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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2007-2008

1051455

Alabama Department of Corrections and Richard Allen

v.

Montgomery County Commission

Appeal from Montgomery Circuit Court
(CV-04-1433)

MURDOCK, Justice.

The Alabama Department of Corrections ("the DOC") and Richard Allen, its commissioner, appeal from a summary judgment in favor of the Montgomery County Commission ("the Commission") entered by the Montgomery Circuit Court. We

affirm in part, reverse in part, and dismiss the appeal in part.

I. Facts and Procedural History

Betti Jo Day was convicted of theft of property in the second degree by the Montgomery Circuit Court on September 17, 2003. On November 6, 2003, the Montgomery Circuit Court entered the following sentence based on that conviction:

> "The Court, having considered the pre-sentence Investigation Report, and having asked the Defendant if she had anything to say prior to sentence, and the Defendant having her say, she is sentenced to the Department of Corrections for 15 years. Pursuant to Split Sentence Act, 15-year sentence suspended conditioned upon Defendant serving 3 years in the Department of Corrections followed by supervised probation for 3 years, or until all conditions are met. 3-year incarceration period postponed (REVERSE SPLIT)[1] until November 9, 2004, at 9:00 A.M., at which time Defendant shall appear and show cause why prison sentence should not be implemented.
>
> "In the meantime, Defendant [is] placed on supervised probation for 3 years, or until all conditions are met, on the following conditions:

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[1]"In a 'reverse split' sentence, the sentencing court orders a defendant to serve the probationary period of the split sentence first, with the period of incarceration to follow." Ex parte McCormick, 932 So. 2d 124, 139 n.18 (Ala. 2005). Separately, we note that a defendant who is on probation is not in the custody of the DOC. See Ala. Code 1975, §§ 15-22-35, 15-22-50; Ala. Admin. Code (Dep't of Corrections), r. 640-X-1-.01.

> "1. Refrain from any illegal activity.
>
> "2. Pay Court costs & $50 to the Victims' Compensation Fund at the rate of $30 per month beginning 12-1-03, with receipts to be provided to probation officer.
>
> "3. Submit to random drug screens.
>
> "4. Comply with all other conditions set out by Probation Officer.
>
> "5. Continue under the care of a psychiatrist and take all medications as prescribed.
>
> "Defendant to appear for review to show cause why prison sentence should not be implemented on 11-09-04, at 9:00 A.M."

On February 26, 2004, Day's probation officer issued an order authorizing the sheriff of Montgomery County to take Day into custody for violating the conditions of her probation. Although the record is not clear, it appears that the violation was based on another charge of theft against Day. Upon her arrest, Day was held at the Montgomery County Detention Facility ("the county jail"). A hearing was held before the Montgomery Circuit Court on March 4, 2004, at which time the court declared that she was delinquent and tolled her probation. The circuit court scheduled a probation-revocation hearing for March 11, 2004. On March 11, 2004, the circuit court noted that Day appeared with her attorneys for the

revocation hearing but that her attorneys were concerned that Day might not be competent to proceed and that they intended to file a motion for a mental evaluation. The circuit court rescheduled the probation-revocation hearing for April 22, 2004.

In April 2004, while being held at the county jail, Day required and received medical treatment at a hospital. The cost of this treatment, together with the expenses for medical treatment she had received in March 2004, was $126,864.93. The Commission sent letters to the DOC on April 8, 2004, and April 15, 2004, in which it expressed the position that, because Day had been sentenced to the custody of the DOC, Day's medical expenses were the responsibility of the DOC. The Commission cited Ala. Code 1975, § 14-3-30(b), which provides, in part:

> "When an inmate sentenced to the custody of the [DOC] and the [DOC] is in receipt of a transcript of such sentence, is being housed in a county jail, and the inmate develops a medical condition which requires immediate treatment at a medical-care facility outside the county jail, the [DOC] shall be financially responsible for the cost of the treatment of the inmate. ... When an inmate sentenced to the custody of the [DOC] and the [DOC] is in receipt of a transcript of such sentence, is housed in a county jail, and the inmate develops a medical condition or has been diagnosed as having a

> medical condition which, in the opinion of a physician licensed in Alabama, would require treatment or a medical procedure or both, involving a cost of more than two thousand dollars ($2,000), the inmate shall be transferred within three days to a state owned or operated correctional facility or to the physical custody of the [DOC] as determined by the Commissioner of the [DOC]. The inmate shall receive treatment in the same manner as other state inmates. Nothing in this subsection shall be interpreted to relieve the [DOC] of its responsibility for the maintenance and upkeep, including the payment of medical costs, of an inmate sentenced to the custody of the [DOC], nor shall this subsection be interpreted as conferring any additional responsibility upon a county for the maintenance and upkeep, or the payment of medical costs, of any inmate sentenced to the custody of the [DOC]."

On April 14, 2004, the circuit court noted that Day was in the hospital and that the court-ordered mental evaluation indicated a need for inpatient evaluation and treatment. The circuit court postponed the April 22, 2004, probation-revocation hearing.

