

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Carolyn C. Matthews, Admin. Law Judge

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Case No.: 2014-002172  
Grievance No.: BRCI-0594-07

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Joshua Cramer, . . . . . Appellant,  
  
v.  
  
SCDC, . . . . . Respondent.

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APPELLANT'S INITIAL BRIEF

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**SC Court of Appeals**

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TABLE OF AUTHORITIES

Section 24-3-40 (A)(5) and (B)(2)

Section 24-3-315

Torrence v. SCDC, 373, SC 586, 646 S.E. 2d. 866 (2007)

Wicker v. SCDC, 360 S.C. 421, 602 S.E. 2d. 56(2004)

Brown v. Bi-Lo, Inc, 354 S.C. 436, 581, S.E.2d. 836, 838 (2003)

Medtronic Inc. v. Lohr, 518 U.S. 470 (1996)

Chevron USA v. National Resources Defense Council Inc., 467 U.S. 837, 843 (1984)

Wigfall v. Tideland Utilities, Inc. 354, S.C. 100, 110, 580 S.E. 2d. 100, 105 (2003)

Gordon v. Phillips Utils. Inc., 362 S.C. 403, 406, 608 S.E. 2d. 425, 427 (2005)

McClanhan v. Richland County Council, 350 S.C. 433, 438, 567 S.E. 2d. 240, 242 (2002)

Miller v. Aiken, 364 S.C. 303,307, 613 S.E. 2d. 364, 366 (2005)

City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E. 2d. 492, 495 (Ct. App. 1997)

Wade v. Berkeley County, 348 S.C. 224, 229, 559 S.E. 2d. 586, 588 (2002)

Johnson v. Collins Entertainment Co. Inc., 88 F .Supp. 2d. 499

Neal v. Brown, 649 S.E. 2d. 164, 374 SC 641

Buff v. Dept. of Transportation, 505 S.E. 2d. 360, 322 SC 472

US. v. Pippetoe, 178 F.2d. 735

Ackerman v. SCDC Docket No. 07-ALJ-04-00444

Hooper v. Ebenezer, 386 SC 108, 687 S.E. 2d. 29 S.C. (2009)

### STATEMENT OF ISSUES ON APPEAL

- I. SCDC DENIED APPELLANT IMMEDIATE ACCESS TO WAGES ESCROWED FOR HIS BENEFIT AGAINST STATUTORY AUTHORITY OF S.C. CODE ANN. Section 24-3-40 (A)(5); (B)(5); AND 24-3-315.
- II. SCDC DENIES APPELLANT A FAIR INTEREST RATE ON WAGES ESCROWED FOR HIS BENEFIT UNDER Section 24-3-40 (A)(5).
- III. SCDC'S DENIAL OF APPELLANT'S GRIEVANCE BASED ON THE "FIFTEEN DAY DEADLINE" CONFLICTS WITH ITS OWN POLICY GA-01.12 Section 13.9.
- IV. THE ALC'S RULING DENYING APPELLANT ACCESS TO HIS ESCROWED WAGES BASED ON THE "FIFTEEN DAY DEADLINE" ROBS APPELLANT OF THE RIGHT TO HAVE THE ISSUES IN HIS GRIEVANCE ADJUDICATED.

### STATEMENT OF THE CASE

This matter is before the Court of Appeals pursuant to the appeal of Joshua Cramer, an inmate in the South Carolina Department of Corrections ("SCDC"). Appellant was employed in the Private Sector Prison Industries ("PI") program under RM Designs at Broad River C/I ("BRCI") from 2005-2010. Appellant learned after he began working that due to his sentence, Life without Parole, he would never obtain his Long Term Savings ("LTS") / Escrowed Wages. As a result he filed a grievance requesting access to his LTS on April 26, 2007. SCDC rendered its Final Agency Decision on February 25, 2014, seven years later. Subsequently, Appellant filed an appeal in the ALC on March 3, 2014. The ALC denied Appellant's appeal on September 23, 2014.

### FACTS

Appellant worked in PI at BRCI from 2005-2010, producing hand sculpted hardwood flooring for RM Designs. Also, Appellant worked in BRCI's PI program for an additional Private company in September and October of 2012. A portion of the wages paid to the Appellant is retained by SCDC in escrow. SCDC refuses Appellant access to his escrowed wages during his lifetime because Appellant is not going to be released from prison. SCDC bases its denial of access on Section 24-3-40 (B) (2) which states in relevant part.

