

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2019-1490

Thomas J. Torrence, Respondent,

v.

South Carolina Department of Corrections, Petitioner.

**RESPONDENT'S RETURN
TO PETITION FOR WRIT OF CERTIORARI
BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

Thomas J. Torrence
#094651
Perry Correctional Institution Q3B-102
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Pelzer, South Carolina 29669

Pro se Respondent

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S.C. SUPREME COURT

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Under the authority of South Carolina Appellate Court Rule [“SCACR”] 242(F), Thomas J. Torrence [“Respondent” or “Torrence”] respectfully enters a Return in this Court to SCDC’s September 30, 2019 petition for writ of certiorari to review the final decision issued by the Court of Appeals in the instant matter, styled as *Thomas J. Torrence, Respondent, v. S.C. Dep’t of Corr., Appellant*, Opinion No 2018-UP-432, --S.E.2d--, 2018 WL 6199185 (S.C. Ct. App. Nov. 28, 2018).

SCDC’s February 17, 2016 Notice of Appeal from the Administrative Law Court [“ALC”] to the Court of Appeals (Apx. pp. 1051-52) challenged two orders: the January 30, 2014 order (Apx. pp. 1053-1062) and the January 20, 2016 order (Apx. pp. 1063-77).

The Court of Appeals dismissed SCDC’s appeal by a November 28, 2018 unpublished decision (Apx. pp. 1231-32).

SCDC’s January 10, 2019 petition for rehearing elected not to prosecute its appeal of the January 30, 2014 order based upon the Court of Appeals decision in *Ackerman, et al., v. S.C. Dep’t of Corr.*, 782 S.E.2d 757 (S.C. ct. App. 2016), *cert. denied* (May 30, 2017).

SCDC’s instant September 30, 2019 Petition for Writ of Certiorari [“Petition”], pg. 2, elects not to prosecute the ALC’s January 20, 2016 ruling that SCDC must allow Torrence to designate persons or entities to receive an immediate distribution of his monies held in escrow pursuant to §24-3-40(A)(5) based upon the Court of Appeals decision in *Baum v. S.C. Dep’t of Corr.*, Opinion No. 2019-UP-104, 2019 WL 1164316 (S.C. Ct. App. Mar. 13, 2019), *cert. denied* (Aug. 16, 2019).

I. STATEMENT OF THE CASE

Torrence filed a Step 1 Grievance Form (SCDC Form 10-5) dated May 21, 2007 (Apx. pp. 015 – 018), and articulated eight (8) claims asserting SCDC unconstitutionally and in

contravention of statutory authority deprived him of a property interest “in the prevailing wage” for a training period of 320 hours, regular hours and overtime hours in an “Addendum” (Apx. p 017) attached to the Step 1 form. Torrence’s Step 1 requested “Payment of wages, withholdings and interests...” (Apx. p. 016).

SCDC would not timely process Torrence’s grievance. Torrence filed a petition for writ of mandamus in this Court (Apx. pp. 006 – 027) after which SCDC conceded to respond (Apx. p. 041) and ultimately entered a Step 1 response dated December 4, 2011 (Apx. pp. 133 – 138).

Torrence filed a Step 2 Appeal and Appendices in February 2019 (Apx. pp. 519-529; 538-688). SCDC entered a Final Agency Decision (Apx. pp. 530-537) dated February 9, 2019 affirming the Step 1 denial.

Torrence entered a Notice of Appeal in the ALC dated March 2, 2012 (Apx. p. 006) challenging SCDC unlawfully failing to pay Torrence the prevailing wage for his labor, interest thereupon, and access to wages escrowed pursuant to §24-3-40(A)(5).

The DOC has dropped any prosecution of the January 30, 2014 order, (Petition, pg. 1 and Apx. p. 1239). Similarly, the DOC has dropped prosecution of the ALC’s January 20, 2016 Order granting Torrence immediate access to wages escrowed under §24-3-40(A)(5).