On May 27, 2004, the Commission sued the DOC in the Montgomery Circuit Court, seeking a judgment declaring that the DOC, rather than the Commission, was responsible for the payment of the medical expenses incurred in treating Day. On July 20, 2004, the DOC filed an answer in which it denied the material allegations of the complaint.

On August 5, 2004, the circuit court noted that Day was competent to proceed and scheduled the probation-revocation hearing for August 26, 2004. Following the hearing, the Montgomery Circuit Court found, based on Day's guilty plea to a new charge of theft of property, that Day had violated one of the conditions of her probation by failing to refrain from illegal activity. The court revoked Day's probation and ordered that she begin serving the three-year period of incarceration of her split sentence in the custody of the DOC concurrently with the sentence she received based on her guilty plea to the new theft-of-property charge.

On November 18, 2005, the Commission filed a motion for a summary judgment in which it argued that, under Ala. Code 1975, § 14-3-30(b), the DOC was obligated to cover Day's medical expenses, which, according to the Commission, now totaled $127,032.93.[2] On March 2, 2006, the circuit court signed an order denying the motion, holding that § 14-3-30(b) did not apply to the case: "The undisputed facts of this case

[2]In addition to the $126,864.93 in medical expenses that Day incurred in March and April 2004, the Commission attached an exhibit to its summary-judgment motion indicating that it had paid an additional $168 for medical expenses that it had incurred for Day's treatment in September 2004.

clearly demonstrate that Day was on supervised probation at the time of her hospitalization. Day was not in the custody of the [DOC]; her sentence in the [DOC] had been suspended."[3]

On March 2, 2006, the Commission filed an amended complaint in which it added Richard Allen, the commissioner of DOC, as a defendant, in his official capacity. The amended complaint sought an order from the court requiring Allen "to perform his legal duties" under § 14-3-30(b) and "to reimburse [the Commission] for its payment of [Day's] medical bills that were the financial responsibility of" the DOC.

The DOC filed a motion for a summary judgment on March 31, 2006. On May 11, 2006, the Commission filed a cross-motion for a summary judgment. On May 31, 2006, the circuit court granted the Commission's motion and entered a summary judgment in its favor. In its order granting the Commission's motion, the circuit court stated, in pertinent part:

> "In its March 2, 2006 order, this Court ruled that inmate Day was not in the custody of the [DOC] at the time of her hospitalizations because she was on probation. The Court also denied the [Commission's] original motion for summary judgment

[3]The order was entered on March 3, 2006.

seeking judgment as a matter of law that the DOC was financially responsible for the medical bills at issue in this case. ... Since the entry of the March 2, 2006 order, the Court has reviewed the case of Thomas v. State, 552 So. 2d 875 (Ala. Crim. App. 1989). In Thomas, the court held that all legal sentences for felonies are sentences to imprisonment in the penitentiary, and that the fact that some sentences are suspended or probated 'relates only to the terms of their execution and not to their basic definitional nature as sentences to imprisonment in the penitentiary.' Id. at 876-77. Therefore, under Thomas, an inmate sentenced to the penitentiary who receives probation is still sentenced to the penitentiary; the inmate's sentence has only been probated which relates solely to the execution of the sentence.

"On November 6, 2003, inmate Day was sentenced to the custody of the DOC for a term of fifteen years. The sentence was suspended conditioned upon Day serving three years in the DOC followed by probation. The three year incarceration was also postponed (reverse split) and inmate Day was placed on supervised probation. The suspension and probation related only to the execution of her sentence. Inmate Day was still an inmate sentenced to the custody of the DOC as contemplated by Ala. Code [1975,] § 14-3-30(b). Therefore, under Ala. Code § 14-3-30(b), the medical bills at issue in this case are the financial responsibility of [the DOC] because they were incurred after Day was sentenced to the custody of the DOC on November 6, 2003.

"[The DOC and Allen] argue that DOC cannot be held responsible for medical bills under Ala. Code § 14-3-30(b) until it receives a transcript of the inmate's sentence. According to [the DOC and Allen], DOC did not receive the transcript of inmate Day's sentence until after at least some of the expenses were incurred, and thus DOC is not

responsible for the bills at issue in this case. In construing Ala. Code § 14-3-30(b), it is this Court's responsibility to give effect to the legislature's intent in enacting the statute. IMED Corp. v. Systems Engineering Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992). In ascertaining legislative intent, 'the Court does not interpret provisions in isolation, but considers them in the context of the entire statutory scheme.' Pope v. Gordon, 922 So. 2d 893, 897 (Ala. 2005). The Court must 'look to the entire act instead of isolated phrases or clauses.' Id.

"The first sentence of Ala. Code § 14-3-30(b) provides that when an inmate sentenced to the custody of the DOC and the DOC is in receipt of a transcript of such sentence, is being housed in a county jail, and the inmate develops a medical condition which requires immediate treatment at a medical-care facility outside the county jail, the DOC shall be financially responsible for the cost of the treatment of the inmate. Section 14-3-30(b) further provides, however, that 'nothing in this subsection shall be interpreted to relieve the department of its responsibility for the maintenance and upkeep, including the payment of medical costs, of an inmate sentenced to the custody of the [DOC]. ...'

