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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
THE HONORABLE JOCELYN NEWMAN
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2025-001923
CIVIL ACTION NO. 2020-CP-40-05532

Marion Katrell Campbell, on behalf of himself and all others similarly situated,

RESPONDENT,

versus

South Carolina Department of Corrections,

APPELLANT,

AND

Wardell Williams, Harry Simmons, Jr., and Isiah Rollins,

RESPONDENTS,

versus

South Carolina Department of Corrections,

APPELLANT,

AND

Larry Hampton, Christopher McDowell, David Payton, Jr., and Michael Smoak,

RESPONDENTS,

versus

South Carolina Department of Corrections,

APPELLANT,

AND

Henry Belton,

RESPONDENT,

versus

South Carolina Department of Corrections,

APPELLANT.

FINAL REPLY BRIEF

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STATEMENT OF ISSUES IN REPLY

- I. SCDC is immune from liability on Plaintiffs' false imprisonment claim pursuant to the exceptions to the waiver of immunity under the South Carolina Tort Claims Act.
 - A. Plaintiffs' claim for false imprisonment arises out of SCDC's failure to enforce relevant provisions of the Omnibus Act to release Plaintiffs' from incarceration at an earlier time; therefore, SCDC is immune from liability pursuant to the exception to the waiver of immunity providing that a governmental entity is not liable for loss resulting from the adoption, enforcement, or compliance with any law or failure to adopt or enforce any law.
 - B. SCDC's interpretation of the Omnibus Act and its application of that interpretation to inmate release dates involves the exercise of discretion or judgment for which a governmental entity is immune from liability.
 - C. SCDC's interpretation of the Omnibus Act and its application of that interpretation to inmate release dates invokes immunity for the decision to or implementation of release of an inmate.
 - D. Plaintiffs agree the gross negligence standard of the custodial immunity exception to the waiver of immunity is not applicable to the false imprisonment claim.
- II. SCDC did not unlawfully restrain any member of the plaintiff class as required for a false imprisonment claim.
 - A. The Omnibus Act did not apply retroactively to those class members sentenced before the effective date of the Act; therefore, because these class members were not entitled to any early release under the Act, SCDC did not unlawfully restrain them.
 - B. Inmates sentenced after the effective date of the Omnibus Act were validly restrained by SCDC until this Court determined that the relevant provisions of the Act should be construed to apply credits for early release.
- III. The alleged injuries of each class member stemmed from the same, singular act by SCDC in interpreting the Omnibus Act and applying its interpretation to inmate release dates; therefore, the complaint alleges only one occurrence for which the total sum potentially recoverable under the Tort Claims Act is six hundred thousand dollars regardless of the number of claims or actions involved.

- IV. Because Plaintiffs' false imprisonment and negligence/gross negligence claims are premised upon the same factual allegations, the immunities and monetary limitations of liability under the Tort Claims Act also apply to Plaintiffs' negligence/gross negligence claim to limit liability.

ARGUMENT IN REPLY

I. SCDC is immune from liability on Plaintiffs' false imprisonment claim pursuant to the exceptions to the waiver of immunity under the South Carolina Tort Claims Act.

- A. Plaintiffs' claim for false imprisonment arises out of SCDC's failure to enforce relevant provisions of the Omnibus Act to release Plaintiffs' from incarceration at an earlier time; therefore, SCDC is immune from liability pursuant to the exception to the waiver of immunity providing that a governmental entity is not liable for loss resulting from the adoption, enforcement, or compliance with any law or failure to adopt or enforce any law.**

Plaintiffs construe the definition of the term "enforce" too narrowly. The Legislature has mandated that the provisions of the Tort Claims Act "establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty . . . be *liberally construed* in favor of limiting the liability of the State." S.C. CODE ANN. § 15-78-20(f) (emphasis added).

Liberal construction requires that the term "enforce" as used in the exception to the waiver of immunity for the "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law" be understood in the broadest sense of its definition. Plaintiffs' argument hinges on the term "enforce" only meaning to compel or to take action against another. But Plaintiffs ignore that the term "enforce" also expressly means to "give force or effect to (as law, etc.)" or to "carry out effectively." See ENFORCE, Black's Law Dictionary (12th ed. 2024); Merriam-Webster, "Enforce," www.merriamwebster.com/dictionary/enforce (last visited July 13, 2026).

