GEORGE M. Adams, #181283
LEE CORRECTION INSTITUTION
KERSHAW NORTH #2211
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010

DATE: SEPTEMBER 3, 2013

THE HONORABLE JENNY Abbott Kitchings, CLERK
SOUTH CAROLINA COURT OF APPEALS
POST OFFICE BOX 11629
COLUMBIA, S.C. 29211

RE: GEORGE M. Adams v. SCDPPPS
APPELLATE CASE NO: 2013-001561

DEAR CLERK,

PLEASE find ENCLOSED the ORIGINAL AND ONE COPY of APPELLANT'S MOTION FOR REINSTATEMENT of ABOVE REFERENCED CASE, ALONG WITH A CERTIFICATE of SERVICE to be filed in your office. THEREFORE, WOULD you PLEASE RETURN the COPY to me in the self Addressed ENVELOPE FOR my FILE.

THANKS IN ADVANCE!

RESPECTFULLY

S/George M. Adams.
GEORGE M. Adams, #181283

CC: TOMMY EVANS, JR.
ASSISTANT GENERAL COUNSEL

COPY

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

GEORGE M. ADAMS,

APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES,

RESPONDENT.

THE HONORABLE RALPH KING ANDERSON, III
TRIAL COURT CASE NO. 2013-ALJ-15-0005-AP

REINSTATEMENT OF APPEAL

GEORGE M. ADAMS, #181283
LEE CORR. INST.
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010

George M. Adams

DATE: SEPTEMBER 3, 2013

Statement of Issue On Appeal

Appellant's Appeal from Administrative Tribunal orders denying parole Eligibility was Raised below in trial and sentencing for Murder and Armed Robbery.

December 21, 2012, the SCDPPPS Reviewed Appellant's sentence to determine Whether his prior Conviction Authorized the Parole Board to grant parole on the presence sentence for Murder And Armed Robbery. The Board Records indicated that Appellant was non Eligible for parol.

January 24, 2013, inmate served and Filed his Notice of intent to Appeal with the Administrative Law Court Concerning the SCD PPPS decision to Revoke parole Eligibility.

May 22, 2013, the Honorable Ralph K. Anderson, III, issued an order Affirming the trial Court's judge sentencing and SCDPPPS decision on non-Eligibility for parole.

May 31, 2013, Appellant served an Filed a Motion under SC Rule of Civil procedure Rule 60(b)(4) and 59(e).

June 18, 2013, the ALJ issued an order and Amended order that further Affirmed the sentencing.

June 24, 2013, Appellant served an Appeal from the Administrative Law Court orders.

July 2. 2013, the Honorable V. Claire, deputy Clerk of Court of the South Carolina Court of Appeals Notified Appellant About A deficiency in the First Notice of Appeal on the filing fee And proof service. Case No. 2013-001423.

July 25, 2013, pursuant to the second Notice of Appeal, the Clerk of Court in South Carolina Court of Appeals Again Notified Appellant About deficiencies with the Filing fee. Case No. 2013-001561.

August 9, 2013, Appellant forwarded a letter to the SC Court of Appeals Clerk informing the Court that his Appeal was a Criminal matter.

August 19, 2013, Appellant received two (2) orders from the SC Court of Appeals Clerk dismissing Appellate Case No. 2013-001423 under Appellate Court Rules 203, 208 and 209. Secondly, dismissing Case No. 2013-001561 under Appellate Court Rule 203.

Reinstatement

Appellant moves for leave of the SC Court of Appeal to an Agreement that proceeding Appellate Case No. 2013-001423 be dismissed pursuant to SC Appellate Court Rule 260(b).

Appellant moves for leave of the SC Court of Appeals to reinstate Appellate Case No. 2013-001561 where dismissal of that case was involuntary pursuant to SC Appellate Court Rule 260(a).

The INVOLUNTARY dismissal of CASE 2013-001561 STARTED WHEN NO RESPONSE WAS given FROM the COURT of APPEALS CLERK CONCERNING the August 9, 2013, letter FROM APPELLANT. WHERE this APPEAL CASE NO. 2013-001561 is A CRIMINAL APPEAL UNDER SC Appellate Court Rule 203 (B)(2)(B)(iii). the Filing fee is NOT REQUIRED AS SET by ORDER of the Supreme Court dated April 17, 1990.