"Construing the statute as a whole, this Court find[s] that it was the intent of the legislature that the DOC be financially responsible for the medical expenses of inmates sentenced to its custody when those inmates are being housed in county facilities. Based on the statute as a whole, this Court further finds that the legislature did not intend for anything in § 14-3-30(b) to relieve the DOC of this responsibility. It would be illogical for the County to suffer the cost of treatment when the inmate violates a state law, is sentenced to state prison, is subject to supervision by a state probation officer, and is arrested pursuant to a

> warrant issued at the request of the state. The inmate's incarceration in the county jail is strictly a matter on convenience; he awaits a judicial proceeding to determine if the inmate will be incarcerated with the state or returned to state supervised probation. The most reasonable and logical construction of this statute, as a whole, is that the transcript of the sentence must be supplied to DOC so that DOC can confirm that the inmate has in fact been sentenced to its custody before being required to pay these bills. The receipt of this transcript is not a condition precedent to the DOC being financially responsible for the bills of an inmate sentenced to its custody."

The circuit court declared that the expenses of Day's medical care were the responsibility of the DOC and ordered Allen to ensure that DOC funds were used to reimburse the Commission the $127,032.93 the Commission had spent on Day's medical care. Allen and the DOC appeal.

II. Standard of Review

This Court reviews a summary judgment de novo. Muller v. Seeds, 919 So. 2d 1174, 1176-77 (Ala. 2005). Likewise, "[t]his Court reviews de novo a trial court's interpretation of a statute, because only a question of law is presented." Scott Bridge Co. v. Wright, 883 So. 2d 1221, 1223 (Ala. 2003) (citing Simcala, Inc. v. American Coal Trade, Inc., 821 So. 2d 197, 200 (Ala. 2001)). Finally, we review de novo whether a trial court has subject-matter jurisdiction over a case. See

Solomon v. Liberty Nat'l Life Ins. Co., 953 So. 2d 1211, 1218 (Ala. 2006).

III. Discussion

A. DOC

Before we address the meaning of § 14-3-30 and its application to this case, we turn first to an issue the parties do not raise on appeal: Whether, because of art. I, § 14, Alabama Constitution of 1901, the DOC is absolutely immune from all aspects of this suit.[4] Section 14 provides "[t]hat the State of Alabama shall never be made a defendant in any court of law or equity." We discussed the effect of § 14 in Haley v. Barbour County, 885 So. 2d 783 (Ala. 2004):

[4]The issue of sovereign immunity goes to the subject-matter jurisdiction of a court. See Larkins v. Department of Mental Health & Mental Retardation, 806 So. 2d 358, 363 (Ala. 2001) ("[A]n action contrary to the State's immunity is an action over which the courts of this State lack subject-matter jurisdiction."). This Court "'will take notice of the question of jurisdiction at any time or even ex mero motu.'" Alabama State Docks Terminal Ry. v. Lyles, 797 So. 2d 432, 435 (Ala. 2001) (quoting Aland v. Graham, 287 Ala. 226, 229, 250 So. 2d 677, 678 (1971)). To be sure, the DOC does contend in this appeal that it is immune, by virtue of § 14, from that part of the suit seeking monetary relief. The DOC does not contend, however, that it is immune from that portion of the suit seeking a declaratory judgment with regard to the meaning and effect of § 14-3-30.

> "This section affords the State and its agencies an 'absolute' immunity from suit in any court. Ex parte Mobile County Dep't of Human Res., 815 So. 2d 527, 530 (Ala. 2001) (stating that Ala. Const. 1901, § 14, confers on the State of Alabama and its agencies absolute immunity from suit in any court); Ex parte Tuscaloosa County, 796 So. 2d 1100, 1103 (Ala. 2000) ('Under Ala. Const. of 1901, § 14, the State of Alabama has absolute immunity from lawsuits. This absolute immunity extends to arms or agencies of the state....'). Indeed, this Court has described § 14 as an 'almost invincible' 'wall' of immunity. Alabama State Docks v. Saxon, 631 So. 2d 943, 946 (Ala. 1994). This 'wall of immunity' is 'nearly impregnable,' Patterson v. Gladwin Corp., 835 So. 2d 137, 142 (Ala. 2002), and bars 'almost every conceivable type of suit.' Hutchinson v. Board of Trustees of Univ. of Ala., 288 Ala. 20, 23, 256 So. 2d 281, 283 (1971). Moreover, if an action is an action against the State within the meaning of § 14, such a case 'presents a question of subject-matter jurisdiction, which cannot be waived or conferred by consent.' Patterson, 835 So. 2d at 142-43."

885 So. 2d at 788 (emphasis added). The "DOC is a department of the State and therefore is entitled to sovereign immunity." Latham v. Department of Corr., 927 So. 2d 815, 820 (Ala. 2005).