Plaintiffs also ignore that SCDC is the agency charged with administering the State's correctional system and implementing sentencing mandates. S.C. CODE ANN. § 1-30-10(A); S.C. CODE ANN. § 24-1-30; [R.p. 8; Campbell v. Florian, 972 F.3d 385, 398 (4th Cir. 2020) (recognizing State has empowered SCDC to implement sentencing law).] The definition of “enforce” meaning “to give force and effect to (a law)” directly encompasses SCDC's role in carrying out and giving effect to statutory sentencing provisions. If SCDC fails to carry out or give effect to a law, it has failed to enforce the law within the meaning of the immunity provided under § 15-78-60(4) of the Tort Claims Act.¹

The Legislature's omission of “failure to comply” from the second phrase of § 15-78-60(4) does not preclude immunity to SCDC where SCDC's conduct in carrying out or failing to carry out the Omnibus Act's sentencing provisions, as explained above, is enforcement activity already immunized under the Legislature's “failure to enforce” language. SCDC had more than a duty to comply; it was charged with enforcing the law.

Where the text of a statute is “plain and unambiguous, and conveys a clear and definite meaning,” there is nothing for a court to do except to apply the plain meaning. Kennedy v. S.C. Ret. Sys., 345 S.C. 339, 346, 549 S.E.2d 243, 246 (2001) (quoting Paschal v. State Election Comm'n, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995)). Under the plain definition of the term “enforce” and construing the language of § 15-78-60(4) broadly in favor of limiting liability, SCDC is entitled to immunity under the Tort Claims Act and the

¹ Plaintiffs argue “enforce” is a transitive verb which requires an object, but the “law” is an object which can be enforced.

grant of summary judgment on the false imprisonment claim due to its alleged failure to enforce the provisions of the Omnibus Act.²

B. SCDC’s interpretation of the Omnibus Act and its application of that interpretation to inmate release dates involves the exercise of discretion or judgment for which a governmental entity is immune from liability.

SCDC’s decision as to the interpretation and application of the Omnibus Act involved the exercise of discretion or judgment entitling it to immunity under S.C. CODE ANN. § 15-78-60(5). At the time SCDC was applying the Omnibus Act, the statute’s interaction with the pre-existing no-parole provisions of S.C. CODE ANN. § 23-13-100 and S.C. CODE ANN. § 24-13-150(A) presented a genuine interpretative question – whether the Omnibus Act implicitly repealed the no-parole designation. The interpretative question presented by the pertinent provisions of the Omnibus Act required professional and legal judgment to resolve.

The ultimate incorrectness of SCDC’s legal interpretation does not negate the discretionary nature of the decision-making process it engaged in. Discretionary immunity protects the process of weighing competing considerations, not just correct outcomes. Plaintiffs contend the Supreme Court’s statement in McCall by Andrews v. Batson, 285 S.C. 243, 246, 329 S.E.2d 741, 742 (1985) that the “exercise of discretion includes the right to be wrong” no longer applies after the enactment of the Tort Claims Act.

² Plaintiffs also rely upon an opinion issued by the Indiana Court of Appeals, St. Joseph Cnty. Police Dep’t v. Shumaker, 812 N.E.2d 1143 (Ind. Ct. App. 2004), but the principles espoused in that case and the interpretation of the provisions of Indiana’s Tort Claims Act are based upon Indiana common law. The opinion does not address principles of statutory construction or construing its Torts Claims Act liberally as to be done under South Carolina law.

In Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001), this Court analyzed the decision in McCall. This Court noted that McCall “largely abolished the doctrine of sovereign immunity,” but carved out certain exceptions to that holding:

[T]he abrogation of the rule will not extend to legislative, judicial and executive acts by individuals acting in their official capacity. These discretionary activities cannot be controlled by threat of tort liability by members of the public who take issue with the decisions made by public officials. We expressly decline to allow tort liability for these discretionary acts. The exercise of discretion includes the right to be wrong.

