The Supreme Court of South Carolina

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NOTICE

IN THE MATTER OF K. DOUGLAS THORNTON, PETITIONER

A hearing on the Petition for Reinstatement filed by K. Douglas Thornton was scheduled before the Committee on Character and Fitness on Friday, June 8, 2001, at 9:30 a.m. in the court room of the Supreme Court Building.

Petitioner has now withdrawn his Petition for Reinstatement and the hearing before the Committee on Character and Fitness has been cancelled.

D. Cravens Ravenel, Chairman
Committee on Character and Fitness
P. O. Box 11330
Columbia, South Carolina 29211

Columbia, South Carolina

May 15, 2001

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

May 14, 2001

ADVANCE SHEET NO. 17

Daniel E. Shearouse, Clerk
Columbia, South Carolina

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Herman
L. Moore, Respondent.

Opinion No. 25288
Heard April 4, 2001 - Filed May 14, 2001

Indefinite Suspension

Henry B. Richardson, Jr., and Senior Assistant Attorney General James G. Bogle, Jr., both of Columbia, for the Office of Disciplinary Counsel.

Coming B. Gibbs, Jr., of Gibbs & Holmes, of Charleston, for respondent.

PER CURIAM: This is an attorney disciplinary matter. The subpanel found misconduct, and recommended respondent be indefinitely suspended. Respondent filed an objection to the subpanel report, contending that a six month suspension was the appropriate sanction. The full panel adopted the subpanel's report and recommended sanction, and neither respondent nor the Office of Disciplinary Counsel has filed exceptions or briefs before the Court. We agree with the findings of misconduct and impose an indefinite

suspension.

Findings

A. Practicing Law Under Suspension

Respondent was suspended from the practice of law for several months in 1997 for nonpayment of Bar license fees and failure to comply with Continuing Legal Education (CLE) requirements. During that period of suspension, he continued to practice law by:

(i) filing an answer and appearing in a family court matter;
(ii) attempting to negotiate plea agreements in Dorchester County;
(iii) claiming a file from an attorney after telling her that he now represented the client;
(iv) filing motions and writing a letter in a DSS matter;
(v) sending a letter to DSS in a different matter;
(vi) filing a Notice of Appeal with the Supreme Court; and
(vii) engaging in discovery in a federal matter.

B. Failure to Cooperate with the Commission

Respondent failed to respond to some inquiries from the Commission on Lawyer Conduct (Commission), and responded to others in an untimely manner.

C. Fraudulent Checks

Respondent was arrested on four fraudulent check charges, and released the next day. He failed to appear for trial, was found guilty *in absentia*, and a bench warrant was issued. He was incarcerated on the bench warrant from April 29, 1997, until May 16, 1997. In addition to the four fraudulent checks mentioned above, two more checks were also drawn, all from respondent's escrow account.

D. Family Court Support Orders

Respondent has been found to have violated family court orders regarding support, has failed to make required payments, and has been found in contempt and incarcerated on at least one occasion.[1]

E. Criminal Matter

Respondent was hired in 1996 to represent a woman facing serious criminal charges. He neglected the case after the woman's bail was revoked. When the woman's husband went to respondent's office, he found it empty and locked. Respondent could not be located by phone.

When the solicitor's office could not locate respondent, a circuit judge asked that it send a certified letter to respondent at his uncle's address. Respondent's uncle was at that time a licensed attorney, and respondent had worked for him for a period of time both before and after passing the Bar examination. The letter warned that the judge intended to issue a Rule to Show Cause if respondent did not respond. A Rule to Show Cause was issued, but apparently never served because respondent could not be located.

When the woman's case was called for trial, respondent was incarcerated on family court contempt charges. A public defender was appointed to represent the client.

E. Fee Dispute Matter

The woman and her husband filed a fee dispute complaint as a result of respondent's conduct in representing her. Respondent did not respond to the

[1]Respondent testified he was incarcerated from January 15 to February 12, 1997.

inquiry, and after investigating, the chairman of the Charleston County Fee Dispute Committee[2] notified the client and respondent that he had awarded the client and her husband a full refund in the amount of $2,340.00. Respondent did not appeal the award, but as of the date of the subpanel hearing, had failed to refund the full amount.

F. Divorce Matter

In 1996, a woman retained respondent to represent her in her divorce and paid him $805.00, which included a $55.00 filing fee. The client could not reach respondent and he did not return her calls. When she went to his office in January 1997, she found it closed. When she learned he was incarcerated for failure to pay child support, she requested the return of her file and the fees she had paid. Respondent did not reply, nor did he return the file or the fee.

G. Adoption Matter

The grandparents hired respondent to represent them in adopting their grandchildren after the children's parents' rights had been terminated in Georgia. The grandparents paid respondent $750.00.

When respondent failed to appear at a hearing in 1996, the family court judge directed staff to contact respondent. Although respondent left a message that he was "on his way," he never appeared.

In February 1998, the grandparents were divorced. The adoption had not been completed, and the grandmother attempted to reach respondent by contacting his attorney uncle. While the uncle undertook to represent the grandmother, he had to relinquish the case when his license was suspended. The uncle or someone in his firm put grandmother in touch with respondent.

[2]The Charleston County Bar Association operates a fee dispute committee.

In April 1998, respondent wrote to Georgia seeking a certified copy of the order terminating parental rights. No further action has been taken in the matter. Subsequently the grandmother obtained an award from the South Carolina Bar's Fee Dispute Committee and had it enrolled as a judgment. As of the date of the hearing, respondent had not refunded the fee, and the adoption had not been completed because the grandmother lacks funds to hire another attorney.

H. Robbery Client

Respondent was retained in 1996 to represent a man facing multiple robbery charges. The client and his family paid approximately $2,100.00 towards respondent's $4,000.00 fee. Respondent neglected his client, who ultimately pled to charges in two counties. The client was represented at one plea by a public defender and at the other by an attorney retained by family members.

I. Escrow Account

Respondent failed to maintain adequate escrow account records as required by Rule 417, SCACR.

J. Rule 403 Matter

Rule 403, SCACR, requires that, subject to certain exceptions, an attorney admitted to practice after March 1, 1979, cannot appear alone unless she has had a certain number of trial experiences approved by the Supreme Court. At the time of the hearing, there was no Rule 403 form on file with the Supreme Court for respondent, nor was he able to produce a copy. The subpanel found he either failed to complete the necessary trial experiences, failed to have it signed by the presiding judges, or at the very least failed to file a certificate with the Court.

