No. 44222-1

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

SHAWN GREENHALGH and JAMES PFAFF, Appellants

v.

DEPARTMENT OF CORRECTIONS et al., Respondents

BRIEF OF APPELLANTS

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A. Assignments of Error

Assignments of Error

1. The trial court erred in entering the October 26, 2012 order, granting the defendants' motion for summary judgment.

2. The trial court erred in dismissing all of Shawn Greenhalgh's and James Pfaff's claims with prejudice.

Issues Pertaining to Assignments of Error

1. Does the January 1, 2010 DOC Policy 440.000, requiring Greenhalgh and Pfaff to either incur the shipping costs for their previously personal clothes to be mailed out to a non-incarcerated third party or lose ownership of this property through donation and/or destruction, violate the requirement in RCW 72.02.045(3) that the Washington State Department of Corrections (WDOC), as the custodian of inmate valuable personal property, store Greenhalgh's and Pfaff's previously authorized personal clothing for delivery to them upon their release from custody? (Assignment of Error 1)

2. Were Greenhalgh's and Pfaff's claims under WAC 137-36-060, RCW 9.92.110, Article I, §§ 3 and 15 of the Washington State Constitution, the Fourteenth Amendment of the U.S. Constitution, and 42

U.S.C. § 1983 improperly dismissed because they were not individually analyzed on the record by the lower court and because their dismissal was based solely on the lower court's finding that the January 1, 2010 DOC Policy 440.000 did not violate RCW 72.02.045(3)? (Assignment of Error 2)

B. Statement of the Case

1. Procedural History

On June 25, 2012, Greenhalgh and Pfaff, prison inmates who are in the custody of the WDOC, filed a Class Action Complaint on behalf of themselves and all others similarly situated against the WDOC, former WDOC Secretary Eldon Vail, and the State of Washington. CP 3. On July 3, 2012, Greenhalgh and Pfaff filed an Amended Class Action Complaint that included claims under 72.02.045(3), WAC 137-36-060, RCW 9.92.110, Article I, §§ 3 and 15 of the Washington State Constitution, and the Fourteenth Amendment of the U.S. Constitution. CP 18.

On August 22, 2012, the defendants moved for partial summary judgment, under CR 56, on Greenhalgh's and Pfaff's claims under RCW 72.02.045(3), WAC 137-36-060, RCW 9.92.110, Fourteenth Amendment

of the U.S. Constitution, and 42 U.S.C. § 1983. CP 90. Greenhalgh's and Pfaff's claims under Article I, §§ 3 and 15 of the State of Washington Constitution were not addressed in Defendants' memorandum in Support of Motion for Summary Judgment. CP 39-51. On September 14, 2012, Greenhalgh and Pfaff also moved for a continuance of the defendants' motion for summary judgment, to strike affirmative defenses, and to compel discovery and for sanctions. CP 91-100.

On September 28, 2012, the lower court heard partial oral argument on Greenhalgh and Pfaff's motion to continue the defendants' motion for summary judgment and the defendants' motion for summary judgment. RP 1-36. The lower court saw no benefit to hearing argument on Greenhalgh and Pfaff's motion to compel discovery before the hearing on motion for summary judgment. RP 13. The lower court stayed all pending discovery and ruled that the hearing would be continued for four weeks to give Greenhalgh and Pfaff an opportunity to file a supplemental brief to address their state constitutional claims and to give the defendants an opportunity to file a reply brief. RP 32. The hearing was reset for October 26, 2012. RP 36.

On October 26, 2012, after hearing oral argument, the lower court concluded that, despite the challenges presented to inmates, the WDOC

was not meant to be a "self-storage unit for inmates" and that "the department has fulfilled its responsibility under the statutory and constitutional law." RP 17-18. Based on these conclusions, the lower court determined that Greenhalgh and Pfaff's motion to compel discovery and sanctions was moot, denied Greenhalgh and Pfaff's motion to continue defendants' summary judgment motion, granted the defendants' summary judgment motion, and dismissed with prejudice all of Greenhalgh's and Pfaff's claims. RP 1-18, CP 350-51. Greenhalgh and Pfaff have filed this appeal requesting that the lower court's order granting the defendants' motion for summary judgment and dismissing Greenhalgh and Pfaff's claims be reversed and that their action be remanded.

