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SC Court of Appeals

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

OCT 30 2023

STEP 1

INMATE NAME: <u>Roger D. Burke</u>	OFFICE USE ONLY
SCDC NUMBER: <u># 304613</u>	Grievance No. <u>BCI-1287-2</u>
INSTITUTION: <u>Broad River</u>	Code: General <u>MY/WS</u>
HOUSING UNIT: <u>Murray-197</u>	Policy _____
WORK ASSIGNMENT: <u>Dorm</u>	Disc. Hear. _____
	Class. _____
	PREA _____
	Date Received <u>10/31/23</u>
	IGC Initials <u>MB</u>

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) I Roger D. Burke file this grievance upon SCDC for being in violation of statute 24-3-450, 24-3-40, and intentional fraud under 24-1-295. I Roger D. Burke request prevailing wage from SCDC from 9-28-06 through 7-31-2007 under sponsor RTM Design, Prison Industry sponsor. This grievance ask for all hours worked in Private Sector be calculated, and disbursement of difference as SCDC took deduction out of lower rate, and not gross wages, as law and statute demand, SCDC entered contract with King of Carls, Buffer Plant, and paid less than prevailing wage, illegally taking advantage of law stating this as service work. I worked for state ran Prison Industries at the following Dates, 9-28-06 through 9-13-07, 10-16-07 through 5-20-09, 11/13-4/28/15, 4/29/15-2-3-16, and 2/4/16-6/6/16, SCDC deducted disbursement from lower Rate and not gross wages of contract as directed by statutes 24-3-40, and 24-1-95.

Roger D. Burke 10/29/03
 Grievant Signature Date

ACTION REQUESTED: The difference in Back Pay for prevailing wage, and all disbursements not taken out of all gross wages. A judgement of prevailing wage for golf cart mechanic work, and it is not service work

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

Due to the nature of your appeal, it has been forwarded the Step 2 level of the appeal process. Please refer to the attached Prevailing Wage Memo provided by SCDC Office of General Counsel/Inmate Grievance Branch for additional information regarding your appeal.

[Signature] 11/2/23
 IGC Signature Date



**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2**

Office Use Only

INMATE NAME: Roger Burke
 SCDC NUMBER: 304613
 INSTITUTION: _____
 HOUSING UNIT: _____
 WORK ASSIGNMENT: _____

Grievance No. PRC1-1287-23
 Code: General MYISM
 Policy _____
 Disc. Hear. _____
 Class _____
 PREA _____
 Date Received: _____
 IGC Initials: _____
 Date Received: JCB
 IGA Initials: 11-14-24

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

In accordance with SCDC Policy GA-01.12, "Inmate Grievance System," due to the nature of allegations you have raised in your Grievance, it has been forwarded to the Inmate Grievance Branch Central Office and Office of General Counsel for a response. Inmate's signature has been adopted from SCDC 10-5, Step 1 Inmate Grievance Form.

Grievant Signature N/A Date N/A

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE REVERSE SIDE FOR RESPONSIBLE OFFICIAL'S DECISION & REASON

Responsible Official Signature Barry Vincent Date 11-14-24

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Roger Burke
 Grievant Signature Date 11-21-24

B. Williams
 IGC Signature Date 11/21/24

State of South Carolina
Administrative Law Court

COPY

Roger Dale Burke, # 304613)	
Appellant)	Honorable Judge Reibold
)	Docket No: 25-ALJ-04-0212-AP
)	Grievance No: BRCI 1287-23
V.)	Amended Response Brief to
)	Dept. of Corrections, Supplemental
South Carolina Department of)	Step 2 Decision
Corrections)	
Respondent)	

Statement of the Case

Appellant filed a Step 1 grievance on Oct. 29, 2023. Step 1 Grievance was forwarded to Step 2 Level. The Dept. of Correction's response was filed on January 8, 2024. Judge Rookard was assigned to the case on March 1, 2024. On Sept. 25, 2024, the Attorney for SCDC visited Appellant at Broad River Correctional Institution to offer a settlement, which was declined by the Appellant. On this same day, the Dept. asked the Court to remand back to the Step 2 Level citing additional information was discovered.

The Appellant objected to this via motion to the Court on October 13, 2024. This motion was never responded by Judge Rookard. The Judge granted the Department's Motion to Remand back to SCDC on October 15, 2024. SCDC on Nov. 14, 2024 submitted its supplemental Step 2, which was received on Nov. 21, 2024 by the Appellant at the institution. On November 25, 2024, Appellant filed a Notice of Appeal with the Administrative Law Court as directed and served the Department of Corrections with a Certificate of Service to notify them of the appeal of the Supplemental Step 2.

