

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM GREENVILLE COUNTY

J. CORDELL MADDOX, JR., CIRCUIT COURT JUDGE

RECEIVED

DEC 21 2015

SC Court of Appeals

Appellate Case No. 2015-0000759  
Trial Court No. 2014CP2305969

BILLY JOE CARTRETTE, 122434, Appellant,

VS.

SOUTH CAROLINA DEPARTMENT OF  
CORRECTIONS, Respondent.

---

RECORD ON APPEAL

Billy J. Cartrette  
RCI, GA-52, POB 2039  
Ridgeland, S.C. 29936

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

02/22/99

STATEMENT OF INMATE GROSS EARNINGS  
 PAY PERIOD: 02/02/99 TO 02/16/99 PAY DATE: 03/01/99 281

|  |        |           |
|--|--------|-----------|
| EMPLOYEE STATUS:                         | ACTIVE |           |
| OVER PAYMENT INSTALLMENT:                |        | - .00     |
| BACK PAY DUE:                            |        | + .00     |
| REGULAR HOURS WORKED:                    |        |           |
| 54.50 REGULAR HOURS @ 5.25 / HOUR =      |        | 285.12    |
| OVERTIME:                                |        |           |
| .50 PREM RATE HOURS @ 7.86 / HOUR = 3.93 |        | + 290.05  |
| TOTAL OVERTIME COMPENSATION:             |        |           |
| GROSS PAYMENT:                           |        | \$ 290.05 |

ONE TIME PAY NOTICE

242-13-9905

CARTRETTE, BILLY J  
 INMATES  
 KHALU FURNITURE-RIDGELAND

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

03/08/99

STATEMENT OF INMATE GROSS EARNINGS  
 PAY PERIOD: 02/17/99 TO 03/01/99 PAY DATE: 03/16/99 285

|   |        |           |
|---|--------|-----------|
| EMPLOYEE STATUS:                            | ACTIVE |           |
| OVER PAYMENT INSTALLMENT:                   |        | - .00     |
| BACK PAY DUE:                               |        | + .00     |
| REGULAR HOURS WORKED:                       |        |           |
| 69.50 REGULAR HOURS @ 5.25 / HOUR =         |        | 364.87    |
| OVERTIME:                                   |        |           |
| 11.75 PREM RATE HOURS @ 7.86 / HOUR = 92.47 |        | + 457.34  |
| TOTAL OVERTIME COMPENSATION:                |        |           |
| GROSS PAYMENT:                              |        | \$ 457.34 |

ONE TIME PAY NOTICE

242-13-9905

CARTRETTE, BILLY J  
 INMATES  
 KHALU FURNITURE-RIDGELAND

|       |        |
|-------|--------|
| 457   | 34     |
| .63   | 457.00 |
| 1371  | 288    |
| 2742  | 169.00 |
| 28791 | 45.00  |
|       | 124.00 |

# OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

By  
Specified Area and Year

| YEAR  | OCC CODE | OCCUPATIONAL TITLE   | SOUTH CAROLINA STATEWIDE |                |          | CHARLESTON METROPOLITAN STATISTICAL AREA |                |          |
|---|----------|--|--------------------------|----------------|----------|--|----------------|----------|
|   |          |  | AREA EMPLOYMENT          | WAGE ESTIMATES |          | AREA EMPLOYMENT                          | WAGE ESTIMATES |          |
|   |          |  |                          | MEAN           | ANNUAL   |  | MEAN           | ANNUAL   |
|   |          |  | HOURLY                   | ANNUAL         | HOURLY   | ANNUAL                                   |                |          |
| <b>51-1011 First-Line Supervisors of Production and Operating Workers</b>   |          |  |                          |                |          |  |                |          |
| Directly supervise and coordinate the activities of production and operating workers, such as inspectors, precision workers, machine setters and operators, assemblers, fabricators, and plant and system operators. Excludes team or work leaders.   |          |  |                          |                |          |  |                |          |
| 1999  | 51-1011  | First-Line Supervisors of Production and Operating Workers | 14,600                   | \$ 20.14       | \$41,890 | 1,290                                    | \$ 19.51       | \$20,190 |
| 2000  | 51-1011  | First-Line Supervisors of Production and Operating Workers | 13,410                   | \$ 20.24       | \$42,100 | 1,290                                    | \$ 19.38       | \$19,840 |
| 2001  | 51-1011  | First-Line Supervisors of Production and Operating Workers | 12,540                   | \$ 20.77       | \$43,190 | 1,290                                    | \$ 20.24       | \$20,870 |
| 2002  | 51-1011  | First-Line Supervisors of Production and Operating Workers | 12,200                   | \$ 21.19       | \$44,070 | 1,000                                    | \$ 21.09       | \$21,750 |
| 2003  | 51-1011  | First-Line Supervisors of Production and Operating Workers | 12,790                   | \$ 21.49       | \$44,700 | 1,000                                    | \$ 20.85       | \$21,450 |
| <b>51-2092 Team Assemblers</b>  |          |  |                          |                |          |  |                |          |
| Work as part of a team having responsibility for assembling an entire product or component of a product. Team assemblers can perform all tasks conducted by the team in the assembly process and rotate through all or most of them rather than being assigned to a specific task on a permanent basis. May participate in making management decisions affecting the work. Includes team leaders who work as part of the team. Assemblers who continuously perform the same task are classified elsewhere in 51-2000. |          |  |                          |                |          |  |                |          |
| 1999  | 51-2092  | Team Assemblers  | 23,240                   | \$ 11.66       | \$24,260 | 2,700                                    | \$ 10.79       | \$21,000 |
| 2000  | 51-2092  | Team Assemblers  | 26,670                   | \$ 12.69       | \$26,390 | 2,700                                    | \$ 10.38       | \$21,000 |
| 2001  | 51-2092  | Team Assemblers  | 24,380                   | \$ 13.07       | \$27,190 | 2,700                                    | \$ 10.88       | \$21,000 |
| 2002  | 51-2092  | Team Assemblers  | 25,490                   | \$ 13.31       | \$27,680 | 2,000                                    | \$ 12.00       | \$24,000 |
| 2003  | 51-2092  | Team Assemblers  | 25,540                   | \$ 13.05       | \$27,150 | 2,230                                    | \$ 12.20       | \$25,100 |
| <b>51-7011 Cabinetmakers and Bench Carpenters</b>   |          |  |                          |                |          |  |                |          |
| Work as part of a team having responsibility for assembling an entire product or component of a product. Team assemblers can perform all tasks conducted by the team in the assembly process and rotate through all or most of them rather than being assigned to a specific task on a permanent basis. May participate in making management decisions affecting the work. Includes team leaders who work as part of the team. Assemblers who continuously perform the same task are classified elsewhere in 51-2000. |          |  |                          |                |          |  |                |          |
| 1999  | 51-7011  | Cabinetmakers and Bench Carpenters                         | 2,400                    | \$ 8.96        | \$18,640 | N/A                                      |                |          |
| 2000  | 51-7011  | Cabinetmakers and Bench Carpenters                         | 1,260                    | \$ 10.10       | \$21,010 | N/A                                      |                |          |
| 2001  | 51-7011  | Cabinetmakers and Bench Carpenters                         | 1,080                    | \$ 10.85       | \$22,570 | N/A                                      |                |          |
| 2002  | 51-7011  | Cabinetmakers and Bench Carpenters                         | 1,400                    | \$ 11.25       | \$23,410 | N/A                                      |                |          |
| 2003  | 51-7011  | Cabinetmakers and Bench Carpenters                         | 1,300                    | \$ 11.80       | \$24,550 | 780                                      | \$ 12.69       | \$25,000 |

SOURCE: The Bureau of Labor Statistics  
[http://www.bls.gov/oes/current/oes\\_sc.htm](http://www.bls.gov/oes/current/oes_sc.htm)

NOTES:

N/A - DATA NOT AVAILABLE

CHARLESTON-NORTH CHARLESTON METROPOLITAN STATISTICAL AREA - Berkeley, Charleston, and Dorchester

SOUTH CAROLINA STATEWIDE - All counties in South Carolina

**OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES  
LOW COUNTRY NON- METROPOLITAN STATISTICAL AREA  
By Specified Year**

| YEAR   | OCC CODE | OCCUPATIONAL TITLE                 | AREA EMPLOYMENT | WAGE ESTIMATES |          |          |           |             |          |
|--|----------|------------------------------------|-----------------|----------------|----------|----------|-----------|-------------|----------|
|  |          |                                    |                 | ENTRY          |          | MEAN     |           | EXPERIENCED |          |
|  |          |                                    |                 | HOURLY         | ANNUAL   | HOURLY   | ANNUAL    | HOURLY      | ANNUAL   |
| <b>FURNITURE ASSEMBLERS</b>  |          |                                    |                 |                |          |          |           |             |          |
| <b>51-2092 Team Assemblers</b>   |          |                                    |                 |                |          |          |           |             |          |
| Work as part of a team having responsibility for assembling an entire product or component of a product. Team assemblers can perform all tasks conducted by the team in the assembly process and rotate through all or most of them rather than being assigned to a specific task on a permanent basis. May participate in making management decisions affecting the work. Includes team leaders who work as part of the team. |          |                                    |                 |                |          |          |           |             |          |
| 1999   | 51-2092* | Team Assemblers                    | 23,240          | \$8.94         | \$18,600 | \$ 11.66 | \$24,260  | \$13.24     | \$27,540 |
| 2000   | 51-2092* | Team Assemblers                    | 26,670          | \$9.10         | \$18,930 | \$ 12.69 | \$26,390  | \$14.43     | \$30,020 |
| 2001   | 51-2092* | Team Assemblers                    | 24,380          | \$9.63         | \$20,040 | \$ 13.07 | \$27,190  | \$14.24     | \$29,620 |
| 2002   | 51-2092* | Team Assemblers                    | 25,480          | \$9.82         | \$20,420 | \$ 13.31 | \$27,680  | \$14.63     | \$30,430 |
| 2003   | 51-2092* | Team Assemblers                    | 25,540          | \$9.88         | \$20,540 | \$ 13.05 | \$27,150  | \$14.14     | \$29,410 |
| 2004   | 51-2092* | Team Assemblers                    | 28,620          | \$10.09        | \$20,990 | \$ 13.24 | \$ 27,530 | \$15.17     | \$31,540 |
| 2005   | 51-2092* | Team Assemblers                    | 31,450          | \$10.08        | \$20,970 | \$ 13.22 | \$ 27,500 | \$15.28     | \$31,780 |
| 2006   | 51-2092  | Team Assemblers                    | 900             | \$10.47        | \$21,780 | \$ 12.47 | \$ 25,940 | \$14.45     | \$30,050 |
| 2007   | 51-2092  | Team Assemblers                    | 770             | \$10.32        | \$21,460 | \$ 12.32 | \$ 25,620 | \$13.92     | \$28,960 |
| <b>51-7011 Cabinetmakers and Bench Carpenters</b>  |          |                                    |                 |                |          |          |           |             |          |
| Cut, shape, and assemble wooden articles or set up and operate a variety of woodworking machines, such as power saws, jointers, and mortisers to surface, cut, or shape lumber or to fabricate parts for wood products.  |          |                                    |                 |                |          |          |           |             |          |
| 1999   | 51-7011* | Cabinetmakers and Bench Carpenters | 2,400           | \$7.05         | \$14,670 | \$ 8.96  | \$18,640  | \$10.37     | \$21,570 |
| 2000   | 51-7011* | Cabinetmakers and Bench Carpenters | 1,260           | \$7.70         | \$16,010 | \$ 10.10 | \$21,010  | \$12.27     | \$25,520 |
| 2001   | 51-7011* | Cabinetmakers and Bench Carpenters | 1,080           | \$8.26         | \$17,180 | \$ 10.85 | \$22,570  | \$13.21     | \$27,480 |
| 2002   | 51-7011* | Cabinetmakers and Bench Carpenters | 1,400           | \$8.72         | \$18,140 | \$ 11.25 | \$23,410  | \$13.37     | \$27,800 |
| 2003   | 51-7011* | Cabinetmakers and Bench Carpenters | 1,300           | \$9.67         | \$20,120 | \$ 11.80 | \$24,550  | \$13.33     | \$27,720 |
| 2004   | 51-7011* | Cabinetmakers and Bench Carpenters | 1,500           | \$9.32         | \$19,380 | \$ 11.82 | \$ 24,590 | \$13.76     | \$28,620 |
| 2005   | 51-7011* | Cabinetmakers and Bench Carpenters | 1,290           | \$9.77         | \$20,320 | \$ 12.24 | \$ 25,460 | \$14.06     | \$29,250 |
| 2006   | 51-7011  | Cabinetmakers and Bench Carpenters | 1,390           | N/A            | N/A      | N/A      | N/A       | N/A         | N/A      |
| 2007   | 51-7011  | Cabinetmakers and Bench Carpenters | 30              | \$14.10        | \$29,330 | \$ 16.01 | \$ 33,290 | \$18.67     | \$38,840 |

**SOURCE** The Bureau of Labor Statistics  
[http://www.bls.gov/oes/current/oes\\_sc.htm](http://www.bls.gov/oes/current/oes_sc.htm)

**NOTES:**

N/A - DATA NOT AVAILABLE

LOW COUNTRY NON-METROPOLITAN STATISTICAL AREA did not become a statistical area until 2006. (Includes Beaufort, Colleton, Georgetown, Hampton, Jasper, and Williamsburg counties.)

