

10) Can a Inmate sue any Government and any other country using state of emergency executive order ?

**RECEIVED**

MAY 15 2024

SC Court of Appeals

Rule 35 En Banc and Rehearing on petition for writ of certiorari and Rule 59(e) and Rule 52 and Rule 5.1 Challenge Statute

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- 1) Did the Court of Appeal overlook my wife is currently in the custody of the Dept. of Immigration awaiting Deportation to South Am. she has custody of our 2 children?
- 2) Did the Court of Appeal overlook my mother is hosting a life threatening illness from Covid-19 which requires her to rely on respiratory breathing machines who is also the legal Guardian of my other 2 kids?
- 3) Did the Court of Appeal overlook S.C. Department of Correction Ridgeland Facility and all other S.C.D.C. facility being short of staff, overcrowded inmate population, lack of clean air and cleaning supplies during Covid-19

- 4) Did the Court of Appeal overlook ~~the~~ Judge err failing to Apply Federal Statutes where State Statute did not exist for Covid-19
- 5) Did the Court of Appeal overlook Judge err order improper venue during State of emergency executive order during Covid-19 ?
- 6) Did the Court of Appeal overlook the Blank order for bond, concerning prison overcrowded and short of staff in every department during Covid-19 and State of emergency executive order ?
- 7) Did the Court of Appeal overlook Compassion Release for Extraordinary Circumstance Pertaining to CARE ACT 1200
- 8) Did the Court of Appeal overlook the Injunction power during Covid-19 because S.C.D.C cannot follow C.D.C guideline do to shortage and overcrowded ?

- 9) Did the Court of Appeal over look Judge err in failing to give petition Bond according to the State of emergency executive order during Covid-19 as life and death situation?
- 10) Did the Court of Appeal over look exceptional importance dealing with extraordinary Circumstance guideline for Majeure Force with the over all case especially State of emergency executive order?
- 11) Was the court of Appeal Negigent in considering these exeptional circumstance pertaining to obstuction of mail by third party as Outlined in section 18 US. Code 1701?
- 12) Was the Court of appeal unwaware of the Significant importance when the Horry County Clerk of Court faxed the information for court order prior to the case being denied?
- 13) Was the force Majeure Clause, which was submitted prior to denial of the case over look by the Court of appeal in Accordance with executive order during Covid-19?

14) Did the Court of Appeal overlook the Frustration Doctrine during Covid-19 and S.C.D.C being short of staff in every department and prison overcrowded?

15) Was the Court of appeal unaware of the significant significance of my sudden and intense or distressing prolonged duress stress disorder resulting from Covid-19, the courts and S.C.D.C during which I nearly lost my life in shower?

16) Has the Court of appeal neglected to consider ~~and~~ this great violate of Art 12 section 2 and Title 24-1-20 that I bound to this contract, Thus breach my right to U.S.C.A Const. Amend 14 and denying me the freedom to comply with a court order as Guaranteed by the United States Constitution?

## Rule 24 Intervention

Come now Defendant Jamie Goss  
Pro Se. Before this Honorable court on  
Motion for Compassionate Release for  
Extraordinary Reasons. This motion is written  
pursuant to 18 U.S.C. 3582(c)(1)(A)(i),  
CARES ACT Section 12003(b)(2),  
18 U.S.C. 3582(c)(A)(i), 18 U.S.C. 2582(c)(1)(A)  
18 USC 3624(c)(2), U.S. v. Sellers Crim. NO  
10-434 (R.M.B) 2020 WL 1972862 and  
United States of America v. Lincoln Warrington  
(March 4, 2021) 825400. This matter comes  
before United State Supreme Court  
Honorable Robert Motion for  
Compassionate Release for Extraordinary  
Reason in light of the Covid-19 Pandemic,  
and theres no statute in the State  
of S.C for Covid-19 cause almost 100  
dead, over 10,000 injury in the S.C  
Department of Correction, which  
I'm still suffering from Covid-19, Farm Flu  
The Defendant respectfully show this  
Honorable Court the following reason

1 Due to S.C. Department of Correction Ridgeland Facility and all other S.C. D.C Facilities being short of staff, overcrowded inmate population, lack of clean air, lack of cleaning supplies, Not having herbal medicine, Not having in place policy for inmates training, Violate Art 12 section 2 and Title 24-1-20 Not having humane treatment, Not having Rehabilitation to restoration of individual to his greatest potential; whether physically, mentally, socially or vocationally,

2 My mom has a life threatening illness which require her to rely upon Respiratory Breathing Machines, and she still suffering from Covid-19 leaving her stuck in her room sick,

