STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Administrative Law Judge Deborah Brooks Durden

ALC- Case No. 23-ALJ-04-0683-AP
Appellate Case NO. 2024-001892

DARREN G. SCOTT, #233182 APPELLANT.

V.

SOUTH CAROLINA Department OF CORRECTIONS. RESPONDENT

REPLY BRIEF OF APPELLANT

Darren Scott # 233182
Allendale Correctional Inst.
1057 Revolutionary Trail
Fairfax, South Carolina
29827
Appellant.

AUTHORITIES CITED

Statutes of Authorities:

Exhibit - F
Letter From the Assistant Deputy Attorney General Robert D. Cook
The Determination Regarding Lieber Correctional Enhancement
SCESC Workforce Center:

REPLY ARGUMENT

The [ALC] improperly dismissed Appellants Appeal - Implication of state-Created liberty or property Interest:

Appellant has asserted a wage claim that is a State-Created property interest pursuant to Al-Shabazz, and Wicker see Al-Shabazz, 338 S.C. at 369-70, 527 S.E. 2d at 750; Wicker, 360 S.C. at 423-24, 602 S.E. 2d at 57. Accordingly, dismissal under Slezak was is improper, see Slezak, 361 S.C. at 331, 605 S.E. 2d at 508 Cert. denied, 544 U.S. at 1033. and for the Following → According to the Documents sumitted by Appellant evidentiary support for his assertion that Appellant participated in the P.I.E. see subsection 24-3-310 this project certified by the federal government under its prison Industries Enhancement Certification program, also Known as P.I.E.C.P. or P.I.E. → see document in the Designation of Matter to support that the Contract & the Subsection falls under the Enhancement program. Please Note that all of the requirments were met (but(D) from 24-3-430, An inmate is entitled to be paid the prevailing wage while working in the private Secter program Id at 421, 602 S.E. 2d at 56. particulary where there is a statute there that mandating payment of the payment of the prevailing wage. Wicker 360 S.C. at 423, 602 S.E. 2d at 57 Further, there is nothing in the statutory scheme, 24-3-310 See Contract as set out in Chapter 3 of Title 24 of the South Carolina Code of Laws, authorizing the Department/S.C.DC to pay an inmate less than the prevailing wage. Id at 425, 602 S.C. 2d at 58 Code Ann 24-3-315 to 40 (Supp. 2005). Appellant asserted he participated in the P.I.E. all-though Section 24-3-430 mandates the payment of prevailing wage to an inmate participating in the prison industries program, in section (A) of 24-3-430 also states processing of goods, wares, or Merchandise or the provision of services. SERVICES is considered within 24-3-430. Appellant processed cutting material into the required size for sale/with Carolina textile, as well as processing transmissions, from - Ford, Mitsubishi, & Jaguar. these processed goods, were sold on the open market.

REPLY ARGUMENT

The [ALC] Improperly dismissed Appellants Appeal with that of 24-3-430, 24-3-315, & 24-3-410

The [ALC] improperly dismissed Appellants appeal under Statutes 24-3-430, 24-3-315, & 24-3-410 the prison work program at SCDC, which are Commonly referred to as the PIECP or PIE programs. If Section 24-3-315 expressly applies only to "inmates participating in any prison industry program pursuant to the Justice Assistance Act of 1984" Section 24-3-430 states that it applies to " inmates labor by a non-profit organization or in private industry for the manufacturing and processing of goods, wares, or merchandise". If these are programs that are organized as an exception to the general rule set forth in Section 24-3-410 prohibiting the Sale on the open market of products manufactured or produced by inmate labor. This appeal dismissal is/was improper for the following reasons (1) It Certainly begs the question as to what the inmates were processing for over 10-Ten years, as Section 24-3-410 States. Appellent along with 50-70 other inmates participated in the program, and processed Transmissions, for → Ford, Jaguar, & Mitsubishi that was Sold on the open market. ALSO with Carolina Textile Cut material into required size to sell to Car-wash, overseas, production plants.
Appellant participated under the same Statutory Scheme as 24-3-310, as Torrance & Wicker.

