

STATE OF SOUTH CAROLINA
In The Supreme Court

On Writ of Certiorari from the Court of Appeals
Appeal from the Administrative Law Court
John D. McLeod, Administrative Law Judge

Opinion No. 2019-UP-104 (S.C. Ct. App. filed 3/13/19)
Appellate Case No. 2016-001564

RECEIVED
MAY 16 2019
SC Court of Appeals

UUNO MATTIAS BAUM,

RESPONDENT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

PETITIONER.

PETITION FOR A WRIT OF CERTIORARI

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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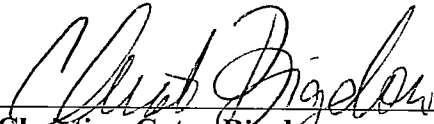
ATTORNEY FOR PETITIONER

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CERTIFICATE OF COUNSEL

Undersigned counsel hereby certifies that a Petition for Rehearing was filed in the South Carolina Court of Appeals on March 26, 2019, and the same was denied on April 18, 2019.



Christina Catoe Bigelow
Attorney for Petitioner

ISSUE PRESENTED

The Court of Appeals erred in reversing the Administrative Law Court where the Administrative Law Court properly determined that the general purpose of S.C. Code § 24-3-40 is to restrict prisoner access to earned wages and correctly found that this statute does not allow Respondent to distribute his escrowed wages to a person of his choosing at the present time.

STATEMENT OF THE CASE

This matter initially came before the court pursuant to the appeal of Uuno Mattias Baum, an inmate in the custody of the South Carolina Department of Corrections. On May 22, 2015, Respondent submitted a Step One Grievance arguing that he should be permitted to immediately distribute his escrowed wages to his mother. SCDC denied the request, stating that under S.C. Code § 24-3-40, since Respondent was serving a life sentence, his escrowed wages must be held until his release, parole, or death. Respondent submitted a Step Two Grievance on June 21, 2015, which was denied for the same reason on January 14, 2016. Respondent filed a Notice of Appeal to the Administrative Law Court on February 16, 2016. On July 14, 2016, Administrative Law Judge John D. McLeod issued an order affirming SCDC's determination under S.C. Code § 24-3-40. Respondent appealed to the South Carolina Court of Appeals, and, on March 13, 2019, the Court of Appeals issued an opinion reversing the Administrative Law Court's order. See Uuno Mattias Baum v. South Carolina Department of Corrections, Op. No. 2019-UP-104 (S.C. Ct. App. filed 3/13/19). The Department filed a Petition for Rehearing which was denied on April 18, 2019.¹ The Department now seeks review of the Court of Appeals' decision.

¹ Please note that the precise issue on appeal in the instant case is one of several issues involved in a similar case currently pending before the South Carolina Court of Appeals in the case of Thomas J. Torrence v. SCDC, Appellate Case No. 2016-000285. The Department's Petition for Rehearing in that case was filed on January 10, 2019, and it has not yet been ruled upon.

ARGUMENT

The Court of Appeals erred in reversing the Administrative Law Court where the Administrative Law Court properly determined that the general purpose of S.C. Code § 24-3-40 is to restrict prisoner access to earned wages and correctly found that this statute does not allow Respondent to distribute his escrowed wages to a person of his choosing at the present time.

The Court of Appeals found that Respondent, an inmate serving a life sentence for murder, was entitled under S.C. Code § 24-3-40 to have his escrowed wages distributed to a person or persons of his choosing at any time. To the contrary, as the Administrative Law Court 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 Respondent 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 this 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.

The Court of Appeals held that subsection (B)(2) allows for an immediate distribution to a person of Respondent's choice. Respectfully, this 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 Court 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 death.²

In sum, the Administrative Law Court properly affirmed the Department of Corrections' final agency determination after correctly concluding that there were no compelling reasons to

² The Administrative Law Court also correctly found that this conclusion is buttressed by the statute's use of the term "estate" in the first part of Subsection (B)(2), which is a term commonly understood to refer to property owned at death. See State v. Wilson, 274 S.C. 352, 355, 264 S.E.2d 414, 415 (1980) (when general words follow the enumeration of particular classes or subjects, the general words should be construed as limited only to those of the general nature or class enumerated); South Mutual Church Insurance Company v. S.C. Windstorm & Hail Underwriting Ass'n, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991) (the meaning of terms in a statute may be ascertained by reference to words associated with them in the statute). (See App. p. 32-33). Subsection (B)(2)'s second option, which allows an inmate serving a life or death sentence to have his escrowed wages "distributed to the persons or entities of his choice," allows the funds to be distributed *outside* of the probate process.

overrule the Department's interpretation of S.C. Code § 24-3-40.³ 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)). The Court of Appeals erred in reversing the determination of the Administrative Law Court.

³ Respondent repeatedly pointed out in his Brief to the Court of Appeals 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.” (See App. p. 40-44). 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 Respondent'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 pardon, or through any other mechanism allowed by law. Having restricted access to his escrowed wages while he is still incarcerated allows Respondent 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, Respondent's argument overlooks the reality that he does indeed benefit by having monies available for distribution to his family members upon his death.

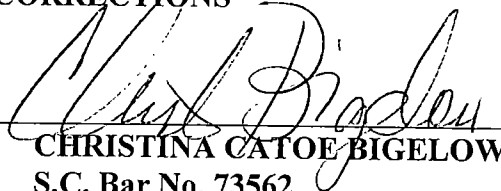
CONCLUSION

For the reasons discussed above, the Department submits that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
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BY:



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May 16, 2019

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT
John D. McLeod, Administrative Law Judge

Opinion No. 2019-UP-104 (S.C. Ct. App. filed 3/13/19)
Appellate Case No. 2016-001564

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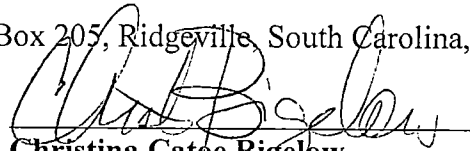
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

PETITIONER.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date she mailed a copy of the **Petition for a Writ of Certiorari** to Respondent, addressed as follows: **Uuno Mattias Baum, # 272249**, Lieber Correctional Institution, Post Office Box 205, Ridgeway, South Carolina, 29472.



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May 16, 2019



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

May 16, 2019

The Honorable Daniel E. Shearouse
Clerk of Court, S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

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SC Court of Appeals

RE: Uuno Mattias Baum v. South Carolina Department of Corrections
Court of Appeals Appellate Case No. 2016-001564

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the Department's **Petition for a Writ of Certiorari**, along with **Proof of Service** for the same. Also enclosed are two copies (one unbound) of the **Appendix**.

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
S.C. Bar No. 73562
Deputy General Counsel
South Carolina Department of Corrections

cc: Uuno Mattias Baum, # 272249
Lieber Correctional Institution
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The Honorable Jenny A. Kitchings
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