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THE STATE OF SOUTH CAROLINA
In The Court of Appeals
APPEAL FROM THE ADMINISTRATIVE LAW COURT
Administrative Law Judge, Carolyn C. Matthews

Admin (S)
RECEIVED
MAR 25 2010
SC Court of Appeals

Jaja D. B. Okera, # 228442, APPELLANT,

vs.

South Carolina Dept. of Corrections, RESPONDENT.

RECORD ON APPEAL

Jaja D. B. Okera, # 228442
Pro Se
Ridgeland Corro Inst.
Post Office Box 2039
Ridgeland, S.C. 29936

Lake E. Summers
Malone, Thompson, Summers & O'H, LLC
339 Heyward St., Ste. 200
Columbia, S.C. 29201
(803) 254-3300

March 22, 2010

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The South Carolina Court of Appeals

Michael Burns a/k/a Ja Ja D. B. Okera, Appellant,

v.

South Carolina Department of
Corrections, Respondent.

The Honorable Carolyn C. Matthews
Richland County
Trial Court Case No. 2006-AL-04-00173

ORDER

The underlying case was initiated by Michael Burns' appeal of the Department of Corrections' denial of his grievance concerning the payment of prevailing wages and overtime pay. He argued he was owed back wages for work performed in the Prison Industries private sector program. The Department argued Burns failed to file a grievance within fifteen days of the alleged incident. The Administrative Law Court found the Department's brief failed to state the day on which Burns ceased working with the prison industries precluding the ALC from determining when the fifteen-day time limit began to run. Accordingly, the Department was ordered to determine if Burns filed his grievance within fifteen days of the time he completed, terminated, or ceased employment under the prison industries program. If the grievance was filed late, the ALC explained the Department's decision to deny the grievance must be a firm decision. If the grievance was timely filed, the ALC ordered the Department to pay Burns the difference

FILED
OCT 28 2008

SC ADMIN. LAW COURT

P.2

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ja Ja D.B. Okera #228442,)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)

Docket No. 08-ALJ-04-00887-AP

FINAL ORDER
GRIEVANCE NO: ECI 2087-05

June 29, 2009

This matter was remanded to the Department on July 17, 2008 to determine if the Appellant filed his grievance in the instant matter while he was employed under the prison industries program or within fifteen days of the time he completed, terminated, or ceased employment under the prison industries program. The Record on Appeal was supplemented on December 29, 2008. In the record, it appears that Appellant failed to file his step one grievance six years after his last day of work in the prison industries. Therefore, Appellant's Appeal was untimely.

Based on the Record on Appeal, this appeal must be dismissed because Appellant failed to file his grievance in the instant matter while he was employed under the prison industries program, or within fifteen days of the time he completed, terminated, or ceased employment under the prison industries program.

The Supreme Court of South Carolina has unequivocally held in Wicker v. South Carolina Dep't of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) that: (1) an inmate is entitled to file a grievance when not being paid the prevailing wage; (2) the ALC has jurisdiction to review the Department's failure to pay the prevailing wage; and, (3) an inmate is entitled to be paid the prevailing wage while working in the private sector program. Id. at 421, 602 S.E.2d at 56.

In addition to the requirement that an inmate must file a grievance within fifteen days of an alleged incident, SCDC Policy Number GA-01-12, paragraph 13.1 states that "[i]nmates will only be allowed to submit one grievance per incident or circumstance."

FILED

JUN 29 2009


SC ADMIN. LAW COURT



ORDER

IT IS THEREFORE ORDERED that this matter is dismissed.

AND IT IS SO ORDERED.

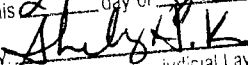


Carolyn C. Matthews
Administrative Law Judge

June 29, 2009
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 29th day of June, 2009
By:  _____
Judicial Law Clerk

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

173

INMATE NAME: Michael Burns / Jabi D. B. Dkera
SCDC NUMBER: 228442
INSTITUTION: Lee C.F.
HOUSING UNIT: Ker
WORK ASSIGNMENT: Doem

OCT 12 2005

OCT 18 2005

INMATE GRIEVANCE

Office Use Only
Grievance No. ECT 2087-05
Code: General NY
Policy _____
Disc. Hear. _____
Class. _____
Date Received 10/12/05
IGC Initials DB

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Warden Engleton did not address my grievance. I did not rely on Adkins, et. al vs SCDC, 360 SC 413, 602 SE2d, 51 (2004), nor Wicker vs. SCDC, 320 SC 421, 602 SE2d, 56 (2004) for the wages argued in my grievance. I relied on South Carolina Code Annotation, § 24-3-430(D), Inmate labor in private industry authorized; requirements and conditions. Nor did I rely on Adkins, nor Wicker for my overtime wages. I relied on the fact that overtime wages were paid (time-and-a-half) to me based on the \$5.25 hourly wage. Therefore, I am due overtime (time-and-a-half) (\$10.75) based on the prevailing wage, \$7.17, I was supposed to have been paid initially. In fact, nowhere in my grievance did I mention anything about Adkins, nor Wicker. Contrary to Warden Engleton's claim in his decision, Adkins, nor Wicker was about "prevailing wage", as my grievance is. see Adkins; see Wicker.

SEE ATTACHMENT...