CONCLUSION

BASED ON THE RECORD, Appellant's August 19, 2013, designation of MATTER to be INCLUDED ON APPEAL AND BRIEF SERVED AND FILED AS REQUIRED by Appellate Court Rules 208 AND 209, be ACCEPTED AS timely SERVED. THEREFORE, the SC COURT of APPEALS CLERK is to REINSTATE APPEAL CASE 2013-001561. MAJOR v. SCDPPPS, 682 S.E.2d 795 (2009).

s/ George M. Adams,
GEORGE M. Adams, #181283
LEE CORRECTION INSTITUTION
990 WISACKY HWY.
Bishopville, S.C. 29010

DATE: SEPTEMBER 3, 2013

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:

Violent Crime	Indictment Number	Parolable	Sentence
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, 3525.c. 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
ADMINISTRATIVE LAW COURT

George M. Adams, # 181283, Appellant, vs. South Carolina Department of Probation, Pardon and Parole, Respondent.	)	Docket No. 13-ALJ-15-0005-AP **ORDER**

FILED
May 22, 2013
SC ADMIN. LAW COURT

This matter is before the Administrative Law Court (ALC or Court) pursuant an appeal filed by George M. Adams (Appellant) 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 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 armed robbery. 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, PPPS notified Appellant that he was not eligible for parole due to his prior conviction for a violent offense. PPPS also informed Appellant that he could appeal its decision to this Court. Appellant filed a Notice of Appeal 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. §§ 24-21-640 and 16-1-60

Appellant correctly points out 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 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

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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 as follows: "Did the South Carolina Department of Probation, Parole [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, 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 by PPPS in its Respondent's Brief, this issue essentially collapses into the first issue as set forth in text above. Appellant's first and third issues will therefore be discussed jointly in the first section of the discussion of the opinion.

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] 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 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. Even if Burglary 1st had not been

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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: burglary in March 1991 and murder in June 1994.

classified as a violent crime under 16-1-60 at the time of Appellant's conviction for these crimes, 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 a person is convicted of murder having served a prior sentence for 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 . . ."; no reference to the possibility of parole is made.[6]

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[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.

[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 argument 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.

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), *overruled on other grounds by Al-Shabazz v. State*, 338 S.C. 354, 427 S.E.2d 742 (2000) (citing *Miller v. Florida*, 482 U.S. 423 (1987). 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 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

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

had no parole eligibility altered or revoked. Due to Appellant reading Section 16-3-20(A) in isolation rather than with Sections 24-21-640 and 16-1-60, Appellant incorrectly presumed that he had preexisting parole eligibility. Because Appellant was never eligible for parole, PPPS's did not deprive Appellant of his 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

May 22, 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

May 22, 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 **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 SCRCP simply do not apply to appellate cases. *See* Rules 1 and 81, SCRCP (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

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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, PPPS 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), SCRCP

For the same reasons given above, ~~Rule 59(e), SCRCP 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
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

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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.").[3]

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 . .

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3 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

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July 02, 2013

George M. Adams, 181283
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville SC 29010

Re: George Adams v. SCDPPPS
Appellate Case No. 2013-001423

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The required filing fee has not been submitted. The correct filing fee is $100.
- A proof of service showing that a copy has been served on the Administrative Law Court has not been provided as required by Rule 203(e), SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Tommy Evans, Jr.

29

The South Carolina Court of Appeals

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July 02, 2013

George M. Adams, 181283
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville SC 29010

Re: George Adams v. SCDPPPS
Appellate Case No. 2013-001423

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Tommy Evans, Jr.
Jana E. Shealy

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Inmate Services

AGREEMENT TO DEBIT E.H. COOPER ACCOUNT

Inmate's Name:	SCDC #:	Housing Unit:	Date:
G. Adams	181283		8/9/13

GENERAL MATERIAL

** Inmate must have the funds in his/her account to pay for the materials.

Item	Amount	To be completed by SCDC staff: Cost
Envelope		
Pen		
Paper		
Postage		
Tape		
Box		
Electronic Repair		
Other		
	Sub-Total:	

LEGAL MATERIAL

** Inmate is not required to have the funds in his/her account to pay for the materials; however, his/her account must be debited for all materials s/he elects to receive.