Torrence submits that he has entered this Reply out of respect for this Court and legal ignorance that failure to respond would be seen as acquiescence to the DOC’s argument and position. Torrence views this position not as a challenge to the issues themselves, but the Court of Appeals’ November 28, 2018 unpublished decision finding the ALC’s January 20, 2016 decision interlocutory.

II. RESPONDENT'S REPLY / COUNTER ARGUMENT(S)

- A. The DOC's Petition alleges "The ALC's ruling that Torrence worked for ESCOD was not interlocutory, and the Court of Appeals erred by dismissing SCDC's appeal of this ruling."**

THE ALC DID NOT RULE THAT TORRENCE WAS AN EMPLOYEE OF ANY SPECIFIC ENTITY.

The ALC was crystal clear in its factual and legal analysis and position regarding Torrence *NOT* being an employee of either the State or the private sector sponsor in its January 20, 2016 order (Apx. p. 1042). The ALC declined to address arguments concerning Torrence's status since they were not necessary for nor bore directly upon the disposition of the case.

Torrence's struggle with a label to define his labor in the participation of the private sector prison industries was just that; not a challenge to well-established precedent of this and other State and Federal Courts. Respondent submits SCDC's raising this issue is a skilled attempt to divert attention toward an area of law well settled and allow another bite at the apple where SCDC raises an issue not appearing numerated in either brief before the Court of Appeals, but which was available at any time in the appeal or petition for rehearing.

- B. The DOC's Petition alleges the ruling by which the ALC defined and determined the "Prevailing Wage" SCDC should have paid Torrence should not have been dismissed as interlocutory.**

THE ALC PROPERLY DEFINED AND DETERMINED THE "PREVAILING WAGE" TO BE PAID FOR TORRENCE'S LABOR.

Respondent continues to assert, as before the Court of Appeals in his Final Appeal (Apx. p. 1152, ft. nt. 2), that S.C. Code §24-3-315, without using the specific nomenclature "prevailing wage," states in part, "...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." That statute was supported by §24-3-430(D), "No inmate participating in the

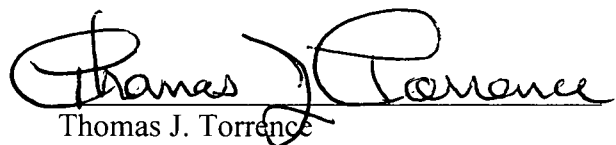
program may earn less than the prevailing wage for work of a similar nature in the private sector.” Both South Carolina statutes contemplate 18 USC § 1761(c)(2) and 64 FR 17010 as defining the substance of the phrase and process for obtaining the “prevailing wage.”

In *S.C. Dep’t of Corr. v. Cartrette*, 694 S.E.2d 18 (S.C. Ct. App. 2010) the Court of Appeals remanded the matter back to the ALC with seven (7) questions to determine the prevailing wage. The record here amply supports the proper method of determination by the appropriate agency and the DOC’s intentional payment of less than the prevailing wage for Respondent’s labor despite the annual wage verification demonstrating the DOC was in violation of state and federal law. Therefore, the ALC in this matter was following precedent to order the DOC in the method and manner of determining the prevailing wage by the Employment Security Commission (ESC) / Department of Employment Workforce (DEW) Code for the years in question and amount of labor performed.

III. CONCLUSION

Based upon the foregoing, this Court should deny SCDC’s petition for writ of certiorari.

Respectfully submitted,



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In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

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Thomas J. Torrence, Respondent,

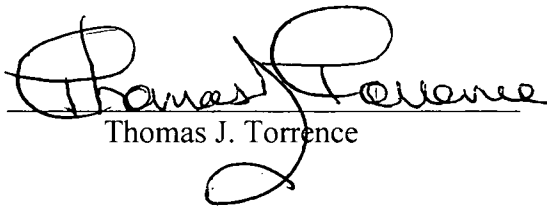
v.

South Carolina Department of Corrections, Petitioner.

PROOF OF SERVICE

I certify that I have served **RESPONDENT'S RETURN TO THE PETITION FOR WRIT OF CERTIORARI BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS** on counsel for the above-named Appellant by mailing a copy of the same to him at the following address

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November 4, 2019

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