Therefore, respondent was not entitled to appear alone in courts of

record in South Carolina.[3]

Conclusions

The subpanel concluded respondent violated numerous disciplinary rules. Specifically, respondent was found to have violated the following provisions of Rule 7(a), RLDE, Rule 413, SCACR by: (a) violating the Rules of Professional Conduct, Rule 407, SCACR (7(a)(1)); (b) knowingly failing to respond to a lawful demand from the Commission (7(a)(3)); (c) engaging in conduct tending to pollute the administration of justice or to bring the courts or legal profession into disrepute (7(a)(5)); (d) violating the oath of office (7(a)(6)); and (e) willfully violating a valid court order (7(a)(7)).

He was also found to have violated certain Rules of Professional Conduct found in Rule 407, SCACR because he: (a) failed to provide competent representation (Rule 1.1); (b) failed to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information (Rule 1.4(a)); (c) failed to consult with clients as to the means by which their objectives were to be pursued (Rule 1.2(a)); (d) failed to act with reasonable diligence and promptness in representing a client (Rule 1.3); (e) failed to deliver promptly client funds or documents (Rule 1.15); (f) practiced law while under suspension (Rule 5.5(a)); (g) failed to respond to a lawful demand for information requested by the Office Disciplinary Counsel (Rule 8.1(b)); (h) violated a Rule of Professional conduct (Rule 8.4(a)); (i) engaged in conduct involving dishonesty, fraud, deceit or misrepresentation (Rule 8.4(d)); and (j) engaged in conduct prejudicial to the administration of justice (Rule 8.4(e)). In addition, he was found to have violated the trial experience rule (Rule 403) and the trust account record keeping rule (Rule 417).

The subpanel and panel recommended that respondent receive an

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[3]On May 4, 2000, the Court received and approved a Rule 403 trial practice form filed by respondent.

indefinite suspension and that he be required to pay the costs of the proceedings.

At the time of the subpanel hearing, respondent was living in a North Charleston motel. He testified that his clients could contact him by cell phone or pager, or by calling the motel. He acknowledged that he had no checking account of any kind since no bank would allow him to open an account in light of his "past history." There were two outstanding bench warrants from Berkeley County for unpaid child support and alimony in the amounts of $8,000 and $9,000.

This is a tragic situation. It is apparent from the record and from respondent's appearance before this Court that respondent is a person who sincerely endeavors to vigorously represent his clients. It is apparent at the same time, however, that respondent's precarious financial situation and transient living situation are incompatible with the practice of law because he is not available to his clients and the court system. We agree that respondent should be indefinitely suspended from the practice of law.

Respondent shall, within fifteen days of the date of this opinion, comply with the requirements of Rule 30, RLDE, Rule 413, SCACR. As a condition of reinstatement, he shall be required to show proof that he has paid any outstanding fee dispute awards, and that his family court support obligations are current.

Indefinite Suspension.

C.J. TOAL, WALLER, BURNETT, PLEICONES, JJ., and Acting Justice John C. Few, concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

William Blair, Appellant,

v.

The City of Manning, a body politic and corporate organized and existing under the laws of the State of South Carolina, Respondent.

Appeal From Clarendon County
Marc H. Westbrook, Circuit Court Judge

Opinion No. 25289
Heard April 25, 2001 - Filed May 14, 2001

AFFIRMED

M.M. Weinberg, III, of Weinberg, Brown and Curtis, of Sumter, for appellant.

Lena Younts, of Coffey and Chandler, P.A., of Manning, for respondent.

JUSTICE WALLER: This is an election protest case in which the Manning Election Commission certified Hezekiah Gibson as the winner of the District One City Council seat. Appellant William Blair appealed to the Circuit Court which affirmed. We affirm the ruling of the Circuit Court.

FACTS

Blair lost the District One City Council election to the incumbent Gibson by three votes. He filed a protest with the Election Commission two days later, contending Gibson did not live in District One and that residency in the District was required to be elected. A hearing was held at which both Blair and Gibson testified. Blair introduced 15 photographs of a residence at **16-A Ragin Street** and contended it was "supposed to be [Gibson's] residence." Blair believed the residence was not in District One, but presented no evidence to substantiate this claim.

Gibson testified that his residence was at 909 Branchview Drive in District One, that 909 Branchview Drive was his permanent residence, he had lived there for 20 years, that he was going through a divorce and had rented a place at **19-A Ragin Street**[1] which was in the District, and that he fully intended to live in the District. The Commission ruled Gibson was a resident of District One and a qualified candidate to serve District One on the City Council.

Blair filed an appeal to the circuit court, requesting a *de novo* hearing pursuant to S.C. Code Ann. § 7-5-240 (1976). The circuit court ruled section 7-5-240 was inapplicable to Blair's appeal; rather, the circuit court found S.C. Code Ann. § 5-15-140 (1976) governed appeals from decisions of the Municipal Election Commission.

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[1] There is no explanation in the record as to the discrepancy between the address introduced by Blair and the address given by Gibson.

ISSUE

Did the circuit court err in refusing to hold a *de novo* hearing?

DISCUSSION

S.C. Code Ann. § 7-5-240 (1976) governs appeals from decisions of the boards of voter registration, providing, in pertinent part:

> **Any person denied registration or restoration of his name on the registration books** and desiring to appeal must within ten days after written notice to him of the decision of the board of registration file with the board a written notice of his intention to appeal therefrom. . . . If the applicant desires the appeal to be heard by a judge at chambers he shall give every member of the board of registration four days' written notice of the time and place of the hearing. On such appeal the **hearing** shall be de novo.

(Emphasis supplied). Under S.C. Code § 7-5-230 (Supp. 2000), the boards of registration are the judges of the legal qualifications of all applicants for registration to vote, and any person denied registration has the right to appeal the board's decision to the circuit court; challenges of the qualifications of any elector, except for certain challenges not at issue here, must be made in writing **to the board of registration** in the county of registration.