Item	Amount	To be completed by SCDC staff: Cost
Envelope		
Pen		
Paper		
Postage		
Other		46
	Sub-Total:	

PHOTOCOPIES

** Inmate may be required to have funds in his/her account. See SCDC Procedure GA-01.03(OP), "Inmate Access to the Courts," to determine if inmate may receive copies with/without funds.

Item	Amount	To be completed by SCDC staff: Cost
Photocopies		
		46
		TOTAL

Inmate's Signature

Mailroom/Canteen Signature (Request filled by)

8/9/13
Date

White - Inmate
Canary - Mailroom/Canteen Employee

SCDC Form 10-14 (November 1998)

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The South Carolina Court of Appeals

George Adams, #181283, Appellant,

v.

South Carolina Department of Probation, Pardon and Parole, Respondent.

Appellate Case No. 2013-001423

The Honorable Ralph King Anderson, III
Trial Court Case No. 2013ALJ150005AP

ORDER

Appellant has failed to provide the notice of appeal filing fee, a proof of service, and has failed to timely serve and file the appellant's initial brief and designation of matter as required by Rules 203, 208, and 209 of the South Carolina Appellate Court Rules and this Court's letter dated July 2, 2013. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

FILED
SF 8/16/13

Columbia, South Carolina

cc:
George M. Adams, 181283
Tommy Evans, Jr.

South Carolina Court of Appeals
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The South Carolina Court of Appeals

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July 25, 2013

George M. Adams, 181283
Lee Correctional Inst.
1204 East Church St.
Bishopville SC 29010

Re: George Adams v. SCDPPPS (2)
Appellate Case No. 2013-001561

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The required filing fee has not been submitted. The correct filing fee is $100.

Very truly yours,

Jenya A. Kitchings

CLERK

cc: Tommy Evans, Jr.

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
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July 25, 2013

George M. Adams, 181283
Lee Correctional Inst.
1204 East Church St.
Bishopville SC 29010

Re: George Adams v. SCDPPPS (2)
Appellate Case No. 2013-001561

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

Very truly yours,

CLERK

cc: Tommy Evans, Jr.
Jana E. Shealy

South Carolina Court of Appeals
JENNY ABBOTT KITCHINGS, CLERK
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

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GEORGE M. ADAMS, 181283
LEE CORRECTIONAL INST.
1204 EAST CHURCH ST.
BISHOPVILLE SC 29010

39

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The South Carolina Court of Appeals

George M. Adams, #181283, Appellant,

v.

South Carolina Department of Probation, Parole and Pardon Services, Respondent.

Appellate Case No. 2013-001561

The Honorable Ralph King Anderson, III
Trial Court Case No. 2013ALJ150005AP

ORDER

Appellant has failed to provide the notice of appeal filing fee, as required by Rule 203 of the South Carolina Appellate Court Rules and this Court's letter dated July 25, 2013. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED
SF 8/12/13

cc:
George M. Adams, 181283
Tommy Evans, Jr.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Inmate Services

AGREEMENT TO DEBIT E.H. COOPER ACCOUNT

Inmate's Name:	SCDC #:	Housing Unit:	Date:
Adams	181283		7/18/13

GENERAL MATERIAL

** Inmate must have the funds in his/her account to pay for the materials.

Item	Amount	To be completed by SCDC staff: Cost
Envelope		
Pen		
Paper		
Postage		
Tape		
Box		
Electronic Repair		
Other		
	Sub-Total:	

LEGAL MATERIAL

** Inmate is not required to have the funds in his/her account to pay for the materials; however, his/her account must be debited for all materials s/he elects to receive.

Item	Amount	To be completed by SCDC staff: Cost
Envelope		
Pen		
Paper		
Postage	.84	.84
Other		
	Sub-Total:	

PHOTOCOPIES

** Inmate may be required to have funds in his/her account. See SCDC Procedure GA-01.03(OP), "Inmate Access to the Courts," to determine if inmate may receive copies with/without funds.

