

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

RECEIVED

APR 19 2010

SC Court of Appeals

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

vs

South Carolina Dept. of Corrections, . . . RESPONDENT.

FINAL BRIEF

Jaja D. B. Okera, # 228442
Pro Se
RCI
POB 2039
Ridgeland SC 29936

2

RECEIVED

NOV 19 1954

TABLE OF CONTENT

Page

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of Case	1
Argument:	
1) DID THE ADMINISTRATIVE LAW JUDGE (ALJ) ERROR IN UPHOLDING THE AGENCY'S CLAIM THAT THE 15 DAY STATUE OF LIMITATIONS APPLIES IN THIS CASE?	2
2) DOES THE 15 DAY STATUE OF LIMITATIONS APPLY IN THIS CASE?	3
3) DID THE ALJ ABUSE HER DISCRETION BY NOT ADDRESSING THE POINTS/ ISSUES OF APPELLANT'S BRIEF IN HER FINAL ORDER?	4
4) DID THE ADMINISTRATIVE LAW COURT (ALC) ABUSE ITS DISCRETION BY RESPONDING TO APPELLANT'S INQUIRIES <u>AFTER</u> THE ISSUING OF THE FINAL ORDER?	5
5) DID SOUTH CAROLINA DEPARTMENT OF CORRECTIONS (SCDC) DENY ME ACCESS TO THE COURTS BY DENYING ME KNOWLEDGE OF CAUSES OF ACTION IN <u>WICKER v SCDC</u> , AND <u>AD-KINS et.al. v SCDC</u> BY DISCONTINUING NEEDED LAW MATERIAL FOR INSTITUTIONAL LAW LIBRARIES?	6
6) WAS APPELLANT ENTITLED TO SUBMIT A BRIEF IN THIS CASE?	6
Conclusion	7

TABLE OF AUTHORITIES

CASES

<u>Adkins et al vs SCDC</u> , 360 SC 413, 602 SE2d. 51 (2004)	1, 2, 3, 4, 5, 6
<u>Torrence, Ward et al. vs SCDC + The State of S.C.</u> , CIA# 01-CP-40-3409	3, 4, 5
<u>Wicker vs SCDC</u> , 360 SC 421, 602 SE2d. 56 (2004)	1, 2, 3, 4, 5, 6

STATUTE(S)

S.C. Code Ann. § 24-3-430 (D)	7
-------------------------------	---

OTHER AUTHORITIES

Adm. Law Court, Rules of Court § V. SPECIAL APPEALS	6
Adm. Law Court, Rules of Court § V. SPECIAL APPEALS, # 60 (A).	4, 6, 7
Adm. Law Court, Rules of Court § V. SPECIAL APPEALS, # 62	6
SCDC Inmate Grievance System policy, GA-01.12.	2
U.S. Constitution, 5 th Amendment - due process.	5, 6, 7
U.S. Constitution, 14 th Amendment - due process.	5, 6, 7

STATEMENT OF ISSUES ON APPEAL:

- 1) DID THE ALJ ERROR IN UPHOLDING THE AGENCY'S CLAIM THAT THE 15 DAY STATUTE OF LIMITATIONS APPLIES IN THIS CASE?
- 2) DOES THE 15 DAY STATUTE OF LIMITATIONS APPLY IN THIS CASE?
- 3) DID THE ALJ ABUSE HER DISCRETION BY NOT ADDRESSING THE POINTS/ISSUES OF APPELLANT'S BRIEF IN HER FINAL ORDER?
- 4) DID THE ALC ABUSE ITS DISCRETION BY RESPONDING TO APPELLANT'S INQUIRIES AFTER THE ISSUING OF THE FINAL ORDER?
- 5) DID THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS DENY ME ACCESS TO THE COURTS BY DENYING ME KNOWLEDGE OF CAUSES OF ACTION IN WICKER v SCDC, AND ADKINS et. al. v SCDC BY DISCONTINUING NEEDED LAW MATERIAL FROM INSTITUTIONAL LAW LIBRARIES?
- 6) WAS APPELLANT ENTITLED TO SUBMIT A BRIEF IN THIS CASE?