\* - SOUTH CAROLINA STATEWIDE data provided for Low Country Non-Metropolitan data.

# OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

By  
Specified Area and Year

| YEAR  | OCC CODE | OCCUPATIONAL TITLE   | SOUTH CAROLINA STATEWIDE* |                |          | CHARLESTON METROPOLITAN STATISTICAL AREA |                |          |
|---|----------|--|---------------------------|----------------|----------|--|----------------|----------|
|   |          |  | AREA EMPLOYMENT           | WAGE ESTIMATES |          | AREA EMPLOYMENT                          | WAGE ESTIMATES |          |
|   |          |  |                           | MEAN           | ANNUAL   |  | MEAN           | ANNUAL   |
| <b>LEAD MAN / SECTION LEADER</b>  |          |  |                           |                |          |  |                |          |
| <b>51-1011 First-Line Supervisors of Production and Operating Workers</b>   |          |  |                           |                |          |  |                |          |
| Directly supervise and coordinate the activities of production and operating workers, such as inspectors, precision workers, machine setters and operators, assemblers, fabricators, and plant and system operators. Excludes team or work leaders.   |          |  |                           |                |          |  |                |          |
| 1999  | 51-1011  | First-Line Supervisors of Production and Operating Workers | 14,600                    | \$ 20.14       | \$41,890 | 1,250                                    | \$ 19.64       | \$40,850 |
| 2000  | 51-1011  | First-Line Supervisors of Production and Operating Workers | 13,410                    | \$ 20.24       | \$42,100 | 1,250                                    | \$ 18.96       | \$39,440 |
| 2001  | 51-1011  | First-Line Supervisors of Production and Operating Workers | 12,540                    | \$ 20.77       | \$43,190 | 1,030                                    | \$ 20.61       | \$42,870 |
| 2002  | 51-1011  | First-Line Supervisors of Production and Operating Workers | 12,200                    | \$ 21.19       | \$44,070 | 1,050                                    | \$ 21.03       | \$43,750 |
| 2003  | 51-1011  | First-Line Supervisors of Production and Operating Workers | 12,790                    | \$ 21.49       | \$44,700 | 1,080                                    | \$ 20.88       | \$43,430 |
| <b>FURNITURE ASSEMBLERS</b>   |          |  |                           |                |          |  |                |          |
| <b>51-2092 Team Assemblers</b>  |          |  |                           |                |          |  |                |          |
| Work as part of a team having responsibility for assembling an entire product or component of a product. Team assemblers can perform all tasks conducted by the team in the assembly process and rotate through all or most of them rather than being assigned to a specific task on a permanent basis. May participate in making management decisions affecting the work. Includes team leaders who work as part of the team. Assemblers who continuously perform the same task are classified elsewhere in 51-2000. |          |  |                           |                |          |  |                |          |
| 1999  | 51-2092  | Team Assemblers  | 23,240                    | \$ 11.66       | \$24,260 | 1,740                                    | \$ 10.49       | \$21,830 |
| 2000  | 51-2092  | Team Assemblers  | 26,670                    | \$ 12.69       | \$26,390 | 2,306                                    | \$ 10.56       | \$21,970 |
| 2001  | 51-2092  | Team Assemblers  | 24,380                    | \$ 13.07       | \$27,190 | 1,760                                    | \$ 10.88       | \$22,630 |
| 2002  | 51-2092  | Team Assemblers  | 25,480                    | \$ 13.31       | \$27,680 | 2,014                                    | \$ 12.00       | \$24,950 |
| 2003  | 51-2092  | Team Assemblers  | 25,540                    | \$ 13.05       | \$27,150 | 2,430                                    | \$ 12.20       | \$25,380 |
| <b>51-7011 Cabinetmakers and Bench Carpenters</b>   |          |  |                           |                |          |  |                |          |
| Cut, shape, and assemble wooden articles or set up and operate a variety of woodworking machines, such as power saws, jointers, and mortisers to surface, cut, or shape lumber or to fabricate parts for wood products.   |          |  |                           |                |          |  |                |          |
| 1999  | 51-7011  | Cabinetmakers and Bench Carpenters                         | 2,400                     | \$ 8.96        | \$18,640 | N/A                                      | \$ 11.23       | \$29,360 |
| 2000  | 51-7011  | Cabinetmakers and Bench Carpenters                         | 1,260                     | \$ 10.10       | \$21,010 | N/A                                      | \$ 11.85       | \$24,650 |
| 2001  | 51-7011  | Cabinetmakers and Bench Carpenters                         | 1,080                     | \$ 10.85       | \$22,570 | N/A                                      | \$ 12.24       | \$25,460 |
| 2002  | 51-7011  | Cabinetmakers and Bench Carpenters                         | 1,400                     | \$ 11.25       | \$23,410 | 240                                      | \$ 12.25       | \$25,570 |
| 2003  | 51-7011  | Cabinetmakers and Bench Carpenters                         | 1,300                     | \$ 11.80       | \$24,550 | 180                                      | \$ 12.09       | \$25,150 |

# OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

By  
Specified Area and Year

| YEAR   | OCC CODE | OCCUPATIONAL TITLE | SOUTH CAROLINA STATEWIDE* |                |        | CHARLESTON METROPOLITAN STATISTICAL AREA |                |        |
|--|----------|--------------------|---------------------------|----------------|--------|--|----------------|--------|
|  |          |                    | AREA EMPLOYMENT           | WAGE ESTIMATES |        | AREA EMPLOYMENT                          | WAGE ESTIMATES |        |
|  |          |                    |                           | MEAN           |        |  | MEAN           |        |
|  |          |                    |                           | HOURLY         | ANNUAL |  | HOURLY         | ANNUAL |
| <b>OTHER ASSEMBLY OCCUPATIONS CLASSIFIED IN THE '51-2000' SERIES</b>   |          |                    |                           |                |        |  |                |        |
| 51-2011 Aircraft Structure, Surfaces, Rigging, and Systems Assemblers<br>51-2021 Coil Winders, Tapers, and Finishers<br>51-2022 Electrical and Electronic Equipment Assemblers<br>51-2023 Electromechanical equipment assemblers<br>51-2031 Engine and other machine assemblers<br>51-2041 Structural Metal Fabricators and Fitters<br>51-2091 Fiberglass laminators and fabricators<br>51-2093 Timing device assemblers, adjusters, and calibrators |          |                    |                           |                |        |  |                |        |

SOURCE: The Bureau of Labor Statistics  
[http://www.bls.gov/oes/current/oes\\_sc.htm](http://www.bls.gov/oes/current/oes_sc.htm)

NOTES:

N/A - DATA NOT AVAILABLE

CHARLESTON-NORTH CHARLESTON METROPOLITAN STATISTICAL AREA - Berkeley, Charleston, and Dorchester

\* - SOUTH CAROLINA STATEWIDE - All counties in South Carolina (Jasper County data included in SC statewide.)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
STATEMENT OF INMATE GROSS EARNINGS  
PAY PERIOD: 03/02/02 TO 03/16/02 PAY DATE: 04/01/02

EMPLOYEE STATUS: ACTIVE  
OVER PAYMENT INSTALLMENT: - .00  
BACK PAY DUE: + .00  
REGULAR HOURS WORKED:  
72.00 REGULAR HOURS @ 5.25 /HOUR = 378.00  
OVERTIME:  
.00 PREM RATE HOURS @ .00 /HOUR = .00  
TOTAL OVERTIME COMPENSATION: + 378.00  
GROSS PAYMENT: \$ 378.00

SSN: 242-13-9905

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
STATEMENT OF INMATE GROSS EARNINGS  
PAY PERIOD: 03/17/02 TO 04/01/02 PAY DATE: 04/16/02

EMPLOYEE STATUS: ACTIVE  
OVER PAYMENT INSTALLMENT: - .00  
BACK PAY DUE: + .00  
REGULAR HOURS WORKED:  
71.75 REGULAR HOURS @ 5.50 /HOUR = 394.62  
OVERTIME:  
.00 PREM RATE HOURS @ .00 /HOUR = .00  
TOTAL OVERTIME COMPENSATION: + 394.62  
GROSS PAYMENT: \$ 394.62

SSN: 242-13-9905

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
STATEMENT OF INMATE GROSS EARNINGS  
PAY PERIOD: 10/17/03 TO 11/01/03 PAY DATE: 11/16/03

EMPLOYEE STATUS: ACTIVE  
OVER PAYMENT INSTALLMENT: - .00  
BACK PAY DUE: + .00  
REGULAR HOURS WORKED:  
34.50 REGULAR HOURS @ 5.55 /HOUR = 191.47  
OVERTIME:  
.00 PREM RATE HOURS @ .00 /HOUR = .00  
TOTAL OVERTIME COMPENSATION: + 191.47  
GROSS PAYMENT: \$ 191.47

SSN: 242-13-9905

peals has held that it would be impermissible to extend the non-compete period contained in the agreement as a remedy for its breach, since such an extension "would essentially rewrite the parties' contract, a service the courts of South Carolina do not perform." *MailSource, LLC*, 356 S.C. at 369, 538 S.E.2d at 639 (Ct.App.2003).

Finally, in *Faces Boutique, Ltd. v. Gibbs*, 318 S.C. 89, 465 S.E.2d 707 (Ct.App.1995), the Court of Appeals upheld the trial court's finding that a non-compete agreement was overbroad in that it purported to prevent the defendant, an esthetician, from being associated in any capacity with a business that competed with the original business. The original business brought suit to enforce the covenant when the defendant went to work for a competitor as a manicurist. On appeal, the court noted that at trial the original business had agreed to limit the agreement to its "spirit" rather than its literal terms, but held that a party could not convert an overbroad clause into an enforceable one by agreeing to an interpretation that artificially limited the actual terms used in the contract.

[5] These cases stand for the proposition that, in South Carolina, the restrictions in a non-compete clause cannot be rewritten by a court or limited by the parties' agreement, but must stand or fall on their own terms. We hold, therefore, that the trial judge erred in rewriting the territorial restriction in the parties' contract.

#### CONCLUSION

[6] We reverse the order which purports to enforce a non-competition agreement on terms other than those agreed upon by the parties. We also note that the parties appear to be laboring under the misconception that the appeal of this preliminary injunction prevented the circuit court from proceeding with the merits of the case. An order granting a preliminary injunction is immediately appealable under S.C. Code Ann. § 14-3-330(4) (Supp.2009). Section 14-3-450 (1976) explicitly provides where an appeal is permitted by § 14-3-330(4), "the proceedings in other respects in the court below shall not be stayed during the pendency of the appeal unless otherwise ordered by the court be-

low." Accordingly, unless ordered by the trial court, an appeal from a preliminary injunction order does not prevent the case moving forward on the merits.

REVERSED.

TOAL, C.J., BEATTY, KITTREDGE and HEARN, JJ., concur.



SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, Respondent,

v. **12-24-34**  
Billy Joe CARTRETTE, Appellant.

No. 4670.

Court of Appeals of South Carolina.

Submitted March 1, 2010.

Decided April 5, 2010.

Withdrawn, Substituted and  
Refiled May 28, 2010.

Rehearing Denied May 28, 2010.

**Background:** Inmate who participated in prison industries program (PIP) appealed decision of the Department of Corrections to deny his grievance that challenged the compensation he received for his work. The Administrative Law Court (ALC) reversed the Department's refusal to pay inmate the prevailing wage and affirmed the Department's denials of overtime pay and reimbursement for wage deductions. Inmate and the Department appealed. The Circuit Court, Jasper County, James C. Williams, Jr., J., remanded the prevailing wage issue and affirmed the denial of overtime wages and reimbursement. Inmate appealed.

**Holding:** On rehearing, the Court of Appeals, Cureton, A.J., held that inmate was

entitled to time-and-a-half pay for overtime worked in PIP.

Affirmed in part, reversed in part, and remanded.

Pieper, J., filed opinion concurring in part and dissenting in part.

U.S.C.A. § 201 et seq.; Code 1976, §§ 24-3-315, 24-3-430(D).

Billy J. Cartrette, pro se, for Appellant.

Lake E. Summers, of Columbia, for Respondent.

CURETON, A.J.

Billy Joe Cartrette filed a grievance with the South Carolina Department of Corrections concerning conditions of his participation in the Prison Industries Program (PIP). Cartrette appeals the circuit court's order remanding his case to the Administrative Law Court (ALC) for a determination of the prevailing wage for similar work, reversing the ALC's finding that Cartrette was an employee of the private sponsor, affirming the ALC's denial of overtime wages, and affirming the ALC's denial of reimbursement for certain pay deductions.<sup>1</sup> We reverse as to overtime wages, remand that issue to the ALC for further proceedings as outlined in this opinion, and affirm the circuit court's decisions on all remaining issues.<sup>2</sup>

After we issued our original opinion affirming in part and reversing in part, both parties petitioned for rehearing. We deny Cartrette's petition for rehearing, grant the Department's petition for rehearing, withdraw our previous opinion, and substitute this opinion.

#### FACTS

Cartrette was an inmate of the Ridgeland Correctional Institution. As a participant in PIP, Cartrette provided on-site labor at the Ridgeland Correctional Institution, sometimes working in excess of ninety hours per two-week period, for PIP sponsor Kwalu Furniture. Cartrette was compensated at a rate of \$5.50 per hour. Cartrette filed a grievance with the Department complaining his hourly wage was insufficient compared to the prevailing wage for similar work performed in the private sector. He asserted

#### 1. Prisons ⇐293

The Administrative Law Court (ALC) has subject matter jurisdiction under the Administrative Procedures Act (APA) to hear properly perfected appeals from the Department of Corrections' final orders in administrative or non-collateral matters. Code 1976, § 1-23-310 et seq.