Michael Burns / Jabi Dkera
Grievant Signature Date 10.10.05

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE REVERSE SIDE
FOR RESPONSE

[Signature]
Signature Date 1-13-06

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.

Grievant Signature _____ Date _____ IGC Signature _____ Date _____

(SEE REVERSE SIDE FOR INSTRUCTIONS)

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

I have reviewed your Step 2 appeal dated October 10, 2005, and I have again reviewed your Step 1 grievance dated July 11, 2005. Additionally, your prison industries participation and pay records were reviewed by the responsible officials at Division of Industries Headquarters in Columbia. These records reflect that you began your participation in the prison industries project located at Evans CI on or about June 25, 1997.

As stated in the response to your Step 1 grievance, two (2) 2004 decisions of the South Carolina Supreme Court apply to both your Step 1 grievance and your Step 2 appeal, Adkins, et al. v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq. and, specifically, 24-3-430(D). Therefore, contrary to the statements you made in your Step 2 appeal, Adkins and Wicker clearly apply to your grievance.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1 of Policy Number GA-01.12, and the exceptions to this deadline recognized by paragraph 13.9 of Policy Number GA-01.12, that you did not submit your Step 1 grievance by the deadline set forth in this policy.

The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

^{MSD} Moreover, you filed your Step 1 grievance over eight (8) years after you first started participating in the project located at Evans CI, and nearly 11 months after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceed any reasonable time frame associated with filing a grievance under SCDC's applicable policy.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I again conclude that you are not entitled to back pay in the amount you state in your Step 2 appeal. No reading of Adkins or Wicker supports the arguments you make concerning "prevailing wages" and "overtime wages" you claim SCDC owes you under the terms and conditions as you state them in your Step 2 appeal.

Finally, I specifically conclude that no conduct or act allegedly committed by SCDC as described by you in either your Step 1 or Step 2 constitutes "criminal activity." Therefore, your reliance on paragraph 15 of Policy Number GA-01.12 is without merit.

Therefore, I, again, deny your Step 2 appeal in its entirety.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

(Prison Industry grievance ATTACHMENT - Grievance No ECT 2087-05)

Warden Kingleton's claim that I did not meet the 15 day time frame to file my grievance is also without merit. . . . South Carolina Department of Corrections "Inmate Grievance" policy (CA-01.12) § 13.9 reads in part: "Exceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures." (emphasis mine). This grievance is alleging "criminal activity" which is within SCDC policies/procedures. (see SCDC I/M Grievance System, supra, § 15). For by definition, a crime is "an act or the commission of an act that is forbidden or the omission of a duty that is commanded by a public law . . ."; "a gross violation of law." (emphasis mine). And is not S.C. Code Ann. § 24-3-430 (D) state law? Section 24-3-430 (D) reads: "No inmate participating in the program" (prison industry-private sector) "may earn less than the prevailing wage for work of similar nature in the private sector."

The crime that makes the 15 day time limit for filing this grievance inapplicable is that SCDC paid me an hourly wage of \$5.25, when the prevailing wage paid to SCDC by Escal Industry was \$7.17; And the hourly overtime wage of \$7.86, when the overtime prevailing wage paid to SCDC by Escal Industry was \$10.75.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

JaJa D. B. Okera, # 228442

APPELLANT,

v

South Carolina Department of
Corrections,

RESPONDENT.

Docket No.: 08-ALC-04-00887-AP

APPELLANT'S BRIEF

STATEMENT OF ISSUES ON APPEAL

- 1) Does the 15 day statute of limitation apply to policy/procedure?
- 2) If I was denied access to the courts because of South Carolina Department of Corrections' (SCDC) discontinuation of needed law material, is the 15 day statute of limitation applicable?
- 3) Did SCDC's discontinuation of Southeastern Reporters deny me knowledge of a 'cause of action' created by Wicker vs SCDC, 360 SC 421, 602 SE2d. 56 (2004) decision?
- 4) Does the notice given to me by prisoner Thomas Torrence, # 094651, constitute a cause of action?
- 5) Did the agency's failure to comply with South Carolina Code Annotation §24-3-430(D) deny me due process?
- 6) Am I entitled to prevailing, and overtime wages?
- 7) Is it legal for SCDC to create policy/procedure(s) that violates or conflicts with State statutes denying me the liberty/property interests created by the statutes?

STATEMENT OF CASE

July 22, 2008, I received Judge Matthews' FINAL ORDER (in the case of 06-ALJ-04-DD173-AP) allowing the agency to determine if I filed my grievance timely. If so, my grievance must be REVERSED; if not, the decision must be AFFIRMED.

August 22, 2008, I timely submitted a Notice of Appeal, and Motion + Affidavit To Proceed In Forma Pauperis, and Memo In Support with the Court of Appeals, arriving in August 27/08. September 8/08 I was given notice of the assigned case tracking number. However, September 18/08, I received a letter from Deputy Clerk, Ms. V. Claire Allen, requesting a memo addressing the issue of appealability, which was timely submitted and received by the Ct. of App.s September 29/08.

An ORDER was issued October 13, 2008, and received by me on October 15/08 holding that "...the ALC's order was not immediately appealable as it merely remanded the matter to the Department." Id. But since the Department has now ruled, I am entitled to reappeal to the ALC. Id. With that being so, I timely submitted a notice of appeal, filed Oct. 28/08, and assigned, again, to Judge Matthews on November 13, 2008.