Blair asserts the circuit court should have conducted a *de novo* trial under section 7-5-240. We disagree. Section 7-5-240 is simply inapplicable here. Blair was neither denied registration of his name on the books, nor did he challenge Gibson's qualifications in writing to the board of registration, as required by section 7-5-230. On the contrary, Blair appealed the decision of the municipal election commission. Such appeals are governed by S.C. Code § 5-15-140 (1976) which provides, in part, "[w]ithin ten days after notice of the decision of the municipal election commission, any party aggrieved thereby may appeal from such decision to the court of common pleas."

In Butler v. Town of Edgefield, 328 S.C. 238, 493 S.E.2d 838 (1997), we held the circuit court lacks authority to conduct full hearings on election challenges because the circuit court is by statute an appellate court in such circumstances. Accordingly, pursuant to Bulter, the circuit court properly declined a *de novo* hearing.

We hold the circuit court, sitting as an appellate court, properly affirmed the decision of the municipal election commission. See Broadhurst v. City of Myrtle Beach, 342 S.C. 373, 537 S.E.2d 543 (2000) (appellate court reviews judgment of circuit court upholding or overturning the decision of a municipal election commission only to correct errors of law; review does not extend to findings of fact unless those findings are wholly unsupported by the evidence); George v. Municipal Election Comm'n of Charleston, 335 S.C. 182, 516 S.E.2d 206 (1999) (same).

The judgment of the circuit court is

AFFIRMED.

TOAL, C.J., MOORE, BURNETT and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Patricia L. Edge and
others similarly situated, Plaintiffs,

v.

State Farm Insurance
Company, and Horace
Mann Insurance
Company, Defendants.

CERTIFIED QUESTION
Dennis W. Shedd, United States District Judge

Opinion No. 25290
Heard April 3, 2001 - Filed May 14, 2001

QUESTION ANSWERED

A. Camden Lewis, of Lewis, Babcock & Hawkins, L.L.P.; Richard A. Harpootlian, and Robert G. Rikard, of the Law Offices of Richard A. Harpootlian, P.A.; and Michael Sullivan, of Michael Sullivan, P.A., all of Columbia, for plaintiffs.

James C. Gray, Jr., B. Rush Smith, III, William C.

Wood, Jr., and Thad H. Westbrook, of Nelson Mullins Riley & Scarborough, L.L.P., of Columbia, for defendant State Farm Insurance Company.

Thomas C. Salane, of Turner, Padget, Graham & Laney, P.A., of Columbia, for defendant Horace Mann Insurance Company.

CHIEF JUSTICE TOAL: We agreed to answer the following question certified by the United States District Court for the District of South Carolina:

> Must a person, who claims her insurer assessed unauthorized surcharge points, exhaust the administrative remedies available under S.C. Reg. 69-13.1 (IV) and S.C. Code Ann. § 38-3-210 before filing a civil action?

FACTS

In 1996, plaintiff Patricia Edge was involved in a two car accident with Ann Shull. Both drivers were insured by defendant State Farm Insurance Company. A ticket was issued to Shull at the scene of the accident for disregarding a traffic signal.

After an internal investigation of the accident, State Farm decided Edge was predominantly at fault for the collision. State Farm paid damages to Shull from Edge's policy. State Farm assigned two surcharge points[1] to Edge

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[1]A surcharge point is a penalty for moving violations, including automobile accidents. If an insured receives a surcharge point, he loses a twenty percent safe driver discount on insurance premiums and a dollar penalty is assigned for each additional point. See 25A S.C. Code Ann. Reg.

pursuant to 25A S.C. Code Ann. Reg. 69-13.1 (III)(H)(4) (Supp. 2000), because it had paid Shull from Edge's policy.

In October 1996, Shull either pled guilty to or forfeited bond on the charge of disregarding a traffic signal.[2] Approximately one year later, despite Shull's plea or forfeit, State Farm notified Edge it intended to increase her premium by more than $600. State Farm advised Edge it raised her premium because its investigation found Edge to be at fault for the accident.

Instead of paying the higher premium, Edge applied for insurance with Horace Mann Insurance Company. Although she was initially quoted a lower premium than State Farm's quote, Horace Mann later notified her that State Farm reported her accident to the Comprehensive Underwriting Exchange, thus she would be assessed two surcharge points and her premiums would be substantially higher. Edge paid the increased premium for the Horace Mann policy. Horace Mann later removed the surcharge and lowered the premium rate after Edge provided documentation that Shull had been convicted of a moving violation in connection with the accident. Edge renewed her policy at the lower rate.

Edge filed this civil action against State Farm and Horace Mann, alleging both companies violated portions of 25A S.C. Code Ann. Reg. 69-13.1 (III) and S.C. Code Ann. § 38-73-455 (repealed effective March 1, 1999) which prohibit the assessment of surcharge points if the policyholder was reimbursed by or obtained a judgment against the other driver or where the other driver, not the policyholder, was convicted of a moving traffic violation in connection with the accident.

Horace Mann filed a Motion to Dismiss and/or for Summary Judgment

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69-13.1 (II)(E) (Supp. 2000).

[2]Edge later sued Shull in Magistrate's Court for damages resulting from the accident. During the jury trial held in April 1998, Shull admitted she caused the accident, and the jury returned a verdict of $5,000 in Edge's favor.

based in part on Edge's failure to exhaust administrative remedies pursuant to 25A S.C. Code Ann. Reg. 69-13.1 (IV) (Supp. 2000). Although State Farm did not move to dismiss on this ground, State Farm raised failure to exhaust as a defense in its answer.

ISSUE

Was Edge required to appeal the assessment of surcharge points to the Chief Insurance Commissioner before pursuing this action?

LAW/ANALYSIS

South Carolina Reg. 69-13.1 (IV), states the following:

> A. Any insured aggrieved by an insurer's application of the Plan or assignment of points may appeal to the Chief Insurance Commissioner for a review thereof. Unless otherwise ordered by the Commissioner, investigation and review of an appeal under this Section shall be conducted informally and without a hearing.
>
> . . .
>
> C. Any decision of the Commissioner will be made in writing, and a copy thereof will be mailed to the insured and the insurer. Any such decision may be appealed by either party in accordance with South Carolina Code Section 38-3-210 (1976),[3]

[3] S.C. Code Ann. § 38-3-210 (Supp. 2000) provides:

> Any order or decision made, issued, or executed by the director [of the Department of Insurance] or his designee is subject to judicial review in accordance with the appellate procedures of the South Carolina Administrative Law Judge Division, as provided by law. An appeal from an order or decision under this section must be heard in the Administrative

as amended.