The Appellant now submits a brief in support of his Notice of Appeal.

Issues on appeal were brought up in the original Step 1 Grievance, therefore being ripe for review, and preserved for the record. Appellant submitted initial brief in support of South Carolina Dept. of Corrections's Denial of original Step 2 to this Court. All issues were raised in this initial brief.

The State of South Carolina
FILES
SEP 12 2025
Administrative Law Court

Appellant submits this Amended Brief to support his allegations under S. C. Code Ann 1-23-380 (A) (6):

- C. Made upon unlawful procedure
- E. Clearly erroneous in view of law
- F. Arbitrary or Capricious by abuse of discretion

Statement of Issues on Appeal

1. Was the Dept. of Corrections in error of taking disbursement taxes, and withholdings out of lower rate provided to inmate, rather than out of gross wages as stated in Statute and rulings of higher courts?
2. Was the Dept. of Corrections in error of not paying prevailing wage for the work done at Prison Industries, Sponsor RM Design?
3. Was the Dept. of Corrections in error for entering into unlawful and illegal contract with Prison Industries, Sponsors where work provided was not service work, and Inmates should have been paid Prevailing Wage?

Appellant's Arguments to Issues on Appeal

Issue 1 on Appeal;

Statute 24-3-40 (A) and 24-1-295 provided that all disbursement, taxes, and withholdings come from gross wages earned by the contract and not the lower rate SCDC paid the Appellant, Gatewood v. SCDC the higher court upheld that disbursement must come from gross wages. The Respondent citing an SCDC policy in its original Step 2 is Capricious and Arbitrary and clearly Erroneous in view of the law. The Respondent abandoned the issue in its Supplemental Step 2 and did not address the issue.

In the record on appeal the Contracts on Appeal prove these allegations raised by the Appellant. The court denied contract with RM Design to be included in the record on appeal. This was needed to prove and substantiate that SCDC took from lower wages.

In the Contract from King of Carts and SCDC the amount was scribbled out and not turned over for the court to see that withholdings were taken from the \$1.50 per hour SCDC paid the Appellant and not the gross. In the record, it is not disputable that SCDC broke the law on this issue.

In the contract for Southeastern Equipment and Supply \$4.50 per hour was provided for inmate pay. SCDC paid \$1.00 per hour. All withholdings came out of lower rate and not the gross, State v. Mittag the Higher Court ruled in favor of Mittag, but held it cannot be cited as a precedent. It did show the issue is proper to challenge through the inmate grievance system.

Court viewed the amount paid by the Industry Sponsor to SCDC as the gross wages.

In Torrence and Ward v. S. C. Dept. of Corrections (373 S. C. 586, 646 SE 2nd 866) Supreme Court held that inmates had to go through the Grievance Procedure to preserve this issue. They also said disbursement in plain language must come out the gross of the Contract.

Here the Dept. entered into Contracts for labor, overhead, security expenses, etc., in these contracts. SCDC then only paid inmates a relatively small amount of what was allotted for inmates' labor, and then took disbursements from lower wage. No statute allows SCDC to pay less

than what was allocated for inmate labor. Appellant worked for Prison Industries (PIE sponsor) - RM Design from 09-28-06 through 05-20-09 and made \$16,138.80 where 55% was deducted for disbursements allowed by statute. These deductions are 25% for Room & Board, 20% for Victim's Restitution Fund, and 10% for Long-Term Offender's Fund (savings).

In 2019, state law allowed inmates serving life sentences to get their long-term savings, leaving 45% that should be returned to Appellant for taking out of net and not the gross as statutes direct. The Appellant is owed \$7,262.46 plus fair interest rates since the Dept. has held this money since 05-20-09 until a date of closure of this issue.

Appellant also worked for Prison Industries (PIE) sponsor King of Carts from 01-29-13 through 02-03-16, and Prison Industries (PIE) sponsor Southeastern (Buffer Plant) from 02-04-16 to 06-16-16, and accumulated a gross of \$9,793.10 which 10% was refunded to inmate, leaving 45% to be returned to Appellant as once again the Dept. of Corrections took disbursements out of lower rate. SCDC should reimburse Appellant \$4,406.89 with fair interest applied since the Dept. of Corrections held this money since 06-06-16.

The state never submitted a brief in rebuttal, nor did they address the issue in Supplemental Step 2. The Appellant asks for judgment in this issue for the Appellant.

Issue 2 on Appeal;

In the Initial Brief on the record submitted by the Appellant, the Appellant argued that the Department should have paid prevailing wage during his employment with Prison Industries (PIE) sponsor RM Design.