Carolina Textile is no longer at Lieber Correctional Institution they moved the production plant to McDougall Institution, They have opted to pay the Forkift drivers and the Balers the federal minimum wage at this time.

The [ALC] improperly dismissed Appellants Appeal without Considering the Agreement/Contract with the/both parties ERRSI and C.T. Carolina Textiles

REPLY ARGUMENT

In this case the [ALC] improperly dismissed Appellants case without Considering the Agreement/Contract with W.T./Caterpillar Remon Powertrain Services Inc. & Carolina Textiles Whereas the Contract/Agreement states to fulill the intent of Section 24-3-310 to what falls under the PIE. See
In the agreement with both Contracts & SCDC. to what is binding as an inmate is also considered within that same Contract. that they would Coply with all Federal State and local laws. Executive orders, rules, regulations and ordinances which may be applicable to the performance of it's obligation under this Agreement. including but not limeted 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 is clear and plain language of both Agreement/Contract. that they would Comply with the Federal Certificatron of the program.
In theory this mechanism or this language is placed in the Contract as a mechanism for inmates against legal error. As the same mechanism was placed in the language of 24-3-430, 24-3-315; 24-3-310, to prevent SCDC/the private Sector from using inmates as cheaper labor.
This Contract has been renegotiated Several times, and has the same language of the Statute governing PIP, PIE, or Service work for private Sector entities.
IF the [ALC] would have Considered the letter to the Honorable Mike Fair from Mr. Robert D. Cook Stating that. In other words, "if we Chose to operate a prison industry Service program, we must do so in Conformance with Section 24-3-43 of the South Carolina S.C. Code of laws and where existing prison industry Service programs are in place. SCDC should begin to Comply with the above provisions immediately" that Section 24-3-430 is mandatory and must be followed. see → the letter (8) pages dated October 17, 2002. Exhibit Appellant Contents he participated in the PIE program and has demonstrated that Service Contracts should be incorporated with 24-3-430 and would request to be

Compensated for his participation in the program. Appellant worked participation was voluntarily and it did not displaced of employed workers see exhibit.

NotE:
More significantly, and unrelated to federal PIE requirements, state law makes it clear that there is no such legal "loophole" in South Carolina. Section 24-3-430(A) provides that the Director of the Department of Corrections may establish a program involving the use of inmate labor by a nonprofit organization or in private industry for the manufacturing and processing of goods, wares or merchandise or the provision of services or another business or commercial enterprise considered by the director to enhance the general welfare of South Carolina. section— Subsection (D) of 24-3-430 requires that No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private Sector.
For example, the supreme court addressed S.C. Code Ann. 24-3-410 (A) (B)(7) (2007) & Section 24-3-430(D) In Torrence → Although both statutes refer to inmate wages earned through PIP, they found that section 24-3-430(D) is the controlling authority as it directly addresses the rate of inmate wages. See → Bruning v. S.C. Dep't of Health and Env't control, 418 S.C. 537, 545, 795 S.E. 2d 290, 294 (Ct. App. 2016). Generally, a specific statutory provision prevails over a more general one. Wooten ex rel. Wooten v. S.C. Dep't of Transp. 333 S.C. 464, 468, 511 S.E. 2d 355, 357 (1999).
Further, as stated in the ALC's order, our there precedent has primarily addressed inmate wages claims within the Context of Section 24-3-430(D). see Dep't of Corr. v. Cantrette, 387 S.C. 640, 646 S.E. 2d 18, 21 (Ct. App. 2010) finding "Sections 24-3-315 and 24-3-430(D) Compel the Department to ensure inmate workers who are employed under those Sections receive the same pay rates and employment Conditions as their non-inmate peers. Wicker, 360 S.C. at 425, 602 S.E. 2d at 58 (holding "there is simply nothing in the [PIP] Statutory Scheme authorizing the [Department] to pay Wicker a training wage less than the prevailing wage as provided by section 24-3-430. The ALC's interpretation of Appellant's case was arbitray, capricious, or manifestly Contrary to the Statute of 24-3-430, 24-3-310, and 24-3-315. Chevron, U.S.A. Inc. v. Nat. Res. Def. Council, Inc. 467 U.S. 837, 844 (1984).

