

IN THE SUPREME COURT OF THE STATE OF IDAHO

In Re: Order Certifying Question to the
Idaho Supreme Court

DAN GOODRICK,

Plaintiff-Appellant,

vs.

DEBBIE FIELD, DAVID McCLUSKY,
CINDY WILSON, AL RAMIREZ, D.W.
RICHARDSON, SGT. DAVID GOULD,
C/O CAMPBELL, C/O. HOSFORD, C/O
BULZOMI, and K. BROWN,

Defendants-Respondents.

Supreme Court Docket No. 47536-2019

U.S. District Court, Idaho
Case No. 1:19-CV-00088-BLW

RESPONDENTS' BRIEF

ON ORDER CERTIFYING QUESTION TO THE IDAHO SUPREME COURT
FROM THE U.S. DISTRICT COURT FOR THE DISTRICT OF IDAHO
Honorable B. Lynn Winmill, U.S. District Judge, presiding

Dan Goodrick, IDOC #13304
Idaho State Correctional Institution
P.O. Box 14
Boise, ID 83707

Appellant-Pro Se

Mark A. Kubinski, ISB #5275
Lead Deputy Attorney General
Idaho Department of Correction
1299 North Orchard, Suite 110
Boise, ID 83706

Attorney for Respondents

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I. STATEMENT OF THE CASE

A. Nature of the Case

This case is before the Court on a certified question of law from the United States District Court for the District of Idaho. Specifically, as presented below, the question involves the interpretation of Idaho Code § 20-209 and whether Respondents¹, the Idaho Board of Correction, is required “to provide employment for all prisoners, and, if so, what is the minimum the Board must do to implement the statute’s mandate?” *Order Accepting Certification of the Question of Law*, p. 1.

B. Course of Proceedings

On March 13, 2019, Plaintiff-Appellant, George Goodrick (“Goodrick”), filed a Civil Rights Complaint in the United States District Court, for the District of Idaho. *Goodrick v. Field, et. al.*, U.S. District Court of Idaho, Case No. 1:19-CV-00088-BLW (Dkt. 3). On October 31, 2019, the U.S. District Court of Idaho, Honorable B. Lynn Winmill, issued its Order Certifying Question to the Idaho Supreme Court (“Certification Order”). As indicated in the Certification Order, the court reviewed Goodrick’s complaint “to determine whether it or any of the claims contained therein should be summarily dismissed under 28 U.S.C. §§ 1915 and 1915A.” It is important to recognize that 28 U.S.C. § 1915A requires the U.S. District Court to review prisoner

¹ Petitioner’s underlying complaint names three current or former Board of Correction members in addition to several correctional officers and prison officials. However, because the certified question before the Court only relates to the Board of Correction’s authority, Respondents will be referred to as the “Board of Correction” or the “Board.” Furthermore, David McClusky (correct spelling) is the only current Board member.

filed complaints and dismiss any claims that are frivolous, malicious, or fail to state a claim upon which relief can be granted. That review takes place prior to service on any defendants. Based on the U.S. District Court’s review in this case, it decided to certify the foregoing question to this Court prior to completing its 28 U.S.C. § 1915A review. As such, at this time the U.S. District Court *has not* decided whether any of Goodrick’s claims are subject to dismissal, and *has not* authorized Goodrick to proceed against any of the Respondents.² On November 26, 2019, this Court issued its Order Accepting Certification of the Question of Law.

C. Statement of Facts

“When addressing a certified question of law, this Court will consider ‘only those facts contained in the [certification] order’.” *In Re Decision on Joint Motion to Certify Question of Law to Idaho Supreme Court (Portneuf Hospital, LLC v. Corizon LLC)*, 165 Idaho 298, 444 P.3d 870, 871 (2018) (citations omitted). Accordingly, as stated by the U.S. District Court in its Certification Order:

Plaintiff is a prisoner in the custody of the Idaho Department of Correction (IDOC), currently incarcerated at the Idaho State Correctional Institution (ISCI). He asserts that he, and all IDOC prisoners, have a state-created liberty interest in being employed, arising from Idaho Code § 20-209:

Control and management of correctional facilities and prisoners—rehabilitative services—Rules. (1) The state board of correction shall have the control, direction and management of such correctional facilities as may be acquired for use by the state board of correction and all property owned or used in connection

² Because the U.S. District Court has not completed its review, Respondents are not currently a party to the underlying lawsuit. By filing this brief and appearing before this Court, Respondents do not waive any challenge to jurisdiction, service of process, or any other defenses they may have in the underlying U.S. District Court case.

therewith, and shall provide for the care, maintenance and employment of all prisoners now or hereinafter committed to its custody.

Plaintiff asserts that this is a “very specific, clear, and unambiguous” mandate that the Board of Correction must provide all inmates with employment during incarceration.

