STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 25-ALJ-04-0147-AP
Appellate Case No. 2025-002443

VINCENT ALLEN, # 194611,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Vincent Allen, an inmate in the custody of the South Carolina Department of Corrections (SCDC). Appellant submitted a Step One and Two Grievances in the fall of 2024 regarding prevailing wages for work in Prison Industries. After his grievances were denied, he appealed to the Administrative Law Court (ALC) on March 27, 2025. On November 12, 2025, the ALC issued an order affirming the Department's agency decision. This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

> The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DEPARTMENT'S AGENCY DECISION WHERE APPELLANT PREVIOUSLY SETTLED ANY AND ALL CLAIMS PERTAINING TO PREVAILING WAGES; WHERE FEDERAL LAW DOES NOT PREEMPT THE STATE LAW WHICH NOW PERMITS INMATES TO BE PAID THE FEDERAL MINIMUM WAGE; AND WHERE EVEN IF FEDERAL LAW PREEMPTS STATE LAW, IT AFFORDS APPELLANT NO RELIEF BECAUSE HE HAS NO PRIVATE RIGHT OF ACTION UNDER FEDERAL CRIMINAL LAW.

Background

In Torrence v. S.C. Dep't of Corrections, this Court held that the Department was required to pay inmates working in qualifying Prison Industries jobs the "prevailing wage." 433 S.C. 633, 646-47, 861 S.E.2d 36, 43-45 (Ct. App. 2021). This Court relied on the language of S.C. Code § 24-3-430 in reaching this decision. Id. at 43-44. At that time, S.C. Code § 24-3-430 stated that "[n]o inmate participating in the program may earn ***less than the prevailing wage*** for work of similar nature in the private sector." Id. at 44 (citing S.C. Code § 24-3-430(D) (2007)(emphasis added)). However, after the Torrence decision, on May 21, 2024, S.C. Code § 24-3-430 was amended to state that "no inmate participating in the program may earn less than an hourly rate equal to the ***federal minimum wage*** for work of similar nature in the private sector." S.C. Code § 24-3-430(D) (2024) (emphasis added). Thus, S.C. Code § 24-3-430(D) now explicitly permits the Department to pay inmates the federal minimum wage rather than the prevailing wage.

Appellant's Claim to Prevailing Wages is Barred by his Previous Settlement

In this appeal, Appellant is requesting to be paid the prevailing wage for his current work in Prison Industries. However, on September 9, 2024 – after S.C. Code 24-3-430 was amended – Appellant signed a settlement agreement agreeing to settle any and all claims relating to prevailing wage payments. (See Settlement Agreement.). The agreement specifically stated as follows:

> Inmate hereby declares that the terms of this Final Release have been completely read, fully understood, and voluntarily accepted for the purpose of making a full and final compromise and settlement of **any and all claims and or losses against SCDC** and any and all firms, persons, or corporations liable or who might be claimed to be liable. Inmate understands that this express purpose of this Release is to **forever preclude any further or additional claims** by or on behalf of Inmate arising out of or in any related to Inmate's participation in the Prison Industries Program, including any Prison Industries Enhancement Program ("PIE" or "PIECP"), and it is further understood and agreed that **this Final Release may be pled as a bar to any claim of any kind whatsoever** which may be asserted by Inmate or on his behalf in connection with the aforementioned participation in the Prison Industries Program.

See Settlement Agreement, page 1 (emphasis added).

Accordingly, Appellant very clearly waived all past and future claims relating to prevailing wages by agreeing to the terms of the settlement and accepting the settlement funds. The agreement serves as an absolute bar to his claim in this case. Therefore, Appellant's current claim for prevailing wages was properly denied and the ALC's decision below should be affirmed on this basis.

Scope and Application of 18 U.S.C. § 1761

Even assuming, for argument's sake, that Appellant's claim was not barred by his settlement, his claim that the amended version of S.C. Code 24-3-430 is preempted by federal law is without merit. In the Ashurst–Sumners Act, 18 U.S.C. §§ 1761–62, Congress criminalized the transportation of prison-made goods in interstate commerce. Section 1761(a) of the Ashurst–Sumners Act provides:

> Whoever knowingly transports in interstate commerce . . . any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners ... shall be fined ... or imprisoned not more than two years or both.