2. Factual Background

Prior to January 1, 2010, both inmate Greenhalgh and Pfaff had authorized personal clothing that they were allowed to own and possess under previous DOC 440.000 Policies. CP 320, 322. In late 2008, the WDOC decided to eliminate inmate possession of all owned personal clothing to cut laundry costs. CP 52-53, 55. In a January 20, 2009 memorandum, inmates were informed of this cost cutting measure that would eliminate their possession of personal clothing. CP 53, 55. On

March 1, 2009, WDOC amended DOC Policy 440.000. CP 56-65. The relevant portion of this policy provides as follows:

> II. Effective January 1, 2010, offenders will not be authorized to retain any personal clothing except shoes/sneakers/sandals, baseball hats, and plastic raincoats per Attachment 3.
>
> A. Offenders may retain personal clothing listed on the Maximum Allowable Personal Property Matrix (Attachments 1 and 2) through December 31, 2009.

CP 57. This policy further provides:

> XI. Disposition Options
>
> A. Between July 1, 2009, and September 30, 2009, offenders can dispose of personal clothing (i.e., no more than 2 – 18" x 12" x 10" boxes, 15 pounds each) by shipping it, at the Department's expense, to a non-incarcerated person designated on DOC 21-139 Property Disposition.
>
> B. Through December 31, 2009, offenders may dispose of personal clothing via an approved visitor after a scheduled visit.
>
> C. Offenders will have 30 days to dispose of the property identified as excess or unauthorized.
>
> 1. Offenders may dispose of their excess or unauthorized personal property, including personal clothing disposed of after September 30, 2009, by shipping it, at their own expense, to a non-incarcerated

person designated by the offender on DOC 21-139 Property Disposition.

2. If the offender is without funds, refuses to pay the required postage or refuses to designate an individual to receive the property, such items will be:

   a. Donated to a charitable organization per WAC 137-36-040, or

   b. Destroyed by staff per DOC 420.375 Contraband and Evidence Handling.

CP 63-64, 66.

On March 29, 2009, Greenhalgh filed an Offender Complaint with the WDOC contending that "[f]irst, it is fundamentally unfair for DOC to first authorize me to purchase personal clothing under DOC 440.000 . . .; and, Second the revised version of DOC Policy 440.000 requiring me to send my personal clothing out of the Department or it will be considered abandoned and disposed of as contraband violates RCW 72.02.045 because this statute requires the Department to store my personal property and deliver it to me upon my release." CP 269. After his initial grievance was denied because the WDOC determined that the revised January 1, 2010 DOC Policy 440.000 did not violate RCW 72.02.045(3) and that RCW 72.02.045(3) only required storage of authorized property,

Greenhalgh appealed to the next levels. CP 269-75. All of his subsequent appeals were also denied. CP 269, 271, 273, 275.

On November 30, 2009, former WDOC Secretary Eldon Vail approved the revised January 1, 2010 DOC Policy 440.000. CP 253-27. In a letter dated April 30, 2010, after the revised January 1, 2010 DOC Policy 440.000 went into effect, Greenhalgh requested that Superintendent Scott Frakes of the Monroe Correctional Complex (MCC), pursuant to RCW 72.02.045(3), store his personal clothing until he either went to work release or he was released from total confinement. CP 328, 151. In a May 18, 2010 memorandum, Captain Ed Fritch of MCC informed Mr. Greenhalgh that "[e]ven until April 15, 2010, personal clothing confiscated in cell searches at MCC was not processed as contraband at the Superintendent's direction. . . . The Superintendent has indicated that he will follow policy and will not store your unauthorized personal clothing as your designated non-incarcerated person." CP 330. On August 12, 2010, after his grievances were denied and the superintendent declined to store his personal clothes, Greenhalgh submitted a Property Disposition to have his grey sweat shirt, blue sweat shirt, and fleece jacket mailed, at his expense, to the Margarts. CP 151, 153. On August 19, 2010, after storing Greenhalgh's personal clothes for eight months and

after Greenhalgh paying the mailing cost of $10.52, WDOC mailed the aforementioned clothing to the Margarts. CP 151, 153.

