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 **AMENDED ORDER**

FILED
June 18, 2013
SC ADMIN. LAW COURT

This matter is before the Administrative Law Court (ALC or Court) pursuant to the Appellant George M. Adams's (Appellant) appeal from the South Carolina Department of Probation, Parole and Pardon 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. Appellant filed this appeal with the Court on January 24, 2013.

BACKGROUND

On June 17, 1992, Appellant, together with his co-defendants, entered into a small grocery store armed with firearms and proceeded to rob the store. During the robbery, one of the owners of the store was shot and killed. Appellant and his co-defendants were later arrested, and Appellant was charged with murder and four (4) counts of murder. On June 23, 1994, Appellant was convicted of murder and armed robbery. The trial judge, the Honorable Henry L. McKellar, sentenced Appellant to a term of life imprisonment for murder and twenty-five (25) years for armed robbery, to run concurrently.[1]

Prior to Appellant's parole eligibility date,[2] PPPS conducted an investigation to see if Appellant could appear before the Parole Board. PPPS discovered that Appellant had been

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[1] On October 7, 1996, Appellant was also convicted of the remaining counts of armed robbery, and was sentenced to a fifteen (15) year sentence on each count, to run concurrently with the previous convictions. Appellant completed his armed robbery sentences on December 29, 2002 and September 9, 2008, respectively.

[2] At the time Appellant committed the offense of murder, S.C. Code Ann. § 16-3-20(A) (1992) allowed those convicted of murder, who were not sentenced to death, to be eligible for parole after twenty (20) years of imprisonment, unless there were aggravating circumstances, in which case the convict would not be parole eligible until he had served thirty (30) years. However, this provision had to be read together with S.C. Code Ann. §§ 24-

convicted on September 17, 1991 of burglary in the first degree (Burglary 1st). Because Burglary 1st and the second or subsequent offense, murder, were both classified as violent offenses at the times of their commission, PPPS determined that Appellant was not eligible for parole.

On December 21, 2012, Appellant was informed that due to his prior conviction for a violent offense, he was not eligible for parole. Appellant was also informed that he could appeal PPPS's decision to this Court. Upon receiving this notice of denial, Appellant filed a Notice of Appeal before this Court on January 21, 2013.

DISCUSSION

Appellant argues that: (1) PPPS improperly denied his parole eligibility by applying S.C. Code Ann. §§ 24-21-640 and 16-1-60 instead of Section 16-3-20(A);[3] and (2) PPPS violated his expectation of parole and due process rights to preexisting parole eligibility.

Application of S.C. Code Ann. §§ 16-3-20(A), 24-21-640, and 16-1-60

In his Initial Brief, Appellant correctly points out, though citing a different authority, that in construing Sections 16-3-20(A), 24-21-640, and 16-1-60, "[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) (internal citation omitted). "What a

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21-640 (1992), which disallowed parole eligibility "to any prisoner 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."

[3] In his Initial Brief, Appellant worded the first issue in his brief's Table of Contents as follows: "Did the South Carolina Department of Probation, Parrole [sic] and Pardon Services have the authority to app[l]y no [sic] parole statute by reviewing Appellant's sentence date, as th[e] law requires that a crime is defined as violent from when it is committed?" However, the issue as set forth above cuts more directly to the heart of what Appellant argues in his Initial Brief.

Appellant also listed a third issue in his brief's Table of Contents, stated as follows: "Did [the] South Carolina Department of Probation, Parole and Pardon Services have the jurisdiction to restructure Appellant's sentence from a mandatory minimum twenty (20) years life with possibility of parole to a life sentence without possibility of parole, when the trial court did not hold a separate sentencing hearing because of the absence of a controlling sentence statute on no parole at the time the crime was committed and sentencing?" Though this issue was not addressed separately by PPPS in its Respondent's Brief, the first issue as set forth above, which PPPS did address, goes to the heart of the third issue. Therefore, Appellant's Motion for Default filed on May 2, 2013 is denied, and Appellant's first and third issues will be discussed jointly in the first section of the discussion of the opinion. Also, in order to more clearly and coherently express the first and third issue, the two issues have been restated in the first issue in a manner that "reflect[s] the thrust of [Appellant's] argument." *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 involved the interpretation of the same statute, and restating one of the appellant's issues "to reflect the thrust of [the appellant's] argument"). Moreover, it was necessary to restate and clarify the issues on appeal because Appellant stated the issues differently and/or in different orders in his Initial Brief's Table of Contents, Statement of Issues on Appeal, and Discussion section. Finally, the Court looked at what Appellant actually argued as well when restating and clarifying the issues on appeal.

legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* Thus, we must follow the plain and unambiguous language in a statute and have "no right to impose another meaning." *Id.* at 535-36, 725 S.E.2d at 695. "It is only when applying the words literally leads to a result so patently absurd that the General Assembly could not have intended it that we look beyond the statute's plain language." *Id.* at 536, 725 S.E.2d at 695-96. Furthermore, "[i]t is presumed that the Legislature is familiar with prior legislation, and that if it intends to repeal existing laws it would ... expressly do so; hence, if by any fair or liberal construction two acts may be made to harmonize, no court is justified in deciding that the later repealed the first." *Hodges v. Rainey*, 341 S.C. 79, 88-89, 533 S.E.2d 578, 583 (2000) (internal citation omitted).

Appellant emphatically argues that the Court must look at the applicable statutes as they existed on the dates on which the crimes were committed, not those in effect at the time of sentencing. He argues that PPPS erred by looking at the date of June 23, 1994, when he was convicted of murder and armed robbery, rather than the date on which the offenses were committed. He contends that "[i]f the Department of Probation, Parole and Pardon Services would have properly reviewed the dates as to when the crimes was [sic] committed, then the amendments to 16-1-60 and 24-21-640 would not apply to this case[, e]ven though made retroactive[]." He adds that "[t]he language of the statutes does not authorize[] the Department of Probation, Parole [and] Pardon Services to apply no parole [eligibility] to appellant's sentence under 16-3-20[(A)] mandatory minimum twenty years life sentence, with eligibility for parole. This law came into effect after appellant's crimes was committed, leaving the court to structure [the] sentence accordingly."

According to *State v. Dawson*, "[i]n the absence of a controlling statute, the common law requires that a convicted criminal receive the punishment in effect at the time he is sentenced, unless it is greater than the punishment provided for when the offense was committed." 740 S.E.2d 501, --- (2013) (quoting *State v. Varner*, 310 S.C. 264, 265, 423 S.E.2d 133, 133 (1992). Until January 1, 1996, S.C. Code Ann. § 16-3-20(A) provided in pertinent part:

> (A) A person who is convicted of or pleads guilty to murder must be punished by death or by **imprisonment for life and is not eligible for parole until the service of twenty years**; provided, however, that when the State seeks the death penalty and an aggravating circumstance is specifically found beyond a

> reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the court must impose a sentence of life imprisonment without eligibility for parole until the service of thirty years. . . .

(emphasis added). Beginning January 1, 1996, however, the pertinent language of S.C. Code Ann. § 16-3-20(A) was changed to reflect a heightened penalty:

> (A) A person who is convicted of or pleads guilty to murder must be punished by death, **by imprisonment for life, or** by **a mandatory minimum term of imprisonment for thirty years**. If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment. For purposes of this section, "life imprisonment" means until death of the offender. **No person sentenced to life imprisonment pursuant to this section is eligible for parole . . .**[, and **n]o person sentenced to a mandatory minimum term of imprisonment for thirty years pursuant to this section is eligible for parole . . . .**

It is evident that at the time Appellant committed murder, on June 17, 1992, and when he was sentenced, on June 23, 1994, S.C. Code Ann. § 16-3-20(A) was unchanged, and would normally have warranted eligibility for parole after Appellant served twenty (20) years (assuming the death penalty was not sought; otherwise, if aggravating circumstances were found and the death penalty was not imposed, a minimum service of thirty (30) years of service would have been required before Appellant could be eligible for parole). However, S.C. Code Ann. §§ 24-21-640 and 16-1-60 were also in existence, and neither had changed in a manner affecting this case,[4] from the time Appellant was convicted of, and sentenced for, Burglary 1st on September 17, 1991, until he was convicted of, and sentenced for, murder on June 23, 1994. Because Sections 24-21-640 and 16-1-60 were in existence during the relevant periods at issue, and are related to the same issue, they must be read together with Section 16-3-20(A). Appellant thus errs in reading Section 16-3-20(A) in isolation.