(emphasis added).

The words of a regulation must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the regulation's operation. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992).

Pursuant to the plain and ordinary meaning of the regulation, an aggrieved party may appeal to the Commissioner; however, nothing prevents the aggrieved party from bypassing an administrative hearing before the Commissioner and bringing an action in the circuit court as Edge did in this matter. By using the word "may" instead of "shall," the regulation allows, but does not require, an aggrieved party to appeal to the Commissioner. See Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995) (use of word "may" signifies permission and generally means the action spoken of is optional or discretionary); State v. Wilson, 274 S.C. 352, 264 S.E.2d 414 (1980) (same).[4]

There is nothing in the regulation to indicate an intent on the part of the regulation's promulgator, that is, the Department of Insurance,[5] to force an aggrieved party to pursue an administrative remedy. This Court considered a

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Law Judge Division, as provided by law. . . .

[4]While State Farm argues the cite to § 38-3-210 in Reg. 69-13.1 (IV)(C) indicates that administrative review is mandatory, this section of the regulation simply informs an aggrieved party about the procedure for appealing a decision by the Commissioner. Here, there was no decision by the Commissioner.

[5] The Department of Insurance is allowed to promulgate regulations that implement or prescribe law or policy or practice requirements of the Department of Insurance. See S.C. Code Ann. § 1-23-10 et. seq.

similar defense claim in Waites v. South Carolina Windstorm and Hail Underwriting Ass'n, 279 S.C. 362, 307 S.E.2d 223 (1983). In Waites, the following language from S.C. Code Ann. § 38-39-110 (1976) (revised as § 38-75-410 (Supp. 2000)) was at issue: "Any person insured pursuant to this chapter . . . who may be aggrieved by an act, ruling, or decision of the Association, may, within thirty days after such ruling, appeal to the Commission." (Emphasis added). We held the statute did not require insureds to pursue an administrative remedy since the legislature had used the word "may" in the statute, which is a permissive and not a mandatory term. Waites, 279 S.C. at 364-365, 307 S.E.2d at 224.[6]

We therefore answer the certified question in the following manner: a person bringing a tort action arising out of an insurer's assessment of unauthorized surcharge points is not required to exhaust the administrative remedies available under Reg. 69-13.1 (IV) and § 38-3-210 before filing a civil action.

QUESTION ANSWERED.

WALLER, BURNETT, JJ., and Acting Justices Carol Connor and George T. Gregory, Jr., concur.

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[6]We note Stanley v. Gary, 237 S.C. 237, 116 S.E.2d 843 (1960), is not dispositive here. In Stanley, the plaintiffs brought an action to enjoin the principal of a high school from coercing and intimidating pupils and to enjoin the school board from employing the principal. The Stanley court held the plaintiffs would have to exhaust their administrative remedies before the court could entertain an injunction action against the principal and the school board. The Stanley court made this finding despite a statute which stated that any person aggrieved by any decision of the board of trustees may appeal to the county board of education. The rationale in Stanley, however, was based largely on the county board's exclusive authority over "matters of local controversy." We find Stanley is limited to the particular school laws at issue in that case.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Levone Graves, Appellant,

v.

County of Marion and
Marion County Council, Respondents.

Appeal From Marion County
Hicks B. Harwell, Circuit Court Judge

Opinion No. 25291
Heard February 21, 2001 - Filed May 14, 2001

REVERSED AND REMANDED

Brenda Reddix-Smalls and Eleazer R. Carter, of Reddix-Smalls & Carter Law Firm, of Columbia, for appellant.

Timothy H. Pogue, of Marion, for respondents.

JUSTICE BURNETT: This is an appeal from an appellate decision of the circuit court, upholding a ruling of the Marion County

Council regarding the salary of appellant Levone Graves, a Marion County magistrate. We reverse.

FACTS

In 1982, Marion County entered into an agreement with the City of Mullins to provide a county magistrate to serve as a municipal judge for the city, to hold municipal court at least once a week. The agreement provided that the city would pay the county a monthly fee, adjustable from time to time, of $416.68 for these services. The agreement further provided, "It is suggested that the County may wish to compensate the magistrate and secretary for the extra work load imposed by the additional duties to the extent of $333.34 for Magistrate monthly and $83.34 for secretarial assistance monthly."

On October 7, 1982, then Chief Justice Lewis signed an order acknowledging the agreement and ordering

> commencing October 1, 1982, any magistrate in Marion County may be assigned to service as the municipal judge for the municipality of Mullins. . . .
>
> The magistrate assigned to serve as municipal judge shall retain the powers, duties and jurisdiction conferred upon magistrates. The magistrate shall not be compensated for his service by the municipality.

The Chief Justice's order does not explicitly approve the agreement between the county and city, nor address whether the county may separately compensate the magistrate for his municipal duties.

In 1990, Judge Graves was appointed a full-time magistrate for Marion County and was assigned to serve as municipal judge for the City of Mullins. Judge Graves received his salary in the form of a single bi-weekly check from Marion County. On March 16, 1998, the City of Mullins

terminated its agreement with Marion County. The county subsequently reduced Judge Graves' salary by some $9,000, from $32,353 annually to approximately $23,000 annually.

The Marion County Council conducted a hearing on Judge Graves' Petition for Magisterial Base Salary and Retroactive Compensation. Judge Graves argued the county's reduction of his salary violated S.C. Code Ann. § 22-8-40(I) (1976)[1] which provided: "A magistrate who is receiving a salary greater than provided for his position under the provisions of this chapter must not be reduced in salary during his tenure in office. Tenure in office continues at the expiration of a term if the incumbent magistrate is reappointed." The council determined the county had not unlawfully reduced Judge Graves' salary because the salary "provided for his position under the provisions of this chapter" had not been reduced. Rather, the amount reduced was a stipend Judge Graves received for his service as municipal judge for the City of Mullins. Judge Graves appealed to the circuit court, which affirmed the county council's decision. This appeal follows.