In a January 11, 2011 letter from McNeil Island Corrections Center (MICC), after having stored Pfaff's personal clothes for more than a year, he was told that he had 30 days to send an institutional check or money order for $15.00 to ship his personal clothes or they would be donated or destroyed per WDOC policy. CP 314. When Pfaff received this letter, his spendable account had a balance of $0.64 and a balance of $0.48 on February 11, 2011. CP 82. Pfaff's postage account had a balance of $10.50 on December 23, 2012 and a balance of $0.00 on February 17, 2011. CP 84. On February 2, 2011, Pfaff received $35.00 from the Wiles. CP 85. This money was transferred to his spendable account on February 17, 2011 to pay UPS postage of $36.86. CP 82, 85. Because Pfaff was indigent and did not have the requested $15.00 in his spendable or postage accounts when the shipping costs were due to be paid, in a letter dated February 8, 2011, he directed the MICC Property Room to dispose of his personal clothing that, based on the March 2009 Maximum Allowable Personal Property Matrix Men's Facilities, had a value of $255.00. CP 74, 322, 324.

C. Argument

1. THE DEFENDANTS VIOLATED GREENHALGH'S AND PFAFF'S RIGHTS UNDER RCW 72.02.045(3) BECAUSE THE WDOC DID NOT STORE THEIR PREVIOUSLY AUTHORIZED PERSONAL CLOTHING UNTIL THEIR RELEASE FROM CUSTODY.

The lower court erred in granting the defendants' motion for summary judgment because the WDOC's custodial duties under RCW 72.02.045(3) required them to store Greenhalgh's and Pfaff's personal clothing until their release from custody. For purposes of this appeal, this Court stands in the same position as the trial court and must review de novo the trial court's summary judgment order, viewing all material facts in the light most favorable to Greenhalgh and Pfaff. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 811, 828 P.2d 549 (1992). Statutory interpretation is also a question of law that is reviewed de novo. Burton v. Lehman, 153 Wn.2d 416, 422, 103 P.3d 1230 (2005).

a. A plain language analysis of RCW 72.02.045(3) required the WDOC to store Greenhalgh's and Pfaff's previously authorized personal clothing until their release from custody because the definitions of "custodian" and "custody" are unambiguous.

The responsibilities of a "custodian" include the duty to preserve or store property for future use. As the "custodian" of inmate personal property, under RCW 72.02.045(3), WDOC was required to store all of

the personal clothes that Greenhalgh and Pfaff owned and were authorized prior to January 1, 2010. RCW 72.02.045, which was first enacted in 1988, states in relevant part:

> The superintendent shall be the **custodian** of all funds and **valuable personal property of convicted persons as may be in their possession upon admission to the institution, or which may be sent or brought in to such persons, or earned by them while in custody, or which shall be forwarded to the superintendent on behalf of convicted persons**. . . . When convicted persons are released from the custody of the department either on parole, community placement, community custody, community supervision, or discharge, all funds and **valuable personal property in the possession of the superintendent belonging to such convicted persons shall be delivered to them**.

RCW 72.02.045(3) (emphasis added). CP 181.