"A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice."

Appellant has sought through the SCDC grievance system to access his escrowed wages, but SCDC has denied him access by maintaining a policy that says the funds can only be released when the

Appellant is released from prison, and since Appellant has life without parole SCDC must hold Appellant's escrowed wages until his death.

STANDARD OF REVIEW

Review of the ALC's decision on SCDC's Final Agency Decision is in violation of constitutional and statutory provisions. The Final Agency Decision is in excess of statutory authority of the agency; conflicts with their own grievance policy, and is clearly erroneous in view of the reliable probative and substantial evidence on the whole record. Pursuant to S.C. Code Ann. Section 1-23-380 (A) (5), this Court may reverse the ALC's decision where the substantial rights of the Appellant have been prejudiced by SCDC's conclusions.

ARGUMENTS

I. SCDC DENIED APPELLANT IMMEDIATE ACCESS TO WAGES  
ESCROWED FOR HIS BENEFIT AGAINST THE STATUTORY  
AUTHORITY OF S.C. CODE ANN.  
Section 24-3-40 (A)(5); (B)(2) and 24-3-315.

Appellant asserts the 10% of his wages deducted pursuant to Section 24-3-40 (A)(5) is to be for the "benefit of the prisoner." If the prisoner cannot or is never allowed to access the principal or interest, the prisoner is systematically deprived, via the unconstitutional interpretation of his property interest therein.

SCDC denies Appellant access to the wages escrowed under (A)(5) in their interpretation of (B)(2), which is that inmates serving a life sentence receive their escrowed wages "only upon the inmate's death". Appellant asserts this is an unconstitutional interpretation.

Senate Bill 384 ("S.384") became Act No. A68 to amend Section 24-3-30 and 24-3-40. S. 384 was introduced without any language regarding prisoner wage disbursement. (See ROA \_\_\_\_\_). House Bill 3216 ("H. 3216") was introduced with language regarding prisoner wage disbursement, particularly escrowed wages. (See ROA \_\_\_\_\_). Each Bill was read by both legislative bodies (See ROA \_\_\_\_\_). The end result was H. 3216's language was added to S.384 and passed into law. H. 3216 (B)(2) originally read a "prisoner serving life shall have his escrowed wages included in his estate upon death." (See ROA \_\_\_\_\_). The final language that became law dropped "upon death" and added an option of distributing the escrowed wages to the person (s) of the prisoner's choice. However SCDC chooses to employ an interpretation of legislation that did not become law, was not the legislative intent, and deprives Appellant of any benefit, for whom it was enacted and earned through his labor.

Our Supreme Court held in Torrance v. SCDC, 373 S.C. 586, 646 S.E. 2d. 866 (2007) rehearing denied (C/A 2001-CP-40-3409) that "clearly, Torrance and Ward can present this claim via the inmate grievance procedure." See Wicker v. SCDC, 360 S.C. 421, 602 S.E.2d. 56 (2004).

Appellant asserts SCDC may not interpret Section 24-3-40 (B)(2) in the manner currently in practice. Our Supreme Court has held the Court “generally gives deference to an administrative agency’s interpretation of an applicable statute or its own regulation.” Nonetheless, where, as here, “the plain language of the statute is contrary to the agency’s interpretation, the court will reject the agency’s interpretation, Brown v. Bi-Lo, Inc., 354 S.C.436, 581 S.E.2d. 836, 838 (2003)(internal citations omitted.) This very proposition is mirrored by the U.S. Supreme Court in Medtronic Inc. v. Lohr, 518 U.S. 470 (1996)(where the language of the statute is clear, resort to the agency’s interpretation is improper.) However, if the statute is silent or ambiguous with respect to the specific issue, the question for the Court is whether the agency’s answer is based on a permissible construction of the statute, see Chevron USA v. National Resources Defense Council, Inc., 467 U.S. 837,843 (1984).

The Prison Industries Enhancement Certification Program (PIECP) in South Carolina is a creature of statute. As such, this Court is bound to construe the terms of the applicable statute and to rely on the General Assembly to amend the statute when necessary. See, Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 110, 580 S.E. 2d. 100, 105 (2003).

