

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY

J. CORDELL MADDOX, JR., CIRCUIT COURT JUDGE

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APPELLATE CASE NO. 2015-0000759  
TRIAL COURT NO. 2014CP2305969

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BILLY JOE CARTRETTE, 122434, Appellant,

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, Respondent.

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BRIEF OF APPELLANT

Billy Joe Cartrette  
RCI, CA-52, POB 2039  
Ridgeland, S.C. 29936

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## STATEMENT OF ISSUES ON APPEAL

I. DID THE CIRCUIT COURT ERR WHEN IT GRANTED SCDC'S MOTION TO DISMISS WITH PREJUDICE ON SUBJECT MATTER JURISDICTION GROUND ACCORDING TO RULE 12(b)(1) OF SOUTH CAROLINA RULES OF CIVIL PROCEDURE (SCRCP)?

II. HAS THE CIRCUIT COURT ERR DISMISSING THE COMPLAINT FOR DECLARATORY JUDGMENT(S) ON THE PREVAILING WAGE AND OVERTIME BACK PAY CLAIMS?

III. WHETHER APPELLATE AND/OR SUBJECT MATTER JURISDICTION WAS PRESENT WHEN THE COURT OF COMMON PLEAS FOR JASPER COUNTY HAD JURISDICTION TO REVERSE THE FINAL ORDER?

## STATEMENT OF THE CASE

After the SCDC v. Cartrette, 722 S.E.2d 805 (2012) decision (issued) of South Carolina Supreme Court the remittitur (R. p.31) was sent to the lower Circuit Court of Jasper County; he filed the Complaint for Declaratory Judgment(s) in Greenville County Court of Common Pleas (R. pp. 32-35). The respondent who was served by Richland County Sheriff's office filed an answer and motion to dismiss (R. pp. 36-46). Prior to the 12-13-15 hearing plaintiff (appellant) filed an opposition to defendant's (respondent's) motion (R. pp. 47-49) and discovery request(s) (R. pp. 50-52).

The Circuit Court Judge granted defendant's motion to dismiss; the appeal herein follows:

## ARGUMENT(S)

I. THE CIRCUIT COURT ERRED WHEN IT GRANTED SCDC'S MOTION TO DISMISS WITH PREJUDICE ON SUBJECT MATTER JURISDICTION GROUND ACCORDING TO RULE 12(b)(1) OF SCRCP

Appellant asserts the Court of Common Pleas for Greenville County erred when it granted respondent's 12-29-14 motion to dismiss

based on Rule 12(b)(1) of SCRCP. Slezak v. Leeke, 378 S.E.2d 65 (Ct. App. 1989); Woodard v. Westvaco, 460 S.E.2d 392 (1995) ("proper procedure for raising lack of subject matter jurisdiction prior to trial is to file a motion to dismiss pursuant to Rule 12(b)(1), SCRCP, rather than a motion for summary judgment".) The Circuit Court issued the 2-13-15 Form 4 (R. pp. 73-74) and the 3-12-15 order granting the defendant's motion to dismiss plaintiff's complaint for declaratory judgment(s). (R. pp. 75-79)

It mentioned,

"In its motion and during the hearing conducted February 13, 2015, the Department argued that the opinion in 2010 by our Court of Appeals, and, for that matter, the opinion issued by our Supreme Court in 2012, completely negates any and all assertions articulated by the Plaintiff that the Court possesses subject matter jurisdiction over his claims." (R. p. 77)

SCDC's attorney mentioned at the hearing, "this is a matter that's I think ripe for adjudication before the administrative law court." (R. p. 57 ll. 13-15) More, counsel stated, "that they are under the jurisdiction of the administrative law court." (R. p. 58 ll. 9-11) The trial court stressed, "you filed this with the wrong court". (R. p. 58 ll. 20-21) A reading of Woodard suggests the circuit court committed clear error "under the provisions of SCRCP 12(b)(1)" (R. p. 79) for Woodard v. Westvaco is cited in Sabb v. S. C. State University, 567 S.E.2d 233, 234 n. 2 (2002).

