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JUL 18 2018

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., Administrative Law Judge

Administrative Law Court Docket No. 16-ALJ-04-0297-AP

James Nathaniel Allen, #171214 Respondent,

v.

South Carolina Department of Corrections Appellant.

NOTICE OF APPEAL

In accordance with South Carolina Appellate Court Rule 203 and the provisions of S.C. Code Ann. § 1-23-610(A)(1), the South Carolina Department of Corrections [“the Department”] appeals the June 20, 2018 Final Order issued by the Honorable H.W. Funderburk, Jr., Administrative Law Judge [“ALJ”].

The Department’s undersigned counsel received written notice of the entry of Judge Funderburk’s June 20, 2018 Final Order on June 21, 2018.

By his June 20, 2018 Final Order, Judge Funderburk affirmed in part and reversed in part the final decision issued by the Department in an administrative grievance filed by the Respondent.

For clarity’s sake, the Department does not appeal the rulings by which Judge Funderburk affirmed its final decision regarding the Respondent’s administrative grievance.

Instead, the Department appeals the following ruling(s) from Judge Funderburk's June

20, 2018 order:

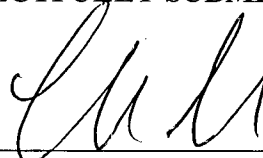
The items set out in the contract as the hourly rate charged to the private sector business for the inmate labor furnished by [the Department] are 'the gross wages of the prisoner,' as indicated in [*Torrence v. S.C. Dep't of Corr.*, 646 S.E.2d 866, 870, n. 4 (S.C. 2007)]. These gross wages must be disbursed as provided in [S.C. Code Ann. § 24-3-40(A)]. Not to do so in an error of law, a "violation of the plain language of the statute which directs [the Department] to disburse the money based on the gross wages." [*Torrence*, 646 S.E.2d at 870, n. 4].

...
[The Department's] failure to include the Social Security withholding, Workers' Compensation premium, and SCDC/Prison Industries Administrative Cost in the gross wages prior to making deductions thereto was an error of law. Accordingly, the parts of [the Department's] decision dealing with gross wages are **REVERSED** and **REMANDED**. [The Department] must classify the entire contract amount as the hourly gross wages and calculate deductions and distributions from [Allen's] pay as set forth in [§ 24-3-40(A)].

...
IT IS THEREFORE ORDERED that those parts of [the Department's] decision dealing with [Allen's] prison industry gross wages, including for [Allen's] training period to the extent this period is covered by the contract, and their disposition are **REVERSED AND REMANDED** for proceedings consistent with this Order.

See Order, pp. 9 – 10. [emphasis supplied by ALJ].

RESPECTFULLY SUBMITTED:



July 18, 2018

Lake E. Summers

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

Outside Counsel for Appellant
South Carolina Department of Corrections

Pro Se Respondent:

James Nathaniel Allen, #171214
Perry Correctional Institution Q-1-B-108
430 Oaklawn Road
Pelzer, South Carolina 29669

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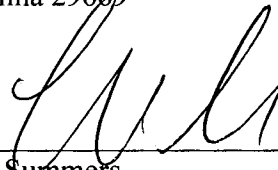
South Carolina Department of Corrections Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Notice of Appeal on the above-named *pro se* Respondent by depositing a copy of it in the United States Mail, First Class Postage Pre-Paid, to the Respondent addressed as follows:

James Nathaniel Allen, #171214
Perry Correctional Institution Q-1-B-108
430 Oaklawn Road
Pelzer, South Carolina 29669

July 18, 2018



Lake E. Summers
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300
Fax: (803)-254-0309
E-mail: summers@mtsolfirm.com

Outside Counsel for Appellant
South Carolina Department of Corrections

LAW OFFICES
MALONE, THOMPSON, SUMMERS & OTT LLC

339 HEYWARD STREET

SUITE 200

COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 254-3300

FACSIMILE: (803) 254-0309

E-MAIL: firm@mtsolvlawfirm.com

WEB: www.mtsolvlawfirm.com

MICHAEL D. MALONE*^o
CHARLES F. THOMPSON, JR.*^o
LAKE E. SUMMERS*^o
MICHAEL K. OTT^a

SPECIAL COUNSEL
LAWRENCE J. NEEDLE*
IMMIGRATION

^oADMITTED IN TX & SC
^aADMITTED IN NC & SC
^{*}CERTIFIED SPECIALIST IN
LABOR & EMPLOYMENT LAW (SC)
^oADMITTED ONLY IN SC
^{*}CERTIFIED MEDIATOR

