THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

Appeal From The Administrative Law Court

he Honorable Law Judge Milton G. Kimpson

Appellate Case No. 2020-001512

Buddy Newsome, #220855 Appellant,

vs.

South Carolina Department of Corrections Respondent.

RECORD ON APPEAL

Buddy Newsome #220855
Tyger River Corr. Inst.
200 Prison Road
Enoree, SC 29335
Appellant, Pro Se.

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CERTIFICATE OF APPELLANT

The Undersigned hereby certifies that the Record on Appeal contains all material proposed to be inlcuded by any of the parties and not any other material.

March 30, 2021

S/ Buddy Newsome

Buddy Newsome #220855
Tyger Riv. C.I.
200 Prison Road
Enoree, SC 29335
Appellant, Pro Se

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Buddy Newsome, #220855, Appellant, v. South Carolina Department of Corrections, Respondent.	)	Docket No. 19-ALJ-04-0575-AP ORDER

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed by Buddy Newsome (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or Respondent). Appellant appeals the Department's decision denying his Step 2 Grievance because the Appellant was not serving a life sentence to imprisonment as contemplated under S.C Code Ann. § 24-3-40 (2017). Upon careful consideration of the Record on Appeal (Record), arguments raised in the parties' briefs, and the applicable law, the Court upholds the Department decision in this case.

BACKGROUND

On September 17, 2019, Appellant filed a Step 1 Grievance contending that he should be allowed access to his "Long Term Savings." [1] Appellant was convicted of Homicide by Child Abuse pursuant to S.C. Code Ann. § 16-3-85, an offense he committed in 1994. He was sentenced for this crime to serve one hundred (100) years in prison. Appellant argues that the South Carolina Court of Appeals' unpublished opinion in *Baum v. South Carolina Department of Corrections*, 2019 WL 1164316 (Ct. App. 2019) requires the Department to allow him to direct his escrowed wages to "persons or entities of his choice" under S.C. Code Ann. § 24-3-40(B)(2). While Appellant acknowledges that § 24-3-40(B)(2), on its face, applies only to inmates "serving life in

[1] As will be explained below, Appellant is referring to an escrow account for wages earned by prisoners employed in the Prison Industries Program created under S.C. Code Ann. § 24-3-40(A)(5) (2007 & Supp. 2019).

prison or sentenced to death," Appellant contends that his definite sentence of 100 years is a *de facto* life sentence because it extends beyond his life expectancy.[2] The Department's internal grievance decision rejected Appellant's *de facto* life argument and denied his attempt to direct distribution of his escrowed wages because he had not been sentenced to life in prison, and further, was eligible for parole.

Thereafter, on November 8, 2019, Appellant filed his Notice of Appeal with this Court. On November 27, 2019, Appellant filed what he characterized as his "Initial Brief." On January 24, 2020, the Department filed the Record on Appeal (Record). The Department then filed a Motion to Enlarge Time to File Brief on March 10, 2020, which the Court granted by Order dated March 13, 2020. The Appellant then filed what he characterized as his "Final Brief" on March 17, 2020. On April 13, 2020, the Department filed its brief. On April 20, 2020, Appellant filed a second "Final Brief" which offers counter arguments to the Department's brief and should, therefore, have been labelled, "Reply Brief."[3]

JURISDICTION/STANDARD OF REVIEW

The Court's jurisdiction to review the Department's final decision in a non-collateral or administrative matter stems from *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). Typically, these administrative matters entitled to review "[a]rise in two ways: (1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status." *Id.* at 369, 527 S.E.2d at 750. In determining to adhere to the limited nature of judicial review in inmate matters, the court observed that, "[c]ourts traditionally have adopted a 'hands off' doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters, although they must intercede when infringements complained of by an inmate reach constitutional

[2] Appellant's acknowledgement that he is serving a 100 year sentence instead of having been sentenced to life imprisonment is significant and is binding on him for the purposes of this appeal. *See Germain v. Nichol*, 278 S.C. 508, 509, 299 S.E.2d at 336 (1983)(A party is bound by what he states in the Statement of Case of his brief) In a previous case involving Appellant, *Newsome v. South Carolina Department of Pardon, Parole and Pardon Services*, Docket No. 17-ALJ-15-0027-AP (S.C. Admin. Law Judge Div. February 13, 2018), based upon a representation contained in the Respondent agency's brief, this Court observed that Appellant was "serving a life sentence for the offense of Homicide by Child Abuse..." "A court can take judicial notice of its own records, files[,] and proceedings for all proper purposes including facts established in its records." *Wise v. Wise*, 394 S.C. 591, 716 S.E.2d 117 (Ct. App. 2011).

