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**ORIGINAL**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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**APPEAL FROM THE ADMINISTRATIVE LAW JUDGE  
Honorable John D. McLeod, Administrative Law Judge**

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**CASE NO. #16-0001564**

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**RECEIVED**

**MAR 13 2017**

**SC Court of Appeals**

**Uuno Mattias Baum #272249 .... Appellant.**

**vs.**

**South Carolina Department  
of Corrections ..... Respondents.**

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**FINAL BRIEF OF APPELLANT**

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

**PRO SE APPELLANT**

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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, #16-001564. This Administrative Law Judge has issued his 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 brings this matter into the ambiance of this Appellate Court's jurisdiction.

STATEMENT OF THE ISSUES ON APPEAL

(1). Did the Administrative Law Judge err by finding that the general purpose of S.C. Code Ann. §24-3-40 is to restrict prisoners from having access to their escrow accounts?

(2). Did the Administrative Law Judge err in failing to make a finding of fact relating to the Constitutional Issue raised by Appellant; and has Respondents 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?

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(1). Did the Administrative Law Judge err by finding that the general purpose of S.C. Code Ann. §24-3-40 is to restrict prisoners from having access to their escrow accounts?

The Administrative Law Judge (ALJ) 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 ALJ's interpretation of this statute is in plain error and completely unreasonable, based on the basic principles of common logic; fundamental law; and the unambiguous "intent" of the statute.

The first six (6) subsections of this statute directs distribution of wages earned by prisoners, and thereby demonstrates that the statutes "general purpose" is to [allocate distribution], not to restrict the prisoner's access as determined and interpreted by the ALJ.

The ALJ 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 ALJ's finding is an incorrect assessment of the statute's language and does not take into consideration subsection (A)(3) which permits prisoners to contribute to voluntary child support. Based on this language the ALJ's finding is in error. Furthermore, the fact that residual amounts from subsection(s) (A)(3) and (A)(6) are directed, in addition to, the amount already allocated to (A)(4) demonstrating that the statutes general purpose cannot be to restrict the prisoners access to his earnings. Additionally, the statutory language of subsection (A)(5) provides that the percentage of wages allocated in accordance with this provision is "for the benefit of the prisoner." Therefore, based on these facts, and the harmonious reading of these provisions, the ALJ's determination and

interpretation of the statute's purpose is incorrect and contrary to its [actual] intent.

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

Prisoners who participate in 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 wage 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 state created liberty interest because it is required by law.

The ALJ, page 5, of its Order found that "there are no compelling reasons to overrule SCDC's interpretation of the statute." However, the compelling reason the ALJ failed to consider is the Equal Protection violation which SCDC's interpretation imposes upon the Appellant. Subsequently, the ALJ did find the statute to be 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 **just, equitable and beneficial** operation of the law." (emphasis added). The ALJ acknowledged the fact that this subsection is ambiguous and subject to a different reasonable interpretation, but failed to resolve the dispute in a just and equitable manner of law.

Instead, the ALJ deferred its decision 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 access were to be postponed until the death of a prisoner sentenced to life imprisonment ... there is no actual or real "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." See, cf., DAVENPORT V. CITY OF ROCKHILL, 315 S.C. 114, 432 S.E.2d 451 (1996)("this Court is bound to presume the framers of the Constitution had some purpose in inserting every clause and every word contained in the document, it is never to be supposed that a single word was inserted in the law of this State without the intention of thereby conveying some meaning")(relying on RAVENEL V. DEKLE, 265 S.C. 364, 218 S.E.2d 521 (1975)). In reviewing subsection (B), this Court should take notice of the legislature's language which makes clear the intent of this provision. Specifically in this subsection the legislature uses the mandatory language "shall return a prisoner's wages held in escrow" demonstrating that the intent is to return these escrowed wages. See ABBEVILLE SCHOOL DISTRICT V. STATE OF SOUTH CAROLINA, 355 S.C. 58, 515 S.E.2d 535 (1999)("Since the education clause uses the term 'shall', it is mandatory"); see also WASHINGTON V. SALISBURY, 279 S.C. 306, 306 S.E.2d 600 (1983)).

The ALJ, 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 ALJ has interjected a maxim in his decision which he used to expand the legislature's intent and language. In this case the two subsections in question are (A)(5) and (B)(2) which the Courts have provided guidance on how to interpret these provisions. "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 are used to determine legislative meaning or intent the ALJ 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 would review subsection (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 utilize 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 have 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; 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). Did the ALJ err in failing to make a finding of fact relating to the Constitutional issue raised by Appellate; and has Respondent 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 those 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 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 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 its progeny, Article I, §3, S.C. Const.), by depriving Appellant of his property without consent and in a manner that denies him equal protection of the law.

Subsection (B)(2) reads: "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." The text of this subsection gives no additional language or guidance with respect to when these two options are to become effective or utilized. The ALJ, in his 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 ALJ's 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 which discriminates must have a rational basis for doing so. If the legislation affects 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 ALJ's decision allows the Equal Protection violation to continue to occur 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 ALJ should have recognized the fact that SCDC's interpretation of subsection (B)(2) creates an equal protection violation, and taken the opportunity to exercise his authority to correct it. The ALJ is empowered to act when an agency's decision prejudice substantial rights. See S.C. Code Ann. §1-23-380(5) (Supp. 2015). In this case it's the fundamental right to equal protection which is being denied the Appellant, due to the fact that others similarly situated will receive their escrowed wages during their lifetime. Furthermore, to apply subsection (B)(2) this way essentially become a taking, thereby denying Appellant the fundamental protections of the Fifth and Fourteenth 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 ALJ's 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 or persons of his choosing during his lifetime as is provided for by subsection (B)(2).

~~Oct. 18~~ <sup>UMB</sup> .2016

March 8, 2017

Respectfully Submitted,

*U. Matt Baum*

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OCT 28 2016

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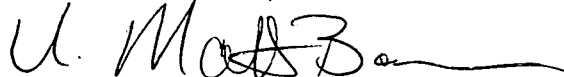
I hereby certify that I have served the: (1) Final Brief of Appellant; and (2) Proof of Service, upon Respondents counsel of record by depositing a copy of the same in the United States Mail, First Class postage affixed thereon, and addressed as follows:

SOUTH CAROLINA COURT OF APPEALS  
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~~Oct. 18~~ <sup>UMB</sup>, 2016  
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