

RECEIVED

SEP 19 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From The Administrative Law Court
Honorable John D. McLeod, Administrative Law Judge

CASE NO. #16-001564

Uuno Mattias Baum #272249 Appellant,

vs.

South Carolina Department
of Corrections Respondents.

INITIAL BRIEF OF APPELLANT

Uuno Mattias Baum
Wando-D-190 #272249
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina
29472-0205

PRO SE APPELLANT

INDEX

INDEX i

STATEMENT OF THE CASE

This matter comes before this Court of appeals seeking appellate review of the adverse decision of the Administrative Law Judge in UUNO MATTIAS BAUM V. SCDC, #16-AJL-04-0153-AP. This Administrative Law Judge has issued its Final Order, on July 14,2016; Appellant has filed his Notice of Appeal with this Court, on July 25,2016, serving all parties associated herewith a copy and subsequently bring this matter into the ambiance of this Appellate courts jurisdiction. i

STATEMENT OF THE ISSUES ON APPEAL

(1). The Administrative Law judge erred in finding that the general purpose of S.C. Code Ann. §24-3-40 is to restrict prisoners from having access to their earned wages. ... 1

(2). The Administrative Law Judge has erred in failing to make a finding of fact relating to the Constitutional issue raised by Appellant; and has applied S.C. Code Ann. §24-3-40(B)(2) to infringe upon the fundamental fairness protections provided by the fifth and Fourteenth Amendments to the United States Constitution and Article I, §3, of the South Carolina Constitution. 5

CONCLUSION 7

AUTHORITIES

STATE V. HUDSON, 336 S.C. 237, 519 S.E.2d 577
(Ct.App. 1999) 2

GORDON V. PHILLIPS UTILITIES INC., 362 S.C. 403,
608 S.E.2d 425 (2004) 3

ALLEN V. STATE, 339 S.C. 393, 529 S.E.2d 541
(2000) 4

MILLER V. LAWRENCE ROBINSON TRUCKING, 333 S.C. 576,
510 S.E.2d 431 (1998) 4

HARDIN V. SOUTH CAROLINA DEPT. OF TRANS.,
371 S.C. 598, 641 S.E.2d 437 5

BYRD V. CITY OF HARTSVILLE, 365 S.C. 650,
620 S.E.2d 76 5

POLICE DEPT. V. MOSELEY, 408 U.S. 92, 92 S.Ct. 2286
(1972) 6

STATUTORY & CONSTITUTIONAL AUTHORITIES

S.C. Code Ann. §24-3-40(A)(3) 1

S.C. Code Ann. §24-3-40(A)(4) 1

S.C. Code Ann. §24-3-40(A)(5) 1, 3

S.C. Code Ann. §24-3-40(A)(6) 1

S.C. Code Ann. §24-3-310(4)	.....	2
S.C. Code Ann. §24-3-315	.....	2
S.C. Code Ann. §24-3-410(b)(7)	.....	2
S.C. Code Ann. §24-3-430(D)	.....	2
S.C. Code Ann. §24-1-290	.....	2
S.C. Code Ann. §24-1-295	.....	2
S.C. Code Ann. §24-3-40(B)(2)	.....	3, 4, 5, 6, and 7
S.C. Code Ann. §24-3-40(B)(1)	.....	4
S.C. Code Ann. §24-3-40(B)(3)	.....	4
S.C. Code Ann. §1-23-380(5)	.....	7
South Carolina Constitution, Art. I, §3	.....	5, 6 and 7
Fifth and Fourteenth Amendments to the United States Constitution	.....	5, 6 and 7
 OTHER AUTHORITIES		
Blacks Law Dictionary	.....	5 and 6

1). The Administrative Law Judge erred by finding that the general purpose of S.C. Code Ann. §24-3-40, is to restrict prisoners from having access to their earned wages.

The Administrative Law Judge found that the "general purpose" of S.C. Code Ann. §24-3-40, is to "restrict" prisoners from having access to their earned wages. The Administrative Law Judge's determination of this statute's purpose is in error and completely unreasonably based on the basic principles of common logic; fundamental law; and the plain language of the statute.

The first six (6) subsections of this statute direct distribution of wages earned by prisoners, and thereby demonstrate that the statute's "general purpose" is to [allocate distribution], not to restrict the prisoner's access as determined by the Administrative Law Judge.