Order Certifying Question to the Idaho Supreme Court, pp. 1-2.

II. ISSUE PRESENTED ON APPEAL

Goodrick’s characterization of the issue is that Idaho Code § 20-209 requires the Board of Correction to provide *paid* employment to *all* prisoners under its custody. However, that is not the issue presented below. This Court accepted the following certified question of law from the United States District to Court for the District of Idaho:

Does Idaho Code § 20-209 require the State Board of Correction to provide employment for all prisoners, and, if so, what is the minimum the Board must do to implement the statute’s mandate?”

III. STANDARD OF REVIEW

“Courts of the United States may certify a controlling question of law in a pending action to the Idaho Supreme Court where there is no controlling precedent in Idaho Supreme Court decisions and the determination would materially advance the orderly resolution of the litigation in the United States court. The Court’s role ‘is limited to answering the certified question’ when the question presented is narrow.” *In Re Decision on Joint Motion to Certify Question of Law to Idaho Supreme Court*, 165 Idaho 298, 444 P.3d 870, 874 (2018) (citation omitted).

“The interpretation of a statute is a question of law over which we exercise free review.” *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 69, 72 P.3d 905, 909 (2003).

IV. ARGUMENT

A. Idaho Code § 20-209 Does Not Require the Idaho Board of Correction to Provide Employment for All Prisoners.

1. Basic Rules of Statutory Construction

“The objective of statutory interpretation is to give effect to legislative intent. Such intent should be derived from a reading of the whole act at issue.” *Searcy v. Idaho State Board of Correction*, 160 Idaho 546, 554, 376 P.3d 750, 758 (2016). As summarized by this Court:

[The interpretation of a statute] must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not consider it, but simply follows the law as written. A statute is ambiguous where the language is capable of more than one reasonable construction. If the statute is ambiguous, then it must be construed to mean what the legislature intended for it to mean. To determine that intent, we examine not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history. Statutes that are in pari materia must be construed together to affect legislative intent. Statutes are in pari materia if they relate to the same subject.

Wasden v. Maybee, 148 Idaho 520, 528, 224 P.3d 1109, 1117 (2010) (citing *City of Sandpoint*, 139 Idaho at 69, 72 P.3d at 909).

2. Idaho Code Section 20-229(1) Does Not Create a Right to Paid Employment for All Prisoners.

Idaho Code § 20-209 states in relevant part:

The state board of correction shall have the control, direction and management of such correctional facilities as may be acquired for use by the state board of correction and all property owned or used in connection therewith, and shall provide for the care, maintenance and employment of all prisoners now or hereinafter committed to its custody.

Idaho Code § 20-209(1). Goodrick’s sole argument is based on his interpretation of one part of a sentence, taken out of context, contained in subsection (1) of Idaho Code § 20-209. Specifically, he asserts that the phrase “shall provide for the care, maintenance and employment of all prisoners” confers upon him and all prisoners in the custody of the Idaho Department of Correction (“IDOC”) the right to paid employment. *Appellant’s Brief*, p. 7. As demonstrated below, Goodrick’s myopic view of the statute ignores the above-cited basic principle of statutory construction and legislative intent; which is the entire statutory section must be construed together. To adopt the reading advanced by Goodrick, this Court would have to ignore the introductory language of the statute, which vests in the Board the “control, direction and management” of correctional facilities. The full statute contemplates that the Board retains authority to manage Idaho’s correctional facilities and the inmate populations residing there as it sees fit, including whether inmates will be employed and if so, under what circumstances. Adopting Goodrick’s interpretation of the statute would lead to the absurd result that all convicted prisoners incarcerated at state expense, regardless of their crime, their behavior, and other factors, have a right to paid employment, while free citizens do not.

The Board of Correction derives its authority from Article X, §5 of the Idaho Constitution, which provides that the “board shall have the control, direction and management of the penitentiaries of the state, their employees and properties, and of adult felony probation and parole, with such compensation, powers, and duties as may be prescribed by law.” In furtherance of this provision, the Idaho Legislature has enacted various statutes establishing the Board’s authority. As recently recognized by this Court, “[t]he constitutional and statutory

grants of authority afford IDOC and the Board wide-ranging authority over the management and operation of Idaho's prisons.” *Searcy*, 160 Idaho at 553, 376 P.3d at 757.

Goodrick ignores the Board’s wide discretion to manage the inmates committed to its custody and instead focuses his entire argument on the word “shall” in the phrase “shall provide for the care, maintenance and employment of all prisoners.” Based on the seemingly mandatory meaning of this single word, Goodrick then concludes that all prisoners in IDOC custody must be given paid jobs during the period of their incarceration. *Appellant’s Brief*, p. 7. However, in certifying the question to this Court, the U.S. District Court stated:

The statute does not seem to require that all prisoners must be employed continuously. However, it is unclear to this Court whether the intent of the statute is to require the board to provide some type of employment for each and every prisoner at some point during his or her incarceration. Or, does the statute impose a greater burden of requiring the board to provide ongoing and meaningful employment for all prisoners—limited only by overriding penological, health, and safety concerns.