3 My wife is currently in custody of Immigration Detention Facing Deportation, she is in custody of my other 2 minor kids

4 Drugs has taken over prison ~~and~~ and my life is at risk because the drugs is driven people to kill they roommate

## Rule 72 Judgment and Orders Subject to Appeal

Petition motion the court under Rule 72 because of err of law durig state of emergency executive order ~~on~~ from Covid-19. The circuit court violate Roe v. Wade because of blank order and improper venue, According to 14-3-330 The Supreme Court shall have appellate jurisdiction for correction of errors of law in law case, and shall review upon appeal

## Rule 24 Intervention

Petition motion Rule 24 under the Question concern when an applicant's claim and main question of law or fact in common. When a party to action ~~administered by Federal and state governmental officer~~ relies for ground of claim or defense upon any statute or executive order administered by federal or state

governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or ~~exec~~ executive order, the officer or agency upon timely application may be permitted to intervene in the action. In petition exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the right of the original parties

### Rule 25 Substitution Parties

Petition Motion the court to Substitution of Parties in case if someone die and the claim is not thereby extinguished, the court may order substitution of the proper parties.

### ~~Rule 19 Joinder of Claims and Remedies~~

### Rule 19 Joinder of Person Needed for Just Adjudication

All defendant is service of process and whose joinder will not deprive the court of Jurisdiction over the subject matter of the action shall be joined as a

party in the action, The defendant's claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may as a practical matter impair or impede his ability to protect that interest. ~~to be made a party~~

~~to be made a party~~ If defendant has not been so joined, the Court shall order that he be made a party.

## Conclusion

Based upon all these statement herein today the Appellant requests Honorable Court vacate the judgment denying Appellant motion for Compassion for Extraordinary Circumstance and grant the Appellants appeal. Appellant request that Court order South Carolina Department of Correction to release Appellant according to the CARE ACT section 12003(b)(2) because the CARE ACT is for everyone in the United State especially this covid-19 case is still pending under State of emergency executive order From Joe Biden, Due to South Carolina Department of Corrections being under staff and overcrowded, This New Farm flu also putting my life at harm because everyone in this dorm is sick from working ON farm this is deliberate Indifference putting my life at risk or death of inmate as well as since the department of Corrections and state of South Carolina not having Compassionate release place in order to address this Covid-19 pandemic and Farm flu this would be a denial of equal protection

of the United State and South Carolina  
Constitution as well as Cruel punishment  
to know this and still force Appellant to  
serve his sentence under those circumstance  
would be unconstitutional therefore as stated  
herein ~~the~~ Appellant states that based upon  
these stated fact Appellant request Court  
to order South Carolina Department of  
Correction to release Appellant according  
to the CARE ACT on this day set forth as  
in accordance with just, fairness, due process  
and equal protection of the law to do other  
wise would be an abuse discretion.

### Certificate of Service

I Jamie Goss 294985 Appellant hereby States  
under penalty of perjury that all statement  
stated herein today are true and correct,  
Appellant further states that he has served U.S  
and S.C Attorney General, Supreme Court  
of S.C and S.C Appeal Court on May 5, 2024  
from order that was receive on April 29,  
2024 from denying writ of Cert. Also due  
to S.C.D.C denying me access to court, I file  
and serve U.S. and S.C. Supreme Court on May  
3, 2024 because of shortage of legal  
Supplies.

Jamie Goss

South Carolina Court of Appeal  
Jenny Abbott Kitchings, Clerk  
Post Office Box 11629  
Columbia, South Carolina 29211

The Supreme Court of South Carolina  
Patricia A. Howard Clerk of Court  
Post Office Box 11330  
Columbia, South Carolina 29211

Office of the Attorney General  
P.O. Box 11549  
Columbia S.C. 29211

U.S. Attorney General  
Merrick B. Garland  
950 Pennsylvania Ave N.W  
Washington D.C. 20530

## Affidavit

I'm Jamie Goss Challenge Constitutional Issues  
S.C. Don't have a statute for Covid-19 that  
cause injury, I'm having problem with breathing  
up my nose, Fast heartbeat, Skin Infection,  
Low bone pain from steel bed, Also family  
was injury My son has crash car that injury,  
my daughter drop out of school, lose her  
job, My wife lose her job and was  
evited out house, Also S.C.D.C don't have  
herbal medicine that causing more problem  
to my health with super high Cholesterol, ~~low~~  
vitamin D is very low, and on borderline  
diabetic, Also the doctor said eating  
all the process food in S.C.D.C cause  
great harm. If S.C. had Compassion  
Release for Extraordinary Circumstance  
I could have raise these issue, This  
is a great violation of Roe V. Wade  
Not have a statute in place for ~~the~~  
extraordinary Circumstance, As the  
Court ~~is~~ exam all these issue