[3] Appellant is reminded that South Carolina Administrative Law Court Rule of Procedure 60(D) states that "[o]nly one initial brief and reply brief will be considered by the court unless, the court, upon motion, has allowed the filing of an additional brief."

dimensions." *Id.* at 382, 527 S.E.2d at 757 (citation omitted).

Post *Al-Shabazz* decisions have determined that a matter is reviewable by the ALC where an inmate's appeal implicates a state-created liberty or property interest. *See e.g., Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 630, 733 S.E.2d 211, 218 (2012); *see also Wicker v. S.C. Dep't. of Corr.*, 360 S.C. 421, 424, 602 S.E.2d 56, 57-58 (2004) (holding that inmates have a right to procedural due process in matters involving a state-created right to property such as the state's mandate that inmates be paid the prevailing wage).[4] In *Slezack v. South Carolina Department of Corrections*, 361 S.C. 327, 605 S.E.2d 506 (2004), our supreme court distinguished the ALC's subject matter jurisdiction from its appellate jurisdiction in clarifying the ALC's jurisdiction in inmate grievance matters. The court explained that the ALC has subject matter jurisdiction to hear appeals from the final decision of the Department in non-collateral or administrative matters. *Id.* at 331, 605 S.E.2d at 507 (citation omitted); *see also Howard*, 399 S.C. at 625, 733 S.E.2d at 215 ("The ALC has subject matter jurisdiction under the [APA] to hear properly perfected appeals from the SCDC's final orders in administrative or non-collateral matters.") In addition, "[t]he AL[C] has appellate jurisdiction over any matter where the procedural prerequisites for perfecting such an appeal have been met." *Slezack*, 361 S.C. at 331, 605 S.E.2d at 507 (citation omitted). However, while the ALC has jurisdiction over all properly perfected appeals from Department final orders, summary dismissal may be appropriate where the inmate's appeal does not implicate a state-created liberty or property interest. *Id.* at 333, 605 S.E.2d at 509. Because Appellant properly perfected his appeal, under the auspices of *Slezack* and *Howard*, the Court has jurisdiction over this matter.

In *Torrence v. South Carolina Department of Corrections.*, 373 S.C. 586, 646 S.E.2d 866, (2007), our state Supreme Court affirmed a circuit court's dismissal of a declaratory judgement action brought by three groups of litigants. Of significance here is the first group, a putative class of inmates who alleged that the Department disbursed wages earned under the Prison Industries Program in a manner that violated section 24-3-40(A) (2007 & Supp. 2019). In finding that the

[4] Under certain circumstances, states may create liberty interests which are protected by the Due Process Clause; however, "[t]hese interests will be generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995); *see also Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 445 n.5, 586 S.E.2d 124, 127 n.5 (recognizing that condition of confinement claims could implicate state-created liberty interests but adhering to *Sandin's* pronouncement limiting these interests).

inmates could not bring their case in circuit court, the Supreme Court observed:

> The Legislature specifically authorized inmate labor in private industry via S.C. Code Ann. section 24-3-430. This statute provides that "[n]o inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector." S.C. Code Ann. § 24-3-430(D) (2007); see also § 24-3-315 (for a prison industry project, the DOC must determine "that the rates of pay and other conditions of employment are not less than those paid and provided for work of similar nature in the locality in which the work is performed"). Moreover, section 24-3-430(H) expressly directs that "[t]he earnings of an inmate authorized to work at paid employment pursuant to this section must be paid directly to the [DOC] and applied as provided under Section 24-3-40."
>
> . . . .
>
> Appellants claim that despite the holdings of *Adkins* and *Wicker*, the Prisoner Subclass [prisoners who have participated in the Prison Industries Program] should be able to proceed in circuit court in the posture of a declaratory judgment action. We disagree. The clear rule emerging from the *Adkins* and *Wicker* cases is this: inmates working in the Prison Industries Program have a cognizable, state-created interest in having the DOC pay them according to the statutory scheme governing the Program, but they do not have a private right of action; instead, the DOC's internal grievance procedure, with recourse to the Administrative Law Court, is the appropriate way to have a prisoner's wage claim adjudicated. Therefore, the trial court correctly applied Adkins and Wicker to the Prisoner Subclass. To hold otherwise would contravene our precedent on these issues by allowing inmates access to the circuit court merely by styling their cases as declaratory judgment actions.

Id., 373 S.C. at 591-594, 649 S.E.2d at 868-869 (emphasis added).

Based upon *Torrence*, therefore, Appellant's claim that the Department will not allow him to distribute his escrowed wages in accordance with § 24-3-40 is properly before this Court and is not subject to summary dismissal.

When reviewing the Department's final decision in a non-collateral or administrative matter, the Court sits in an appellate capacity. *Al-Shabazz*, 338 S.C. at 376-77, 527 S.E.2d. at 754. Accordingly, the Court's review is limited to the Record presented. S.C. Code Ann. § 1-23-380(4) (Supp. 2018). The Administrative Procedures Act establishes the standard of review the ALC must apply when reviewing the Division's decisions:

> 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)(a)-(f) (Supp. 2018); *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2018) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380).

The Court's review is governed by the substantial evidence standard. *See generally Hamm v. S.C. Pub. Serv. Commission*, 309 S.C. 295, 422 S.E.2d 118 (1992) (explaining that under the APA, the Court must sustain an agency decision if there is substantial evidence to support it). The South Carolina Supreme Court has observed that "Substantial evidence is not a mere scintilla; rather, it is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency." *Friends of the Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010) (citation omitted). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, "[a] reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)).

A reviewing court is not so constrained when deciding questions of law, however. *See Gibson v. Ameris Bank*, 420 S.C. 536, 542, 804 S.E.2d 276, 279 (Ct. App. 2017) ("[Q]uestions of law may be decided with no particular deference to the trial court...") (*quoting U.S. Bank Tr. Nat'l Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009)); *see also Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 569, 776 S.E.2d 397, 402 (Ct. App. 2015) ("This court [Court of Appeals] reviews questions of law *de novo*.") (quoting *Proctor v. Steedley*, 398 S.C. 561, 573, 730 S.E.2d 357, 363 (Ct. App. 2012)).

Affidavits of F/m's Serving Parole Eligible Life.

Nevertheless, despite the latitude afforded to an appellate court when reviewing questions of law, "[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 77, 716 S.E.2d 877, 882 (2011) (citation omitted); see also *S.C. Dep't of Motor Vehicles v. Dover*, 423 S.C. 153, 161, 813 S.E.2d 532, 536 (Ct. App. 2018) ("[T]he deference doctrine ... provides that whe[n] 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.") (citation omitted).

DISCUSSION

Appellant argues that he should be allowed to direct the money in his escrow account to persons he selects under §24-3-40(B)(2).[5] In pertinent part, § 24-3-40(B) provides:

> (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

(emphasis added). [6]

[5] Appellant cites the Court of Appeals' unpublished decision in *Baum* for this proposition. There, in interpreting § 24-3-40 for inmates serving life sentences and those serving death sentences, the Court of Appeals construed the language of "subsections (A)(5) and (B)(2) to allow for either immediate distribution of an inmate's escrowed wages to persons or entities of his choosing or inclusion of these assets in the distribution of his estate." Although the Record here does not reveal the Department's construction of these subsections prior to *Baum*, the Record indicates that the agency's current policy has changed to conform to the decision.

