

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph King Anderson, III

ALC Case No. 17-ALJ-04-0572-AP
Appellate Case No. 2018-001741

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APR 01 2019

SC Court of Appeals

SHAWNDELL MONTE MCFARLIN, # 200701,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF THE ISSUE ON APPEAL 1

STATEMENT OF THE CASE2

STANDARD OF REVIEW3

ARGUMENT4

CONCLUSION.....10

TABLE OF AUTHORITIES

Cases

<u>Brown v. Bi-Lo, Inc.</u> , 354 S.C. 436, 581 S.E.2d 836 (2003)	5
<u>Cabiness v. Town of James Island</u> , 393 S.C. 176, 712 S.E.2d 416 (2011).....	5
<u>Charleston School Dist. v. State Budget & Control</u> , 313 S.C. 1, 437 S.E.2d 6 (1993)	4
<u>Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.</u> , 467 U.S. 837 (1984)	6
<u>City of Sumter v. 1 1992 Blue Mazda</u> , 330 S.C. 371, 498 S.E.2d 894 (Ct. App. 1998).....	5
<u>Durham v. United Cos. Fin. Corp.</u> , 331 S.C. 600, 503 S.E.2d 465 (1998).....	4
<u>Gilstrap v. SC Budget and Control Bd.</u> , 310 S.C. 210, 423 S.E.2d 101 (1992)	5
<u>Grier v. AMISUB of S.C., Inc.</u> , 397 S.C. 532, 725 S.E.2d 693 (2012)	4
<u>Hodges v. Rainey</u> , 341 S.C. 79, 533 S.E.2d 578 (2000).....	4
<u>Kiawah Development II v. SC Dept. of Health</u> , 411 S.C. 16, 766 S.E.2d 707 (2014)	9
<u>State v. Dawkins</u> , 352 S.C. 162, 573 S.E.2d 783 (2002)	5
<u>State v. Hudson</u> , 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999)	5
<u>State v. Morgan</u> , 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002)	5
<u>State v. Wilson</u> , 274 S.C. 352, 264 S.E.2d 414 (1980).....	9
<u>Sullivan v. S.C. Dep't of Corr.</u> , 355 S.C. 437, 586 S.E.2d 124 (2003)	2
<u>Wade v. Berkeley County</u> , 348 S.C. 224, 559 S.E.2d 586 (2002)	5

Statutes

S.C. Code § 1-23-380.....	3
S.C. Code § 1-23-610.....	3
S.C. Code § 24-3-40.....	<i>passim</i>

STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY FOUND THAT THE GENERAL PURPOSE OF S.C. CODE § 24-3-40 IS TO RESTRICT PRISONER ACCESS TO EARNED WAGES AND CORRECTLY AFFIRMED THE DEPARTMENT OF CORRECTIONS' CONCLUSION THAT S.C. CODE § 24-3-40 DOES NOT ALLOW APPELLANT TO DISTRIBUTE HIS ESCROWED WAGES TO A PERSON OF HIS CHOOSING AT THE PRESENT TIME.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of Shawndell Monte McFarlin, an inmate serving a life sentence in the custody of the South Carolina Department of Corrections. On August 2, 2017, Appellant submitted a Step One Grievance arguing that he should be permitted to immediately distribute his escrowed wages to a third party of his choice. SCDC denied the request, stating that under S.C. Code § 24-3-40, since Appellant was serving a life sentence, his escrowed wages must be held until his release. Appellate submitted a Step Two Grievance, which was denied for the same reason. Appellant then filed a Notice of Appeal to the Administrative Law Court. On April 19, 2018, Administrative Law Judge Ralph King Anderson, III, issued an order affirming SCDC's determination under S.C. Code § 24-3-40. This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (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. § 1-23-610(B); see also S.C. Code § 1-23-380(5).

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY FOUND THAT THE GENERAL PURPOSE OF S.C. CODE § 24-3-40 IS TO RESTRICT PRISONER ACCESS TO EARNED WAGES AND CORRECTLY AFFIRMED THE DEPARTMENT OF CORRECTIONS' CONCLUSION THAT S.C. CODE § 24-3-40 DOES NOT ALLOW APPELLANT TO DISTRIBUTE HIS ESCROWED WAGES TO A PERSON OF HIS CHOOSING AT THE PRESENT TIME.