ARGUMENT

1a) THE 15 DAY STATUTE OF LIMITATION DOES NOT APPLY TO SCDC Policy/Procedure.

Section (3) 13.10 of SCDC Policy, GA-01.12, "Inmate Grievance System" (July 1, 2008), states, in part, that, "[e]xceptions to the 15 day time limit requirement will be made for grievances concerning Policy/Procedure."

SCDC has been paying prisoners employed in Evans' Prison Industry (P.I.) minimum wage since at least 1997 (the year of my employment), and still does to date, ... over 11 years later. (see EXHIBIT A). As EXHIBIT A reveals, the payment of minimum wage at Evans Corr. Inst.'s (ECI) P.I. is policy/procedure, which is an exception to the 15 day limitation requirement established by SCDC grievance policy, supra, at § 13.10. Therefore, I request that the SCDC's decision be REVERSED, and relief sought, granted.

2a) THE STATUTE OF LIMITATIONS IS INAPPLICABLE BECAUSE SCDC DENIED ME ACCESS TO THE COURTS BY DISCONTINUING NEEDED LAW MATERIAL.

The agency is relying on two (2) cases (Adkins et.al v SCDC, 360 SE 413, 602 SE 2d. 51 (2004), and Wicker v SCDC, 360 SE 421, 602 SE 2d. 56 (2004)) that it and/or the General Counsel has/have denied me access to. Adkins et.al and Wicker are 2004 cases that are contained in 602 SE 2d.. However, the last Southeastern Reporter received by ECI's institutional law library is 578, 2nd edition, (see EXHIBIT B). The agency's decision to discontinue Southeastern Reporters for its institutional law libraries denied me access to the courts by the fact that I had no way of knowing about Wicker, nor Adkins et.al.

The decision of Wicker created a 'cause of action' enabling me to file a grievance at that time, but as stated above, I could not have known. For that reason, the 15 day statute of limitation is inapplicable, and the relief sought should be granted.

3a) SOUTH CAROLINA DEPARTMENT OF CORRECTIONS' DISCONTINUATION

OF SOUTHEASTERN REPORTERS DENIED ME KNOWLEDGE OF A CAUSE OF ACTION CREATED BY WICKER'S DECISION.

For the sake of judicial economy, I incorporate here, verbatim, the argument presented in issue 2a above. Further, Rumpf v Massachusetts Mut., 357 SC 386, 593 SE2d. 183 (2004) ("Under the discovery rule, a cause of action accrues for purposes of the statute of limitations when a plaintiff has notice that he might have a remedy for a harm."). Here, I was denied that notice.

4a) THE NOTICE GIVEN TO ME BY T. TORRENCE CONSTITUTE A CAUSE OF ACTION.

I was apart of a class action suit in relation to P.L.'s prevailing wage (Torrence, Wand et al v SCPC, and the State of South Carolina, c/A# 01-CP-40-3409), however, in July, 2005, before my transfer from Lieber C.T., Torrence, #094651, informed me that the case might be dismissed, so I should file a grievance concerning the prevailing wages. So days later, I filed my initial grievance, (July 11, 2005).

In June, 2007 (almost 2yrs. after filing my initial grievance, and more than 1yr. after I filed my brief in your Court) I received a letter from Torrence's lawyer, Ms. Helen T. McFadden, Esquire, informing me that she told Torrence and Wand to inform us to "... file a Wicker type claim...". (see EXHIBIT C). So as advised by his lawyer, Torrence advised me to do so - a cause of action.

Unlike in this instance, a notice was posted at ECI on 10-20-08 concerning a class action lawsuit filed by Darryl Williams on behalf of prisoners currently participating in, or once participated in the SCDC/

Williams Technologies, Inc. P.J. Project at Lieber Ct. (see EXHIBIT D). The suit was dismissed relying on Adkins et al, and Wicker, but the notice states, in part, that "inmates who participate or participated in this project may, if they have not already done so, file Step 1 grievances and Step 2 appeals against SCDC..." emphasis added. This is the same scenario as with my case... my grievance was filed before I was legally notified that I should. (see EXHIBIT E). The same legal principle applies. Therefore, the SCDC's decision should be REVERSED, and relief sought, granted.

5a) THE AGENCY'S FAILURE TO COMPLY WITH SOUTH CAROLINA CODE ANNOTATION §24-3-430(D) DENIED ME DUE PROCESS.

South Carolina Code Ann. §24-3-430(D) states 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 statute is perfectly clear in its language, creating liberty/property interests in the wages I seek. The denial of said wages denied me the protection of liberty and property interests created by the state, and protected under due process - state and federal constitutions, therefore, the SCDC's decision should be REVERSED, and relief granted.

6a) I AM ENTITLED TO PREVAILING, AND OVERTIME WAGES.

Wicker did not seek prevailing wages. He sought minimum wage for the training pay hours. That is not my request. I seek to be paid the prevailing wages paid to the private sector for similar work done by me while employed at P.J. as required by S.C. Code Ann. §24-3-430(D).

I am entitled to overtime wages, because SCDC paid me overtime (time + 1/2) of \$ 7.86 based on the \$ 5.25 hourly wage. So if

SCDC would have complied with § 24-3-430(D) initially, my overtime pay would have been based on the prevailing hourly wage.