The Department asked for and was granted the case to be remanded back to the Department for Supplemental Step 2, citing new information was discovered during appeals. This was a strategic move by SCDC to stall and buy extra time as they had already got an extension from the ALC. In its decision, the Department admitted they owe the Appellant. The issue is what is the correct amount. Just because the state submits their calculations of hours and amount owed, it cannot be trusted to be accurate to what is owed to the Appellant. State v. Cartrette "held that the ALC is the proper authority to determine the prevailing wage." The Department of

Employee Workforce (DEW) shall provide the ALC of the prevailing wage. Every bi-weekly transaction from SCDC to the Appellant is in the Appellant's financial account. The state's Department should submit every transaction to this court from 09-28-2006 to 05-20-2009 to get the accurate hours worked by Appellant, and the prevailing wage set by the ALC, to calculate the exact compensation owed to the Appellant. The state has kept this money from the Appellant, and the state shall pay interest on the amount owed to the Appellant, from 05-20-2009 until this matter is resolved.

In Baum v. SCDC unpublished opinion No 2019-UP-104 the Court of Appeals reversed ALC decision allowing for inmates serving life sentences to be able to distribute to entities of choice SCDC inmates serving life sentences can receive their Long Term Savings. In Supplemental Step 2 SCDC says that \$1,562.24 will be put in savings. SCDC is preventing life sentence inmates from obtaining this money. The Appellant is serving life. All inmates serving life are being denied their long-term money. Appellant citing Baum v. SCDC request Long Term Savings added to total due to Appellant.

Issue 3 on Appeal;

In the original ~~Step~~ 1 Grievance Appellant put in the record that he worked for Prison Industries (PIE) King of Carts, and Prison Industries (PIE) Southeastern preserving issue for the record.

On August 2007, Statute 24-1-295 went into effect allowing the Dept. of Corrections to enter into contracts with private sector for service work without paying prevailing wage. However, the Dept. of Corrections took it upon itself to define service work and this created an unequal work force with private sectors doing the same work. Appellant worked for SCDC who was employed to provide labor as a trained golf cart mechanic for Industry-Sponsor King of Carts. A competitor in private sector sued King of Carts for creating an unequal work force because of cheap inmate labor. The competitor lost the case because they sued King of Carts and not ~~The~~ ^{The} appropriate South Carolina Dept. of Corrections for this is who provided the labor. The federal and state laws did determine this was unlawful and prevailing wage should have been paid. The Dept. changed

work assignments from Prison Industry Trainee to Inventory Clerk, yet kept operations despite of law for unlawful monetary gain, denying Appellant's right of prevailing wage. It is clearly error where SCDC intentionally and fraudulently provided work force under service pay where the work performed was trained skilled gold cart mechanic. Appellant also worked for Southeastern, a buffer restoration plant as a mechanic. This was also branded as not service work.

In the Initial Brief by the Appellant, he addressed this issue. In the Supplemental Step 2 by the Department of Corrections, the state said that all other work was not subject to prevailing wage, or was after prevailing wage statue was amended. S. C. Code Ann 24-3-315- stated, "No inmate participating in PIE may earn less than prevailing wage for work of a similar nature in the private sector." In 2007, Statute allowed the DOC to enter into contracts for inmate labor, for service work, without paying prevailing wage. Here the DOC entered into illegal contracts, where the state embezzled funds for the state through the PIE, King of Carts, and Southeastern were taken out of SCDC, because Federal, State, and Civil Action stated this was not service work, and was illegal. All inmates working for PIE King of Carts, job titles changed from Prison Industries Trainee, to Inventory Clerk without going in front of the Job Assignment Board, and committed fraud, while inmates kept working for Prison Industry, trying to conceal the fraud, which was uncovered by the Appellant during research for the case at hand.

On 02-04-2016, Appellant went before the Job Board and was assigned to work at Southeastern as a skilled mechanic, and worked for the PIE program until 06-06-2016. In the Appellant work history, he is listed as working for the Sign Shop in the Printing Section. This is blatant fraud by the DOC to cover up their illegal actions for running PIE as service work when it was not. At King of Carts, they bought shipments of used preleased golf carts, then custom-built them into high-priced luxury vehicles ordered by customers built to their specs. They also opened showroom stores to sell to the public at retail. This was not service work. At Southeastern (Buffer Plant) PIE sponsor, brought old and used buffers in to be rebuilt back to new condition, then sold to buyers at retail price.

