

**RECEIVED**

**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-04-0397-AP

Reyes Cabrera Pena, #265665 ..... 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 agreement between [the Department] and the Contractor (the private sector entity) establishes an hourly rate that includes a wage, Social Security withholding, a Workers' Compensation premium, and a "SCDC Surplus Fund Amount." [Pena] contends that all of these items are part of his hourly gross wage should be part of the back pay owed. The Supreme Court referred to the sum of these items as a diversion from the hourly rate paid for inmate labor and stated:

[I]f [Torrence and Ward] prove true their allegation that [the Department] removes any of the money remitted by the private industry sponsor and then disburses the percentages listed in [S.C. Code Ann. § 24-3-40] based on the lower rate, [the Department] would be in violation of the plain language of the statute which directs it to disburse the money based on the gross wages. *See* [S.C. Code Ann. § 24-3-40(A)].

[*Torrence v. S.C. Dep't of Corr.*, 646 S.E.2d 866, 870, n. 4 (S.C. 2007)].

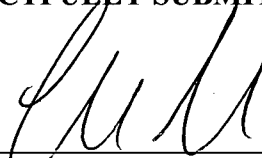
Thus, all the items in this subsection of the contract are included in an inmate's gross wages. What must be proved is whether the statutory deductions were calculated after the removal of any of these items. From the record provided, this Court can only direct [the Department] to calculate the statutory deductions from the gross hourly sum of \$8.01, if it cannot show that it has already done so.

SCDC'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 [Pena's] pay as set forth in [§ 24-3-40(A)].

**IT IS THEREFORE ORDERED** that those parts of [the Department's] decision dealing with [Pena's] prison industry gross wages, including for [Pena'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. 8 – 9. [emphasis supplied by ALJ].

RESPECTFULLY SUBMITTED:



---

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

July 18, 2018

*Pro Se* Respondent:

Reyes Cabrera Pena, #265665  
Perry Correctional Institution Q-1-A-207  
430 Oaklawn Road  
Pelzer, South Carolina 29669

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED  
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-04-0397-AP

Reyes Cabrera Pena, #265665 ..... Respondent,

v.

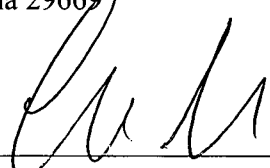
South Carolina Department of Corrections ..... Appellant.

**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:

Reyes Cabrera Pena, #265665  
Perry Correctional Institution Q-1-A-207  
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](mailto:firm@mtsollawfirm.com)

WEB: [www.mtsollawfirm.com](http://www.mtsollawfirm.com)

MICHAEL D. MALONE\*<sup>o</sup>  
CHARLES F. THOMPSON, JR.\*<sup>o</sup>  
LAKE E. SUMMERS\*<sup>o</sup>  
MICHAEL K. OTT\*<sup>o</sup>

SPECIAL COUNSEL  
LAWRENCE J. NEEDLE\*<sup>o</sup>  
IMMIGRATION

\*ADMITTED IN TX & SC  
\*ADMITTED IN NC & SC  
\*CERTIFIED SPECIALIST IN  
LABOR & EMPLOYMENT LAW (SC)  
\*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) 522-2032

H. FRANK MALONE  
1930-2002

July 18, 2018

VIA HAND DELIVERY

**RECEIVED**

JUL 18 2018

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. Reyes Cabrera Pena*, #265665, Respondent, ALC Docket No. 16-ALJ-04-0397-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  
July 18, 2018

Re: Notice of Appeal of the Administrative Law Court's Final Order in *S.C. Dep't of Corrections, Appellant, v. Reyes Cabrera Pena, #265665, Respondent*, ALC Docket No. 16-ALJ-04-0397-AP

---

Very respectfully yours,



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

Cc:  
Reyes Carbrera Pena,  
*Pro Se* Respondent  
The Honorable Jenny Abbott Kitchings,  
Clerk of Court for the South Carolina Court of Appeals  
Kensley Barrett, Esquire,  
Staff Attorney for the South Carolina Department of Corrections (via e-mail)

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](mailto:firm@mtsolvlawfirm.com)

WEB: [www.mtsolvlawfirm.com](http://www.mtsolvlawfirm.com)

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

MICHAEL D. MALONE\*\*  
CHARLES F. THOMPSON, JR.\*\*  
LARK E. SUMMERS\*\*  
MICHAEL K. OTT\*

SPECIAL COUNSEL  
LAWRENCE J. NEEDLE\*  
IMMIGRATION

\*ADMITTED IN TX & SC  
\*ADMITTED IN NC & SC  
\*CERTIFIED SPECIALIST IN  
LABOR & EMPLOYMENT LAW (SC)  
\*ADMITTED ONLY IN SC  
\*CERTIFIED MEDIATOR

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

Re: Notice of Appeal of the Administrative Law Court's Final Order in *S.C. Dep't of Corrections, Appellant, v. Reyes Cabrera Pena, #265665, Respondent*, ALC Docket No. 16-ALJ-04-0397-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

RECEIVED  
JUL 18 2018  
SC Court of Appeals

Page 2 of 2  
July 18, 2018

Re: Notice of Appeal of the Administrative Law Court's Final Order in *S.C. Dep't of Corrections, Appellant, v. Reyes Cabrera Pena, #265665, Respondent*, ALC Docket No. 16-ALJ-04-0397-AP

---

Very respectfully yours,



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

Cc:  
Reyes Carbrera Pena,  
*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)