DISCUSSION

I. Standard of Review

The standard of review in this case is governed by the Administrative Procedures Act, S.C. Code Ann.§ 1-23-380 (Supp. 2000). The fact finder in this case was the county council, which heard the case pursuant to its authority under S.C. Code Ann. § 22-8-50 (1976). Section 22-8-50 authorizes the county council to hear cases of magistrates aggrieved by the county's action concerning compensation, subject to judicial review under § 1-23-380. Under § 1-23-380, the appellate court "shall not substitute its judgment for that of the agency as to the weight of the evidence on

[1]Due to a recent amendment, subsection 22-8-40(I) is now subsection (J). The subsection was also amended to address annual increases. This amendment does not affect the issue before the Court.

questions of fact" and

> 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(6) (Supp. 2000).

We reverse because the county council's factual determinations are affected by error of law and result in a statutory violation. Moreover, the circuit court, in affirming the county council's decision, misapplied the law.

II. § 22-8-40(I)

Judge Graves argues the circuit court erred in ruling that the county did not violate § 22-8-40(I) when it reduced his salary during his tenure as magistrate. We agree.

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Gilstrap v. South Carolina Budget and

Control Bd., 310 S.C. 210, 423 S.E.2d 101 (1992). This Court cannot construe a statute without regard to its plain and ordinary meaning, and may not resort to subtle or forced construction in an attempt to limit or expand a statute's meaning. Cox v. County of Florence, 337 S.C. 340, 347 n.10, 523 S.E.2d 776, 780 n.10 (1999). Nor may the Court engraft extra requirements to legislation which is clear on its face. Id.

In Cox, we addressed § 22-8-40(D)[2], which provided "[p]art time magistrates are entitled to a proportionate percentage of the salary provided for full-time magistrates." We held that part-time magistrates were entitled to a proportional percentage of the salary actually paid to full-time magistrates, rather than a percentage of the minimum base salary, as argued by the county. We reasoned the county's interpretation would require the Court to engraft additional terms onto the statute. 337 S.C. at 347 n.10, 523 S.E.2d at 780 n.10.

There are two ways of viewing this situation. If Judge Graves was a full-time magistrate, whose duties to the county included serving as municipal judge for the City of Mullins, then the county violated § 22-8-40(I) by reducing Judge Graves' salary simply because his duties changed. If, however, Judge Graves held two jobs, one as county magistrate and one as municipal judge, then terminating Judge Graves' position as municipal judge, along with his salary for that position, would not violate § 22-8-40(I) because § 22-8-40(I) would be inapplicable to the municipal salary.

The county council found Judge Graves held two distinct jobs, for which he was separately compensated; thus, eliminating Judge Graves' municipal salary did not reduce his magistrate's salary in violation of § 22-8-40(I). In support of this finding, the county cites "the procedures mandated by the South Carolina Supreme Court" and Judge Graves' payment agreements showing separate sums for county and city work. Specifically, the county council found "[t]he payment agreements for the last three fiscal

[2]Now S.C. Code Ann. § 22-8-40(F) (Supp. 2000).

years show the amount [Judge Graves] was being compensated by the County *and by the City of Mullins*." (emphasis added). The county council further noted that when the city terminated its contract with the county, "the stipend which [Judge Graves] was receiving *from the City of Mullins* was done away with." (emphasis added).

Although there is evidence to support the county council's finding, we reject it because, if correct, it would place the county and city in direct violation of the Chief Justice's order. The Chief Justice ordered that

> [A]ny magistrate in Marion County may be *assigned* to service as the municipal judge for the municipality of Mullins. . . . The magistrate assigned to serve as municipal judge shall retain the powers, duties and jurisdiction conferred upon magistrates. The magistrate *shall not be compensated for his service by the municipality*.

(emphasis added). As we read the Chief Justice's order, serving as municipal judge was to be a duty assigned to a Marion County magistrate. Moreover, the order explicitly forbids the city to compensate the magistrate. Finding Judge Graves worked two jobs for which he was separately compensated would allow the county to circumvent the Chief Justice's order prohibiting the city to compensate the magistrate.

Under the standard of review provided in § 1-23-380(6), we need not accept the county council's factual determination because it is affected by error of law. We find that serving as municipal judge was one of Judge Graves' duties as magistrate. There are abundant facts in the record to support our finding. Judge Graves was at all times employed by the county, he was not a party to the agreement between the county and the city, he received one paycheck from the county, and he testified his work hours have not decreased since his municipal duties ended. Moreover, even if the county could lawfully serve as a conduit for Judge Graves to receive a stipend from the city, the county's failure to provide the requested accounting calls into

question any such finding.[3] We conclude Judge Graves was at all times employed by and compensated by the county, and the Chief Justice's order expressly forbade any other arrangement.

Having found that serving as municipal judge was one of Judge Graves' duties as a full-time magistrate for Marion County, it is clear the county violated § 22-8-40(I) when it reduced Judge Graves' salary. The statute is plain on its face and contains no exceptions.

The county argues that the situation presented here is highly analogous to the statutory supplement provided to chief magistrates, which ends when the extra duties end. See § 22-8-40(F).[4] However, the statutory supplement is distinguishable, in part because it is contained in the very same statute as the prohibition on reducing a magistrate's salary, and the two provisions can be read harmoniously.[5]

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[3]In response to Judge Graves' request for an accounting, the county provided a comparison between the minimum salary required by state law and what the county paid Judge Graves. This was not responsive to Judge Graves' request for an accounting. Significantly, it does not show how much money the county received from the city and how that money was allocated. Furthermore, it does not show how the money appropriated for magistrate's salaries in fiscal year 1998-99 was spent. The county's contract with the city terminated in March of 1998 and Judge Graves' salary was reduced, but the county's line item for magistrates' salaries the ensuing fiscal year was not reduced.

[4]Now S.C. Code Ann. § 22-8-40(G) (Supp. 2000).