STATEMENT OF CASE:

Appellant (I) filed Step 1 grievance July 11/05. October 7/05, denial was received stating that Adkins et. al. v SCDC, 360 SC 413, 602 SE2d. 51 (2004), nor Wicker v SCDC, 360 SC 431, 602 SE2d. 56 (2004) required that I nor any other "inmate" in my "position" be paid overtime wages, and that grievance was not timely filed. Step 2 was timely filed, and its denial was received January 24/06. Notice of Appeal was timely submitted, and was filed February 22/06 with the ALC. A FINAL ORDER, filed July 17/08, ordered SCDC to make a determination that was not included in its brief. August 22, 2008, I appealed to the S.C. Court of Appeals; but in an Oct. 13/08 ORDER, the Court determined that the case was not appealable, and allowed me to appeal again to the ALC. The ALC filed my Notice of Appeal Oct. 28/08, and assigned it to Judge Matthews. She issued a FINAL ORDER dismissing my case. I timely appealed to the S.C. Court of Appeals, and received by the Court August 3/09. I later requested an extension, and was given to January 4/10. But because of Evans C.I.'s warden's abuse(s), I missed my

deadline, but I submitted a motion to reinstate my case on Jan. 21/10. On February 1, 2010, an Order was issued construing my Motion to Reinstate as a motion for an extension giving me to March 4, 2010 to serve and file Initial Brief and Designation of Matters on Appeal.

ARGUMENT:

1a) THE ALJ ERRORED BY UPHOLDING THE AGENCY'S CLAIM THAT THE 15 DAY STATUTE OF LIMITATIONS APPLIES TO THIS CASE.

I asserted (as I do now) that the 15 day statute of limitations does not apply in this case for the following reasons:

In my APPELLANT'S BRIEF (08-ALJ-04-00887-AP) at page 2 in 1a (R. p. 10, line (In) 21 - p. 11, ln. 8) I argued that the rate of pay paid to Evans Correctional Institution's (ECI's) prison industry (PI) workers is policy/procedure practiced by South Carolina Department of Corrections (SCDC), and proven to be so with evidence from P.I.'s SCDC official who stated that "... the Federal min wage Rate is \$6.55/HR." and that they "... Comply with All Federal Wage Requirements." (R. p. 16, DISPOSITION BY STAFF MEMBER, Ins. 5 and 6).

Pursuant to SCDC Inmate (1/m) Grievance System policy, GA 01.12, § 13.10 (July 1/08), "Exceptions to the 15 day time limit requirement will be made for grievances concerning policy/procedure." (emphasis added). Therefore, I asserted (as I do here) that the 15 day statute of limitations is inapplicable. (Id.)

In Point 2a (Id. at p. 3) (R. p. 11, Ins. 9-25), I argued (as I do now) that SCDC denied me access to the courts by discontinuing needed law material. It points out that respondent relied on Adkins et al., and Wicker-two (2) cases that were not available to ECI's prison population. (R. p. 17, DISPOSITION BY STAFF MEMBER, ln. 1; R. p. 23 ln. 10 - p. 24 ln. 17). As shown, the last Southeastern Reporter received by ECI's law library is 578. And with Adkins et al., and Wicker being in 602

Southeastern Reporter, I had no way of knowing the decisions of Adkins et al., nor Wicker. And as substantiated by SCDC/General Counsel, Adkins + Wicker were causes of action - (RESPONSIBLE OFFICIALS DECISION AND REASON, R. p. 7, Ins. 14 + 15 (paragraph # 5)) - causes of action that SCDC denied me the knowledge of.

Point/issue 3a simply provided case law supporting the cause of action in point/issue 2a supra. (R. p. 11, ln. 26 - p. 12, ln. 8).

Point/issue 4a (R. p. 12, ln. 9 - p. 13, ln. 9) revealed that I was also apart of a class action in the case of Torrence, Ward et al. v SCDC + The State of South Carolina, CA# 01-CP-40-3409. (see also R. p. 24, ln. 18 - p. 25, ln. 6). And evidence that I did not have in the case of 06-ALS-04-00173-AP to prove this point was presented in this case. (R. pp. 18 + 19). I argued that it also was a cause of action. I gave an example of a cause of action initiated by Darryl Williams' class action against Williams Technologies Inc. at Lieber Corr. Inst. (R. p. 12, ln. 9 - p. 13, ln. 9). (NOTE: EXHIBIT D concerning Williams Technologies is not included in brief, because I only had 3 copies, but the education official here at ECI would not make a copy of it. And of the 3 copies, one (1) was forwarded with the brief served on opposing counsel, and the other two (2) were forwarded with the two (2) briefs forwarded to the ALJ (one return copy), but the return copy was never returned.) I argued that the scenarios were similar (with the exception of me filing my grievance as informed by T. Torrence long before I received the letter from Ms. M^{rs} Fadden.)