South Carolina Dept. of Corrs' failure to comply with S.C. Code Ann. § 24-3-430(D) denied me due process guaranteed by the 14th Amendment to the U.S. Constitution, and Article I § 3 of the S.C. Constitution. Therefore, the SCDC's decision should be REVERSED, and relief sought, granted.

7a) IT IS ILLEGAL FOR SCDC TO CREATE POLICY/PROCEDURE THAT VIOLATES (OR OVERRIDES) STATE STATUTE.

South Carolina Code Annotation § 24-1-30 states: "There is hereby created as an administrative agency of the State government the Department of Corrections. The functions of the Department shall be to implement and carry out the policy of the State with respect to its prison system, as set forth in § 24-1-20, and the performance of such other duties and matters as may be delegated to it pursuant to law."

Administrative agencies are required to formulate and promulgate rules and regulations governing their activities and the activities of those whom they regulate. However, All agencies must comply with the statutes that originally brought them into existence. Here, legislation, has not given the Department of Corrections power to create policies/procedures that conflicts with state law. (see § 24-1-30 supra). The agency may not confer power upon itself. Louisiana Public Service Com'n v F.C.C., — US —, 106 S.Ct. 1890, 1901 (1986).

Therefore, SCDC, in this instance, has acted beyond its authority. For that reason, I ask that the wages I seek be granted, reversing

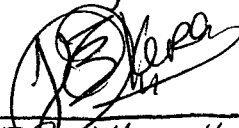
the agency's decision.

CONCLUSION

As shown above, I was denied due process guaranteed by the 5th, and 14th Amendments to the U.S. Const.; and liberty and property interests created by S.C. Code Ann. § 24-3-430(D).

For such, I request to be paid the difference between the wages actually paid to me, and the prevailing wages that should have been paid to me for each hour, and fraction of an hour, worked by me, to include the overtime wages, and the interest earned on same wages.

Respectfully submitted,



J. B. Okera, # 228442
Pro Se

ECI

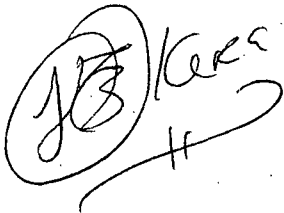
610 HWY 9 West
Bennettsville SC 29512

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

TO: NAME: Gene Baker TITLE: PRISON INDUSTRY	DATE: Oct. 17, 2008
INMATE'S NAME: Jaja Okena	SCDC #: 228442
INSTITUTION: Evans C.J.	LIVING QUARTERS: 2B-142


I have learned that the rate of pay in P.T. had increased. I ask what is the hourly wage now, and are you hiring? Mind you, I am experienced in lacing.

Sincerely,



DISPOSITION BY STAFF MEMBER: Michael Burns - Currently as you probably know, work is slow and we are not hiring in fact we don't have enough work for the men we have. I discuss a man's pay rate when he is hired.

- 1a.5 - For your information the Federal min wage rate is \$6.55/hr,
- 1a.6 - We comply with all Federal wage requirements.

DATE: 10-21-08	SIGNATURE: 
----------------	---

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

TO: NAME: Cpl. B. Miller - EDUCATION	TITLE: Cpl.	DATE: 9.26.08
INMATE'S NAME: Jaja D. B. O'Kern	SCDC #: 228442	
INSTITUTION: Evans C.I.	LIVING QUARTERS: 2B-142	

I have two (2) questions for you:


- 1) What is the last Southeastern Reporter that Evans Corr. Inst. received?; and
- 2) What year did SCDC discontinue certain law material for the law library?

S/ (JB) Kern
H

DISPOSITION BY STAFF MEMBER:

In.1

→ 578 SE^{ed}
2003 for SE^{ed} but the law library still receive certain books

DATE: 9-30-08	SIGNATURE: 
-------------------------	---

HELEN T. MCFADDEN, ESQ.

P.O. BOX 1114

Kingstree, South Carolina 29556

Telephone
843-355-5200

Facsimile
843-355-7658

May 30, 2007

Michael Burns # 228442
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Dear Mr. Burns,

You are one of the class of prisoners who was represented in the action *Torrence v. S. C. D. C.* who has written to me individually. This case, like all of the others before it, was treated in the circuit courts with a determination to give prisoners nothing. The circuit court granted the motion for summary judgement against the prisoners and the two other classes we joined with it—mothers of the children of prisoners and victims who would receive money from the prisoner funds. After the summary judgement we took the appeal to the South Carolina Supreme Court. The Court ruled in this case on May 7, 2007, holding that the prisoners did not have a right to pursue this matter in circuit court, but that the right outlined in *Wicker* was available to them. The text below is a quote from the opinion.

Appellants claim that despite the holdings of *Adkins* and *Wicker*, the Prisoner Subclass should be able to proceed in circuit court in the posture of a declaratory judgment action. We disagree. The clear rule emerging from the *Adkins* and *Wicker* cases is this: inmates working in the Prison Industries Program have a cognizable, state-created interest in having the DOC pay them according to the statutory scheme governing the Program, but they do not have a private right of action; instead, the DOC's internal grievance procedure, with recourse to the Administrative Law Court, is the appropriate way to have a prisoner's wage claim adjudicated. Therefore, the trial court correctly applied *Adkins* and *Wicker* to the Prisoner Subclass. To hold otherwise would contravene our precedent on these issues by allowing inmates access to the circuit court merely by styling their cases as declaratory judgment actions.