We have recognized that there are certain species of actions that, though they name as a defendant a State officer in his or her official capacity, are not considered suits against the State for purposes of § 14 immunity. We listed

those types of suits in Ex parte Alabama Department of Transportation, 978 So. 2d 17 (Ala. 2007):

> "'A state official is not immune from an action that (1) seeks to compel a state official to perform his or her legal duties, (2) seeks to enjoin a state official from enforcing unconstitutional laws, (3) seeks to compel a state official to perform ministerial acts, or (4) seeks a declaration under the Declaratory Judgments Act, § 6-6-220 et seq., Ala. Code 1975, construing a statute and applying it in a given situation.'
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> "Latham v. Department of Corr., 927 So. 2d 815, 821 (Ala. 2005). Other actions that are not prohibited by § 14 include:
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> > "'(5) valid inverse condemnation actions brought against State officials in their representative capacity; and (6) actions for injunction or damages brought against State officials in their representative capacity and individually where it was alleged that they had acted fraudulently, in bad faith, beyond their authority or in a mistaken interpretation of law.'
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> "Drummond Co. [v. Alabama Dep't of Transp.], 937 So. 2d [56] at 58 [(Ala. 2006)] (emphasis omitted)."

978 So. 2d at 21 (footnote omitted).

Some previous decisions of this Court were worded in such a way as to leave open the possibility that a State agency was a proper defendant in a declaratory-judgment action, in spite of its absolute immunity under § 14. See, e.g., Aland v.

Graham, 287 Ala. 226, 229-30, 250 So. 2d 677, 679 (1971).[5] This Court recently held, however, that State agencies are completely immune from suit and that only State officials, and not the State or its agencies, are subject to the "exceptions" to sovereign immunity listed in Ex parte Alabama Department of Transportation. As this Court explained in Alabama Department of Transportation v. Harbert International, Inc., [Ms. 1050271, March 7, 2008] __ So. 2d __ (Ala. 2008):

> "The purpose of the so-called 'exception' to § 14 allowing declaratory-judgment actions is to give direction to State officers. Consistent with the other 'exceptions' to § 14 immunity, we hold that only State officers named in their official capacity--and not State agencies--may be defendants in such proceedings."

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[5]In Aland, this Court stated:

> "Without professing to cover every situation that has arisen, there are four general categories of actions that we have held do not come within the prohibition of Sec. 14. (1) Actions brought to compel State officials to perform their legal duties. (2) Actions brought to enjoin State officials from enforcing an unconstitutional law. (3) Actions to compel State officials to perform ministerial acts. (4) Actions brought under the Declaratory Judgments Act, Tit. 7, § 156 et seq., Code 1940, seeking construction of a statute and how it should be applied in a given situation."

287 Ala. at 229-30, 250 So. 2d at 679 (citations omitted).

___ So. 2d at ___.

Because the DOC is an agency of the State and is therefore entitled to absolute immunity pursuant to § 14, the circuit court was without subject-matter jurisdiction to enter a judgment against the DOC. As a result, the circuit court's judgment is void to the extent that it purports to operate against and bind the DOC. Because a void judgment will not support an appeal, see Pinkerton Sec. & Investigation Servs., Inc. v. Chamblee, 961 So. 2d 97, 105 (Ala. 2006), that portion of the appeal relating to the DOC is due to be dismissed.

B. Richard Allen, as commissioner of the DOC

Our holding in Part III.A. does not address the circuit court's jurisdiction as to Allen, who has been sued in his official capacity as commissioner of the DOC. As indicated by the above-quoted passage from Harbert, it is "State officers named [as defendants] in their official capacity," ___ So. 2d at ___, to whom the exceptions to § 14 immunity apply. It is in reference to his official capacity as the commissioner of the DOC that Allen's potential liability is now discussed.

1. The Declaratory Judgment

Allen contends the trial court erred in declaring that § 14-3-30(b), Ala. Code 1975, required the DOC to assume responsibility for all the medical expenses that the Commission paid on behalf of Day while Day was being held at the county jail. He argues that, at the time Day received medical treatment, she was a probationer whose probation had not yet been revoked. He points out that, although Day's original sentence committed her to the custody of the DOC, that sentence had been suspended, and the three-year term of incarceration the circuit court substituted in its place had been postponed by the circuit court. Under these circumstances, Allen argues, Day was not "an inmate sentenced to the custody of the [DOC]" as contemplated by § 14-3-30.[6]

The Commission responds that the plain language of § 14-3-30(b) required the DOC to assume responsibility for Day's medical expenses. It argues that Day previously had been

[6]Allen also contends that the DOC cannot be responsible for Day's medical expenses because it did not receive a transcript of her sentence until September 8, 2004, and receipt of such a transcript is a statutory precondition to its assumption of responsibility. We need not reach this contention in light of our disposition of Allen's argument.

sentenced to the custody of the DOC and that she was still serving that sentence at the time of her medical treatment, albeit by a reverse-split sentence that placed her on probation. It argues that the fact that she was on probation at the time she received the medical treatment, as opposed to being in prison, does not alter the fact that she had been sentenced to the custody of the DOC. It argues that probation relates solely to the execution of the sentence received, not to the fact that the sentence itself committed the defendant to the custody of the DOC. It argues that, under § 14-8-30, Ala. Code 1975, at the time Day was convicted and sentenced to a term of confinement of more than one year, she immediately became a State inmate, irrespective of how her sentence was executed. Thus, according to the Commission, at the time of Day's medical treatment, she was "an inmate," she had been "sentenced to the custody of" the DOC, and she was being temporarily housed in the county jail, all preconditions necessary to trigger the DOC's responsibility for her medical expenses.