The primary objective of statutory construction is "'to ascertain and carry out the intent of the Legislature.'" HomeStreet, Inc. v. Dep't of Revenue, 166 Wn.2d 444, 451, 210 P.3d 297 (2009) (quoting Rozner v. City of Bellevue, 116 Wn.2d 342, 347, 804 P.2d 24 (1991)). When interpreting a statute, a court must first look to its plain language. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). If the plain language is subject to only one interpretation, the court's inquiry ends because plain language does not require construction. Id. "Where statutory language is plain and unambiguous, a court will not construe the statute but will glean the legislative intent from the words of the statute

itself, regardless of a contrary interpretation by an administrative agency." Burton, 153 Wn.2d at 422. Absent ambiguity or a statutory definition, words in a statute should be given their "'usual and ordinary meaning and courts may not read into a statute a meaning that is not there.'" Id. at 422-23 (quoting State v. Hahn, 83 Wn.App. 825, 832, 924 P.2d 392 (1996)). This Court may look to a dictionary to establish the meaning of a word if the undefined statutory word is not technical. Id. at 423.

In Burton, the Supreme Court concluded that all that was necessary was a plain language analysis of two undefined terms, "transfer" and "deliver," in the former version of RCW 72.02.045(3). Id. at 423. As did the Supreme Court in Burton, this Court should also use a plain language analysis to ascertain the meaning of the term "custodian." Like the terms "transfer" and "deliver" in Burton, the term "custodian" is not defined in chapter RCW 72.02, the legislative history of 72.02.045, RCW 72.09.015, or the 1965 predecessor statute to RCW 72.02.045(3) and its legislative history, which states in relevant part:

> The superintendent shall be **custodian** of all funds and **valuable personal property of a convicted person as shall be in his possession upon admission to the state penitentiary, or which shall be sent or brought to such person, or earned by him while in custody, or which shall be forwarded to the superintendent on behalf of a convicted person**. . . . When a convicted person is released

> from the confines of the state penitentiary either on parole or discharge, **all funds and valuable personal property in the possession of the superintendent belonging to such convicted person shall be delivered to him**.

RCW 72.08.103(5) (emphasis added). CP 187-89, 191-98, 200-08, 210-12.

Black's Law Dictionary defines "custodian" as "[a] person or institution that has charge or **custody** (of a child, **property**, papers, or other valuables)." Black's Law Dictionary (9th ed. 2009) (emphasis added). "Custody" is defined as "[t]he care and control of a thing or person for inspection, **preservation**, or security." Id. (emphasis added). "Store is defined as "[a] place where goods or supplies are **stored for future use**." Id. (emphasis added). The dictionary defines "custodian" as "one that protects and **maintains**; . . . ." Merriam-Webster's Dictionary and Thesaurus (17th ed. 2012) (emphasis added). CP 214. A synonym for **maintain** is **preserve**. Id. (emphasis added). CP 215. Merriam-Webster's Dictionary and Thesaurus's definition of "store" is "to place or leave in a safe location for **preservation** or **future use**." Id. (emphasis added). CP 216. Applying the aforementioned definitions of "custodian" and "custody," WDOC clearly was required under RCW 72.02.045(3) to preserve or store Greenhalgh's and Pfaff's previously approved personal clothing until their release from WDOC custody so that they would not

have to choose between having to pay shipping costs or lose their ownership, which is a requirement the Supreme Court in Burton held the WDOC could not impose. Burton, 153 Wn.2d at 426.

Moreover, there are other phrases in RCW 72.02.045(3) that indicate that, as the "custodian," WDOC was required to preserve or store Greenhalgh's and Pfaff's previously approved personal clothing. Pursuant to this statute, valuable personal property that a convicted person has upon their **admission to the [WDOC] institution**, was **sent or brought in to** the convicted person, was **earned by** the convicted person **while in custody**, or was on behalf of the convicted person **forwarded to the superintendent shall** be delivered to them upon discharge from the custody of WDOC. RCW 72.02.045(3) (emphasis added). CP 181. This mandatory delivery of approved valuable personal property, that an inmate has with him when he/she is admitted into the WDOC institution and/or obtains during incarceration, cannot occur, as required by RCW 72.02.025(3), unless the property is preserved or stored by WDOC.