The Court went on to say that this was the only route available to the mother class and the victim class also.

SCDC has asked for reconsideration of the opinion, seeking to have the Court overturn *Wicker* in essence. We don't think there is much likelihood of a change of the opinion in a rehearing. Right after the *Wicker* decision we indicated to the named parties that they should file a *Wicker* type claim and to tell everyone else to do so also. I hope that you received this information and did so.

EXHIBIT C

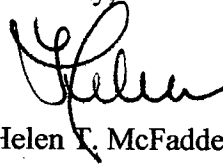
Page 2
May 30, 2007

The lawyers who have worked on this matter believe that you have not been treated fairly in the payment of the wages. However, the underlying reason for the loss is the effect on the state budget, not solely the consideration of the law and a determination that it is correctly applied. We had joined the claims of mothers and victims to try to persuade the Court that not only were prisoners being poorly treated, that the real beneficiaries of the statute were not receiving the benefits outlined by the legislative action. This was not sufficiently persuasive.

I send my sincere regrets that this case did not result in a favorable verdict..

With regards,

Sincerely,



Helen T. McFadden, Esq.

EXHIBIT C cont. ...

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

JaJa P. B. Dkera, # 228442

APPELLANT,

CASE #: 08-ALJ-04-00887-AP

South Carolina Department of
Corrections,


RESPONDENT.

AFFIDAVIT

COMES now, the Appellant, in the above captioned case, JaJa P. B. Dkera, duly swear that:

- 1) I am the Appellant in this action;
- 2) all EXHIBITS, herein, are true, and unaltered;
- 3) SCDC prisoner, Thomas Torrence, # 094651, did, in fact, advise me to file a grievance concerning the prevailing wages owed to me;
- 4) I did submit my grievance within 15 days of inmate Torrence's advice to do so; and
- 5) I am entitled to the wages I seek, pursuant to State statute.

I swear, under the penalty of perjury, that all of the above is true, and correct.

s/ 
JaJa P. B. Dkera, # 228442
Pro Se
ECI
610 HWY 9 West
Bennettsville SC 29512

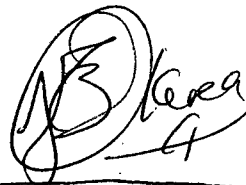
CERTIFICATE OF SERVICE

DKera vs SCDC, 08-ALS-04-00887-AP

I certify that on this 20th day of January, 2009, I forwarded a copy of the enclosed APPELLANT'S BRIEF (and EXHIBITS A-D), and AFFIDAVIT to Respondent's counsel (Lake L. Summers) at Malone, Thompson, Summers, & DTH LLC, 339 Heyward Street, Suite 200, Columbia, SC 29201 by way of INTERDEPARTMENTAL MAIL, no postage necessary, by delivery to, and depositing them in Evans

In. 7 → Correctional Institution's mailroom, VIA, the institutional

In. 8 → mailbox.



s/ Jaja D. B. DKera, #228442
Pro Se

Evans Corr. Inst.
610 HWY 9 West
Bennettsville SC 29512

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael Burns, # 223442

Appellant,

vs.

South Carolina Department
of Corrections,

Respondent.

CKET No: DL-ALS-04-00173-AP

APPELLANT'S BRIEF

FILED

MAY - 2 2006

SC ADMIN. LAW COURT

STATEMENT OF ISSUES ON APPEAL

- 1) IS 15 DAY TIME LIMITATION APPLICABLE DESPITE DENIED DUE PROCESS BY SCDC'S DISCONTINUATION OF LAW MATERIAL?
- 2) DOES THE FACT THAT APPELLANT IS/WAS PART OF A CLASS ACTION MAKE THE 15 TIME LIMITATION INAPPLICABLE?
- 3) WAS APPELLANT DENIED DUE PROCESS BY THE AGENCY'S FAILURE TO COMPLY WITH SOUTH CAROLINA CODE ANNOTATION § 24-3-430 (D)?
- 4) IS APPELLANT ENTITLED TO PREVAILING ANNO. OVERTIME WAGES?

STATEMENT OF CASE:

The appellant initially filed a step 1 grievance on July 11, 2005. On October 7, 2005, appellant received Warden Eggleston's decision dated September 27, 2005, denying grievance on the ground that Adkins et al v SCDC, nor Wicker v SCDC required that I,

ANSWER FOR
(1) (2) (3) (4)
+ DUE PROCESS
WAGES (1) (2) (3) (4)
MAY 11, 2006



nor any other "inmate" in my "position" be paid overtime wages. And on the ground that I did not timely file my grievance.

October 10, 2005, appellant submitted Step 2 grievance. A response dated January 13, 2006 was received by appellant on January 24, 2006, also denying appellant's claims.

Appellant submitted a Notice of Appeal dated February 21, 2006 which was filed on February 22, 2006, and assigned to Judge Matthews on March 1, 2006.