If the warden brought his car in for repair and paid \$2.00 an hour, where mechanic in the free world would make \$20.00 an hour this is slave labor and not service work. The state deliberately ran these illegal Prison Industry Programs to embezzle funds under false pretense. This Court should rule in Appellant's favor, find the Prevailing Wage for skilled mechanics, calculate all hours of Appellant's time working for Prison Industry-Sponsors, King of Carts, and Southeastern Equipment & Supply.

Facts and Law in Support of Issue 3

1. In the record provided by Respondent, in the work history Section Pg. 10 of record on appeal, on 04/29/2015 Appellant's Job Description was changed from Prison Industry Worker to Inventory Clerk.
2. On Pg. 30 of record on appeal, it shows Appellant continued to work for King of Carts, and being compensated for hours worked. This is direct proof that SCDC fraudulently tried to cover up, because the courts ruled this as prevailing wage.
3. On 02/04/2016, on Pg. 10 of the record on appeal, Appellant was employed at Prison Industry 1, and was listed as silkscreen operator in the Sign Shop. This was fraud to conceal the fact he was employed by Southeastern (Buffer Plant). On Pg. 30 of record on appeal, it shows that Appellant worked for Sign Shop, when in fact he was assigned to South Eastern (Buffer Plant). This is direct cover up of fraud by SCDC, which cannot be disputed.
4. Appellant was paid \$1.50 per hour for work performed while employed by King of Carts and should have been paid prevailing wage.
5. Appellant was paid \$1.00 per hour for work performed while employed by Southeastern Equipment and Supply (Buffer Plant).
6. King of Carts and Buffer Plant were removed from SCDC due to ruling of prevailing wage should be paid.

24-3-430 establishes an inmate's right to prevailing wage, "No inmate can earn less than prevailing wage for work of similar nature in the private sector."

Williams v. SCDC 372 SC 255, 258, 259, 641 SE 2nd 885 (2007) held "A Prison Industry-Sponsor is not an employer of inmates because it does not exclusively control the payments of inmates wages.

Adkins v. SCDC 360 SC 413, 418 60 SE 2nd 51, 54 (2004) held that "South Carolina law requires that inmate workers in Prison Industry Programs enjoy pay and working conditions comparable to those enjoyed by non-inmate workers to prevent unfair competition.

24-3-430 (E) Inmates in Prison Industry Program may not result in the displacement of employed workers in South Carolina. Ackerman v. SCDC 415 SC 412, 414, 782 SE 2nd 757, 758 (CVt. App. 2016).

Therefore, South Carolina is in violation of statutory and constitutional provisions, and its actions are in excess of its statutory authority.

SC Code Ann. 24-3-430 = while inmates are not entitled to a private right of act in tort claim, they may protest through the grievance process. Inmates must exhaust all remedies to be able to bring civil litigation.

Conclusion:

I, Roger D. Burke (Appellant) asks this court to accept this Amended Brief to the State's Supplemental Step 2 decision with the following relief requested.

(1) SCDC be made to reimburse the Appellant \$11,669.35 for disbursement not taken out of gross wages as defined by law.

(2) SCDC be made to pay the Appellant \$8,592.35 to the Appellant's Inmate SCDC Account.

(3) A ruling in favor of Appellant that prevailing wage should have been paid, calculations of hours worked multiplied by prevailing wage, less the \$1.50 per hour Appellant already received, minus the 45% the state would have received; total to be added to Appellant's inmate account.

Roger Dale Burke, # 304613

11th day of September 2025

Roger D. Burke

cc: Office of General Counsel (SCDC)
4444 Broad River Rd.
Columbia, SC 29221-1787

**STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

Roger Burke, #304613,)	Docket No.: 25-ALJ-04-0212-AP
)	[<u>Grievance No.: BRCI 1287-23</u>]
)	
Appellant,)	<i>Hon. Robert L. Reibold</i>
)	
v.)	
)	
South Carolina Department of Corrections,)	RESPONDENT'S BRIEF
)	
)	
Respondent.)	
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STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (“ALC”) pursuant to the appeal of Roger Burke (“Appellant”). Appellant filed a Step One Grievance on October 19, 2023, claiming he was not paid in accordance with the former prevailing wage statute, S.C. Code Ann. § 24-3-430, for his work in the Prison Industries Enhancement Program (“PIECP”). The Step One Grievance was forward to the Step Two level of the appeal process due to the nature of Appellant’s appeal. Respondent, South Carolina Department of Corrections (“SCDC” or “Department”), issued its Step Two Grievance response on January 8, 2024. SCDC denied the grievance because Appellant’s grievance was untimely. Appellant filed a Notice of Appeal on February 20, 2024. The case was assigned to the Honorable Crystal M. Rookard and docketed as 24-ALJ-04-0251-AP. On October 15, 2024, Judge Rookard remanded the case back to the Department to issue a supplemental Step Two Grievance response.

