

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Shawndell Monte McFarlin, #200701,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No. 17-ALJ-04-0572-AP

ORDER

RECEIVED
NOV 05 2018
SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Shawndell Monte McFarlin (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant appeals the Department's decision denying his request to presently distribute his escrowed wages to a third-party of his choice.

STATEMENT OF THE CASE

Appellant filed his Step 1 Grievance on August 2, 2017, seeking to have the funds held in his prison escrow account distributed to a Latonya Sims pursuant to S.C. Code Ann. §24-3-40(A)(5) and (B)(2). The Warden denied the request stating that 10% of the earnings must be held in an interest-bearing account for the benefit of the inmate. In addition, the Warden stated the money in the account could only be distributed upon the inmate's release. Appellant then filed a Step 2 Grievance. The Step 2 Grievance was denied for the same reasons, and because Appellant was serving a life sentence plus a consecutive twenty-five years, the Department provided him a Declaration Form to designate the primary beneficiary and/or contingent beneficiary for the account. Appellant filed his Notice of Appeal on November 9, 2017.

Appellant appeals the Department's decision denying his request to presently distribute his escrowed wages to a third-party of his choice. On March 13, 2018, Appellant also filed a document which this Court interprets as a Motion for Directed Verdict pursuant to Rule 50 of the South Carolina Rules of Procedure (SCRCP) and a Motion for Summary Judgment pursuant to Rule 56, SCRCP. The Department responded to these Motions on March 20, 2018. The Court hereby resolves Appellant's motions and appeal in this order.

FILED

April 19, 2018

SC ADMIN. LAW COURT

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003). Furthermore, in *Wicker v. South Carolina Department of Corrections*, the Supreme Court held that this Court has jurisdiction to hear inmate wage claim grievances in the limited circumstance where the state has created a statutory right to that wage. *Id.* at 423–24, 602 S.E.2d at 57 (“We find that where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law.”).

When reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Al-Shabazz*, 338 S.C. at 377; 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2016) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(A)(5) states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2016).

Consequently, an Administrative Law Judge may not substitute his judgment for that of an agency “as to the weight of the evidence on questions of fact.” *Id.* Furthermore, an Administrative Law Judge may not reverse or modify an agency's decision unless the Record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence, arbitrary or affected by an error of law. *Id.*; *see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999);

S.C. Dep't of Labor, Licensing and Regulation v. Girgis, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). “‘Substantial evidence’ is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.” *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting *Law v. Richland Cnty. Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

Additionally, in *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 455-456, 105 S.Ct. 2768 (1985), the U.S. Supreme Court held that “the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.” Moreover, in *Al-Shabazz*, the South Carolina Supreme Court underscored that except where there is a possible Constitutional violation, since prison officials are in the best position to decide inmate disciplinary matters, the courts, and therefore this tribunal, adhere to a “hands off” approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the Administrative Procedures Act.

DISCUSSION

The Court first addresses Appellant’s motions. Appellant filed a Motion for Directed Verdict and Motion for Summary Judgment. These motions are appropriate when the court is acting as the fact-finder in a *de novo* hearing and must make a determination based upon the facts and evidence presented to it. However, in this case, the Court sits in its appellate capacity, and its review is confined to the record because the Department was the fact-finder in this case. See *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754; § 1-23-380(4) (providing that when sitting in its appellate capacity, this Court’s review is confined to the record). Accordingly, Appellant’s motions are inappropriate at this juncture in the case and are denied.

Regarding Appellant’s grievance, Appellant complains the Department improperly denied his request to distribute his escrowed wages to a third-party of his choice contrary to section 24-3-40 of the South Carolina Code.¹ Pertinent to this review, Appellant is serving a life sentence plus

¹ The only issue raised in Appellant’s Step 1 and Step 2 Grievances is the Department’s denial of his request to

twenty-five years' imprisonment.

Section 24-3-40 explains how wages earned by inmates are held and distributed. Under sub-section 24-3-40(A)(5), the Department is required to hold ten percent of an inmate's wages "in an interest bearing escrow account for the benefit of the prisoner." Appellant's issue concerns the distribution of funds in this escrow account. Section 24-3-40(B) provides, in part, that the Department "shall" return the escrowed wages held pursuant to sub-section 24-3-40(A) as follows:

(1) A prisoner released without community supervision must be given his escrowed wages upon his release.

(2) 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.

(3) A prisoner released to community supervision shall receive two hundred dollars or the escrow balance, whichever is less, upon his release. Any remaining balance must be disbursed to the Department of Probation, Parole and Pardon Services. The prisoner's supervising agent shall apply this balance toward payment of the prisoner's housing and basic needs and dispense any balance to the prisoner at the end of the supervision period.

§ 24-3-40(B).

Here, since Appellant is serving a life sentence, he is given the option under subsection 24-3-40(B)(2). The Department interprets subsection 24-3-40(B)(2) as creating an option that Appellant's escrowed funds be distributed upon death either to Appellant's estate or to persons or entities of his choice as previously designated. In contrast, Appellant contends the escrowed funds can be distributed now to the person of his choice.² Thus, the issue is when the escrowed funds can be distributed and, more specifically, whether the statutory subsection at issue conditions the distribution upon the inmate's death.

In its brief, the Department admits "the statute is somewhat ambiguous," but argues its interpretation is entitled to deference and

have the funds in his escrow account presently distributed to a third-party of his choice. To the extent Appellant raised other issues for this first time in his appeal, such as the condition of his clothing, these issues are not preserved for this Court's review. *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved.").