ARGUMENT:

1a) DISCONTINUATION OF NEED OLD LAW MATERIAL

The agency is relying on two (2) cases (Adkins et. al v. SCDC, 360 SC 413, 602 SE 2d. 51 (2004), and Wicker v. SCDC, 360 SC 421, 602 SE 2d. 56 (2004)) that - THE AGENCY/GENERAL COUNSEL - HAVE denied me access to Wicker and Adkins are 2004 cases that are contained in 602 Southeastern Reporter, second edition. However, the last second edition Southeastern Reporter received by Evans' institutional law library is 576. And "Advance Sheets" - which would have been in the institutional law library in time enough to meet the 15 day time limit in relation to the decision in Wicker - are non-existent. (I do not recall a time that Evans C. I. ever received advance sheets.)

The agency's decision to discontinue law material for its institutional law libraries denied appellant access to the courts by the fact that appellant had no way of knowing the decisions of Adkins.

or Wicker denying appellant the ability to meet the 15 day deadline as argued by the agency. And despite the fact that the appellant's grievance was filed eight (8) years after his employment date at prison industry, - in interpreting the agency's references to Wicker - Wicker opened the door for the appellant to file a grievance at that time. But, ... I can not substantiate my assertion, because I do not have access to Wicker which has denied me the ability to adequately argue the case at hand.

*The appellant asserts that he was denied due process guaranteed by the 5th Amendment to the U.S. Constitution in that he was denied access to the courts by the agency's/general counsel's discontinuation of needed law material for institutional law libraries throughout S.C.D.C. To hold me accountable for the agency's deprivals is the same as removing all established law from the public's access, but yet, hold them accountable for being in accordance with them. Such an act, itself, would be a denial of due process.

2a) APART OF CLASS ACTION

*The appellant is/was apart of a class action suit in relation to prison industry's prevailing wage (Torrence, Nard, et. al v SCDC and the State of South Carolina, C/A # 01-CP-40-3409). However, before my transfer from Lieber Corr Inst. in 2005, T. Torrence (SCDC # 094651) informed me that the case may get dismissed, and that I should submit a grievance concerning the prevailing

wages. I am not in contact with Mr. Torrence, nor am I provided the needed law material to have knowledge of the suit's disposition. However, the existence of the class action should toll any statute of limitation. But then, the denial of said disposition should be the liability of the agency, not the appellant, . . . resulting in the inapplicability of the statute of limitations.

3a) FAILURE TO COMPLY WITH S.C. CODE ANNOT. § 24-3-430(D)

South Carolina Code Annotation § 24-3-430(D) states that, "In no inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector." This statute is perfectly clear in its language, creating a liberty interest in the wages asserted in appellant's step one (1) grievance attachment. (see ATTACHMENT A). The denial of said wages denied appellant the protection of liberty & property guaranteed by the U.S. Const., 14th Amendment.

4a) IS APPELLANT ENTITLED TO WAGES REVERSED?

For the agency to assert that Kicker does not support my claim of prevailing wages implies that Kicker is not about prevailing wages.

Bennie Kicker, and I, both, worked at Evans Correctional Institution's prison industry, and we both were paid training pay wages, and later, minimum wage. However, the minimum wage was not the prevailing wage. Minimum wage (\$5.25) is

what SCDC paid us (prison industry workers). Prevailing wage (\$7.17) is what Escal Industry paid SCDC for our labor. The \$7.17 is the liberty interest that was created by S.C. Code Ann. §24-3-430(D).

I assert that I am entitled to the overtime wage claimed in my steps 1 and 2 grievances simply because, I was paid, by SCDC, an over-time wage (time and one-half) of \$7.36 based on the \$5.25 hourly wage paid me by SCDC. So, if SCDC would have complied with §24-3-430(D) initially, my overtime pay would have been \$10.75 based on the "prevailing" hourly wage of \$7.17.

South Carolina Department of Corrections' failure to comply with S.C. Code Ann. §24-3-430(D) denied me due process guaranteed by the 14th Amendment to the United States Constitution, and Article I §3 of the South Carolina Constitution.

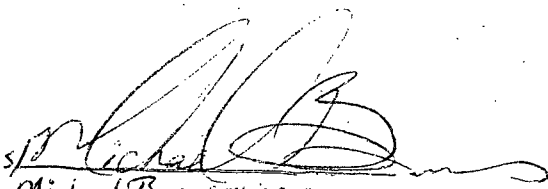
CONCLUSION

I was denied due process (U.S. Const. 5th Amendment) by the agency's 2003 discontinuation of needed law material (which denied me access to the courts, making compliance with the agency's 15 day time limitation impossible in relation to the decision in Wicker, supra. And I am/was apart of a class action which should have tolled the statute of limitations until its disposition (which would have passed the same problem as Wicker - - NOT KNOWNING).

Due to the denial of due process (access to the courts) argued supra, the appellant ask that the statute of limitation not be applied here. And that §24-3-430(D) created a liberty in-

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terest in the prevailing wages (regular and overtime pay) claimed in appellant's steps 1 and 2 grievances, as well as the fact that I was paid overtime wages (time & 1/2) based on the \$5.25 hourly wage.

The agency's denial of said wages denied appellant due process (U.S. Const. 14th Amend.). Therefore, the appellant asks that he be granted the wages owed to him which is argued for in ATTACHMENT A of this brief.