18 U.S.C. § 1761(a).

Section 1761 was originally enacted in 1935 as part of the Ashurst–Sumners Act. 49 Stat. 494 (1935). As originally enacted, the statute prohibited interstate transportation of all convict-made goods, except those manufactured in federal correctional institutions for use by the federal government. The original purpose of the statute was to protect private business from unfair

competition from low-cost, convict-made goods. McMaster v. State of Minn., 819 F. Supp. 1429, 1440 (D. Minn. 1993), aff'd, 30 F.3d 976 (8th Cir. 1994); see also Wentworth v. Solem, 548 F.2d 773, 775 (8th Cir. 1977).

Section 1761 was amended in 1948 to exempt from coverage agricultural commodities, parts for farm machinery, and commodities manufactured for use by state or local governments. McMaster, 819 F. Supp. at 1440. The statute was amended again by the Justice System Improvement Act of 1979 which authorized the federal law enforcement assistance administration to designate seven pilot projects in which inmates would produce goods that would be exempt from the prohibition on the transportation of convict-made goods; the exemption was conditioned on inmates working voluntarily and being paid prevailing wages for their labor. Id.

Under this statutory authority, the Prison Industry Enhancement Certification Program ("PIE program") was established. The PIE program was expanded by the Justice Assistance Act of 1984, which increased the number of authorized pilot projects from seven to twenty. The Senate Report accompanying the 1984 amendment indicated that the PIE program was expanded because "'the designated projects have been successful in teaching inmates marketable job skills, reducing the need for their families to receive public assistance, decreasing the net cost of operating correctional facilities, and breaking the recidivist cycle.'" Id. (quoting S.Rep. No. 98–225, reprinted in 1984 U.S.C.C.A.N. 3182, 3463).

In 1990, Congress amended Section 1761 again to expand the PIE program to fifty non-federal prison work pilot projects. McMaster, 819 F. Supp. at 1440. The House Report accompanying the amendment outlined the benefits of the program:

> The benefits of this program are numerous, with the reduction of the cost of incarceration being the most notable. It is also an effective way of occupying the growing prison population and reducing idleness, while at the same time expanding

> the available supply of goods and services. For the victims of crime, it is a means of partial reparation. For the inmates, the program provides them with a marketable skill, offering a chance of rehabilitation, as well as a way of meeting financial obligations while incarcerated.

Id. at 1441 (quoting H.R.Rep. No. 101–681(I), reprinted in 1990 U.S.C.C.A.N. 6472, 6608–09 (1990)).

Section 1761(c) thus now provides that criminal penalties will not apply:

> (c) . . . to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners who—
>
> > (1) are participating in--one of not more than 50 prison work pilot projects designated by the Director of the Bureau of Justice Assistance;
> >
> > [and]
> >
> > (2) have, in connection with such work, ***received wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was performed*** . . . .

18 U.S.C. § 1761(c)(2) (emphasis added).

Section 1761(c)(2)'s wage requirement is known as the "prevailing wage." See *Prison Industry Enhancement Certification Program Guideline*, 64 FR 17000-01, Section III(b). The United States Court of Appeals for the Fourth Circuit has observed "[the PIE program] requires that inmates be paid at least the prevailing local rate for their work, with the FLSA (Fair Labor Standards Act) minimum wage as a floor." Harker v. State Use Indus., 990 F.2d 131, 134 (4th Cir. 1993). The Fourth Circuit further recognized 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." Id. (emphasis added).

Significantly, federal courts have held that because 18 U.S.C. § 1761 is a criminal statute designed to protect private business from competition from goods produced with inexpensive convict labor, Section 1761 does not create a private cause of action under which an inmate may

assert a claim to be paid a certain wage under the statute. Wentworth, 548 F.2d at 775 (holding Section 1761 is a criminal statute that "do[es] not expressly create a private right of action"); see also McMaster v. State of Minn., 30 F.3d 976, 981 (8th Cir. 1994); McMaster, 819 F. Supp. at 1439.