#### 2. Prisons ⇐172

Inmate was entitled to time-and-a-half pay for overtime worked in prison industries program (PIP), under prison industries statutes providing that rate of pay for inmate labor in a PIP could not be less than that paid for work of a similar nature in the private sector in the locality in which the work was performed. Code 1976, §§ 24-3-315, 24-3-430(D).

#### 3. Prisons ⇐273

While inmates working in a prison industries program (PIP) are not entitled to a private right of action in tort to challenge Department of Corrections' alleged noncompliance with governing statutes, they may protest through the grievance process the Department's failure to comply with these statutes. Code 1976, §§ 24-3-315, 24-3-430.

#### 4. Prisons ⇐172

Although the federal Fair Labor Standards Act (FLSA) does not apply to inmate workers, statutes governing prison industries programs (PIP) compel the Department of Corrections to ensure inmate workers who are employed in a PIP receive the same pay rates and employment conditions as their non-inmate peers in the same locality. Fair Labor Standards Act of 1938, § 1 et seq., 29

1. This appeal is being considered alongside S.C. Dep't of Corr. v. George Lee Tomlin, — S.C. —, 694 S.E.2d 25 (App.2010). The material facts, substantive arguments, and procedural postures of these two appeals are identical.

2. We decide this case without oral argument pursuant to Rule 215, SCACR.

non-inmate employees earned \$11.00 to \$14.00 per hour for the same work. Cartrette further complained he did not receive additional pay for overtime hours and the Department improperly withheld funds from his paychecks. Specifically, Cartrette challenged as unconstitutional the withholding of funds for his room and board and additional funds for Victim's Assistance.<sup>3</sup>

The Department denied Cartrette's grievance, and Cartrette appealed to the ALC. The ALC reversed the Department's refusal to pay Cartrette the prevailing wage and found the prevailing wage was \$5.25. Furthermore, the ALC affirmed the Department's denials of overtime and reimbursement for wage deductions.

Both Cartrette and the Department then appealed to the circuit court. After a hearing, the circuit court found \$5.25 was not the prevailing wage and remanded that issue to the ALC with seven questions for the ALC to consider in determining the correct prevailing wage. The circuit court reversed the ALC's apparent finding that Cartrette "worked for ... or was otherwise ever an employee of Kwalu." Finally, the circuit court affirmed the ALC's determinations Cartrette was ineligible for overtime or reimbursement of wage deductions for room and board and for Victims Assistance. Cartrette now appeals.

#### STANDARD OF REVIEW

[1] The ALC has subject matter jurisdiction under the Administrative Procedures Act (APA) to hear properly perfected appeals from the Department's final orders in administrative or non-collateral matters. *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 507 (2004). Our standard of review derives from the APA. *Al-Shabazz v. State*, 338 S.C. 354, 379, 527 S.E.2d 742, 755 (2000). We may affirm, remand, reverse, or modify the appealed decision if the appellant's substantive rights have suffered prejudice because the decision is:

3. See S.C.Code Ann. § 16-3-1290 (2003) (establishing Victim's Compensation Fund from which State Office of Victim Assistance may pay victims' claims); S.C.Code Ann. § 16-3-1260

- (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) (Supp.2009).

#### LAW/ANALYSIS

##### I. Overtime Pay

[2] Cartrette contends he is entitled to time-and-a-half pay for overtime worked. We agree.

In South Carolina, a non-inmate employee's right of action for overtime pay lies in § 207(a)(1) of the Federal Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C.A. §§ 201-219 (1998 & Supp.2009). Under the FLSA, non-inmate workers receive compensation at a rate of one and one-half times their hourly rate for hours worked in excess of forty per week. 29 U.S.C.A. § 207(a)(2) (1998). This court recently examined the legislative intent underlying the FLSA and found:

The purpose of the FLSA is to protect "the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profit of others." *Tennessee Coal, Iron & R.R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 597, 64 S.Ct. 698, 88 L.Ed. 949 (1944). The FLSA was enacted in response to a congressional finding that some industries, engaged in commerce, maintained labor conditions which were detrimental to a minimum standard of living necessary for health, efficiency, and the general well-being of workers. See 29 U.S.C. § 202(a) (1998). The Act attempts to eliminate unfair labor

(2003) (requiring persons convicted of criminal acts to reimburse the State and directing such payments to be made from inmate wages to the State Office of Victim Assistance).

practices without substantially curtailing employment or earning power. 29 U.S.C. § 202(b). Because the FLSA is remedial and humanitarian in purpose, it should be broadly interpreted and applied to effectuate its goals. *Tennessee Coal, Iron & R.R. Co.*, 321 U.S. at 597, 64 S.Ct. 698; *Benshoff v. City of Virginia Beach*, 180 F.3d 136 (4th Cir.1999).

*Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 221, 616 S.E.2d 722, 730 (Ct.App.2005).

Our supreme court has held the FLSA does not extend to inmate workers because, for purposes of payment of wages, inmate workers are not employees of PIP sponsors. *Williams v. S.C. Dep't of Corr.*, 372 S.C. 255, 260, 641 S.E.2d 885, 888 (2007). Other courts, including the Federal Court of Appeals for the Fourth Circuit, have also declined to extend the protections of the FLSA and state labor statutes to inmates. See, e.g., *Harker v. State Use Indus.*, 990 F.2d 131, 135 (4th Cir.1993).

[3] Nonetheless, South Carolina law requires that inmate workers in a PIP enjoy pay and working conditions comparable to those enjoyed by non-inmate workers. According to our supreme court, the overall purpose of these statutes "is to prevent unfair competition." *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 418, 602 S.E.2d 51, 54 (2004).

The [Department] must determine prior to using inmate labor in a [PIP] that it will not displace employed workers, that the locality does not have a surplus of available labor for the skills, crafts, or trades that would utilize inmate labor, and that the rates of pay and other conditions of employment are not less than those paid and provided for work of [a] similar nature in the locality in which the work is performed.

4. We specifically reject Cartrette's contention that *Hamilton v. Daniel Int'l Corp.*, 273 S.C. 409, 257 S.E.2d 157 (1979), established his right to time-and-a-half pay for overtime work. Although the *Hamilton* court cited to statutory language similar to that found in section 24-3-315, it did not contemplate overtime work. *Id.* at 410, 257 S.E.2d at 158. The issue in that case concerned the right of an inmate participating in a work-release program to benefits under the Worker's

S.C.Code Ann. § 24-3-315 (2007). "No inmate participating in [PIP] may earn less than the prevailing wage for work of [a] similar nature in the private sector." S.C.Code Ann. § 24-3-430(D) (2007). "Inmate participation in the program may not result in the displacement of employed workers in the State of South Carolina and may not impair existing contracts for services." S.C.Code Ann. § 24-3-430(E) (2007). While inmates are not entitled to a private right of action in tort, they may protest through the grievance process the Department's failure to comply with these statutes. *Adkins*, 360 S.C. at 419, 602 S.E.2d at 55.

[4] We expand upon the analysis of this issue in our original opinion, as that analysis appears to have been incomplete. Cartrette properly brought this matter as a grievance and alleged the Department denied him time-and-a-half overtime wages for the hours he worked beyond forty each week. As observed above, both federal and South Carolina courts have held inmate workers do not qualify as "employees" and are therefore excluded from the coverage of the FLSA.<sup>4</sup> See *Williams*, 372 S.C. at 260, 641 S.E.2d at 888; *Harker*, 990 F.2d at 135. However, our General Assembly has required the Department to ensure inmate workers receive "rates of pay and other conditions of employment" comparable to those afforded non-inmate workers performing similar labor in the same locality. See § 24-3-315. Consequently, we hold that although the FLSA does not apply to inmate workers, sections 24-3-315 and 24-3-430(D) compel the Department to ensure inmate workers who are employed under those sections receive the same pay rates and employment conditions as their non-inmate peers.<sup>5</sup>

The statutory mandate of comparable pay rates and employment conditions does not expressly exclude time-and-a-half pay for

Compensation Act. *Id.* at 410-11, 257 S.E.2d at 158.

5. While the Department argues our opinion impacts three of its PIPs, this opinion is limited solely to the program in which Cartrette was involved and that was promulgated and operated pursuant to sections 24-3-315 and 24-3-430.

overtime hours worked. Instead, sections 24-3-315 and 24-3-430(E) require that inmate workers receive comparable compensation and prohibit inmate workers from displacing non-inmate workers. These provisions appear to support Cartrette's argument for overtime pay. Failure of the Department's contracts with PIP sponsors to provide inmate workers with time-and-a-half pay for overtime hours when their non-inmate counterparts receive it would create an impermissible and unfair advantage for inmate labor over private labor. Moreover, any failure on the Department's behalf to pay inmates time-and-a-half overtime pay when non-inmate workers receive it for comparable work in the same area contradicts the Department's obligation under section 24-3-315.<sup>6</sup> Consequently, the circuit court erred in denying Cartrette time-and-a-half pay for overtime work without first determining whether non-inmate workers performing the same work in the same locality receive time-and-a-half pay for overtime.<sup>7</sup>

In addition, we observe section 24-3-430(D) requires inmates receive the "prevailing wage" paid to their non-inmate peers for comparable work. However, the question of the prevailing wage to which Cartrette is entitled has been remanded to the ALC for

6. In its petition for rehearing, the Department declares the majority's analysis of section 24-3-430's provision of a prevailing wage for inmate labor "obviously overlooked the explicit intent of our General Assembly" regarding inmate labor. The Department cites section 24-3-310 of the South Carolina Code (2007), which indicates the purposes of inmate labor include self-maintenance, reimbursement of the State, restitution, and child support. In our opinion, these purposes harmonize with the General Assembly's mandate that inmate labor not unfairly compete with non-inmate labor. See §§ 24-3-315 & -430(E); see also *Adkins*, 360 S.C. at 418, 602 S.E.2d at 54 (finding the overall purpose of these statutes "is to prevent unfair competition"). By statute, seventy percent or more of each inmate worker's pay is diverted for restitution, victim's programs, child support, room and board, or taxes. S.C.Code Ann. § 24-3-40 (2007). Increased pay, including overtime pay, for inmate workers ultimately benefits the Department by increasing the funds available to relieve the burden of inmate housing and care; benefits crime victims, both directly through fulfillment of inmates' restitution obligations and indirectly by funding state agencies that provide victim assis-

Further proceedings. We nonetheless have jurisdiction to consider whether the prevailing wage language of section 24-3-430(D) entitles Cartrette to overtime pay because the issue remanded concerned the proper hourly rate, only. However, because we have found section 24-3-315 resolves Cartrette's dispute, we need not address this argument. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding appellate court need not discuss remaining issues when decision on prior issue disposes of appeal).

For the foregoing reasons, we reverse the circuit court's decision concerning overtime pay and remand this issue to the ALC for a determination of whether the Department failed to pay Cartrette at the time-and-a-half rate for the hours he worked in excess of forty per week. In the event of such a failure, we instruct the ALC to determine the rate of compensation to which Cartrette was entitled, the number of overtime hours that were underpaid, and the amount the Department owes Cartrette for his labor.

## II. Remaining Issues

With regard to Cartrette's remaining issues, we affirm based upon the following authorities:

tance; and benefits inmates' minor children by increasing the amount available for child support. We believe that in crafting these statutes, our General Assembly carefully balanced its desire to maximize inmates' financial contributions against the need to ensure inmate workers do not supplant non-inmate workers in the labor force.

7. We note with some consternation that despite its persistent arguments against paying Cartrette time-and-a-half for overtime under Cartrette's theories of entitlement, the Department admits in its petition for rehearing that applicable federal regulations "required [the Department] to pay Cartrette time-and-a-half for his overtime labor." (emphasis supplied) Furthermore, despite the fact the record in this case appears to reflect a failure to pay overtime at the time-and-a-half rate, the Department repeatedly asserts for the first time in its petition for rehearing that it did pay Cartrette time-and-a-half overtime pay for his work on Kwalu projects "on numerous and diverse occasions." We are troubled that these assertions, which might have led to a speedy disposition of this issue before the ALC, escaped counsel's attention for so long.

1. As to the circuit court's remand to the ALC for determination of the prevailing wage: *Condor, Inc. v. Bd. of Zoning Appeals, City of N. Charleston*, 328 S.C. 173, 178, 493 S.E.2d 342, 344 (1997) (preventing an appellant from arguing on appeal an issue conceded in the trial court); *Bowman v. Bowman*, 357 S.C. 146, 160, 591 S.E.2d 654, 661 (Ct.App.2004) (holding a party cannot seek and receive a particular result at trial and then challenge it on appeal).

2. As to whether Cartrette was an employee of the private sponsor: S.C.Code Ann. § 24-3-40(A) (2007) ("Unless otherwise provided by law, the employer of a prisoner authorized to work . . . in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections."); *Williams v. S.C. Dep't of Corr.*, 372 S.C. 255, 258-59, 641 S.E.2d 885, 887 (2007) (holding a prison industries program sponsor is not an employer of inmates because the sponsor does not exclusively control the payment of inmate wages and finding agreement among other jurisdictions that examined this issue).