On November 14, 2024, SCDC issued its supplemental Step Two response containing Appellant’s wage calculations. Appellant subsequently filed this Notice of Appeal. Respondent filed the record on August 18, 2025. Respondent filed a Supplemental Record on August 28, 2025, containing the King of Carts contract, Letter to Representative Nathan Ballentine, Prison Industries

statute from 2014, and the Southeastern contract and addendum. Pursuant to this Court's order, Respondent filed a second Supplemental Record containing a unredacted version of the King of Carts contract on September 23, 2025. Respondent has calculated the backpay owed to Appellant and requests this Court order the Department to pay the same.

JURISDICTION

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 527 S.E.2d 742 (S.C. 2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* at 754.

In *Allen v. S.C. Dep't of Corr.*, 886 S.E.2d 671, 674 (S.C. 2023), the South Carolina Supreme Court clarified the jurisdiction of the South Carolina Administrative Law Court [ALC]:

... the ALC has subject matter jurisdiction over inmate grievance appeals that have properly filed. ... However, the ALC ... may summarily dismiss an inmate's grievance if does not implicate a state-created liberty or property interest sufficient to trigger procedural due process guarantees. The ALC may not grant an inmate relief from an erroneous administrative decision by SCDC, however, unless the inmate demonstrates the error deprived him of due process. [citations omitted].

"The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Al-Shabazz*, 527 S.E.2d at 750 (quoting *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972)). In *Slezak v. S.C. Dep't of Corr.*, 605 S.E.2d 506, 509 (S.C. 2004), the South Carolina Supreme Court held that the ALC "may summarily decide those appeals that do not implicate an inmate's state created liberty or property interest."

STANDARD OF REVIEW

A reviewing court will not disturb an administrative agency's findings if the findings are supported by substantial evidence on record as a whole. *Pearson v. JPS Converter & Industry*

Corp., 489 S.E.2d 219 (S.C. Ct. App. 1997). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 461 S.E.2d 388, 391 (S.C. 1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. *Heater of Seabrook, Inc. v. Public Svc. Comm'n of S.C.*, 503 S.E.2d 739 (S.C. 1998).

ARGUMENT

I. SCDC HAS CORRECTLY CALCULATED THE GROSS BACKPAY DUE TO THE APPELLANT.

Respondent has calculated the gross backpay due to the Appellant for the labor he provided to the PIECP project at Broad River Correctional Institution ("BRCI"). From October 16, 2006, to December 2, 2009, Appellant worked under Standard of Occupation Code ("SOC") 51-7099 "Woodworkers, all other." R. pp. 10, 23, 26. Starting off, Appellant was paid \$5.15 an hour, which was the federal minimum wage. *Id.* at 23, 28. His hourly wage gradually increased to \$7.45 an hour. *Id.* at 23. The average mean wage from May 2006 to April 2007 was \$10.16. *Id.* The average mean wage from May 2007 to April 2008 was \$11.12. *Id.* The average mean wage from May 2008 to April 2009 was \$13.57. R. pp. at 23, 27. The average mean wage from May 2009 to April 2010 was \$13.88. *Id.* Respondent used these average mean wages for SOC 51-7099 in South Carolina to calculate the back pay owed to Appellant. *Id.* at 23.

Respondent has correctly calculated the difference between the average hourly wage for the jobs Appellant worked and the hourly rate SCDC paid Appellant for each of those jobs. *Id.* at 11-16, 23. Specifically, Respondent submits that Appellant worked a total of 2,483.95 regular hours and 40.30 overtime hours from October 16, 2006, to December 2, 2009. *Id.* at 14-16, 20-23. For example, from May 1, 2008, to July 16, 2008, Appellant worked 404.75 hours. *Id.* at 23. SCDC

paid Appellant \$2,408.26 for his work. *Id.* at 12, 14-15, 23, 42-46. Under the average mean wage, Appellant should have been paid \$15,492.46. *Id.* at 23. Respondent has subtracted what Appellant should have been paid and what SCDC paid Appellant to arrive at \$3,084.20. *Id.* These calculations are in conformity with the 2021 decision by the Court of Appeals in *Torrence*, 861 S.E.2d at 40-41 and 43-45, and its calculations encompass the entirety of the time the Appellant participated in the PIECP project. Thus, Respondent has correctly calculated what Appellant is owed.