have same Interest extraordinary  
Circumstance, All said defendant has  
same Interest violate 14 Amendment of  
the United State Constitution and Roe V.  
Wade during these extraordinary Circumstance,  
This great violation of Compassion Release  
for extraordinary Circumstance has cause  
great family harm and cause great  
harm for not having a statute in place  
in the state of South Carolina for  
extraordinary Circumstance, Also  
Rule 42(b) and Individual Capacities,  
violation of Judges 28 U.S.C.A 453 oaths,  
and Illegal act during stat of emergency,  
SIC kidnapping and Murder, Conspiracy  
to defraud the Government with  
respect to claims, Constitutional Challenge  
Federal Statute, Compassion Release for  
extraordinary Circumstance

State Statute Compassion Release

Gamir Dyll

STATE OF SOUTH CAROLINA  
COUNTY OF Horry

ORDER IN A CRIMINAL CASE  
WARRANT(S) K002194

IN THE COURT OF GENERAL SESSIONS

INDICTMENT(S): 2006GS2604735

State of South Carolina

JAMIE GOSS  
DEFENDANT(S)

MOTION FOR COMPASSIONATE RELEASE

This form order submitted by: Assistant Sol. Seth Oskin

Attorney for :  State  Defendant  
or  
 Self-Represented Litigant

**DISPOSITION TYPE**

- DECISION BY THE COURT AFTER HEARING.** This action came to a hearing before the court. The issues have been heard and a decision rendered.  See below for additional information.
- DECISION BY THE COURT AFTER STATUS CONFERENCE.** This case came for a status conference before the court. The status of this case and pending issues in this case were discussed and a decision rendered.  See below for additional information.
- MOTION:**
  - GRANTED  DENIED  CONTINUED  WITHDRAWN
  - WITHDRAWN BY MOVING PARTY: \_\_\_\_\_  
Signature of Moving Party
  - OTHER:

IT IS ORDERED AND ADJUDGED:  See Order of the Court below  See attached order  
 Formal Order to follow; to be prepared by:  State  Defendant  Other: \_\_\_\_\_

**ORDER INFORMATION**

This order  ends  does not end the case.  
Additional Information for the Clerk : \_\_\_\_\_

This is an improper venue for this motion as it is based on a Federal statute. However, the Hon. Judge Cothran heard the motion and denied it. Accordingly, this motion is denied.

FILED  
HORRY COUNTY  
2006 SEP 18 PM 3:10  
KAREN E. VISS  
CLERK OF COURT  
HORRY COUNTY, SC

  
Circuit Court Judge

2157  
Judge Code

Date

STATE OF SOUTH CAROLINA  
COUNTY OF Horry

ORDER IN A CRIMINAL CASE  
WARRANT(S) K802194

IN THE COURT OF GENERAL SESSIONS

INDICTMENT(S): 2006GS2604735

State of South Carolina

JAMIE GOSS

DEFENDANT(S)

MOTION FOR COMPASSIONATE RELEASE

This form order  
submitted by: Asst. Sol. Seth Oskin

Attorney for:  State  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE

- DECISION BY THE COURT AFTER HEARING. This action came to a hearing before the court. The issues have been heard and a decision rendered.  See below for additional information.
- DECISION BY THE COURT AFTER STATUS CONFERENCE. This case came for a status conference before the court. The status of this case and pending issues in this case were discussed and a decision rendered.  See below for additional information.
- MOTION:
  - GRANTED  DENIED  CONTINUED  WITHDRAWN
  - WITHDRAWN BY MOVING PARTY: \_\_\_\_\_
  - OTHER: \_\_\_\_\_

Signature of Moving Party

FILED  
 2021 AUG -9 AM 11:00  
 RENEEM. ELVIS  
 CLERK OF COURT  
 HORRY COUNTY SC

IT IS ORDERED AND ADJUDGED:  See Order of the Court below  See attached order  
 Formal Order to follow, to be prepared by:  State  Defendant  Other: \_\_\_\_\_

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_


*Seth Oskin*  
Circuit Court Judge

2144  
Judge Code

Aug. 4 2020  
Date

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For Clerk of Court Office Use Only

This judgment was entered on the 9<sup>th</sup> day of August, 2021 and a copy mailed first class or placed in the appropriate attorney's box on this 9<sup>th</sup> day of August, 2021 to attorneys of record or to parties (when appearing pro se) as follows:

SETH OSKIN  
[Signature]  
ATTORNEY(S) FOR THE STATE

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)  
Renée N. Elvis  
CLERK OF COURT

