

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Carolyn C. Matthews, Administrative Law Judge

Appellate Case No. 2014-000461

MICHAEL HEATH BOLIN, #341806,

Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

Respondent.

INITIAL BRIEF OF THE APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

- I. DID THE ADMINISTRATIVE LAW JUDGE ERR IN CONCLUDING THAT THE APPELLANT IS REQUIRED TO SERVE AT LEAST EIGHTY-FIVE (85%) PERCENT OF HIS SENTENCES FOR POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE (SECOND OFFENSE), AND CONSPIRACY TO MANUFACTURE METHAMPHETAMINE (SECOND OFFENSE), UNDER THE AMENDED PROVISIONS OF S.C. CODE ANN. §44-53-375(B)?

STATEMENT OF THE CASE

On May 15, 2012, the Appellant, Michael Heath Bolin, pled guilty to certain drug offenses in the Court of General Sessions for Cherokee County. At issue is the length of time the Appellant must be incarcerated for the nonviolent offenses of Conspiracy to Manufacture Methamphetamine (Second Offense) and Possession with Intent to Distribute Methamphetamine (Second Offense), both of which occurred after June 2, 2010, which was the effective date of the Omnibus Crime Reduction and Sentencing Reform Act of 2010. See 2010 South Carolina Joint Acts and Resolutions, Act No. 273.

That after the Appellant was sentenced, he was transferred to the Department of Corrections (Department), where he was informed that he was eligible for parole on the offenses of Conspiracy to Manufacture Methamphetamine (Second Offense) and Possession with Intent to Distribute Methamphetamine (Second Offense), however, if he was not paroled, his offenses would be treated as "no parole" offenses under S.C. Code Ann. §§24-13-100 and 24-13-150 (Supp. 2012), meaning that he would be required to serve at least eighty-five percent (85%) of his sentences before being released.

Upon learning that the offenses of Conspiracy to Manufacture Methamphetamine and Possession with Intent to Distribute Methamphetamine would be treated by the Department as "no parole" offenses, the Appellant filed an inmate grievance with the Department. The grievance in question, reads in pertinent part:

That the Department of Corrections has incorrectly calculated my projected release date so as to require that I serve 85% of my sentence, treating my offenses of Conspiracy to Manufacture Methamphetamine (2nd Offense and Possession With Intent to Distribute Methamphetamine (2nd Offense) as "no parole" offenses under S.C. Code §24-13-100. Pursuant to the amended provisions of S.C. Code §44-53-375, the aforesaid offenses should not be treated as "no parole" offenses.

That after the Appellant's grievance was filed, his grievance was denied at Step One and at Step Two of the inmate grievance procedure. Having exhausted the Department's inmate grievance procedure, on July 23, 2013, the Appellant timely filed a Notice of Appeal with the Administrative Law Court stating as his only ground for appeal that the Department had incorrectly treated his offenses of Possession With Intent to Distribute Methamphetamine (Second Offense) and Conspiracy to Manufacture Methamphetamine (Second Offense) as "no parole" offenses. Pursuant to the Administrative Procedures Act, the Administrative Law Court has subject matter jurisdiction to hear properly perfected appeals from the Department's final orders in administrative or non-collateral matters. Al-Shabazz v. State, 338 S.C. 353, 527 S.E.2d 742, 754

(2000). That after the parties filed their appellate briefs with the Administrative Law Court, Administrative Law Judge Carolyn Matthews issued an opinion affirming the decision of the Department of Corrections. This appeal followed pursuant to S.C. Code Ann. §1-23-610(A)(1) (Supp. 2012), and Rule 203 of the South Carolina Appellate Court Rules.