Accordingly, the Appellant would receive a remittance of gross backpay in the amount of \$15,622.45 after taking into account the wages Appellant was already paid for this work. *See id.* However, these gross backpay wages are subject to the deductions mandated by operation of § 24-3-40(A)(1) through (A)(6), which includes state and federal taxes. Therefore, Respondent has correctly calculated the gross backpay due to Appellant and asks that this Court order Respondent pay Appellant gross backpay in the amount of \$15,622.45, subject to the deductions mandated by § 24-3-40(A)(1) through (A)(6), which includes state and federal taxes.

II. APPELLANT'S WORK WITH KING OF CARTS AND SOUTHEASTERN ARE NOT SUBJECT TO THE PREVAILING WAGE STATUTE.

SCDC's contracts with King of Carts and Southeastern are service work programs, which are not subject to the prevailing wage. There are three types of Prison Industry programs at SCDC: PIECPs, Service Programs, and Traditional Programs. Only PIECPs and Service Programs operate with private industry sponsors. Inmates working in PIECP engage in the "manufacturing and processing of goods, wares, or merchandise or the provision of services or another business or commercial enterprise." S.C. Code Ann. § 24-3-430(A). Only PIECP programs are subject to the prevailing wage statute. S.C. Code Ann. § 24-3-430(D). "Service work" is defined as "any work that includes repair, replacement of original manufactured items, packaging, sorting, recycling, labeling, or similar work that is not original equipment manufacturing." S.C. Code Ann. § 24-1-

295. Inmates working in a service program with Prison Industries receive wages “less than the prevailing wage for work of a similar nature . . .” *Id.* The statutes governing traditional programs do not include any language regarding payment. S.C. Code Ann. §§ 24-3-320, 24-3-330.

Appellant alleges that his work with King of Carts and Southeastern from January 29, 2013, to June 16, 2016, is subject to the prevailing wage. Appellant Br. However, Appellant’s work with King of Carts and Southeastern were service work programs. King of Carts is governed by S.C. Code § 24-1-295. Supp. R. p. 12. Inmates working with King of Carts replaced the batteries, tires, and rubber flooring of golf carts. *Id.* They also added back seats where golf clubs were carried and installed radios to the golf carts. *Id.*; *see also* King of Carts Contract. Appellant was not engaging in the “manufacturing and processing” of golf carts. Appellant replaced fixtures in the golf carts, such as batteries, tires, and flooring, and added additional elements to golf carts. *See* Supp. R. p. 12. This is considered service work because Appellant did not make or manufacture golf carts. Appellant was paid \$1.50 an hour for his work with King of Carts. R. pp. 29-30. Because Appellant participated in a service program, SCDC was permitted to pay him less than the prevailing wage. *See* S.C. Code Ann. § 24-1-295.

Southeastern’s contract at BRCI was a part of the service work program. Supp. R. p. 26. Inmates working with Southeastern refurbished floor cleaning machines. *Id.* at 15, 19. Inmates were not “manufacturing” or creating floor cleaning machines. They were renovating or making improvements to the floor cleaning machines. *See June 13, 2025, Word of the Day, The Britannica Dictionary* (June 13, 2025), <https://www.britannica.com/dictionary/eb/word-of-the-day/2025/06/13> (defining “refurbish” as “to repair and make improvements to (something, such as a building)”). Appellant was paid \$1.00 an hour for his work with Southeastern. R. p. 30. Because

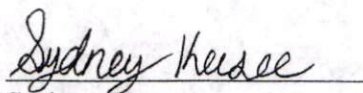
Appellant participated in a service program, SCDC was permitted to pay him less than the prevailing wage. *See* S.C. Code Ann. § 24-1-295.

Additionally, SCDC's PI Private Sector Accounting Account Summary indicates that there were no payroll deposits after January 4, 2010. *See* R. p. 34. Inmates participating in PIECP receive their payroll deposits through the PI Private Sector Accounting Account Summary. The fact that Appellant does not have any payroll deposits in this account from January 29, 2013, to June 16, 2016, indicates that his work with King of Carts and Southeastern were not part of PIECP. *See id.* at 31-34. Therefore, Appellant's work with King of Carts and Southeastern are not subject to the prevailing wage.

CONCLUSION

Based on the foregoing, Respondent asks that this Court order Respondent pay Appellant gross backpay in the amount of \$15,622.45, subject to the deductions mandated by § 24-3-40(A)(1) through (A)(6) because Respondent correctly calculated the backpay owed to Appellant.

