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.

South Carolina Department of Probation and Parole Services,

Respondent.

BRIEF ON APPEAL OF APPELLANT

George M.AAdams, #181283
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Date: November 21, 2013

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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 storeowners. 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.2d 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 as required 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 new 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 to was 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. January 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 orderrto triggerrthe no-parole lanuage in the paroleé 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 paroleé be reinstated as provided for in §16-3-20(a). State v. Varner, 423 S.E.2d1133 (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.

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Date: November 21, 2013

cc: Tommy Evans, Jr.
Assistant General Counsel