[6] Section 24-3-40(A)(5) provides for this escrow account and requires the Department to "deduct the following amounts from the gross wages of the prisoner:...(5) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner." Inasmuch as Appellant is employed in a Prison Industries job or is engaged in other employment so that his wages must be distributed in accord with this code section, ten percent of his earned wages have been deposited into an escrow for "the benefit of the

As stated, although Appellant acknowledges that the trial judge did not sentence him to "life in prison," he argues that his 100 year sentence – a term ostensibly exceeding his life expectancy – is a *de facto* life sentence which qualifies him for the requested relief under § 24-3-40(B)(2). Appellant cites *State v. Slocumb*, 426 S.C. 297, 827 S.E.2d 148 (2019) (also referred to herein as 2019 *Slocumb* decision) for the proposition that his 100 year sentence is a *de facto* life sentence. In the 2019 *Slocumb* decision, which concerned a sentencing issue for a defendant who was a juvenile at the time he committed his offense(s), the South Carolina Supreme Court recognized that the defendant's "130 year sentence [was] a *de facto* life sentence." *Id.*, 426 S.C. at 309, 827 S.E.2d at 154. In doing so, the court referred to *Bunch v. United States*, 685 F.3d 546 (6th Cir. 2012) in defining a *de facto* life sentence as "one that is expressed as a lengthy term of years, causing the defendant's eligibility for parole or release to fall outside his projected life expectancy." *Id.*, 426 S.C. at 301, n. 3, 827 S.E.2d at 301, n. 3.

The Department, citing to the South Carolina Court of Appeals' decision in *State v. Slocumb*, 412 S.C. 88, 770 S.E.2d 436 (Ct. App. 2015) (2015 *Slocumb* decision), rejects Appellant's *de facto* sentence rationale, however, and argues that the defendant in *Slocumb* "was serving several consecutive life sentences that exceeded his life expectancy and did not have the possibility of parole." As such, according to the Department, the *Slocumb* defendant had no chance to be released from prison prior to the expiration of his 130-year sentence. In the Court of Appeals' 2015 *Slocumb* decision, the issue was whether the state circuit court judge, on resentencing ordered after a United States District Court granted the defendant's *habeas corpus* petition, should have resentenced Slocumb for the one charge considered by the District Court or whether the judge should have resentenced him on all of his charges "because his [total] term-of-years sentence was the functional equivalent of a life sentence." *Id.*, 412 S.C. at 92, 770 S.E.2d at 438. The District Court granted *habeas corpus* because Slocumb, who committed multiple offenses while a juvenile, had been sentenced to life imprisonment for burglary. *Id.*, 412 at 91, 770 S.E.2d at 438.[7] The District Court vacated the life imprisonment sentence for burglary based upon the United States Supreme Court's ruling in *Graham v. Florida*, 560 U.S. 48, 82 (2010) which held that life without

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prisoner."

[7] Slocumb was also sentenced to thirty (30) years for kidnapping, thirty (30) years for first degree criminal sexual conduct, fifteen (15) years for robbery, and five (5) years for escape. All sentences were to run consecutively. *Id.*, 412 S.C. at 90, 770 S.E.2d at 437-338.

parole is unconstitutional under the Eighth Amendment to the United States Constitution when imposed on juvenile nonhomicide offenders. *Id.*, 412 S.C. at 91, 770 S.E.2d at 438. On resentencing in state court, the trial judge sentenced Slocumb to fifty (50) years in prison for the burglary conviction, but did not address his other convictions, leaving those consecutive sentences totaling an additional eighty (80) years imprisonment intact. *Id.* The Court of Appeals affirmed the lower court's reasoning that it had authority to address only the burglary conviction the District Court found to be in violation of applicable precedent. Thus, while Slocumb no longer faced a *de jure* life in prison sentience, and as such, presumably, *could* become parole eligible at some point, he still faced a total, definite prison sentence of 130 years. The 2015 Court of Appeals' *Slocumb* case did not address the *de facto* life sentence issue subsequently considered by the South Carolina Supreme Court in its 2019 *Slocumb* decision.