STANDARD OF REVIEW

This Court's standard of review in appeals from final decisions of an administrative law judge (ALJ) derives from the Administrative Procedures Act, which provides that an appellate court may affirm, remand, reverse or modify the appealed decision if the appellant's substantive rights have been prejudiced because the decision is, inter alia, in violation of a constitutional or statutory provision, or affected by some other error of law. S.C. Code Ann. §1-23-610(B) (Supp. 2012). In the matter before the Court, the Appellant states that the ALJ's finding that the Appellant's offenses or sentences fall under the "no parole" provisions of S.C. Code Ann. §§24-13-100 and 24-13-150 (Supp. 2012), have prejudiced the substantive rights of the Appellant, and that the decision of the ALJ is in violation of the statutory provisions of S.C. Code §44-53-375 (Supp. 2012), or that the ALJ decision constitutes some other error of law.

ARGUMENT

- I. THE ADMINISTRATIVE LAW JUDGE ERRED IN CONCLUDING THAT THE APPELLANT IS REQUIRED TO SERVE AT LEAST EIGHTY-FIVE (85%) PERCENT OF HIS SENTENCES FOR THE OFFENSES OF POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE (SECOND OFFENSE), AND CONSPIRACY TO MANUFACTURE METHAMPHETAMINE (SECOND OFFENSE), UNDER THE AMENDED PROVISIONS OF S.C. CODE ANN. §44-53-375(B).

The only issue before the Court is whether the Appellant's offenses under the amended provisions of S.C. Code Ann. §44-53-375(B) for Conspiracy to Manufacture Methamphetamine (Second Offense), and Possession With Intent to Distribute Methamphetamine (Second Offense), should be treated as "no parole" offenses under S.C. Code Ann. §24-13-100 and 24-13-150 (Supp. 2012).

To address this legal issue the Court must first look to the general application of the "no parole" provisions of S.C. Code Ann. §24-13-100 and 24-13-150.

Secondly, the Court must examine the specific statutory provisions of S.C. Code Ann. §44-53-375(B), as recently amended in 2010, that apply to the Appellant's offenses.

And thirdly, the Court must determine how the statutes in question should be read together and construed or applied in the Appellant's case.

A. "NO PAROLE" OFFENSES

As a beginning point, the provisions of S.C. Code Ann. §§24-13-100 and 24-13-150, generally provide that when a person is convicted of an offense that is classified as an A, B, or C felony (all of which carry possible sentences of twenty years or more), or an unclassified offense which is punishable by a maximum term of imprisonment for twenty years or more, that such person will be ineligible for parole until he has served eighty-five (85%) percent of his sentence. (The full text of these statutes is provided in Appendix 1 to this brief). The calculation of eighty-five (85%) percent of the sentence is done without the full benefit of work credits, education credits or good time credits that is available to other prisoners. S.C. Code Ann. §24-13-150.

Prior to the enactment of the Omnibus Crime Reduction and Sentencing Reform Act of 2010, there was no question but that a person sentenced as a second offender under S.C. Code Ann. §44-53-375(B), fell under the "no parole" provisions of S.C. Code Ann. §§24-13-100 and 150. As noted above, the sole question before the Court is whether the 2010 amendments to S.C. Code Ann. §44-53-375(B) have now taken second time offenders like the Appellant out from under the "no parole" provisions of S.C. Code Ann. §§24-13-100 and 150.

B. APPELLANT'S CONVICTIONS UNDER S.C. CODE ANN. §44-53-375 (B)

As stated above, the Appellant pled guilty and was sentenced under S.C. Code Ann. §44-53-375(B), for the nonviolent offenses of Conspiracy to Manufacture Methamphetamine (Second Offense), and Possession With Intent to Distribute Methamphetamine (Second Offense). The enactment of the Omnibus Crime Reduction and Sentencing Reform Act of 2010, substantially amended the provisions of S.C. Code Ann. §44-53-375(B), so as to dramatically lessen the punishment for certain drug offenses, and to provide for probation and parole for offenders who were previously ineligible for probation or parole. The amended provisions of S.C. Code Ann. §44-53-375(B), which apply to the Appellant's offenses, now read as follows:

(B) A person who manufactures, distributes, dispenses, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370, is guilty of a felony and, upon conviction:

(1) for a first offense, must be sentenced to a term of imprisonment of not more than fifteen years or fined not more than twenty-five thousand dollars, or both;

(2) for a second offense or if, in the case of a first conviction of a violation of this section, the offender has been convicted of any of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than five years nor more than thirty years, or fined not more

than fifty thousand dollars, or both.

