

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT
South Carolina Department of Corrections

SC Court of Appeals

Crystal M. Rookard, Administrative Law Judge

Appellate Case No. 2025-002433

Bernard Bagley, #175851,

Appellant,

v.

South Carolina Department
of Corrections,

Respondent.

INITIAL BRIEF OF APPELLANT

Bernard Bagley
#175851/SB21b/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

pro se

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER APPELLANT WAIVED A CLEAR AND PLAIN ERROR WHEN ALC DID NOT RULE ON THE MATTER NOR INVOKED RULE 40, SCRALC AND RULE 68, SCRALC?
2. WHETHER ALC FAILED TO PRESERVE APPELLANT'S CONTEMPORANEOUS OBJECTION TO FIND APPELLANT'S SOCIAL SECURITY WITHHOLDING PAYMENTS THAT SCDC CHARGED THE PRIVATE INDUSTRY SPONSOR (ESCOD, INC.), WAS PART OF HIS GROSS WAGES FROM 1991 TO 1995?
3. WHETHER ALC FAILED TO PRESERVE APPELLANT'S CONTEMPORANEOUS OBJECTION TO FIND SCDC PRISON INDUSTRIES ADMINISTRATIVE COST THAT SCDC CHARGED THE PRIVATE INDUSTRY SPONSOR WAS PART OF BAGLEY'S GROSS WAGES FROM 1991 TO 1995.
4. WHETHER ALC ARBITRARY OR CAPRICIOUSLY TRAP PRO SE LITIGANTS SO AS TO PREVENT THE APPEAL OF LEGITIMATE ISSUES IN ACCORDANCE TO PRESERVATION RULES.

STATEMENT OF THE CASE

This matter is before the South Carolina Court of Appeals pursuant to an appeal dated November 24, 2025, and received by the Court of December 5, 2025, by the Appellant, Bernard Bagley, a state prisoner incarcerated within the South Carolina Department of Corrections (SCDC). This matter was assigned to Judge Crystal M. Rookard, South Carolina Administrative Law Court (ALC) on June 19, 2025. Appellant filed a Notice of Appeal to dispute his pay under the prevailing wage statute, and social security withholding payments that SCDC charged was part of his gross wages from 1991 to 1995, and SCDC charged administrative cost was part of his gross wages from 1991 to 1995. The Respondent filed a Motion to Dismiss on August 28, 2025, asserting that this matter should be dismissed because Appellant was employed prior to the enactment of the the prevailing wage statute. Appellant filed a response to the Respondent's Motion on September 4, 2025. An Order of the ALC dismissed the appeal with prejudice, and granted Respondent's Motion to Dismiss dated October 21, 2025, on the basis that Appellant's grievance did not implicate a state-created liberty or property interest regarding his gross wages during 1991- to-1995.

This appeal follows because there is evidentiary error that the ALC erroneously failed to remand Bagley's gross wage social security withholdings payments, and administrative cost that was part of his gross wages from 1991 to 1995 claims to SCDC. Also, upon Appellant's contemporaneous objection was not waived by him when he submitted Motions under Rule 40, and 68 of SCRALC, pursuant to preservation rules.

STANDARD OF REVIEW

S.C. Code §1-23-610(B)(d)(e)(f), sets forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an ad-

ministrative agency. In relevant part, "however, when reviewing an ALC decision, an appellate court, "may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced" because of finding, conclusion, or decision." Here, there is no factual disputes, and the issues on review involve questions of law governed by items (d)(e)(f) of §1-23-610(B), which should allow this Court to reverse the ALC's decision based on its findings.

FACTS

Appellant's grievance implicates a state-created liberty or property interest on the basis that SCDC removed money from his gross wages during 1991 to 1995, that was remitted by Escod for labor he performed or worked, and then disbursed the percentages for deductions causing unauthorized deductions, specifically based on the lower rate, under either statutes, §24-1-295, and §24-3-40, of S.C. Code, thus, violating Appellant's due process right.

Furthermore, prevailing wages or gross wages not earned prior to §24-3-430(D), effective date deprived Appellant of wages for labor performed or worked at the higher net wage under the statute governing paid labor performed by Appellant, which include 40 hours overtime as well. Therefore, the question of whether §24-3-430(D) applies retroactively to the wages earned before the statute's effective date.

Nevertheless, the Appellant did not knowingly, intelligently, nor voluntarily waived preservation of issues regarding this matter.

