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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Crystal M. Rookard

ALC Case No. 25-ALJ-04-0139-AP
Appellate Case No. 2025-002328

MARCO BATES, # 249552,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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STATEMENT OF ISSUE ON APPEAL

THE LOWER COURT PROPERLY DISMISSED THE APPEAL FOR FAILING TO IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST WHERE APPELLANT WORKED FOR A SERVICE PROJECT AND NOT A PRISON INDUSTRIES ENHANCEMENT PROGRAM, AND LABOR FOR SERVICE PROJECTS WAS NOT SUBJECT TO THE PREVAILING WAGE STATUTE.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Marco Bates, an inmate in the custody of the South Carolina Department of Corrections (SCDC). Appellant submitted a grievance in 2024 asserting that he was entitled to the prevailing wage for work from 1998 through 2001. After his grievance was denied, he filed a Notice of Appeal in the Administrative Law Court (ALC) on March of 2025. On October 15, 2025, Judge Crystal M. Rookard issued an Order granting the Respondent's Motion to Dismiss. In that Order, Judge Rookard found that Appellant was not entitled to the prevailing wage because he worked in a service project rather than a PIECP job. 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. § 1-23-610(B).

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 LOWER COURT PROPERLY DISMISSED THE APPEAL FOR FAILING TO IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST WHERE APPELLANT WORKED FOR A SERVICE PROJECT AND NOT A PRISON INDUSTRIES ENHANCEMENT PROGRAM, AND LABOR FOR SERVICE PROJECTS WAS NOT SUBJECT TO THE PREVAILING WAGE STATUTE.

Despite Appellant’s allegation that he was denied a prevailing wage under S.C. Code 24-3-430(D), the job Appellant actually worked was not subject to the prevailing wage statute. Accordingly, the Administrative Law Court properly dismissed the appeal as not implicating a state-created liberty or property interest.

There are three types of prison industries programs in the South Carolina Department of Corrections: (1) Prison Industries Enhancement Programs (commonly referred to as “PIE or PIECP”); (2) Prison Industries Service Projects; and (3) traditional prison industries. Only “PIE” or “PIECP” programs are subject to the former prevailing wage statute, S.C. Code 24-3-430(D).¹ This statute generally covers the use of inmate labor for manufacturing and processing of goods. See S.C. Code 24-3-430 (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. . . .”).

Appellant claimed below that he was entitled to the prevailing wage for work he performed at from 1998 through 2001, when he was housed at McCormick and Lee Correctional Institutions. However, the record before the ALC established that Appellant never had a Prison Industries

¹ S.C. Code 24-3-430(D) was amended effective May 21, 2024 to remove the requirement that inmates be paid the prevailing wage. The statute now states that inmates must be paid not less than the federal

account; that neither McCormick nor Lee had a PIECP program; and that Appellant was paid less than minimum wage for his work from 1998 through 2001, which is consistent with pay for service or traditional work. (See Record before the ALC, pages 12-14 and Supplement to ALC Record submitted October 1, 2025). Therefore, the record supports that Appellant never worked a PIECP job.

Service projects are governed by S.C. Code § 24-1-290 & -295. S.C. Code 24-1-295 states in relevant part:

The Director of the Department of Corrections may enter into contracts with private sector entities that allow inmate labor to be provided for prison industry service work and export work that involves exportation of products. The use of inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Pursuant to this section, 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. *The department may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts and export work contracts, and these wages may be less than the prevailing wage for work of a similar nature in the private sector.....*

S.C. Code Ann. § 24-1-295 (emphasis added).

Traditional industry programs are governed by S.C. Code 24-3-320 and -330. S.C. Code 24-3-320 states as follows:

The Department of Corrections may purchase, in the manner provided by law, equipment, raw materials, and supplies and engage the supervisory personnel necessary to establish and maintain for this State at any penal farm or institution now, or hereafter, under control of the department, industries for the utilization of services of inmates in the manufacture or production of such articles or products as may be needed for the construction, operation, maintenance, or use of any office,

minimum wage for work in PIECP jobs. See S.C. Code 24-3-430(D) (as amended).

department, institution, or agency supported in whole or in part by this State and its political subdivisions.

S.C. Code Ann. § 24-3-320.

S.C. Code 24-3-330 states as follows:

(A) All offices, departments, institutions, and agencies of this State supported in whole or in part by this State shall purchase, and all political subdivisions of this State may purchase, from the Department of Corrections, articles or products made or produced by inmate labor in this State or another state as provided for by this article. These articles and products must not be purchased by an office, a department, an institution, or an agency from another source, unless excepted from the provisions of this section, as provided by law. All purchases must be made from the Department of Corrections, upon requisition by the proper authority of the office, department, institution, agency, or political subdivision of this State requiring the articles or products.

(B) The Materials Management Office of the Division of General Services shall monitor the cooperation of state offices, departments, institutions, and agencies in the procurement of goods, products, and services from the Division of Prison Industries of the Department of Corrections.

S.C. Code Ann. § 24-3-330.

The statute governing service work specifically states that the wages may be less than the prevailing wage for work of a similar nature in the private sector, and the statutes regarding traditional work do not contain any language requiring payment.² Therefore, Appellant was not entitled to a prevailing wage, and the ALC properly dismissed the case for failing to implicate a state-created liberty or property interest.


² Appellant cites to a 2002 Attorney General's Opinion in his Brief in support of his argument that he was entitled to a prevailing wage. See Op. S.C. Att'y Gen., 2002 WL 31728841 (Oct. 17, 2002). However, the Attorney General's opinion only addressed work under S.C. Code 24-3-430. It did not address service work under S.C. Code 24-1-290 and -295 or traditional work under S.C. Code 24-3-320 and -330. Therefore, the

CONCLUSION

For the reasons discussed above, Respondent respectfully requests that this Court affirm the determination of the Administrative Law Court.

Respectfully submitted,

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