Williams, 347 S.C. 227 at 248-49, 553 S.E.2d at 508 (quoting McCall, 285 S.C. at 246, 329 S.E.2d at 742)).

This Court in Williams then noted that when the Legislature enacted the Tort Claims Act, “it codified the McCall exceptions.” Williams, 347 S.C. 227 at 249, 553 S.E.2d at 508. This included the above language from McCall that executive acts by individuals acting in their official capacity are discretionary activities exempt from tort liability and that “the right to be wrong” is included in those acts exempt from liability. Id.

Here, SCDC, as an executive agency, carried out its function in interpreting and applying the provisions of the Omnibus Act. It grappled with the ambiguous language of the Omnibus Act, as noted by the Fourth Circuit. [R.p. 3; Campbell v. Florian, 972 F.3d 385, 389 (4th Cir. 2020) (observing the “arguable contradiction” created by the Omnibus Act).] The two competing opinions issued by different judges of the Administrative Law Court further demonstrates that the question presented by the Omnibus Act involved genuine competing interpretative considerations, not simply the ministerial application of unambiguous law.

Plaintiffs further discount the Fourth Circuit’s factual findings made in this very case that SCDC’s attorney acted reasonably as “a careful attorney” would to confront the

statutory interpretative questions before him. [See R.p. 6; Campbell, 972 F.3d at 395(4th Cir. 2020).] Plaintiffs argue the Fourth Circuit’s factual findings are mere dicta which have no bearing upon the issues in this appeal. While the Fourth Circuit made factual findings in addressing qualified immunity under a federal deliberate indifference standard, those factual findings made in this case also bear upon the issue of discretionary immunity because those factual findings show that SCDC exercised professional judgment in interpreting the provisions of the Omnibus Act even though the interpretation was later deemed incorrect.

SCDC was not faced with solely a ministerial task as Plaintiffs contend. Before the provisions of the newly enacted Omnibus Act could be applied, they had to be interpreted by the professionals charged with applying them. Discerning legislative intent also required the use of professional judgment. Because SCDC exercised discretion and judgment in interpreting and applying the provisions of the Omnibus Act, SCDC is immune from Plaintiffs’ false imprisonment claim under § 15-78-60(5) of the Tort Claims Act.

C. SCDC’s interpretation of the Omnibus Act and its application of that interpretation to inmate release dates invokes immunity for the decision to or implementation of release of an inmate.

The language of S.C. CODE ANN. § 15-78-60(21) exempts from liability the “implementation of release” of any prisoner. This language is broad enough to encompass decisions about the timing and conditions of release, including the process of calculating and determining release dates which is the conduct at issue here. SCDC made decisions directly concerning the implementation of release dates for which it is entitled to immunity under the express language of § 15-78-60(21).

D. Plaintiffs agree the gross negligence standard of the custodial immunity exception to the waiver of immunity is not applicable to the false imprisonment claim.

Plaintiffs agree that the gross negligence standard under S.C. CODE ANN. § 15-78-60(25) is not applicable to the false imprisonment claim. For the reasons asserted herein and in the Appellant's Brief, SCDC is therefore entitled to immunity under S.C. CODE ANN. § 15-78-60(4) for the failure to enforce a law, S.C. CODE ANN. § 15-78-60(5) for the exercise of discretion or judgment, or S.C. CODE ANN. 15-78-60(21) for the decision to or implementation of release of an inmate without any regard to a gross negligence exception.

II. SCDC did not unlawfully restrain any member of the plaintiff class as required for a false imprisonment claim.

A. The Omnibus Act did not apply retroactively to those class members sentenced before the effective date of the Act; therefore, because these class members were not entitled to any early release under the Act, SCDC did not unlawfully restrain them.

The Legislature's inclusion of the savings clause in the Omnibus Act evinces its clear intent that the terms and provisions of the Omnibus Act were to be applied prospectively only. Therefore, those inmates sentenced under S.C. CODE ANN. § 44-53-375(B) prior to the enactment of the Omnibus Act continued to be not eligible for parole and had to serve eighty-five percent of their sentences.