Michael Burns, # 228442
Evans C. I.
610 Hwy 9 West
Bennettsville, SC 29512

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

TO: NAME: <i>D. Bundy</i>	TITLE: MAILROOM OPERATOR	DATE: <i>10 28-09</i>
INMATE'S NAME: <i>JaSa T. B. Okeru</i>		SCDC #: <i>228442</i>
INSTITUTION: <i>Evans Corr. Inst.</i>		LIVING QUARTERS: <i>2B-142</i>

ln. 1 - Friday, January 16, 2009, I gave you an I/m Request requesting
ln. 2 - an OTR for the next business day since Monday, Jan. 19th/09
ln. 3 - was a holiday. I received an OTR for Tuesday, Jan. 20th/09 to
ln. 4 - report to the mailroom at 9am. However, it was closed when I
ln. 5 - arrived, so I had to put my legal mail in the mailbox. The next
 day (Wed., Jan. 21st/09), you told me you were given the day off (I
 guess b/c of the inauguration), and that you would mail it on that day.
 My gripe is, ... I am indigent + you've once told me that indigent I/ms can
 mail legal mail interdepartmental @ no cost. But Friday Jan 23rd/09, I re-
 ceived SCDC Form 10-14 billing me \$3.02 for 2 postages. Mind you, I'm indig-
 gent. And based on your words, legal mailings are free. AND I had interde-
 partmental mail boldly printed on the outer covering.
 With that said, I ask that you remove that billing from my account.
(Signature)

DISPOSITION BY STAFF MEMBER:
WHO WAS THEY MAILED TO.

DATE: <i>01-30-09</i>	SIGNATURE: <i>D W Bundy</i>
--------------------------	--------------------------------

Judge Carolyn C. Matthews
Administrative Law Court
Edgar A. Brown Bldg.
1205 Pendleton St., Ste. 224
Columbia SC 29201

RE: Letter of Inquiry - Okera v SCDC, C/A #08-ALJ-04-00887-AP

Judge Matthews,

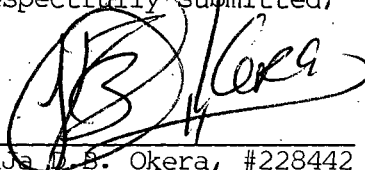
Monday, January 19, 2009 was a holiday, so on Tuesday, Jan. 20/09, I went to the institutional mailroom to mail my brief and affidavit (2 copies) in the above captioned case to your court, and opposing counsel. But when I arrived, it was closed. Not knowing whether inauguration day was a holiday for certain state employees or not, I deposited the documents (to you and opposing counsel) in the institutional mail-box, with certificate of service stating delivery through interagency mail. However, postage was placed on them on January 21st/09 when the mailroom operator(s) returned. But because postage was not added to the enclosed SASE for the return copy, I enclosed two (2) stamped envelopes for postage to added to the legal envelope.

After close to a month, on Feb. 16th/09, I submitted a letter of inquiry concerning my return copy, but still no response from you. so on April 3rd/09, I inquired again, sending two (2) more stamped envelopes assuming that postage previously sent was insufficient. But again, nothing.

Your Honor, it is now June 15th/09, but I still do not have my filed copy from you. So in another attempt to get my return copy, enclosed is another SASE with enough prepaid postage on it for you to return to me all that I have forwarded to you. So if you would, I ask that you please return to me the requested filed copy of my brief, affidavit, certificate of service & exhibits in the above captioned case, and the legal & stamped envelopes that I also forwarded to you. And likewise, please file & return to me the additional copy of this letter of inquiry & request with the documents and materials requested supra.

I thank you for your time, and I apologize for any inconveniences.

Respectfully submitted,



Jaja B. Okera, #228442
Pro Se
Evans Corr. Inst.
610 Hwy. 9 West
Bennettsville SC 29512

cc: Lake E. Summers
339 Heyward St., Ste. 200
Columbia SC 29201
File

June 15, 2009

RECEIVED

JUN 15 2009

SC ADMIN. L.W. COURT



Memorandum

To: APPELLANT
From: Clerk's Office
Date: 7-15-09

The information you filed with the Administrative Law Court is being returned to you for the following reason(s):

_____ You did not file your appeal on the appropriate form (see attached Notice of Appeal form and Special Appeals Rules).

_____ You did not attach a copy of the final decision from the Department of Corrections to your Notice of Appeal pursuant to ALC Rule 59 (Special Appeals Rules attached).

_____ The Administrative Law Court does not have statutory authority to hear Tort Claim actions. Pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 et seq., the appropriate venue for filing this type of action is in circuit court.

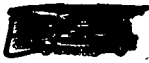
_____ In keeping with Proviso 55.3 of the 2007-2008 Appropriations Act, you have filed excess of three appeals received in year 2009. **However, if an inmate files three administrative appeals during a calendar year, then each subsequent filing during that year must be accompanied by a twenty-five dollar filing fee.** Therefore your appeal(s) is being returned for that reason.

_____ Please comply with attached Special Appeals rule #56 on Legibility of Documents.

_____ Please provide any response from the IGC to support your claim.

_____ Your appeal/motion is being returned to you pursuant to the attached order.

ln. 23 Other X According to the record of the file, there is not a copy of a brief filed. If you
ln. 23 want copies of the file, please submit a check in the amount of \$20.00 (40 pages @ .50 cents
ln. 24 per page).



THE STATE OF SOUTH CAROLINA
In The Court of Appeals
APPEAL FROM THE ADMINISTRATIVE LAW COURT
Administrative Law Judge, Carolyn C. Matthews
Docket # 2009-135046

Jaja D. B. Dkera, # 228442, APPELLANT,
vs.
South Carolina Dept. of Corrections, RESPONDENT.