[5]We reject the county's argument that appointment to chief magistrate constitutes a new tenure in office. Such an interpretation would leave the chief magistrate vulnerable to salary reductions, both at the beginning and end of his term as chief. Moreover, the case cited by the county is distinguishable in that it concerned appointment to the federal Court of Appeals after service on the District Court bench, unquestionably two

This Court has previously refused to permit a county to avoid paying appropriate compensation to a magistrate through hyper-technical division of a magistrate's duties. In Ramsey v. County of McCormick, 306 S.C. 393, 412 S.E.2d 408 (1991), the county paid Judge Ramsey $5,200 as a part-time magistrate, the $1,500 statutory supplement for her duties as chief magistrate, and $8,500 for her full-time secretarial duties. We held Judge Ramsey was entitled to a full-time chief magistrate's $17,000 salary and $3,000 supplement. We reasoned that because a magistrate's judicial function, by statutory definition,[6] includes time spent performing ministerial duties, Judge Ramsey was "in substance, performing the duties of full-time Chief Magistrate." Id. at 398, 412 S.E.2d at 411. Therefore, the county could not avoid paying her a full-time chief magistrate's salary by classifying her as a part-time magistrate and full-time secretary.

We are mindful of the potential for salary inequity which may result from this opinion. However, the record does not reveal the salaries of other magistrates in Marion County, so we have no basis for determining whether any inequity does in fact exist in this case. Moreover, § 22-8-40(I) contemplates salary inequities resulting from grandfathering higher salaries than those provided by statute. Despite the possibility of such disparities, we cannot escape the plain language of § 22-8-40(I). The county paid Judge Graves a higher salary than it was required by law to pay, and it may not now reduce his salary because it has changed his duties.

The county shall pay Judge Graves the difference in the salary he received and the salary to which he was entitled from the time of his last full paycheck until July 1, 2000, the effective date of the Magistrate's Court Reform Act of 2000, when Judge Graves' salary was substantially increased to $40,823.64.

In light of our disposition of the statutory question, we need not

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separate offices. See O'Malley v. Woodrough, 307 U.S. 277 (1939).

[6]S.C. Code Ann. § 22-8-20 (1976).

address Judge Graves' constitutional arguments, which are in any case unpreserved. However, given the result on appeal, we remand for consideration of Judge Graves' petition for attorneys fees.

REVERSED AND REMANDED.

TOAL, C.J., and PLEICONES, J., concur. MOORE, J., and Acting Justice George T. Gregory, Jr., dissenting in a separate opinion.

JUSTICE MOORE (dissenting): I respectfully dissent from the majority's opinion. I do not believe the county council's factual determinations were affected by error of law or resulted in a statutory violation when the council found the reduction of Judge Graves' salary had not violated S.C. Code Ann. § 22-8-40 (I) (1976). I further disagree with the conclusion that the county council's finding, that Judge Graves held two distinct jobs for which he was separately compensated, would place the county and city in direct violation of the order of Chief Justice Lewis. The order stated

> [A]ny magistrate in Marion County may be assigned to service as the municipal judge for the municipality of Mullins. . . . The magistrate assigned to serve as municipal judge shall retain the powers, duties and jurisdiction conferred upon magistrates. The magistrate shall not be compensated for his service by the municipality.

(emphasis added).

The majority concludes that if the county was allowing Judge Graves to work two jobs for which he was separately compensated, then this would allow the county to circumvent the Chief Justice's order, which prohibited the city from compensating the magistrate. However, the plain language of the Chief Justice's order states that the magistrate cannot be compensated for his service by the municipality. The order does not prevent the county from compensating the magistrate for his job of serving the municipality for the county's benefit. Cf. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000) (the canon of statutory construction "expressio unius est exclusio alterius" or "inclusio unius est exclusio alterius" holds that "to express or include one thing implies the exclusion of another, or of the alternative.")

I also disagree with the conclusion that the county violated section 22-8-40 (I). Section 22-8-40 (I) (1976) provided:

> A magistrate who is receiving a salary greater than

> provided for his position under the provisions of this chapter must not be reduced in salary during his tenure in office. Tenure in office continues at the expiration of a term if the incumbent magistrate is reappointed.

I agree with the county council's finding that the county had not unlawfully reduced Judge Graves' salary because the salary "provided for his position under the provisions of this chapter" had not been reduced. I believe the word "position" in the statute clearly means the position of magistrate, which would not affect the magistrate's position as municipal judge. See Lester v. South Carolina Workers' Compensation Comm'n, 334 S.C. 557, 514 S.E.2d 751 (1999) (if a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another meaning).

Prior to the reduction, Judge Graves was receiving two salaries for two jobs encompassed by one paycheck.[7] When the municipal job ended, the county properly eliminated the amount of his payment that represented the amount he was being compensated for his municipal job. The county did not reduce the salary that represented his position of magistrate. It is clear that the statute acts to prevent the county from reducing a magistrate's salary; however, it does not prevent the county from eliminating the portion of the magistrate's payment that represents his job as a municipal judge.

Accordingly, I believe the county did not violate section 22-8-40 (I) by reducing Judge Graves' salary after his job of municipal judge was eliminated.

Gregory, A.J., concurs.

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[7] This finding is supported by Judge Graves' payment agreements for the three fiscal years prior to the elimination of his municipal job, which show separate sums for county and city work.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

South Carolina Pipeline Corporation, Plaintiff,

v.

Lone Star Steel Company, Defendant.

IN THE ORIGINAL JURISDICTION

Opinion No. 25292
Heard April 24, 2001 - Filed May 15, 2001

Certified Question Answered

Charles S. Porter, Jr. and Benjamin E. Nicholson, V, of McNair Law Firm of Columbia, for Plaintiff.

Gray T. Culbreath, of Collins & Lacy, P.C., of Columbia, for Defendant.

PER CURIAM: We accepted this certified question in our original jurisdiction to determine if a certain gas transmission line constitutes an "improvement to real property" for purposes of S.C. Code Ann. § 15-3-640 (Supp. 2000).

FACTS

South Carolina Pipeline Corporation ("Pipeline") owns a natural gas pipeline running from Aiken to Bishopville. Construction of the pipeline was completed in 1961. The property under which the pipeline is buried consists of contiguous easements, all owned by Pipeline. In 1998, the pipeline ruptured and exploded. The explosion caused personal injuries and property damage. After Pipeline paid the claims for the resulting property damage and personal injuries, it brought a products liability action against Lone Star Steel Company ("Lone Star"), the manufacturer of the pipe. In the suit, Pipeline seeks indemnification for the costs it has incurred as a result of the explosion.

CERTIFIED QUESTION

> Does the gas transmission line in question constitute an "improvement to real property" under S.C. Code § 15-3-640 (Supp. 2000)?