(3) for a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both.

Possession of one or more grams of methamphetamine or cocaine base is prima facie evidence of a violation of this subsection. Notwithstanding 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. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), 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. In all other cases, the sentence must not be suspended nor probation granted.

[Amended provisions of 2010 Act are underlined.]

As one can readily discern from a reading of the amended provisions of S.C. Code Ann. §44-53-375(B), the General Assembly amended the statute to allow second time offenders to be eligible for probation and parole, and to earn work credits, good time credits, and education credits. (The full text of the prior and current versions of S.C. Code Ann. §44-53-375 are included in Appendix 1 to this brief).

C. CONSTRUING AND APPLYING THE PROVISIONS OF S.C. CODE ANN. §44-53-375(B) AND S.C. CODE ANN. §§24-13-100 AND 150

Having briefly discussed the two applicable statutes in this appeal, the question before the Court is how these statutes should be read together and construed in determining how long the Appellant must be incarcerated. The heart of the controversy before the Court is one of statutory construction.

In construing the terms of a statute, the primary rule of statutory construction is that a statute should be construed to give effect to the intent of the legislature. Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011); State v. Johnson, 393 S.C. 182, 720 S.E.2d 516, 519 (Ct.App. 2011). A court should not attempt to divine the intent of the legislature when the statutory language of the statute is clear and unambiguous. Town of Mt. Pleasant v. Roberts, supra; State v. Johnson, supra. Thus, in interpreting a statute, a court should give words their plain and ordinary meaning, and not resort to forced construction that would limit or expand the statute in question. Town of Mt. Pleasant v. Roberts, supra; State v. Johnson, supra. An additional rule of statutory construction is that when two statutes are in apparent conflict, the more recent and specific statute should prevail so as to modify or repeal the

earlier and more general statute.¹ Stone v. State, 313 S.C. 533, 443 S.E.2d 544, 545 (1994).

While some statutes enacted by the General Assembly do not provide an express statement of legislative intent, the General Assembly did make such an express statement with the enactment of the Omnibus Crime Reduction and Sentencing Reform Act of 2010, and stated among other things in Sections 1 and 2 of the Act that the purpose of the Act was to "provide fair and effective sentencing options," "employ evidence-based practices for smarter use of correctional funding" and to "provide proportional punishments for the offenses committed". Simply stated, in the context of this appeal, the Act amended S.C. Code Ann. §44-53-375(B) to decriminalize certain drug offenses, and to thereby lessen the burdensome expense of incarcerating nonviolent offenders such as the Appellant. Thus, under the amended provisions of S.C. Code Ann. §44-53-375(B), offenders like the Appellant who were previously ineligible for probation or parole, or now eligible to be sentenced to probation or granted parole.

¹ Thus, for example, in Hair v. State, 305 S.C. 77, 406 S.E.2d 332 (1991), where the defendant was convicted of burglary in the second degree (non-violent) which under the burglary statute, (S.C. Code Ann. §16-11-312(C)), the defendant would have been eligible for parole after serving one-third of the sentence imposed, the statute was repealed by implication by the subsequent enactment of the 1986 Omnibus Crime Bill, (S.C. Code Ann. §24-21-610), which provided for parole eligibility after service of one-fourth of the sentence imposed for any non-violent offense. Because the legislature chose not to exclude burglary offenses under S.C. Code Ann. §24-21-610, the Hair Court concluded that the legislature intended to replace S.C. Code Ann. §16-11-312(C) regarding the parole eligibility of a prisoner, with the provisions of S.C. Code Ann. §24-21-610.

