

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
Appellate Case No. 2013-001423

Appeal of Administrative Law Court
Department of Probation, Parole and Pardon Services

George M. Adams, #181283,

Appellant,

v.

S.C. Department of Probation, Parole and Pardon Service,

Respondent

Designation of matter to be
included in the Record on appeal

George M. Adams, #181283
Lee Correction Institution
990 Wisacky Hwy.
Bishopville, S.C. 29010

cc: Tommy Evans, Jr.
Assistant General counsel

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State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9207
Facsimile: (803) 734-9324
www.state.sc.us/ppp

December 21, 2012

George Adams, #181283
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

RE: NON ELIGIBILITY FOR PAROLE

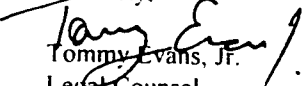
Dear Mr. Adams:

It is my duty to inform you that South Carolina law prohibits the Board of Probation, Parole, and Pardon Services from granting you parole on the sentence(s) identified below. Section 24-21-640 states: "[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 prior conviction, for violent crimes as defined in Section 16-1-60." Our records indicate that you have been convicted of the following violent crimes:

<u>Violent Crime</u>	<u>Indictment Number</u>	<u>Parolable</u>	<u>Sentence</u>
Murder	92-GS-40-11317	No	06/23/94
Burglary, 1st (16-11-311)	91-GS-40-5731		09/17/91

Please note that this letter is the Department's "final decision" on this matter. You have the right to appeal this final decision by seeking review by an Administrative Law Judge. Furtick v. South Carolina Department of Probation, Parole and Pardon Services, 352 S.E.2d 594, 576 S.E.2d 146 (2003). In order to file such an appeal, you must follow the instructions on the back of the enclosed "Notice of Appeal" form approved by the Administrative Law Court (ALC). You will also be required to comply with ALC Rules of Procedure for special appeals. Failure to follow the ALC instructions or Rules of Procedure will result in forfeiture of your right to challenge the Department's final decision.

Sincerely,


Tommy Evans, Jr.
Legal Counsel

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

February 5, 2013

Mr. George M. Adams SCDC# 181283
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, South Carolina 29010

RE: Subsequent Violent Offender

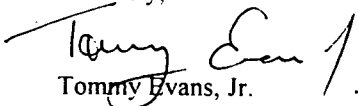
Dear Mr. Adams:

This letter is in response to the inquiries you made regarding being determined not being eligible for parole. On December 21, 2012, you were notified that due to your prior conviction for burglary in the first degree you are not eligible for parole. According to your letter you are questioning this decision, and of the opinion that this decision was made in error.

Pursuant to Section 24-21-640 of the South Carolina Code of Laws "the board must not grant parole nor is parole is authorized to any prisoner serving a sentence for a subsequent conviction following a separate sentencing for a prior conviction for violent crimes as defined in Section 16-1-60." Your dispute is that the prior offense should not be classified as violent. Enclose please find a copy of your sentencing sheets for the offenses of murder and burglary in the first degree. Both of which are classified as violent. It clearly reveals that you were convicted of the offense of burglary on September 17, 1991; and murder on June 23, 1994. Since you had a conviction of a classified violent offense upon your conviction for murder, you are not eligible for parole.

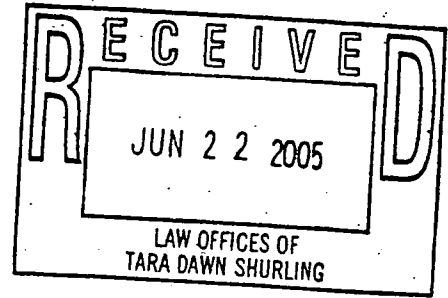
This our final response to this matter. If you continue to feel that this decision was made in error you have the right to appeal to the Administrative Law Court. With kind regards I remain,

