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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
ROBERT L. REIBOLD, ADMINISTRATIVE LAW COURT

Alonzo Hawes, #344451,

Appellant,

v.

South Carolina Department Of Corrections

Respondent.

FINAL BRIEF OF APPELLANT

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ISSUES ON APPEAL

1. DID THE ADMINISTRATIVE LAW COURT ERR IN IT'S FINDINGS THAT IT LACKED SUBJECT MATTER JURISDICTION DUE TO APPELLANT'S FAILURE TO EXHAUST HIS ADMINISTRATIVE REMEDIES?
2. DID THE ADMINISTRATIVE LAW JUDGE ERR IN HIS FINDINGS THAT THE RULING IN TORRENCE V. S.C.DEPT. OF CORR.(2021) AND SCDC'S UPDATED GRIEVANCE POLICY GA-01.12§13.2 DOES NOT SUPERSEDE POLICY ADM-15.13§12?
3. DID THE ADMINISTRATIVE LAW JUDGE ERR IN HIS FINDINGS THAT THE FAILURE TO INFORM APPELLANT THAT HE WOULD NOT BE PAID PREVAILING WAGES AS REQUIRED UNDER S.C.CODE§24-3-430(D), IS NOT CONSIDERED A "CONDITION OF EMPLOYMENT" UNDER S.C.Code§24-3-430(C)?

STATEMENT OF CASE

This matter comes before the South Carolina of Appeals pursuant to an appeal filed by Alonzo Hawes(Appellant), an inmate incarcerated with the South Carolina Department of Corrections(SCDC). In the present appeal, Appellant asserts that the Department did not pay him a prevailing wage under South Carolina Code §24-3-430(D), and is seeking to be paid the prevailing wages for his work from March 2010 through December 2015 and May 2018 through May 2019.

On June 30,2023, Appellant sent an Automated Request To Staff Member(ARTSM) on the Inmate kiosk machine to Inmate financial and stated that, "I would like to know why i did not receive my prevailing wages when i worked in P.I.".see Inmate Kiosk Number 23-03161700. On August 31,2023, he received a response stating that, "this is in ICH level 2 HQ". On July 17,2023, Appellant

filed a step 1 grievance and it was elevated to a Step 2 Grievance without a response on the merits. The Responsible Official then denied the Step 2 Grievance on October 24, 2023, explaining that Appellant's grievance was untimely under SCDC Policy ADM-15.13, section 12.1, which governs problems with inmate pay. Appellant received the decision on October 26, 2023.

On November 1, 2023, Appellant filed a Notice of Appeal in the Administrative Law Court. In the Notice of Appeal, Appellant alleged he is entitled to back pay of prevailing wages for prior work in the prison industries program. The matter was assigned to Judge Milton Kimpson on November 20, 2023. The Department filed a Motion to File Out of Time and Motion to Extend Time To File Record on February 1, 2024 which was subsequently granted in part. Appellant filed his original brief on February 5, 2024, before the Department had completed the Record on Appeal.

The Department filed a Motion To Dismiss the appeal on May 6, 2024, on the basis that Appellant failed to exhaust administrative remedies thereby depriving the Court of jurisdiction. Appellant filed a response opposing the motion on May 9, 2024. On May 14, 2024, this appeal was reassigned to judge Robert L. Reibold. On August 20, 2024, judge Reibold dismissed the appeal stating that, "Because Appellant failed to exhaust his Administrative remedies, and this failure deprives the court of jurisdiction, dismissal is appropriate". This appeal follows.

ISSUE 1

DID THE ADMINISTRATIVE LAW JUDGE ERR IN HIS FINDINGS THAT HE LACKED SUBJECT MATTER JURISDICTION TO HEAR THIS MATTER DUE TO APPELLANT'S FAILURE TO EXHAUST HIS ADMINISTRATIVE REMEDIES?

DISCUSSION

The Department contends that Appellant's appeal should be dismissed due to his failure to fully exhaust his administrative remedies. IN support of its contention, the Department explains that for the purpose of inmate pay, inmates must make efforts to informally resolve a grievance. Section 12.1 of SCDC Policy ADM-15.13 requires that inmates report problems in pay by way of an Automated Request To Staff Member (ARSTM) system within fifteen days of the payroll date error. Here, the Department indicates that Appellant received his last pay deposit on June 14, 2019, but did not submit an ARSTM until June 30, 2023, well beyond fifteen days from the date of his last deposit. With reference to its policy, the Department argues that since Appellant failed to timely exhaust his administrative remedies (i.e. submission of an ARSTM report within fifteen days of a payroll date error), the court lacks jurisdiction to consider Appellant's appeal.