So as shown by the arguments readdressed above, the 15 day statute of limitations does not apply in this case.

2a) DOES THE 15 DAY STATUTE OF LIMITATIONS APPLY IN THIS CASE?

For the sake of judicial economy, I incorporate here, verbatim, the argument presented in issue 1a supra.

3a) THE ALJ ABUSED HER DISCRETION BY NOT ADDRESSING THE ISSUES OF APPELLANT'S BRIEF IN HER FINAL ORDER.

In an order from the S.C. Court of Appeals filed Oct. 13/68 concerning the appealability of case # 06-ALJ-04-00173-AP, I was "...entitled to appeal again to the ALC," because "...the Department..." had finally ruled. (R.p. 3, Ins. 9 + 10). October 28/68, my Notice of Appeal was filed with the ALC, and assigned a new docket number. (R.p. 28, Docket No.). On January 20/69, I deposited my brief into the institutional mailbox. (R.p. 21, Ins. 7+8; see also R.p. 29, Ins. 1-5). (NOTE: I placed it in the mailbox, because the mailroom was not open, and I did not know if inauguration day was a recognized holiday.) (See RTSM supra). However, instead of addressing the points of my brief, the ALJ only addressed respondent's statute of limitations claim that was supplemented Dec. 29/68. (R.p. 4, Ins. 1-9).

Because I was allowed to appeal again to the ALC, and given a new docket #, I was entitled, ... REQUIRED! to submit a new brief. (see ALC Rules, § V. SPECIAL APPEALS # 60(A) which states in part that "unless otherwise ordered, the party first noticing the appeal shall file an original brief within sixty-five (65) days after the date of assignment." (emphasis added). (Note that there was not an order issued otherwise.)

In my brief, I addressed the same points/issues I argued in my previous case. (R.p. 9, Ins. 11-13, 17-21; R.p. 22, Ins. 11-17); with two (2) additional points/issues (R.p. 9 In. 10, Ins. 22-24); evidence NOT PREVIOUSLY AVAILABLE (R.p. 16-20). I assert that all seven (7) points have merit, and should have

been addressed by Judge Matthews in her final order.

At this point, for the sake of judicial economy, I incorporate here, verbatim, the argument presented in point/issue 1a supra.

As shown, all seven (7) points/issues addressed supra have substantially more merit than the respondent's claim. But yet, the ALJ saw fit to disregard them all, thereby, abusing her discretion, denying me due process.

4a) THE ALC ABUSED ITS DISCRETION BY RESPONDING TO MY INQUIRIES AFTER THE ISSUING OF THE FINAL ORDER.

My filing deadline fell on a weekend, therefore, I had to mail it the following business day. Monday, Jan. 19th/09 was an official holiday, so Tuesday, Jan. 20th/09 was the next business day. But when I reported to the mailroom, it was closed. Not knowing whether inauguration day was an official holiday, I added the last sentence to my certificate of service, and placed my APPELLANT'S BRIEF in the institutional mailbox. (R.p. 21, lns. 7+8; see also R.p. 29, lns. 1-5). After weeks of not receiving my return copy, I forwarded a letter of inquiry dated Feb. 16/09, but mailed Feb. 17/09. After no response, I sent a second letter of inquiry dated April 3/09. (R.p. 32, lns. 11-13). AGAIN!, after no response, on June 15/09, I sent a third letter of inquiry. (R.p. 30). But I still did not receive my return copy - not even a response. Then on or about June 30th/09, I received the FINAL ORDER dismissing my case. But then finally, approx. 16 days AFTER receiving my case's dismissal, and five (5) months AFTER my first inquiry, on July 16/09, I received an unsigned (UNOFFICIAL) memo from the "Clerk's Office" stating that there "is not a copy of a brief filed." (R.p. 31, lns. 22-24). I went as far as asking

opposing counsel to forward me a copy of the brief I served him (R.p. 32, lns. 14-16), but to no avail, because he did not respond to my request.