DISCUSSION

Section 15-3-640 provides, in part, that "[n]o actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property may be brought more than thirteen years after substantial completion of such an improvement. . . ."[1]

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[1]The section's preamble provides, in part:

In answering the question before us, we must determine whether this easement is "real property" for purposes of § 15-3-640 and, if so, whether the pipeline at issue constitutes an "improvement" thereto.

> Whereas, the General Assembly finds that persons involved in improvements to real property are subject to the economic and emotional burdens of litigation and liability for an indefinite period of time upon allegations of defective or unsafe conditions; and
>
> Whereas, the General Assembly finds it in the public interest to provide a measure of protection against claims and litigation arising years after substantial completion of an improvement to real property; and
>
> Whereas, the General Assembly finds that substantial differences exist between improvements to real property and other activities for which liability may be alleged, including the fact that improvements to real property have lengthy useful lives and are utilized, changed, and affected by many people, forces, and things after completion; and
>
> Whereas, the General Assembly finds it reasonable and necessary to distinguish between a person in actual possession or control of an improvement to real property and those otherwise involved in an improvement to real property, for the following reasons: because acceptance of some future responsibility for the condition of the premises is implied in the acceptance of an improvement to real property; because possession or control of the premises is a reasonable and fair basis for imposing some additional liability; because after the date of acceptance of the work by the owner, there exists the possibility of neglect, abuse, poor maintenance, mishandling, improper modification, or unskilled repair of an improvement; because owners and persons in control have the opportunity to avoid liability by taking care of the improvement and by regulating its use . . . .

We recently stated that "[a]n easement gives no title to land on which [the] servitude is imposed, but it is a property or an interest in land." Main v. Thomason, 342 S.C. 79, 92, 535 S.E.2d 918, 924 (2000). American Jurisprudence describes an easement as "neither an estate in land nor the 'land' itself. It is, however, property or an interest in land. Thus, an easement is real property." 25 AM. JUR. 2D *Easements and Licenses* § 2 (1996). We hold that this easement is real property within the ambit of § 15-3-640, and that it is capable of being improved.

We have not defined the term "improvement" in the context of § 15-3-640. In construing that term for purposes of the Betterment Statutes,[2] we cited with approval the then-current definitions of "improvement" from American Jurisprudence and Corpus Juris Secundum:

> The phrase 'permanent improvements' means something done to or put upon the land, which the occupant cannot remove or carry away with him, either because it has become physically impossible to separate it from the land or because, in contemplation of law, it has been annexed to the soil and is therefore to be considered a part of the freehold. . . . It has been held, on the one hand, that the term 'improvements' applies only to things which have been placed upon the land under such circumstances as to make them a part of the realty, and, on the other hand, that it comprehends all additions to the freehold, except trade fixtures which can be removed without injury to the building.

Dunham v. Davis, 232 S.C. 175, 183-84, 101 S.E.2d 278, 282 (1957).

The current versions of American Jurisprudence and Corpus Juris Secundum contain the following:

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[2]See S.C. Code Ann. §§ 27-27-10 through 100 (1991).

> Generally speaking, the word "improvement" includes everything that permanently enhances the value of premises for general uses. However, an "improvement" need not only enhance the value of the property, but may also enhance the beauty or utility of that property or adapt it to different or further uses.

41 AM. JUR. 2D *Improvements* § 1 (1995). "The term 'improvements' . . . may be defined as improvements on realty which are more extensive than ordinary repairs, and enhance in a substantial degree the value of the property." 42 C.J.S. *Improvements* § 2 (1991).

Other courts more precisely define improvement as a permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable, as distinguished from ordinary repairs. United States Fire Ins. Co. v. E. D. Wesley Co., 313 N.W.2d 833, 835 (Wis. 1982); Delgadillo v. Socorro, 723 P.2d 245, 247 (N.M. 1986).

The elemental and cardinal rule of statutory construction is that the Court ascertain and effectuate the actual intent of the legislature. In construing a statute, its words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 537 S.E.2d 543 (2000). We look to the preamble of § 15-3-640 as an aid in determining if the legislature intended to include the pipeline at issue within the statute of repose.

Pipeline argues, *inter alia*, that the pipeline is not an improvement because it is not a permanent addition to realty. We decline to give the word "permanent" as used in the above-cited definitions of improvement the rigid interpretation advanced by Pipeline. The preamble makes clear the legislature's intent to extend the protection contained in the statute of repose to additions which have "lengthy useful lives." The pipeline unquestionably had a "lengthy useful life."

The pipeline at issue here satisfies any of these contemporary definitions of "improvement." The pipeline unquestionably made the easement more valuable to Pipeline; it involved the investment of labor and money; and it was permanent[3] as that phrase is commonly understood – it had been in place for 38 years when the explosion occurred. Whether an addition to real property constitutes an improvement requires a case by case determination. We hold under these facts, the pipeline is an improvement to the real property under which it lies for purposes of § 15-3-640.

CONCLUSION

Because Pipeline's easement was real property, and because the pipeline involved the expenditure of labor and money, enhanced the value of Pipeline's easement, and had a lengthy useful life, we answer the certified question in the affirmative.

CERTIFIED QUESTION ANSWERED.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

[3]Permanence is necessarily a relative term when applied to improvements, since no improvement, whether the Tower of Pisa or the Pyramids at Giza, is truly permanent. They do, however, have "lengthy useful lives" – as set forth in the preamble to § 15-3-640.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

James D. Proctor,

Appellant.

Appeal From York County
Henry F. Floyd, Circuit Court Judge

Opinion No. 3341
Heard February 6, 2001 - Filed May 7, 2001

REVERSED

James W. Boyd, of Rock Hill, for appellant.

Deputy Director for Legal Services Teresa A. Knox, Legal Counsel J Benjamin Aplin and Deborah D. Deutschmann, all of South Carolina Department of Probation, Parole and Pardon Services, of Columbia, for respondent.

CONNOR, J.: James D. Proctor appeals the order finding him in violation of probation. Proctor contends he was not on probation but was actively serving his sentence under the Youthful Offender Act, S.C. Code Ann. §§ 24-19-10 to -160 (1989 & Supp. 2000). We reverse.