REPLY ARGUMENT

The [ALC] failed to Consider that of in 24-3-430 IF all of the requirments were met.

24-3-430. Inmate labor in private industry authorized requirements and Conditions

(A) The Director of the Department of Corrections may establish a program involving the use of inmates labor by a nonprofit organization or in private industry for the manufacturing and processing of goods, wares, or merchandise or the provisio of services of another business or Commercial enterprise Considered by the director to enhance the general welfare of South Carolina. No violent offender shall be afforded the Opportunity to perform labor for nonprofit organizations if such labor is outside the confines of a Correctional institution. Inmates participating in such labor shall not benefit in any manner Contradictory to existing statutes.

(B) The director may enter into Contracts necessary to implement this program. The contractual agreements may include rental or lease agreements for state buildings or portions of them on the grounds of an institution or a facility of the Department of Corrections and provide for reasonable access to and from the building to establish and operate a facility.

(C) 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.

(D) No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector.

(E) ~~Noth~~ Inmate participation in the program may not result in the displacement of employed workers in the state of South Carolina and may not impair existing Contracts for services.

(F) Nothing Contained in this section restores, in whole or in part, the Civil rights of an inmate. No inmate Compensated for participation in the program is considered an employee of the state.

(G) No inmate who participates in a project designated by the Director of the Bureau of Justice Assistance pursuant to Public law 90-351 is eligible for unemployment Compensation upon termination from the program.

(H) The earnings of an inmate authorized to work at paid employment pursuant to this Section must be paid directly to the Department of Corrections and applied as provided under Section 24-3-40

Therefore, recognizing the statute requirements set forth in 24-3-430, It becomes apparent that services is a part of the statute, and the (ALC) did not consider the manner in which the legislater intent of the statute. The respondents utilized the statute, but did not utilizes of what the intent was by the legislater. When a legislative enactment limits or the manner in which Something may be done, the enactment also evinces the intent that it shall not be done another way.....

CONCLUSION

For the reasons stated in this reply brief. Appellant respectfully request that this court would remand this case back to the Administrative law Court [ALC] Calculate and determine prevailing wages owed to Appellant, as it complys with ~~wi~~ the provisions of 24-3-430(D) In accordance 24-3-40.

S.C. Department of Corrections
P.O. Box 21787
4444 Broad River Rd.
Columbia, S.C. 29221-1787

To Whom it May Concern:

Having reviewed the proposed project/s for the Lieber Correctional Institution under the Prison Industries Enhancement program, I make the following determination regarding projected impact upon the local area.

X This project will not result in the displacement of workers and will not adversely affect employers in the area.

_____ This project will result in the displacement of workers and will adversely impact employers in the area.

Area Director Signature

Summerville
SCESC Workforce Center

EX-F

7357 Letter

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 17, 2002

The Honorable Mike Fair
Chairman, Corrections & Penology Committee
The Senate of South Carolina
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Fair:

You have asked us to outline the applicable federal and state law governing the payment of inmates who perform "certain service work for private sector entities at wage levels below the federal minimum wage." By way of background, you state the following:

> [c]urrently, S.C. Code 24-3-430 provides for certain service work to be performed for private sector entities if certain conditions are met. Among those conditions is the requirement that inmates be paid no less than the prevailing wage for work of a similar nature in the private sector. The language mirrors the requirements of the Prison Industries Enhancement Program pursuant to the United States Justice Assistance Act of 1984.
>
> In reviewing the operations of Department of Corrections (SCDC) Prison Industries Division last year, the General Counsel for SCDC realized that the agency was operating outside the authority and requirements of S.C. Code 24-3-430 in that inmates were being paid less than the prevailing wage for work performed for private companies. Several binding contracts were in place, which would require renegotiation in order to meet the Code.
>
> So as to avoid the closure of the programs, the agency sought and was granted temporary authority though Budge Proviso 37.31 to continue the operation at a wage rate less than the prevailing.
>
> Currently, I am examining the propriety of allowing the utilization of inmate labor to perform work for private businesses at a wage rate below the prevailing or even the minimum, as established by federal law for civilian employees. Would you kindly review both state and federal laws and regulations relative to use of inmate labor and fair trade practices, and advise me as to the legality of inmates performing

work for private companies at a less than minimum wage, as established by federal laws?

