

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

Case No.: 12-ALJ-30-0014-AP

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

SC Court of Appeals

v.

Johnnie L. Bryant,.....Respondent.

FINAL REPLY BRIEF OF APPELLANT

January 31, 2014

South Carolina Department of Corrections

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ARGUMENT

I. THE DEFERENTIAL STANDARD OF REVIEW PROVIDED BY S.C. CODE ANN. § 8-17-340(E)(1) APPLIES TO THE CHARGES THAT RESPONDENT MADE FALSE STATEMENTS DURING THE COURSE OF AN OFFICIAL INVESTIGATION AND FALSIFIED OFFICIAL DOCUMENTS.

The deferential standard of review provided in S.C. Code Ann. § 8-17-340 (E)(1) extends to all the offenses charged in respondent's corrective action, including the charges of making false statements and falsifying official documents.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id. A statute's language is construed in light of the intended purpose of the statute. See Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 23, 579 S.E.2d 334, 336 (Ct. App. 2003).

S.C. Code Ann. § 8-17-340(E)(1), provides in relevant part that the more deferential standard of review applies “[i]n cases involving actual or threatened abuse[.]” Nothing in the language of section 8-17-340 indicates the deferential standard of review is limited to the specific charge of inflicting the abuse in question. Instead, the statute is written broadly to include any case involving such abuse. Consequently, the plain language of section 8-17-340(E)(1) includes the failure to report abuse and falsifying documentation related to abuse.

A broad reading of the more deferential standard of review would also serve the purpose of section 8-17-340(E)(1). The deferential standard of review was first added by S.C. Act No. 110 (June 11, 1993) which included the following legislative findings:

Whereas, the General Assembly finds it necessary:

- (1) to provide a system of adult protection in South Carolina;
- (2) to clarify the roles and responsibilities of agencies involved in the system;
- (3) to provide a mechanism for problem resolution and interagency coordination;
- (4) to address continuing needs of vulnerable adults;**
- (5) to uniformly define abuse, neglect, and exploitation for vulnerable adults in all settings;
- (6) to clarify reporting procedures for allegations of abuse, neglect, and exploitation;**
- (7) to provide procedures for emergency protective custody;
- (8) to define the role of the court in the adult protection system;
- (9) to provide civil and criminal penalties for abuse, neglect, and exploitation;**
- (10) to provide services in the least restrictive setting possible.

(Emphasis added). A broad application of the deferential standard of review to all cases involving abuse, as specified by the language of the statute, serves the legislature's intent by enforcing reporting procedures and ensuring effective application of penalties for all offenses related to abuse.

Because the deferential standard of review provided by S.C. Code Ann. § 8-17-340(E)(1) applies to all cases involving abuse, including those involving false statements and false documentation related to such abuse, the Committee erred in applying a less deferential standard of review.

II. THE APPLICATION OF THE INCORRECT STANDARD OF REVIEW WAS NOT HARMLESS ERROR.

The State Employee Grievance Committee's use of an incorrect standard of review was

not harmless error because it could reasonably have affected the outcome of the hearing.

For an error to be harmless, it must be shown beyond a reasonable doubt that the error did not contribute to the verdict. See Wells v. Halyard, 341 S.C. 234, 237, 533 S.E.2d 341, 343 (Ct. App. 2000).

As outlined in detail in the Department's principal brief, the Committee was presented with evidence in the form of witness testimony – testimony the Committee found to be credible – that facts were being omitted from the reports Bryant completed and statements that Bryant provided. The witness testimony further explained the omissions occurred with the intent to mislead. (R.p.201, lines 5-18). Considering this credible witness testimony in conjunction with content of Bryant's reports, respondent has not shown beyond a reasonable doubt that application of the incorrect standard of review did not affect the Committee's decision.

III. THE APPROPRIATENESS OF THE SANCTIONS IMPOSED AS A RESULT OF RESPONDENT'S CHARGES SHOULD BE ADDRESSED IN THE FIRST INSTANCE BY THE STATE EMPLOYEE GRIEVANCE COMMITTEE.

In the event the Court agrees there was sufficient evidence to support the charges of making false statements and falsifying official documents, the appropriate remedy would be remand the matter to the Committee to evaluate the appropriateness of the sanctions the Department imposed using the correct standard of review. In his brief, respondent invites the Court to preemptively evaluate whether the Department's decision to terminate respondent's employment was an abuse of discretion.¹ However, because that issue has not yet been ruled

¹ Respondent incorrectly refers to the sanction as an 1800-day suspension. In doing so, respondent conflates his administrative suspension (from August 25, 2008 to March 30, 2011) with his termination (effective March 30, 2011). The employee grievance at issue dealt only with respondent's termination, and as a result the order currently on appeal relates back only to March 30, 2011. (R.p.54). Therefore, the period of administrative suspension prior to respondent's

upon by the Committee, the Committee should be given the opportunity to consider that issue before it is addressed on appeal.

CONCLUSION

WHEREFORE, for the foregoing reasons, SCDC respectfully requests the Court reverse the decision of the Court of Appeals.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Attorney for Appellant



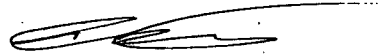
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January 31, 2014

termination is not properly before the Court at this time.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR and the Supreme Court's order of August 13, 2007.



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CERTIFICATE OF SERVICE

I hereby certify that I have served Respondent a copy of this Final Reply Brief by depositing a copy of same in the United States Mail, postage prepaid, January 31, 2014 addressed to the Respondent as follows:

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