Item	Amount	To be completed by SCDC staff: Cost
Photocopies		
		.84
		TOTAL

Inmate's Signature

Mailroom/Canteen Signature (Request filled by)

2/18/13
Date

White - Inmate
Canary - Mailroom/Canteen Employee

SCDC Form 10-14 (November 1998)

George M. Adams,#181283
Lee Correction Institution
Kershaw North#2211
990 Wisacky Hwy.
Bishopville, S.C. 29010

Date: 8/19/13

The Honorable Jenny Abbott Kitchings, Clerk
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211 - 1629

Re: George M. Adams v. SCDPPPS, 2013 - ~~001423~~ 001561

Dear Ms. Kitchings,

Please find enclosed for filing the Appellant's Brief and Designation of matter to be included in the Record on Appeal, along with proof of services in the above referenced case.

Thank you for your cooperation in this appeal.

Respectfully

George M. Adams, #181283

Enclosures

cc:Tommy Evans, Jr.
Assistant General Counsel

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From The Administrative Law Court
Ralph K. Anderson,III

George M. Adams,#181283,

Appellant,

V.

South Carolina Department of Probation and Parole Services,

Respondent.

BRIEF ON APPEAL OF APPELLANT
Appellate Case No.001561

George M. Adams, #181283
Lee Correction Institution
Kershaw North Cell #2211
990 Wisacky Hwy.
Bishopville, S.C. 29010

Date: 8/19/13

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Statement of Issues on Appeal

1. The lower court erred in ruling that South Carolina Department of Probation, Parole and Pardon Services has authority to look at Appellant's sentencing date when reviewing whether the crime was violent.

2. The lower court erred in ruling that South Carolina Department of Probation, Parole and Pardon Services did not violate Appellant's State and Federal Constitutional rights to preexisting expection of parole eligibility date of February 8, 2013.

3. The lower court erred in ruling that South Carolina Department of Probation, Parole and Pardon Srvices did not jurisdictionally restructure Appellant's sentence.

Statement of Case

On June 17, 1992, Appellant together with other codefendants James Brown entered into a small grocery store which codefendant Brown shot and killed one of the store owners. Appellant and other codefendants were later arrested, and Appellant was charged with murder and armed robbery. On June 23, 1994, Appellant was convicted for murder and armed robbery. The trial judge, 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.

Prior to Appellant's parole eligibility date of February 8, 2013, South Carolina Department of Corrections classification Summary report dated August 23, 2004, print out report revealed Appellant next parole hearing date was schduled for February 8, 2013. Acopy of the document was served on Appellant's pcr counsel Tara D. Shurling, Esq. June 22, 2005.

December 12, 2012, Lee facility parole examiner interviewed Appellant and presented questions concerning Appellant's whereabouts and job status if parole was granted toward possible projection on parole. Alson informed Appellant that the actual hearing was schduled for March 6, 2013.

December 21, 2013, PPPS conducted an investigation to see if Appellant could appear before the parole board on March 6, 2013. PPPS discovered that Appellant had been convicted on September 17, 1991, of Burgulary first degree. Appellant was also infirmed that he could appeal PPPS decision to the Administration Law Court. Appellant filed a notice of appeal before the ALC on January 21, 2013.

April 2, 2013, Appellant served and filed his initial brief with the ALC judge Honorable Ralph K. Anderson III. In Appellant's brief, there was three allegations raised. April 22, 2013, Respondent served and file a response brief to Appellant's brief but only addressing two of Appellant's claims.

May 2, 2013, Appellant served his motion for default against Respondent for failure to address all of the claims raised by Appellant. May 22, 2013, the ALJ issued an order denying the appeal and not properly ruling on the motion.

May 31, 2013, Appellant served and filed his 60(b)(4) motion and 59(e) motion asking the court to relieve Appellant of any representattion of the premature order and to reconsider the ruling in the order on the claims under Res Judicato.

June 18, 2013, the ALJ issued an order clarifying the ruling in an Amended order and order denying the motions.

This appeal follows:

Argument

1. The Respondent is not authorized to look at Appellant's sentencing date when reviewing whether the crime was violent.

Pursuant to the ominibus crime bill enacted on June 3, 1986, which was introduced to the State of South Carolina, defining elements of crimes to be violent became effective January 12, 1994, under **§16-1-60 South carolna Code of Laws (1986)**, and was amended and applied prospectively and retroactively listing the title of all crimes and identified their sections. The last sentence of the section says, ("only those offense specifically enumerated in this section are considerated violent offenses"). The lanuage of the 1994 and 1995 statute does not create a question about the interpretation of when the crime was committed. Does **§24-21-640 South Code of Law (1992)** in it's present form, eliminate the consideration of when the crime was committed?