The issue our state Supreme Court adjudicated in the 2019 *Slocumb* decision was whether the Eighth Amendment to the United States Constitution prohibited the imposition of a *de facto* life sentence on an inmate who committed nonhomicide crimes while a juvenile. 426 S.C. at 303, 827 S.E.2d at 151. As stated earlier, the *Slocumb* Court recognized that Slocumb's 130-year prison sentence constituted a *de facto* life sentence. *Id.*, 426 S.C. at 309, 827 S.E.2d at 154 ("We do not deny the obvious—Slocumb's 130-year sentence is a de facto life sentence.") Nevertheless, our Supreme Court declined to rule that such violated the Eighth Amendment without further direction from the United States Supreme Court. *Id.*, 426 S.C. at 34-315, 827 S.E.2d at 314.

This Court must determine, then, whether Appellant's 100 year sentence constitutes a *de facto* life sentence as contemplated by the 2019 *Slocumb* decision, and if, so, whether such qualifies Appellant to direct his wages to "persons or entities" under § 24-3-40(B)(2).

Based on the 2019 *Slocumb* decision, this Court must conclude that Appellant is not serving a *de facto* life sentence. While clearly his 100 year sentence, if served without interruption, would almost certainly result in his not being released from prison during his natural life, Appellant is eligible for parole and has already appeared before the parole board. [8] The only guide the 2019 *Slocumb* decision gave in assessing "*de facto*" life sentences is its citation to *Bunch*. Our Supreme Court thus gave the following definition of *de facto* life sentence: "a *de facto* life sentence is one

[8] This Court's earlier decision in *Newsome v. South Carolina Department of Pardon, Parole and Pardon Services*, Docket No. 17-ALJ-15-0027-AP (S.C. Admin. Law Judge Div. February 13, 2018), arose out of Appellant's challenge to the time between his parole hearings.

that is expressed as a lengthy term of years, causing the defendant's *eligibility for parole or release to fall outside his projected life expectancy*." *Id.*, 426 S.C. at 301, n. 3, 827 S.E.2d at 301, n. 3. (emphasis added) Here, it is clear that Appellant is currently eligible for parole. As such, Appellant's situation is excluded from the only definition of *de facto* life sentence that our state Supreme Court has provided.

Moreover, even if Appellant's sentence were to be considered to be a *de facto* life sentence, this Court does not believe that such would fall within the "serving a life sentence" language of § 24-3-40(B)(2). "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Alltel Comm. Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 320, 731 S.E.2d 869, 873 (2012). "The plain language of the statute is the principal guidepost in discerning the General Assembly's intent." *Blue Ribbon Taxi Corp. v. South Carolina Department of Motor Vehicles*, 380 S.C. 600, 607, 670 S.E.2d 674, 678 (2008) "Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Alltel*, 399 S.C. at 320-21, 731 S.E.2d at 873. However, a "statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper Cnty*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

The language of §24-3-40(B)(2) is straightforward. It allows an inmate "serving life in prison or sentenced to death" the option of sending his escrowed wages to persons or entities of his choice or to have such escrowed wages included in his estate. While the Court declines to rely upon the definition of "life imprisonment" under S.C. Code Ann. § 16-3-20 proffered by the Department,[9] it is clear that the General Assembly contemplated making the relief under § 24-3-40(B)(2) available to a prisoner serving a life sentence who does not have the possibility of release earlier than the expiration of his or her natural life. Not only is this made clear by (B)(2)'s alternate clause, "or sentenced to death," it is supported by the remaining subsections of (B) inasmuch as (B)(1) and (B)(3) both provide for distribution of some or all of the escrow account to a prisoner upon his release, whether that release is because of the expiration of a term of years, community supervision or parole. The General Assembly's intent then is to ensure that the escrowed funds are available to an inmate as he reenters society upon release from prison. Given his eligibility for

[9] Section 16-3-20, by its very terms, limits the definition of "life imprisonment" to that section, e.g., "For purposes of this section, "life" or "life imprisonment means..." (emphasis added).

parole, to allow the distribution of Appellant's escrowed funds under § 24-3-40(B)(2) now, instead of at the time of his parole, would create an inconsistency with the expressed intent of the code section. Because Appellant has the possibility of release from prison on parole prior to the end of his natural life, he is ineligible for relief under § 24-3-40(B)(2). [10]