The recent amendment to S.C. Code Ann. §44-53-375(B), specifically provides that "[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." [Emphasis Added]

The use of the phrase "[n]otwithstanding any other provision of law a person convicted and sentenced pursuant to this subsection for a...second offense...is eligible for parole," plainly states the intent of the General Assembly to exempt second offenses from the "no parole" provisions of S.C. Code Ann. §§24-13-100 and 150. Thus, the statute as amended supercedes the earlier enacted and general provisions of S.C. Code Ann. §§24-13-100 and 150. Accordingly, Appellant's offenses should not be treated as "no parole" offenses.

The ALJ construed the statutes in question in the Appellant's case to mean that the Appellant is eligible for parole, that is, the Appellant is eligible to have a parole hearing to determine whether he should be paroled. [Presumably, the date for any parole hearing is calculated the same as an offense that would not fall under the "no parole" provisions of S.C. Code Ann. §§24-13-100 and 150?] However, should the Appellant not be granted parole, then,

he would fall under the "no parole" provisions of S.C. Code Ann. §§24-13-100 and 150, which require service of eighty-five percent (85%) of the sentence imposed. The ALJ further reasoned that while the Appellant may earn credits to reduce his sentence, such credits will be earned at the rate of a "no parole" offense as provided for by S.C. Code Ann. §§24-13-210 and 230, which will not reduce the amount of time the Appellant must serve on his sentences below eighty-five (85%) percent. Essentially, the ALJ's decision, and the Department's position, regarding the Appellant's sentences are: "We're treating your offenses as parole offenses, unless you are not granted parole, in which case, your offenses are to be treated as no parole offenses."²

The ALJ's and the Department's construction of the amended provisions of S.C. Code Ann. §44-53-375(B), would render most of the newly enacted language superfluous. Specifically, the language that a person convicted and sentenced pursuant to S.C. Code Ann. §44-53-375(B) 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,

² Although Appellant's counsel is admittedly not as well versed as the Department's counsel with respect to the calculation of all sentences being served by all prisoners in the Department of Corrections, Appellant's counsel is unaware of any other statute which has been subject to the same construction or application by the Department as the provisions of S.C. Code Ann. §44-53-375(B), where the Department treats a single offense as being both a "parole" and "no parole" offense.

work credits, education credits, and good conduct credits" would be meaningless.³ If it was the intent of the General Assembly for a second offense to remain a "no parole" offense the General Assembly could have done so by omitting the language regarding parole eligibility or the earning of any credits. Of further significance, the provisions of S.C. Code Ann. §44-53-375(B), now read that for a "first offense or second offense" a person is similarly eligible for probation, parole, credits, etc. [Emphasis Added] Because a first offense violation of S.C. Code Ann. §44-53-375(B), was not a "no parole" offense before the amendment of the statute, any reading of the amended statute which limits the amended statute to only first offenses also renders the added amended language superfluous, as it changes nothing as to the treatment of first offenses as parole offenses. Any reading of the amended version of S.C. Code Ann. §44-53-375(B) which would render

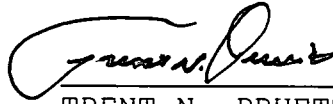
³ The Appellant notes that the General Assembly uses the term "community supervision" in the amended provisions of S.C. Code Ann. §44-53-375(B). Admittedly, the term "community supervision" is usually associated with the Community Supervision Program for "no parole" offenders that are released on community supervision after serving eighty-five (85%) percent of their sentence. See S.C. Code Ann. §24-21-560(A). However, in the context of some offenses, including drug offenses that are not "no parole" offenses, the General Assembly also uses the term "community supervision". Thus, for example, the term "community supervision" is referenced numerous times in S.C. Code Ann. §44-53-370(d), which addresses the punishment for possessory offenses for drug violations, all of which are not "no parole" offenses. Accordingly, the mere mention of the term "community supervision" in S.C. Code Ann. §44-53-375(B), does not mandate the conclusion that the offense is a "no parole" offense.