The facts in this case are similar to the facts in Blum v. The State of Arizona, 829 P.2d 1247, 1248, 171 Ariz. 201, 202 (1992), a case in which the Arizona Department of Corrections (ADOC) adopted a policy that set forth the types and quantities of personal items inmates were

allowed to possess while incarcerated, that designated previously authorized personal property then possessed by the inmates as unauthorized property and contraband, and that required the inmates to send out the property to a person outside the prison system, to have the property picked up by a person outside the prison system, or to have the property donated to a charity within 90 days of notification. The Blum inmates argued that this policy violated an Arizona statute which provided that "[w]hen a prisoner is released on parole or discharged from a facility of the department of corrections there **shall** be returned to the prisoner **everything of value taken upon commitment to the department of corrections, or thereafter received by the prisoner**." Id. at 1249, 171 Ariz. at 203 (emphasis added). Like the Blum Arizona statute, RCW 72.02.045, which states "[w]hen convicted persons are released from the custody of the department . . . **all funds and valuable personal property in the possession of the superintendent** belonging to such convicted person **shall** be delivered to them," would also cover all WDOC inmate valuable personal property taken upon admission to the institution and/or received during the inmate's incarceration. RCW 72.02.045(3) (emphasis added), CP 181. All valuable personal property in a WDOC inmate's actual possession would still be in the possession, constructive possession, of the WDOC superintendent. See Burton 153 Wn.2d at 424 and RCW

72.02.045(1). "Constructive possession" is defined as the ability to exercise dominion and control over the property. State v. Walcott, 72 Wn.2d 959, 968, 435 P.2d 994 (1967).

Like the Blum inmates, Greenhalgh and Pfaff had in their possession property that was previously approved, redefined as contraband when the new policy went into effect, and if not mailed out to or picked up by a non-incarcerated person within 30 days, became the property of the WDOC. Id. at 1248-49, 171 Ariz. at 202-03. CP 63-64, 320, 322. As stated previously, Pfaff, after not having the funds to mail out or a non-incarcerated visitor to pick up his personal clothes, lost ownership of these clothes to the WDOC after the 30 day notice had passed, and they were disposed of pursuant to the January 1, 2010 DOC Policy 440.000. Id. at 1251, 171 Ariz. at 205; CP 74, 82, 84-85, 314. While Greenhalgh could afford to mail out some of his personal clothing to a third party, there is no guarantee that his ownership rights in these clothes will be preserved because of the very real possibility that the they could dispose of or lose his clothes before he is released from custody. Id. at 1251-52, 171 Ariz. at 206; CP 151, 153.

Like the Blum inmates, who did not challenge the ADOC's right to determine the amount of property they could have in their possession and

who were not making the case that the Arizona statute required ADOC to store everything they brought to prison or subsequently received while in prison, Greenhalgh and Pfaff are not challenging WDOC's right, under RCW 72.02.045(3), to determine the types and amounts of personal clothing they could have in their possession. Neither are they making the case that RCW 72.02.045(3) would require WDOC to store or preserve all property they receive while incarcerated. Id. at 1250, 1252, 171 Ariz. at 204, 206. "DOC superintendents are custodians of inmate property and may limit an inmate's actual possession." Burton, 153 Wn.2d at 424. Furthermore, the January 10, 2010 DOC Policy 440.000 would limit the inmate personal property that WDOC would be required to store or preserve. This policy restricts unauthorized or contraband personal property from newly incarcerated inmates who enter WDOC facilities and that is received by inmates from facility offender stores, approved vendors, monthly/quarterly packages, education or religious programs, and/or hobby craft items made by the inmate. CP 254-58.

