

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

George M. Adams, # 181283,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Probation,)
 Parole and Pardon Services)
)
 Respondent.)
)

Docket No. 13-ALJ-15-0005-AP

ORDER

This matter comes before the Administrative Law Court (Court or ALC) pursuant to Appellant George M. Adams's (Appellant) Motions to be Relieved from a Final Order and to Alter/Amend Judgment pursuant to Rules 60(b)(4) and 59(e) of the South Carolina Rules of Civil Procedure (SCRCP). These motions follow an order issued by this Court on May 22, 2013 (Order) affirming the South Carolina Department of Probation, Pardon and Parole Services' (PPPS) decision that Appellant was a subsequent violent offender pursuant to S.C. Code Ann. § 24-21-640 (Supp. 2011) and therefore not eligible for parole.

Some of Appellant's arguments alleging error warrant clarification or amendment of the original Order. Accordingly, I am issuing an Amended Order in this case to reflect such clarifications or amendments.

DISCUSSION

Rule 60(b)(4), SCRCP

Appellant argues that this Court's Order is void because it was prematurely issued and that Appellant should therefore be relieved from this Order. ~~He argues that the Order was premature because PPPS failed to timely file a response in its Initial Response Brief to Appellant's third issue, and because res judicata bars the refiling of a response brief to the issues. Appellant additionally argues that his default motion is still pending to resolve the issue of PPPS's failure to respond to Appellant's third issue.~~

At the outset, the Court is sitting as an appellate court in this case, and therefore Rule 60(b)(4), SCRCP is inapplicable to this case. Though Rule 68 of the South Carolina Administrative Law Court Rules (SCALCR) permits this Court to apply the South Carolina

Rules of Civil Procedure and the South Carolina Appellate Court Rules, in contested cases and appeals **respectively**, to resolve questions not addressed by these rules, the SCRCR simply do not apply to appellate cases. See Rules 1 and 81, SCRCR (discussing the scope and applicability of the South Carolina Rules of Civil Procedure). Rather, Rules 33-41, SCALCR govern the appeal procedure in the ALC; and the South Carolina Appellate Court Rules may be applied, in the discretion of the ALC judge, where the SCALCR do not address an issue.

~~As to Appellant's default motion, this motion, too, was improperly filed with the Court because a default motion cannot be filed in an appellate case. Moreover, Appellant cites in his Motion for Default Rule 59(B), SCALCR, but that rule by itself has nothing to do with the content of a respondent's brief. However, the ALC rules governing appellate procedure do include rules similar to the one governing default, specifically Rules 60(B)(3) and 62, SCALCR. Rule 60(B)(3) sets forth the requirements for the argument section of a party's brief, and Rule 62 allows the Administrative Law Judge to dismiss an appeal or resolve the appeal adversely towards any party that fails to comply with the procedural rules for appeals, though the Judge is not required to take either action.~~

* In this case, because it was Respondent who did not separately address Appellant's third issue, the Court did not dismiss the appeal. Also, the Court did not resolve the appeal as to that issue adversely towards Respondent because Respondent addressed in its discussion of the first issue that which is at the heart of Appellant's third issue, specifically whether there was a controlling sentencing statute denying parole eligibility to Appellant that would have negated the application of the requirement existing at the time of Appellant's offenses that a mandatory minimum twenty-(20)-years on a life sentence be served before the possibility of parole. This, together with the fact that Appellant stated the issues on appeal differently and/or in different orders in his Initial Brief's Table of Contents, Statement of Issues on Appeal, and Discussion section, and that Appellant's first, and especially third, issues are written in such an unclear and convoluted manner, is also why the Court restated the first issue to encompass both the first and third issues. See, e.g., *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 73, 716 S.E.2d 877, 880 n.3 (2011) (consolidating three of appellant's issues on appeal because they all

⁽¹⁾ Rule 62 includes "failure to provide a factual basis for each expressly and specifically asserted constitutional violation as prescribed by Rule 59(B)" as a grounds for noncompliance upon which the Court may, if it chooses, dismiss an appeal. However, this requirement would only apply to Appellant in this case, as he is the one asserting a constitutional violation.

involved the interpretation of the same statute, and restating one of the appellant's issues "to reflect the thrust of [the appellant's] argument").