AFFIDAVIT

I, Jaja D. B. Dkera, declare that:

- 1) I am the appellant in the above captioned case;
- 2) I did deposit a copy of my brief in the case of 08-ALJ-04-00887-AP into the institutional mailbox on January 20th, 2009 to opposing counsel, because the institutional mailroom was closed;
- 3) I did deposit two (2) ~~copies~~ copies of my brief in the case of 08-ALJ-04-00887-AP into the institutional mailbox on January 20th, 2009 to the ALJ, C. Matthews, because the institutional mailroom was closed;
- 4) the then mailroom operator, Mr. Oscar Bundy, informed me that he was given the day of January 20th, 2009 off from work;

ln. 11 - 5) I did on April 3, 2009 mail a second letter of inquiry to ALJ, C. Mat-
ln. 12 - thews inquiring about my return copy of my brief in the case of
ln. 13 - 08-ALJ-04-00887-AP;

ln. 14 - 6) I did on July 17, 2009, forward a letter to opposing counsel request-
ln. 15 - ing a copy of the brief I forwarded to him in the case of 08-ALJ-04-
ln. 16 - 00887-AP on January 20th, 2009;

7) the actions I have stated to have taken in the initial brief in

this case are all true and correct;
8) all of the content included in the designation of matters to be included in the record on appeal are unaltered, and true and correct with the exception of the last Southeastern Reporter received by ECI's law library in Appellant's brief 06-ALW-04-20173-AP; and
9) the correct number of the last Southeastern Reporter received by ECI's law library is stated in EXHIBIT B of APPELLANT'S BRIEF 08-ALW-04 00887-AP - SCDC RTSM, B. Miller's disposition at line # 1.

I swear, under the penalty of perjury, that the above is true and correct to the best of my knowledge, sworn to and signed on this 5th day of January, 2010.



Ja Ja D. B. Okena, #228442
Pro Se
~~Evans Comm. Inst.~~
~~610 Hwy 4 West~~
~~Bennettsville SC 29512~~
Ridgeland Co. 1.
POB 2039
Ridgeland, S.C. 29936

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
~~APPEAL FROM THE ADMINISTRATIVE LAW COURT~~
Administrative Law Judge, Gordon C. Matthews
Tracking # 2009135046

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MAR 25 2010
SC Court of Appeals

Jaja D. B. Okera, #228442, . . . APPELLANT,

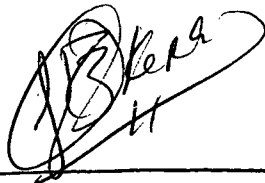
vs.

South Carolina Dept. of Corrections, RESPONDENT.

CERTIFICATE OF COUNSEL

The undersigned, hereby, certifies that the Record on Appeal contains all material proposed to be included by the above party, and not any other material.

March 22, 2010

sl 

Jaja D. B. Okera, #228442
Pro Se
Ridgeland C.1.
PoB 2039
Ridgeland, S.C. 29936

THE STATE OF SOUTH CAROLINA

In The Court of Appeals
APPEAL FROM THE ADMINISTRATIVE LAWS COURT
Administrative Law Judge, Gordon C. Matthews
Tracking # 2009135046

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SC Court of Appeals

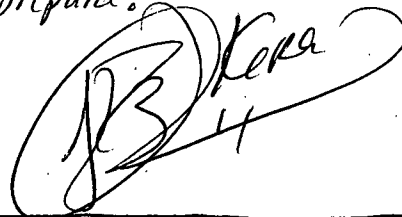
Jaja D. B. Okeru, # 228442, APPELLANT,

vs.

South Carolina Department of Corrections, . RESPONDENT.

CERTIFICATE OF MAILING/SERVICE

I declare that on March 22, 2010, I mailed two (2) copies of my Record on Appeal, and Certificate of Counsel (for one) of each to be returned to me) in the above case to the S.C. Court of Appeals' Clerk of Court at 1015 Sumter St., Columbia, SC 29201; and I served a copy of the same on opposing counsel, Lake E. Summers at Malone, Thompson, Summers + DTH, LLC, 339 Heyward St., Ste. 200, Columbia, SC 29201 all by way of the U.S. Postal Service, postages prepaid.



SI

Jaja D. B. Okeru, # 228442
Pro Se
Ridgeland C. 1.
POB 2039
Ridgeland, SC 29936

The South Carolina Court of Appeals

Ja Ja D. B. Okera,

Appellant,

v.

South Carolina Department of
Corrections,

Respondent.

The Honorable Carolyn C. Matthews
Richland County
Trial Court Case No. 2008-AL-04-00887

ORDER

Appellant has filed a motion requesting this Court waive the requirements set forth in Rule 267(e), SCACR, concerning the covers to the Record on Appeal and briefs. Appellant's motion is hereby granted. However, Appellant must provide a cover page to the Record and his brief. The covers may be of any material and in any color, and must contain only the caption.

AND IT IS SO ORDERED.

K. Bruce Wilson, J.

Columbia, South Carolina

August 11, 2010

cc: Ja Ja D. B. Okera # 228442
David M. Tatarsky, Esquire
Lake Eric Summers, Esquire

FILED

8/21/10