Appellant, an inmate serving a life sentence for murder, argues that S.C. Code § 24-3-40 entitles him to have his escrowed wages distributed to a person or persons of his choosing at any time. To the contrary, as the Administrative Law Judge properly concluded, S.C. Code § 24-3-40's general purpose is to restrict still-incarcerated inmates' access to their escrowed wages, and subsection (B)(2) does not allow Appellant to distribute his earned wages to a person of his choosing at the present time.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Charleston County School District v. State Budget & Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). The text of a statute is considered the best evidence of the legislative intent or will, and the courts are bound to give effect to the expressed intent of the legislature. Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012). The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. Durham v. United Cos. Fin. Corp., 331 S.C. 600, 604, 503 S.E.2d 465, 468 (1998). “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.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

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. State v. Morgan, 352 S.C. 359, 367, 574 S.E.2d 203, 207 (Ct. App. 2002); see also Wade v. Berkeley County, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002) (“[W]here a statute is ambiguous, the Court must construe the terms of the statute.”). An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law. State v. Hudson, 336 S.C. 237, 247, 519 S.E.2d 577, 582 (Ct. App. 1999); City of Sumter Police Dep't v. One (1) 1992 Blue Mazda Truck, 330 S.C. 371, 376, 498 S.E.2d 894, 896 (Ct. App. 1998). In construing a statute, the court looks to the language as a whole in light of its manifest purpose. See, e.g., State v. Dawkins, 352 S.C. 162, 166, 573 S.E.2d 783, 785 (2002). Statutory language “must be construed in context and in light of the intended purpose of the statute in a manner which harmonizes with its subject matter and accords with its general purpose.” Cabiness v. Town of James Island, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011) (internal quotations omitted).

Appellate courts give great weight to an agency’s long-standing construction of a statute; however, such a construction is not dispositive. Gilstrap v. South Carolina Budget and Control Bd., 310 S.C. 210, 423 S.E.2d 101 (1992); see also Brown v. Bi-Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003) (recognizing that courts generally give deference to an administrative agency’s interpretation of an applicable statute or its own regulation unless the plain language of the statute or regulation is contrary to the agency’s interpretation). If the statute or regulation “is silent or ambiguous with respect to the specific issue,” the court then must give deference to the agency’s interpretation of the statute or

regulation, assuming the interpretation is worthy of deference. Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843 (1984).

The statute at issue in Appellant's case, S.C. Code § 24-3-40, involves the disposition of wages of inmates who are allowed to work at paid employment. The statute, in its entirety, reads as follows:

(A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. If the prisoner is serving his sentence in a local detention or correctional facility pursuant to a designated facilities agreement or in a local work/punishment program, or if the local governing body elects to operate one, then the same provisions for payment directly to the official in charge of the facility shall apply if the facility has the means to account for such monies.

The Director of the Department of Corrections, or the local detention or correctional facility manager, if applicable, shall deduct the following amounts from the gross wages of the prisoner:

(1) If restitution to a particular victim or victims has been ordered by the court, then twenty percent must be used to fulfill the restitution obligation. If a restitution payment schedule has been ordered by the court pursuant to Section 17-25-322, the twenty percent must be applied to the scheduled payments. If restitution to a particular victim or victims has been ordered but a payment schedule has not been specified by the court, the director shall impose a payment schedule of equal monthly payments and use twenty percent to meet the payment schedule so imposed.

(2) If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied then:

(a) if the prisoner is engaged in work at paid employment in the community, five percent must be placed on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, Section 1404, and fifteen percent must be retained by the department to support services provided by the department to victims of the incarcerated population; or

(b) if the prisoner is employed in a prison industry program, ten percent must be directed to the State Office of Victim Assistance for use in training, program development, victim compensation, and general administrative

support pursuant to Section 16-3-1410 and ten percent must be retained by the department to support services provided by the department to victims of the incarcerated population.

(3) Thirty-five percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the guardian of the child or children or to appropriate clerks of court, in the case of court ordered child support, for application toward payment of child support obligations, whichever is appropriate. If there are no child support obligations, then twenty-five percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board. Furthermore, if there are no child support obligations, then ten percent must be made available to the inmate during his incarceration for the purchase of incidentals pursuant to subsection (4). This is in addition to the ten percent used for the same purpose in subsection (4).

(4) Ten percent must be available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate's choice.

(5) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner.

(6) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of incidentals pursuant to subsection (4).

(B) The Department of Corrections, or the local detention or correctional facility, if applicable, shall return a prisoner's wages held in escrow pursuant to subsection (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.

