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STATE OF SOUTH CAROLINA
In The Court of Appeals

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Appeal From The Administrative Law Court
S. Phillip Lenski, Administrative Law Judge
Case No. 14-AWJ-15-0024
AUG 03 2015
SC Court of Appeals

Appellate Case No. 2014-002640

Ikeef Brailsford, #264172 Appellant,

vs

South Carolina Department of Probation, Parole
and Pardon Services,

Respondant.

RECORD ON APPEAL

Ikeef Brailsford, #264172
Appellant

Tommy Evans, Jr.
Assistant General Counsel

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Ridgeville, S.C. 29472

South Carolina Department of
Probation, Parole, and Pardon Services
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Pro-Se Appellant

Attorney for Respondant

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ikeef Brailsford, 264172,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

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

ORDER

COPY

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)

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ADMIN. LAW COURT

(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.

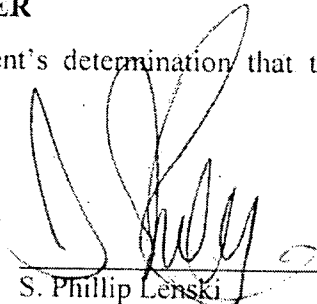
In this case, the Appellant has a prior conviction for distribution of crack cocaine from 2006. Therefore, pursuant to § 44-53-375(B), the Appellant's conviction for manufacture of distribution of crack cocaine, third or subsequent offense, coupled with his prior conviction for distribution of crack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

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SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From The Administrative Law Court
S. Phillip Henski, Administrative Law Judge
Case No. 14-ALS-15-0024

Appellate Case No. 2014-002610

Ikeef Brailsford, # 264172

Appellant,

vs.

S.C. Department of Probation,
Parole, and Pardon Services

Respondent.

INITIAL BRIEF OF APPELLANT

Ikeef Brailsford, # 264172
Appellant

Evans Correctional Institution
610 Highway 9 West
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Pro-Se Appellant

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Statement of Issues on Appeal

Was there error 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 plead guilty to Distribution of Crack Cocaine 3rd a 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 the service of (12) years. The Omnibus Crime Reduction and Sentence Reform Act of 2010, signed into law June 2, 2010, made certain drug offenses parolable that were not parolable prior to the act. The SCDPPPS (Respondent) 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 eligible for parole. The Appellant served a notice of appeal to the Respondent and the Administrative Law Court in response to the letter received from the Respondent, on June 6, 2014. After pleadings from both parties, the Administrative Law Judge Honorable S. Phillips Lenski issued an order on 11-26-14 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 possession 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 ineligible for parole. The Appellant perfected a notice of appeal to the Honorable Judge Lenski's order to this Court and SCDPPP on December 22, 2014. The Appellant's brief arguing against that order follows:

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Argument

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

The Appellant contends that by law he is to be eligible for parole consideration with the underline conviction. The statute itself does not specifically state all convicted under the statute is to be parole eligible, but by the rules of statutory construction the wording of the statute 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. SCDPPPS, 384 S.C. 457, 682 S.E.2d 795 (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 systmes. 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 those convicted. 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. 354 (BKrtcy D.S.C. 2006). Distribution of Crack Cocaine is a non-violent drug offense, 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 eligible. 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 669, 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 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. 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 legislature only intended that individuals 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. Inc. 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, 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. Harleysville 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 inadvertence 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 superflous, void, or insignificant. Barnewell v. Bank of America N.A., 378 F.Supp.2d 696 (D.S.C. 2005).

The Respondent 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).


