THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Appeal of Parole Eligibility

S. Phillip Lenski, Administrative Law Judge

Appellant Case No. 2014-002640

Ikeef Brailsford, #264172 . . . . Appellant

vs.

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

INITIAL BRIEF OF APPELLANT

Ikeef Brailsford, #264172
Appellant

Evans Correctional Institution
610 Highway 9 West
Bennettsville, S.C. 29512

January 20, 2015

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1. Was there err in the determination that the Appellant is ineligible for parole because of his prior drug conviction?

STATEMENT OF THE CASE

On March 1, 2011 the Appellant pled guilty to Distribution of Crack Cocaine, 3rd or sub offense, a violation of S.C. Code Ann. § 44-53-375(B). The Circuit Court Judge sentenced him to a (15) year period of incarceration, suspended upon service of (12) years. The Omnibus Crime Reduction and Sentence Reform Act of 2010 made certain drug offenses parolable that were not parolable prior to the act. The SCDPPPS (Respondant) notified the Appellant, pursuant a letter dated November 12, 2013, that after their mandatory investigation it was determined that the Appellant was convicted of a "no parole offense", so he was not elgible for parole. The Appellant served a notice of appeal to the Respondant and the Administrative Law Court in response to the letter received from the Respondant on June 6, 2014. After pleadings from both parties, the ALJ Honorable S. Phillip Lenski issued an order on November 26, 2014 agreeing with the Appellant that the language added to S.C. Code Ann § 44-53-375(B) does allow the possibility of parole for individuals convicted of Distribution of Crack Cocaine, 3rd or sub. offense, but that possibility is limited only to those convicted of that offense whose prior offenses were solely for the possesion of a controlled substance. In the case of the Appellant he has a prior conviction in 2006 for distribution of crack cocaine that would make him inelgible for parole. The Appellant perfected a notice of appeal to the Honorable Judge Lenski's order to this Court on December 22, 2014. The Appellant's brief arguing against the order follows:

ARGUMENT

Was there err in the determination that the Appellant is inelgible for parole because of his prior drug conviction?

The Appellant contends that by law he is to be elgible for parole consideration with the underline conviction. The statute itself does not specifically state all convicted under the subsection is to be parole elgible, but by the rules of statutory construction the wording of the subsection implies that. When a term is not defined in the code of laws, court must employ the rules of statutory construction to ascertain and effectuate the intent of the general assembly. Major v. S.C. Dept. of Probation, Parole, and Pardon Services, 384 S.C. 457, 682 S.E. 2d. 745 (2009).

The Omnibus Crime Reduction and Sentence Reform Act of 2010 came on the heels of legislation across the country lessening the punishment on non-violent drug offenders, which was to have a direct affect on combating the problem of over-crowded prison systems. In that Act, the State's General Assembly made amendments to the non-violent drug offenses that was to directly affect the length of incarceration of these convictions. The intent of the legislature in making a statutory amendment is determined in light of the overall climate in which the legislation was amended. Stardancer Casino, Inc. v. Stewart, 556 S.E. 2d 357, 347 S.C. 377 (2001). Courts should presume that [legislature] acts intentionally and purposefully when [legislature] includes particular language in one section of a

statute but omits it in another. In re Jupiter, 344 B.R. 334 (BKrtcy D.S.C. 2006). Distribution of Crack Cocaine is a non-violent drug offense pursuant to S.C. Code Ann. 16-1-70. The added language to S.C. Code Ann. § 44-53-375(B) implies that the entirety of those persons convicted under the subsection is to be parole elgible. In interpreting a statute, the court's primary function is to ascertain the intention of legislature. State v. Leopard, 563 S.E. 2d. 342, 349 S.C. 467 (S.C. App. 2002).

When interpreting the language of S.C. Code Ann. § 44-53-375(B), the court is to read the statutory language in light most favorable to persons convicted under it. When a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant. State v. Blackmon, 304 S.C. 270, 273, 403 S.E. 2d. 660, 662 (1991). The section relevant to this appeal reads:

> Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or sub. offense in which all prior offenses were for possesion of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is elgible 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. S.C. Code Ann. § 44-53-375(B) (Supp. 2013).

Reading that section of the statutory language of S.C. Code Ann. § 44-53-

375 (B), it appears that legislation only intended that persons convicted of 3rd or sub. offense under the subsection not be given a suspended sentence nor have probation granted under certain circumstances. Under the rule of "expressio unius", exceptions made in a statute give rise to a strong inference that no other exceptions were intended. Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 320 S.E. 2d 458 (S.C. App. 1984). The amended language to the subsection granted a number of provisions to all convicted under the subsection, including parole eligibility, and only restricted the possibility of getting a suspended sentence or having probation granted to persons convicted of 3rd or sub. offense under specified circumstances. Where there is express exception in statute, all other exceptions not expressly set forth are excluded; inclusion of one exception amounts to affirmation of applicability of provision to all other cases not excepted. Vernon v. Hackeysville Mut. Cas. Co., 135 S.E. 2d. 841, 244 S.C. 152 (S.C. 1964). "Exceptions are noteworthy because they demonstrate the General Assembly's readiness to expressly address" such situations for the law as written to have intended effect. State v. Baucom, 340 S.C. 339, 342, 531 S.E. 2d 922, 923 (2000). No where in the language does the statute restrict parole eligibility to an individual convicted of 3rd or sub. offense. It is not permissible to construe a statute on the basis of a mere surmise as to what legislature intended and to assume that it was only by inadvertance that it failed to state something other than what it plainly stated. Bob Jones

University v. U.S., 468 F. Supp. 890 reversed 639 F. 2d. 147 (D.S.C. 1978). To say that parole eligibility is not extended to all convicted of 3rd or sub. offense because the absence of language stating that in the subsection would be to assume that legislation could had infer that also concerning suspended sentences and probation eligibility by not saying so, making the last sentence in the subsection useless. It is cardinal principal of statutory construction that statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word should be superfluous, void, or insignificant. Boatwell v. Bank of America, N.A., 378 F. Supp. 2d 696 (D.S.C. 2005).

The Respondant and the ALJ in this case erred when determining the Appellant is not eligible for parole. Applying the rules of statutory construction to § 44-53-375(B) of the S.C. Code of laws, all convicted under the subsection is to be parole eligible. In the case of this appeal the Court is constrained to hold, as defined by § 44-53-375(B), the Appellant is parole eligible." Despite the possibility of frustrating legislative intent, however, [the court] is confined to the statutory language..." Scholtec v. Estate of Reeves, 327 S.C. 551, 559, 490 S.E. 2d. 603, 607 (Ct. App. 1997).

CONCLUSION

For the reasons set forth in this brief, this appeal should be granted in favor of the Appellant and he be granted parole elgibility.

Respectfully Submitted,

Ineef Brailsford, #264172
Appellant

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CERTIFICATE OF SERVICE

I, Ikeef Brailsford #264172, Appellant, hereby certify that I placed in the United States Mail, a copy of Initial Brief of Appellant with postage prepaid and the return address clearly shown on said envelope to Clerk of Court of South Carolina Court of Appeals to:

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

Ikeef Brailsford #264172
Appellant

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