Law / Analysis

Congress authorized the Prison Industry Enhancement (PIE) program through the Justice System Improvement Act of 1979. Pub. L. No. 96-157, § 827. As has been explained in a scholarly article regarding PIE,

> [t]he PIE program brings the private sector into prison industry by exempting certified correctional agencies from legislative restrictions on the transportation and sale of prison made goods in interstate commerce provided that prisoners are paid minimum wage and certain other criteria are met .... The program additionally authorizes deductions of up to eighty percent of gross wages for taxes, room and board, family support, and victim compensation ... .

Misrahi, "Factories With Fences: An Analysis of the Prison Industry Enhancement Certification Program In Historical Perspective," 33 Am.Cr.L.Rev. 411 (Winter 1996). The PIE program "provides limited deregulation of federal prohibitions affecting both the movement of state prison-made goods in interstate commerce and the ability to use prison labor in government contracts in excess of $10,000 ...." The program does not repeal the longstanding Ashurst-Sumners Act first enacted in 1935, see, 49 Stat. 494 (1935) (now codified at 18 U.S.C. § 1761, Ashurst-Sumners is the federal law which prohibits, with certain exceptions, prison-made goods being transported in interstate commerce). However, the federal law authorizing the PIE program "does negate its [Ashurst-Sumners] application to certain certified prison industries." Id. at 419. The purpose and theory of PIE

> ... is to remedy the historical concerns of free labor competition and inmate exploitation associated with private sector involvement in prison industry by treating the convict laborer the same as a free worker .... The program seeks to provide meaningful work for inmates, thereby reducing inmate idleness, increasing job skills, and providing an opportunity for rehabilitation .... As a result of the success of the program, Congress had gradually expanded the number of allowable certifications from seven to fifty .... All prison-made products of every state may now, in theory, legally enter the stream of interstate commerce ....

The PIE program was originally authorized in 1979, revised in 1984 under the Justice Assistance Act, Pub. L. No. 96-157, § 827, and amended again by the Crime Control Act of 1990, Pub. L. No. 101-647, 104 Stat. 4789. Misrahi, Id.

In order to be certified as a PIE program, a prison industry must do all of the following:

- pay offenders the prevailing wage in the free market or the minimum wage, whichever is higher;
- provide a financial contribution to victim's compensation or victim's assistance programs;
- consult with organized labor and local businesses that might be affected by the industry prior to start-up;
- provide assurance that inmate labor will not displace workers in the free society;
- provide for worker's compensation;
- provide assurance that offender participation in the program is voluntary and that the workers agree to specific deductions from wages;
- involve the private sector.

Id. The program is intended to provide a strong financial incentive for the State. The goals are to seek to generate goods and services that produce income so that offenders can make a contribution to society, defray their own costs, support their families and aid crime victims. Id.

In 1995, the General Assembly enacted legislation, now codified in § 24-3-430, which authorizes South Carolina's participation in the federal PIE program. As you note, the State legislation closely parallels the federal enabling statute governing PIE. Section 24-3-430 provides as follows:

> (A) The Director of the Department of Corrections may establish a program involving the use of inmate labor by a nonprofit organization or in private industry for the manufacturing and processing of goods, wares, or merchandise or the provision of services or another business or commercial enterprise considered by the director to enhance the general welfare of South Carolina. No violent offender shall be afforded the opportunity to perform labor for nonprofit organizations if such labor is outside the confines of a correctional institution. Inmates participating in such labor shall not benefit in any manner contradictory to existing statutes.
>
> (B) The director may enter into contracts necessary to implement this program. The contractual agreements may include rental or lease agreements for state buildings or portions of them on the grounds of an institution or a facility of the Department of Corrections and provide for reasonable access to and egress from the building to establish and operate a facility.