Woodard points to Googe v. Speaks, 9 S.E.2d 439, 444 (1946) (procedural rather than jurisdictional); Taylor v. WUSC, 362 S.E. 2d 381, 385 (S.C. App. 1987) (The Court of Appeals articulated "WUSC advanced no good reasons, certainly none raising any jurisdictional

issue"). Evenmore, "the failure to exhaust administrative remedies goes to the prematurity of the case, not subject matter jurisdiction" which was announced or set forth by South Carolina Supreme Court in Ward v. State, 538 S.E.2d 245, 246 (2000) wherein it stated, "as a general rule, if the sole issue posed in the particular case is the constitutionality of a statute, a court may decide the case without waiting for an administrative ruling." See Video Gaming Consultants, Inc. v. SCDCR, 535 S.E.2d 642 (2000).

Cartrette exhausted the administrative grievance(s) in 2004-2005. Cf. Torrence v. SCDC, 646 S.E.2d 366 (2007) ("plaintiffs could not maintain their declaratory judgment claims because they were required to pursue their claims through SCDC's internal grievance procedure.") The election of avenue for enforcement of the 2010 judgment(s) is procedural and the circuit court had jurisdiction to issue declaratory judgment(s) requested therein. In Re Mover, 754 S.E.2d 375, 382 (2014) Moreover, the 12-18-14 answer of the Agency failed to plead exclusivity if it is applicable herein for respondent has surely waived it (see Rule 8(d) of SCRCP). Section 15-53-50; 50(1) and 60 of the Code authorizes this proceeding to enforce order.\*

II. THE CIRCUIT COURT ERRED DISMISSING THE COMPLAINT FOR DECLARATORY JUDGMENT(S) OF THE PREVAILING WAGE AND OVERTIME BACK PAY CLAIM(S)

The circuit court erred when it dismissed with prejudice the complaint for declaratory judgment(s) on the prevailing wage and overtime back pay claims. SCDC v. Cartrette, 694 S.E.2d 18 (S.C.

\*More specific, decisions, judgments, also see Rule 9(e) of SCRCP.

App. 2010) The court indicated, "I've got to grant their motion." (R. p. 64 1. 25) Further, "if you appeal my decision and they tell me I'm wrong, I'll be happy to hear it." (R. p. 66 11. 18-19) The complaint at (R. p. 34) paragraph 7 set forth:

Year	FURNITURE (Team) ASSEMBLERS		
	Entry hourly	Mean hourly	Experienced hourly
1999	\$8.94	\$11.66	\$13.24
2000	9.10	12.69	14.43
2001	9.63	13.97	14.24
2002	9.82	13.31	14.63
2003	9.88	13.05	14.14

(R. p. 5)

See also Judy v. Martin, 674 S.E.2d 151 (2009); Byrd v. Irmo High School, 468 S.E.2d 861 (1996) ("there must exist a justiciable controversy.") Id. at 804 Auto-owner Ins. v. Rhodes, 748 S.E.2d 781, 787 (2013) Appellant (plaintiff) began employment at Kwalu on 1-16-99 and he continued to work through 3-16-2002 at \$5.25 per hour (R. p. 8) if he was properly paid according to mean wage for team assembler(s); the difference or amount owed would be \$67,735.14. The Occupational Employment and Wage Estimates which reference "LEAD MAN/SECTION LEADER" (R. pp 5-6) set forth:

<u>Year</u>	<u>Wage Estimate</u>
2002	\$21.19
2003	21.49

He was employed in the section at Kwalu from 3-17-2002 (R. p. 8) to 10-23-2003 where his pay was increased to \$5.50 per hour; the difference would be \$14.50 per hour under-paid; 1280 hours times \$14.50 equals \$17,951.00. He had 81 hours overtime at \$30 an hour which is \$2,430.00. Total equals \$20,381.00.

Therefore, regular pay \$67, 735.14 plus leadman pay with over-time pay equals \$88,116.14. This Court should grant the award herein in this appeal.

III. THERE WAS NO SUBJECT MATTER AND/OR APPELLATE JURISDICTION WHERE THE APPELLATE COURT OF COMMON PLEAS FOR JASPER COUNTY WAS AUTHORIZED OR HAD POWER TO GRANT RESPONDENT'S APPEAL IN 2006

The Court of Common Pleas for Jasper County (which was the 2006 appellate circuit court) did not have jurisdiction to grant respondent's appeal from the "order of Clarification". (R. pp. 53-54) SCDC v. James, Unpublished opinion No. 2010-UP-251 (filed 4-26-10) At the 2-13-15 motion hearing Cartrette presented:

I've got one more thing. I have the subject matter jurisdiction issue of employee status from that administrative law court 3-2-2006 order of Judge Matthews. (R. p. 65 ll. 1-4).