§24-21-640 of the code establishes the standards for the Department of Probation, Parole and Pardon Services regarding the determination of parole in pertinent part as follows; **The Board must not grant parole, nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a seperate sentencing for a prior conviction for a violent crime such as defined in §16-1-60.** But does not authorize the PPPS to go into the sentence date.

In construing **§16-3-20(a) South Carolina Code of Laws (1992), §24-21-640** and **§16-1-60** statutes, this court's primary guidpost is the intention of the legislature. **Adams v. Claredon Co. School Dist. No. 2, 241 S.E.2d 897 (1978).** The ominbus crime bill law must be interpreted reasonably and practically, consistent with the purpose of the policy of the General Assembly. **Hay v. S.C. Tax Commission, 255 S.E.2d 837 (1979).** The purpose of the enactment always takes precedence over the lanuage employed. **Abelly v. Bell, 91 S.E.2d 548 (1956).** And the Department of Probation, Parole and Parole Services can not read into the sentencing statutes something which is not within the manifest intention of the General Assembly. **Laird v. Nationwide Inst. Co., 134 S.E.2d 206 (1964).** This court has the authority to look to existing ciecumstances at the time of both statutes amendments and enactment. **Gaffney v. Mallory, 195 S.E. 840 (1938).** Moreover, the meaning of the statute is not to be deemed to depened upon a single part or an isolated sentence. **Deloach v. Scheper, 198 S.E. 409 (1938).** As the legislature intent must always be gathered from the statute as a whole, read in light of all circumstances. **Creeech v. South Carolina Public Service Authority, 20 S.E.2d 645 (1942).** It is presumed that the legislature was familiar with prior legislation dealing with the same subject matter when it enacted the statutes. **Bell v. S.C. Highway Dept., 30 S.E.2d 65 (1944).** Furthermore, was the law intended to be applied

from the date of the crime or date of sentencing?

Concerning legislattive intent pursuant to §24-21-640, and 16-1-60, this court has to xamine the history of the legislation under these statutes to make ascertain it's real meaning. Palmetto Lumbr Co. v. Southeern Ry., 151 S.E.2d 279 (1929). An absured result not possibly intended by the lagislature should be rejected. Hamm v. S.C. Public Comm., 336 S.E.2d 470 (1985). In this case, the PPPS notice dated December 21, 2013, letter referes to the review of the prior and presence sentencing dates, instead of the dates when the crimes was committed. Turning now to the specific question raised. Is the intent of the lanuage by the lagislature charge PPPS with administration to look to the sentencing date of the crimes or the date of when the crimes was committed to help define the crimes? Which otherwise falls within the list enumerated by law. Where the PPPS has looked to the final judgment on this case, and is jurisdictionally changing the court's original sentence with possibility of parole after twenty years. Where Appellant has served the minimum pursuant to §16-3-20(a), this court is to correct the error. State v. Mckay, 386 S.E.2d 623 (1989). The date the crime was committed is what gives the general sessions court jurisdiction to sturcture sentence when Appellant was found guilty at trial.

The question of this parole eligibility is seperate and independant from the court's authority to sentence. Berman v. United States, 58 S.Ct. 164 (1973). Here, the PPPS has erred by not informing Appellant that the PPPS has looked to the date of when the crimes was committed in 91 and 92, in order to help define the crimes as violent by law and deny parole. The PPPS intention to deny Appellant parole under the above circumstances changes the sentence to somewhat like the Death Sentence.

Authorizing the PPPS discretion to look to the sentence dates is a violation of due process of law. Because such allow the PPPS to go into the sentence and not the definition and elements of the crimes s r qu'red by law. Violating Appellant's right to apeal this sentence after trial as to first sentence of final judgment to this privilege of a minimum twenty years life sentence with possibility of parole. Where parole was first structed in 1994 as part of the original sentence. Also, §16-1-60 says the General Assembly identified the title of crimes and it's South Carolina statutes numbers, not the sentencing dates.