Plaintiffs continue to argue that SCDC admitted the Omnibus Act applied to pre-2010 amendment inmates, even though SCDC never admitted the Omnibus Act applied retroactively and only admitted as to what the calculation of release dates would be for the pre-2010 amendment inmates if the Omnibus Act were applied, which SCDC chose to voluntarily apply to those inmates sentenced prior to the effective date of the Act.

But no matter what SCDC may or may not have admitted, any such admissions do not negate the language of the Omnibus Act and its savings clause evincing the Legislature's intent that the Act be applied prospectively. Under the terms of § 44-53-375(B) prior to its amendment and the savings clause of the Omnibus Act, SCDC had absolute legal authority to restrain the pre-2010 amendment inmates and cannot be liable for false imprisonment.

Plaintiffs also argue that the Omnibus Act is remedial, but that analysis is not reached in light the Act's savings clause. A "clear expression of legislative intent" eliminates any need to determine whether an amendment is remedial. State v. Hilton, 406 S.C. 580, 588, 752 S.E.2d 549, 553 (Ct. App. 2013).

Plaintiffs then argue the terms of the savings clause do not apply because the question of parole does not involve any sort of penalty, forfeiture, or liability. For the pre-2010 amendment inmates, they suffered a penalty upon conviction under § 44-53-375(B) because they were not eligible for parole. The bar of parole eligibility under the prior version of § 44-53-375(B) is a punitive measure and thus a penalty, forfeiture, or liability saved by the savings clause of the Omnibus Act. See Warden, Lewisburg Penitentiary v. Marrero, 417 U.S. 653, 664, 94 S. Ct. 2532, 41 L. Ed. 2d 383 (1974).

It is the prohibition against parole that is the penalty, forfeiture, or liability, not the general nature of parole itself as Plaintiffs discuss in their brief. The penalty of parole ineligibility remained in effect via the savings clause of the Omnibus Act for those inmates sentenced prior to the enactment of the Omnibus Act.³

³ Plaintiffs also rely upon Tyree v. Moran, 550 P.2d 1076 (Ariz. 1976) and State v. Vera, 334 P.3d 754 (Ariz. Ct. App. 2014) in arguing that statutes relating to parole are remedial, but those cases do not analyze the issue in connection with a savings clause to an amendment expressly preserving all prior penalties, forfeitures, and liabilities.

Finally, Plaintiffs contend that the “[n]otwithstanding any other provision of law” language of Section 38 of the Omnibus Act means that the savings clause of the Omnibus Act does not apply to it and thus its terms were to be applied retroactively. See 2010 South Carolina Laws Act 273, § 38 (S.B. 1154). But Section 38 containing the amendments to § 44-53-375(B) is a part of the Omnibus Act, and the amendment to § 44-53-375(B) took place by operation of the Act, which contains a savings clause. See State v. Brown, 402 S.C. 119, 127, 740 S.E.2d 493, 497 (2013). Therefore, all the provisions of the Omnibus Act apply to the statutory amendment, including the savings provision.

In addition, the savings clause provides that it “does not affect pending, actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide.” 2010 South Carolina Laws Act 273, § 65 (S.B. 1154) (emphasis added). Nothing in Section 38 of the Omnibus Act amending § 44-53-375(B) provides or indicates that the amendment was to be applied retroactively.

The language of the savings clause is clear, and no matter the Legislature’s purpose for enacting the Omnibus Act, it chose to include the savings clause to express its intent that the Act be applied prospectively. Accordingly, the pre-2010 amendment inmates were not falsely imprisoned, and SCDC is entitled to the grant of summary judgment on the false imprisonment claim as to these inmates.

B. Inmates sentenced after the effective date of the Omnibus Act were validly restrained by SCDC until this Court determined that the relevant provisions of the Act should be construed to apply credits for early release.