In its entirety, § 14-3-30 provides:

"§ 14-3-30. Temporary confinement of convict pending removal; inmate developing medical condition which requires treatment.

"(a) When any convict is sentenced to the penitentiary, the judge of the court in which the sentence is rendered shall order the inmate to be confined in the nearest secure jail. The clerk of the court shall at once notify the [DOC] as to the jail where the inmate is confined, forward to the [DOC] a copy of the judgment entry and sentence in the case, and inform the [DOC] if any special care is necessary to guard the inmate. Thereupon, the [DOC] shall direct where the inmate shall be taken for confinement or hard labor.

"(b) When an inmate sentenced to the custody of the [DOC] and the [DOC] is in receipt of a transcript of such sentence, is being housed in a county jail, and the inmate develops a medical condition which requires immediate treatment at a medical-care facility outside the county jail, the [DOC] shall be financially responsible for the cost of the treatment of the inmate. The [DOC] shall receive any contractual discounts the medical-care facility has agreed to grant for the treatment of inmates housed in state correctional facilities. When an inmate sentenced to the custody of the [DOC] and the [DOC] is in receipt of a transcript of such sentence, is housed in a county jail, and the inmate develops a medical condition or has been diagnosed as having a medical condition which, in the opinion of a physician licensed in Alabama, would require treatment or a medical procedure or both, involving a cost of more than two thousand dollars ($2,000), the inmate shall be transferred within three days to a state owned or operated correctional facility or to the physical custody of the [DOC] as determined by the Commissioner of the [DOC]. The inmate shall receive treatment in the same manner as other state inmates. Nothing in this subsection shall be interpreted to relieve the [DOC] of its

> responsibility for the maintenance and upkeep, including the payment of medical costs, of an inmate sentenced to the custody of the [DOC], nor shall this subsection be interpreted as conferring any additional responsibility upon a county for the maintenance and upkeep, or the payment of medical costs, of any inmate sentenced to the custody of the [DOC]."

When interpreting a statute, courts "should not simply look at 'isolated phrases or clauses' in ascertaining the meaning and application of [the] statute," Limestone County Water & Sewer Auth. v. City of Athens, 896 So. 2d 531, 535 (Ala. Civ. App. 2004), but, instead, should "read the statute as a whole because statutory language depends on context ...." Bean Dredging, L.L.C. v. Alabama Dep't of Revenue, 855 So. 2d 513, 517 (Ala. 2003). Furthermore, in considering a statute as a whole, courts will "'construe the statute reasonably so as to harmonize [its] provisions,'" Proctor v. Riley, 903 So. 2d 786, 789-90 (Ala. 2004) (quoting McRae v. Security Pac. Hous. Servs., Inc., 628 So. 2d 429, 432 (Ala. 1993)). Consistent with the foregoing principles, this Court will read different parts of the same statute in pari materia. See Carroll v. Alabama Pub. Serv. Comm'n, 281 Ala. 559, 562, 206 So. 2d 364, 366 (1968). Furthermore, "[a] phrase that is used repeatedly in statutory provisions relating to the same object

or subject matter shall 'be interpreted to have the same meaning' throughout." House v. Cullman County, 593 So. 2d 69, 72 (Ala. 1992) (citing 73 Am. Jur. 2d Statutes §§ 232-33 (1974)).

Considering § 14-3-30 as a whole, we conclude that the opening phrase of subsection (b) refers to the execution of a sentence of incarceration in the custody of the DOC, not merely to the fact of the entry of a sentence of incarceration in the custody of the DOC. We reach this conclusion for several reasons.

First, subsection (a) of § 14-3-30 clearly is designed to govern a situation in which the defendant, having been sentenced to the penitentiary, is merely awaiting transfer to the penitentiary. If subsection (b) is to be read in pari materia with subsection (a), then it must be read to refer to situations where an inmate needs medical attention during that period following his or her sentencing while awaiting such transfer. That is not the situation presented in this case.