Finally, like the Arizona statute, RCW 72.02.045(3) includes the word "shall." CP 181. The Blum court reasoned that "[t]he use of the word 'shall' indicates that the legislature intended the provision to be mandatory. . . . Thus, on its face, the statute means that everything of

value taken upon commitment to ADOC or subsequently received by a prisoner must be returned upon release from ADOC custody." Id. at 1251, 171 Ariz. at 205, See also State v. G.A.H., 133 Wn. App. 567, 577, 137 P.3d 66 (2006). Ultimately, The Blum court held that "ADOC may adopt policies limiting the amount of property prisoners may keep in their cells but any such items disallowed from immediate possession, which were previously authorized, **must be stored and maintained pending a prisoner's release** pursuant to A.R.S. § 31-228(A)." Id. at 1253, 171 Ariz. at 207 (emphasis added). Thus, like the Courts in Burton and Blum, this Court should adopt the plain language analysis of RCW 72.02.045(3) and find that the statute required WDOC to preserve or store Greenhalgh's and Pfaff's previously approved personal clothing until their release from custody.

b. Judicial construction of RCW 72.02.045(3) required the WDOC to store Greenhalgh's and Pfaff's previously authorized personal clothing until their release from custody because of the statute's history and WDOC's previous practice.

If this Court deems RCW 72.02.045(3) to be ambiguous, the WDOC nonetheless had a duty under this statute, in order to protect Greenhalgh's and Pfaff's ownerships rights, to preserve or store their personal clothing until their release from custody. A statute is ambiguous

if it is subject to multiple interpretations, "but a statute is not ambiguous merely because different interpretations are conceivable." Burton, 153 Wn.2d at 423. Judicial construction requires the court to "construe the statute to effectuate the legislature's intent." Id. In determining the legislature's intent, this Court may look to the legislative history. Id. This Court may consider legislative facts which constitute social, economic, and scientific realities or facts that enable it to interpret law. State v. Balzer, 91 Wn. App. 44, 58, 954 P.2d 931 (1998). Furthermore, this Court may consider the state of the law prior to the adoption of a statute. Chelan County v. Nykreim, 146 Wn.2d 904, 930, 52 P.3d 709 (2002).

An examination of the legislative history of RCW 72.02.045 and state law prior to the adoption of RCW 72.02.045(3), clearly shows that the Washington State Legislature intended that inmate property ownership rights be protected by preservation or storage of previously approved property by WDOC. First, according to the 1988 Senate Floor Notes for RCW 72.02.045, "[t]he superintendent's powers and duties are defined in one section. One of these duties already includes **custody** of inmate's property . . . ." CP 197 (emphasis added). In enacting RCW 72.02.045(3), the Washington State Legislature adopted almost verbatim the language of the former RCW 72.08.103(5), which also made the WDOC

superintendent the "custodian" of inmate valuable personal property. CP 181, 210-12.

Second, RCW 63.42.010 is further evidence that the Washington State Legislature intended that WDOC continue to preserve or store approved inmate property until release. This statute, which was enacted in 1983 to establish procedures for handling abandoned personal property, states as follows:

> It is the intent of the legislature to relieve the department of corrections from unacceptable burdens of cost related to **storage space** and manpower in the **preservation of inmate personal property** if the property has been **abandoned** by the inmate and to enhance the security and safety of the institutions.

RCW 63.42.010 (emphasis added). Appendix A-2 and A-3. The highlighted language in the above-referenced statute establishes that, prior to the adoption of RCW 72.02.045 in 1988, the WDOC was required to preserve inmate personal property and that WDOC had the storage space to do so. Additionally, if WDOC is required to preserve abandoned inmate personal property, it would most surely be required to preserve approved inmate personal property.

Third, WDOC's February 1, 1983 450.030 Policy Directive (Inmate Personal Property) demonstrates that WDOC historically understood its duty as custodian to store approved inmate personal property. Unlike in the March 1,

2009 and January 1, 2010 DOC 440.000 policies, there is not a "Property Storage" section, which limits storage of inmate personal property to a temporary loss of control, in the February 1, 1983 450.030 Policy Directive. CP 63, 218-26, 259.