Finally, the Court recognizes Appellant's counter argument that parole is not a right of any prisoner but, instead, is a privilege, citing *Furtick v. South Carolina Department of Probation, Parole and Pardon Services*, 352 S.C. 494, 576 S.,E.2d 146, 149-50 (2003). As such, as Appellant correctly contends, parole eligibility, in and of itself, does not guarantee that he will be released short of the expiration of his 100-year sentence. Nevertheless, in a situation such as this where the plain meaning of § 24-3-40(B)(2) does not result in an absurdity, this Court is bound to apply the law as written. While courts interpret the laws to determine legislative intent, "the responsibility for the justice or wisdom of legislation rests exclusively with the legislature..." *Adkins v. Comcar Industries*, 316 S.C. 149, 151, 447 S.E.2d 228, 230 (Ct. App. 1994). [11]

ORDER

IT IS THEREFORE ORDERED that, based on the foregoing, the Appellant's appeal is DENIED.

AND IT IS SO ORDERED.

October 8, 2020
Columbia, SC

Milton G. Kimpson, Judge
South Carolina Administrative Law Court

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 8 day of October

By: _____
Judicial Law Clerk

[10] Even if § 24-3-40(B)(2) could be deemed ambiguous in this regard, the Court believes that the Department's interpretation is worthy of deference on this issue. *See Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 32, 766 S.E.2d 707, 717 (2014) (An agency's interpretation of a silent or ambiguous statute that it is charged with administering is worthy of deference unless it is "'arbitrary, capricious, or manifestly contrary to the statute," or unless there is a compelling reason to differ.")

[11] In a similar fashion, although the Court commends the Appellant on his well-crafted and substantive arguments, this Court is bound by the definition of *de facto* life sentence recited in the 2019 *Slocum* decision.

RECEIVED
OCT 14 2019

575
Due Date 10-8-19

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only

INMATE GRIEVANCE

Grievance No. TyRCI-0523-19
Code: General
Policy PL/Bm
Disc. Hear.
Class
PREA
Date Received: 10/9/19
IGC Initials: QC
Date Received: 10-15-19
IGA Initials:

INMATE NAME: Buddy Newsome

SCDC NUMBER: 220855

INSTITUTION: Tyger River Corr. Inst. ✓ 10-17-19 LOR

HOUSING UNIT: Unit 11 Room 227

WORK ASSIGNMENT: Prison Industries

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

According to SCDC my sentence is not considered a LIFE sentence, therefore I am according to their interpretation not eligible for accessing my escrow account in accordance to the UNA BAM ruling by the AIC. Further that due to the fact that my setnence is parole eligible that I can't access the escrowed account where it is possible that I may be released. I specifically object based upon the following:
The South Carolina Supreme Court has acknowledged that a term of years can constitute a De Facto LIFE sentence, Slocumb v. State Opinion No: 27877 (2019), further the United States Supreme Court has held that there is no liberty interest in parole, or any right to release on parole Nebraska v. Greenholtz 442 U.S. 1, 7, (1979), therefore the interpretation of SCDC is arbitrary to S.C. Code § 24-3-40, and State Law Precedent along with United States Supreme Court Rulings. Thus, my sentence does fall within the meaning of UNA BAM and I should receive the same access as those committed for LIFE Sentences.

Grievant Signature Buddy Newsome Date 10/3/19

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

See reverse side for final Agency response.

Responsible Official Signature [signature] Date 10-31-19

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date

IGC Signature Date

SCDC 10-5A (Rev May 2015)

(SEE REVERSE SIDE FOR INSTRUCTIONS)

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.

2. State your specific reason for further appeal. Do not submit any new issues for review. No additional pages will be permitted.

3. Submit this completed form ~~with your copy of the Step 1 form~~ by placing in the Grievance Box within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.