Further, federal courts have emphasized that the prevailing wage provision set forth in Section 1761(c) does not create enforceable federal rights in the favor of inmates because the benefits of meaningful prison industry programs in safeguarding against unfair competition and in reducing inmate idleness, recidivism rates, and the costs of incarceration "accrue not specifically to inmates, but to prison administrators and to society in general." McMaster, 819 F. Supp. at 1441. Additionally, "although the prevailing wage provisions were intended to help inmates meet their financial obligations while incarcerated, it is again society in general that benefits from the inmates' ability to do so: society gains if prisoners pay taxes, support their families, and compensate their victims." Id. For these reasons, because the prevailing wage provision was not enacted for inmates' "especial benefit," they may not enforce the provisions of Section 1761(c) as a federal right. Id.; see also McMaster, 30 F.3d at 981-83.

South Carolina's Inmate Wage Requirements for Prison Industry Programs

In 1995, South Carolina's General Assembly enacted legislation, now codified in S.C. Code § 24-3-430, which authorizes "[t]he Director of the Department of Corrections [to] 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." This legislation authorizes the Department to use inmate labor in private industry. Adkins v. S.C. Dep't of Corr., 360 S.C. 413, 416, 602 S.E.2d 51, 53 (2004).

Previously, Section 24-3-430(D) provided that "[n]o inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector." This subsection was amended on May 21, 2024 to provide that "[n]o inmate participating in the program may earn less than an hourly rate equal to the federal minimum wage for work of similar nature in the private sector." S.C. Code § 24-3-430(D).

It is this amended provision with which Appellant takes issue and argues conflicts with 18 U.S.C. § 1761(c)'s exemption to the prohibition of interstate transportation of all convict-made goods for those goods produced by convicts participating in a PIE program and who "received wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was performed."

Federal Preemption Doctrine Analysis

"The preemption doctrine is rooted in the Supremacy Clause[1] of the United States Constitution and provides that any state law that conflicts with federal law is 'without effect.'" Priester v. Cromer, 401 S.C. 38, 43, 736 S.E.2d 249, 252 (2012) (*quoting* Cipollone v. Liggett Group, Inc., 505 U.S. 504, 516 (1992)). In applying the Supremacy Clause, courts "start with the assumption that the historic police powers of the States [are] not to be superseded by [a] Federal Act unless that was the clear and manifest purpose of Congress." Medtronic v. Lohr, 518 U.S. 470, 485 (1996) (citing Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)); see also CSX Transp., Inc. v. Easterwood, 507 U.S. 658, 664 (1993) ("In the interest of avoiding unintended encroachment

[1] The Supremacy Clause of the United States Constitution provides that federal law "shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONST. ART. VI.

on the authority of the states, however, a court interpreting a federal statute pertaining to a subject traditionally governed by state law will be reluctant to find pre-emption.").

Therefore, "'the purpose of Congress is the ultimate touchstone' of pre-emption analysis." Priester, 401 S.C. at 43, 736 S.E.2d at 252 (quoting Cipollone, 505 U.S. at 516). "To discern Congress'[s] intent [the Court] examine[s] the explicit statutory language and the structure and purpose of the statute." Priester, 401 S.C. at 43, 736 S.E.2d at 252 (quoting Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 138 (1990)). The issue of whether a federal statute preempts state law is a question of law. Weston v. Kim's Dollar Store, 385 S.C. 520, 526, 684 S.E.2d 769, 772 (Ct. App. 2009).

A federal law may either expressly or impliedly preempt a state law. Congress may expressly preempt state law through specific language clearly stating its intent. On the other hand, implied preemption occurs through "field preemption" or "implied conflict preemption." "Implied conflict preemption occurs in one of two ways—either where compliance with both federal and state regulations is physically impossible or where the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" Priester, 401 S.C. at 44, 736 S.E.2d at 252 (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)); see also City of Cayce v. Norfolk S. Ry. Co., 391 S.C. 395, 401, 706 S.E.2d 6, 8 (2011) ("In the absence of an express congressional command, state law is preempted if the law actually conflicts with federal law, or if federal law so thoroughly occupies the legislative field as to make reasonable the inference that Congress has left no room for the states to supplement it.").

Thus, "[u]nder the principle of federal law supremacy, there are three ways that federal law can preempt state law: (1) where Congress makes its intent to preempt state law explicit in statutory language; (2) where state law regulates conduct in a field that Congress intends for the federal

government to occupy exclusively; or (3) where there is an actual conflict between state and federal law." City of Cayce, 391 S.C. at 401, 706 S.E.2d at 9 (internal citation omitted).