(C) 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.

(D) No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector.

(E) Inmate participation in the program may not result in the displacement of employed workers in the State of South Carolina and may not impair existing contracts for services.

(F) Nothing contained in this section restores, in whole or in part, the civil rights of an inmate. No inmate compensated for participation in the program is considered an employee of the State.

(G) No inmate who participates in a project designated by the Director of the Bureau of Justice Assistance pursuant to Public Law 90-351 is eligible for unemployment compensation upon termination from the program.

(H) The earnings of an inmate authorized to work at paid employment pursuant to this section must be paid directly to the Department of Corrections and applied as provided under Section 24-3-40. (emphasis added).

It is evident that the touchstone of the PIE program is that inmates participating therein must be paid the prevailing wage. Courts have interpreted the Congressional legislation authorizing the Prison Industries Enhancement program (PIE) as requiring those projects certified thereunder by the Bureau of Justice to insure that inmates are paid either minimum wage or the prevailing local rate for their work. In this regard, for example, the Court in McMaster v. State of Minn., 30 F.3d 976 (8th Cir. 1994) concluded that, pursuant to the Fair Labor Standards Act (FSLA), 29 U.S.C. §§ 201-219, prison inmates are generally not required to be paid minimum wage because they are not "employees" of the state or prison within the meaning of the FSLA. In addition, the Court held that inmates do not possess a private right of action to enforce the Ashurst-Sumners Act. One of the purposes of the FSLA, concluded the Court, is the protection of competition. Thus, Congress has enacted Ashurst-Sumners Act, 18 U.S.C. § 1761-1762 (which prohibits shipping prison-made goods in interstate commerce) to effectuate this important purpose. To that end, noted the Court, only in very limited circumstances are there exceptions to Ashurst-Sumners. One of these exceptions is the PIE program. The Court described how PIE represents an exception to Ashurst-Sumners:

> Ashurst-Sumners prevents the shipment of prison-made goods in interstate commerce, thus avoiding the problem of unfair competition based on cheap labor. However, Ashurst-Sumners provides two exceptions to its prohibitions: (1) any goods which are produced for use by federal or state governments; and (2) goods

> produced as part of a designated pilot project in which inmate workers are paid prevailing wages. § 1761(b)-(c). The government exception was part of the original enactment in 1935; the prevailing wage exception, known as the Justice System Improvement Act, was added in 1979.
>
> The very existence of these exceptions indicates that Congress did not intend for inmates to be covered by the FSLA. If Congress intended for prisoners to be covered by the FSLA, then the entire Ashurst-Sumners Act would be unnecessary; if all inmate workers made minimum wage, there would be no need to protect private businesses from unfair competition.

30 F.3d at 979. Therefore, the Court held, the prevailing wage need not be paid to all inmates. However, as the Court recognized, federal law mandates that the prevailing wage must be paid to inmates who participate in the PIE program.

Likewise, in Harker v. State Use Industries, 990 F.2d 131 (4th Cir. 1993), the Fourth Circuit, ruled that inmates are not covered "employees" under the FSLA and thus are not entitled to minimum wage under that Act. The Court, however, further commented that the Ashurst-Sumners Act provides for the PIE program exception to its requirement that inmate-made goods not be placed in interstate commerce. Noting that the Ashurst-Sumners Act "criminalizes the transport of prison-made goods in interstate competition in ... those situations in which prison labor threatens competition," 990 F.2d at 133, the Fourth Circuit observed that there are certain exceptions to this prohibition because these situations "pose no threat to fair competition." Id. at 134. In addition to prison-made goods for use by federal, state and local governments, the Harker Court described the PIE exception to Ashurst-Sumners this way:

> ... Ashurst-Sumners exempts the transport of goods produced under the Bureau of Justice Assistance's Private Sector/Prison Industry Enhancement Certification Program. 18 U.S.C. § 1761(c)(1). The Program requires that inmates be paid at least the prevailing local rate for their work, with the FSLA minimum wage as a floor. Id. at § 1761(c)(2); see also 50 Fed. Reg. 12661 (March 29, 1985). This exemption creates a quid pro quo that allows prison-made goods to enter the open market when manufacturers have paid inmates at least the minimum wage to ensure that no unfair competition occurs. Under Harker's interpretation of the FSLA, this Program would be altogether superfluous because the minimum wage already would be paid to inmates, thus eliminating any need for Congress to have ever offered a quid pro quo to manufacturers to avoid unfair competition.