4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

I have reviewed your concern. You stated in this grievance that you have requested access to your Long-Term Savings which has been denied. You stated according to the respondent your sentence is not considered a Life Sentence and as such eligible for Parole. You stated that you are grieving this decision as it is arbitrary to State Law and Supreme Court Authority. You further stated that you have a 100-year sentence with exceeds your life expectancy and that the Supreme Court has ruled that such sentences are essentially life sentences. You also stated the United States Supreme Court has held that a sentence with parole is a unilateral hope not a state Created Right. You stated that the reasoning in the Una Baum Case should apply to your sentence thus any policy denies the same right violates the rule of laws in said case. Finally, you stated that you are requesting access to your Long-Term equivalent to those with Life Sentences. It is noted that SCDC Policy identifies the Long -Term Savings as an Escrow Account. The word Escrow is defined as a bond, deed, or other document kept in the custody of a third party and taking effort only when a specified condition has been fulfilled. SCDC Policy ADM-15.10, Work Release Accounting States, 2.8 Escrow Savings: Ten percent (10%) of the inmate's gross wages must be retained until the inmate's release, death, parole, probation, or release to community supervision programs in an interest-bearing escrow account. The ten percent (10%) will be retained in the work release program account and tracked as the mandatory savings amount.

Therefore, your grievance is denied.

You may appeal this decision under the South Carolina Administrative Procedures Act to the South Carolina Administrative Law Court. In order to appeal, you must complete the attached Notice of Appeal Form (Form) and submit it as instructed on the Form within thirty (30) days of receipt.

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RECEIVED

OCT 14 2019

Due Date 10-8-19

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 2

Office Use Only

Grievance No. TyRCI-0523-19
Code: General
Policy PL/Bm
Disc. Hear.
Class
PREA
Date Received: 10/9/19
IGC Initials: QA
Date Received: 10-15-19
IGA Initials:

INMATE GRIEVANCE

INMATE NAME: Buddy Newsome

SCDC NUMBER: 220855

INSTITUTION: Tyger River Corr. Inst. ✓ 10-17-19 BDR

HOUSING UNIT: Unit 11 Room 227

WORK ASSIGNMENT: Prison Industries

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

According to SCDC my sentence is not considered a LIFE sentence, therefore I am according to their interpretation not eligible for accessing my escrow account in accordance to the UNA BAUM ruling by the AIC. Further that due to the fact that my setnence is parole eligible that I can't access the escrowed account where it is possible that I may be released. I specifically object based upon the following: The South Carolina Supreme Court has acknowledged that a term of years can constitute a De Facto LIFE sentence, Slocumb v. State Opinion No: 27877 (2019), further the United States Supreme Court has held that there is no liberty interest in parole, or any right to release on parole Nebraska v. Greenholtz 442 U.S. 1, 7, (1979), therefore the interpretation of SCDC is arbitrary to S.C. Code § 24-3-40, and State Law Precedent along with United States Supreme Court Rulings. Thus, my sentence does fall within the meaning of UNA BAUM and I should receive the same access as those committed for LIFE Sentences.

Grievant Signature Buddy Newsome Date 10/3/19

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

See reverse side for final Agency response.

Responsible Official Signature [signature] Date 10-31-19

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date

IGC Signature Date

SCDC 10-5A (Rev May 2015)

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: Buddy Newsome

SCDC NUMBER: 220855

INSTITUTION: Tyger River Corr. Inst. 9-19-19 BDR

HOUSING UNIT: Unit 11, Room 227

WORK ASSIGNMENT: Prison industries

OFFICE USE ONLY
Grievance No. TYRCI 0523-19
Code: General
Policy PL/BM
Disc. Hear.
Class.
PREA
Date Received 9/20/19
IGC Initials JC

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

On September 16, 2019 I requested to access my Long Term Savings, On September 17, 2019 I received Kiosk Message 19-01377583, denying my request. According to this response my sentence is not considered a Life Sentence and Parolable, that only inmates with Life sentences can now access their Long Term Savings pursuant to New Changes in Policy.

I am grieving this decision as it is arbitrary to State Law and Supreme Court Authority. I have a 100 year sentence, a sentence that exceeds my life expectancy, the South Carolina Supreme Court has held that such sentences are essentially life sentences pursuant to the Law of our State, State v. kimbrough, 212 S.C. 348; 46 S.E.2d 273 (1948), further the United States Supreme Court has held that a sentence with parole is just a unilateral hope not a State Created Right, Greenholtz v. Nebraska, 442 U.S. 1, 99 S.Ct. 2100; 60 L.E.2d 668 (1979), thus I have no guarantee of release within my Life time, and the reasoning in the Una Baum case, Appellate Case No: 2016-001564, should apply to my sentence as well, thus any policy that denies me the same right as those with life sentences where my sentence exceeds my life expectancy and I have no guarantee of release in my life time violates the same rule of laws as those found in Una Baum.