Court Reporter:

FILED  
2021 AUG -9 AM 11:00  
RENEE N. ELVIS  
CLERK OF COURT  
Horry County, SC

PLAINTIFF <u>Jamie Goss</u> DEFENDANT <u>SEE Attachment Complaint</u>	COURT CASE NUMBER <u>2023-001660</u> TYPE OF PROCESS
NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN	
SERVE AT	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW  <div style="border: 1px solid black; height: 80px; width: 100%;"></div>	Number of process to be served with this Form 285	<u>36</u>
	Number of parties to be served in this case	<u>36</u>
	Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service):

Fold

Fold

Signature of Attorney other Originator requesting service on behalf of:	<input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER	DATE
---	--	------------------	------

**SPACE BELOW FOR USE OF U.S. MARSHAL ONLY-- DO NOT WRITE BELOW THIS LINE**

I acknowledge receipt for the total number of process indicated. <i>(Sign only for USM 285 if more than one USM 285 is submitted)</i>	Total Process _____	District of Origin No. _____	District to Serve No. _____	Signature of Authorized USMS Deputy or Clerk _____	Date _____
--	------------------------	---------------------------------	--------------------------------	---	---------------

I hereby certify and return that I  have personally served,  have legal evidence of service,  have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above on the on the individual, company, corporation, etc. shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (*See remarks below*)

Name and title of individual served ( <i>if not shown above</i> )	<input type="checkbox"/> A person of suitable age and discretion then residing in defendant's usual place of abode
Address ( <i>complete only different than shown above</i> )	Date _____ Time _____ <input type="checkbox"/> am <input type="checkbox"/> pm
	Signature of U.S. Marshal or Deputy _____

Service Fee	Total Mileage Charges including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal* or (Amount of Refund*)
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REMARKS:

1. CLERK OF THE COURT
2. USMS RECORD
3. NOTICE OF SERVICE
4. BILLING STATEMENT\*: To be returned to the U.S. Marshal with payment, if any amount is owed. Please remit promptly payable to U.S. Marshal.
5. ACKNOWLEDGMENT OF RECEIPT

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PRIOR EDITIONS MAY BE USED



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SCLaw Enforcement Division  
1100 Oak Drive  
Myrtle Beach, SC 29577



STATEMENT OF ISSUES

1. Was Petitioner's arguments raised in proper form and venue?
2. Did Judge err in failing to apply Federal statutes where State statute did not exist?
3. Did Judge take into consideration that S.C. Depart. of Corrections, Ridgeland facility and all other SCDC facilities being short of Staff, overcrowded inmate population, lack of clean air and cleaning supplies?
4. Did the Judge take into consideration the fact that my mother has a life threatening illness which require her to rely upon Respiratory Breathing Machine, and she has custody of my two (2) children ages 14 and 15?
5. Did the Judge take into consideration that my wife is currently in the custody of Immigration Detention facing deportation, she has custody of my other two (2) children ages 15 and 16?
6. Did Courts fail to acknowledge Covid-19 as a condition in the language of statute governing "compassionate release in S. Carolina?

Petitioner has contracted Covid-19 which has proved to be a life threatening illness, under unpredictable circumstances. The World, including the (BOP) has acknowledged the dangers of over-crowded confinement, cause the "Cares Act" to be amended and effective. South Carolina has no State statute with language governing release after Covid-19 to inmates. The substantial risk that presents on a consistent basis lead to a Motion for "Compassionate Release".

Petitioner is moving the Courts for a compassionate release in accordance with the language of the "Cares Act"(Section 12003(b)(2). Petitioner argues the supremacy clause gives rise to the rights, which have ben violated in accordance with S.C. Constitution Art. I §15. The State has raised their objection, stating petitioner's arguments are not in the proper venue to receive the relief he seeks. The State contends South Carolina has a governing statute regarding compassionate although does not acknowledge the Covid-19 pandemic, as the Cares Act.

STATEMENT OF CASE

Petitioner is an inmate in the South Carolina Department of Corrections (SCDC), governed by §24-1-20. After serving 15 years of a 28 year sentence for drug trafficking, petitioner filed a Motion for Release Under Extraordinary circumstances with Horry County.

In 2021, petitioner submitted a letter to the Department of Probation, Parole, and Pardon Services requesting a "compassionate release due to extraordinary circumstances" [Cares Act §12003(b)(2)]. The DPPP denied petitioner's request. Petitioner wrote a similar request to the Warden of the Institution.