3. As to whether Cartrette is entitled to reimbursement of monies deducted from his pay for room and board because he was double-billed for this cost: Rule 210(h), SCACR (limiting appellate review to facts appearing in the record on appeal); *State v. Mitchell*, 330 S.C. 189, 199, 498 S.E.2d 642, 647 (1998) (placing on appellant the burden of presenting a sufficient record to allow appellate review).

4. As to whether Cartrette is entitled to reimbursement of monies deducted from his pay for room and board because the deduction was unconstitutional: S.C. Const. art. XII, § 2 ("The General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates."); S.C.Code Ann. § 24-3-40 (2007) (allocating portions of inmates' wages for restitution, the State Office of Victim Assistance, child support, room and board, and inmate use); *Brown v. S.C. Dep't 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.").

5. As to whether Cartrette is entitled to reimbursement of monies deducted from his pay for victim's assistance because inmate wages are outside the funds available for appropriations by the General Assembly: S.C.Code Ann. § 24-3-40 (2007) (allocating portions of inmates' wages for restitution, the State Office of Victim Assistance, child support, room and board, and inmate use); S.C.Code Ann. § 16-3-1260 (2003) (requiring persons convicted of criminal acts to reimburse the State and directing such payments to be made from inmate wages to the State Office of Victim Assistance); S.C.Code Ann. § 16-3-1290 (2003) (establishing Victim's Compensation Fund from which State Office of Victim Assistance may pay victims' claims).

## CONCLUSION

We find sections 24-3-315 and 24-3-430(D) entitle inmate workers in a PIP to pay and working conditions comparable to those enjoyed by workers in private industry, including time-and-a-half pay for overtime hours worked. Accordingly, we reverse the circuit court's decision on this issue and remand to the ALC for additional proceedings consistent with this opinion. For the foregoing reasons, we affirm the circuit court's decision on the remaining issues.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

GEATHERS, J., concurs.

PIEPER, J., concurring in part and dissenting in part.

I concur in the majority's conclusion to affirm the decision to remand to determine a prevailing wage. I also concur in the determination that the inmate is not an employee of the private sponsor or entitled to reimbursement for room and board and other costs. However, I respectfully dissent as to any finding that the inmate is entitled to overtime pay. Section 24-3-430 establishes

an inmate's right to the prevailing wage, stating "[n]o inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector." S.C.Code Ann. § 24-3-430(D) (2007). Our supreme court recognizes that a critical purpose of the prevailing wage provision is to prevent unfair competition. *Adkins v. S.C. Dept of Corr.*, 360 S.C. 413, 418, 602 S.E.2d 51, 54 (2004). Nonetheless, I would distinguish between prevailing wages and any right to overtime pay for inmates participating in a prison industries program. In fact, there is no authority within the applicable state statutory scheme recognizing any right to overtime pay for inmates.<sup>8</sup> See § 24-3-430(D) (2007) (stating only that no inmate participating in the program may earn less than the prevailing wage). Moreover, the inmate never specifically raised the issue of whether a particular federal program provides for the right to overtime pay.

While the Fair Labor Standards Act (FLSA) provides a right to overtime pay for certain employees, the protections of the act do not apply to inmates working within the prison setting. See *Harker v. State Use Indus.*, 990 F.2d 131, 136 (4th Cir.1993) ("For more than fifty years, Congress has operated on the assumption that the FLSA does not apply to inmate labor. If the FLSA's coverage is to extend within prison walls, Congress must say so, not the courts."). As noted by the Fourth Circuit in *Harker*, inmates participating in these types of programs perform work not to "turn profits for their supposed employer, but rather as a means of rehabilitation and job training." *Id.* at 133.

In sum, I am not convinced the current statutory scheme provides for overtime pay

8. Although not within the applicable statutory scheme, section 8-11-55 of the South Carolina Code mentions overtime in the context of state employees. That statute only applies to state employees and provides that "[a]ny state employee who is required to work overtime during any particular week may, as a result, be given compensatory time..." S.C.Code Ann. § 8-11-55 (Supp.2009). The statute further provides that any compensatory time granted must be in accordance with the FLSA. As indicated, the FLSA does not apply to inmates and the prevailing statute at issue specifically states that in-

to inmates. Inmates are not employees entitled to the protections of the FLSA, and I do not find it appropriate to read into the prevailing wage statute any such right to inmates voluntarily participating in a prison industries program.<sup>9</sup> As Judge Posner of the Seventh Circuit has explained:

People are not imprisoned for the purpose of enabling them to earn a living. The prison pays for their keep. If it puts them to work, it is to offset some of the cost of keeping them, or to keep them out of mischief, or to ease their transition to the world outside, or to equip them with skills and habits that will make them less likely to return to crime outside. None of these goals is compatible with federal regulation of their wages and hours. The reason the FLSA contains no express exception for prisoners is probably that the idea was too outlandish to occur to anyone when the legislation was under consideration by Congress.

*Bennett v. Frank*, 395 F.3d 409, 410 (7th Cir.2005). Accordingly, I concur in the decision of the majority to affirm the circuit court and remand to the ALC to determine a prevailing wage; however, I respectfully dissent as to the overtime issue, and I would affirm the finding of the ALC and the circuit court that the inmate is not entitled to overtime pay.



mates participating in the prison industries program are not considered employees of the state. See S.C.Code Ann. § 24-3-430(F) (2007).

9. An inmate's participation in the prison industries program is voluntary and contingent upon consent to the conditions of the employment. S.C.Code Ann. § 24-3-430(C) (2007) ("An inmate may participate in the program established pursuant to this section only on a voluntary basis and only after he has been informed of the conditions of his employment.") (emphasis added).

SOUTH CAROLINA DEPARTMENT OF  
CORRECTIONS, Respondent,

v.

George Lee TOMLIN, Appellant.

No. 4671.

Court of Appeals of South Carolina.

Submitted March 1, 2010.

Decided April 5, 2010.

Withdrawn, Substituted and  
Refiled May 28, 2010.

Rehearing Denied May 28, 2010.

**Background:** Inmate who participated in prison industries program (PIP) appealed decision of the Department of Corrections to deny his grievance that challenged the compensation he received for his work. The Administrative Law Court (ALC) reversed the Department's refusal to pay inmate the prevailing wage and affirmed the Department's denials of overtime pay and reimbursement for wage deductions. Inmate and the Department appealed. The Circuit Court, Jasper County, James C. Williams, Jr., J., remanded the prevailing wage issue and affirmed the denial of overtime wages and reimbursement. Inmate appealed.

**Holding:** On rehearing, the Court of Appeals, Cureton, A.J., held that inmate was entitled to time-and-a-half pay for overtime worked in PIP.

Affirmed in part, reversed in part, and remanded.

Pieper, J., filed opinion concurring in part and dissenting in part.

1. Prisons ⇐293

The Administrative Law Court (ALC) has subject matter jurisdiction under the Administrative Procedures Act (APA) to hear properly perfected appeals from the Department of Corrections' final orders in administrative or non-collateral matters. Code 1976, § 1-23-310 et seq.

2. Prisons ⇐172

Inmate was entitled to time-and-a-half pay for overtime worked in prison industries program (PIP), under prison industries statutes providing that rate of pay for inmate labor in a PIP could not be less than that paid for work of a similar nature in the private sector in the locality in which the work was performed. Code 1976, §§ 24-3-315, 24-3-430(D).

3. Prisons ⇐273

While the prevailing wage statutes for inmates working in prison industries programs (PIP) do not entitle inmates to a private right of action in tort for Department of Corrections' failure to comply with those statutes, inmates may protest through the grievance process the Department's failure to comply with these statutes. Code 1976, §§ 24-3-315, 24-3-430.

4. Prisons ⇐172

Although the federal Fair Labor Standards Act (FLSA) does not apply to inmate workers, statutes governing prison industries programs (PIP) compel the Department of Corrections to ensure inmate workers who are employed in a PIP receive the same pay rates and employment conditions as their non-inmate peers in the same locality. Fair Labor Standards Act of 1938, § 1 et seq., 29 U.S.C.A. § 201 et seq.; Code 1976, §§ 24-3-315, 24-3-430(D).

George Tomlin, pro se, for Appellant.

Lake E. Summers, of Columbia, for Respondent.

CURETON, A.J.

George Lee Tomlin filed a grievance with the South Carolina Department of Corrections concerning conditions of his participation in the Prison Industries Program (PIP). Tomlin appeals the circuit court's order remanding his case to the Administrative Law Court (ALC) for a determination of the prevailing wage for similar work, reversing the ALC's finding that Tomlin was an employee of the private sponsor, affirming the ALC's denial of overtime wages, and affirming the ALC's denial of reimbursement

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

South Carolina Department of  
Corrections, Respondent,

v.

Billy Joe Cartrette, Petitioner.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Jasper County  
James C. Williams, Jr., Circuit Court Judge

Opinion No. 27094  
Submitted January 26, 2012 – Filed February 22, 2012

**DISMISSED AS IMPROVIDENTLY GRANTED**

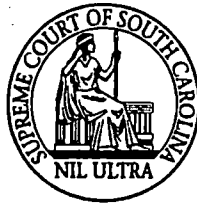
Billy Joe Cartrette, of Ridgeland, Pro-se Petitioner.

Lake Eric Summers and Katherine Phillips, both of Malone,  
Thompson, Summers & Ott, of Columbia, for Respondent.

**CHIEF JUSTICE TOAL:** We granted a writ of certiorari to review the court of appeals' decision in *South Carolina Department of Corrections v. Cartrette*, 387 S.C. 640, 694 S.E.2d 18 (Ct. App. 2010). We now dismiss the writ as improvidently granted.

**DISMISSED AS IMPROVIDENTLY GRANTED.**

**PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.**



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 12, 2012

## REMITTITUR

The Honorable Margaret Bostick  
305 Russell St  
PO Box 248  
Ridgeland, SC 29936-0248

Re: SCDC v. Cartrette, Billy Joe, #122434  
Trial Court Case No. 2006-CP-27-00095 & 00176

Dear Ms. Bostick:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court and the Court of Appeals is enclosed.

Sincerely yours,



CLERK

DES/lda

Enclosure

cc: Billy Joe Cartrette, #122434  
Lake E. Summers, Esquire  
Katherine A. Phillips, Esquire

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL D. WICKENSIMMER  
2014 OCT 31 PM 3 18

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS

BILLY JOE CARTRETTE, )  
Plaintiff, )  
-VERSUS- )  
SOUTH CAROLINA DEPARTMENT OF )  
CORRECTIONS (SCDC), )  
Defendant. )

SUMMONS

2014-CP-23- 05969

TO: DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint (For Declaratory Judgment) herein, a copy of which is herewith served upon you, and to serve a copy of your answer to the complaint upon the subscribed at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/ *Billy Joe Cartrette*  
-----  
Billy J. Cartrette, 122434  
Plaintiff  
Ridgeland Correctional Institution  
Charleston 'A' Unit, Room 52  
Post Office Box 2039  
Ridgeland, S.C. 29930

Dated: 9-25-14

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GREENVILLE CO. S.C.  
PAUL B. WICKENSIMMER  
2014 OCT 31 PM 3 18

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE }

IN THE COURT OF COMMON PLEAS

BILLY JOE CARTRETTE, )  
Plaintiff, )  
-VERSUS- )  
SOUTH CAROLINA DEPARTMENT OF )  
CORRECTIONS (SCDC), )  
Defendant. )

COMPLAINT FOR DECLARATORY JUDGMENT(S)

2014-CP-23- 05969

Plaintiff Billy J. Cartrette (122434) complains, litigates and sues defendant [SCDC] and for cause(s) of action set forth:

FACT(S)

1. Plaintiff who is serving a long-term sentence within South Carolina Department of Corrections and while assigned to the Ridgeland Correctional institution was employed in prison industries from January 16, 1999 until October 23, 2003 where he was paid less than the prevailing wage for the job assignment that which he performed;
2. He filed a step 1 grievance which was denied; he filed a step 2 [grievance appeal]; it was denied so he filed a step 3 which was an appeal to the Administrative Law Court (ALC); it was granted in part. See SCDC v. Cartrette, 694 S.E.2d 18 (S.C. App. 2010);
3. He filed an appeal to South Carolina's Supreme Court SCDC v. Cartrette, 722 S.E.2d 805 (2012).

