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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. PHILLIP LENSKI, ADMINISTRATIVE LAW JUDGE

APPELLATE CASE No. 2025-001166

Robert Deal, Jr., #301062,

Appellant,

V.

South Carolina Department of Corrections,

Respondent.

FINAL BRIEF OF APPELLANT

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ISSUES ON APPEAL

1. DID THE ADMINISTRATIVE LAW JUDGE ERR IN HIS RULING THAT, "HERE,THE APPELLANT DID NOT WORK FOR A PIECP,THEREFORE THERE IS NO STATE-CREATED LIBERTY INTEREST IMPLICATED HERE"?;and
- 2 .DID THE DEPARTMENT VIOLATE THE PRISON INDUSTRIES STATUTORY SCHEME BY PAYING APPELLANT \$0.35 PER HOUR FOR HIS WORK PERFORMED IN THE PRISON INDUSTRIES PROGRAM?

STATEMENT OF CASE

This matter comes before the South Carolina Court of Appeals pursuant to the appeal of Robert Deal (Appellant), an inmate incarcerated in the South Carolina Department of Corrections ("SCDC" or "Department"). In the present appeal, Appellant asserts that the Department did not pay him a prevailing or realistic wage under South Carolina Code §24-3-310(4), 24-3-430(D), 24-3-40(A) and 24-1-295, and is seeking to be paid back pay wages for his work from September 22, 2014 until October 1, 2018, and again from November 10, 2019 until November 2, 2021, as an upholstery worker in which he was paid \$0.30 and \$0.35 per hour.

On November 11, 2024, due to the kiosk machine being out of service due to hurricane Helene, Appellant sought an informal resolution by sending a paper request to staff member form to General Counsel complaining of the same. On November 25, 2024, he received a response stating that, "The office of General Counsel has received your letter and have reviewed it. According to Prison Industries, you worked in the upholstery industries at McCormick from 2014-2018. This work was in a service program, which was not subject to the prevailing wage statute. Therefore, you are not owed any funds. see REQUEST TO STAFF MEMBER, DATED 10-11-2024; and SCDC OFFICE OF GENERAL COUNSEL, RESPONSE TO INMATE CORRESPONDENCE, DATED 11-20-2024.

On November 28, 2024, Appellant filed a step 1 grievance which was returned as "Unprocessed" stating that, "The grievance is being Processed (Reviewed) and Returned (No Warden's Decision)

for the following reasons: Non-Grievable-General Counsel Memo dated 11-20-2024 in response to your RTSM via Prison Industry that the position you held at McCormick CI was in a service program, which was not subject to the prevailing wage statute. Therefore, you are not owed any funds."see STEP 1 GRIEVANCE, DATED 12-02-2024. On December 3, 2024, Appellant filed a Step 2 Request To Staff Member form to the Inmate Grievance Branch Chief which was denied on December 20, 2024. see REQUEST TO STAFF MEMBER, DATE STAMPED DECEMBER 2, 2024.

On January 1, 2025, Appellant filed a notice of appeal in the Administrative Law Court. In the notice of appeal, Appellant alleged that he is entitled to back pay wages for his employment in the prison industries program. This matter was assigned to Judge S. Phillip Lenski On January 6, 2025. On May 8, 2025, the Department filed a Motion to file Out of Time and Motion to Dismiss with the court. In its Motion to File Out of Time, the Department explained that the Department's brief or responsive filing was due May 6, 2025, however due to an administrative oversight and the over abundance of cases the Department did not file its Motion to Dismiss in a timely manner. The Department asked the court to dismiss the appeal because the Appellant's allegations do not implicate a state-created liberty or property interest since the Appellant never worked for a Prison Industries Enhancement Certification Program(PIECP).

On May 15, 2025, Appellant filed a response to the Department's Motion to Dismiss arguing that the legislative intent in section 24-1-295 was for the Department to have flexibility to negotiate

contracts with private sector entities at a rate below the prevailing wage, not to pay an inmate slave wages. Therefore, he should be awarded all back pay for his labor while assigned to Prison Industries at McCormick Correctional Institution.

The court dismissed the appeal on May 21, 2025, finding that, "the Appellant did not work for a PIECP, therefore there is no state-created liberty or property interest. This appeal follows.

ISSUE 1

DID THE ADMINISTRATIVE LAW JUDGE ERR IN HIS RULING THAT, "HERE, THE APPELLANT DID NOT WORK FOR A PIECP, THEREFORE THERE IS NO STATE-CREATED LIBERTY INTEREST IMPLICATED HERE"?