Sincerely,


Tommy Evans, Jr.
Legal Counsel

TE:te

Enclosures



CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 08/23/04
 OMCOMITA RELEASE DATE SCREEN C023981
 SCDC# > 181283 LOC: LEE
 ADAMS, GEORGE MAURICE SCDC CLASSIFICATION... VIOLENT

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
 SEXUAL PREDATOR...:
 DNA STATUS...: COMPLETED
 TOTAL SENTENCE...: LIFE CONSECUTIVE SENTENCE ...:
 CURRENT SENTENCE: CURRENT SENT START DATE: 02/08/1993
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 99/99/9999 CURRENT EWC ..:
 YOA SIX YEAR DATE: CURRENT EEC ..:
 INITIAL PAROLE DATE: 02/08/2013 NEXT PAROLE HEARING DATE: 02/08/2013

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 OFFENSE > CAT 3
 TOTAL EXTRA EARNED CREDITS ..: 000
 TOTAL SERVICE TIME EARNED ...: 000000

PFKEYS: 5: HISTORY OF DATE CHANGES
 4-© 1 Sess-1 167.7.50.33 TNET0389 3/11

CLASSIFICATION SUMMARY REPORT DATED 08/23/04

C023981

DC# 181283 ADAMS, GEORGE MAURICE
FENDER TYPE.: ADULT-STRAIGHT SENTENCE
STITUTION...: LEE CORR INST
SECURITY/CUST.: 3 SHORT TERM LOCKUP
T INCARC SENT....: 999 YRS 0 MOS 0 DYS
NTRAL MONITORING.: YES SEPREQ
D CLASS: 3 MED PROB/WORK RESTRICT
NTAL CLASS: MI-3 (OUTPATIENT MENTAL H
RRENT PROGRAM...: NO CURRENT PROGRAM
E...: 38

FBI# 563895EA5

DORM.....: ASU0128B

PROJ MAXOUT DATE: 99/99/9999
~~PROJ PAROLE DATE: 02/08/2013~~
EWC JOB...: NO CURRENT JOB
EDUC PGM.: NO CURR EDUC PROGRAM
EWC LEVEL: 0 EEC LEVEL:
ASSIGNMENT...: LOCKED - UP

EVIDIOUS NUMBERS:
NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE			INDICT
	YRS	MOS	DYS		START	V/NV	CAT	
ORDER	999	99	999	RICHLAND	02/08/1993	V	5	924011317
MED ROBBERY	25	0	0	RICHLAND	02/08/1993	V	4	924011316
MPLA ASSLT	0	0	60	RICHLAND	11/18/1992	N	2	0000000
MPLA ASSLT	0	0	60	RICHLAND	11/18/1992	N	2	0000000
MED ROBBERY	15	0	0	RICHLAND	06/18/1992	V	4	924011808
MED ROBBERY	15	0	0	RICHLAND	06/18/1992	V	4	924011486
MED ROBBERY	15	0	0	RICHLAND	06/18/1992	V	4	924011485
RCENY	0	24	0	RICHLAND	03/25/1991	N	2	916S405700
RGLARY-1ST DEGREE	0	24	0	RICHLAND	03/25/1991	V	4	916S405731
RGLARY-2ND DEGREE	0	24	0	RICHLAND	03/25/1991	V	4	916S405699
AND LARCENY	0	24	0	RICHLAND	03/25/1991	N	2	916S405730
RGLARY-2ND DEGREE	0	24	0	RICHLAND	03/25/1991	V	4	916S405731

NO PRIOR COMMITMENTS OVER 90 DAYS:
NO PRIOR COMMITMENTS OVER 90 DAYS

CONTAINERS (HOLD, WANTED, NOTIFY):