S.C. Code Ann. § 24-21-640 (1992) states in pertinent part:

> The [parole] board must not grant parole nor is parole authorized to any prisoner 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.

In determining whether a prisoner is a subsequent violent offender, the prisoner must have first been convicted and sentenced, either before or after June 3, 1986, of one of the violent crimes

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[4] Section 16-1-60 had been amended prior to June 23, 1994, specifically by 1993 Act No. 184, § 8, eff January 1, 1994. However, Burglary 1st and murder were both classified as violent crimes under 16-1-60 at the time the crimes were committed.

listed in 16-1-60, and the subsequent crime of which the offender is convicted must be one of the violent crimes listed in Section 16-1-60 and have been committed after June 3, 1986. 1986 Op. Atty Gen, No. 86-102, p 309. Thus, it is immaterial when the first violent offense occurred, so long as the sentencing for that prior violent crime occurs prior to sentencing for a second or subsequent conviction. But the second or subsequent violent offense must be committed after June 3, 1986.

In the present case, both burglary in the first degree and murder were enumerated as a violent crimes under Section 16-1-60 at the time Appellant committed the respective crimes and at the time of conviction of, and sentencing for, those crimes. And even had Burglary 1st not been classified under 16-1-60 as a violent crime at the time of Appellant's prior conviction therefor, Appellant could still be denied parole following his subsequent conviction for murder pursuant to S.C. Code Ann. §§ 24-21-640 and 16-1-60 if Burglary 1st was a violent crime under 16-1-60 by that time. *See Sullivan v. State*, 331 S.C. 479, 504 S.E.2d 110 ("[I]t is not a violation of the *ex post facto* clause for the legislature to enhance punishment for an offense based on a prior conviction of the defendant, even though the enhancement provision was not in effect at the time of the previous offense.").[5]

Appellant seems to believe there is a contradiction between the parole eligibility granted under the 1992 versions of Section 16-3-20(A) and Sections 24-21-640 and 16-1-60. However, when read together, the statutes work in harmony. Section 16-3-20(A) applies only when a person is convicted of murder having served no prior sentence for a violent crime under Section 16-1-60. Nevertheless, when, as in this case, a person is convicted of murder, which is listed as a violent crime under Section 16-1-60, has received separate sentencing for a prior conviction of a violent crime under Section 16-1-60, then Sections 24-21-640 and 16-1-60 apply. This is why all three statutes – Sections 16-3-20(A), 24-21-640, and 16-1-60 have been able to co-exist since 1986. Though Appellant seems to believe that his sentence by the trial court was governed by Section 16-3-20(A), there is no evidence that the trial court included the possibility of parole in sentencing Appellant to life imprisonment. Indeed, the trial court's sentencing sheet only states that Appellant "is committed to the State Department of Corrections/County for a term of Life . .

[5] There is an exception to this in that if the subsequent violent crime was committed between January 1, 1994 and January 12, 1995, the prior crime must have been classified as violent at the time the subsequent crime was committed. However, this exception does not apply because Appellant's subsequent violent crime of murder was committed in 1992.

."; no reference to the possibility of parole is made.[6] Therefore, Sections 24-21-640 and 16-1-60 apply in this case, not Section 16-3-20(A).

Due Process Rights to Preexisting Parole Eligibility

Appellant argues that he was eligible for parole under S.C. Code Ann. § 16-3-20(A) and that PPPS "applied [its] new statute[7] to alter the condition of appellant's preexisting parole eligibility, and indeed has revoked parole all together [sic][,] which violated the *Ex Post Facto* Clause of the State and federal Constitutions.