DISCUSSION

In its motion to dismiss, the Respondent argued that out of the three types of prison industries programs run by SCDC (Prison Industries Certified Enhancement Program (PIECP), Prison Industries Service Programs, and Traditional Industries Programs), only PIECP are subject to the former prevailing wage statute S.C. Code §24-3-430(D), and implicate a state-created liberty interest. That the Prison Industries Service Programs and Traditional Prison Industries Programs in contrast are governed by S.C. Code sections 24-1-295, 24-3-320 and 24-3-330, which allow inmates to be paid a wage less than the prevailing wage and therefore, do not implicate a state-created liberty or property interest. The Administrative law court agreed. This is err.

The Statutes under which Appellant seeks relief are part of a statutory scheme creating a Prison Industries Program to provide employment of inmates and utilize their labor for self

maintenance and reimbursement of expenses.

Each part of the statutory scheme governing inmate pay (S.C.Code Ann. §24-3-315, 24-3-310(4), 24-3-430(D), 24-3-40(A), 24-1-295, etc.) implicate the state created liberty or property interest after an inmate has performed the work to acquire the provisions in the statutes. see Wicker v. South Carolina Dept. of Corrections, 360 S.C. 421, 602 S.E.2d 56 (S.C. 2004) (State's statutory mandate that inmates be paid the prevailing wage in prison industries program created an interest that could not be denied without due process, and thus, Department of Corrections' failure to pay prevailing wage was reviewable by Administrative Law Judge).; also see Torrence v. South Carolina Dept. of Corrections, 373 S.C. 586, 646 S.E.2d 866 (2007) (Inmates working in the prison industries program have a cognizable, state-created interest in having the Department of Corrections (DOC) pay them according to the statutory scheme governing the program...); Gatewood v. South Carolina Dept. of Corrections, 416 S.C. 304, 785 S.E.2d 600 (Ct. App. 2016).

So, because Appellant has performed the duties required under the Prison Industries statutory scheme, and was not paid a realistic wage as expressly required by S.C.Code Ann. §24-3-310(4), his liberty and property interest has been implicated.

ISSUE 2

DID THE DEPARTMENT VIOLATE THE PRISON INDUSTRIES STATUTORY SCHEME BY PAYING APPELLANT \$0.35 PER HOUR FOR HIS WORK PERFORMED IN THE PRISON INDUSTRIES PROGRAM?

DISCUSSION

Appellant contends that the Respondent's arguments that it is justified in paying him \$0.30 and \$0.35 per hour because prison industries service programs are governed by section 24-1-295, which allows inmate wages to be less than the prevailing wage, was a misguided attempt to rehash an already settled issue.

The Department virtually made this same claim in Gatewood v. South Carolina Dept. of Corrections, 416 S.C. 304, 785 S.E.2d 600 (S.C.App.2016). There, the Department argued that the gross earnings as used in 24-1-295, should be calculated at a rate of \$0.35 per hour opposed to Gatewood's argument that the gross wages used in 24-3-40 should be calculated at a rate of \$4.00 per hour. Not only did this Court agree with Gatewood, that the \$4.00 rate per hour represented by 24-3-40's gross wages was the correct calculations, it also found that the Department conceded as much in oral arguments.

The \$4.00 per hour rate which represented the gross wage that was required to be paid to Gatewood for his service job employment under 24-1-295 back in 2007, is representative of the current wage negotiated by the Department from 2014-2018 and 2019-2021, for inmate labor, must be paid to Appellant.

As far as Respondent's allegations that it is justified in paying inmates working service jobs \$0.35 per hour because section 24-1-295 says that "inmate wages may be less than the prevailing wage for work of a similar nature...", is misleading. In reality, section 24-1-295 states that, "The department may negotiate the wage to be paid for inmate labor provided under

prison industry service work contracts...and these wages may be less than the prevailing wage for work of a similar nature in the private sector."

There, the legislative intent was for the Director to have the flexibility to negotiate contracts for inmate labor with private sector entities at a rate below the prevailing wage, not to pay an inmate slave wages. see S.C. Code Ann. §24-3-310. Declaration of Intent, section (4): Provide prison industry projects designed to place inmates in a realistic working and training environment in which they are able to acquire marketable skills and to make financial payments for restitution to their victims, for support of their families, and for the support of themselves in the institution.

Realistically, it is absolutely impossible to perform any of the listed purposes pronounced in section 24-3-310(4) with a pay rate of \$0.35 per hour.

CONCLUSION

The Department should be Ordered to pay Appellant all back pay wages at the rate per hour or per production that it negotiated with the private sector entity for inmate labor during Appellant's employment in Prison Industries.

This 28 day of October, 2025

BY: Robert Deal
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