After being denied, petitioner filed the motion in Horry County, the county of conviction. An oral hearing was conducted before the Honorable Judge Cothran on April 16, 2022. Defendant raised their argument using language in the S.C. Const. Art. I§15, "Cruel & Unusual Punishment". Petitioner argued he was entitled to relief under "extraordinary circumstances" in the (Cares Act). the deprivation of his constitutional rights initiated the (Supremacy Clause), Supreme Law of the Land. Petitioner directed his argument to the factual basis of the Department of Correction's inability, uniformed by negligence, to meet the statutory standards placed in (§24-1-20). Also that he is the only legal guardian of his children, succeeding his mother whom has a terminal illness. Judge Cothran stated the courts had no jurisdiction to grant petitioner's relief. A re-hearing was conducted in Horry County before the Honorable William Seals, Jr. His opinion was similar to Judge Cothran, and so the motion was denied. *Following this Motion file is Appeal court Honorable Chef William denied Rule 241 on Oct 26 2022.*

STANDARD OF REVIEW

Unless the parties otherwise provide, "the question of arbitrability of a claim is an issue for judicial determination" [Zabinski v. Bright Acres Assocs, 346 S.C. 580, 596; 553 S.E.2d 110, 118 (2001)]. Determinations of arbitrability are subject to de novo review, but if any evidence reasonably supports the circuit court's factual finding this court will not overrule those findings. [Stokes v. Mebro Life Ins. Co., 351 S.C. 606, 609-10; 571 S.E. 2d 711, 713 (Ct. App 2002)].

An appellate court reviews the circuit court's ruling is based upon an error of law, such as application of the wrong legal principle; or when based upon factual conclusions, the ruling is without evidentiary support; or when the circuit court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling



STANDARD OF REVIEW (cont.)

does not fall within range of permissible decisions applicable in a particular case, such as it may be arbitrary and capricious.

S.C. Code Annotated §17-15-50; "Amendment of Order" states "The Court with jurisdiction of the offense, at any time after notice and hearing, may amend the order to impose additional or different conditions of release.

S.C. Const. Art. I §15 addresses the cruel and unusual standard. Const. Art. I §8 addresses judicial discretion in sentencing, also acknowledging the restrictions of legislatures by state and federal statutes alike.

ARGUMENT I

The South Carolina Constitution gives the judge of the court discretionary power to conduct the subject matter and its constitutionality.

Petitioner argued the Agency, South Carolina Department of Corrections (DOC) does not provide, and institute policies regarding Covid-19 protocol. The Agency provided a copy of protocol they have in place, and in doing so, created a question of law as to whether Agency (DOC) has instituted the protocols to meet the statutory provisions set by the "Declaration of Policy Statute" in the 1976 Code Annotated §24-1-20.

Petitioner argues the (DOC) have not implemented these policies which would violate the §24-1-20 statutory provision, infringing petitioner's right under the South Carolina Const. Art. I §15, "Prohibition of Cruel and Unusual Punishment".

Petitioner addressed these concerns with an Agency Warden and the Department of Probation, Parole and Pardons, which is vested the power of clemency through §24-21-920 of the SC Code 1976 Annotated.

After petitioner has gone through the procedural process of notifying and petitioning the Agency, the Agencies have a responsibility to, at least, review claims and make proper corrections to claims. The argument that they have not, in favor of petitioner, creates a question of law eligible for review under the jurisdiction of the courts presiding over the case of petitioner.

## ARGUMENT II

"Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State". [Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78; 58 S.Ct. 817; 82 L.Ed. 1188 (1938)].

"And whether the law of the State shall be declared by its legislature in a statute or by its highest court in a decision is not a matter of Federal concern. There is no federal common law. id]

Petitioner argues the Supremacy Clause provides the "preemption doctrine". In regards to the State preemption is compelled whether Congress command is explicitly stated in the Statute's language or implicitly contained in its structure.

In this particular case, petitioner raises the argument of the unconstitutionality of the "Operation" of (DOC), not its ruling/governing statute(s). That the (DOC) is operating under extraordinary circumstances which would be over-crowded, and understaffed during the Covid-19 pandemic.

At the very least, the Courts have an obligation, powered by the Constitution, to review claims of constitutional infringement, which was properly identified through hearings and notice to the (DOC).

Judicial intervention is most necessary when the constitutional rights of a person is infringed upon, in accordance with S.C. Const. Art. IS15. In petitioner's Motion for Release Under Extraordinary Circumstances, he pleaded with the courts to use powers of a federally enacted law that Congress intended to help prisoners and families during and after the Covid-19 pandemic.

