

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from the Administrative Law Court
The Honorable Crystal M. Rookard, Administrative Law Judge
Docket Number 24-ALJ-15-0029-AP

Appellate Case No.: 2025-000392

KENNETH STUART, #389211,APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,RESPONDENT

BRIEF OF RESPONDENT

Octavia Y. Wright
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STATEMENT OF ISSUES ON APPEAL

1. Did the Department of Probation, Parole and Pardon Services properly determine that Appellant's current criminal sentence was ineligible for parole based on South Carolina law?

STATEMENT OF THE CASE

On October 22, 2020, the State Grand Jury issued a four-count indictment alleging Appellant committed numerous violations of South Carolina's drug laws. R.5-8. On October 14, 2022, Appellant pled guilty to distribution of methamphetamine (first offense) in Chester County before the Honorable Eugene C. Griffeth, Jr., and received a sentence of seven years of incarceration. Appellant's R. 2a – 2b. On that same day before Judge Griffeth, Appellant also pled guilty to trafficking methamphetamine 28-100 grams (first offense). Sentencing for the other charges was deferred because he cooperated with police and prosecutors in an ongoing investigation. See <https://www.heraldonline.com/news/local/crime/article267213107.html> (last visited on April 15, 2025). Additionally, the Appellant admitted that he delayed sentencing. R. 7. For this reason, the sentence for the trafficking charge was not imposed until April 3, 2024, in which Appellant received a sentence of ten years. R. 3-4.

Appellant, while incarcerated for the distribution of methamphetamine conviction and before the imposition of the trafficking sentence, received a parole hearing on January 11, 2024. The Board denied him parole. Appellant's R. 4-5.

Upon the imposition of the sentence for the trafficking conviction, Respondent determined that Appellant was not eligible for parole on that trafficking sentence. Respondent informed Appellant of that decision in a letter dated August 7, 2024. R. 1.

Appellant appealed this decision, arguing that Respondent erred when it determined him to be ineligible for parole. Appellant also argued that he did not receive his parole file prior to his January 11, 2024 hearing, and that Respondent did not follow the law regarding parole consideration when it determined him to be ineligible for parole.

Respondent argued that the trafficking offense is ineligible for parole by statute, and

therefore it did not err when it determined him to be ineligible for parole.

On January 28, 2025, the Administrative Law Court ruled that the Department's determination of parole eligibility be affirmed.

Appellant now brings this appeal, arguing that the Administrative Law Court's Decision be set aside in order to have a due process parole eligibility hearing, and for the court to award him credit time for the community supervised home detention portion of his sentence.

Respondent's brief follows.

ARGUMENTS

1. South Carolina law is clear that Appellant's conviction for trafficking is ineligible for parole.

Parole eligibility is defined solely by statute. The South Carolina Department of Probation, Parole and Pardon Services is given the authority to determine whether an inmate is eligible for parole. "In effectuating a sentencing court's order, the Department [of Probation, Parole and Pardon Services] has the sole authority to look to the statutes to determine whether a defendant is eligible for parole separate and apart from the court's authority to sentence a defendant." *Major v. South Carolina Department of Probation, Parole and Pardon Services*, 384 S.C. 457, 466, 682 S.E.2d. 795, 8800 (2009) (citations omitted).

"[T]he *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process." *Furtick v. South Carolina Dep't of Probation, Parole and Pardon Services*, 352 S.C. 594, 598, 576 S.E.2d 146, 149 (2003) (Emphasis in original).

Respondent would submit that the basis of Appellant's argument that he was improperly determined to be ineligible for parole is because he received a parole hearing at the beginning of 2024. However, subsequent to this hearing, he was sentenced to a second offense which was not parole eligible, thus rendering him ineligible for parole.

Distribution of methamphetamine (distribution) is defined in S.C. Code §44-53-375(B). Furthermore, “[n]otwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is *eligible for parole*, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.” *Id.* (emphasis added).