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Conclusion

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

Respectfully Submitted,



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January 20, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge
Case No. 14-ALJ-15-0024

Appellate Case No. 2014-002640

IKEEF BRAILSFORD, #264172,.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

INITIAL BRIEF OF RESPONDENT

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ATTORNEY FOR THE RESPONDENT

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STATEMENT OF THE CASE

- 1. Did the ALC err in determining that the Appellant was not eligible for parole due to his prior drug conviction?**

STATEMENT OF THE CASE

On May 28, 2010, the Appellant was found delivering a quantity of crack cocaine to his co-defendant Fred China in order for him to sell. The Defendant's was unaware that the buyer was an undercover police officer, participating in a drug sting operation coordinated by the Sumter County Sheriff's Department. Upon arrest, the co-defendant had on his person the marked hundred dollar bill used in the drug transaction. Both defendants were arrested and charged with the offense of distribution of crack cocaine. It was later determined this was the Appellant's third drug offense.

On March 1, 2011, the Appellant appeared before the Honorable Y. Jeffery Young for the offense of distribution of cocaine third offense. Upon conclusion of this appearance, Judge Young sentenced the Appellant to a fifteen year period of incarceration, suspended upon the service of twelve years. Pursuant to South Carolina law, a person convicted of distribution of cocaine will become eligible for parole upon the service of one-fourth of his sentence. Prior to the Appellant becoming eligible for parole a mandatory investigation was completed by the Respondent. At the conclusion of this investigation, it was discovered that on June 6, 2006, the Appellant was convicted of distribution of cocaine. Due to this prior conviction, the Appellant is not eligible for parole on the current offense pursuant to South Carolina law.

On November 12, 2013, the Appellant was notified by Mr. Matthew Buchanan, Department's General Counsel, that due to his prior conviction, he is currently not eligible for parole. Upon receipt of this notification the Appellant filed a notice of appeal before the Administrative Law Court (ALC). Within this appeal the Appellant argues that changed as part of the 2010 Omnibus Crime Reduction and Sentence Reform Act, he is currently eligible for parole. The Respondent argued, that even though the Appellant is correct regarding the 2010 law, he still remains ineligible for parole due to a prior conviction for distribution of cocaine.

Each party submitted briefs supporting their arguments. Upon reviewing these briefs the Honorable S. Phillip Lenski issued his decision. On November 26, 2014, Judge Lenski determined that due to his prior conviction the Appellant is currently not eligible for parole. He decided to affirm the decision of the Respondent. On December 7, 2014, the Appellant filed his notice of appeal before the South Carolina Court of Appeals. Within his brief the Appellant argues that the statute does not specifically state he is not eligible for parole, so the ALC ruled in error. It is his position that the General Assembly intended him to be allowed to appear before the Parole Board, and to deny him this opportunity is unlawful.

The Respondent argues that the ALC was not in error in affirming the decision of the Respondent. It is clear in the statute, the only way a person with a third or subsequent conviction of a drug offense can be allowed parole, if his priors are only for possession. Since one of the Appellant's priors is for distribution of crack cocaine, he is not eligible for parole. The ALC was correct in their determination, the lower court's decision should be upheld.

ARGUMENT

1. The ALC did not err in determining that the Appellant is not eligible for parole due to his prior drug convictions.

The Appellant argues that the ALC erred in affirming the decision of the Respondent denying him parole. The Appellant argues that the determination that he is ineligible for parole due to his prior conviction for distribution of cocaine, goes against the intention of the General Assembly; therefore, an error of law was made by the ALC. The Appellant argues that as part of the 2010 Omnibus Crime Reduction and Sentencing Reformation Act, the law changed allowing him parole eligibility. The law has changed; however, due to his prior drug conviction the Appellant is currently not eligible for parole. The South Carolina Code of Laws specifically state:

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.

S.C. Code Ann. §44-53-375(B)(Supp. 2014).

The Appellant was convicted of distribution of crack cocaine third or subsequent offense. There is no evidence that the Appellant was convicted of anything else. According to the above referenced statute he is currently not eligible for parole. The statute is clear, an inmate convicted of a third or subsequent offense can only be eligible for parole if his prior drug conviction were solely for possession. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. *Rowe v. Hyatt*, 321 S.C. 366, 468 S.E.2d 649 (1996). The Appellant was convicted of distribution of cocaine, he had a prior conviction in 1996 for manufacture or distribution of cocaine. The statute clearly states that an inmate convicted of a third drug offense is eligible for parole only if the prior offenses were for possession. If the legislature wished inmates convicted of a third or greater drug offense be allowed parole regardless of their prior offenses that condition would not be in place. The General Assembly would just allowed all persons who have committed a prior third drug offense parole eligibility regardless of their prior convictions.