For The First Cause of Action

4. Cartrette alleges that he and other [prisoners] are judgment creditor(s) with reference thereto discussion set forth above and below herein as there were wage disputes and retention(s) grievance(s) filed against defendant SCDC in 2004 and 2005 and prior thereto which resulted in judgment(s) against defendant (judgment debtor) in March 2006 from the ALC, the Court of Common

Pleas for Jasper County and South Carolina Court of Appeals. *Judy v. Martin*, 674 S.E.2d 151 (2009);

For Second Cause of Action

5. Plaintiff Cartrette alleges that in accordance with judgment of South Carolina Court of Appeals he is entitled to a declaratory judgment as far as the set prevailing wage(s) that this court determines in the first cause of action herein where he worked in the capacity of furniture assemble although the furniture was not made of wood;

6. There is a chart issued by South Carolina Department of Employment and Workforce's 'Occupational Employment And Wage Estimates for Low Country Non-Metropolitan Statistical Area' for 1999 through 2007 which gives estimation for entry, mean and experienced team assemblers; see attached,

For Third Cause of Action

7. Plaintiff should get the benefits of the 2010 WL10079906 decision of South Carolina Court of Appeals (cert. denied) in his request for declaratory judgment relief; no matter how the court of appeals ruled in *Tanlin* and *Cartrette* with reference to being a employee of KWALU, for he is/was a member of the sub-class which was addressed in the ALC's April 24th, 2006 'Order of Clarification' it would include any fringe benefit(s) Kwale Furniture granted to their employee, i.e. pension(s), profit and/or work sharing, perhaps four (4) weeks paid vacation each year of employment, holiday(s) and religious holiday pay, paid sick day(s) and etc.;

The evidence of pay scale material(s) set forth:

| Year                        | Entry hourly | Mean hourly | Experienced hourly |
|-----------------------------|--------------|-------------|--------------------|
| FURNITURE (Team) ASSEMBLERS |              |             |                    |
| 1999                        | \$8.94       | \$11.66     | \$13.24            |
| 2000                        | 9.10         | 12.69       | 14.43              |
| 2001                        | 9.63         | 13.07       | 14.24              |
| 2002                        | 9.82         | 13.31       | 14.63              |
| 2003                        | 9.88         | 13.05       | 14.14              |

8. Plaintiff claims entitlement to prejudgment, judgment and post-judgment interest which is set by "ORDER" of South Carolina Supreme Court: This section applies to all judgments entered on or after July 1, 2005. For judgments

entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition on the Wall Street Journal after January 1, 2005, plus four percentage points.;

PRAYER FOR RELIEF

Plaintiff Billy Joe Cartrette prays that this Court grants the declaratory judgment(s) requested herein with actual damages in excess of fifty-five (55) thousand dollars for the wage(s) wrongfully withheld; SCBC v. James set forth "the Final Order and other ALC orders concerning the nine inmates appeals" supra; which denotes judgment(s) therein.

/s/ *Billy Joe Cartrette*  
Billy J. Cartrette, 122434  
Plaintiff

Ridgeland Correctional Institution  
Charleston 'A' Unit, Room 52  
Post Office Box 2039  
Ridgeland, S.C. 29936

Dated: 9-25-14

STATE OF SOUTH CAROLINA )  
COUNTY OF JASPER )

VERIFICATION

Plaintiff deposes and says that he has read and knows the facts set forth in said complaint for declaratory judgment are true of his own knowledge except as to those matter states on information and belief and as to those matter(s) he believes them to be true.

/s/ *Billy Joe Cartrette*

SWORN to Before me this 26  
day of September 2014  
Virginia Robinson  
Notary Public

My Commission Expires: May 20, 2021

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13<sup>TH</sup> JUDICIAL CIRCUIT

BILLY JOE CARTRETTE, )  
 )  
Plaintiff, )

Civil Action No. 2014-CP-23-5969

vs. )

**MOTION TO DISMISS THE  
PLAINTIFF'S "COMPLAINT FOR  
DECLARATORY JUDGMENT(S)"  
BY THE SOUTH CAROLINA  
DEPARTMENT OF CORRECTIONS**

SOUTH CAROLINA DEPARTMENT OF )  
CORRECTIONS, )  
 )  
Defendant. )

**TO: BILLY JOE CARTRETTE, pro se Plaintiff:**

PLEASE TAKE NOTICE THAT the Defendant, the South Carolina Department of Corrections ["the Department"], by and through it undersigned counsel, will move before the Presiding Judge of the Greenville County Court of Common Pleas at 10:00 a.m. on the tenth (10<sup>th</sup>) day after service of his instant motion, or as soon thereafter as they may be heard, for an Order dismissing the Plaintiff's "COMPLAINT FOR DECLARATORY JUDGMENT(S)" ["Complaint"] pursuant to South Carolina Rule of Civil Procedure 12(b)(1).

The Department so moves, because this Court does not possess the requisite subject matter jurisdiction over the Plaintiff's claims. Instead, the South Carolina Administrative Law Court ["ALC"] possesses subject matter jurisdiction over the entirety of the claims articulated by the Plaintiff in his Complaint.

In paragraphs 2 through 5 of his Complaint, the Plaintiff asserted as follows:

[The Plaintiff] filed a step 1 grievance which was denied; he filed a step 2 grievance appeal; it was denied so he filed a Step 3 which was an appeal to the [ALC]; it was granted in part. See [*South Carolina Department of Corrections v. Cartrette*, 694 S.E.2d 18 (S.C. Ct.App. 2010)].

[The Plaintiff] filed an appeal to the South Carolina Supreme Court. [*South Carolina Department of Corrections v. Cartrette*, 772 S.E.2d 805 (S.C. Sup. Ct. 2012)].

[The Plaintiff] alleges that he and other prisoners are judgment creditor(s) with reference thereto discussion set forth above and below herein as there were wage disputes and retention(s) grievance(s) filed against [the Department] in 2004 and 2005 and prior thereto which resulted in judgment(s) against [the Department] (judgment debtor) in March 2006 from the ALC, the Court of Common Pleas for Jasper County and [the] South Carolina Court of Appeals. [citation omitted].

**[The Plaintiff] alleges that in accordance with judgment of [the] South Carolina Court of Appeals he is entitled to a declaratory judgment as far as the set prevailing wage(s) that this Court determines in the first cause of action herein where he worked in the capacity of furniture assemble although the furniture was not made of wood. [emphasis supplied].**

However, the opinion issued by our Court of Appeals in the Plaintiff's case completely negates any and all assertions articulated by the Plaintiff in his Complaint that this Court possesses subject matter jurisdiction over his claims. Instead, as explicitly declared by our Court of Appeals in its 2010 decision in the Plaintiff's case, 694 S.E.2d at 22, the ALC is the only forum before which the Plaintiff's claims may be adjudicated:

In addition, we observe section 24-3-430(D) requires inmates receive the "prevailing wage" paid to their non-inmate peers for comparable work. **However, the question of the prevailing wage to which Cartrette is entitled has been remanded to the ALC for further proceedings.** We nonetheless have jurisdiction to consider whether the prevailing wage language of section 24-3-430(D) entitles Cartrette to overtime pay because the issue remanded concerned the proper hourly rate, only. However, because we have found section 24-3-315 resolves Cartrette's dispute, we need not address this argument. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598

(1999) (holding appellate court need not discuss remaining issues when decision on prior issue disposes of appeal).

For the foregoing reasons, we reverse the circuit court's decision concerning overtime pay and **remand this issue to the ALC** for a determination of whether the Department failed to pay Cartrette at the time-and-a-half rate for the hours he worked in excess of forty per week. In the event of such a failure, **we instruct the ALC** to determine the rate of compensation to which Cartrette was entitled, the number of overtime hours that were underpaid, and the amount the Department owes Cartrette for his labor. [emphasis supplied].

The Court of Appeals also remanded the determination of the "prevailing wage" paid by the Department for the labor he voluntarily provided to the prison industries project in question to the ALC. 694 S.E.2d at 23.

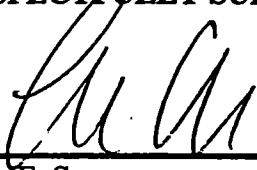
In the section of its opinion entitled "CONCLUSION," 694 S.E.2d at 23, the Court of Appeals reiterated its decision to remand the issues raised by the Plaintiff regarding overtime pay "to the ALC for additional proceedings consistent with this opinion."

Succinctly stated, this Court does not possess subject matter jurisdiction over the instant controversy between the parties. All of the claims articulated by the Plaintiff in his instant Complaint are, as explicitly declared by our Court of Appeals, ripe for adjudication by the ALC, and the Plaintiff possesses the opportunity to avail himself of the jurisdiction of the ALC upon the dismissal of his instant action.

Further grounds for the Department's instant motion may be more clearly set out in a memorandum of law and supplemented by affidavits and/or other evidence.

**RESPECTFULLY SUBMITTED,**

**BY:**



Lake E. Summers  
E-mail: summers@mtsolfirm.com  
Charles F. Thompson, Jr.  
E-mail: thompson@mtsolfirm.com  
Katherine A. Phillips  
E-mail: phillips@mtsolfirm.com

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339 Heyward Street, Suite 200  
Columbia, South Carolina 29201  
Telephone: (803) 254-3300  
Fax: (803) 254-0309

**OUTSIDE COUNSEL FOR THE  
SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

Columbia, South Carolina  
December 18, 2014

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE 13<sup>TH</sup> JUDICIAL CIRCUIT

BILLY JOE CARTRETTE, )  
 )  
Plaintiff, )

Civil Action No. 2014-CP-23-5969

vs. )

**ANSWER BY THE SOUTH CAROLINA  
DEPARTMENT OF CORRECTIONS**

SOUTH CAROLINA DEPARTMENT OF )  
CORRECTIONS, )  
 )  
Defendant. )

**(JURY TRIAL DEMANDED)**

The Defendant, the South Carolina Department of Corrections [“the Department”], by and through its undersigned counsel, respectfully answers the Plaintiff’s “COMPLAINT FOR DECLARATORY JUDGMENT(S)” [“Complaint”] as follows:

**FOR A FIRST DEFENSE**

As to the unnumbered paragraph that precedes paragraph 1 of the Plaintiff’s Complaint, the Department respectfully submits that this paragraph requires no response from it.

**AS TO THE SECTION OF THE PLAINTIFF’S COMPLAINT STYLED AS  
“FACT(S)”**

1. Regarding paragraph 1, the Departments admits that the Plaintiff “is serving a long-term sentence within” its custody, and it further admits that the Plaintiff was at one time assigned to Ridgeland Correctional Institution. The Department otherwise denies the remaining allegations as articulated by the Plaintiff in paragraph 1 in their entirety.

2. Regarding paragraph 2, the Department admits that it denied his Step 1 administrative grievance and his Step 2 appeal, and it further admits that the Plaintiff appealed the Department’s denied of his administrative grievance and appeal to the South Carolina

Administrative Law Court ["ALC"]. The Department otherwise denies the remaining allegations as articulated by the Plaintiff in paragraph 2 in their entirety.

3. Regarding paragraph 3, the Department admits that the Plaintiff filed a petition for writ of certiorari by which he challenged the opinion issued by the South Carolina Court of Appeals in the matter styled as *South Carolina Department of Corrections v. Cartrette*, 694 S.E.2d 18 (S.C. Ct. App. 2010), and the Department further admits that the South Carolina Supreme Court granted the Plaintiff's petition for writ of certiorari. However, the South Carolina Supreme Court, by its decision styled *South Carolina Department of Corrections v. Cartrette*, 772 S.E.2d 805 (S.C. Sup. Ct. 2012), dismissed the Plaintiff's writ of certiorari as improvidently granted. The Department otherwise denies the remaining allegations as articulated by the Plaintiff in paragraph 3 in their entirety.

**AS TO THE PLAINTIFF'S FIRST CAUSE OF ACTION**

4. The Department incorporates its responses to the allegations from paragraphs 1 through 3 of the Plaintiff's Complaint as if set forth herein verbatim.

5. The Department denies the allegations articulated in paragraph 4 in their entirety.

**AS TO THE PLAINTIFF'S SECOND CAUSE OF ACTION**

6. The Department incorporates its responses to the allegations from paragraphs 1 through 4 of the Plaintiff's Complaint as if set forth herein verbatim.

7. The Department denies the allegations articulated in paragraph 5 in their entirety.

8. To the extent that the allegations articulated by the Plaintiff in paragraph 6 relate to the Department, all such allegations are denied in their entirety.

**AS TO THE PLAINTIFF'S THIRD CAUSE OF ACTION**

9. The Department incorporates its responses to the allegations from paragraphs 1 through 6 of the Plaintiff's Complaint as if set forth herein verbatim.

10. The Department denies the allegations articulated in paragraph 7 in their entirety.

11. The Department denies the allegations articulated in paragraph 8 in their entirety.

**THE SECTION OF THE PLAINTIFF'S COMPLAINT ENTITLED  
"PRAYER FOR RELIEF"**

12. Denied.

**FOR A SECOND DEFENSE**

13. The Department denies each and every allegation of the Plaintiff's Complaint not previously admitted, qualified, or explained.

**FOR A THIRD DEFENSE**

14. The Plaintiff's Complaint fails to state a single cause of action upon which relief may be granted, and, accordingly, the Department reserves its right to file a motion to dismiss in accordance with South Carolina Rule of Civil Procedure 12(b)(6).

**FOR A FOURTH DEFENSE**

15. This Court lacks subject matter jurisdiction over all of the claims asserted by the Plaintiff in his Complaint, and, accordingly, the Department reserves its right to file a motion to dismiss in accordance with South Carolina Rule of Civil Procedure 12(b)(1).

16. The provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-310, *et seq.*, apply to all of the claims asserted by the Plaintiff in his Complaint.

**FOR A FIFTH DEFENSE**

17. The Plaintiff's claims against the Department are barred, in whole or in part, by the provisions of the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, *et*

*seq.* as amended, and specifically including, but not limited to, § 15-78-60(2), (3), (4), (5), (12), (13), (14), (15), and (20).

17. The Department is entitled to immunity pursuant to the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, *et seq.* and specifically §§ 15-78-60 and 15-78-70.

**FOR A SIXTH DEFENSE**

18. The Department is not a proper party, in whole or in part, to the Plaintiff's Complaint pursuant to the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, *et seq.*

**FOR A SEVENTH DEFENSE**

19. The Department, by and through its officials, employees, and agents, acted, at all times relevant to the events depicted in the Plaintiff's Complaint, in good faith, on reasonable grounds, and without malice or intent to harm the Plaintiff; therefore, the Plaintiff's claims are barred.

20. To the extent applicable, the Department respectfully pleads good faith and qualified immunity to all claims against it as articulated by the Plaintiff in his Complaint.