The Administrative Law Judge found, on page 6, lines 14-15, of its Order that "the only direct access of an incarcerated inmate to his earnings are those distributed under section (A)(4)." The Administrative Law Judge's finding is incorrect and does not consider the language of subsection (A)(3) which allows prisoners to contribute voluntary child support. Based on this language, the Administrative Law Judge's finding is in error. Furthermore, the fact that residual amounts from subsections (A)(3) and (A)(6), are directed in addition to the amount already allocated to (A)(4) demonstrating that the statute's general purpose cannot be to restrict the prisoner's access to his earnings. Additionally, the statutory language of subsection (A)(5) provides that the percentage of wages allocated

to this provision is "for the benefit of the prisoner." Therefore, based on these facts, this Administrative Law Judges determination of the statutes purpose is incorrect and in opposition to its [actual] purpose.

This Court can find further clarification concerning the overall purpose of the Prison Industries Program and the purpose of allowing inmates to earn wages by reviewing S.C. Code Ann. §24-3-310, "Declaration of Intent", by taking specific notice of subsection (4).

Prisoners who participate in the the South Carolina Department of Corrections (SCDC) Prison Industry "Private Sector" Program do so on a voluntary basis, but, with the expectation that they will earn a wage for their labor. The actual wages amount earned and distributed for the benefit of the prisoner is determined by statutory law. (See S.C. Code Ann. §24-3-315; §24-3-410(b)(7); §24-3-430(D); §24-1-290; and §24-1-295). Based on these statutory provisions of law a prisoner has a legitimate expectation that he will receive monetary compensation for providing labor to Private Sector companies. In fact, this expectation equates to a stated created liberty interest because it is required by law.

The Administrative Law Judge, on page 5, of its Order found that "there are no compelling reasons to overrule SCDC's interpretation of this statute." However, the compelling reason the Administrative Law Judge failed to consider the Equal Protection violation of SCDC's interpretation, imposes upon this Appellant, subsequently the Administrative Law Judge did find the statute was ambiguous and subject to other reasonable interpretations. In STATE V. HUDSON, 336 S.C. 237, 519 S.E.2d 577 (Ct.App. 1999), this Court found that an "ambiguity in a statute should be resolved in favor of a just, equitable and beneficial operation of the law." (emphasis added). The Administrative Law

Judge acknowledged the fact that this subsection was ambiguous and subject to a different reasonable interpretation, but failed to resolve the dispute in a just and equitable manner of law. Instead, the Administrative Law Judge deferred to SCDC's interpretation which violates the substantial rights of this Appellant.

The legislature in subsection (A)(5) provides: "Ten percent of the prisoners wages must be held in an interest bearing escrow account for the benefit of the prisoner." Based on this language the legislature intended for the prisoner to benefit from the escrow wages. If they were to be postponed until death of a prisoner sentenced to life imprisonment ... there is no actual "benefit of the prisoner". This would render the purpose of subsection (A)(5) [futile] to prisoners serving life sentences. In the case of GORDON V. PHILLIPS UTILITIES INC., 362 S.C. 403, 608 S.E.2d 425 (2004), this Court provided that the "Legislature intends to accomplish something by it's choice of words and would not do a futile thing." In reviewing subsection (B), this Court should take notice of the legislature's language which makes it clear the intent of this provision. Specifically in this subsection the legislature uses the mandatory language "shall return a prisoners wages held in escrow" demonstrating that the intent is to return these escrowed wages.

The Administrative Law Judge, on page 6 and 7, of its Order uses "Legal Maxims" to support its decision; however, in doing so it fails to consider case precedence for guidance. Maxims are nothing more than traditional forms of legal expression and should never be used in place of clearly established law. The Administrative Law Judge has interjected a maxim in its decision which it uses to expand the legislatures language and intent. In this case the two subsections in question are (A)(5) and (B)(2) which the higher Courts have provided guidance on how to interpret. "Words of a statute must be given

their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its scope." ALLEN V. STATE, 339 S.C. 393, 529 S.E.2d 541 (2000).

On the other hand, if maxims can be used to determine legislative meaning or intent the Administrative Law Court did not consider "expressum facit cesare tactitum", meaning something expressed nullifies what is unexpressed. In this instance the legislature in subsection (B)(2) [did not] express that distribution of these escrowed wages could only occur at death or upon release, thereby nullifying this "absurd" interpretation. "Interpretation of a term set forth in a statute should support the statute and should not lead to an absurd result." MILLER V. LAWRENCE ROBINSON TRUCKING, 333 S.C. 576, 510 S.E.2d 431 (1998).