As Plaintiffs note, false imprisonment is a refusal to release one from confinement when there is a legal duty to do so. As to the post-2010 amendment inmates, the Administrative Law Court had issued an opinion authorizing SCDC's detention of those inmates convicted under S.C. CODE ANN. § 44-53-375(B). [R.pp. 298-302; Bolin v. South Carolina Dep't of Corrections, No. 13-ALJ-04-0534-AP (S.C. Admin. Law Ct. Feb. 24, 2014).]

Although another Administrative Law Court judge reached an opposite conclusion in the Fowler case, when two tribunals of equal weight and authority reach opposite conclusions on the same legal question, SCDC should not face fault and liability for acting pursuant to one of those decisions until a higher court could resolve the issue. Until this Court reached its opinion and issued the remittitur in Bolin v. S.C. Dep't of Corr., 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016), the legal duty of SCDC to release did not arise. Accordingly, SCDC did not unlawfully restrain the post-2010 amendment inmates.

III. The alleged injuries of each class member stemmed from the same, singular act by SCDC in interpreting the Omnibus Act and applying its interpretation to inmate release dates; therefore, the complaint alleges only one occurrence for which the total sum potentially recoverable under the Tort Claims Act is six hundred thousand dollars regardless of the number of claims or actions involved.

Plaintiffs argue that in determining the number of occurrences which occurred under the Tort Claims Act, the Court should disregard the Legislature's definition of "occurrence" which expressly defines it as "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. CODE ANN. § 15-78-30(g).

Plaintiffs contend that looking at the single act of negligence – here, the legal interpretation of the Omnibus Act – is not appropriate with a false imprisonment claim.

The Legislature, however, has chosen this definition of “occurrence” for all torts under the Tort Claims Act and has opted to limit liability for all events, no matter how many, unfolding from a single act of negligence. Once the General Assembly has made a public policy decision, the courts have no authority to invalidate that decision. See ArrowPointe Fed. Credit Union v. Bailey, 438 S.C. 573, 580, 884 S.E.2d 506, 509 (2023) (“Determinations of public policy are chiefly within the province of the legislature, whose authority on these matters we must respect.”) (internal citation omitted); Nationwide Ins. Co. of Am. v. Knight, 433 S.C. 371, 376, 858 S.E.2d 633, 635 (2021) (observing “the General Assembly establishes the public policy . . . and enacts statutes to let the public and the courts know what that policy is”); Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 523, 377 S.E.2d 569, 570 (1989) (“It is the responsibility of this Court to construe statutes; we have no power to legislate.”); S.C. Farm Bureau Mut. Ins. Co. v. Mumford, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989) (“Once the Legislature has made that choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.”).

In this case, the alleged tortious conduct stems from a single governmental decision applied uniformly to the inmates. The individual variations in release dates and periods of alleged excess detention are merely downstream consequences of that single decision. Pursuant to the unambiguous definition of “occurrence” under the Tort Claims Act, there is only one occurrence in this case.

IV. Because Plaintiffs' false imprisonment and negligence/gross negligence claims are premised upon the same factual allegations, the immunities and monetary limitations of liability under the Tort Claims Act also apply to Plaintiffs' negligence/gross negligence claim to limit liability.

Plaintiffs do not identify any different underlying facts under their negligence/gross negligence claim from their false imprisonment claim. The Tort Claims Act immunity analysis applicable to the conduct forming the basis of their false imprisonment claim equally applies to the allegations of the same conduct forming the basis of their negligence/gross negligence claim. Because the parties moved for cross-motions for summary judgment on the same set of facts, the Court may, should it agree with SCDC as to the arguments on the false imprisonment claim, find SCDC is also entitled to summary judgment on the immunities and limitations of liability set forth in the Tort Claims Act on the negligence/gross negligence claim as well.

CONCLUSION

For the reasons set forth herein and in the Appellant's Brief, SCDC respectfully requests this Court to reverse the grant of summary judgment to Plaintiffs on the false imprisonment claim and to enter judgment in favor of SCDC on the false imprisonment and negligence/gross negligence claims. Alternatively, SCDC requests the Court to reverse the Trial Court's ruling that Plaintiffs have asserted multiple occurrences under the Tort Claims Act.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

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