Respectfully submitted,



Sydney Keesee
Staff Attorney
South Carolina Department of Corrections
PO Box 21787
Columbia, South Carolina 29221-1787
(803) 896-1943

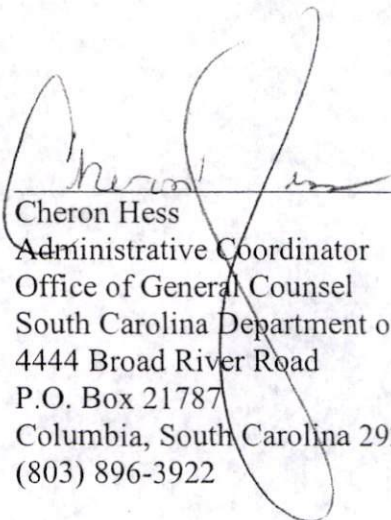
October 1, 2025
Columbia, SC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Roger Dale Burke, #304613,)
)
 Appellant,)
) **Certificate of Service**
 vs.)
) Docket# 25-ALJ-04-0212-AP
 South Carolina Department of Corrections,)
)
 Respondent.)

I hereby certify that a copy of the foregoing *Respondent's Brief* was, this date, served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate Roger Dale Burke
Inmate Number: 304613
Broad River Correctional Institution
Dorm-Room-Bunk: MTB-2111-B


Cheron Hess
Administrative Coordinator
Office of General Counsel
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, South Carolina 29221-1787
(803) 896-3922

October 1, 2025

State of South Carolina
Administrative Law Court

Roger Dale Burke, # 304613)
Appellant) Honorable Judge Reibold
) Docket No: 25-ALJ-04-0212-AP
)
)
V.) **Reply Brief to**
) **Respondent's Brief**
South Carolina Department of)
Corrections)

Now comes Appellant before this Honorable Court in Reply Brief to the State's Submitted Rebuttal Brief submitted 10 / 1 / 2025
Appellant addresses each issue in reply as followed:

Issues

Issue 1

Was the Department of Corrections in error of taking disbursements, taxes, and withholdings out of lower rate provided to inmates rather than out of gross wages as stated in statute and rulings of higher courts?

The Appellant raised this issue in his Original Step 1 Grievance, preserving the issue for review.

The Department of Corrections did not address nor rebut this issue in its supplemental Step 2.

The Appellant argued this issue in his Initial Brief, and the Amended Brief for the Court to review. In the Respondent's Brief, the Respondent did not address this issue or dispute the Appellant's claims in this preserved issue.

The Appellant asks this Court for judgment by default. Under SCALC Rules 7 and 61, the Department of Corrections has presented no objection, which they consent the issue in favor of the Appellant. See Argument of Law in Amended Brief submitted by Appellant.

The Appellant asks this Court to order Respondent to pay Appellant \$11,669.35 because they took disbursements from lower rate and not from gross of contract, as provided by Statute 24-3-40 (A) and 24-1-295.

Issue 2

Was the Department of Corrections in error of not paying prevailing wage for the work done at Prison Industries, sponsor, RM Design?

The Respondent in its Supplemental Step 2 agreed that the Appellant was owed prevailing wage and laid out their calculations of what the Appellant was due.

In the Respondent's Brief, SCDC once again admitted to owing the Appellant, and does not dispute the fact they owe the Appellant. This issue is not in dispute by Appellant.

In the Supplemental Step 2, SCDC calculated the Gross Total due the Appellant, was \$15,622.45, with deductions of 20% for Victim's Restitution; 25% for Room and Board; and 10% for Long Term Savings; the Net Owed to Appellant is \$7,030.11.

Due to ruling in Baum v. SCDC (opinion No: 2019-up-104) a person with a life sentence can receive these Long Term Savings to be able to distribute to entities of choice. Appellant addressed this issue in his Amended Brief. Appellant has a natural life sentence to qualify. Appellant now asks this Court to grant Appellant \$7,030.11, plus Long Term amount of \$1,562.24 for a total of \$8,592.35.

Issue 3

Was the Department of Corrections in error for entering into unlawful and illegal contract with Prison Industries, where work provided was not service work, and Appellant should have been paid prevailing wage?

This issue was raised in Step 1 Grievance pursuant to Torrence v. SCDC. In the Supplemental Step 2, SCDC denied owing the Appellant prevailing wage. The Appellant argued in his Amended Brief that he was due prevailing wage, as this was not service work. In the Respondent's Brief the State's argument was arbitrary and capricious, by abuse of discretion, clearly erroneous in view of law, made upon unlawful procedure under S. C. Code Ann 1-23-380 (6) C. E. F.