LABOR & EMPLOYMENT LAW
EMPLOYEE BENEFITS
IMMIGRATION

NORTH CAROLINA OFFICE
POST OFFICE BOX 38184
CHARLOTTE, NC 28278
TELEPHONE (704) 522-2824
FACSIMILE (704) 522-2032

H. FRANK MALONE
1930-2002

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SC Court of Appeals

The Honorable Jana E. Shealy
Clerk of Court, South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29211

Re: Notice of Appeal of the Administrative Law Court's Final Order in *S.C. Dep't of Corrections, Appellant, v. James Nathaniel Allen, #171214, Respondent*, ALC Docket No. 16-ALJ-04-0297-AP

Dear Ms. Shealy:

Enclosed for filing is the Notice of Appeal submitted by the South Carolina Department of Corrections to the Court of Appeals in the above-captioned case.

I include with the Notice of Appeal a copy of its allied proof of service. I also include copies of the order issued by this Court which is to be challenged on appeal with the Court of Appeals.

Finally, I enclose a second copy of each of these documents. Please return the file stamped copy to our representative who delivered them to your office.

Thank you for your consideration of this matter.

As always, I remain

Page 2 of 2
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Re: Notice of Appeal of the Administrative Law Court's Final Order in *S.C. Dep't of Corrections, Appellant, v. James Nathaniel Allen, #171214, Respondent*, ALC Docket No. 16-ALJ-04-0297-AP

Very respectfully yours,



Lake E. Summers
Counsel for Appellant
South Carolina Department of Corrections

Cc:

James Nathaniel Allen,
Pro Se Respondent

The Honorable Jenny Abbott Kitchings,
Clerk of Court for the South Carolina Court of Appeals

Kensey Barrett, Esquire,
Staff Attorney for the South Carolina Department of Corrections (via e-mail)

LAW OFFICES

MALONE, THOMPSON, SUMMERS & OTT LLC

LAW OFFICES
MALONE, THOMPSON, SUMMERS & OTT LLC

339 HEYWARD STREET
SUITE 200

COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 254-3300

FACSIMILE: (803) 254-0309

E-MAIL: firm@mtsolvlawfirm.com

WEB: www.mtsolvlawfirm.com

MICHAEL D. MALONE*^o
CHARLES F. THOMPSON, JR.*^{oo}
LAKE E. SUMMERS*^o
MICHAEL K. OTT*

SPECIAL COUNSEL
LAWRENCE J. NEEDLE*
IMMIGRATION

^o ADMITTED IN TX & SC
^a ADMITTED IN NC & SC
^{*} CERTIFIED SPECIALIST IN
LABOR & EMPLOYMENT LAW (SC)
^o ADMITTED ONLY IN SC
^{*} CERTIFIED MEDIATOR

LABOR & EMPLOYMENT LAW
EMPLOYEE BENEFITS
IMMIGRATION

NORTH CAROLINA OFFICE
POST OFFICE BOX 38184
CHARLOTTE, NC 28278
TELEPHONE (704) 522-2824
FACSIMILE (704) 522-2082

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1930-2002

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, South Carolina 29201

Re: Notice of Appeal of the Administrative Law Court's Final Order in *S.C. Dep't of Corrections, Appellant, v. James Nathaniel Allen, #171214, Respondent*, ALC Docket No. 16-ALJ-04-0297-AP

Dear Ms. Kitchings:

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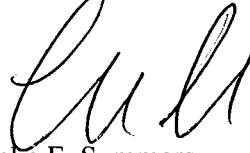
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Very respectfully yours,



Lake E. Summers
Counsel for Appellant
South Carolina Department of Corrections

Cc:

James Nathaniel Allen,
Pro Se Respondent

The Honorable Jana E. Shealy,
Clerk of Court for the Administrative Law Court

Kensley Barrett, Esquire,
Staff Attorney for the South Carolina Department of Corrections (via e-mail)