the amendment meaningless, would run afoul of another cardinal rule of statutory construction, that it must be presumed that the General Assembly does not intend a futile or meaningless act by enacting legislation. State v. Long, 363 S.C. 360, 610 S.E.2d 809, 811-812 (2005); State v. Sweat, 379 S.C. 367, 665 S.E.2d 645, 651 (Ct.App. 2008). The amended language of S.C. Code Ann. §44-53-375(B), which makes a person convicted of a first offense or second offense similarly eligible for probation, parole, credits, etc, is but further evidence of the intent of the General Assembly to treat both first offenses or second offenses of S.C. Code Ann. §44-53-375(B) the same, i.e., as offenses not falling under the no parole provisions of S.C. Code Ann. §§24-13-100 and 150.

CONCLUSION

That based upon the above statement of the case and the applicable law, it is respectfully submitted that the Administrative Law Judge erred by treating the Appellant's convictions for Conspiracy to Manufacture Methamphetamine (Second Offense) and Possession with Intent to Distribute Methamphetamine (Second Offense), as "no parole" offenses, and that such holding was a violation of S.C. Code Ann. §44-53-375(B), or other error of law, which should be corrected by this Court.

Respectfully submitted,



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APPENDIX 1

§ 24-13-100. Definition of no parole offense; classification.

For purposes of definition under South Carolina law, a "no parole offense" means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more.

HISTORY: 1995 Act No. 83, § 1.

§ 24-13-150. Early release, discharge, and community supervision; limitations; forfeiture of credits.

(A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, 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, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, 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. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended. Nothing in this section may be construed to allow an inmate convicted of murder or an inmate prohibited from participating in work release, early release, discharge, or community supervision by another provision of law to be eligible for work release, early release, discharge, or community supervision.

(B) If an inmate sentenced to the custody of the Department of Corrections and confined in a facility of the department, confined in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, or temporarily confined, held, detained, or placed in a facility which is not under the direct control of the department, to include an inmate on a labor crew or any other assigned detail or placement, or an inmate in transport status, commits an offense or violates one of the rules of the institution during his term of imprisonment, all or part of the credit he has earned may be forfeited in the discretion of the Director of the Department of Corrections. If an inmate sentenced to a local detention facility or upon the public works of any county in this State, even when temporarily confined, held, detained, or placed in any facility which is not under the direct control of the local detention facility, to include an inmate on a labor crew or any other assigned detail or placement, or an inmate in transport status, commits an offense or violates one of the rules of the institution during his term of imprisonment, all or part of the credit he has earned may be forfeited in the discretion of the local official having charge of the inmate. The decision to withhold credits is solely the responsibility of officials named in this subsection.

HISTORY: 1995 Act No. 83, § 3; 2010 Act No. 237, § 71, eff June 11, 2010.

PRIOR VERSION OF S.C. CODE ANN. §44-53-375

§ 44-53-375. Possession, manufacture and trafficking of methamphetamine and cocaine base and other controlled substances; penalties.

(A) A person possessing or attempting to possess less than one gram of methamphetamine or cocaine base, as defined in Section 44-53-110, is guilty of a misdemeanor and, upon conviction for a first offense, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. For a first offense the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both.

(B) A person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370, is guilty of a felony and, upon conviction:

(1) for a first offense, must be sentenced to a term of imprisonment of not more than fifteen years or fined not more than twenty-five thousand dollars, or both;

(2) for a second offense or if, in the case of a first conviction of a violation of this section, the offender has been convicted of any of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both;

(3) for a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than fifteen years nor more than thirty years, or fined not more than fifty thousand dollars, or both.

Possession of one or more grams of methamphetamine or cocaine base is prima facie evidence of a violation of this subsection.