**FOR AN EIGHTH DEFENSE**

21. The Department, by and through its officials, employees, and agents, has complied fully with all applicable statutes and regulations.

22. The Department, by and through its officials, employees, and agents, has complied fully with all other applicable laws.

**FOR A NINTH DEFENSE**

23. To the extent applicable, the Department did not, at any time, owe a special duty or any other duty to the Plaintiff.

24. To the extent applicable, the Department, did not, at any time, breach any duty it purportedly owed to the Plaintiff or the public at large.

**FOR A TENTH DEFENSE**

25. The Plaintiff is barred from any recovery of punitive damages, in whole or in part, pursuant to the provisions of the South Carolina Tort Claims Act, South Carolina Code Ann. § 15-78-10, *et seq.*

26. The Defendant is not an entity against which punitive damages may not be awarded.

27. Additionally, to the extent that the Plaintiff demands punitive damages, the Department respectfully asserts that punitive damages are not properly recoverable under the Common Law of the State of South Carolina and the Constitution of South Carolina.

**FOR AN ELEVENTH DEFENSE**

28. Some if not all of the Plaintiff's claims for damages are limited and/or foreclosed by the doctrine of avoidable consequences.

**FOR A TWELFTH DEFENSE**

29. The Plaintiff failed to mitigate any damages he purportedly sustained as a result of any action or inaction on the part of the Department.

**FOR A THIRTEENTH DEFENSE**

30. Some if not all of the Plaintiff's claims are barred by the applicable statute of limitations.

**FOR A FOURTEENTH DEFENSE**

31. The Department alleges that, at no time alleged herein, did its officials, employees, or agents violate any of the clearly established constitutional rights held by the Plaintiff, which were known or should have been known to them, and, therefore, it is entitled to immunity.

32. The actions of the Department, through its employees and agents, were objectively reasonable in light of existing law, and, therefore, it is entitled to immunity.

**FOR A FIFTEENTH DEFENSE**

33. Some if not all of the Plaintiff's claims are barred by the doctrine of waiver.

**FOR A SIXTEENTH DEFENSE**

34. Some if not all of the Plaintiff's claims are barred under the doctrine of laches.

**FOR A SEVENTEENTH DEFENSE**

35. The Plaintiff is not the proper party to assert one or more of the actions articulated within his Complaint.

**FOR AN EIGHTEENTH DEFENSE**

36. To the extent the Plaintiff seeks special damages, the Department asserts that the Plaintiff failed to satisfy the heightened pleading requirement of South Carolina Rule of Civil Procedure 9(g).

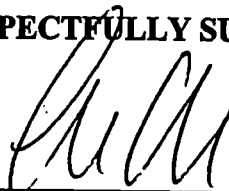
**FOR A NINETEENTH DEFENSE**

37. The Plaintiff failed to comply with the provisions and requirements of the South Carolina "Uniform Declaratory Judgments Act," S.C. Code Ann. § 15-53-10, *et seq.*

38. Under the provisions of S.C. Code Ann. § 15-53-70, this Court should refuse to render or enter into any declaratory judgment or decree sought by the Plaintiff in his instant complaint.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Department prays the Court to dismiss the Plaintiff's entire Complaint with prejudice, for the costs of this action, and for any further relief as the Court deems just and proper.

**RESPECTFULLY SUBMITTED,**

BY: 

Lake E. Summers  
E-mail: summers@mtsolfirm.com  
Katherine A. Phillips  
E-mail: phillips@mtsolfirm.com

**Malone, Thompson, Summers & Ott LLC**  
339 Heyward Street, Suite 200  
Columbia, South Carolina 29201  
Telephone: (803) 254-3300  
Fax: (803) 254-0309

**OUTSIDE COUNSEL FOR THE  
SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

Columbia, South Carolina  
December 18, 2014

|                           |   |                                   |
|---------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS      |
| County of Greenville      | ) | Civil Action No. 2014-CP-23-05969 |
| Billy Joe Cartrette,      | ) |                                   |
| Plaintiff,                | ) |                                   |
| -Versus-                  | ) | CATRETTE'S OPPOSITION TO          |
| South Carolina Department | ) | DEFENDANT'S MOTION                |
| of Corrections (SCDC)     | ) | TO DISMISS                        |
| Defendant.                | ) |                                   |
| _____                     | ) |                                   |

To: Lake Summers  
 Malone, Thompson, Summers & OTT LLC  
 339 Heyward Street, Suite 200  
 Columbia, South Carolina 29201

Defendant SCDC has generated, filed and served a discretionary motion to dismiss (p.1) under Rule 12(b)(1) of South Carolina Rules of Civil Procedure (SCRCP) of 12-18-14 which was received by plaintiff on 23 December 2014. He stresses that SCDC'S 12-18-14 motion must or should be denied in full and/or in part for many reasons and the complaint for declaratory judgment relief granted on the 1st, 2nd, and 3rd causes of action therein. specifically, Billy Joe Cartrette brought this action under sections 15-53-20; 30; 15-53-50; 50(1); 15-53-60 and 15-53-120 of South Carolina (SC) Code Ann (2013). Moveover, section 15-53-130 of S.C. Code Ann set forth, "It is to be liberally construed and administered."

1. Defendant's 12(b)(1) motion to dismiss is based on the pleadings; see Rule 9(e) of SCRCP, Woodard v. Westyaco Corp., 460 S.E.2d 392, 393 (1995); this is a discretionary motion to dismiss for absence of subject matter jurisdiction compared to Rule 12(h)(3) mandatory dismissal; in short where SCDC refers to SCDC v. Cartrette, 694 S.E.2d 18 (S.C. App. 2010) that appeal or case was remanded "to the ALC" (p. 3 of 5); he points the remittitur was sent to Jasper County Court of Common Plea on March-12-2012 by South Carolina Supreme Court. Linda Mc Company, Inc. v. Shore, 653 SE2d 279 (S.C. App. 2007)

2. South Carolina Supreme Court recently issued the In Re Hoyer, 754 S.E.2d

875, 892 (2014) decision which explained aspects, components and elements of jurisdiction. Hoyer declared: Rather, "[J]urisdiction is generally defined as the authority to decide a given case one way or the other. Without jurisdiction the court cannot proceed at all ... . " Specifically, [J]urisdiction is composed of three elements: (1) personal jurisdiction; (2) subject matter jurisdiction; and (3) the court's power to render the particular judgment requested." Ibid at 882; Home Port Rentals, Inc. v. Moore, 632 S.E.2d 862 (2006);

*Stimmon v. Campbell*  
*Declaratory Judgment*

3. Where SCDC suggests the wrong court; this Court should look to Rule 9(e) of SCRCP and section 15-53-50; 50(1) of S.C. Code Ann (and as amended) as plaintiff claims and shows that he is a "creditor"; even MUSC v. Taylor, 362 S.E.2d 881, 883-84 (Ct. App. 1987) pointed if an "issue" is more appropriately kosherly, properly for agency, then issue of law should go for adjudication in/before agency; however, if it is only fact, factual "prevail wage"; then prevailing wage (amount determination set) should be declared in this action. See sections 15-53-20 "Courts of record within their respective jurisdiction shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed and 15-53-120 mentions "Granting of further relief based on declaratory judgment. So there is no legal and rational manner and/or way this Court may grant defendant's motion in full on the first and second causes of action herein;

4. Further, the 12-18-14 motion does not reference the third cause of action in the complaint for declaratory judgment; why? Because the 3rd cause of action was not remanded "to the ALC"; therefore SCDC'S motion to dismiss must be denied in to to or whole on the third cause of action because this Court has exclusive subject matter jurisdiction therewith. The complaint for declaratory judgment was generated, filed and properly served;

5. The third cause of action (p.2) in the complaint for Declaratory Judgment is not affected and/or susceptible to defendant's motion, it also set forth the pay scale for similar work in the private sector-furniture assembly line production, KWALU Furniture should have defrayed the prevailing wage for plaintiff's expertises.

The 3rd cause of action dealt with a jurisdictional issue, properly termed currently as appellate jurisdiction, Allison v. A.L. Gore & Associates, 714 SE2d 547, 54- (2011) (citing SCDC v. Tomlin). There was the consolidated 'Order of Clarification' of 3-24-06 and SCDC filed an untimely [out-of-time] notice of appeal on the 3-6-06 order of the ALC. When the motion to dismiss was filed in the appeal [Court of Common Pleas for Jasper County]. Judge Williams denied James's motion to dismiss which was overturn vacated in S.C. Court of Appeal on 4-26-10. The law of the case, res adjudicate and/or appellate/subject-matter jurisdiction require the Court to issue declaratory judgment on third cause of action.

Consequently, defendant's motion to dismiss should be denied. This 30 day of December 2014.

Respectfully Submitted

s/ Billy J. Cartrette

Billy J. Cartrette, #122434

RCI, CA-52, POB 2039

Ridgeland, S.C. 29936

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Rudolph Feaster, #291269, )  
Appellant, )  
vs. )  
South Carolina Department of Corrections, )  
Respondent. )

Docket No. 05-ALJ-04-00687-AP  
ORDER OF CLARIFICATION

GRIEVANCE NO: RCI 241-05

Daniel Green, #177913 )  
Appellant, )  
vs. )  
South Carolina Department of Corrections, )  
Respondent. )

Docket No. 05-ALJ-04-00772-AP  
ORDER OF CLARIFICATION

GRIEVANCE NO: RCI 152-05

Billy Joe Cartrette, #122434, )  
Appellant, )  
vs. )  
South Carolina Department of Corrections, )  
Respondent. )

Docket No. 05-ALJ-04-00736-AP  
ORDER OF CLARIFICATION

GRIEVANCE NO: RCI 0089-05

Andongo Johnson, #254303, )  
Appellant, )  
vs. )  
South Carolina Department of Corrections, )  
Respondent. )

Docket No. 05-ALJ-04-00737-AP  
ORDER OF CLARIFICATION

GRIEVANCE NO: RCI 96-05

Isiah James, #96883, )  
Appellant, )  
vs. )  
South Carolina Department of Corrections, )  
Respondent. )

Docket No. 05-ALJ-04-00739-AP  
ORDER OF CLARIFICATION

GRIEVANCE NO: RCI 133-05

George Lee Tomlin, #166361 )  
Appellant, )  
vs. )  
South Carolina Department of Corrections, )  
Respondent. )

Docket No. 05-ALJ-04-00760-AP  
ORDER OF CLARIFICATION

GRIEVANCE NO: RCI 139-05

**FILED**

Anthony L. Duvenary, #228855 )  
 Appellant, )  
 vs. )  
 South Carolina Department of Corrections, )  
 Respondent. )

Docket No. 05-ALJ-04-00771-AP  
 ORDER OF CLARIFICATION

GRIEVANCE NO: RCI 103-05

Bruce Whitehead, #177931 )  
 Appellant, )  
 vs. )  
 South Carolina Department of Corrections, )  
 Respondent. )

Docket No. 05-ALJ-04-00774-AP

ORDER OF CLARIFICATION

GRIEVANCE NO: RCI 224-05

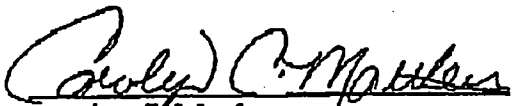
Alfred Singleton, #137469, )  
 Appellant, )  
 vs. )  
 South Carolina Department of Corrections, )  
 Respondent. )

Docket No. 05-ALJ-04-00832-AP  
 ORDER OF CLARIFICATION

GRIEVANCE NO: RCI 95-05

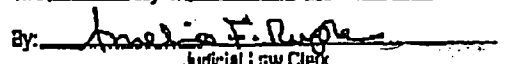
These orders were signed on February 7, 2006, but were not filed and served on the parties until March 6, 2006. By letter dated March 14, 2006, the Department of Corrections asked for clarification of the order to reflect that 30 days from the date of service as the deadline for compliance. To avoid any further confusion, and to give the Department adequate time to complete its work, it is hereby ORDERED that the relief ordered in each case shall be completed by April 24, 2006, thirty days from the file date of this order. Upchurch v. Upchurch, 367 S.C. 16, 624 S.E.2d 643 (2006) states that "the effective date of an order is not when it is signed by the judge, but when it is entered. . . ." citing Bowman v. Richland Mem. Hosp. 335 S.C. at 93, 515 S.E.2d at 261.

**AND IT IS SO ORDERED.**

  
 Carolyn C. Matthews  
 Administrative Law Judge

March 24, 2006  
 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 Emergency Mail Service addressed to the party(ies) or their attorney(s).

This 24<sup>th</sup> day of March 2006  
 By:   
 Judicial Law Clerk

1 STATE OF SOUTH CAROLINA : COURT OF COMMON PLEAS  
 2 : 2004-CP-23-5969  
 3 :  
 3 Billy Joe Cartrelle : TRANSCRIPT RECORD  
 4 :  
 4 vs :  
 5 :  
 5 SC Dept of Corrections :  
 6 :  
 7 :

February 13, 2015  
 Greenville, South Carolina

10 BEFORE: The Honorable Cordell Maddox, Judge

11 A P P E A R A N C E S:

12 Billy Joe Catrelle, Pro Se

13  
 14 Lake Summers, Esquire  
 Attorney for the Defendant

19  
 20 Caroline Hiskell  
 Thirteenth Circuit Court Reporter

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I N D E X

E X H I B I T S

Defendant 1 Document Packet

PLEASE NOTE: This transcript was produced to the best of of my ability but due to some sections of distance and muffled speaking an (inaudible) parathetical had to be inserted.