The BOP explicitly states its reasoning to the amended Cares Act. South Carolina does not provide similar relief for their prisoners in fact have no regulation or statutes to combat Covid-19 while understaffed and overcrowded. The Circuit Judge's ruling were in fact conceived in error of law.

The State argued the courts had no jurisdiction on the matter, which was a premature argument. The subject matter was never reviewed through facts and questions of law. The State raised claim to having a statute that addresses sentence reductions, but failed to mention Covid-19 protocols were not amended within its language. Herein lies the error of law.

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ARGUMENT II (cont.)

S.C. Const. Art. V §11 vests the circuit court with original jurisdiction in civil and criminal cases, and shall have appellate jurisdiction as provided by law. The Court's claim of no jurisdiction is a clear abuse of discretion.

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CONCLUSION

In conclusion, Petitioner argues Motion for Compassionate Release Under Extraordinary Circumstances was argued in the proper form and venue. Circuit Judges have an obligatory duty to review any and all constitutional infringements, specifically those of prisoners, in this case.

The Federal Cares Act preempts State law due to its conflict of interest, explicitly the fact that South Carolina does not provide Covid relief to Prisoners, even under the extraordinary circumstances of over-crowding and short of staff.

Petitioner's specific relief would be that the petition be reviewed through facts of law and circumstance. Petitioner asks that the S.C. Supreme Court reverse and remand with an opinion.

Injunctive Power !!!!!

James Goss

Nov. 4. 2022

A. South Carolina Constitution Article XII § 2 articulates specific requirement concerning the manner by which the State must treat its prisoners.

In the early 1970's, the General Assembly and the people of this State amended the South Carolina Consitution to mandate that the State provide specific services to its prisoners, The amendment reads as follows:

Article XII

§2. Institutions for confinement of persons convicted of crimes.

The General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates.

In order to understand the meaning of any legal statute or phrase of law, it is necessary to determine the meaning of the language as it is used in the particular context. [Robinson v. Shell Oil Company, 117 S.Ct. 843, 846 (1977)].

[1] Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. Our inquiry must cease if the statutory language is unambiguous and "the statutory scheme is coherent and consistent". [U.S. V. Ron Pair Enterprises, Inc., 109 S.Ct. 1026, 1030 (1989); see also Connecticut Nat. Bank v. Germain, 112 S.Ct. 1146, 1149-50 (1992)].

Article XII § 2 utilizes the words "shall provide..." In this context, "shall" is mandatory. [U.S. v. Myers, 106 F.3d 946, 941 (CA10 1997)].

[13]...It is basic canon of statutory construction that the use of the word "shall" indicates a mandatory intent. [Association of Civilian Technicians v. Federal Labor Relations Auth., 22 F.3d 1150, 1153 (D.C. Cir. 1994)].

While the focus of this argument is on the constraints placed on the legislature to provide meaningful rehabilitation to the State's prisoners, it should be noted that Art. XII § 2 stands as a command and State Constitutional guarantee.

The legal meaning of Rehabilitation is found in Black's Law Dictionary (6th ed. 1990), which states:

Investing or clothing again with some right, authority or dignity. Restoring person or thing to a former capacity; reinstating; qualifying again. Restoration of individual to his greatest potential, whether physically, mentally, socially or vocationally.

Accordingly, there can be no doubt that rehabilitation in the context of Article XII § 2 means restoring the prisoner to a capacity where he can physically, mentally, socially and vocationally reenter society as a productive member. Furthermore, to ensure that the commands of the Constitution were abided by, the General Assembly and the people of South Carolina left no doubt as to their intentions in this regard by placing severe restrictions on the activities of all branches, agencies departments, and subdivisions of state government, thus limiting their authority only to that allowed by the Constitution.

#### Article 1

#### § 23. Provisions of Constitutional Mandatory

The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where made directory or permissory by its own Constitution.

Hence, the Constitution of South Carolina is a limitation upon, rather than a grant of, legislative powers. [Smith v. Roberson, 210 S.C. 99, 41 S.E.2d 631 (1947)]. In other words, the government must abide by and is limited to the terms granted to it in the Constitution.

Although the commands of the Constitution are quite clear, there exists some confusion over the court's interpretation of this Constitutional Amendment because of two citations under the

due process, equal protection and the ban against cruel and unusual punishment, than that which is required under the United States Constitution.

1.

Like every other article, clause, phrase or word in the Constitution, Article XII § 2 of the South Carolina Constitution is a command. It is not meaningless phraseology without specific intent and purpose. The State Constitution does not allow the legislature unbridled authority in the passage of laws.

The General Assembly may only enact laws that are not expressly or by clear implication, prohibited by the Constitution. Elliot v. McNair 250 S.C. 75, 156 S.E.2d 421 (emphasis added).