(C) A person who knowingly sells, manufactures, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ten grams or more of methamphetamine or cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), is guilty of a felony which is known as "trafficking in methamphetamine or cocaine base" and, upon conviction, must be punished as follows if the quantity involved is:

(1) ten grams or more, but less than twenty-eight grams:

(a) for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(b) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(2) twenty-eight grams or more, but less than one hundred grams:

(a) for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(3) one hundred grams or more, but less than two hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(4) two hundred grams or more, but less than four hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

(5) four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

(D) Possession of equipment or paraphernalia used in the manufacture of cocaine, cocaine base, or methamphetamine is prima facie evidence of intent to manufacture.

(E)(1) It is unlawful for any person, other than a manufacturer, practitioner, dispenser, distributor, or retailer to knowingly possess any product that contains twelve grams or more of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers; or a combination of any of these substances. A person who violates this subsection is guilty of a felony and, upon conviction, must be punished as follows if the quantity involved is:

(a) twelve grams or more, but less than twenty-eight grams:

(i) for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(ii) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(iii) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) twenty-eight grams or more, but less than one hundred grams:

(i) for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(ii) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(iii) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) one hundred grams or more, but less than two hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(d) two hundred grams or more, but less than four hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

(e) four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

(2) This subsection does not apply to:

(a) a consumer who possesses products:

(i) containing ephedrine, pseudoephedrine, or phenylpropanolamine in a manner consistent with typical medicinal or household use, as indicated by storage location, and possession of the products in a variety of strengths, brands, types, purposes, and expiration dates; or

(ii) for agricultural use containing anhydrous ammonia if the consumer has reformulated the anhydrous ammonia by means of additive so as effectively to prevent the conversion of the active ingredient into methamphetamine, its salts, isomers, salts of isomers, or its precursors, or the precursors' salts, isomers, or salts of isomers, or a combination of any of these substances; or

(b) products labeled for pediatric use pursuant to federal regulations and according to label instructions primarily intended for administration to children under twelve years of age; or

(c) products that the Drug Enforcement Administration and the Department of Health and Environmental Control, upon application of a manufacturer, exempts because the product is formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, its salts, isomers, salts of isomers, or its precursors, or the precursors' salts, isomers, or salts of isomers, or a combination of any of these substances.

(3) This subsection preempts all local ordinances or regulations governing the possession of any product that contains ephedrine, pseudoephedrine, or phenylpropanolamine.

(F) Except for a first offense, as provided in subsection (A) of this section, sentences for violation of the provisions of this section may not be suspended and probation may not be granted. A person convicted and sentenced under this subsection to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release as provided in Section 24-13-610, or supervised furlough as provided in Section 24-13-710.

(G) A person eighteen years of age or older may be charged with unlawful conduct toward a child pursuant to Section 63-5-70, if a child was present at any time during the unlawful manufacturing of methamphetamine.

HISTORY: 1987 Act No. 128 § 1; 1990 Act No. 604, § 8; 1993 Act No. 58, § 2; 1993 Act No. 184, § 74; 1995 Act No. 7, Part I, § 18; 2005 Act No. 127, § 5, eff June 7, 2005.

2010 AMENDED VERSION OF S.C. CODE ANN. §44-53-375

§ 44-53-375. Possession, manufacture and trafficking of methamphetamine and cocaine base and other controlled substances; penalties.

(A) A person possessing less than one gram of methamphetamine or cocaine base, as defined in Section 44-53-110, is guilty of a misdemeanor and, upon conviction for a first offense, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. For a first offense the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection 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.

(B) A person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370, is guilty of a felony and, upon conviction:

(1) for a first offense, must be sentenced to a term of imprisonment of not more than fifteen years or fined not more than twenty-five thousand dollars, or both;

(2) for a second offense or if, in the case of a first conviction of a violation of this section, the offender has been convicted of any of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs; the offender must be imprisoned for not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both;

(3) for a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both.

Possession of one or more grams of methamphetamine or cocaine base is prima facie evidence of a violation of this subsection. Notwithstanding 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. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), 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. In all other cases, the sentence must not be suspended nor probation granted.