(ph) = phonetically spelled

## Cartrette versus SC Department of Corrections

## P R O C E E D I N G S

1  
2 THE COURT: What do we have here? A motion  
3 to dismiss?

4 MR. SUMMERS: Yes, Your Honor. My name is  
5 Lake Summers, outside counsel for the Department of  
6 Corrections. As you can see, the petitioner, Billy Joe  
7 Cartrette is here in the courtroom.

8 THE COURT: How are you, sir?

9 MR. CARTRETTE: Good morning, Judge.

10 MR. SUMMERS: Very briefly, Your Honor, we  
11 filed a motion to dismiss Mr. Cartrette's complaint for  
12 declaratory judgment or petition for declaratory judgment.  
13 The reason we did so, Your Honor, is that this is a matter  
14 that's I think ripe for adjudication before the  
15 administrative law court.

16 As I tried to make clear in our motion to  
17 dismiss, the Court of Appeals in 2010 issued a decision  
18 regarding prison industry pay claims that Mr. Cartrette  
19 had raised initially via the administrative grievance  
20 process.

21 Mr. Cartrette's claims are adjudicated during  
22 that process and went to the administrative law court and  
23 then the circuit court and then the court of appeals. The  
24 Court of Appeals issued its decision in 2010.  
25 Mr. Cartrette filed a petition for writ with our Supreme

## Cartrette versus SC Department of Corrections

1 Court which was, at one time, accepted and then ultimately  
2 dismissed as improvident and granted back in 2012.

3           The long and the short of it, Your Honor, is  
4 we submit based upon the decision issued by the Court of  
5 Appeals, which specifically stated that Mr. Cartrette  
6 remaining claims would go back to the administrative law  
7 court for adjudication, but whatever claims that  
8 Mr. Cartrette wishes to raise or articulate that he has  
9 done so in his complaint for declaratory judgment, that  
10 they are under the jurisdiction of the administrative law  
11 court.

12           That is the essence for our motion so we're  
13 moving for dismissal for lack of subject matter  
14 jurisdiction.

15           THE COURT: So you're position is he should  
16 have filed these with the administrative law court?

17           MR. SUMMERS: Yes, sir.

18           THE COURT: Sir, you understand, so she can  
19 understand you and I can hear you if you would stand up.  
20 Do you understand what he's saying that you filed this  
21 with the wrong court and it should go through the  
22 administrative law court.

23           MR. CARTRETTE: Sir, we've already been  
24 through the administrative law court with all this. Sir,  
25 I would like to say for the record I have three exhibits I

Cartrette versus SC Department of Correctioons

1 would like to put into evidence.

2 THE COURT: Tell me what they are but show  
3 them to him first.

4 MR. CARTRETTE: Yes, sir.

5 MR. SUMMERS: Beg the Court's indulgence  
6 while I take a look at these.

7 THE COURT: Sure. Hand those up and we'll  
8 make them apart of the record.

9 MR. SUMMERS: Let the record reflect, Your  
10 Honor, that Mr. Cartrette handed me these exhibits just a  
11 few minutes ago.

12 THE COURT: Okay.

13 (Whereupon, packet of exhibits were marked as  
14 Plaintiff's Exhibit No. 1 for identification and admitted  
15 into evidence.)

16 Sir, tell me why -- you say you've already  
17 been through the administrative law court.

18 MR. CARTRETTE: Yes, sir. We appealed part  
19 of the issues to Mr. Summers and the Department of  
20 Corrections appealed part of the issues as well. Judge  
21 Matthews, the administrative law judge, on the prevailing  
22 wage sheet said it was \$5.25. And we said it's not  
23 prevailing wage and it was appealed to the circuit court  
24 Judge James C. Williams in 2006. He reversed that and  
25 sent it back and said \$5.25 is not the prevailing wage and

## Cartrette versus SC Department of Correctioons

1 for her to determine the correct prevailing wage.

2           And it hasn't been done and this is the 9th  
3 year and it could have been settled but it had not been  
4 determined. However, on Mr. Summer's motion to dismiss,  
5 we're saying that the lower courts got jurisdiction  
6 because the South Carolina Supreme Court was the last  
7 court to rule on it and here's the -- Judge, I believe you  
8 have one in your file.

9           THE COURT: I do.

10           MR. CARTRETTE: And it says, "The above  
11 reference matter is hereby remitted to the lower court,"  
12 not the administrative law court. "And a copy of this  
13 judgment of this court, the Supreme Court and the Court of  
14 Appeals is enclosed." That would have been ripe at the  
15 Court of Appeals if I had stopped the appeal there but I  
16 went on to the Supreme Court and the grounds and issues as  
17 well.

18           We're saying the lower court has jurisdiction  
19 because the Supreme Court sent it to the lower court and  
20 not the administrative law court.

21           THE COURT: Let me ask you this, this was  
22 heard by Judge Williams when?

23           MR. CARTRETTE: September of 2006.

24           THE COURT: Why are you in Greenville County?

25           MR. CARTRETTE: What happened, Your Honor, it

## Cartrette versus SC Department of Corrections

1 don't appear that we can even get this thing on the court  
2 docket. Since the remand on this Supreme Court order, we  
3 can't even get it on the document. It's been three years  
4 and in a few more days it would be three years since the  
5 Supreme Court. If you see this remitter, Part (12) 2012,  
6 it's not even on the docket to be heard. We can't get any  
7 action to be heard down there in Jasper County.

8 We moved bring it into Greenville County to  
9 try to get judgment and wages set just like the Court of  
10 Appeals said the wages has got to be set, hourly wage, on  
11 this which I provided exhibits here with the sheet of  
12 Occupational Wage. I'm sure you looked at it and my  
13 numbers I come up with.

14 If you look at the complaint on the back  
15 sheet where it says Occupational Employment Wage  
16 estimates, I worked from a company from '99 to 2003 as you  
17 can see on the pay scale and you had entry, you had means,  
18 and you had experience pay. The whole thing is is they  
19 were not paying the proper wages.

20 You see by this Occupational Sheet for  
21 furniture assemblers, if you look at the bottom, you have  
22 low country and Jasper County as well provided in the  
23 data. But as you see the entry pay here is \$8.94 but by  
24 my calculation, I calculated it under which you see all  
25 the calculations based on a five-day work week anything

## Cartrette versus SC Department of Corrections

1 over 40 hours federal laws you get time and a half.

2 That's federal law.

3           They argued it all the way to the Court of  
4 Appeals and the Court of Appeals in Footnote 7, the Court  
5 Appeals order, they kind of frown on it and said the  
6 defendant should have argued it at first and it filed  
7 against overtime and in a re-hearing brief they said  
8 federal law requires us to pay you time and half overtime  
9 and ---

10           THE COURT: Well, let me read this sentence  
11 and again I come in on non-jury weeks and these are new to  
12 me, but let me read what I was looking for. This is in  
13 the original opinion at the Court of Appeals which  
14 apparently that was 2010 and then apparently 2012, the  
15 Supreme Court said we granted a writ of cert to review.  
16 We dismissed that as improvidently granted," which means  
17 they thought it was too early. The Court of Appeals  
18 affirmed and also reversed in part and they said, "We  
19 reverse as to overtime wages and remand the issue to the  
20 ALC," which would be the administrative law court which,  
21 "as outlined in this opinion and confirmed the circuit  
22 court decisions on all remaining issues."

23           I think he's right. I thought y'all got to  
24 go back to -- I don't think there's anything I can do. I  
25 think y'all got to back to the administrative law court.

## Cartrette versus SC Department of Corrections

1           Isn't that the basis of y'all motion?

2           MR. SUMMERS: That's correct, Your Honor.

3 Just as a side, the issues that Mr. Cartrette has raised  
4 in his declaratory judgment complaint, he can certainly  
5 raise to the extent of administrative law court on the  
6 briefing format and under the rules that are governing  
7 there. But certainly he can do that in the administrative  
8 law court pursuant to what you just read from the Court of  
9 Appeals.

10           THE COURT: That jumps out big because  
11 basically they're saying the ALC's ruling has been  
12 appealed and then the circuit court got in and they  
13 affirmed the circuit court ut then they reversed the  
14 matters that the ALC did and sent it back to them.

15           I respect the heck out of what you've done  
16 because quite frankly I'm looking through this stuff and  
17 it has some interest to me. I'd love to do it but I don't  
18 think I can. Let's put it this way, if I ruled in your  
19 favor today, it wouldn't mean anything. It would be just  
20 like family court ruling because they've already granted  
21 jurisdiction to the administrative law court.

22           MR. CARTRETTE: Well, we think the  
23 declaratory judgment act, South Carolina Supreme Court  
24 Case, in the Rebores(ph), 2014 case would give you that  
25 authority to rule on these claims today. The case law

Cartrette versus SC Department of Corrections

1 within the pleadings would give you the authority under  
2 the declaratory judgment act and the Rebores(ph) case would  
3 give you the authority to do that.

4           Your Honor, we're still looking at the  
5 prevailing wage within the Court of Appeals order in  
6 addition we observe Section 24.330 (inaudible) prevailing  
7 wages which would require inmates receive the prevailing  
8 wage to non-inmate however the question of prevailing wage  
9 had been remanded to administrative law clerk but we still  
10 nonetheless had jurisdiction to consider whether the  
11 prevailing wage language of 24.334(b) of overtime pay  
12 because the issue remanded the proper rate on it  
13 (inaudible). We still think that someone needs to set the  
14 prevailing wage before overtime can be calculated and it's  
15 got to be determined on the prevailing wage.

16           THE COURT: I agree and I think the ALC has  
17 to do it. I've got to grant his motion because I do think  
18 that you're doggedly doing this because you at least have  
19 a few people on the Supreme Court that apparently agree  
20 with you. You've got two or three that disagree with you.  
21 As you know the make up of the administrative law court  
22 has changed and you're going to get somebody new that  
23 might be good for you and not have someone with a  
24 predisposed opinion to dismiss it. Keep going but I can't  
25 hear it today. I've got to grant their motion.

## Cartrette versus SC Department of Corrections

1 MR. CARTRETTE: I've got one more thing. I  
2 have the subject matter jurisdiction issue of employee  
3 status from that administrative law court 3-2-2006 order  
4 of Judge Matthews. She ruled us as employees of the  
5 company Quoloop(ph), however, that was one of the things  
6 that was appealed from the defendants in Jasper County.  
7 Judge Williams reversed that. The employee status was one  
8 thing he reversed.

9 There was a 3-24-2006 clarification order  
10 which is a consolidated order. Upon reversal my roommate  
11 Mr. James he appealed that to the South Carolina Supreme  
12 Court citing the defendant filed an out of town appeal  
13 proceeding the final order of Judge Matthews which we know  
14 is 30 days from the time he received that order. It was  
15 outside of the window so the Court of Appeals reversed  
16 Mr. James's standing on that and reinstated his employee  
17 status and of course denied cert on the defendant Supreme  
18 Court hit on that.

19 I'm raising mine under subject matter  
20 jurisdiction as well on employee status and like to have  
21 that reinstated since my appeal was untimely in filing my  
22 appeal from the Ms. Matthews granting employee status  
23 amount to profit sharing, paid vacation, the same benefits  
24 employee would get on the street.

25 MR. SUMMERS: Your Honor, he mentioned

Cartrette versus SC Department of Corrections

1 Mr. James. He's another inmate and if I recall correctly,  
2 sir, the Court of Appeals, there was a procedural  
3 difference, if you will, and I think that's what  
4 Mr. Cartrette is talking about. The Court of Appeals  
5 considered Mr. James's matter alone, issued a unpublished  
6 decision specifically based upon the procedure and facts  
7 based upon that case.

8 Obviously, the Court of Appeals addressed  
9 Mr. Cartrette's procedural history and facts on a separate  
10 reported opinion. So that's just a background, I believe,  
11 as to what Mr. Cartrette was addressing. I don't think  
12 that at all changes our posture or respectfully the  
13 Court's ruling.

14 THE COURT: Not on this one.

15 Here's the deal, I've made what you gave me a  
16 part of the record, so if you appeal my decision, this is  
17 all here and I'm doing that specifically so that the  
18 record is clear if you appeal my decision and they tell me  
19 I'm wrong, I'll be happy to hear it. I think based upon  
20 what I've made and I don't think I'm wrong.

21 MR. CARTRETTE: Your Honor, I oppose the  
22 remand because they had nine years to do this case what  
23 Judge Williams told them to do to and determine the  
24 correct prevailing hourly wage, which I think you see the  
25 pay sheet.

SEE p. 67

Sept. 2015 R.

## Cartrette versus SC Department of Correctioons

1 MR. CARTRETTE: I hope so, it's been about 10  
2 years. Frankly I been working on it for about 14 years  
3 and I'm sure that the courts are tired of hearing this.

4 THE COURT: Are you better prepared than  
5 about 50 percent of the lawyers in Anderson County. By  
6 the way, what are you in for?

7 MR. CARTRETTE: Murder and attempted armed  
8 robbery. It's about 32 years I'm working on now.

9 THE COURT: So how long you been in?

10 MR. CARTRETTE: This is 32 years I'm working  
11 on now.

12 THE COURT: Are you up for parole?

13 MR. CARTRETTE: I've been up for parole about  
14 16 times in the Mrytle Beach area. You got seven members  
15 on the board and I haven't gotten one single vote from one  
16 person on the board in about 16 years.