Finally, the Declaration of WDOC Director Dan Pacholke is evidence of WDOC's prior practice of preserving or storing inmate personal property and of WDOC'S belief that it had a responsibility to do so. Mr. Pacholke states that the "DOC also concluded that costs would be saved by DOC staff not having to document, track, search, move, or **store** inmates' personal property." CP 52-53 (emphasis added) Mr. Pacholke also states that "[b]ecause of the costs to DOC of handling, transporting, and **storing** inmate property, DOC's regulations and policies attempt to minimize the types and amounts of property DOC will **store** for inmates." CP 54 (emphasis added).

Therefore, under a judicial construction analysis that looks at the legislative history, prior Washington law, and the WDOC's prior practice of preserving and storing approved inmate personal property, this Court should find that WDOC had a duty to store Greenhalgh's and Pfaff's previously approved personal clothes until their release from custody.

2. THE COURT ERRED IN DISMISSING GREENHALGH'S AND PFAFF'S ADDITIONAL CLAIMS UNDER WAC 137-36-060, RCW 9.92.110, ARTICLE I, §§ 3 AND 15 OF THE WASHINGTON STATE CONSTITUTION, THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION, AND 42 U.S.C. § 1983 BECAUSE THE LOWER COURT'S RULING WAS BASED ON AN INCORRECT INTERPRETATION OF RCW 72.02.045(3) AND FAILED TO INCLUDE A DISCUSSION OF THESE CLAIMS.

Because the lower court's decision was based on the incorrect conclusion that the January 1, 2010 WDOC Policy 440.000 did not violate RCW 72.02.045(3) and it failed to state its reasoning on the record, it improperly dismissed Greenhalgh's and Pfaff's claims under WAC 137-36-060, RCW 9.92.110, Article I, §§ 3 and 15 of the Washington State Constitution, the Fourteenth Amendment of the U.S. Constitution, and 42 U.S.C. § 1983. A trial court commits reversible error if its decision was imprecise or if it rules without setting out its analysis in the record. See Burton, 153 Wn.2d at 426; See also United States v. Alanis, 335 F.3d 965, n. 2 (9th Cir. 2003) (The record failed to show a deliberate decision by the trial court.); Jordan v. Lefevre, 206 F.3d 196, 198-99 (2d Cir. 2000) (The trial court's decision was imprecise and failed to set out its analysis in the record.). In Burton, the inmates' additional claims were dismissed by the lower court, without discussion, on the incorrect conclusion that a previous WDOC Policy 440.000 did not violate the former RCW 72.02.045(3). Id. at 419, 426. Similar to Burton, the lower court in this case has incorrectly concluded that the January 1, 2010 WDOC Policy 440.000 does not violate the

current RCW 72.02.045(3) because it found that the WDOC was not meant to be a "self-storage unit for inmates." RP 17. As a result of this incorrect conclusion, and without any discussion or analysis on the record, the lower court has dismissed Greenhalgh's and Pfaff's claims under WAC 137-36-060, RCW 9.92.110, Article I, §§ 3 and 15 of the Washington State Constitution, the Fourteenth Amendment of the U.S. Constitution, and 42 U.S.C. § 1983. RP 17-18. Other than the brief discussion by the lower court of Searcy v. Simmons, 299 F.3d 1220, 1229 (10th Cir. 2002) (addresses procedural due process and not substantive due process), the record consists of only a single sentence discussion of Greenhalgh's and Pfaff's other claims:

> But whereas here, there's been a change of policy, and the department has determined that certain property, although it previously was not contraband, will now be defined as contraband, provided that the department gives the inmate a reasonable opportunity to direct where that property should go, I think the department has fulfilled its responsibility under the statutory and constitutional law.

RP 16-18.

Because the lower court erroneously dismissed all of Greenhalgh's and Pfaff's claims due to an incorrect legal interpretation of RCW 72.02.045(3) and it failed to state the reason on the record for dismissing all of their other claims, this Court should reverse the trial court's dismissal of these claims.

D. Conclusion

Based on the foregoing reasons, this Court should reverse the trial court's dismissal of Greenhalgh's and Pfaff's individual Complaint and remand the matter back to the trial court.