Appellant asserts that subsection (B)(2) allows for a current distribution to a person of his choice. Appellant's interpretation is incorrect under the plain language of the statute

and considering the general purpose of the statute, which is clearly to restrict an inmate's access to his earned wages. The disbursement of escrowed wages is governed by subsection (B) of the statute. Subsection (B)(1) states that a prisoner released without community supervision must be given his escrowed wages *upon his release*. Subsection (B)(2), a subsection dedicated to inmates sentenced to death or life imprisonment, states that such an inmate "shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice." Subsection (B)(3) states that an inmate released to community supervision shall receive the lesser of two-hundred dollars or the escrow balance *upon his release*, with any remaining balance going to the Department of Probation, Parole and Pardon Services to be applied toward payment of the offender's housing and basic needs. Any balance remaining at the conclusion of the supervision period is returned to the offender at that time.

The Administrative Law Judge properly concluded that a review of the statute as a whole indicates that the general purpose of S.C. Code § 24-3-40 is to restrict personal access of still-incarcerated inmates to their earnings except in the limited circumstances specified in the statute. In fact, the only direct access an incarcerated inmate has to his earnings is under Subsection (A)(4), which requires that ten percent of the escrowed wages must be made available to the inmate during his incarceration. This subsection specifically states that the inmate may use the ten percent "for the purchase of incidentals" or he may distribute these funds "to the person or persons of the inmate's choice." Subsection (A)(4) provides the only mechanism for an inmate to distribute funds to other people during his incarceration. Subsection (B)(2), read in harmony with the restrictive nature of the statute as a whole, does

not change this fact and consequently only allows an inmate who serves a life or death sentence to have his escrowed wages distributed to the persons or entities of his choice upon his or her release or death.

In sum, the Administrative Law Judge properly affirmed the Department of Corrections' final agency determination after correctly concluding that there were no compelling reasons to overrule the Department's interpretation of S.C. Code § 24-3-40.¹ See Kiawah Development Partners, II v. South Carolina Dept. of Health and Environmental Control, 411 S.C. 16, 34-35, 766 S.E.2d 707, 718 (2014) ("Accordingly, the deference doctrine properly stated 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.'" (citation omitted)). Accordingly, the order of the Administrative Law Judge should be upheld.

¹ Appellant mentions in his Brief the fact that section (A)(5) of S.C. Code § 24-3-40 states that the interest-bearing escrow account is "for the benefit of the prisoner." The fact that ten percent of an inmate's wages goes into an escrow account for his benefit does not change the fact that very next portion of the statute restricts inmate access to such funds until release from custody. Although Appellant's life sentence means that he most likely will not be released until he dies, his release is still possible through reversal of his conviction via the appellate, post-conviction relief, or habeas corpus processes, through parole, pardon, or any other mechanism allowed by law. Having restricted access to his escrowed wages while he is still incarcerated allows Appellant to build up a supply of funds in the event of his release, which would obviously be to his benefit. Further, even if he is not released during his lifetime, Appellant's argument overlooks the reality that he does indeed benefit by having monies available for distribution to his family members or others upon his death.

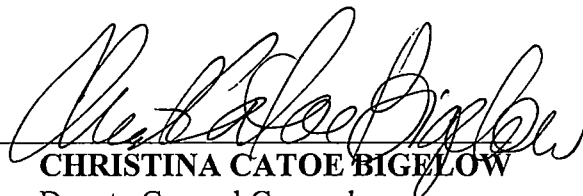
CONCLUSION

For the foregoing reasons, this Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
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BY:



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April 1, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph King Anderson, III

ALC Case No. 17-ALJ-04-0572-AP
Appellate Case No. 2018-001741

SHAWNDELL MONTE MCFARLIN, # 200701,

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APPELLANT,

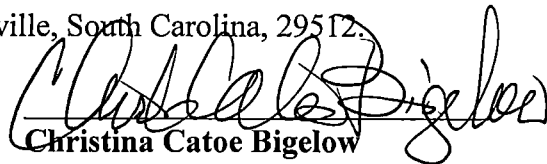
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date she mailed a copy of the **Initial Brief of Respondent and Designation of Matter to be Included in the Record** to Appellant, addressed as follows: Shawndell Monte McFarlin, # 200701, Evans Correctional Institution, 610 Highway 9 West, Bennettsville, South Carolina, 29512.



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April 1, 2019



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

April 1, 2019

The Honorable Jenny A. Kitchings
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SC Court of Appeals

RE: Shawndell Monte McFarlin, # 200701, v. South Carolina Department of Corrections
Appellate Case No. 2018-001741

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter** in the above captioned appeal, along with **Proof of Service**. Also enclosed is a **Motion to File Out of Time** and a corresponding **Proof of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections

cc: Shawndell Monte McFarlin, # 200701
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