In reading the entire statute, it is clear the legislature wished all prisoners who were convicted of a first or second offense parole eligibility. The statute clearly states, " 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 eligible for parole, supervised furlough, community supervision, work release, work credits, education credits and good conduct credits."

S.C. Code Ann. §44-53-375(B)(2)(Supp. 2014). If the legislature wished all individuals who have committed drug offenses given parole eligibility, the statute would have not limited parole eligibility. The statute would have not limited parole eligibility only to first, and second offenders or third offenders who priors were only for possession. Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction. *Higgins v. State*, 307 S.C. 446, 415 S.E.2d 799 (1992).

The law does not allow parole eligibility for a third offense unless all of your prior drug offenses were for possession. A Court should consider not merely the language of the particular clause being construed but word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. *Whitner v. State*, 328 S.C. 1, 492 S.E.2d 777 (1997). A law must be interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly. *Abell v. Bell*, 229 S.C. 1, 91 S.E.2d 548 (1956). It is clear by the reading of the statute, the General Assembly only wished certain drug offenders be allowed parole eligibility. The Appellant does not fall under this criteria, so his parole eligibility was rightfully denied. The ALC made the correct decision in affirming the decision of the Respondent.

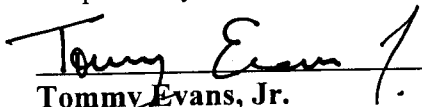
The statute is clear, when a person has a first or second offense they are allowed parole eligibility, under a third offense you are only allowed parole if your prior drug offenses are for possession. If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ the rule of statutory interpretation, and the court has no right to look for, or impose another meaning. *Pachal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995). The terms of the statute are clear, no individual with a third drug offense can be allowed to appear before the Parole Board unless the priors are for possession. The Appellant

has a prior offense of distribution of cocaine, so this statute does not allow him parole eligibility. Since it was applied properly this decision should be affirmed. When the terms of a statute are clear, the court must apply those terms according to their literal meaning. *Cooper v. Moore*, 351 S.C. 207, 569 S.E.2d 330 (2002).

CONCLUSION

Based on the foregoing reasons the ALC correctly dismissed the appeal; therefore the Respondent respectfully requests the final decision of the Administrative Law Court be affirmed.

Respectfully submitted,



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Assistant General Counsel

South Carolina Department of Probation,
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Columbia, South Carolina
June 15, 2015

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From The Administrative Law Court
S. Phillip Lenski, Administrative Law Judge
Case No. 14-ALJ-15-0024

Appellate Case No. 2014-002640

Ikeef Brailsford, # 264172 Appellant,

vs.

S.C. Department of Probation, Respondant.
Parole, and Pardon Services

CERTIFICATE OF COUNSEL

I hereby certify that all within is the material proposed
to be included and nothing more necessary to this appeal.

Ikeef Brailsford
Ikeef Brailsford, # 264172 Appellant
Maddoxall Correctional Institution
1516 Old Gilliard Road
Ridgeville, S.C. 29472

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From The Administrative Law Court
S. Phillip Lenski, Administrative Law Judge
Case No. 14-AJ-15-0024

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AUG 03 2015

Appellate Case No. 2014-002640 SC Court of Appeals

Ikeef Brailsford, #264172 Appellant,

vs.

S.C. Department of Probation, Parole, and Pardon Services Respondant.

CERTIFICATE OF SERVICE

I, Ikeef Brailsford #264172, Appellant, hereby certify that I have served the Record on Appeal and the Final Brief of Appellant on the Court this 30th day of July, 2015, by depositing copies of the same in the United States Mail, postage prepaid, addressed to their clerk at:

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

Ikeef Brailsford
Ikeef Brailsford, #264172 Appellant
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July 30, 2015