If PPPS is using §24-21-640 lanuage "serving a sentence" when reviewing the prior or presence crimes, then the PPPS is without jurisdiction, and such process do not apply to this case.Nothing in §16-3-20(a)(1992) sentencing statute refer of direct the court to the lanuage of §24-21-640 no parole statute when sentencing for a subsequent violent crime. The no parole law was not structured as part of Appellant's sentence. Appellant's trial transcript records, indictments or any discovery materials show that Appellant was sentenced without parole. There as mentioned above, Appellant's crimes was committed March 8, 1991 and June 17, 1992, which was well after 6/3/1986.

So if a grace period exist, there is one in between 1986 and 1992 of the ominibus crime bill and found in the sentencing statutes when screening by the PPPS for subsequent violent offender status.
Wherefore, Appellant's statutory structured sentence to be eligibable for parole under §16-3-20(a) has been unconstutuitionally reviewed and altered by PPPS without the authority in violation of S.C. and Federal Constitutions and statutory laws. William E.Gunn, WL 80366, May 24, 1995, letter to assistant Deputy Attorney General Robert D. Cook, letter in response, and other attached documents. Appellant will conclude by concurring to be classified a violent offender, but sentenced with the possibility of parole.

2. The Respondent violated Appellant's State and Federal Constitutional rights to his preexisting expection of parole eligibility date of Feburary 8, 2013.

In this case, Appellant gained his expectation of parole June 23, 1994, sentencing date. Where Appellant entered the South Carolina Department of Correctios in the year of 1994 with possibility of parole as part of his sentence. December 12, 2012, the PPPS Appellant was interviewed by one of the parole examiners and informed that he would go up for parole on March 6, 2013 insteed of January 8, 2013. December 21, 2013, the PPPS took Appellant's parole eligibility without a due process hearing. Where the board of parole decision and statment of reason for denial does not satisfy due process,a violation hasoccured. Particularizing the due process requirements, the law requires an examination of the precise nature of the government fuction as well as the interest affected. Morrissey v. Breeweer, 408 U.S. 471,481 (1972). The court has specified factors to be considered in making such analysis. 1) the private interest affected, 2) the risk of an erroneous deprivation of such interest through procedures used versus the probable value of the enhanced procedures, and 3) the governments interest. Matthews v. Eldridge, 424 U.S. 319,335 (1976). Even though §24-21-640 use the word "may", Appellant under §16-3-20(a) effective parole date has been set, but not yet releases, have a protected interest entitled him to a due process hearing before recission of the schduled parole hearing date. And this date is not a presumptive parole date, because Appellant has had this parole expectation for twenty years shortly after sentencing, and was heightened December 12, 2012, and other prior successive SCDC administration reviews, while incarcerated. Johnson v. Williford, 682 F.2d 868, 871-874 (9th cir. 1982). The court held that revocation of parole under these circumstances would violate due process. The PPPS reconsideration hearing held December 21, 2012, violates Ex post facto Clause. Because the parole consideration hearing is a essential part of the Appellant's parole eligibility. AND Ex post facto Clause applies to the change in parole in this case. The constitution

prohibits both State and Federal legislatures from passing ex post facto laws. U.S. Const. Art. I § 9, cl. 3 and 10 cl. 1. Neither congress nor the State may enact any laws which imposes a punishment for an act which was punishable at the time it was committed, or impose additional punishment to that then described. Weaver v. Graham, 101 S.Ct. 960, 964-967 (1981)(quoting) Cumming v. Missouri, 4 Wall 277, 325-26 (1987). Though there is no constitution requirement that a State permit parole or early release from confinment, statute §16-3-20(a) provided for parole, and is part of law annexed to the offense and this case. Schwart v. Muncy, 834 F.2d 296, 338 N. 8 (4th cir. 1987)(quoted) in Fender v. Thompson, 883 F.2d 303, 305 (4th cir. 1989). Any statute that is enacted or amended after sentenceing cannot be applied to alter the condition of or revoke Appellant's parole eligibility. PPPS has undoubtly applied it's no parole statute to alter the condition of Appellant's sentenceon preexisting parole date, and indeed, has revoked Appellant's parole all together. December 12, 2012, Appellant was interviewed and informed that his parole date was set. therefore, PPPS has violated Appellant's ex post facto Clause rights.

3) The Respondent has without jurisdiction restructured Appellant's sentence.

