

The South Carolina Court of Appeals

Fred Gatewood, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2014-001199

ORDER

Both Appellant (Inmate) and Respondent (SCDC) have filed petitions for rehearing. After careful consideration of both petitions, the Court is unable to discover any material fact or principle of law that has been either overlooked or disregarded, and, hence, there is no basis for granting a rehearing. Accordingly, the petitions are denied. However, we take this opportunity to address SCDC's misapprehension of our March 9, 2016 opinion.

SCDC argues the questions of whether section 24-1-295 of the South Carolina Code (Supp. 2015) operates retroactively and whether the statute's retroactive application violates due process are not preserved. However, beginning with his Step 1 grievance, Inmate has claimed that he was entitled to \$4.00 per hour. This claim logically encompasses the questions of what amount constituted Inmate's "gross wage" and which deductions were permitted to be taken from gross wages. Both parties addressed deductions from gross wages in their briefs before the ALC, and the ALC's conclusion that section 24-1-295 governed deductions directly addressed these arguments. As we stated in our opinion, the question of whether section 24-1-295 applied to Inmate's wages necessarily included the question of whether the statute applied retroactively to the wages Inmate earned prior to the statute's effective date, August 1, 2007. Further, this question necessarily included the question of whether the statute's retroactive application would divest Inmate of a vested right, thereby depriving him of due process. Therefore, Inmate adequately preserved the questions of whether section 24-1-295 operates retroactively and whether the statute's retroactive application violates due process. In any event,

"where the question of preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012), Toal, J., dissenting.

In contrast, the question of Inmate's entitlement to any overtime wages is a separate question and is not encompassed by the evaluation of the proper amount of Inmate's regular wages. Therefore, contrary to SCDC's assertion, our conclusion that the ALC properly found the question of overtime wages unpreserved is consistent with our conclusion that Inmate adequately preserved the issues of whether section 24-1-295 operates retroactively and whether the statute's retroactive application violates due process.

Paul G. Spont, Jr. J.

John J. Deak J.

James P. McQuinn J.

Columbia, South Carolina

cc:
Douglas H. Westbrook, Esquire
Lake Eric Summers, Esquire
The Honorable Ralph King Anderson, III

FILED

June 2, 2016