Appellant, serving a life sentence, is entitled to immediate access to funds escrowed for his benefit Section 24-3-40 (A)(5) under Section 24-3-40 (B)(2).

Appellant suggests an analysis and contrast of Section 24-3-40 (B)(2) with the SC House and Senate Bills (H.3216 and S.384) to ascertain the true legislative intent in regards to if “the interest bearing account” in question is “for the benefit of the prisoner” and how a prisoner sentenced to life may actually “benefit” from the escrowed account if, according to the agency interpretation by SCDC, the prisoner serving life may not have access to the funds in that account until after his death.

The primary purpose in construing a statute is to ascertain legislative intent. Gordon v. Phillips Utils, Inc., 362 S.C. 403, 406, 608 S.E. 2d. 425, 427 (2005). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute, McClanhan v. Richland County Council, 350 S.C. 433, 438, 567 S.E. 2d. 240, 242 (2002).

Appellant submits that the language of the statute [section 24-3-40 (B)(2)] does not indicate, imply, or infer in any language that Appellant must wait until after he is dead to have any control or benefit. Appellant suggests that the language used is the intended purpose of the statute and this purpose is demonstrated clearly in the SC legislature declining to utilize the “upon death” language of H.3216 [intending to create Section 24-3-40 (B)(2)].

If this Court construes the statute’s terms as clear and unambiguous on their face, then there is no room for statutory construction and the Court must apply the statute according to its literal meaning, see, e.g., Miller v. Aiken, 364 S.C. 303, 307, 613 S.E. 2d. 364, 366 (2005).

In the matter of Respondent’s interpretation, considering the difference in the House and Senate Bills considered in 1999 Act No. 68 Section 2 [H.3216 and S.384]. “Where the language of the statute is clear and explicit, the Court cannot rewrite the statute and inject matters into it which are not

in the legislature's language" see, City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E. 2d. 492, 495 (Ct. App 1997). If the language of an Act gives rise to doubt or uncertainty as to legislative intent, the construing Court may search for that intent beyond the borders of the Act itself, see Wade v. Berkeley County, 348 S.C. 224, 229, 559 S.E. 2d. 586, 588 (2002).

1A. "FOR THE BENEFIT OF THE PRISONER"

Appellant suggests that an analysis of the term and implication of the language "for the benefit of the prisoner" is necessary to determine if the Appellant himself is required to and actually "benefits" under the interpretation of Section 24-3-40 (B)(2) employed by SCDC.

Section 24-3-40 (A)(5) states in clear language the account is for the "benefit of the prisoner." Black's Law Dictionary 8<sup>th</sup> ed. p.166 defines the term "benefit" as: 1) Advantage; privilege <the benefit of owning a car >. 2.) Profit or gain: esp. the consideration that moves to the promise <a benefit received from the sale.> The logic in these illustrative examples relates directly to Appellant's escrowed wages. If he cannot receive or access his account then he cannot benefit from it.

Courts must presume that the legislature did not intend a statute to be futile. Johnson v. Collins Entertainment Co. Inc., 88 F. Supp. 2d. 499.

Ultimately, the escrowed wages belong to the Appellant not SCDC or anyone else. The Appellant earned this money and is entitled to receive it during his lifetime or at a minimum be able to distribute it to the "persons of his choice" during his lifetime. However plain the ordinary meaning of the words used in a statute may be, courts will reject a certain meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the legislature; if possible, the court will construe the statute so as to escape such absurdity and carry the intention into effect. Neal v. Brown, 649 S.E. 2d. 164, 374 SC 641. Buff v. Dept of Transportation, 505 S.E. 2d. 360, 322 SC 472, US v. Pippetoe, 178 F. 2d. 735. The Appellant appeals to the common sense of this court. Certainly in passing Section 24-3-40 (A)(5) and (B)(2) our legislature did not intend for the Appellant, to be allowed to and earn money while in prison, have 10% of that money put into an interest bearing account for his benefit by SCDC, but then have SCDC hold that money until the Appellant dies and give his money to someone else. If this was the case, as SCDC argues it is, then why would our legislature create a statute, namely Section 24-3-40 (A)(5), to benefit a prisoner; but then in the next subsection of the statute, (B)(2) make it where the prisoner can never have the money he has worked for and was supposed to benefit from? This would be a contradiction in and of itself, and certainly would be the absurd result the courts were talking about in the above-mentioned cases.