Appellant now submits his argument against the SCDC for their violations of his Constitutional Rights.

On August 28th, 2025, SCDC through its attorney filed a motion to supplement the record with additional documents. Appellant did not object, and the Court granted the motion.

SCDC submitted a letter to Representative Nathan Ballentine. This letter does nothing to rebut the Appellant's arguments; it actually supports all arguments in facts.

Facts

1. It shows that in 2014 the issue of prevailing wage was in dispute, and that SCDC was in violation of the law. The issue was raised and no resolution was eluded to. This is just the program's Director's letter in response to a Freedom of Information request. The Programs Director in quote says, "We are authorized to negotiate the wage to be paid for inmate labor." In the contract, they charged \$4.00 per hour to be paid for Inmate Labor. They only paid the inmate \$1.5 per hour. This is embezzlement of funds, as no law or statute allows them to keep the remaining for themselves for gain, because overhead and additional expenses are already paid.

When a rival private sector company found out that King of Carts was using inmate labor to create an unequal workforce, they filed civil actions against King of Carts for creating a competitive advantage by using inmate labor.

The Court ruled and dismissed lawsuit due to the fact that inmates were not employed by King of Carts. It was ruled that inmates were due prevailing wage. See page 7 in King of Carts contract under Hold Harmless Section.

On page 6, under Period of Performance the agreement was for 5 years. This contract was terminated and program moved after 3 years after the Court's ruled that inmates must be paid prevailing wage. The State's argument is arbitrary and capricious, as well as clearly erroneous in view of the law.

The State took steps to hide this by changing their work assignments from Prison Industries to Inventory Clerk, but kept on paying

inmates. The State committed fraud by trying to hide their wrongful actions.

On page 30 of the State's submitted Record on Appeal, it is reported that Appellant worked for Sign Shop and hours worked. This is fraudulent information before the court, as the Appellant was working for Prison Industries, sponsor Southeastern Equipment and Supply (Buffer Plant). It is clear that SCDC committed fraud by covering up that inmate worked for (Buffer Plant) but assigned to Sign Shop. It was ruled that this also was not service work, but subject to prevailing wage, and Program was removed from SCDC. In the Respondent's Supplemental record, page 14, the State submitted Statute 24-3-310 as law. This statute in no way provides any evidence to dispute the Appellant's claim of prevailing wage and not service work. Statute 24-1-295 as mentioned on page, Letter to Representative Nathan Ballentine, Service Work is defined but not explained.

Service Work example = SCE+G contracts SCDC to provide labor to refurbish used and damaged meter cans for electrical services. After repaired these cans are sent back to SCE+G to be used on residences and businesses to provide electricity. This is service work because of reuse and not sold to the public for profit.

Prevailing wage example = If Rick Hendrick Used Cars buys used cars, sends them to SCDC for repair, and puts them on car lots for sale to the public, inmates must be paid prevailing wage to keep from creating an unequal workforce. If inmates are paid \$1.5 per hour, and a competitor in the free world has to pay mechanic \$20.00 per hour, it creates an unequal workforce, and competitors are at a disadvantage.

This is what happened with King of Carts and Southeastern (Buffer Plant). Both of these contractors were removed after Federal Courts ruled this was not service work, and subject to prevailing wage. Appellant is correct that he should have been paid prevailing wage.

The Appellant asks this Honorable Court to find this issue in favor of Appellant, that the work was not service work, and was subject to prevailing wage statute. Appellant asks this Court to find prevailing wage for skilled mechanic, and order the state to pay this amount for all hours worked for King of Carts, and Southeastern (Buffer Plant).

CONCLUSION

The Appellant asks this Honorable Court to gran all issues in favor of Appellant, as law supports each issue.

Respectfully Submitted,

13th day of October 2025

Roger Dale Burke

Roger Dale Burke, # 304613

cc: Office of General Counsel
South Carolina Department of Corrections
444 Broad River Rd.
Columbia, South Carolina 29221-1787

Certificate of Service

I, hereby certify that I, Roger Dale Burke on this 13th day of October 2020, in Columbia, South Carolina served a copy of the Reply Brief filed with Administrative Law Court, Honorable Judge Reibold, to the S. C. Dept. of Corrections by depositing the same in the U. S. mail at Broad River Correctional Institution, Mail Room:

Office of General Counsel
S.S. Dept. of Corrections
4444 Broad River Rd.
Columbia, SC 29221-1787

10 / 13 / 2020

Sincerely,

Roger Dale Burke
Roger Dale Burke, # 304613