We also note that, with regard to the use of the word "sentenced," the opening phrase of subsection (a) ("When any convict is sentenced to the penitentiary ....") is similar in

all pertinent respects to the opening phrase of subsection (b) ("When an inmate sentenced to the custody of the department ....").[7] The Commission would have this Court construe this phrase in subsection (b) to mean, in effect, "When an inmate sentenced to the custody of the [DOC], regardless of whether the execution of that sentence is stayed, and regardless of whether, instead of immediate incarceration, the convict is placed on probation ...." In isolation, this is certainly one way in which the phrase "sentenced to the custody of the department" could be interpreted. When the statute is considered as a whole, however, and the same construction is applied to the similar language of subsection (a), the statute, at least with regard to subsection (a), makes little sense. To interpret the phrase "sentenced to the penitentiary" in subsection (a) in the same manner as the Commission would have us interpret the phrase "sentenced to the custody of the [DOC]" in subsection

[7]Day was "sentenced to the [DOC] for 15 years." This was equivalent to being "sentenced to the penitentiary," because all felonies carry a sentence of imprisonment, see § 13A-5-2(a), and, when the term of the sentence of imprisonment exceeds three years, the imprisonment is to be served in the penitentiary, see § 15-18-1(b), Ala. Code 1975.

(b) would require that, when a "convict is sentenced to the penitentiary," that convict is to be immediately confined in the nearest jail and subsequently transferred to a place, as designated by the DOC, for incarceration, even if the trial court immediately suspends execution of the sentence and places the convict on probation.

The aforesaid result can be avoided only if subsection (b) is construed, as discussed above, in pari materia with subsection (a) so that the term "sentenced" in subsection (b) refers to a sentence to the custody of the DOC that is presently executable.[8]

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[8]In addition to the fact that our rules of statutory construction call on us to construe subsection (b) in the context of the entire statute rather than in isolation and to interpret the word "sentenced" in that subsection in the same manner as it must be interpreted in subsection (a), we further note that the construction of subsection (b) advanced by the Commission would lead to untenable consequences. We reject this construction because of the principle that "[i]f a literal construction would produce an absurd and unjust result that is clearly inconsistent with the purpose and policy of the statute, such a construction is to be avoided." City of Bessemer v. McClain, 957 So. 2d 1061, 1075 (Ala. 2006).

As previously noted, the Commission argues that the expenses of the medical treatment Day received should be borne by the DOC because she was "an inmate," she had been "sentenced to the custody of the [DOC]" (even though that sentence had been immediately suspended upon imposition), and she was "being housed in a county jail." All three of these

So that the DOC is not forced to assume responsibility for the medical expenses of individuals over whom it otherwise exercises no responsibility and over whom it has no control with regard to custody, and so that the two parts of § 14-3-30 can be read in harmony, we conclude that § 14-3-30 applies only to situations involving convicts who are immediately subject to the custody of the DOC, and not to situations

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criteria would have been met even if Day had been placed in the county jail for reasons having no relationship to the terms of her probation. In other words, the literal and isolated construction of § 14-3-30(b) advanced by the Commission has, as its result, the DOC's being "financially responsible for the cost of the [medical] treatment" of every person on probation from a sentence to the penitentiary who is placed in a county jail for any reason, regardless of whether his or her reason for being in the county jail has any relationship to the reason he or she was originally sentenced to the custody of the DOC, and regardless of whether the DOC otherwise has any authority or control over the custody of that person. In this regard, we note that the third sentence of § 14-3-30(b) provides:

> "When an inmate sentenced to the custody of the [DOC] ... is housed in a county jail, and the inmate develops a medical condition or has been diagnosed as having a medical condition which, in the opinion of a physician licensed in Alabama, would require treatment or a medical procedure or both, involving a cost of more than two thousand dollars ($2,000), the inmate shall be transferred within three days to a state owned or operated correctional facility or to the physical custody of the [DOC] as determined by the Commissioner of the [DOC]."

involving convicts of whom the DOC is not immediately authorized, by virtue of the convict's sentence, to take custody. Applying this construction of § 14-3-30 to the present case, we conclude that the circuit court erred to reversal when it declared that the expenses of the medical treatment Day received in March and April of 2004, amounting to $126,864.93, were the responsibility of the DOC, because Day was not subject to the DOC's custody at that time. Because Day became subject to the DOC's custody after the circuit court, in August 2004, revoked her probation and ordered her to begin serving the three-year period of incarceration called for by her split sentence, the DOC was responsible for the expenses of the medical treatment Day received on September 9, 2004, in the amount of $168, and to the extent the circuit court's judgment so declared, it is due to be affirmed.[9]

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[9]The Commission's reliance on Thomas v. State, 552 So. 2d 875 (Ala. Crim. App. 1989), is misplaced. In Thomas, a convict petitioned for a writ of habeas corpus claiming that he was entitled to incentive-good-time credit under the Alabama Correctional Incentive Time Act, Ala. Code 1975, § 14-9-40 et seq. The convict had received a sentence of 15 years' imprisonment, but the trial court suspended that sentence and ordered the convict to serve a split sentence of 3 years' incarceration followed by 12 years' supervised

probation. The convict argued that he was entitled to incentive-good-time credit because, although § 14-9-41(e) then provided that "no person may receive the benefits of correctional incentive time if he or she ... has received a sentence for 10 years or more in the state penitentiary," he was serving only 3 years in actual incarceration and was therefore not within the class of convicts barred by § 14-9-41(e) from receiving the benefits of correctional incentive time for having received a sentence of 10 or more years in the penitentiary. (Section 14-9-41(e) had been amended to change 10 years to 15 years.) The trial court denied the petition.

