

clerk of Court,

12-22-14

I do thank you for your assistance in my concerns. I did receive your letter dated 12-16-14 in which you gave a 10 day deadline to address deficiencies with my notice of appeal. You gave 4 issues to address, only giving a format to follow in the proof of service I was to provide. I addressed all the issues in this reply letter, particular to format the proof of service by SCAAB. You gave no format to follow nor was I able to get one to apply in forma pauperis if I couldn't pay the filing fee. So I did draw up an application and affidavit that I pray will suffice as I am indigent and knew not how to draw up the application. I do wish all submitted in this letter suffices the requirements I need to proceed. Should there be any problems, please do notify me of what I need to do to correct the matter so that my appeal be not delayed. Thank You Again!

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JAN 05 2015

**SC Court of Appeals**

Sincerely,

Albert B. Burt

THE STATE OF SOUTH CAROLINA  
IN The Court of Appeals

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APPEAL FROM SOUTH CAROLINA  
Administrative Law Court  
Denial of Parole Eligibility

S: Phillip Lenski, Administrative Law Judge

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Docket No.: 14-ALJ-15-0034-AP

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J. Keef Brailsford # 264172, Appellant,

vs.

South Carolina DPPPS, Respondent.


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CERTIFICATE OF SERVICE

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I, J. Keef Brailsford # 264172, the Appellant, hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal with postage prepaid and the return address clearly shown on said envelope to the Clerk of Court with the Court of Appeals at:

South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

  
I Keef Brailsford # 264172  
Appellant  
430 Oaklawn Rd.  
Palmer, S.C. 29169

December 7, 2014

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JAN 05 2015

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA  
Administrative Law Court  
Division of Public Eligibility

S. Phillip Lenski, Administrative Law Judge

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Docket No: 14-ALJ-15-0824-AP

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Ikeef Brailsford #264172, . . . . . Appellant,

vs.

South Carolina DPPPS, . . . . . Respondent.

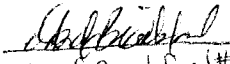
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CERTIFICATE OF SERVICE

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I, Ikeef Brailsford #264172, the Appellant, hereby certify that I placed in the United States Mail, a copy of a Notice of Appeal with postage prepaid and the return address clearly shown on said envelope to S. Phillip Lenski, ALJ with the Administrative Law Court at:

S. Phillip Lenski, ALJ  
Administrative Law Court  
1205 Pendleton St. Suite 224  
Columbia, S.C. 29201

  
Ikeef Brailsford #264172  
Appellant  
430 Cahalan Rd.  
Pitcair, S.C. 29166

December 7, 2014

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JAN 05 2015

**SC Court of Appeals**

APPLICATION TO PROCEED WITHOUT  
PAYMENT OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Ikeef Brailsford #264172, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Ikeef Brailsford  
Ikeef Brailsford #264172  
Appellant  
430 Coklaw Rd.  
Rt 207, S.C. 291669

12-22-14

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JAN 05 2015  
SC Court of Appeals

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**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

**SC Court of Appeals**

Ikeef Brailsford, 264172,

Docket No. 14-ALJ-15-0024-AP

Appellant,

vs.

**ORDER**

South Carolina Department of Probation,  
Parole and Pardon Services,

**COPY**

Respondent.

**STATEMENT OF THE CASE**

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to the appeal of Ikeef Brailsford (“The Appellant”), an inmate incarcerated with the South Carolina Department of Corrections. On March 1, 2011, the Appellant was sentenced to fifteen (15) years, suspended to the service of twelve (12) years, for the offense of manufacture or distribution of crack cocaine, third or subsequent offense. On November 12, 2013, the South Carolina Department of Probation, Parole and Pardon Services (“Department”) notified the Appellant that the South Carolina Parole Board (“Board”) determined that the Appellant was convicted of a “no parole offense” and is therefore not eligible for consideration for parole. On November 12, 2013 the Appellant filed a Notice of Appeal with the ALC seeking review of the Board’s determination that he was not eligible for consideration for parole. As grounds for the appeal, the Appellant contends that the 2010 Omnibus Crime Reduction and Sentence Reformation Act revised South Carolina Code Ann. § 44-53-375(B) so that a person who is convicted of distribution of crack cocaine, third or subsequent offense, may be eligible for parole.