The PPPS application of §24-21-640 to this case violates the constitutional prohibition against ex post facto laws. Where that statute provides that Appellant convicted of a second violent crime "two strikes" would not be considered eligible for parole due to the sentencing statute under §16-3-20(a)(1992), which was the statutory scheme in effect when the Appellant committed the crime and was sentenced. This entitled the Appellant to be eligible for consideration for parole. §24-21-640 cannot be applied by PPPS to alter the condition of or revoke Appellant's pre-existing eligibility. Roller v. Cavanaugh, 984 F.2d 120 (S.C. 1993), 113 S.Ct. 2421.
Is the Appellant entitled to the benfit of sentencing? Is the Appellant entitled to the benfit of eligibility for parole as sentenced to a mandatory minimum?
June 17 1992, was when the crime was committed and §16-3-20(a) provided that, "a person who is convicted of or pleads guilty to murder must be punished by death or imprisonment for life and is not eligible for parole until the service of twenty years". In 1995 §16-3-20(a) was amended denying parole after Appellant crime was committed and sentencing.JJanuary 1, 1996, the statute specifically addressed it's effective date, and was applied prospectively to all crimes committed on or after the date. The restrospective operation of this statute is not favored by the courts. Ops. S.C. Atty. Gen. May 20,2003. Brightman v. State, 520 S.E.2d 614 (1999). South Carolina Supreme Court has frequently recognized that a statute is not to be applied retroactively unless that result is so compel as to leave no room for doubt.

Am. Nat. Fire Inst. Co. v. Smith Grading and Paving,445 S.E.2d 897, 899 (1995). In this case, the PPPS is now imposing punishment provided for when Appellant was sentenced, not when the crime was committed. The legislature stated it's intent for new, lesser penalties to take effect based on the date of the crime rather than the date of sentencing. And because the legislature expressly stated in 1995 S.C. Act. No 83 §62, it's intent for prospective application based upon the date of the crime commission. And §24-21-640 does not give the parole board authority to change Appellant's sentence, when the court has correctly sentenced Appellant with the possibility of parole. In State v. Dingle, 659 S.E.2d 101,105 (2008)(holding) "that in order to trigger the no-parole lanuage in the parole statute, a defendant must have a seperate sentencing hearing." Such process did take place in this case in 1991. But in summary, based on the foregoing, Appellant convicted of murder, and the circumstances presented here on the sentencing statute entitles Appellant to be eligible for parole as is the 1992 provision of §16-3-20 (a) on the date the crime was committed. The PPPS cannot, of course, predict how the trial court sentencing went when faced with this matter during sentencing. and the Attorney General's long-standing policy to the prosecution of a particular individual, which is a matter within the discretion of the circuit court solicitor. The solicitor is the person who can weigh the strength or weakness of a particular case. Thus, where Appellant has provided to this court the relevant facts and laws, PPPS must yield to the judgment of the sentencing court regarding the prosecution of this case. Appellant can provide this court with any and all trial records needed in order to prove his original sentencerendered by the court. Whereas, because the court has imposed the correct punishment in effect at the time of sentencing in 1992, this court is to give Appellant the beifit of the sentencing court punishment which was mitigated by the legislature intent. Due to no lanuage is listed in §16-3-20(a)(1992) which would required the reading of the no-parole statute and sentencing statutes together. Accordingly, it is to be ordered that the Appellant eligibility for parole be reinstated as provided for in §16-3-20(a). State v. Varner, 423 S.E.2d 133 (1992). Where the court stated that in the absence of a controlling statute, the common law requires that a convicted criminal receives the punishment in effect at the time he is sentenced, unless it is grater than the punishment privided for when the offense was committed.

S/ George M. Adams

George M. Adams, #181283

Conclusion

Appellant respectfully request this court reinstate his parole eligibility, and entitling Appellant to be reviewed by the board every year for parole as sentenced.

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

Date: August 19, 2013

cc: Tommy Evans, Jr.
Assistant General Counsel

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From The Administrative Law Court
Ralph K. Anderson, III

Appellate Case No. 2013-001561

George M. Adams, #181283,

Appellant,

V.

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

Respondent.

CERTIFICATE OF SERVICE

I, George M. Adams, #181283, imate housed in the South Carolina Department of Corrections, certify that I have served the within Brief of Appellant dated 8, 19, 2013, on Respondent by depositing a copy of the same in the United States mail, postage prepaid, this 19, August, 2013, addressed to:

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

I further certify that all parties by rule 208(a)(1) to be served have been served.

st George M. Adams

George M. Adams, #181283

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appellate Case No. 2013-001561

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

Index

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.