ESCAPES:
NO ESCAPE HISTORY

CRIMINAL CHARGES:
NO CRIMINAL CHARGES HISTORY

SAULTIVE DISCIPLINARIES:		
12/29/00 RIOT	CONVICTED	MAJOR
05/30/04 SEXUAL MISCONDUCT	CONVICTED	MAJOR
02/22/04 USE OBSCENE, VULGAR, PROFA	CONVICTED	MINOR
02/14/04 USE, POSS NARC, MARIJ, UNAU	CONVICTED	MAJOR
01/07/04 SEXUAL MISCONDUCT	NOT GUILTY	MINOR
12/11/03 USE, POSS NARC, MARIJ, UNAU		OTHER
08/04/03 THREATENING TO INFLICT H	DROPPED	MAJOR
06/25/03 USE, POSS NARC, MARIJ, UNAU	CONVICTED	MAJOR
04/14/03 THREATENING TO INFLICT H	DROPPED	MAJOR
03/09/03 THREATENING TO INFLICT H	DROPPED	MAJOR
01/25/03 SEXUAL MISCONDUCT		OTHER
01/07/03 SEXUAL MISCONDUCT	DROPPED	MAJOR
10/11/02 OUT OF PLACE		OTHER
07/29/02 REFUSING OR FAILING OBEY		OTHER
05/13/02 DISRESPECT	CONVICTED	MINOR
05/06/02 SEXUAL MISCONDUCT	DROPPED	MAJOR
02/04/02 DAMAGE, DESTROY, DEFACE, PR		OTHER
12/27/01 SEXUAL MISCONDUCT	DROPPED	MAJOR
11/04/01 SEXUAL MISCONDUCT	CONVICTED	MAJOR
10/26/01 FALSE STATEMENT TO HARM		OTHER
09/19/01 SEXUAL MISCONDUCT		OTHER
09/13/01 SEXUAL MISCONDUCT	DROPPED	MAJOR
08/03/01 SEXUAL MISCONDUCT	DROPPED	MAJOR

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

FILED

June 18, 2013

SC ADMIN. LAW COURT

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.¹⁰ 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

¹⁰ 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.~~

~~I 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, SCALCR.~~

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.

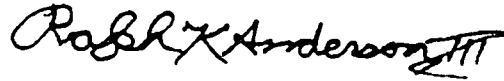
Appellant next argues that the Court failed to rule on whether S.C. Code Ann. § 24-21-640 (1992) was triggered in Appellant’s case “from trial and sentencing.” Appellant also asserts that the Court did not address in whole the third issue on appeal that he raised. He further objects to the combining 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

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

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

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, Parole [sic] and Pardon Services have the authority to app[ly] 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 PPS 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 24-2-640 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

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.")⁹~~

~~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 . .~~

⁹ 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

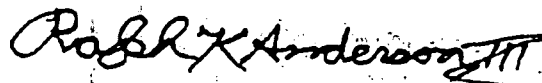
⁶ Appellant misconstrues the statutes at issue, as he argues that “Appellant[’s] crimes as mentioned above were committed March 8, 1991 and June 17, 1992, which was well after 6/3/1986.” (emphasis in original). This fact is entirely irrelevant, as is his next argument that “[t]hese crimes are separate 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, PPS’s failure to grant Appellant parole did not constitute a deprivation of Appellant’s due process rights.~~

ORDER

IT IS THEREFORE ORDERED that the PPS’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

E. Harvin Belser Fair
Judicial Law Clerk

June 18, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal of Administrative Law Court
Department of Probation, Parole and Pardon Services

George M. Adams, #181283,

Appellant,

v.

S.C. Department of Probation, Parole and Pardon Service,

Respondent.

CERTIFICATE OF SERVICE

I, George M. Adams, #181283, inmat housed in S.C. Department of Corrections, certify that I have served the within Designation of matter to be included in the appeal, dated 8, 19th, 2013, on Respondent by depositing a copy of the same in the United States mail, postage prepaid, the 19th day of August, 2013, addressed to:

Respondent

Tommy Evans, Jr. Assistant General Counsel
2221 Devine Street, suit 600
Post Office Box 50666
Columbia, S.C. 29205


George M. Adams, #181283

I further certify, that this Designation of matter contains no matter which is irrelevant to this appeal.

I also furthe certify that all parties required by rule 209(a) to be served have been served.