Because the Court found that S.C. Code Ann. §§ 24-21-640 and 16-1-60 applied to Appellant, Appellant was never eligible for parole. Therefore, PPS could not have, as Appellant asserts in his third issue, restructured Appellant's sentence by denying eligibility to parole to which he was never entitled. Likewise, Appellant's entire premise in his third issue – that there was an "absence of a controlling sentencing statute on no parole at the time [Appellant's] crime was committed and sentencing – is undermined by the Court's finding that S.C. Code Ann. §§ 24-21-640 and 16-1-60 applied at the time Appellant's crimes were committed. ~~And again, as mentioned in the Order, Appellant was sentenced by the trial court, but the trial court did not give Appellant the possibility of parole on his sentencing sheet, only life imprisonment. Therefore, because the resolution of the first issue would have resolved the third had they been addressed separately, there was no need to address them separately.~~

~~Nevertheless agree that Appellant's Motion for Default was not expressly ruled upon in the Order, though it was implicitly denied via footnote 3 of the Order. Therefore, for the sake of clarity, the Court will issue an Amended Order in which footnote 3 expressly denies Appellant's default motion.~~

Rule 59(e), SCRPC

For the same reasons given above, ~~Rule 59(e), SCRPC does not apply in this case.~~ However, ~~because there is a similar rule in the ALC Rules of Procedure that allow for rehearing of appeals, the Court will treat Appellant's Motion to Alter/Amend Judgment as a motion for rehearing pursuant to Rule 40, SCA LCR.~~

Appellant begins by alleging the following:

The ALJ order dated May 22, 2013, fail's [sic] to address Appellant's issue individually in whole [sic] by not indicating whether S.C. law §§ 16-3-20(a) (1992) and §§ 24-21-640(1992) intent of the legislature lan[g]uage [sic] was to read both statutes together when sentenced to a '**mandatory minimum twenty years life, with possibility of parole**' as listed in the order footnote at page 1, 2 [sic].

(emphasis in original). It is axiomatic that "[t]he language [of a statute] must . . . be read in a sense which harmonizes with its subject matter and accords with its general purpose." *See also Brice v. McDow*, 116 S.C. 324, ---, 108 S.E. 84, 87 (1921) ("[W]here [a] statute is general in its terms, [and] another particular statute deal[s] with the same subject in a particular way or

particular purpose, the two should be read together, and harmonized, if possible, letting both of them stand.”).

In this case, S.C. Code Ann. § 16-3-20(A) (1992) is the general statute regarding parole for convicted murderers. S.C. Code Ann. § 24-21-640 (1992), on the other hand, is a more specific provision. It regulates parole for a narrower category of inmates convicted of violent crimes, specifically, inmates “serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60. Thus, while Section 16-3-20(A) governs parole for convicted murderers, Section 24-21-640 governs parole for a narrower subset of convicted murderers –those for whom murder was second or subsequent conviction following a separate sentencing for a prior conviction of a violent crime under Section 16-1-160. Because Sections 16-3-20(A) and 24-21-640 can be read together and harmonized, the Court was obligated to do so, and did so, in the Order.

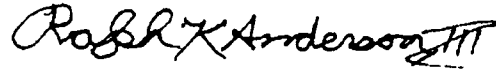
Appellant next argues that the Court failed to rule on whether S.C. Code Ann. § 24-21-640 (1992) was triggered in Appellant’s case “from trial and sentencing.” Appellant also asserts that the Court did not address in whole the third issue on appeal that he raised. He further objects to the combining of his first and third issues on appeal. As an initial matter, the Court has addressed its restatement and consolidation of Appellant’s first and third issues in its discussion above regarding Appellant’s Motion for Default. The Court has also clarified its reasons for the restatement and consolidation in footnote 3 in its Amended Order. ~~The Court has also sufficiently addressed Appellant’s third issue above and in the Order. Therefore, the only remaining argument that warrants further discussion is that the Court failed to rule on whether S.C. Code Ann. § 24-21-640 (1992) was triggered in Appellant’s case “from trial and sentencing.”~~ However, this Court, on page five (5) of the Order, stated that in cases such as this one, 24-21-640 and 16-1-60 apply. The Court also explained when Section 16-3-20(A) applies and when Sections 24-21-640 and 16-1-60 apply. ~~But the Court will amend the Order for the benefit of Appellant by including a restatement of the ruling that it already made with respect to whether Section 24-21-640 was triggered. This restatement will conclude the Court’s discussion of the first issue discussed in the Amended Order and will read as follows: “Therefore, Sections 24-21-640 and 16-1-60 apply in this case, not Section 16-3-20(A).”~~

ORDER

IT IS THEREFORE ORDERED that Adams’s Motion to Alter or Amend is **DENIED**.

IT IS FURTHER ORDERED that all additional analysis in this Order is incorporated into the Amended Order.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

June 18, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

June 18, 2013
Columbia, South Carolina