**DISCUSSION**

An individual has a right to ALC review of a final decision of the Board only when that decision affects a liberty interest for which due process is required. See Furtick v. S.C. Dep’t of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146, 149, 150 (2003); see also Sullivan v. South Carolina Dep’t of Corrections, 355 S.C. 437, 586 S.E.2d 124, 127 (2003)

**FILED**

NOV 26 2014

(explaining the nature of the right to ALC review). In Furtick, the South Carolina Supreme Court held that although an inmate has a liberty interest in parole *eligibility* pursuant to S.C. Code Ann. § 24-21-620, the statute creates no such liberty interest in the granting of parole itself. Furtick, 352 S.C. at 598, 576 S.E.2d at 149 n.4. Therefore, claims arising from the Board's decision denying parole are not appealable to the ALC, only claims that the Board failed to consider the appropriate criteria so as to be tantamount to an abrogation of parole eligibility. Cooper v. S.C. Dep't. of Probation, 377 S.C. 489, 661 S.E.2d 106 (2008). The Appellant challenges the Board's determination that he is not eligible for parole. Because the Appellant's appeal is based on the denial of his liberty interest in parole eligibility, the court must consider the Appellant's arguments.

The Appellant was convicted of manufacture or distribution of crack cocaine, third or subsequent offense, pursuant to S.C. Code Ann. § 44-53-375(B) on March 1, 2011. Under S.C. Code Ann. § 24-13-100, a "no parole" offense is defined as "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." Manufacture or distribution of crack cocaine, third or subsequent offense is a Class A felony. See S.C. Code. Ann. § 16-1-90(A).

The Appellant contends that his conviction is not subject to classification as a "no parole offense". The Appellant relies upon language added to S.C. Code Ann. § 44-53-375(B) by the Omnibus Crime Reduction and Sentencing Reform Act of 2010, which reads:

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.

The court agrees with the Appellant that the 2010 Omnibus Crime Reduction and

Sentencing Reform Act changes the language of S.C. Code Ann. § 44-53-375(B), allowing for the possibility that an individual convicted of manufacture or distribution of crack cocaine, third or subsequent offense, may be eligible for parole. However, the language limits this possibility to individuals whose prior offenses were solely for the possession of a controlled substance. The statute does not extend parole eligibility to individuals with prior convictions for anything other than the possession of a controlled substance.

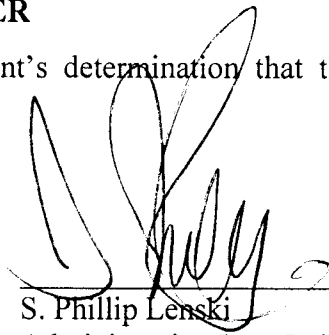
In this case, the Appellant has a prior conviction for distribution of crack cocaine from 2006. Therefore, pursuant to § 44-53-375(B), the Appellant's conviction for manufacture of distribution of crack cocaine, third or subsequent offense, coupled with his prior conviction for distribution of crack cocaine, render § 44-53-375(B) inapplicable and cause him to be ineligible for parole.

**ORDER**

For the foregoing reasons, the Department's determination that the Appellant is not eligible for parole is **AFFIRMED**.

**AND IT IS SO ORDERED.**

November 26, 2014  
Columbia, South Carolina

  
\_\_\_\_\_  
S. Phillip Lenski  
Administrative Law Judge

**FILED**

NOV 26 2014

SC ADMIN. LAW COURT

E. Rice P. Breitstein, # 264172.  
Henry C. S. / Donn CX-18  
1300 Oakleaf Rd.  
Rt 209, S.C. 29166-9

*AMY*

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JAN 05 2015

**SC Court of Appeals**

South Carolina Court of Appeals  
Clerk of Court  
P.O. Box 11629  
Columbia, S.C. 29211

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Jan 23 2014

Mailroom

**LEGAL MAIL**