FACTS

On December 11, 1997, James D. Proctor was sentenced to fifteen years for second degree burglary, suspended on the service of five years probation, and to twenty-five years for second degree arson, suspended on the service of five years probation. At the same time, Proctor was sentenced to five years under the Youthful Offender Act (YOA) for grand larceny.

The probation order for the burglary conviction stated, "The conditions of probation begin after YOA case." The probation order for the arson conviction stated, "The conditions of probation begin after active YOA."

While serving the five-year YOA sentence, Proctor was granted a conditional release from incarceration. In September of 1999, during Proctor's conditional release from his YOA sentence, Proctor engaged in consensual sexual activities with two minor girls. Proctor and the girls were smoking marijuana at the time. As a result, Proctor failed a mandatory drug test required by his conditional release. Proctor denied knowing the girls were underage, but eventually pled guilty to two counts of assault and battery of a high and aggravated nature.

At the probation revocation hearing, Proctor argued his terms of probation for the burglary and arson convictions had not yet begun. His position was that those terms of probation did not begin until he was unconditionally released from the YOA sentence. After taking the matter under advisement, the trial judge focused on the term "active" in the probation order for the arson conviction. He construed the term "active" to mean only the period of incarceration and not the time Proctor was on conditional release. Accordingly, the trial judge ruled the period of probation began upon Proctor's

conditional release from the YOA sentence and ran concurrently with the YOA conditional release.

After the trial judge's ruling, Proctor conceded he had wilfully violated the terms and conditions of his probation. The trial judge found Proctor "willfully violated the terms and conditions of his probation" and ordered "a five-year revocation on both, concurrent" and terminated "the balance of the case." Proctor appeals.

LAW/ANALYSIS

The determination to revoke probation is within the discretion of the circuit judge. State v. Hamilton, 333 S.C. 642, 511 S.E.2d 94 (Ct. App. 1999). A reviewing court will only reverse this determination when it is based on an error of law or a lack of supporting evidence renders it arbitrary or capricious. Id.

Proctor contends he was still serving his YOA sentence and had not yet begun to serve either of the terms of probation under the arson conviction or the burglary conviction at the time of the probation revocation hearing. The State, like the judge at the revocation hearing, focuses on the use of the word "active" in Proctor's arson probation order. The State argues Proctor's "active" YOA sentence ended with his conditional release and Proctor began serving his consecutive probationary sentence under the arson conviction at the time of his conditional release.

Proctor was conditionally released under the YOA sentence pursuant to S.C. Code Ann. § 24-19-110 (Supp. 2000). Section 24-19-110 governs the conditional release of youthful offenders and provides:

> The division may at any time after reasonable notice to the director release conditionally under supervision a committed youthful offender. When, in the judgment of the director, a committed youthful

> offender should be released conditionally under supervision he shall so report and recommend to the division.
>
> The division may regularly assess a reasonable fee to be paid by the youthful offender who is on conditional release to offset the cost of his supervision.
>
> The division may discharge a committed youthful offender unconditionally at the expiration of one year from the date of conditional release.

S.C. Code Ann. § 24-19-110 (Supp. 2000).

While on conditional release, Proctor remained under the supervision of the Youthful Offender Division of the Department of Corrections (the Division). The statutory scheme created by the South Carolina General Assembly envisions a youthful offender's continued service of a YOA sentence beyond his initial, possibly temporary, conditional release. The Division's authority to revoke Proctor's conditional release is provided by statute:

> If, at any time before the unconditional discharge of a committed youthful offender, the Division is of the opinion that such youthful offender will be benefited by further treatment in an institution or other facility any member of the Division may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youthful offender and cause such warrant to be executed by an appointed supervisory agent, or any policeman. Upon return to custody, such youthful offender shall be given an opportunity to appear before the Division or a member thereof. The Division may then or at its discretion revoke the order of conditional release.

S.C. Code Ann. § 24-19-150 (1989). Clearly, the Division had the authority to revoke the conditional release and incarcerate Proctor for the remainder of his YOA sentence.

In Thompson v. South Carolina Department of Public Safety, 335 S.C. 52, 515 S.E.2d 761 (1999), the Supreme Court explained the phrase "term of imprisonment." The Court stated, "The phrase 'Term of imprisonment' has a well-established meaning in South Carolina criminal law." Id. at 55, 515 S.E.2d at 763. According to Thompson, the phrase "term of imprisonment" includes actual incarceration, parole, the suspended portion of a sentence, probation, and supervised furlough. Id. at 55-56, 515 S.E.2d at 763. The Court rejected a narrow view of the phrase that would limit it to the period of actual incarceration. Id.

Based on the broad definition of "term of imprisonment" in Thompson, we find Proctor was still serving his YOA sentence while on conditional release. This view is further supported by the case law of this State which equates the conditional release of an inmate to the parole of an inmate.

In Crooks v. Sanders, 123 S.C. 28, 115 S.E. 760 (1922), the Supreme Court likened the parole of an inmate to a conditional release. The Court stated, "To attribute to the word 'parole' the meaning of a conditional release from imprisonment which does not suspend the running of the prisoner's sentence is entirely in accord with the etymology of the word." Id. at 34, 115 S.E. at 762. In Sanders v. MacDougall, 244 S.C. 160, 135 S.E.2d 836 (1964), the Court held, "A prisoner upon release on parole continues to serve his sentence outside the prison walls. The word parole is used in contra-distinction to suspended sentence and means a leave of absence from prison during which the prisoner remains in legal custody until the expiration of his sentence." Id. at 163, 135 S.E.2d at 837.

For the foregoing reasons, Proctor was still serving his YOA sentence and will continue to serve that sentence until he is unconditionally

released by the Division.[1] Upon his unconditional release by the Division, Proctor will begin to serve his probationary terms as provided in the probation orders.

Accordingly, the trial judge's determination Proctor was concurrently serving his YOA sentence on conditional release and serving his probationary sentence was an error of law. Based on this error of law, the trial judge improperly found Proctor in violation of his probation. Therefore, the order of the lower court is

REVERSED.

HUFF and HOWARD, JJ., concur.

[1] As further proof that Proctor was not yet on probation, we take note that no evidence was presented showing Proctor had been assigned a probation agent. Additionally, the State admitted that Proctor's restitution hearing required by the probation orders had not been scheduled because Proctor "was serving an active YOA sentence."