Certification Order, p. 2. As suggested by the U.S. District Court, the focus is on the meaning of the word “employment,” which is not defined in the statute, and is completely ignored by Goodrick.

Nearly every time Goodrick mentions the word “employment” throughout his brief, he adds “(paying jobs)” immediately after it. *See Appellant’s Brief*, pp. 1, 2, 3, 5, 7. However, Idaho Code § 20-209 does not define or otherwise guarantee employment, nor does it state that inmates must be provided with paid employment. To the contrary, the common definition of employment does not include payment. Employment is defined as: “1: USE, PURPOSE; 2a: activity in which one engages or is employed, b: an instance of such activity, c: the extent or

degree to which a labor force is employed, 3: the act of employing : the state of being employed.” *Merriam-Webster Dictionary* (<https://www.merriam-webster.com/dictionary/employment>, accessed January 5, 2020). Notably absent from the definition of employment is any reference to payment. Based on the plain and ordinary definition of “employment,” and as that term is used when construed with the remaining statutory language, there is no right to paid jobs for inmates under Idaho Code § 20-209. This interpretation is consistent with the legislature’s intent.

A review of other corrections statutes confirms that Idaho Code § 20-209 does not guarantee paid employment for all prisoners. “Language of a particular section need not be viewed in a vacuum. And all sections of applicable statutes must be construed together so as to determine the legislature’s intent.” *Wasden v. Maybee*, 148 Idaho 520, 528, 224 P.3d 1109, 1117 (citation omitted). This is especially true when the statutes to be interpreted were enacted by the same session of the legislature. *State v. Casselman*, 69 Idaho 237, 244, 205 P.2d 1131, 1134 (1949). As explained by the Court:

The rule that statutes *in pari materia* are to be construed together means that each legislative act is to be interpreted with other acts relating to the same matter or subject. Statutes are *in pari materia* when they relate to the same subject. Such statutes are taken together and construed as one system, and the object is to carry into effect the intention. It is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy, and was intended to be consistent and harmonious in its several parts and provisions. For the purpose of learning the intention, all statutes relating to the same subject are to be compared, and so far as still in force brought into harmony by interpretation.

Grand Canyon Dories v. Idaho State Tax Com'n., 124 Idaho 1, 4, 855 P.2d 462, 465 (1993) (italics in original) (quoting *Meyers v. City of Idaho Falls*, 52 Idaho 81, 89–90, 11 P.2d 626, 629 (1932)).

3. *Other Related Statutes Confirm That Prisoners Do Not Have a Right to Paid Employment.*

There are three statutes relevant to the issue before the Court, which must be read together to determine legislative intent. Those statutes are: Idaho Code §§ 20-101, 20-209, and 20-242A. Idaho Code §20-101 reads in relevant part:

All persons convicted of crimes against the laws of this state, and sentenced to confinement in the state prison shall be committed to the custody of the state board of correction, and must, during the term of their confinement, perform such labor under such rules and regulations as may be prescribed by the state board of correction.

(Emphasis added).

As established by Idaho Code § 20-101, prisoners perform labor under rules and regulations prescribed by the Board of Correction. In turn, Idaho Code § 20-244 grants the board the authority to “make and adopt such rules and regulations for the government and discipline of the correctional facility as the may consider expedient, and from time to time, change and amend the same as circumstances may require.” This court recently examined the Board’s authority to make rules and regulations in *Searcy v. Idaho State Board of Correction*, 160 Idaho 546, 376 P.3d 750. In doing so, the Court discussed the interplay between Idaho Code §§ 20-212 and 20-244 and held that because the regulations at issue related to the internal operation of the prison system, they were not subject to the Board’s rulemaking requirements under Idaho Code § 20-

212. *Searcy*, 160 Idaho at 556, 376 P.3d at 760. In reaching its holding, the Court explained that “the Legislature meant to give the Board flexibility in carrying out its difficult responsibilities by exempting internal rules from the rulemaking requirements of Idaho Code section 20-212.” *Id.* Because inmate labor is a matter of internal prison management, it is clearly within the Board’s authority to determine whether inmates will be provided with employment and if so, whether they will receive pay for said employment.

The Board, pursuant to its authority under Idaho Code §§ 20-101 and 20-244, adopted regulations addressing payment for inmate labor in the form of Standard Operating Procedure 611.02.01.004, “Incentive Pay for Incarcerated Individuals and CRC Workers.”

