

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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JUL 28 2021

**SC Court of Appeals**

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Milton G. Kimpson

ALC Case No. 19-ALJ-04-0575-AP  
Appellate Case No. 2020-001512

Buddy Newsome, # 220855.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

**FINAL BRIEF OF RESPONDENT**

July 28, 2021

South Carolina Department of Corrections

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**STATEMENT OF THE ISSUES ON APPEAL**

**THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEAL BECAUSE APPELLANT IS NOT SERVING A LIFE SENTENCE AND IS NOT ELIGIBLE TO DISTRIBUTE HIS ESCROW WAGES TO A PERSON OR ENTITY**

## STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Buddy Newsome (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). On September 17, 2019, Appellant filed a Step One grievance requesting that he have access to his wages in escrow the same as inmates who are serving life sentences. On September 27, 2019, SCDC denied the Step 1 grievance. Thereafter, on August 6, 2019, Appellant filed a Step Two grievance alleging that he is serving a life sentence and should have access to wages in escrow. On October 31, 2019, SCDC denied the Step 2 grievance. Appellant appealed to the Administrative Law Court (ALC). On October 8, 2020, the Honorable Milton G. Kimpson dismissed Appellant’s appeal because Appellant is not serving a *de facto* life sentence. This appeal followed.

## 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 of 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.

*See also* S.C. Code Ann. § 1-23-380(5); *Lake v. Reeder Constr. Co.*, 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the Administrative Law Court's (ALC) findings are supported by substantial evidence. *See* S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. *Id.* In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALC reached. *DuRant v. S.C. Dep't of Health & Environmental Control*, 361 S.C.

416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. *Id.*

## ARGUMENT

### **THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEAL BECAUSE APPELLANT IS NOT SERVING A LIFE SENTENCE AND IS NOT ELIGIBLE TO DISTRIBUTE HIS ESCROW WAGES TO A PERSON OR ENTITY**

Appellant asserts that the ALC made an error of law dismissing Appellant's appeal based on his parole eligibility. *See* Appellant Brief. Appellant argues that he should be allowed to distribute wages from his escrow account the same as those serving a life sentence or sentenced to death pursuant to S.C. Code Ann. § 24-3-40(B)(2) because his 100- year sentence is a *de facto* life sentence. *Id.* However, Appellant is eligible for parole and is not serving a life sentence. Therefore, Appellant is not entitled to distribute wages from his escrow account to a person or entity of his choice.

S.C. Code § 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.

Appellant is not serving a *de facto* life sentence. The Supreme Court of South Carolina defined 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." See Judge Kimpson's October 8, 2020 Order citing *State v. Slocumb*, 426 S.C. 297, 301, 827 S.E.2d 148, 150 n3. (2019). R. p. 10. Because Appellant is currently eligible for parole, he is not serving a *de facto* life sentence. Furthermore, if Appellant is granted parole § 24-3-40(B)(3) provides how the escrow balance will be distributed to him and the Department of Probation, Parole and Pardon Services. Because Appellant is currently eligible for parole and the statute provides how wages in escrow will be distributed if an inmate is granted parole, Appellant is not entitled to distribute his wages in escrow while incarcerated. Therefore, Judge Kimpson's dismissal of Appellant's appeal was proper. See R. p. 4.

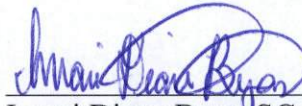
### CONCLUSION

WHEREFORE, for all the reasons stated above, the Court should affirm the Administrative Law Court's decision.

Respectfully submitted,

### SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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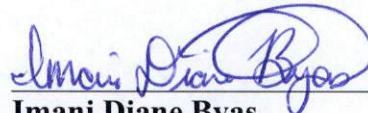
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**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court’s April 15, 2014, order entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”



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