The doctrine of exhaustion of administrative remedies is generally considered a rule of policy, convenience, and discretion, rather than one of law." Ward v. State, 343 S.C. 14, 538 S.E.2d 245 (2000). The doctrine of exhaustion of administrative remedies only comes into play when a litigant attempts to invoke the original jurisdiction of a court to adjudicate a claim based on a statutory violation for which the legislature has provided an administrative remedy. Thomas sand Co. v. Colonial Pipeline Co., 349 S.C. 402, 563 S.E.2d 109 (Ct.App.2002). "Proper exhaustion of administrative remedies means using all steps that the agency holds out, and doing so properly, so that the agency addresses the issues on the merits." 2 Am.Jur.2d Administrative

Law §450 (Feb. 2024 Update). "The failure to exhaust administrative remedies goes to the prematurity of a case, not subject matter jurisdiction." Ward v. State, 343 S.C. 14,533 S.E.2d 245, at n.5(2000).

In regard to the Department's policy, section 12.1 of SCDC Policy ADM-15.13 sets forth that "[i]nmates 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 policy further provides that if the inmate fails to notify the Agency in writing and within fifteen days, no back pay will be given. Id. Considering Appellant's last pay deposit, the Department ascertains that Appellant failed to timely report problems in his pay. Nonetheless, this is not the position advanced by the Department in its Motion. This is the position it took in the Step 2 Grievance.

The Department contends that the Administrative Law Court lacks jurisdiction over Appellant's appeal since Appellant failed to exhaust his administrative remedies by not filing a claim utilizing the ARTSM system within fifteen days of the payroll date error. However, as set forth in Appellant's Notice of Appeal to the Administrative Law Court, the question of whether the Department deprived Appellant of statutory rights arising under 24-3-430(D) is a matter of timeliness, not an exhaustion issue. The issue of whether the Department's denial of Appellant's grievance on the basis of timeliness falls squarely within the Administrative Law Court's jurisdiction. see Ward, supra. (failure

to exhaust administrative remedies goes to prematurity of a case, not subject matter jurisdiction).

ISSUE 2

DID THE ADMINISTRATIVE LAW JUDGE ERR IN HIS FINDINGS THAT THE RULING IN TORRENCE V. S.C. DEPT. OF CORR. (2021), AND SCDC'S UPDATED GRIEVANCE POLICY GA-01.12§13.2 DOES NOT SUPERSEDE SCDC POLICY ADM-15.13§12.1?

DISCUSSION

Appellant contends that judge Reibold's findings are erred base on his failure to consider the Department's interpretation and application of Torrence v. S.C. Dept. of Corr. (2021) on its ADM and Grievance policies, opposed to applying his own interpretation of the affects Torrence may have had on those policies.

In his Order, judge Reibold states the following: "After considering Appellant's arguments, the Court cannot conclude that Appellant was excused from compliance with ADM 15.13. Appellant asserts that under Torrence, his appeal was not untimely because his grievance concerns a policy/procedure and not an incident. Appellant's argument improperly conflates the 15-day time limit for filing a wage complaint under ADM 15.13 with the 15-day time limit for filing an inmate grievance discussed in Torrence. In that case, the court of appeals concluded that section 13.9 of the inmate grievance policy then in place provided an exception to the 15-day time-limit for filing a grievance concerning policies and procedures. However, Torrence did not address ADM 15.13 in any manner. Additionally, the exception set forth in

section 13.9 of the policy GA 01.12 discussed in Torrence applies, by its terms, only to "grievances" submitted under the inmate grievance policy. ADM 15.13 is not part of the Department's inmate grievance policy. see Order page 5.

The Order further states that, "Appellant finally cites the recent inmate grievance policy under policy GA 01.12 section 13.2, which, he argues, creates a two-year statute of limitations for prevailing wage claims. As Appellant's argument goes, because he asserted his claim within two years of the time at which he learned he may not have been properly paid and because the recent policy allows such claims for up to two years, his request is timely. The relevant provision of recently revised section 13.2 reads, as follows:

Unless a separate SDC policy requires filing a grievance within a shorter period of time, any and all grievances that involve a continuous matter (prison industries pay) must be filed within two (2) years of when the issue arose, or the grievant should have known about it. If the issue is older than two (2) years but continued to be an issue that is grievable, only the two (2) year portion immediately prior to filing of the grievance will be considered.

This policy has an effective date of September 1, 2023. It did not apply in March 2010 through December 2015 and May 2018 through May 2019 when Appellant contends he worked in the prison industry program. There is nothing in the revised policy to indicate that it was intended to apply retroactively, and,

generally, procedural changes shortening or lengthening a filing period do not operate retroactively. See §5:34. Effect of change or amendment; retroactivity, 1A American Law of Torts §5:34v (It is usually held that the statute of limitations in force at the time of suit governs—even though it either shortens—provided that a reasonable time is allowed for enforcement—or lengthens the earlier period of limitations). "see ORDER PAGE 6-7."

In his Order, Judge Reibold concludes that because "...Torrence did not address ADM 15.13 in any manner" and that, "...the exception set forth in section 13.9 of the Policy GA 01.12 discussed in Torrence applies, by its terms, only to "grievances" submitted under the inmate grievance policy.", that the 15 day time limit for reporting problems with prison industries pay in ADM 15.13 section 12.1 is controlling.