990 F.2d at 134. Thus, federal case law recognizes that Congress intended to provide the PIE program as a clear exception to federal law which provides that prison inmates need not be paid the minimum wage.

In 1999, the Bureau of Justice issued Guidelines for State participation in the PIE program. Under the heading "Mandatory Program Criteria for PIECP Participation," the Guidelines discuss at length the wage which must be paid inmates as part of the federal PIE criteria. There, it is stated:

> (A) Section 1761(c) requires that the PIECP wage amount be set exclusively in relation to the amount of pay received by similarly situated non-inmate workers. In deriving the appropriate PIECP wage 18 U.S.C. 1761(c)(2) does not allow other cost variables to be taken into consideration, such as unique expenses incurred as a result of undertaking production within the prison environment. (emphasis added).

Federal Register: April 7, 1999 (Volume 69, Number 66), pages 17000-17014, 17009-10.

Thus, it is quite evident that the relevant federal statutes, the case law interpreting those statutes, as well as Bureau of Justice Guidelines issued pursuant to those enactments mandate that inmates participating in the PIE program must be paid at least the prevailing wage. As the Bureau of Justice's most recent Guidelines emphasize, "PIECP inmate workers must receive wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work is to be performed." Guidelines, supra at p. 17009. Section 24-3-430 (D) likewise requires that "[n]o inmate participating in the program may earn less than the prevailing wage for work of a similar nature in the private sector." Accordingly, both federal and state law make this wage requirement mandatory.

On its face, the federal statute authorizing the PIE program applies to "goods, wares, or merchandise manufactured, produced or mined by convicts or prisoners ...." See, 18 U.S.C.A. § 1761 (c). As noted above, this provision constitutes an exception to the Ashurst-Sumners Act. You have advised that Subsection (c) of § 1761 is being interpreted in South Carolina as inapplicable to so-called "service contracts." Pursuant to such interpretation, you note that the requirement that inmates performing work on such "services contracts" need not be paid the prevailing wage. Your concern is that, as a result of this interpretation, the PIE program is being severely undermined by this so-called "loophole."

We agree with your concerns. It is clear that there is no prohibition in the federal PIE program for service industries' participation therein. Indeed, the Bureau of Justice Guidelines note that while service industries "were not a threat to the private sector in 1935 and thus, were not included within the scope of the Ashurst-Sumners prohibition, a number of service industries have elected to comply with the PIECP requirements." Guidelines, supra at 17002.

More significantly, and unrelated to federal PIE requirements, state law makes it clear that there is no such legal "loophole" in South Carolina. Section 24-3-430(A) provides that "[t]he Director of the Department of Corrections may establish a program involving the use of inmate labor by a nonprofit organization or in private industry for the manufacturing and processing of goods, wares or merchandise or the provision of services or another business or commercial enterprise

considered by the director to enhance the general welfare of South Carolina." (emphasis added). Moreover, Subsection (D) of § 24-3-430 requires that "[n]o inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector."

Thus, state law requires that "the provision of services" by inmates who otherwise meet the requirements of § 24-3-430 must be paid the prevailing wage. As I understand it, "service" work is work which does not result in the manufacture or production of an item that is sold on the open market by the South Carolina Department of Corrections and does not involve work done for the benefit of other public sector entities.

Of course, as with the interpretation of any statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 253 S.C. 46, 358 S.E.2d 697 (1987). An enactment should be given a reasonable and practical construction, consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). Words used therein should be given their plain and ordinary meaning. First South Sav. Bank, Inc. v. Gold Coast Associates, 301 S.C. 158, 390 S.E.2d 486 (Ct. App. 1990).