(C) A person who knowingly sells, manufactures, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ten grams or more of methamphetamine or cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), is guilty of a felony which is known as "trafficking in methamphetamine or cocaine base" and, upon conviction, must be punished as follows if the quantity involved is:

(1) ten grams or more, but less than twenty-eight grams:

(a) for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(b) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(2) twenty-eight grams or more, but less than one hundred grams:

(a) for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(3) one hundred grams or more, but less than two hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(4) two hundred grams or more, but less than four hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

(5) four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

(D) Possession of equipment or paraphernalia used in the manufacture of cocaine, cocaine base, or methamphetamine is prima facie evidence of intent to manufacture.

(E)(1) It is unlawful for any person, other than a manufacturer, practitioner, dispenser, distributor, or retailer to knowingly possess any product that contains nine grams or more of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances. A person who violates this subsection is guilty of a felony known as "trafficking in ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances" and, upon conviction, must be punished as follows if the quantity involved is:

(a) nine grams or more, but less than twenty-eight grams:

(i) for a first offense, a term of imprisonment of not more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(ii) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(iii) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) twenty-eight grams or more, but less than one hundred grams:

(i) for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(ii) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(iii) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) one hundred grams or more, but less than two hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(d) two hundred grams or more, but less than four hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

(e) four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

(2) This subsection does not apply to:

(a) a consumer who possesses products:

(i) containing ephedrine, pseudoephedrine, or phenylpropanolamine in a manner consistent with typical medicinal or household use, as indicated by storage location, and possession of the products in a variety of strengths, brands, types, purposes, and expiration dates; or

(ii) for agricultural use containing anhydrous ammonia if the consumer has reformulated the anhydrous ammonia by means of additive so as effectively to prevent the conversion of the active ingredient into methamphetamine, its salts, isomers, salts of isomers, or its precursors, or the precursors' salts, isomers, or salts of isomers, or a combination of any of these substances; or

(b) products labeled for pediatric use pursuant to federal regulations and according to label instructions primarily intended for administration to children under twelve years of age; or

(c) products that the Drug Enforcement Administration and the Department of Health and Environmental Control, upon application of a manufacturer, exempts because the product is formulated in such a way as to

effectively prevent the conversion of the active ingredient into methamphetamine, its salts, isomers, salts of isomers, or its precursors, or the precursors' salts, isomers, or salts of isomers, or a combination of any of these substances.

(3) This subsection preempts all local ordinances or regulations governing the possession of any product that contains ephedrine, pseudoephedrine, or phenylpropanolamine.

(F) Sentences for violation of the provisions of subsections (C) or (E) may not be suspended and probation may not be granted. A person convicted and sentenced under subsection (C) or (E) to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release as provided in Section 24-13-610, or supervised furlough as provided in Section 24-13-710.

(G) A person eighteen years of age or older may be charged with unlawful conduct toward a child pursuant to Section 63-5-70, if a child was present at any time during the unlawful manufacturing of methamphetamine.

HISTORY: 1987 Act No. 128 § 1; 1990 Act No. 604, § 8; 1993 Act No. 58, § 2; 1993 Act No. 184, § 74; 1995 Act No. 7, Part I, § 18; 2005 Act No. 127, § 5, eff June 7, 2005; 2010 Act No. 275, § 38, eff June 2, 2010.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Carolyn C. Matthews, Administrative Law Judge

Appellate Case No. 2014-000461

MICHAEL HEATH BOLIN, #341806,

Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief and Designation of Matter to be Included in the Record on Appeal in the above captioned appeal, by depositing the same in the United States Mail, postage prepaid, on March 21, 2014, with the envelopes being addressed and mailed to the following:

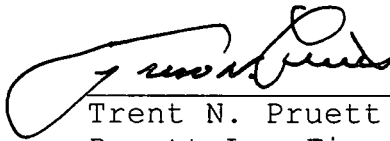
The Honorable Jenny Abbott Kitchings
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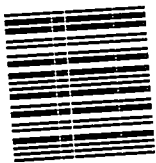


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