In other words, the legislature must abide by and is limited to the terms granted to it in the Constitution, because the Constitution is the supreme law. Anton v. S.C. Coastal Council, 469 S.E.2d 604 (1996). (emphasis added)

...where there is a conflict between a statute and the State Constitution, the Constitution overrides the statute. State v. Whitener, 225 S.C. 244, 81 S.E.2d 784 (1954).

Simply put, the General Assembly made a contract with the people and prisoners of this state to ensure that the prisoners would receive sufficient rehabilitation during their incarceration. Thus, ensuring them a greater chance at being a successful and productive citizen if released back into society.

This constitutional obligation cannot be abridged or avoided simply by the passage of more restrictive sentencing laws. The passage of any restrictive sentencing laws that alter, deny or otherwise interfere with the commands of the Constitution, make the law unconstitutional.

Hence, Article XII § 2 is equivalent to a constitutional contract in which State prisoners have a liberty and property interest that must be honored. Logan v. Zimmerman Brush Co., 455 U.S. 422, 430-31 (1982); see also Ken Moorhead Oil Co. v. Federated Mut. Ins., 476 S.E.2d 481, 485 (SC 1996).

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Therefore, South Carolina Constitution Article XII § 2 limits legislative authority to "provid[ing] for the custody, maintenance, health, welfare, education and rehabilitation of the inmates" in order to ensure that any prisoner returned to society would be "physically, mentally, socially [and] vocationally" prepared to be a productive member of society. (Jones v. Grinnel Corp., 362 A2d 139, 143). Any attempt by the legislature or other department or agency to abridge this right is unconstitutional. In other words, the legislature cannot avoid its constitutional duty by "putting slippage in the joints" that allows a state department or agency to do what the legislature is forbidden to do by giving that department or agency "unbridled discretion" in its decision making process. [U.S. Outdoor Advert. Inc. v. S.C. Dept. of Transportation, 481 S.E.2d 112, 113 (1997)].

[2, 3] An administrative regulation is valid so long as it is reasonably related to the purpose of the enabling legislation. [Hunter & Walden Co. v. S.C. State Licensing Bd. of Contractor, 272 S.C. 211, 251 S.E. 2d 186 (1978)]. However, although regulations have the force of law, they may not alter or add to the terms of a statute. Goodman v. City of Columbia, 318 S.C. 488, 458 S.E.2d 531 (1995); Society of Prof'd Journalist v. Sexton, 382 S.C. 563, #24 S.E.2d 313 (1984)].

Hence, any law passed by the legislature which denies or interferes with a prisoner's rehabilitation, or any delegation of authority to any state agency which does the same is unconstitutional.

2.

It is undisputed that under the United States Constitution although states must provide the basics to a prisoner, Estell v. Gamble, 97 S.Ct. At 290-91, they are not required to rehabilitate them. Williams v. McGinnis, 755 F.Supp. 230. However, unlike the federal consstitution, the South Carolina Constitution does require that prisoners be rehabilitated. Accordingly, federal rights can flow from a court's interpretation of a state constitution. [Mathis v. Eli Lilly and Co. 719 F.2d 134, 137 (1983)].

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When presented with challenge to constitutionality of state statute under State Constitution, federal court must look to the decision of the state Supreme Court and, if there are none, must determine how the state Supreme Court would rule if presented with the same issue.

Hence, when a court takes into consideration the fact that the South Carolina Constitution demands rehabilitation for its prisoners and that this Constitution, itself, is a mandate to government from the people, the federal constitution takes on a different meaning. When a state violates its own constitution and the mandates of its people, that would be "truly irrational" in violation of substantive due process. [Thompson v. Ellenrecker, 935 F.Supp. 1037, 1040 (DCSC) 1995)].

The Eighth Circuit explained "[a] plaintiff asserting a substantial Due Process claim must establish that the government action complained of is "truly irrational", that is something more than... arbitrary, capricious, or in violation of state law. Anderson v. Douglas County, 4 F.3d 574, 577 (8th Cir. 1991)].

Moreover, the Eighth Amendment to the U.S. Constitution must also take on a different meaning since the people set the minimum standards of civilized decency in South Carolina by mandating rehabilitation as part of their Constitution. [Tropp v. Dulles, 78 S.Ct. 590, 598 (1958)]. The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.

Finally, the Equal Protection clause also requires more protection as South Carolina has elevated its prisoners to a protected class. Any legislation enacted that denies rehabilitation to them must be judged under strict scrutiny. Personnel Adm's of Mass. v. Feeney, 99 S.Ct. 2282; Feeney v. Comm. Of Mass., 475 F.Supp. 109, affirmed 100 S.Ct. 1075 (1980).

