines. As defined

In Wicker v. SC Dep't of Corr., 360 S.C. 421, 433-24, 602 S.E.
2d 56, 57 (2004); South Carolina Dep't of Corrections vs.
Cartrette, Court of Appeals, 387 S.C. 640 694 S.E. 2d 18 2010
WL-2178982, and Terrence v. SCD, 433 S.C. 633 861 S.E. 2d 36
(Ct. of App.)

DID THE (ALC) ERR IN CONSIDERING THE RESPONDENTS / DEPARTMENT'S MOTION TO DISMISS?

ARGUMENT V

In this case Appellant contends that the [ALC] erred by allowing the respondents to use the motion to dismiss for the department's evidentiary support for its assertion that Appellant participated in the service work project rather than the PIECP or PIE project is based entirely upon the paperwork from Katherine Klein see exhibit [I] stating there was no PIECP program at Lieber.

This was based entirely upon the documents attached to its motion to dismiss, that have not been verified see Rule 240(c), SCACR additionally, as explained above, the Respondents/Department has not filed a brief to the record on Appeal, consequently, the [ALC] should not consider that information in these documents see id.

The Department contends that there was no Enhancement program at Lieber, please see Exhibit A (F) from the SCACR workforce center that states their determination regarding Lieber Correctional Institution. Please note that this is in full contradiction of what the respondents are trying to relay to this court.

To what a reasonable mind person would understand it to be an Enhancement along with both parties agreed to be in compliance with the Federal Certification of the private sector / Prison industries programs.

On July 23, 2007 both parties agreed to the following changes, that the name be change from Williams Technologies Inc, to Caterpillar Remanufacturing Powertrain Services, Inc, and the term of the contract to be 10 years to 5 years [Ten to Five years] The name, and the yearly term is the only change, see exhibit [J] same CO.

DID THE [ALC] ERR IN NOT KNOWING THAT
APPELLANT HAS AN STATE CREATED INTEREST?
ARGUMENT VI

Appellant contends that the [ALC] erred in not granting his state-created liberty interests in his property of prevailing wages for services rendered under 24-3-430(D). The state statutory law is which is always controlling see Constitution, South Carolina Article 1, 4, and State v. Cottingham, 77 S.E. 2d 897, 224 S.C. 181 (1953). The legislative intent behind statute 24-3-430 providing that no inmate participating in a prison industry program may earn less than the prevailing wage for work of a similar nature in the private sector is to be a safeguard to prevent inmates from becoming a cheaper alternative to their counterparts in the private realm see → Torrence v. South Carolina Department of Corrections, (S.C. App. 2021) 433 S.C. 633, 861 S.E. 2d 36, rehearing denied, certiorari denied.

Inmates working in the prison industries program have a cognizable state-created interest in having (SCDC) Respondents pay them according to the statutory scheme governing the program, 24-3-430(D) 24-3-315, 24-3-310, 24-3-410, & 24-3-40. Also with Government Compliance - State & Federal law. please see code 1976 - 24-3-315 - 24-3-310

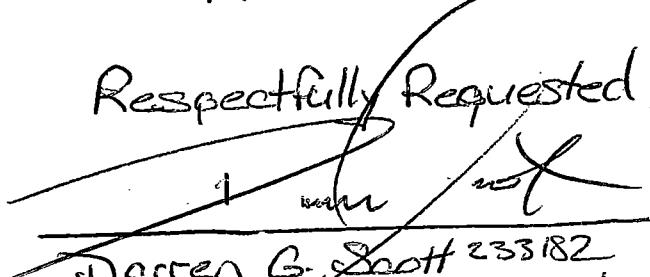
Appellant contends that all consultation were met for the outlined of requirements for the implementation of the PIE & PIECP.

CONCLUSION

WHEREFORE, Appellant respectfully Request that this court would Calculate and or determine amount owed and the difference between the wage Appellant was paid and the prevailing wage rate mandated to be paid to Appellant under SC code 24-3-10, 24-3-35, 24-3-410, and 24-3-438(D) As defined in → Wicker v. SC Dept of Corr, 360 S.C. 421 423-24, 602 S.E. 2d 56, 57 (2004),

South Carolina Dept of Corrections vs Cartrette, Court of Appeals, 387 S.C. 640 694 S.E. 2d 18-2010 WL-2178982, and Torrence v. SCDC 433 S.C. 633 861 S.E. 2d 36 (Ct. of App.) (2021)
To remand back to respondents to comply to 24-3-40.

Respectfully Requested


Darren G. Scott 233182
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1057 Revolutionary Trail
Fairfax SC 29827

This 17th day of January 2025
Fairfax, South Carolina

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CERTIFICATE
OF
SERVICE

CASE NO. 2024-001892

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SC Court of Appeals

That I, Darren G. Scott, hereby Certify that I have this date January 17th 2025 Served the following:
(1) the Appellant's Initial Brief, (2) Designation of Matter and (3) the Certificate of Service, upon all parties to this case by depositing a copy hereof, in the United States mail, postage paid or by institution mail, to the last known address as follows: "With Exhibits"

The Honorable Catherine S. Harrison
Chief Deputy Clerk

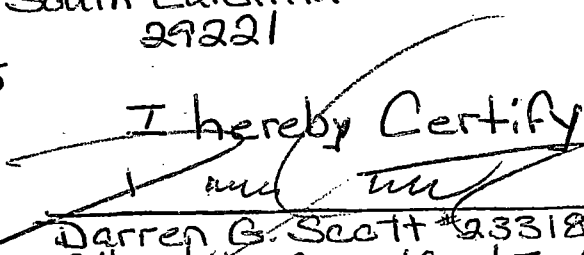
The South Carolina Court of Appeals

1220 Senate Street
Columbia, South Carolina
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Kensley Evans Esquire
Deputy General Counsel
The South Carolina Department of Corrections
4444 Broad River Road
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This 17th day of January 2025

I hereby Certify


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