If this Court will review subsections (B)(1) and (B)(3) it will discover that the legislatures language specifically expresses the words [upon release]. Whereas, in (B)(2) it provides an "option" for prisoners sentenced to life to be utilized at death or during their lifetime. Had the legislature intended for prisoners sentenced to life imprisonment to distribute their escrowed wages only upon their death it would specifically used those plain and ordinary words to express that intent. However, it did not use the explicit language at or upon death, because to do so would be "absurd" and completely contrary to the "benefit of the prisoner" provision contained in subsection (A)(5). These are wages the prisoner has lawfully earned in exchange for his labor; it is the prisoners monetary property; specifically set aside for his benefit and he has a fundamental right to it; which is protected by the Constitution of the United States and South Carolina.

2). The Administrative Law Judge has erred in failing to make a finding of fact relating to the Constitutional issue raised by Appellant; and has applied S.C. Code Ann. §24-3-40(B)(2) to infringe upon the fundamental fairness protections provided by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, §3, of the South Carolina Constitution.

In accordance with the various provisions contained in S.C. Code Ann. §24-3-40, portions of the wages earned by prisoners participating in this SCDC program are allocated for specific purposes such as: (1) Victim Assistance; (2) Voluntary and/or court ordered child support; (3) Housing; (4) Reimbursement; and (5) State and Federal Taxes. Subsection (A)(5) is specifically allocated for the benefit of the prisoner, therefore, to deny a prisoner access to these earnings during his lifetime equates to a "taking" of his property in violation of the Fifth and Fourteenth Amendments to the United States Constitution. See also, Article I, §3, of the South Carolina Constitution.

"There is a taking of property when a government action directly interferes with or substantially disturbs the owners use and enjoyment of the property." BLACKS LAW DICTIONARY (8th Abr. Ed. 2005). "In the Constitutional sense, government regulations which control or limit the use of property effectively 'take' the property." HARDIN V. SOUTH CAROLINA DEPT. OF TRANS., 371 S.C. 598, 641 S.E.2d 437. When a property owner has been deprived of his property there is a taking per se. BYRD V. CITY OF HARTSVILLE, 365 S.C. 650, 620 S.E.2d 76. The "Taking clause reaches beyond protection of real property to other forms

of private property, such as financial assets." *MCMAHAN V. INTERNATIONAL ASS'N OF BRIDGE STRUCTURAL & ORNAMENTAL IRON WORKERS*, 858 F.Supp. 529 (S.C.). "Taking" - the act of seizing an article with or without removing it, but with an implicit transfer of possession or control." *BLACKS LAW DICTIONARY* (8th Abr. Ed. 2005).

As applied, S.C. Code Ann. §24-3-40(B)(2) infringes upon the fundamental protections provided by the Fifth and Fourteenth Amendments, (see also their progeny, Article I, §3), by depriving Appellant of his property without consent and in a manner that denies him the equal protection of the law.

Subsection (B)(2) reads: "A prisoner serving a 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 of entities of his choice." The text of this subsection gives no additional language or guidance with respect to when these two options are to be effective or utilized. The Administrative Law Judge, in its extensive and in depth analysis has determined that the SCDC's interpretation is correct and that both of these options are only available to the Appellant upon his death. However, the Administrative Law Courts determination was made without consideration of the Constitutional infringement such an interpretation imposes.

The United States Supreme Court (USSC) has held "equal protection under the Fourteenth Amendment means that legislation that discriminates must have a rational basis for doing so. If legislation effects a fundamental right it is unconstitutional. The critical question is whether there is an appropriate governmental interest furthered by the differential treatment." *POLICE DEPT. V. MOSELEY*, 408 U.S. 92, 92 S.Ct. 2286 (1972). In the instant case, the Administration Law Judges decision allows the Equal Protection violation to continue

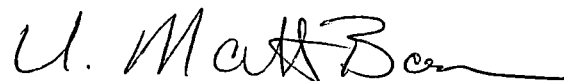
because prisoners not sentenced to life imprisonment are afforded access to their escrowed wages during their lifetime while Appellant is not, making subsection (B)(2) discriminatory in the way it is applied to this current instant. The Administrative Law Judge should have recognized the fact that the SCDCs interpretation of subsection (B)(2) creates an equal protection violation and exercised its authority to correct it. The Administrative Law Judge is empowered to act when an agency's decision prejudices substantial rights. See S.C. Code Ann. §1-23-380(5) (Supp. 2015). In this case its the fundamental right to equal protection which is being denied this Appellant due to the fact that other similarly situated will receive their escrowed wages during their lifetime. Furthermore, to apply subsection (B)(2) this way essentially becomes a taking, thereby denying Appellant of the fundamental protections of the Fifth and Fourteen Amendments to the United States Constitution (and its progeny Article I, §3, of the South Carolina Constitution).