The order which dismissed the action in the lower court with prejudice does not address or rule on the issue. (R. pp. 75-79) of course, the jurisdictional issue may be raised at anytime; in short, SCDC had procedural defaulted when it failed to timely appeal the final order mentioned above herein. At the 9-19-2006 consolidated oral argument the circuit court appellate judge stated, "All of you have made the same claim; that's the reason I got you all in here at one time." (R. p. 12 ll. 18-20). Further, "I'm taking his to apply to all of you." (R. p. 14 l. 8).

The correct definition or term would be the circuit court did not have appellate jurisdiction to reverse ALJ Matthews' 2-6-2006 order, stare decisis and law of case(s) doctrine. See

Allison v. W.L. Gore & Associates, 714 S.E.2d 547 (2011) See also SCDC v. James (R. pp. 19-23). This Court should recognize what fringe benefit(s) exist where Cartrette is granted Kwalu employee status. Kwalu's employee(s) don't pay room and board and/or victim witness payment(s).

The SCDC v. Cartrette decision adhered, "holding a prison industries program sponsor is not an employer of inmates because the sponsor does not exclusively control the payment of inmate wages", 694 S.E.2d 23 (S.C. App. 2010). Fringe benefits at Kwalu consisted of:

- (a) paid vacation(s);
- (b) paid holidays (State and Federal);
- (c) retirement plan;
- (d) 401 K plan;

As an employee of Kwalu the room and board and vicetim witness payment(s) should be return immediately.

#### CONCLUSION

The appellant respectfully requests and urges this Court to reverse the dismissal with prejudice, grant the declaratory judgment(s) and order the payment(s) back pay and wage(s) set forth above herein immediately. Also granting relevant fringe benefits.

November 1st, 2015

/s/ *Billy J. Cartrette*

Billy Joe Cartrette, 122434  
RCI, CA-52, POB 2039  
Ridgeland, S.C. 29936

#### CERTIFICATE OF COUNSEL

The undersigned certifies this brief complies with Rule 211(b) of

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This 2 day of November 2015  
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/s/ *Billy J. Cartrette*

SC Court of Appeals

STATE OF SOUTH CAROLINA  
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Appeal From Greenville County

J. CORDELL MADDOX, JR., CIRCUIT COURT JUDGE

SC Court of Appeals

Appellate case no. 2015-0000759

Billy Joe Cartrette, Appellant,

vs.

South Carolina Department Corrections, Respondent.

CERTIFICATE OF SERVICE

I certify that I served the 'Final' Brief of Appellant on SCDC by mailing a copy of it to the Agency's attorney, postage prepaid, address to:

Lake E. Summers  
339 Heyward St., Ste. 200  
Columbia, S. C. 29201

this 2 day of November 2015.

s/ *Billy J. Cartrette*

Billy J. Cartrette, 122434



# The South Carolina Court of Appeals

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July 28, 2015

Billy Joe Cartrette, 122434  
Ridgeland Correctional Institution  
P.O. Box 2039  
Ridgeland SC 29936

Re: Billy Joe Cartrette v. SCDC  
Appellate Case No. 2015-000759

Dear Mr. Cartrette:

Upon reviewing your appellant's initial brief, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected upon the filing of the appellant's final brief:

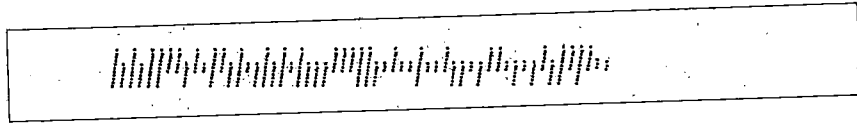
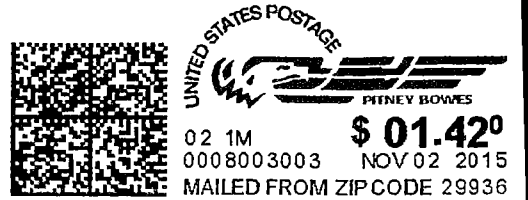
- The document must be single-sided as required by Rule 267(c), SCACR.
- The caption/title does not comply with Rule 267(a), SCACR. Specifically, it should read as follows:

Billy Joe Cartrette, #122434, Appellant,

v.

South Carolina Department of Corrections, Respondent.

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