First, as aforementioned, Appellant errs in his assertion that Section 24-21-640 is a new statute that did not exist when he committed his crimes; for Section 24-21-640 existed well before Appellant committed either of his crimes, including his Burglary 1st in 1991, and imposed at the time of his offenses the same restriction at issue in this case. And it is "[t]he law existing at the time of the offense, not the time of sentencing, [that] determines whether an increase of punishment or reduction of benefits constitutes an *ex post facto* violation." *Elmore v. State*, 305 S.C. 456, 409 S.E.2d 397 (1991) (citing *Miller v. Florida,* 482 U.S. 423 (1987), *overruled on other grounds by Al-Shabazz v. State*, 338 S.C. 354, 427 S.E.2d 742 (2000). Therefore, there is no *ex post facto* issue in this case.

Secondly and finally, there has been no other violation of Appellant's due process rights. Appellant correctly acknowledges that there is no constitutional requirement that a State permit parole or early release from confinement. *Greenholtz v. Inmates of Neb. Penal and Corr. Complex*, 442 U.S. 1, 7 ("There is no constitutional or inherent right of a convicted person to be

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6 Appellant misconstrues the statutes at issue, as he argues that "Appellant['s] crimes as mentioned above were committed March 8, 1991 and June 17, 1992, which was well after **6/3/1986**." (emphasis in original). This fact is entirely irrelevant, as is his next argument that "[t]hese crimes are separate offenses." Appellant also makes an incoherent about how "[t]he grace period . . . between 1986 and 1992 of the omnibus crime bill and section 24-21-640, [during which] the Department of Probation, Parole and Pardon Services screen[s] for subsequent violent offender status on appellant to see if he has committed two separate offenses and, to be a subsequent violent offender, has been violated." The Court is not aware of any such grace period, and Appellant has provided no statutory or regulatory authority for such a grace period. Therefore, this argument is considered abandoned on appeal. *See Bean v. S.C. Cent. R. Co., Inc.*, 392 S.C. 532, 559, 709 S.E.2d 99, 113 (Ct. App. 2011) (finding that an issue was deemed abandoned on appeal because Appellant cited no legal authority to support the argument, and the argument itself was merely conclusory). Appellant also argues that he was not given a separate sentencing hearing required to trigger the no-parole language in the Section 24-21-640, citing *State v. Dingle*, 376 S.C. 643, 650, 659 S.E.2d 101, 105 (2008). The Court in *Dingle* explained that "a defendant must not only have a separate sentencing hearing, but he or she must also have a separate conviction." (emphasis removed). In this case, Appellant was convicted of, and sentenced for, both his Burglary 1st and murder charges.

7 The Court assumes that Appellant is referring to Section 24-21-640 when he says PPPS's "new statute."

conditionally released before the expiration of a valid sentence."); *Cooper v. S.C. Dep't of Probation, Parole and Pardon Servs.*, 377 S.C. 489, 496, 661 S.E.2d 106, 110 ("Parole is a privilege, not a right) (citing *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437 443 n.4, 586 S.E.2d 124, 127 n. 4 (2003), *cert. denied*, 540 U.S. 1153 (2004)). "The parole board . . . has the sole authority to determine parole eligibility separate and apart from the court's authority to sentence a defendant." *Cooper*, 377 S.C. at 496, 661 S.E.2d at 110. The Legislature can and has placed restrictions and guidelines on parole eligibility, and Section 24-21-640 is one such limitation. It sets forth in pertinent part that "[t]he board must not grant parole nor is parole authorized to any prisoner 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." Because this Court has found that Sections 24-21-640 and 16-1-60 are implicated and applicable in this case, for the reasons discussed above, Appellant never had parole eligibility, and therefore could have had no parole eligibility alter or revoked. Appellant's failure to read Sections 24-21-640 and 16-1-60 together with Section 16-3-20(A), and his reading of Section 16-3-20(A) in isolation instead, has consequently caused Appellant to err in presuming that he had preexisting parole eligibility. Because Appellant was never eligible for parole, PPPS's failure to grant Appellant parole did not constitute a deprivation of Appellant's due process rights.

ORDER

IT IS THEREFORE ORDERED that the PPPS's decision is **AFFIRMED**.

AND IT IS SO ORDERED.

Ralph K. 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
Judicial Law Clerk

June 18, 2013
Columbia, South Carolina