II. SCDC DENIES APPELLANT A FAIR INTEREST RATE ON WAGES  
ESCROWED FOR HIS BENEFIT UNDER  
SECTION 24-3-40 (A)(5)

Per Appellant's 1099 he earned \$54.89 interest in 2007 on \$1,742.54. (see ROA \_\_\_\_\_). The 2008 Form 1099 recorded \$40.33 interest on \$3,175.66 (see ROA \_\_\_\_\_). The 2009 Form 1099 recorded \$10.47 interest on \$3,441.83 (see ROA \_\_\_\_\_). Appellant did not receive a Form 1099 for

the years 2010-2014. Thru a Request to Staff Appellant learned he earned \$0.30 interest on \$3,444.58 for 1020 and 2011. (see ROA\_\_\_\_\_).

During September and October 2012 Appellant worked in BRCI's PI and deposited \$132.00 in escrowed wages into his LTS account bringing his balance up to \$3,577.38. (see ROA\_\_\_\_\_).

In a 2014 letter to SCDC's Financial Branch Appellant learned he was paid \$0.36 in interest on \$3,577.58 for the years 2012 and 2013. (see ROA\_\_\_\_\_).

On October 17, 2011 through a letter to SCDC's Financial Branch Appellant attempted to learn where, what type of account, and what interest rate was applied to his escrowed wages. Instead of a direct answer Appellant was told the interest rate is comparable with similar account at local financial institutions and the rate varies from period to period. (see ROA\_\_\_\_\_). From 2010-2014 Appellant received an interest payment on average of \$0.15 a year which on \$3,500 is not comparable to anything any bank would offer as SCDC has suggested. Based on the \$0.15 interest payment, and \$3500 principle Appellant's interest rate basically zero percent. Appellant would argue here that when the legislature directed SCDC to place Appellant's escrowed wages in an interest bearing account they did not intend for the rate to be non-existent.

Appellant is entitled to a fair interest rate on his escrowed wages and this amount should be fairly applied each year. SCDC acts in a fiduciary capacity in the administration of this trust in management of the LTS Account and thus has a duty to Appellant to pay a comparable interest rate, as they claim they do, on Appellant's funds held in escrow. SCDC is in violation of SC Code of Laws Title 34, governing banking and financial institutions. Appellant relies upon the theory interest follows principal.

### III. SCDC'S DENIAL OF APPELLANT'S GRIEVANCE BASED ON THE "FIFTEEN DAY DEADLINE" CONFLICTS WITH IT'S OWN POLICY GA-01 PARAGRAPH 13.9

SCDC stated Appellant did not file his grievance within "fifteen days of the incident". However, Appellant is not grieving a singular incident rather Appellant is challenging SCDC's policy/procedure which prohibits Appellant access to his escrowed wages. Said policy creates a continuous cause of action.

GA-01.12, "Inmate Grievance System" Oct. 1, 2010 Paragraph 7.1 names a grievable issue as "Department policies/procedures, directives, or conditions which directly affect the inmate. "Paragraph 13.9 further states Exceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures."

SCDC's determination conflicts with its own policy and should be disregarded by this Court. Appellant's grievance falls within the conditions set forth in Paragraph 7.1 and 13.9, therefore the "15 day deadline" does not apply to Appellant's grievance.

IIIB. RESPONDENT'S POLICY GA-01.12 PARAGRAPH 13.1 IS  
INAPPLICABLE IN APPELLANT'S CASE

Respondent's defense based on the "fifteen day time limit" of GA-01.12 Paragraph 13.1 is rendered moot where Respondent's own record (ROA in the ALC) indicating the date Appellant filed his Step 1 Grievance (4-26-07) substantiate Appellant filed his grievance during his employment period and during the violations complained of.

IV. THE ALC'S RULING DENYING APPELLANT ACCESS TO HIS ESCROWED  
WAGES BASED ON THE "FIFTEEN DAY DEADLING" ROBS  
APPELLANT OF THE RIGHT TO HAVE THE ISSUES IN HIS  
GRIEVANCE ADJUDICATED

First, the ALC erroneously applied the Ackerman case to Appellant's case. Appellant's grievance is not incident grievance, rather it is a grievance against SCDC's interpretation of Section 24-3-40 (B)(2) wherein the department maintains a policy that prohibits Appellant from receiving his escrowed wages during his lifetime. Their policy has created a continuous cause of action.