² Appellant contends the Department has allowed the present distribution of funds for other prisoners who are currently imprisoned, but provides no evidence to support his claim.

[t]he overall legislative intent of the statute [sic] appears to be to ensure that inmates' wages are used to help pay for their housing and care while still ensuring they have some of their wages saved to use to support themselves upon their release or, in the case of inmates serving life sentences, to provide for their final expenses.

The deference doctrine provides that:

where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons. We defer to an agency interpretation unless it is arbitrary, capricious, or manifestly contrary to the statute.

Kiawah Dev. Partners II v. SCDHEC, 411 S.C. 16, 34-35, 766 S.E.2d 707, 718 (2014) (quotation marks omitted).

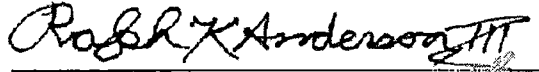
In this case, there is uncertainty in the meaning of section 24-3-40(B)(2). The statute could either provide inmates who are serving life sentences the extraordinary benefit of distributing their wages while imprisoned even though no other inmates would be entitled to that option. Or, the statute could simply recognize that inmates who are serving life sentences may never be released from prison and thus provide a means by which they can choose the distribution of wages upon their death. Implicit within the Department's interpretation is the latter assumption. That interpretation is neither arbitrary, capricious, or manifestly contrary to the statute.

In fact, interpreting section 24-3-40(B)(2) as applying to inmates who are never released from custody is in keeping with the subject matter of the section as a whole. The other provisions under section 24-3-40(B)(2) address the direct release of a prisoner or the release of a prisoner under community supervision. Indeed, under those provisions, an inmate released from prison who is serving a life sentence would be entitled to the distribution of his wages under the terms of the statute, as any other inmate. Therefore, it is logical to interpret section 24-3-40(B)(2) as recognizing the reality that an inmate who is serving a life sentence may never be released, and based on this reality, giving the inmate an option to distribute his or her wages directly to someone other than passing through the inmate's estate. Further, under the Appellant's interpretation, the purpose of withholding the wages until an inmate's release would be defeated. Rather, the wages could be distributed to a person of his choosing who could simply return those wages to the inmate as allowed by the Department's regulation. Therefore,

IT IS ORDERED that Appellant's Motion for a Directed Verdict and Motion for Summary Judgment are **DENIED**.

IT IS FURTHER ORDERED that the decision of the South Carolina Department of Corrections is **AFFIRMED**.

AND IT IS SO ORDERED.

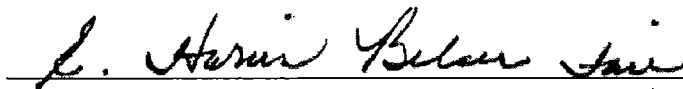
Handwritten signature of Ralph King Anderson, III in black ink.

Ralph King Anderson, III
Chief Administrative Law Judge

April 19, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

A handwritten signature in cursive script that reads "E. Harvin Belser Fair". The signature is written in black ink and is positioned above a horizontal line.

E. Harvin Belser Fair
Judicial Law Clerk

April 19, 2018
Columbia, South Carolina

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THE STATE OF SOUTH CAROLINA NOV 05 2018
IN THE COURT OF APPEALS SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
H.W. Funderburk, Jr., Administrative Law Judge

Appellate Case No. 2018-001896

Docket No. 18-ALS-04-0211-AP
[Grievance No. EC10118-18 I

Shawndell Monte McFarlin, # 200701,
Appellant,

v.

South Carolina Department of Corrections (2),
Respondent.

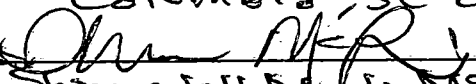
PROOF OF SERVICE

I certify that I have served the Notice of Appeal, Proof of Service, and the Initial Brief of Appellant on Jenny Abbott Kitchings, Clerk, and South Carolina Dept. of Corrections (2), by depositing a copy of it in the United States Mail, postage prepaid, on November 1, 2018, addressed to their attorney of record.

S.C. Court of Appeals
Jenny Abbott Kitchings, Clerk
PO Box 11629
Columbia, SC 29211

Dept. of General Counsel
S.C. Dept. of Corrections
PO Box 21787
Columbia, SC 29221

November 1, 2018


Shawndell Monte McFarlin
SCOC Number 200701
610 Hwy. # 9, West
Bennettsville, SC 29512

Shawndell Monte McFarlin
SCDC Number 200701
610 Hwy. #9, West
Bennettsville, SC 29512

S.C. Court of Appeals
Jenny Abbott Kitchings, Clerk
PO Box 11629
Columbia, SC 29211

RE: Shawndell McFarlin v. SCDC
Appellate Case No. 2018-001741

Shawndell McFarlin v. SCDC (2)
Appellate Case No. 2018-001896

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NOV 05 2018

SC Court of Appeals

Dear Honorable Clerk :

Enclosed please find :

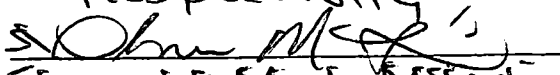
1. The clean, clear copy of the Order in Appellate Case No. 2018-001741 requested by the Honorable V. Claire Allen, Deputy Clerk.

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Enclosed please also find :

2. The Initial Brief of Appellant with Proof of Service, and the Designation of Matter to be Included in the Record on Appeal with Proof of Service in Appellate Case No. 2018-001896.

November 1, 2018.

Respectfully,

Shawndell Monte McFarlin
SCDC Number 200701



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HW 59 West
Avenue, SC 29512

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NOV 05 2018
SC Court of Appeals

South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
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LEGAL
MAIL