Under these principles, 18 U.S.C. § 1761 does not preempt S.C. Code § 24-3-430(D). First, Congress included no specific language in 18 U.S.C. § 1761 expressly preempting South Carolina's ability to enact its own statutory provisions for the creation of prison industry programs within the state and the ability to enact state wage laws for inmates. Second, there is no indication in 18 U.S.C. § 1761 that Congress intended the federal government to occupy exclusively the field of wages for inmates incarcerated in state prison systems. Finally, as to Appellant's claim for increased wages, there is no conflict between South Carolina's payment of the federal minimum wage pursuant to S.C. Code § 24-3-430(D) and the provisions of 18 U.S.C. § 1761(c) because, as noted above, Appellant has no enforceable right to any certain wage under 18 U.S.C. § 1761(c). McMaster, 30 F.3d at 981-83; Wentworth, 548 F.2d at 775; McMaster, 819 F. Supp. at 1439.

Section 18 U.S.C. § 1761(c) creates voluntary federal PIE programs for which states may participate under certain guidelines. It does not create any enforceable rights of inmates against states as to wages paid. Under these circumstances, this statutory provision does not, as a matter of law, preempt South Carolina's statutory inmate wage provisions.

Accordingly, Appellant only has a state-created statutory right to a certain wage. Under the current S.C. Code 24-3-430(D), that right is to be paid the federal minimum wage. See, e.g., Brown v. South Carolina Dept. of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) ("An appellate court cannot construe a statute without regard to its plain meaning and may not resort to a forced interpretation in an attempt to expand or limit the scope of a statute."). Additionally, "[u]nless there is a compelling reason to the contrary, appellate courts defer to an administrative agency's interpretation with respect to the statutes and trusted to its administration or its own

regulations.'" Torrence, 433 S.C. at 643, 861 S.E.2d at 41 (*quoting* Chapman v. S.C. Dept. of Soc. Servs., 420 S.C. 184, 188, 801 S.E.2d 401, 403 (Ct. App. 2017)); see also Kiawah Development Partners, II v. S.C. Dep't of Health and Env. Control, 411 S.C. 16, 34-35, 766 S.E.2d 707, 718 (2014) ("We defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'"). Therefore, Appellant's claim for prevailing wages fails since S.C. Code 24-3-430(D) now permits inmates to be paid the federal minimum wage.

This Court Need Not Address Federal Preemption Where It Affords Appellant no Relief

Finally, even assuming, for argument's sake, that federal law does preempt state law in this area, this still does not provide Appellant, or any other individual inmate, with any cause of action or right to claim entitlement to prevailing wages. As discussed above, the federal law in question is a criminal penalty statute to be used by the United States government, not a law creating rights for individuals. Stated differently, individual inmates have no standing to assert any entitlements under this federal criminal statute. See, e.g., Wentworth, 548F.2d at 775 ("We need not consider the propriety of the district court's construction of 18 U.S.C. 1761-62 because we find that Wentworth cannot predicate a private claim on those statutes. Sections 1761-62 are criminal statutes and do not expressly create a private right of action."); McMaster, 30 F.3d at 981-982 (holding that Congress' purpose in enacting the Ashurst-Sumners Act was to protect private business, not inmate workers, and that it therefore does not provide a private cause of action for inmates, either expressly or by implication); United States v. Nixon, 418 U.S. 683, 693 (1974) ("[T]he Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case."); Robertson v. U.S. ex rel. Watson, 560 U.S. 272, 278 (2010) (stating that the force of the criminal justice system may only be brought to bear by society as a whole, through a prosecution brought on behalf of the government); Lefebure v. D'Aquilla, 15 F.4th 650, 654 (5th Cir. 2021) ("It is a bedrock principle of

our system of government that the decision to prosecute is made, not by judges or crime victims, but by officials in the executive branch."); Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973) (holding that in American jurisprudence, a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another). Therefore, this Court need not even address the issue of federal preemption because it would afford Appellant no relief in any event.

Based on the above, Appellant's failed to meet his burden to show that the Department erred in denying his claim for prevailing wages, and the ALC properly denied his appeal.

CONCLUSION

For the foregoing reasons, this Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

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