Therefore, when Appellant’s only sentence was for distribution, he was eligible for parole. This changed on April 3, 2024 when he was sentenced for trafficking of methamphetamine 28 to 100 grams first offense. The sentence for trafficking is also in S.C. Code §44-53-375, but in subsection (C). First offense trafficking of twenty-eight grams but less than one hundred carries a minimum sentence of seven years but not more than twenty-five. *Id.* Also, trafficking 28-100 grams first offense is a B-class felony, defined by S.C. Code §16-1-90.

South Carolina law defines Class A, B, and C felonies as “no parole offenses” in S.C. Code §24-13-100. South Carolina law also declares that “an inmate convicted of a ‘no parole offense’ as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections...is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed.” S.C. Code §24-13-150(A).

For this reason, Respondent has determined that Appellant is not eligible for parole. When he was only serving the sentence for the distribution, he was parole eligible, but as soon as he was sentenced to the trafficking conviction, a “no parole offense” defined by S.C. Code §24-13-100, he could no longer be eligible for parole. Quite simply, Appellant’s argument fails to acknowledge this fact, and thus Respondent’s determination must stand.

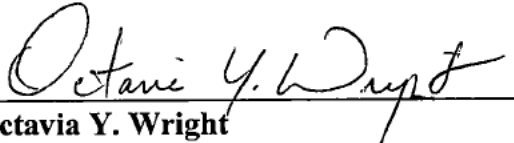
2. The Appellant was awarded credit time for the community supervised home detention portion of his sentence.

SCDC has already awarded the Appellant with credit time on all four of his convictions. His max out date for his distribution charge is February 10, 2026. This was a seven-year sentence that began on October 14, 2022. In fact, SCDC awarded him this additional time as part of his delayed sentencing. For this reason, he will max out on July 4, 2027 on the ten-year sentences he received for criminal conspiracy and misconduct in office. These sentences began on April 3, 2024 along with his trafficking sentence in which he will max out on April 2, 2031.

CONCLUSION

The Appellant received delayed sentencing in response to his cooperation with a criminal investigation. After pleading to multiple charges, he initially received a sentence on only one of those convictions – distribution of methamphetamine, which was parole-eligible according to statute. He received a parole hearing on that sentence, in which parole was denied. Then, subsequent to the parole hearing, Appellant received his sentence on the remaining convictions, which included one for trafficking methamphetamine 28 grams to 100 grams, a B-class felony and one ineligible for parole. It is solely because of Respondent's sentence for trafficking that he is ineligible for parole. He has already been awarded credit time for the community supervised home detention that he served as explained herein. Therefore, this Court should uphold the determination that Appellant is ineligible for parole and has already received his credit time.

Respectfully submitted,


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Columbia, South Carolina
April 21, 2025

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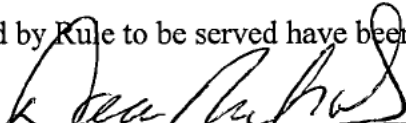
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within
Initial Brief and Designation of Matter on Appellant this 30th day of April, 2025, by depositing a
copy of the same in the United States mail, postage prepaid, addressed to:

Kenneth Stuart, #389211
Wateree Correctional Institution
PO box 189
Rembert, SC 29128

I further certify that all parties required by Rule to be served have been served.



Dawn K. Nichols
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State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JAKE GADSDEN, JR.
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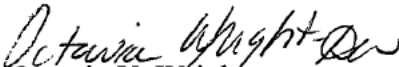
The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

RE: Kenneth Stuart, #389211 v. SCDPPPS
Case No.: 25-000392

Dear Ms. Kitchings:

Please find enclosed the Respondent's Initial Brief and Designation of Matter. Thank you for your assistance in this matter.

Sincerely,


Octavia Y. Wright
Assistant General Counsel

OYW:dn
Enclosures

cc: Kenneth Stuart

State of South Carolina

Department of Probation, Parole, and Pardon Services

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