Respectfully submitted 21st day of March, 2013

THE LAW OFFICE OF L. M. JONES, LLC

By: LaDonna Jones
Attorney for Appellants
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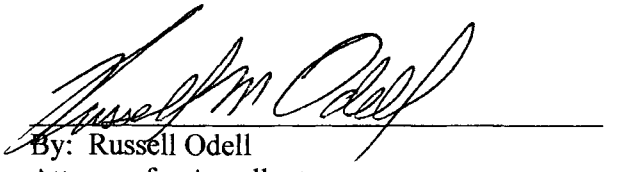

By: Russell Odell
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APPENDIX

§ 63.42.010. Legislative intent.

Washington Statutes

Title 63. Personal property

Chapter 63.42. Unclaimed inmate personal property

Current through 2012 Second Special Session

§ 63.42.010. Legislative intent

It is the intent of the legislature to relieve the department of corrections from unacceptable burdens of cost related to storage space and manpower in the preservation of inmate personal property if the property has been abandoned by the inmate and to enhance the security and safety of the institutions.

Cite as RCW 63.42.010

History. 1983 1st ex.s. c 52 § 1.

SENATE BILL REPORT

SB 4137

BY Senator Granlund

Relating to adult corrections.

SENATE COMMITTEE on Institutions

Senate Hearing Date(s): March 17, 1983

Senate Majority Report: That Substitute Senate Bill No. 4137 be substituted therefor, and the substitute bill do pass. SIGNED BY Senators Granlund, Chairman; Owen, Vice Chairman; Fuller, McManus, Peterson.

Senate Staff: Jane Habegger (753-7708)

SYNOPSIS AS OF MARCH 21, 1983

BACKGROUND:

Current statute requires inmate property to be retained for seven years whether claimed or not. This requirement can be costly to the Department of Corrections in terms of storage space and claims against the Department when property deteriorates after such a lengthy storage period.

The current statute defining which inmates are covered by industrial insurance is unclear.

SUMMARY:

Senate Bill 4137 was introduced by title only.

EFFECTS OF PROPOSED SUBSTITUTE:

All personal property and any income accrued thereon held for an inmate who escapes for three or more months is presumed abandoned. All such property held for an inmate terminated from a work release program or who was transferred to a different institution, or if the owner is unknown is presumed abandoned after remaining unclaimed for six months.

All abandoned personal property must be destroyed, unless the Secretary of Corrections feels the property has some value to a charitable or nonprofit organization, in which case the property may be donated to such an organization.

All illegal items owned or in the possession of an inmate must be confiscated and held by the correctional institution. Those items must be held for evidence for law enforcement authorities or destroyed.

Money which is presumed abandoned must be paid into the parolee and probationer revolving fund.

Procedures are set forth requiring an inventory to be kept of all property prior to its destruction or donation and for notifying the owners of property prior to its donation or being destroyed.

Property shall not be destroyed if an inmate and the Department of Corrections have reached an agreement regarding the disposition of the property.

Inmates employed in classes I, II and IV of institutional industries are eligible for industrial insurance benefits. Class I is the free venture industry; Class II is the tax reduction industry and Class IV is community work industries. However, eligibility for temporary or permanent total disability benefits shall not begin until an inmate is released pursuant to an order from the Parole Board, discharged after the expiration of a sentence or discharged pursuant to a court order.

Fiscal Note: requested

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

SHAWN GREENHALGH and JAMES PFAFF, on behalf of themselves and all others similarly situated, Appellants, Vs. DEPARTMENT OF CORRECTIONS, ELDON VAIL, and the STATE OF WASHINGTON, Respondents.	Case No.: 44222-1-II CERTIFICATE OF SERVICE

I, the undersigned, certify under penalty of perjury and laws of the State of Washington that on the date indicated below I caused service of a copy of the Brief of Appellants with Appendix to be served by ABC Legal Services to:

Douglas Carr
Assistant Attorney General
1125 Washington St. SE, Olympia, WA 98504

DATED this 21st day of March, 2013, at Seattle, Washington.

LaDonna Jones

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