Buddy Newsome 9/17/19
Grievant Signature Date

ACTION REQUESTED:

To have access to my Long Term as those with Life Sentences, and treated the same as those with Life Setnences under Policy.

ACTION TAKEN BY IGC: ☑ PROCESSED ☐ UNPROCESSED ☐ OTHER

See Warden's response on back.

J Crumley 9/27/19
IGC Signature Date

(CONTINUE ON REVERSE SIDE)

SCDC 10-5 (Rev. October 2013)

WARDEN'S DECISION AND REASON:

Newsome, Buddy 220855 TYRCI-0523-19

You stated in your grievance that you have requested access to your Long-Term Savings which has been denied. You stated that according to the respondent, your sentence is not considered a Life Sentence and as such eligible for Parole. According to policy at this time, only inmates with Life sentences can access their Long-Term Savings. You allege that you are grieving this decision as it is arbitrary to State Law and Supreme Court Authority. You stated you have a 100-year sentence which exceeds your life expectancy and that the Supreme Court as ruled that such sentences are essentially life sentences. You also allege that the United States Supreme Court has held that a sentence with parole is ~~have~~ a unilateral hope not a State Created Right. You stated that the reasoning in the Una Baum Case should apply to your sentence thus any policy that denies the same right violates the rule of laws in said case. You have requested access to your Long-Term equivalent to those with Life Sentences. SCDC Policy identifies the Long-Term Savings as an Escrow account. The word "Escrow" is defined as a bond, deed, or other document kept in the custody of a third party and taking effect only when a specified condition has been fulfilled. SCDC Policy, ADM.15-10, Work Release Accounting states, "2.8 Escrow Savings: Ten percent (10%) of the inmate's gross wages must be retained until the inmate's release, death, parole, probation, or release to community supervision programs in an interest-bearing escrow account. The ten percent (10%) will be retained in the work release program account and tracked as the mandatory savings amount."

Therefore, your grievance is denied.

If you disagree with this Warden's Decision (Decision), you may file an appeal by completing SCDC Step 2 Inmate Grievance Form 10-5A, provided to you while serving you this Decision, and placing it in the Grievance Box at your local correctional institution within five (5) days of your receipt of this Decision.

Warden Signature Date 09/27/19

☐ I accept the Warden's decision and consider the matter closed.

☒ I do not accept the Warden's decision and wish to appeal.

Buddy Newsome 10/3/19

Grievant Signature Date

J Crumley 10/3/19

IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

Inmate Request - General

Today's Date: 9/24/19 11:56

Name:	NEWSOME, BUDDY
Booking #:	220855
Permanent #:	220855
Reference #:	19-01377583
Date Requested:	09/16/19 10:01
Request Type:	Inmate Financial
Requested By:	Kiosk
Request Details:	I AM UNDER THE IMPRESSION I CAN CUT A CHECK FROM MY LONG TERM DUE TO THE UNA BUAM CASE RULING. I HAVE A 100 HUNDRED YEAR SENTENCE AND THIS SENTENCE EXCEEDS MY LIFE EXPECTANCY. WHAT I WANT TO KNOW IS CAN I CUT A CHECK FROM MY LONG TERM AND IF SO CAN I HAVE IT SENT TO MY E.H.COOPER. THANKS.
Disposition:	Complete
Officer:	
Disposition Date:	09/17/19 08:19

Request Responses

Date	Author	Note
09/16/19 11:46	c063735	Sending to Headquarters
09/17/19 08:21	c059229	SCDC is currently working to making adjustments to policy and procedures concerning long term savings. Once this is done inmates who is serving a "life or death sentence only" will be able to request long term funds. 1) To be sent 2 times per calendar year or 2) entire amount sent. This can be sent by providing name and address of who it is being sent to along with the amount or specify "entire amount" noted on the RTS or you can request it go into your EH Cooper Account. Although your sentence is 100 years & you could still at some point make parole, so this would not apply to you since you do not have a life or death sentence.