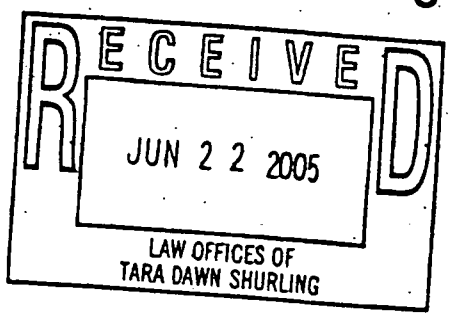
This our final response to this matter. If you continue to feel that this decision was made in error you have the right to appeal to the Administrative Law Court. With kind regards I remain,

Sincerely,

Tommy Evans, Jr.
Legal Counsel

TE:te

Enclosures

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

                                       SEXUAL REGISTRY..: N
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE  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
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CLASSIFICATION SUMMARY REPORT DATED 08/23/04 C023981

DC# 181283 ADAMS,GEORGE MAURICE FBI# 563895EA5

FENDER TYPE.: ADULT-STRAIGHT SENTENCE

STITUTION ..: LEE CORR INST DORM.....: ASU0128B

CURITY/CUST.: 3 SHORT TERM LOCKUP

T INCARC SENT....:999 YRS 0 MOS 0 DYS PROJ MAXOUT DATE: 99/99/9999

NTRAL MONITORING.: YES SEPREQ PROJ PAROLE DATE: 02/08/2013

D CLASS: 3 MED PROB/WORK RESTRICT EWC JOB..: NO CURRENT JOB

NTAL CLASS: MI-3 (OUTPATIENT MENTAL H EDUC PGM.: NO CURR EDUC PROGRAM

RRENT PROGRAM..: NO CURRENT PROGRAM EWC LEVEL: 0 EEC LEVEL:

E...: 38 ASSIGNMENT..: LOCKED - UP

EVIOUS NUMBERS:

NO PREVIOUS NUMBERS **

RRENT OFFENSES	SENTENCE YRS	MOS	DYS	COUNTY	SENTENCE START	V/NV	CAT	INDICT
RDER	999	99	999	RICHLAND	02/08/1993	V	5	924011317
MED ROBBERY	25	0	0	RICHLAND	02/08/1993	V	4	924011316
MPLE ASSLT	0	0	60	RICHLAND	11/18/1992	N	2	0000000
MPLE 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

IOR COMMITMENTS OVER 90 DAYS:

NO PRIOR COMMITMENTS OVER 90 DAYS

TAINERS (HOLD,WANTED,NOTIFY):

CAPES:

NO ESCAPE HISTORY

IMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

SAULTIVE DISCIPLINARIES:

12/29/00	RIOT	CONVICTED	MAJOR

N-ASSAULTIVE DISCIPLINARIES:

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

IN THE COURT OF APPEALS

Appellate Case No. 2013-151601

Appeal of Administrative Law Court

Department of Probation, Parole and Pardon Services

George M. Adams, #181283,

Appellant,

V.

S.C. Department ofProbation, 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, 19, 2013, on Respondent by depositing a copy of the same in the United States mail, postage prepaid, the 19 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 slso furthe certify that all parties required by rule 209(a) to be served have been served.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPELLATE CASE NO. 2013-001561

GEORGE M. ADAMS, #181283, APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES,

RESPONDENT.

CERTIFICATE OF SERVICE

I, GEORGE M. ADAMS, #181283, INMATE HOUSED IN S.C. DEPARTMENT OF CORRECTIONS, CERTIFY THAT I HAVE SERVED THE WITHIN MOTION FOR REINSTATEMENT OF APPEAL, AND SUPPORTING DOCUMENTS, CONSECUTIVELY NUMBERED PAGES, DATED 9th, 3RD, 2013, ON RESPONDENT BY DEPOSITING A COPY OF THE SAME IN THE UNITED STATES MAIL, POSTAGE PREPAID, THE 3RD DAY OF 9th, 2013, ADDRESSED TO:

RESPONDENT

TOMMY EVANS, JR.
ASSISTANT GENERAL COUNSEL
2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, S.C. 29205

s/ GEORGE M. ADAMS, #181283