Judge Reibold has failed to take note of the Department's final decision denying the step 2 grievance. There, the Department states the following: "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 June 30, 2023, approximately two years after the Court of Appeals issued its opinion. Accordingly, your grievance is untimely under SCDC Policy ADM-15.13, section 12.1"

In denying the step 2 grievance, the department referenced the two year delay between the court's ruling in Torrence (June 30, 2021) and Appellant filing his claim (June 30, 2023) as the gauge to the timeliness of the claim. Even though the Department

referenced the 15 day time limit in Policy ADM-15.13, section 12.1, the fact that it pointed out the 2 year delay in filing the claim shows that it was applying the time limitation in its updated Grievance policy.

On September 1, 2023, the Department updated its Grievance Policy GA-01.12, and stated that the update "Supersedes: GA-01.12-May 12, 2014; Ga-01.12(Change 2, dated March 19, 2013); (change 1, dated August 2, 2012); (October 1, 2010); (September 1, 2009); (July 1, 2008); (January 1, 2006)." It then added the following language to section 13.2: "Unless a separate SCDC policy requires filing a grievance within a shorter period of time, any and all grievances that involve a continuous matter (prison industries pay) must be filed within two (2) years of when the issue arose, or the grievant should have known about it. If the issue is older than two (2) years but has continued to be an issue that is grievable, only the two (2) year portion immediately prior to filing of the grievance will be considered."

Pursuant to that new language, the Department surely meant for the updated grievance policy to retroactively supersede all prior policy changes concerning prison industries pay, which included ADM-15.13§12.1. That fact can be reasoned simply by considering the retroactive affect of Torrence on the prevailing wage issue. Torrence raised his claim back in November 2004, over twenty (20) years ago. Since that time, the Department fought and refused to pay him and those similarly situated their claims for back pay. But since the Court of Appeals' ruling in Torrence, the Department was forced to now go back and retroactively pay

torrence and all others similarly situated those backpay wages. Therefore, all the policy changes concerning prison industries pay were considered void as they no longer stood as a adequate means to notify inmates of the proper procedure to address the matter. That is why it installed the updated language that, "...any and all grievances that involve a continuous matter (prison industries pay) must be filed within two (2) years of when the issue arose,".

What's more, is that the time limitations of both GA-01.12§13.2 and ADM-15.13§12.1 can not coincide with each other. the ADM Policy states that the inmate must file a ARTSD within 15 days of the problem with pay. The updated Grievance policy states that a grievance must be filed within 2 years of when the issue arose. Either or, it's clear that the Department stated in the Updated Policy GA-01.12 that Policy Supersedes all other policies concerning continuous matters(prison industries pay).

ISSUE 3

DID THE ADMINISTRATIVE LAW JUDGE ERR IN HIS FINDINGS THAT THE FAILURE TO INFORM APPELLANT THAT HE WOULD NOT BE PAID PREVAILING WAGES AS REQUIRED UNDER S.C.CODE§24-3-430(D), IS NOT CONSIDERED A "CONDITION OF EMPLOYMENT" UNDER §24-3-430(C)?

DISCUSSION

In his Order judge Reibold states the following: "Next, Appellant argues that under section 24-3-430(C) the Department was required to inform him of the "conditions of employment", which he alleges includes the requirement that he be paid a prevailing wage. He further alleges that the Department did not

inform him of the right to prevailing wage and it was only when inmates from another institution were transferred to his prison that Appellant became aware of a right to prevailing wage. Appellant has not explained how the legal requirement contained in the prevailing wages act would constitute a "condition of employment" and the court concludes that it does not."

Appellant contends that judge Reibold's own words that, "the legal requirement contained in the prevailing wages act", discredits his findings. The very name and nature of the act (Inmate labor in Private authorized; requirements and conditions) inherently makes the rate of pay a "condition of employment", and a "legal requirement". see S.C. Code §24-3-315, (The Department of Corrections shall ensure ...that the rates of pay and other conditions of employment are no less than those paid and provided for work of similar nature in the locality in which the work is performed).

Because the Department knew before hiring Appellant, that it was not going to pay him a prevailing wage, then it had a legal duty under §24-3-430(C) to inform him of that condition of his employment, before he entered into the contract for employment. Id. "An inmate may participate in the program established pursuant to this section only on a voluntary basis and only after he has been informed of the conditions of his employment". Torrence v. South Carolina Department of Corrections, 433 S.C. 633, 851 S.E.2d 36 (Ct.App.2021).

CONCLUSION

Appellant respectfully requests that the Administrative Law

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Judge's decision be reversed and his appeal be reinstated.

This 06 day of February, 2025,

BY: Alwyn C. Haver
PRO SE
POST OFFICE BOX 530
UNA, S.C. 29378