On page four of the ALC's order the court stated "If this Court would rule in favor of Appellant then any inmate could file a grievance claiming access to escrowed wages at anytime. Further, as noted in Ackerman, this Court has long held that wage claims do not involve SCDC's Policies and Procedures."

Both points quoted from the ALC's order are incorrect when applied to Appellant's grievance. Namely, a ruling in favor of the Appellant would negate any need for an inmate to file a grievance requesting access to his escrowed wages because the ruling would strike down SCDC's policy, forcing SCDC to enact a policy in accordance with Section 24-3-40 (1B)(2). Hence an inmate's escrowed wages could be distributed to a "person of his choice" at each pay period in the same manner as an inmate's child support payment. SCDC distributes inmate child support payment at each pay period to a person designated by the inmate or the child's guardian.

Next, the issue in Appellant's grievance is not a prevailing wage claim like those in the case, and should not be treated the same. Appellant's grievance should not be labeled a wage claim because the grievance deals solely with SCDC's policy to exceed its statutory authority; in its interpretation of Section 24-3-40 (A)(5) and (B)(2).

Any time statute of limitations and tolling are involved the interest of justice require that a case by case analysis of the facts of the case are required especially where the facts of the instant case are significantly distinct from the Ackerman inmates. For example, Appellant is not challenging a particular hourly wage; rather, Appellant is challenging SCDC's policy denying him from enacting the clause in Section 24-3-40 (B)(2) to have his LTS distributed to a person of his choice during his lifetime.

The ALC did not rule on the question of Law presented by Appellant; rather they forbore settling the question and instead prohibited Appellant an opportunity to have his issue settled by using the "fifteen day deadline" to deny Appellant's claims.

The court in Hooper v. Ebenezer, 386 SC 108, 687 S.E. 2d. 29 S.C. 2009 held that “The equitable power of a court is not bound by cast-iron rules but exist to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other.” Certainly, taking money from Appellant’s pay check, depositing it into an escrow account, and the telling him he has to die before the money can be released could be a gross wrong the court identified in Hooper.

### CONCLUSION

WHEREFORE, Appellant respectfully prays this Honorable Court reverse and remand the SCDC ruling and Final Agency Decision of SCDC with an appropriate order to structure the proposed relief.

1. Reverse the Department’s February 25, 2014 decision to deny Appellant’s grievance;
2. SCDC shall determine the dates the inmate in the instant matter started and completed his participation in SCDC’s P.I.;
3. Shall determine the correct or fair rate of interest on the Appellant’s LTS account for each year the inmate had a portion of his wages deducted pursuant to Section 24-3-40 (A)(5) and every subsequent year those funds remained in that account;
4. SCDC shall grant the Appellant, serving a life without parole sentence immediate access to the option of having his escrowed wages distributed to the persons or entities of his choice pursuant to Section 24-3-40 (B)(2) and
5. SCDC shall determine and pay pre- and -post – judgment interest on the funds held in Appellant’s LTS account.

October 29, 2014  
Ridgeville, SC

Respectfully Submitted,



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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
Case No. 2014-002172

Joshua Cramer, . . . . . Appellant,  
v.  
SEDC, . . . . . Respondent.

CERTIFICATE OF SERVICE

I, Joshua Cramer, certify that I have filed the within APPELLANT'S INITIAL BRIEF and DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL both dated Oct. 29, 2014 on the below listed addresses by depositing a copy of the same in the SEDC interdepartmental mail and/or the US mail first class postage affixed thereto on this 5 day of November 2014.

Kenneth A. Richstad  
Clerk, SC Court of Appeals  
P.O. Box 11629  
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Lake Summers  
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Nov. 4, 2014  
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s/ Joshua Cramer  
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Nov. 4, 2014

Kenneth A. Richstad, Clerk  
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Re: Case No. : 2014 - 002172

Dear Mr. Richstad

Enclosed for filing please find a copy of my APPELLANT'S  
INITIAL BRIEF and DESIGNATION OF MATTER TO BE INCLUDED IN  
THE RECORD ON APPEAL. Thank you in advance.

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