The problem in South Carolina can be summed up in one case: *Brown v. Evatt*, 470 S.E.2d 848, 851 (1996). The federal constitution vest no liberty interest in inmates retaining or receiving any particular security or custody status as long as the challenged conditions or degree of confinement are within the sentence imposed and are not otherwise violative of the constitution. (*Sandin v. Conner*), 115 S.Ct. 2293 (1995); *Slezak v. Evatt*, 21 F.3d 590 (4th Cir.). Within these limits and custody classification of state prison inmates is a matter for state prison official discretion whose exercise is not subject to federal procedural due process constraints. (*Sandin v. Conner*, *Supra*). Nonetheless, a liberty interest in state inmates to retain or attain a particular security or custody classification may be created by state law which places substantive limitations on official discretion. However even if a state law regime mandates both a detailed procedural process for making classification decisions and substantive criteria to be used in making those decisions, no constitutionally protected liberty interest is created if the regime either the primary decision maker or any reviewing authority is authorized to override, as a matter of discretion, any classification suggested by application of the prescribed substantive criteria. (*Slezak v. Evatt*, *Supra*). Holding that *Brown* had no liberty interest because "neither the state statutes which creates and defines the powers of SCDC's operational classification regulations create the required liberty interest". it is important to note that *Brown* brought his case under the United States Constitution without asking the court to consider the mandates of South Carolina Constitution Article XII § 2. Had *Brown* brought his claim under Art. XII § 2, the state would have been forced to implement procedures which are outcome determine by placing "substantive limitations on official discretion and a detailed procedural process for making classification decisions" along with a substantive criteria to be used in making those decisions as required by the mandatory language of Art. XII § 2. Once the allegations contained in the Plaintiff's Complaint along with the law and practices contained in the facts of this brief (*infra*) are given proper consideration, it is clear that the legislature has violated the commands of the state and federal constitution by passing laws which directly deny prisoners of access to meaningful rehabilitations programs. They have further violated the constitutions by passing laws which allow

or create "sippage in the joints" which permits the Department of Corrections and Parole Board to deny rehabilitation to prisoners by using "unbridled discretion" and no "detailed procedural process" or "substantive criteria" upon which their decisions must be made. Since the legislature has clearly exceeded the scope of authority granted to it by the Constitution, the conditions of confinement must be corrected as a matter of law. SCDC cannot save my life because so many people have died because shortness of staff. I need to be Released Under Extraordinary Circumstances due to under-staffing for more than 10 years. My life matters and I don't want to die and be forgotten about, like the rest of the inmates that die in SCDC. The law makers and Gov. has neglected duties of short of staff for over 15 years CAUSING me to catch Covid-19.

Jamie Goss  
Jamie Goss

ATTACHMENT

As to Issue I, this court erred in concluding that Appellant is not entitled to Compassionate Release for Extraordinary Circumstances due to Covid-19. When South Carolina Department of Corrections, (herein after SCDC) has shown failures to adequately prevent, address and respond to Covid-19 pandemic. The substandard patterns or practices within SCDC, in which this court is aware of these deficiencies, i.e. overcrowding, short of staff, including but not limited to security, medical and mental health staff, which are the three main components in administering the Covid protocols.

Futhermore, SCDC is very much aware of their failures to correct these substandard patterns or practices which would lead to serious bodily and or mental injury.

The Covid-19 pandemic is still very much alive within SCDC and it is a health hazard due to all the above reasons stated.

Furthermore, SCDC's reponse is lock-down 24/7. Appellant's rights to be free from the threat of the Covid-19 pandemic under the amendments to the Constitution of the United States are being overlooked by this Court.

SCDC's response to the pandemic is problematic to the morale and overall mental health of prisoners systemwide.


Fact finders have shown that SCDC has substantially fallen below the ACA standard of a modern prison.

There is a substantial risk of harm with overcrowding, and remaining in close quarters during this pandemic. Quarantine has the effect of raising the risk due to shortage of staff in the medical and security divisions.


When systematic deficiencies in staffing facilities, or procedures make unnecessary suffering inevitable, a court should not hesitate to use the injunctive power. Todaro vs. Ward 565 F.2d 48, 52 (2nd Cir. 1977). The overcrowding and understaffing within SCDC has exposed Appellant to a constitutionally unacceptable substantial risk from the Covid-19 pandemic and physical violence. SCDC has manifested "deliberate indifference" toward this risk. If this court overlooks or misapprehended this issue, it too would have manifested further "deliberate indifference" toward this risk. *James E.*

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