<http://forms.idoc.idaho.gov/WebLink/0/edoc/281939/Incentive%20Pay%20for%20Incarcerated%20Individuals%20and%20CRC%20Workers.pdf>, accessed January 5, 2020). That standard operating procedure states: “Idaho law states that all persons committed to the custody of the IDOC perform labor under the rules established by the Board of Correction. However, placement in an institutional job is not a right but a privilege that can be terminated at any time. Incarcerated individuals may receive incentive pay for hours worked based on the pay scale established in this SOP.” Standard Operating Procedure 611.02.01.004, p. 2 (emphasis added).

The discretionary nature of inmate employment and payment for inmate labor is further supported by the legislative histories of Idaho Code §20-101 and §20-209. Prior to 1970, a component of incarceration in the state penitentiary was “hard labor.” The predecessor act to Idaho Code § 20-101 was Section 8500, Rev. St. Idaho, which provided:

The penitentiary building erected and conducted by the United States, in the county of Ada, is the territorial prison of the territory of Idaho, wherein must be confined for reformation and punishment, and employed at hard labor, all offenders convicted and sentenced according to law to imprisonment in the territorial prison; and all persons convicted of crime against the laws of this territory and sentenced to confinement in the territorial prison, must be sentenced to hard labor during the term of their confinement, and must perform such labor under such rules and regulations as may prescribed by the governor of the territory, the United States marshal and the territorial treasurer; and they may make regulations for working prisoners outside of the prison walls between sunrise and sunset.

In re Cocoran, 6 Idaho 657, 59 P. 18, 20 (1899) (emphasis added). There is no mention of payment. To the contrary, the labor to which prisoners were employed, as envisioned by the Legislature, was “hard labor.” Eventually the prior version of the statute was codified as Idaho Code § 20-101. However, it was not until 1970 that the reference to “hard labor” was removed from the statute. 1970 Idaho Sess. Laws, ch. 143, sec. 5, p. 425. Prior to its removal, the statute provided that prisoners would be “employed at hard labor.” *Id.* Based on this history, employment and labor are synonymous. Significantly, payment for labor is not provided and labor was part of the punishment of incarceration, rather than a right.

Idaho Code § 20-209 was enacted in 1947 as part of a major revision to the Idaho Code, and included the “shall provide for the care, maintenance and employment of all inmates” language that is at issue in this proceeding. 1947 Idaho Sess. Laws, ch. 53, sec. 9, 59. Notably, in 1970 both Idaho Code § 20-209 and § 20-101 were amended again and a new statute, § 20-242A was added. 1970 Idaho Sess. Laws, ch. 16, sec. 1, p. 31. Statutes enacted during the same legislative session should be construed harmoniously. *State v. Casselman*, 69 Idaho 237, 244, 205 P.2d 1131, 1134. The new statute, § 20-242A, provided in relevant part: “The board of

correction is hereby authorized to institute an incentive pay program for those inmates performing at a meritorious level but who are not privileged to participate in prison industry employment.” This was the first statutory reference to inmate pay, and as clearly stated, the Board had the authority to institute a program, but did not guarantee paid employment to all prisoners. The current version of Idaho Code § 20-242A states in relevant part: “[t]he board of correction is hereby authorized to institute an incentive pay program for those inmates performing work at the direction of the board of correction in jobs not associated with correctional industry employment.” (emphasis added). Therefore, whether to pay inmates for labor is a matter of discretion with the Board.

Based on the foregoing analysis, the decisions whether to employ inmates and whether to pay inmates for their labor is a matter of discretion for the Board. Providing prisoners with wage paying jobs is authorized by law, but is not guaranteed and rather is completely within the discretion of the Board of Correction. It is implausible that the Legislature intended any other result. Any other interpretation would result in the creation of a right to paid employment for state prisoners that is, in fact, nonexistent for citizens who are not incarcerated. Such a construction of Idaho Code § 20-209 would lead to an absurd and harsh result, which is disfavored by the Court. *Wasden v. Maybee*, 148 Idaho 520, 528, 224 P.3d 1109. As such, Goodrick’s position that Idaho Code §20-209 creates a state-created right to paid employment for all inmates under the custody of the Board of Correction cannot stand.

V. CONCLUSION

For the reasons discussed above, Respondents respectfully request that the Court answer the certified question of the U.S. District Court as follows:

1. Idaho Code § 20-209 does not require the Board of Correction to provide employment for all prisoners.

2. Since employment for all prisoners is not mandated by Idaho Code § 20-209, there is no minimum requirement for the Board to implement regarding paid employment for prisoners committed to its care and custody.

DATED this 6th day of January 2020.

By: /s/ Mark A. Kubinski
MARK A. KUBINSKI
Deputy Attorney General
Counsel for Defendants-Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of January, 2020, I caused to be served a true and correct copy of the foregoing Respondents' Brief on:

Dan Goodrick #13304
ISCI
P.O. BOX 14
Boise, Idaho 83707

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/s/ Mark A. Kubinski
MARK A. KUBINSKI