ARGUMENTS

1. APPELLANT DID NOT WAIVED A CLEAR AND PLAIN ERROR WHEN ALC DID NOT RULE ON THE MATTER NOR INVOKED RULE 40, SCRALC AND RULE 68, SCRALC.

Appellant avers the statement of the case and the facts herein verbatim to support this argument. In addition, the Appellant avers that he did not waived clear and plain errors that he made contemporaneous objections in his pleadings. However, the ALC did not have an evidentiary hearing to create an adequate record for contemporaneous objections, nor an affidavit or testimony from the Respondent on record sufficient to support the ALC findings that the prevailing wages or gross wages not earned prior to §24-3-430(D), S.C. Code effective date, along with unauthorized deductions, in which the wage grievance challenges preserved for appeal his question of certain deductions. SEE: Beaufort County Bd. of Educ. v. Lighthouse Charter Sch., 335 S.C. 230, 516 S.E.2d 655 (1999),

Furthermore, the ALC denied Appellant's motions asking it to invoke Rule 40, SCRALC, and Rule 68, SCRALC. For the most part, the Court held in Wicker v. SCDC, 360 S.C. 421, 424, 602 S.E.2d 56, 57 (2004), "where the state has created a statutory right to the payment of prevailing wage, it cannot there after deny that right without affording due process of law. Further, an inmate's right to a certain wage became vested soon as he earned that wage." As such, Appellant contends that §24-3-430(D) is applicable for retroactive for vested earned wages under certain real property. In short, not to mention the fact, ALC did not cite Wicker in its order.

2. THE ALC FAILED TO PRESERVED APPELLANT'S CONTEMPORANEOUS OBJECTION TO FIND APPELLANT'S SOCIAL SECURITY WITHHOLDING PAYMENTS THAT SCDC CHARGED THE PRIVATE INDUSTRY SPONSOR (ESCOD, INC.), WAS PART OF HIS GROSS WAGES FROM 1991 to 1995.

Appellant avers the statement of the case and facts herein verbatim to support this argument. Also, the Appellant asserts that his Step 1 grievance challenges preserved for appeal on this issue under Article 1, §3, of South Carolina Constitution and the 14th Amendment of the U.S. Constitution. The Court held in Gatewood v. SCDC, 416 S.C. 304, 878 S.E.2d 600 (2016), that it was proper to address the issue on the merits as to whether social security withholding payments were fairly deducted or applies to inmate's gross wages. Also, Appellant contends that SCDC did not dispute the issue in its motion to dismiss.

3. THE ALC FAILED TO PRESERVE APPELLANT'S CONTEMPORANEOUS OBJECTION TO FIND SCDC PRISON INDUSTRIES ADMINISTRATIVE COST THAT SCDC CHARGED THE PRIVATE INDUSTRY SPONSOR WAS PART OF BAGLEY'S GROSS WAGES FROM 1991 to 1995.

Appellant avers the statement of the case and facts, along with argument verbatim to be incorporated herein to support this argument. In addition, Appellant's Step 1 grievance challenges preserved for appeal to make it proper to address the issue on the merits as to administrative cost that SCDC charged the private sponsor was part of Bagley's gross wages from 1991 to 1995. Appellant asserts that Gatewood in controlling case for preservation.

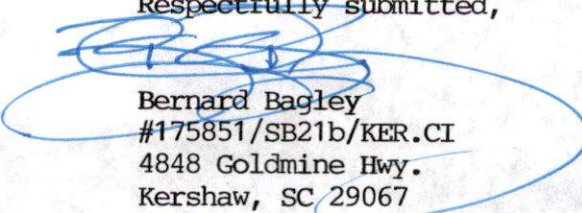
4. ALC DID ARBITRARY OR CAPRICIOUSLY TRAP PRO SE LITIGANTS SO AS TO PREVENT THE APPEAL OF LEGITIMATE ISSUES IN ACCORDANCE TO PRESERVATION RULES.

The Appellant incorporates and aver the statement of the case, standard of review, facts, and arguments 2 and 3 verbatim herein to support this issue and argument. For example, Appellant asserts that the ALC order falls short regarding the Step 1 Grievance that shows a challenges preservation for appeal on each issue and argument in this matter whereby Wicker is the controlling case for preservation of due process violations under Article 1, §3, of S.C. Constitution and the the U.S. Constitution.

CONCLUSION

For the reasons stated, this Court should remand the judgment the ALC for further proceedings to redress all issues.

Respectfully submitted,


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January 9, 2026

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