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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Opinion No. 5361 (S.C. Ct. App. filed Nov. 12, 2015)
ALC Case No. 13-ALJ-04-0534-AP
Appellate Case No. 2014-000461

MICHAEL HEATH BOLIN, # 341806,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

PETITION FOR REHEARING
AND
SUGGESTION FOR REHEARING *EN BANC*

On November 12, 2015, this Court reversed the Administrative Law Judge's conclusion that the South Carolina Department of Corrections was properly calculating Appellant's sentence. Specifically, this Court found that under the amended provisions of S.C. Code § 44-53-375 (B), Appellant's drug offenses were not "no parole" offenses and that he was not required to serve eighty-five percent of his sentences. See Bolin v. South Carolina Dep't of Corr., Op. No. 5361 (S.C. Ct. App. filed Nov. 12, 2015) (Shearouse Adv. Sh. No. 44 at 75). Pursuant to Rule 221, SCACR, SCDC respectfully requests that this Court reconsider its decision in light of the facts this Court misapprehended and the law this Court overlooked, as will be discussed below.

Initially, however, pursuant to Rule 219(a), SCACR, SCDC would respectfully suggest that this Court rehear this matter *en banc*. According to our calculations, this Court's November 12, 2015 Opinion will have an impact on almost 900 inmates in South Carolina. If this Court's Opinion stands, nearly 200 drug offenders will be due for immediate release into our communities. Nearly 700 inmates' records would have to be updated to move their projected release dates forward. Additionally, it is our understanding from the South Carolina Department of Probation, Pardon, and Parole Services that hundreds of offenders who are currently participating in community supervision programs may be impacted by this Court's Opinion. In light of the large number of offenders potentially affected by this Court's Opinion, and considering the resulting impact upon our communities, SCDC believes this is an issue of "exceptional importance" under Rule 219(a) and we are therefore suggesting that this Court rehear the matter *en banc*.

Regardless of whether or not this Court hears the matter *en banc*, SCDC submits that this Court's Opinion misapprehends key facts in the case and overlooks critical principles of law. First, this Court misapprehended the facts as pertaining to SCDC's interpretation of amended S.C. Code § 44-53-375(B). In its Opinion, this Court states as follows:

> DOC interprets the interplay between amended section 44-53-375(B), the definition of no-parole offense in section 24-13-100, and the eighty-five percent requirement in section 24-13-150 to allow a person convicted of a second offense under section 44-53-375(B) to be eligible for parole the first time he is considered by the Parole Board. However, DOC argues that if such an inmate is initially denied parole, he would be required to serve eighty-five percent of his sentence before he is once again considered to be eligible for parole or other early release, discharge, or community supervision. That is, he is not considered for parole on a yearly basis under section 24-21-620.

Bolin, Op. No. 5361 (S.C. Ct. App. filed Nov. 12, 2015) (Shearouse Adv. Sh. No. 44 at 80).

Consistent with this theme, this Court mentions SCDC's purportedly incorrect interpretation again on page 82 of the Advance Sheet:

> In light of [the legislature's] objective, it makes little sense to allow the Parole Board to review the case of an inmate convicted of a drug offense for the purpose of determining whether he is entitled to parole only to suspend the Parole Board's yearly review schedule for that inmate should be not be granted parole the first time.

Respectfully, these facts - which do not appear anywhere in the record - are incorrect. Contrary to the language of this Court's Opinion, SCDC does not give this special class of offenders only one chance at parole; instead, this class of offenders has always been given yearly parole hearings. Considering the apparent significance of the erroneous facts to this Court's analysis, SCDC respectfully requests that this Court grant rehearing and reconsider the ultimate outcome of the case with the correct factual backdrop.

The second reason for granting rehearing is that this Court's Opinion overlooks the statutory construction principles indicating that when two statutes can be reconciled, they should be construed in such a way that both statutes remain functional. See, e.g., Beaufort County v. S.C. State Election Comm'n, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011) ("It is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result."); Richardson v. City of Columbia, 340 S.C. 515, 520, 532 S.E.2d 10, 12 (Ct. App. 2000) ("When two statutes can be reconciled, the court must construe the statutes in such a way that both remain functional. The more recent statute takes precedence over the

earlier statute only if there is a conflict between the two statutes.") (internal citations omitted).

In SCDC's view, and as was explained fully in SCDC's Brief and at oral argument, there is simply not a conflict between the 2010 amendments and the other statutes. Although the 2010 amendments to S.C. Code § 44-53-375(B) created a new, special class of offenders, they did not alter the requirement that this class of offenders serve eighty-five percent of the sentence pursuant to S.C. Code § 24-13-150(A), if a particular offender is not granted parole at some point during incarceration. This Court's Opinion is flawed because it failed to make any attempt to reconcile the statutes and instead simply ignored the case law requiring reconciliation. Significantly, SCDC's interpretation fully comports with the stated legislative intent for the 2010 amendments.

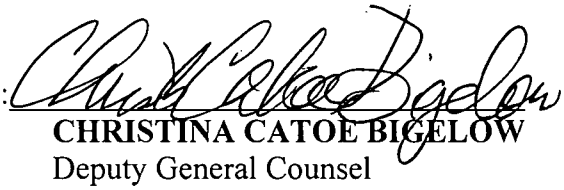
Finally, this Court's interpretation of amended section 44-53-375(B) is further problematic because it renders the provision specifically referencing "community supervision" completely superfluous. Only offenders serving sentences for "no parole" offenses are required to participate in community supervision, and the provisions governing the community supervision program specifically require service of eighty-five percent of the sentence before participation. See S.C. Code § 24-21-560(A); Barton v. SCDPPPS, 404 S.C. 395, 415, 745 S.E.2d 110, 121 (2013) ("This Court will not construe a statute in a way which leads to an absurd result or renders in meaningless."). SCDC respectfully disagrees with this Court's conclusion that the 2010 amendments were intended to allow non-eighty-five-percent offenders to participate in community supervision.

CONCLUSION

For the reasons set forth above, Respondent asks that this Court rehear the matter *en banc* due to the exceptional importance of the issue in South Carolina. Furthermore, even if this Court declines to rehear the matter *en banc*, Respondent asks that this Court reconsider the case and reverse the ultimate outcome, taking into account the correct factual background and the legal principles that were overlooked in the Opinion.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

BY: 

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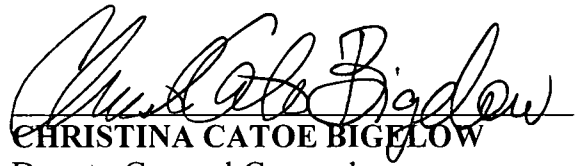
RESPONDENT.

PROOF OF SERVICE

The undersigned hereby certifies that SCDC's **Petition for Rehearing and Suggestion for Rehearing *En Banc*** in the above-referenced matter has been served upon counsel for Appellant via U.S. Mail, addressed as follows: **Trent N. Pruett, Pruett Law Firm, 202 North Petty Street, Gaffney, South Carolina, 29340**, this **30th** day of **November, 2015.**



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November 30, 2015

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Michael Heath Bolin, # 341806, v. South Carolina Department of Corrections
Appellate Case No. 2014-000461

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of SCDC's **Petition for Rehearing and Suggestion for Rehearing *En Banc*** in the above referenced matter, along with Proof of Service.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections

cc: Trent N. Pruett, Esquire
Pruett Law Firm
202 North Petty Street
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