On appeal, the Court of Criminal Appeals affirmed, holding that the phrase "received a sentence for 10 years or more" referred to the actual sentence imposed by the trial court, regardless of whether the trial court subsequently split the sentence and ordered a lesser period of incarceration. The court stated:

> "Section 14-9-41(a) contains the phrase 'confined ... in the penitentiary' in reference to those eligible for its benefits, and § 14-9-41(e) contains the phrase 'received a sentence for 10 years or more in the state penitentiary' in reference to those ineligible for its benefits. 'Confinement' is an obvious prerequisite for good time eligibility under § 14-9-41(a). It does not follow, however, that the exception to eligibility in § 14-9-41(e) is 10 years' actual confinement. In subsection (e), the legislature used the term '[any convict] who has <u>received</u> a sentence of 10 years or more in the state penitentiary' to describe those who are ineligible for good time. 'Has received' is past tense and denotes the original sentence imposed upon conviction. A sentence of '10 years or more in the state penitentiary' is not equivalent to being '<u>confined</u> under a sentence of 10 years,' especially when read in light of the other exception in subsection (e), which excludes from earning good time those convicts who have been convicted of a

> Class A felony. The minimum sentence for a Class A felony is 10 years, Alabama Code 1975, § 13A-5-6. Class A felons may have their sentences split under § 15-18-8 or suspended under § 15-22-50, thus resulting in a term of confinement of less than 10 years, yet they are still ineligible for good time because the legislature obviously deemed the nature of their offenses too serious to merit the benefits of good time sentence reduction. It is reasonable to assume that the legislature also concluded that anyone who received a sentence in the Class A felony range would also not merit beneficial treatment.
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> "This interpretation of and distinction between the terms 'confinement' and 'sentence' are reasonable and in accordance with the fundamental rule of statutory construction that '[w]ords used in the statute must be given their natural, plain, ordinary, and commonly understood meaning.' Alabama Farm Bureau Mutual Casualty Ins. Co. v. City of Hartselle, 460 So. 2d 1219, 1223 (Ala. 1984). The term 'sentence' means: 'The judgment formally pronounced by the court or judge upon the defendant after his conviction in a criminal prosecution, imposing the punishment to be inflicted.' Black's Law Dictionary 1222 (rev. 5th ed. 1979). The term 'confinement' means: 'State of being confined; shut-in; imprisoned.' Black's at 270."

Thomas, 552 So. 2d at 877.

Within the context of the Alabama Correctional Incentive Time Act, the Thomas court's interpretation of the passage "received a sentence for 10 years or more in the state penitentiary" as referring to the original sentence of a convict, even if that sentence is subsequently suspended, was eminently reasonable. However, the term "sentenced" in § 14-3-30 cannot be susceptible to the construction of § 14-9-41 applied by the Court of Criminal Appeals in Thomas because, as discussed above, such a construction would violate our rules

2. The Order to Reimburse the Commission

Allen contends that the circuit court was without jurisdiction to order him to ensure that DOC funds were used to reimburse the Commission for its expenditures for Day's medical care because, he argues, he is entitled to sovereign immunity. He argues that the exceptions to sovereign immunity involving claims against State officials, noted in Part III.A., supra, do not apply to this case. He asserts that the DOC's decision to not reimburse the Commission for Day's medical expenses flowed from an analysis of § 14-3-30 that "involved discretion and interpretation, [and] was not clearly erroneous or made in bad faith," so that his decision was cloaked in sovereign immunity.

Because we have already held that the portion of the circuit court's order declaring that $126,864.93 of Day's medical expenses were the responsibility of the DOC was in error, we necessarily conclude that there was no legal basis

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of statutory construction requiring, among other things, that we read a statute as a whole and construe it so as to harmonize its provisions and that we avoid statutory constructions that produce an absurd result. The holding in Thomas is limited to the construction of the statute at issue in that case.

for the circuit court's order requiring the DOC to reimburse the Commission that amount. Thus, the only matter we address with regard to Allen's immunity argument is whether he is immune from being required to ensure that the DOC reimburses the Commission for its $168 expenditure for Day's medical treatment on September 9, 2004. We conclude that the order is not barred by the sovereign immunity contemplated by § 14 of the Alabama Constitution and that Allen must cause this amount to be paid to the Commission.

