

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUL 18 2018
SC 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-04-0296-AP

Elliott Hatton, #158373 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.

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:

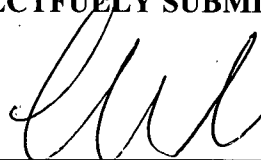
The items set out in the contract as the hourly rate charged to the private sector business for the inmate labor furnished by SCDC are 'the gross wages of the prisoner,' as indicated in [*Torrence v. S.C. Dep't of Corr.*, 646 S.E.2d 866, 870, n. 4 (S.C. 2007)]. These gross wages must be disbursed as 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] failures to demonstrate that it paid [Hatton] the prevailing wage rate and to include the Social Security withholding, Workers' Compensation premium, and SCDC Surplus Fund Amount in the gross wages prior to making deductions thereto were errors of law. Accordingly, the parts of [the Department's] decision dealing with the prevailing wage rate and gross wages are **REVERSED** and **REMANDED**. [The Department] must demonstrate that [Hatton] was paid prevailing wage rate for the type of labor he provided at the time and in the area that he provided it, pursuant to [S.C. Code Ann. § 24-3-430(D)]. [The Department] must also classify the entire contract amount as the hourly gross wages and calculate deductions and distributions from [Hatton's] pay as set forth in [§ 24-3-40(A)]. If the contractual wage rate was also used to pay the inmate while training for the work, then this amount must also be included in the recalculation.

...
IT IS THEREFORE ORDERED that those parts of [the Department's] decision dealing with [Hatton's] prison industry wages, including training wages if covered by the wage rate in the contract, and their disposition are **REVERSED AND REMANDED** for proceedings consistent with this Order.

See Order, pp. 12 – 13. [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:

Elliott Hatton, #158373
Perry Correctional Institution Q-2-A-124
430 Oaklawn Road
Pelzer, South Carolina 29669

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Elliott Hatton, #158373 Respondent,

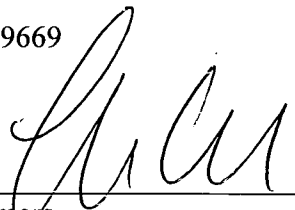
v.

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:

Elliott Hatton, #158373
Perry Correctional Institution Q-2-A-124
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@mtsolawfirm.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@mtsollawfirm.com

WEB: www.mtsollawfirm.com

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

SPECIAL COUNSEL
LAWRENCE J. NEEDLE^o
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

July 18, 2018

VIA HAND DELIVERY

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

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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. Elliott Hatton, #158373, Respondent*, ALC Docket No. 16-ALJ-04-0296-AP

Dear Ms. Kitchings:

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

I also enclose a proof of service of the Notice of Appeal on the Respondent and a copy of the order which is to be challenged on appeal.

Additionally, 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

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July 18, 2018

Re: Notice of Appeal of the Administrative Law Court's Final Order in *S.C. Dep't of Corrections, Appellant, v. Elliott Hatton, #158373, Respondent*, ALC Docket No. 16-ALJ-04-0296-AP

Very respectfully yours,



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

Cc:
Elliott Hatton,
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)