I assert that the ALC purposely delayed its response to my inquiries. And because of it, I might have been unjustly denied redress. However, I am of the opinion that had Judge Matthews not received my brief, she would have dismissed my case on that basis. (See ALC Rules, § V, SPECIAL APPEALS #s 60(A) + 62). Additionally, opposing counsel would have motioned to have my case dismissed. Again, my opinion.

I do not know whether there was a conspiracy or not, but I do know that proper procedure was not followed. And for that reason, I was denied due process.

5) SCDC DENIED ME ACCESS TO THE COURTS BY DENYING ME KNOWLEDGE OF CAUSES OF ACTION IN WICKER AND ADKINS et al. BY DISCONTINUING NEEDED LAW MATERIAL FOR INSTITUTIONAL LAW LIBRARIES.

For the sake of judicial economy, I incorporate here, verbatim line 21 (ln. 22 of initial brief) of page two (2) thru to line 5 (ln. 6 of initial brief) of page three (3) supra.

Therefore, SCDC/General Counsel denied me access to the courts in relation to this matter.

6) I WAS ENTITLED TO SUBMIT A BRIEF IN THIS CASE.

Because the South Carolina Court of Appeals allowed me to appeal again to the ALC, it allowed me to reargue my case. My case was given a new docket number (08-ALW-04-00887-AP), an assigned date, an assigned judge, and I was forwarded the court rules for special appeals. Also,

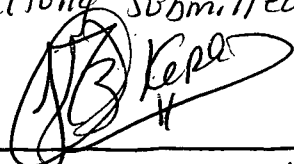
there WAS NOT an order enclosed stating that I could not submit a brief in this case. Therefore, I adhered to the rules. And Rule 60(A) states in part that "... the party first noticing the appeal shall file an original brief within sixty-five (65) days after the date of assignment." (emphasis added). Therefore, I was entitled, ... REQUIRED to submit a brief.

CONCLUSION:

As shown, I was denied due process guaranteed by the 5th and 14th Amendments to the U.S. Constitution; and liberty and property interests created by S.C. Code Ann. § 24-3-430(D). For such, I request that the ALS's decision be REVERSED, and that I 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. And any other relief that the Court deems warranted.

April 14, 2010

Respectfully submitted,



Jaja D. B. D. Kena, # 228442
Pro Se
RCI
POB 2039
Ridgeland SC 29936

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

RECEIVED
APR 19 2010
SC Court of Appeals

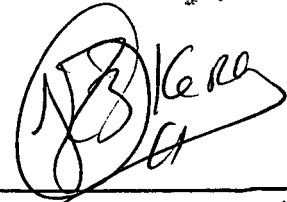
Jaja D. B. Okeru, # 228442, APPELLANT,

vs.

South Carolina Dept. of Corrections, RESPONDENT.

CERTIFICATE OF MAILING/SERVICE

I declare that on April 14, 2010, I mailed two (2) FINAL BRIEFS, CERTIFICATE OF MAILING/SERVICE, and CERTIFICATE OF COUNSEL (one (1) original) (for one (1) of each to be returned to me) in the above captioned case to the S.C. Court of Appeals' Clerk of Court at 1015 Sumter St., Columbia, S.C. 29201; and I served a copy of each of the same on opposing counsel, Lake E. Summers at Malone, Thompson, Summers, + O'H, LLC, 339 Heyward St., Ste. 200, Columbia, S.C. 29201 all by way of the U.S. Postal Service, postages prepaid.

51 

Jaja D. B. Okeru, # 228442
Pro Se
RC1
POB 2039
Ridgeland SC 29936

RECEIVED

OFFICE OF THE ATTORNEY GENERAL

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

RECEIVED
APR 19 2010
SC Court of Appeals

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

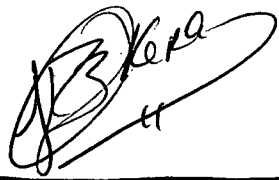
vs.

South Carolina Dept. of Corrections, RESPONDENT.

CERTIFICATE OF COUNSEL

The undersigned certifies that this final brief complies with
Rule 211(b), SCACR.

April 14, 2010


s/ _____
Jaja D. B. Dkera, # 228442
Pro Se
RC1
POB 2039
Ridgeland SC 29936

13

RECEIVED

NOV 19 1956