In McDowell-Purcell, Inc. v. Bass, 370 So. 2d 942, 944 (Ala. 1979), this Court addressed the claims of a company against a State official under a contract that was subject to multiple interpretations:

> "There are certain principles of law applicable to this case. Among those are the following: Suits against the State are prohibited by Section 14 of the Constitution of Alabama of 1901 and those dealing with the State are charged with knowledge of this. Dunn Construction Co. v. State Board of Adjustment, 234 Ala. 372, 175 So. 383 (1937). This immunity from suit does not extend, in all instances, to officers of the State acting in their official capacity. Unzicker v. State, 346 So. 2d 931 (Ala. 1977). In limited circumstances the writ of mandamus will lie to require action of state officials. This is true where discretion is exhausted and that which remains to be done is a ministerial act. See Hardin v. Fullilove Excavating

Co., Inc., 353 So. 2d 779 (Ala. 1977); Tennessee & Coosa R.R. Co. v. Moore, 36 Ala. 371 (1860). ...

"....

"McDowell-Purcell contends that because the required rock bolting has been completed and accepted by appellee Bass[, director of the Alabama Highway Department], all that remains is for Bass to perform a ministerial act: paying McDowell-Purcell for all rock bolting at four dollars per linear foot. Were one other circumstance present we would be compelled to agree. The payment request for the rock bolting by McDowell-Purcell has never been approved by the Highway Department. Had it been, mandamus would lie because all that would remain would be for Bass to make payment. See Dampier v. Pegues, 362 So. 2d 224 (Ala. 1978); Hardin v. Fullilove Excavating Co., Inc., 353 So. 2d 779 (Ala. 1977).

"McDowell-Purcell had constructive notice that it could not sue the State over a contract dispute. Section 14, Const. 1901. It was furnished the contract, specifications and plans, and was free to consult with officials of the Highway Department concerning any ambiguities it considered present in those documents. If they were not cleared up to McDowell-Purcell's satisfaction it could have refused to submit a bid. In this case Bass had a duty to either approve or disapprove payment according to one of two different interpretations of the contract. Performance of that duty rested upon his judgemental or discretionary ascertainment of facts or existence of conditions to be applied under the terms of the contract. The writ of mandamus will not lie to compel him to exercise his discretion and apply the ascertained facts or existing conditions under the contract so as to approve payment to McDowell-Purcell according to its interpretation of the contract rather than his. See generally, Ex parte Cannon, 369 So. 2d 32, (Ala.

> 1979); Barnes v. State, [274 Ala. 705, 151 So. 2d 619 (1963)]; Gardner v. Stevens, 269 Ala. 213, 111 So. 2d 904 (1959)."

McDowell-Purcell, Inc., 370 So. 2d at 944 (some emphasis original; final emphasis added).

Unlike McDowell-Purcell, the present case involves a statutory duty on the part of a State official, rather than a contractual duty. Under the circumstances presented here, it is beyond question that § 14-3-30 required the DOC to be responsible for the expenses of the medical treatment received by Day on September 9, 2004. The application of § 14-3-30 in this case does not "rest[] upon [a State official's] judgmental or discretionary ascertainment of facts or existence of conditions to be applied." Indeed, Allen presents no argument that any such discretion exists specifically as to the September 9, 2004, medical expenses.[10]

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[10]Allen relies on Williams v. Hank's Ambulance Service, Inc., 639 So. 2d 1230 (Ala. 1997), for the proposition that, when a State official relies on a mistaken but good-faith interpretation of the law in refusing payment, that official will not be required to make payment under the statute when it is later judicially determined that the official's interpretation is legally incorrect. Whatever force this argument may have with regard to Day's medical expenses incurred before September 9, 2004, we have already determined that the DOC's interpretation of § 14-3-30 was correct and that it was not responsible for those medical expenses. Allen

In addition, Allen does not argue that there is any dispute as to the validity of the amount claimed for medical treatment on that day, i.e., $168.

We conclude that the circuit court's order, to the extent it requires Allen to cause the DOC to reimburse the Commission for Day's medical expenses incurred on September 9, 2004, is due to be affirmed. That portion of the order requiring Allen to cause the DOC to reimburse the Commission for the expenses of the medical treatment Day received in March and April 2004 is due to be reversed for the reasons discussed in Part III.B.1. of this opinion.

IV. Conclusion

Based on the foregoing, we affirm the circuit court's judgment against Allen to the extent that it declared that under § 14-3-30 the DOC was responsible for the expenses incurred as a result of Day's medical treatment in September 2004 and required Allen to cause the DOC to reimburse the Commission for that amount; we reverse the circuit court's

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has not demonstrated (or even argued) that the statute is subject to a good-faith interpretation that DOC was not responsible for the expense of Day's medical treatment on September 9, 2004. To this extent, then, Allen's reliance on Williams is misplaced.

judgment against Allen in all other respects and remand the cause. Because the DOC is entitled to sovereign immunity under § 14 of the Alabama Constitution, we dismiss the appeal to the extent that it is an appeal from those aspects of the judgment purporting to operate against and bind the DOC.

AFFIRMED IN PART; REVERSED IN PART; APPEAL DISMISSED IN PART; AND REMANDED WITH DIRECTIONS.

Cobb, C.J., and See, Lyons, Woodall, Stuart, Smith, Bolin, and Parker, JJ., concur.