CONCLUSION

WHEREFORE, Appellant prays this Court grant the relief of reversing the Administrative Law Judges decision where there has occurred a violation of his rights, as applies under S.C. Code Ann. §24-3-40(B)(2), thereby ordering the release of all escrowed wages to entities of persons of his choosing during his lifetime as is provided for by subsection (B)(2).

September 14, 2016

Respectfully Submitted,



Uuno Mattias Baum
Wando-D-190 #272249
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina
29472-0205

RECEIVED

SEP 19 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appeal From The Administrative Law Court
Honorable John D. McLeod, Administrative Law Judge

CASE NO. #16-01564

Uuno Mattias Baum #272249 Appellant,

vs.

South Carolina Department
of Corrections Respondents.

CERTIFICATE OF SERVICE

I hereby certify that I have served the: (1). Initial Brief of Appellant; and (2) Certificate of Service, upon Respondents counsel of record by depositing a copy of the same in the United States Mail, First Class postage affixed thereon, and addressed as follows:

RECEIVED

SEP 19 2016

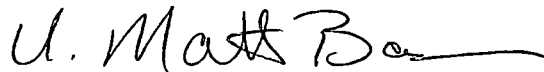
SC Court of Appeals

SOUTH CAROLINA COURT OF APPEALS
CLERK OF COURTS OFFICE
Jenny Abbott Kitchens, Clerk
Post Office Box 11629
Columbia, South Carolina
29211-1629; and

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
David M. Tartarsky, Esquire
Chief General Counsel for Respondents
Post Office Box 21787
Columbia, South Carolina
29221-1787.

September 14, 2016

Respectfully Submitted,



Uno Mattias Baum
Wando-D-190 #272249
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina
29472-0205

PRO SE APPELLANT

PAGE [2] OF [2]

Uuno Mattias Baum
Wando-D-190 #272249
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina
29472-0205

RECEIVED

SEP 19 2016

SC Court of Appeals

SOUTH CAROLINA COURT OF APPEALS
CLERK OF COURTS OFFICE
Jenny Abbott Kitchens, Clerk
Post Office Box 11629
Columbia, South Carolina
29211-1629

RE: INITIAL BRIEF OF APPELLANT
BAUM V. SCDC, #16-001564

Clerk,

Enclosed for filing are the:

- (1). Initial Brief of Appellant; and
- (2). Certificate of Service.

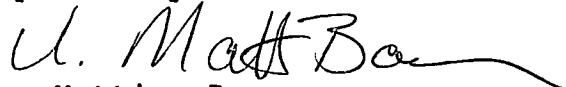
If I may be of any further assistance to this Court, in these matters, please do not hesitate to contact me. Thank you for this Court's time and attention in these matters.

September 14, 2016

rds/UMB

cc: FILE
CLERK
TATARSKY

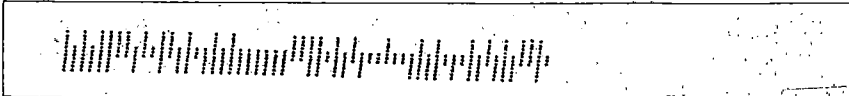
Respectfully Submitted,



Uuno Mattias Baum
Wando-D-190 #272249
Lieber Correctional Institution
Post Office Box 205
Columbia, South Carolina
29472-0205

PRO SE APPELLANT

U. Matthias Baum #272249
L.C.I Wando Unit D-190
Post Office Box 205
Ridgeville, S.C. 29472



RECEIVED
SEP 19 2016
SC Court of Appeals

South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina
29211

FOR LEG.

MAILED FROM ZIP CODE 29472
0000835844 SEP 16 2016
02 1P \$001.570
PITNEY BOWES
FIRST CLASS
SENSITIVE MATERIAL
UNITED STATES POSTAGE