

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph King Anderson, III, Administrative Law Court

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HARDY MARVIN LANIER, #381975,

Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

Respondent.

**RECEIVED**  
DEC 19 2022  
SC Court of Appeals

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**PETITION FOR REHEARING**

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On December 7, 2022, this Court affirmed the Administrative Law Judge's conclusion that the South Carolina Department of Corrections had properly calculated Appellant's sentence. See Lanier v. South Carolina Department of Corrections, Unpublished Opinion No. 2022-UP-442 (S.C.Ct.App. filed December 7, 2022).

Pursuant to Rule 221, SCACR, Appellant respectfully requests that the Court reconsider its decision in light of matters possibly misapprehended by the Court. The undersigned counsel for Appellant is mindful of the demands made upon this Court by persons seeking appellate relief, and the time

required for the Court to meaningfully review and respond to every appeal and petition submitted to the Court. With this in mind, Appellant will be brief.

As with most legal questions, the issue presented by the Appellant's case is at once both simple and complex. Simple, in that the only issue is the statutory construction of subsection (F) of section 44-53-375. Complex, perhaps, because in every case involving statutory construction there are the various rules of statutory construction that are seemingly vying and competing for application by an appellate court. From these various rules of statutory construction, an appellate court must ultimately choose which rule will be given primacy in its resolution of a case.

In this case, Appellant pled guilty to two counts of trafficking methamphetamine. The first count was under S.C. Code Ann. §44-53-375(C)(1)(a) (punishable by imprisonment of three to ten years -- a Class E Felony), and the second count was under S.C. Code Ann. §44-53-375(C)(2)(a) (punishable by imprisonment of seven to twenty-five years -- a Class B Felony). Appellant received sentences of ten years and thirteen years, respectively on each count. Importantly, Appellant's sentences did not involve a mandatory term or mandatory minimum term of twenty-five years or more. The entirety of subsection (F) of 44-53-375, which reads:

(F) Sentences for a violation of subsections (C) or (E) may not be suspended and probation may not be granted. A person convicted and sentenced under subsection (C) or (E) to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release as provided in Section 24-13-610, or supervised furlough as provided in Section 24-13-710. [emphasis added]

Following his incarceration, Appellant was informed by the Department of Corrections that he was ineligible for parole under S.C. Code Ann. §24-13-100 (a "no parole offense" means a class A, B, or C felony...). Appellant filed an inmate grievance regarding his parole ineligibility, stating that subsection (F) made him parole eligible, because he did not receive a sentence involving a mandatory term or mandatory minimum term of twenty-five years or more. Appellant's grievance was denied by the Department of Corrections. This appeal followed.

#### **WHAT TO DO ABOUT SUBSECTION (F)?**

In determining that Appellant is ineligible for parole, the Department of Corrections has relied upon the "no parole" provisions of section 24-13-100, which were enacted in 1995, and have not been since amended.

By contrast, Appellant states he is parole eligible under subsection (F), which was also enacted in 1995, the same year that the "no parole" provisions of section 24-13-100 were enacted. The provisions of section 44-53-375 were amended in 1995 to add subsection (D), the predecessor of subsection (F), which contains the parole eligibility language at issue. In 2005, section 44-53-375 was substantially amended, with the provisions of subsection (D) being re-codified as subsection (F), however, the parole eligibility language was unaltered. Lastly, in 2010, the provisions of section 44-53-375 were again amended, and again, the parole eligibility language of subsection (F) was left unaltered.

In sum, the General Assembly has enacted and included the parole eligibility language of subsection (F), not once, not twice, but three times. If indeed, all rules of statutory construction are subservient to the one rule that the legislative intent must prevail, what better evidence of legislative intent can there be than the General Assembly's creation, and then persistent inclusion, of the parole eligibility subsection (F) in the provisions of 44-53-375.

So, what does subsection (F) mean? Appellant states that subsection (F) means exactly what it states, that only a person who receives a sentence of "twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years" is ineligible for parole. Because Appellant was not sentenced to a term of twenty-five years, or a mandatory term of twenty-five years, he is eligible for parole. See *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000) (the statutory canon of construction "*expression unius est exclusio alterius*" or "*inclusio unis est exclusio alterius*" holds that "to express or include one thing implies exclusion of another or the alternative.").

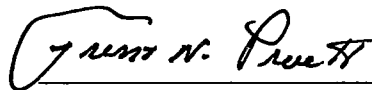
This Court noted in its opinion that that the law does not favor the implied repeal of a statute. In this case, the issue is less of a matter of an implied repeal; rather, the issue is more of a matter of a statutory exception being expressly created, and then being repeatedly affirmed, by General Assembly.

It may be that Appellant is beating the proverbial dead horse, but a reasonable construction of subsection (F) is that the General Assembly expressly intended for certain offenders, such as the Appellant, to be parole eligible.

If subsection (F) is to be read as not affecting the parole eligibility of persons convicted of trafficking under section 44-53-375(C), because the provisions of section 24-13-100 are controlling, then the entirety of subsection (F) was superfluous from the time of its original enactment in 1995, and has remained so up to the present day. Such a conclusion is contrary to the language of the statute, and the intent of the General Assembly. *State v. Long*, 363 S.C. 360, 364, 610 S.E.2d 809, 811 (2005) ("The legislature is presumed to intend that its statutes accomplish something.").

#### CONCLUSION

In conclusion, Appellant respectfully requests that this Court reconsider this matter, and that in so doing, that the decision of the Department of Corrections be reversed, and that this Court find that Appellant is parole eligible for the offenses for which he is currently incarcerated.



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December 16, 2022

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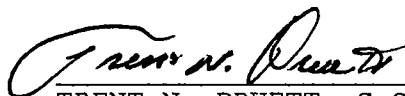
**CERTIFICATE OF SERVICE**

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I, Trent N. Pruett, do hereby certify that on this day, December 16, 2022, that I deposited, postage prepaid, in the United States Mail, an original and six copies of the Appellant's "Petition for Rehearing" addressed to the Clerk of Court, and a copy of the said petition addressed to opposing counsel, as follows:

The Honorable Jenny Abbot Kitchings  
Clerk of the South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Office of General Counsel  
South Carolina Department of Corrections  
Attn: Imani Byas, Staff Attorney  
Post Office Box 21787  
Columbia, South Carolina 29221-1787



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December 16, 2022

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December 16, 2022

Trent N. Pruett  
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The Honorable Jenny Abbot Kitchings  
Clerk of the South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: Hardy Marvin Lanier, #381975 v. South Carolina Department of  
Corrections, Appellate Case No. 2020-001628

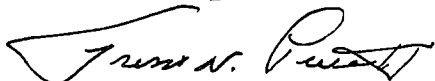
Dear Ms. Kitchings:

Please find enclosed an original and six copies of the Appellant's  
Petition for Rehearing in the above cited matter, and the \$50.00  
filing fee for the Petition for Rehearing.

Also enclosed is a Proof of Service stating that said Petition has  
been served with your office and upon opposing counsel.

Please contact me should you have any questions regarding the  
Petition for Rehearing of the Appellant.

Sincerely,



Trent N. Pruett  
Attorney for the Appellant

c: Office of General Counsel  
South Carolina Department of Corrections  
Attn: Imani Byas, Staff Attorney  
Post Office Box 21787  
Columbia, South Carolina 29221-1787

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FROM: Trent N. Pruett  
Pruett & Cook, Attorneys at Law  
202 N. Petty St.  
Gaffney, S.C. 29340

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