Moreover, the full effect must be given to each part of the statute, and in the absence of ambiguity, words must not be added or taken from the statute. Home Bldg. & Loan Assn. v. City of Sptg., 185 S.C. 313, 194 S.E. 139 (1938). Any interpretation which would render parts of the statute as mere surplusage is to be avoided. Bruner v. Smith, 188 S.C. 75, 198 S.E. 184 (1938).

It should be noted that § 24-3-430 was enacted in 1995, while the Ashurst-Sumners Act, which contains the phrase "goods, wares, or merchandise," was a product of the 1930s. At the time the Legislature enacted § 24-3-430, the service industry in this country had become just as important to the American economy as manufacturing or production. Recognition of that fact is obviously one reason the General Assembly included the broad language "the provision of services" in § 24-3-430. To read that provision out of state law is, in our view, simply incorrect. 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.

This conclusion is in accord with a Memorandum by the Department of Corrections' General Counsel (dated March 23, 2001) which you have provided. In that detailed and very helpful Memorandum, the General Counsel advises as follows:

> 1. The advice that you or your staff may have previously received from my Office concerning prison industry service work was substantially effected by numerous statutory changes in this area in 1993, and by the passage of Section 24-3-430 of the S.C. Code on Laws of July 1, 1995.

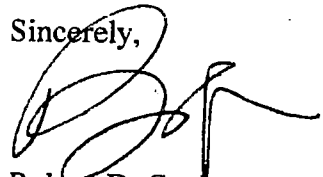
2. SCDC may operate a prison industry service program, but inmates who work in such programs must do so voluntarily, must be paid the prevailing wage for their work, and the work may not result in the displacement of employed workers in the State nor impair existing contracts for services. In other words, if we chose to operate a prison industry service program, we must do so in conformance with Section 24-3-430 of the S.C. Code of Laws.

3. Inmates who work in prison industry service programs must have their wages received by SCDC, with such wages affected and distributed in accordance with Section 24-3-40 of the S.C. Code of Laws. This means that inmate wages for prison industry service work must be handled as other prison industry wages are handled and distributed.

4. Where existing prison industry service programs are in place, SCDC should begin to comply with the above provisions immediately.

I agree that Section 24-3-430 is mandatory and must be followed.

Sincerely,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Administrative law Judge Deborah Brooks Durden

ALC Case NO. 23-ALJ-04-0683-AP
Appellate Case NO. 2024-001892

RECEIVED
MAR 06 2025
SC Court of Appeals

Darren G. Scott, #233182 Appellant,

V.

South Carolina Department of Corrections, Respondent.

CERTIFICATE OF SERVICE

The Appellant hereby Certifies that on this date he mailed a Copy of the Reply Brief of Appellant & the Certificate of Service to the following addressed as follows:

The Honorable Catherine S. Harrison
Chief Deputy Clerk
The South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina
29201

Ms. Christina Catoe Bigelo
Deputy General Counsel
S.C. Department of Correctio
Post office Box 21787
Columbia, S.C. 29221

This 4th day of March 2025

I hereby Certify

Darren G. Scott #233182
Allendale Correctional Inst.
1057 Revolutionary Trail
Fairfax, S.C. 29827

Darren G. Scott # 233182
Allendale Correctional Institution
HAB- 0057
1057 Revolutionary Trail
Fairfax, South Carolina
29827

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

RE: Case # 2024-001892 Clocked Stamped Copies

Date: March 4th 2025

Dear, Honorable Kitchings.

Enclosed please find the reply brief of Appellate, with the exhibits. please clock stamp and send me a copy. along with a clock stamped copy of the Appellates initial brief and the Appellate's Designation of Matter that was submitted to your office on January 17, 2025 Thank you for your time in this matter for it is most appreciated.

Respectfully Submitted & Requested

Darren G. Scott
233182

Darren G. Scott #236182
Allendale Correctional Institution
HAB-0057
1057 Revolutionary Trail
Fairfax, South Carolina
29827

$00.23

RECEIVED
MAR 06 2025
SC Court of Appeals

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

RECEIVED
MAR 03 2025
MAILROOM
ACI