17 THE COURT: Did you get a lawyer when you  
18 went up there?

19 MR. CARTRETTE: For a couple of times. I had  
20 Tommy Thompson from Columbia.

21 THE COURT: He was very good.

22 MR. CARTRETTE: We got a real conservative  
23 board about violent crimes and all of that. I had one  
24 minor charge in 31 years. I've done a whole lot for the  
25 system, I think.

14  
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Cartrette versus SC Department of Corrections

1           THE COURT: You been in 32 years on a murder  
2 charge.

3           MR. CARTRETTE: I wish I'd had Mr. Paul Moore  
4 back in January when he was listening to cases up here  
5 back in January 10, '84. He was doing cases and a lady  
6 next to me, one of the jurors on that, he knew that I got  
7 a raw deal on the case and ---

8           THE COURT: You've only gotten one write up  
9 in 31 years?

10          MR. CARTRETTE: Yes, it was a piece of wood  
11 that put on the water back there, we have one hot water  
12 and one cold water back there, so that was basically just  
13 to hold ---

14          THE COURT: No drugs, no fighting, no  
15 disrespect?

16          MR. CARTRETTE: No, none of that. I had 11  
17 years in the Columbia area and I helped open up the Broad  
18 River Complex and at that time they had the man executed  
19 and ---

20          THE COURT: It's all on cameras now.  
21 When are you up for parole again?

22          MR. CARTRETTE: Yes, year August.

23          THE COURT: I'm going to tell you something  
24 that I hadn't told a defendant in 15 years, a month before  
25 you're about to get paroled send me a letter reminding me

## Cartrette versus SC Department of Corrections

1 who you are because to be honest with me I've got so many  
2 things going because you've served more time than -- I  
3 used to do those parole hearings and in about 18 years,  
4 unless you were the worse inmate in the world ---

5 MR. CARTRETTE: I'd like to interject  
6 something, my case was like one of those hand of one hand  
7 of all cases. I didn't kill anyone. I just drove to do a  
8 break in and the guy come out and had a shoot out and  
9 killed each other and I was convicted of attempted robbery  
10 so ---

11 THE COURT: You drove somebody to a robbery  
12 and somebody got killed?

13 MR. CARTRETTE: Yes.

14 THE COURT: A month before you come up for  
15 parole send me a letter.

16 MR. CARTRETTE: I got David Broch.

17 THE COURT: I don't know what I can do for  
18 you. What did David Broch do for you?

19 MR. CARTRETTE: David read my transcript and  
20 he said you got screwed over. They didn't prove their  
21 case and there wasn't clear instructions given to the  
22 jury. In other words, basically, the held me responsible  
23 for carrying two people to a robbery and that's all that  
24 was proven in court but I didn't kill anybody. He said  
25 the jury wasn't given clear instructions which would have

## Cartrette versus SC Department of Corrections

1 basically would have told them about the break in and the  
2 murder.

3 THE COURT: It's illegal for me to contact  
4 the board but send me a letter telling me you're coming  
5 up.

6 MR. CARTRETTE: About 30 days?

7 THE COURT: When you get that date, send me a  
8 letter. I'm not saying I can do anything for you but I'm  
9 telling you you've served more time than people who have  
10 done much worse things and normally people who serve 30  
11 years have a wrap sheet in the prison a mile long.

12 MR. CARTRETTE: Well, I had a good standing  
13 in the community before this.

14 THE COURT: No record, no write up?

15 MR. CARTRETTE: Except for the one for the  
16 piece of wood.

17 THE COURT: Thank you.

18 MR. CARTRETTE: Thank you, Your Honor.

19 ---END OF TRANSCRIPT RECORD---

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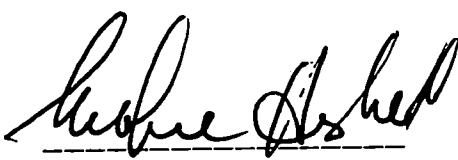
Cartrette versus SC Department of Corrections

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I, the undersigned Caroline Hiskell, Official Court Reporter for the Thirteenth Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas of Greenville County, South Carolina on this 13th of February, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



Caroline Hiskell

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2014CP2305269  
FILED IN COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2015 MAR 5 PM 3 48

Billy Joe Cartrette

South Carolina  
Department Of  
Corrections

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: South Carolina Department of Corrections

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (**CHECK REASON**):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (**CHECK REASON**):  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk: Defendant's motion to dismiss the Plaintiff's "complaint for declaratory judgment" is granted. The Administrative Law Court has subject matter jurisdiction.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|--|--|--|
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

*J. Cordell Maddox, Jr.*  
J. Cordell Maddox, Jr

2131

2/13/2015

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

53

This judgment was entered on <sup>3-5-15</sup>, and a copy mailed first class or placed in the appropriate attorney's box on <sup>3-5-15</sup>, to attorneys of record or to parties (when appearing pro se) as follows:

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

Lake Eric Summers Malone, Thompson, Summers & Ott  
LLc 339 Heyward Street, Suite 200 Columbia, SC 29201  
Katherine Anne Phillips Malone, Thompson, Summers &  
Ott LLC 339 Heyward Street, Suite 200 Columbia, SC 29201-  
3002

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*Paul B. Wickensimer*

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of  
Court - Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 BILLY JOE CARTRETTE, )  
 )  
 Plaintiff, )  
 )  
 )  
 )  
 vs. )  
 )  
 SOUTH CAROLINA DEPARTMENT OF )  
 CORRECTIONS, )  
 )  
 Defendant. )  
 )

IN THE COURT OF COMMON PLEAS  
 FOR THE 13<sup>TH</sup> JUDICIAL CIRCUIT

Civil Action No. 2014-CP-23-5839

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
 2015 FEB 27 PM 3:35

**ORDER GRANTING THE  
 DEFENDANT'S MOTION TO  
 DISMISS THE PLAINTIFF'S  
 "COMPLAINT FOR  
 DECLARATORY JUDGMENT(S)"**

On Friday, February 13, 2015, the Court conducted a hearing at the Greenville County Courthouse during which it considered a motion to dismiss the Plaintiff's "Complaint for Declaratory Judgment(s)" ["Complaint"] filed by the Defendant, the South Carolina Department of Corrections ["the Department"].

The Plaintiff in this matter is Billy Joe Cartrette, an inmate currently incarcerated in the Department's custody, and he appears *pro se*. Outside counsel for the Department, Lake E. Summers, Esquire of Malone, Thompson, Summers & Ott, LLC, properly served the Department's motion upon the Plaintiff, and the Plaintiff further received adequate notice from the Court of its intent to conduct a hearing regarding the Department's motion.

During the February 13, 2015 hearing conducted by the Court, Mr. Summers appeared on the Department's behalf, and the Plaintiff appeared on his own behalf.

After considering the Plaintiff's Complaint, the Department's motion to dismiss, the Plaintiff's memorandum in opposition, argument offered by the Department's counsel, and argument by the *pro se* Plaintiff, the Court **GRANTS** the Department's motion.

**I. PROCEDURAL HISTORY**

**A. BACKGROUND**

The Plaintiff at one time voluntarily participated in a prison industries project operated by the Department at Ridgeland Correctional Institution. In the course of his participation in the aforementioned project, the Plaintiff disputed various aspects of the pay the Department remitted to him for his labor. In accordance with our Supreme Court's decision in *Wicker v. S.C. Dep't of Corr.*, 602 S.E.2d 56 (S.C. 2004), the Plaintiff filed an administrative grievance with the Department.

**B. THE PLAINTIFF'S COMPLAINT AND OPPOSITION TO THE DEPARTMENT'S MOTION TO DISMISS**

The Plaintiff filed his "Complaint for Declaratory Judgment(s)" on October 31, 2014, and, in paragraphs 2 and 3 of his complaint, the Plaintiff asserted as follows:

[The Plaintiff] filed a step 1 grievance which was denied; he filed a step 2 grievance appeal; it was denied so he filed a Step 3 which was an appeal to the [ALC]; it was granted in part. See [*South Carolina Department of Corrections v. Cartrette*, 694 S.E.2d 18 (S.C. Ct.App. 2010)].

[The Plaintiff] filed an appeal to the South Carolina Supreme Court. [*South Carolina Department of Corrections v. Cartrette*, 772 S.E.2d 805 (S.C. Sup. Ct. 2012)].

By a memorandum dated December 30, 2014, the Plaintiff opposed the Department's motion to dismiss his complaint, and, within the materials he filed in support of his opposition memorandum, the Plaintiff included copies of the opinions issued by both our Court of Appeals and our Supreme Court as he referenced them in his Complaint.

Our Court of Appeals issued its opinion concerning the Plaintiff's prison industries pay dispute on May 28, 2010. A review of the decision issued February 22, 2012 by our Supreme Court concerning the Plaintiff's prison industries pay dispute reveals that it dismissed the writ of

certiorari it had previously granted to review the Court of Appeals' decision as having been improvidently granted.

In paragraphs 4 and 5 of his instant Complaint, the Plaintiff further asserted as follows:

[The Plaintiff] alleges that he and other prisoners are judgment creditor(s) with reference thereto discussion set forth above and below herein as there were wage disputes and retention(s) grievance(s) filed against [the Department] in 2004 and 2005 and prior thereto which resulted in judgment(s) against [the Department] (judgment debtor) in March 2006 from the ALC, the Court of Common Pleas for Jasper County and [the] South Carolina Court of Appeals. [citation omitted].

[The Plaintiff] alleges that in accordance with judgment of [the] South Carolina Court of Appeals he is entitled to a declaratory judgment as far as the set prevailing wage(s) that this Court determines in the first cause of action herein where he worked in the capacity of furniture assemble although the furniture was not made of wood.

**C. THE DEPARTMENT'S MOTION TO DISMISS**

On December 29, 2014, the Department, by and through its outside counsel, filed its motion to dismiss the Plaintiff's instant complaint pursuant to South Carolina Rule of Civil Procedure ["SCRCP"] 12(b)(1).

In its motion, the Department asserted that the Court did not and does not possess the requisite subject matter jurisdiction over the Plaintiff's claims. Instead, as further asserted by the Department, the South Carolina Administrative Law Court ["ALC"] possesses subject matter jurisdiction over the entirety of the claims articulated by the Plaintiff in his instant Complaint.

In its motion and during the hearing conducted February 13, 2015, the Department argued that the opinion issued 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.

Instead, as advocated by the Department in its motion and during the February 13, 2015 hearing, our Court of Appeals explicitly declared in its 2010 decision, 694 S.E.2d at 22, that the ALC is the only forum before which the Plaintiff's claims may be adjudicated:

In addition, we observe section 24-3-430(D) requires inmates receive the "prevailing wage" paid to their non-inmate peers for comparable work. **However, the question of the prevailing wage to which Cartrette is entitled has been remanded to the ALC for further proceedings.** We nonetheless have jurisdiction to consider whether the prevailing wage language of section 24-3-430(D) entitles Cartrette to overtime pay because the issue remanded concerned the proper hourly rate, only. However, because we have found section 24-3-315 resolves Cartrette's dispute, we need not address this argument. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding appellate court need not discuss remaining issues when decision on prior issue disposes of appeal).

For the foregoing reasons, we reverse the circuit court's decision concerning overtime pay and **remand this issue to the ALC** for a determination of whether the Department failed to pay Cartrette at the time-and-a-half rate for the hours he worked in excess of forty per week. In the event of such a failure, **we instruct the ALC** to determine the rate of compensation to which Cartrette was entitled, the number of overtime hours that were underpaid, and the amount the Department owes Cartrette for his labor. [emphasis supplied].

As observed by the Department in its motion, our Court of Appeals also remanded the determination of the "prevailing wage" paid by the Department for the labor the Plaintiff voluntarily provided to the prison industries project in question to the ALC. 694 S.E.2d at 23.

Finally, as the Department observed in its motion, our Court of Appeals, in the section of its opinion entitled "CONCLUSION," 694 S.E.2d at 23, reiterated its decision to remand the issues raised by the Plaintiff regarding overtime pay "to the ALC for additional proceedings consistent with this opinion."

**II. ANALYSIS AND CONCLUSION**

Succinctly stated, the Court agrees with the position articulated by the Department in both its motion and during the February 13, 2015 hearing, namely that it does not possess subject matter jurisdiction over the instant controversy between the parties.

The Court concludes that, contrary to any and all arguments he articulated in his "Opposition to Defendant's Motion to Dismiss" dated December 30, 2014 and during the February 13, 2015 hearing, all of the claims articulated by the Plaintiff in his instant "Complaint for Declaratory Judgment(s)," are, as explicitly declared by our Court of Appeals in its 2010 opinion, ripe for adjudication only by the ALC.


The Court further concludes that the Plaintiff possesses the opportunity to avail himself of the jurisdiction of the ALC upon the dismissal of his instant action. Toward that end, the Court respectfully urges the ALC to consider and adjudicate the Plaintiff's claims, as the Court of Appeals identified them in its 2010 opinion, as expeditiously as possible.



**III. ORDER**

Accordingly, under the provisions of SCRCP 12(b)(1), as well as S.C. Code Ann. §§ 15-53-10, *et. seq.*, the Court **GRANTS** the Department's motion and hereby **DISMISSES** the Plaintiff's "Complaint for Declaratory Judgment(s)" **WITH PREJUDICE.**

**IT IS SO ORDERED.**

  
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**J. CORDELL MADDOX, JR.**  
**PRESIDING CIRCUIT COURT JUDGE**

3/12, 2015  
Anderson, South Carolina