

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

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AUG 03 2015

Appellate Case No. 2014-002640

SC Court of Appeals

Ikeef Brailsford, # 264172 Appellant,

vs.

South Carolina Department of Probation, Parole
and Pardon Services,

. Respondant.

FINAL BRIEF OF APPELLANT

Ikeef Brailsford, # 264172
Appellant

Macdougall Correctional Institution
1516 Old Gilliard Road
Bidgeville, S.C. 29472

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:

Argument

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

As noted in the Appellant's Initial Brief, the statute in question does not address specifically whether or not those convicted of a 3rd or sub. offense in which all the priors are not for possession are eligible for parole. (R. p.9). Contrary to the Respondent's assertion, no where does the statute "clearly states that an inmate convicted of a 3rd drug offense is eligible for parole only if the prior offenses were for possession." (R. p.20) Because the statute is quiet about parole eligibility for those 3rd or sub. offense in which all priors are not for possession, the rules of statutory construction are to be employed to determine the legislature intent on the issue. When a term is not defined in the code of laws, courts 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 portion of § 44-53-375(B) relevant to this appeal reads:

Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a 3rd 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)

Agreed to by both parties involved and the ALC, the "Notwithstanding any other provision of law" clause added in the amended portion of this subsection in the 2010 Omnibus Act takes away the applicability of the general statute § 24-13-100, which denies parole eligibility to certain offenses, to the entirety of those sentenced under the subsection. Amended statute should be construed as if original statute had been repealed, and new and independent act is amended form adopted. State ex rel. Carter v. State, 481 S.E.2d 429, 325 S.C. 204 (1997). So the statute itself is to determine parole eligibility under the subsection and the parole eligibility is to be construed in light most favorable to those convicted under the statute. As with any statute that is penal in nature, a court must construe the parole statute strictly in favor of the defendant and against the state. State v. Dingle, 376 S.C. 643, 659 S.E.2d 101 (2008).

By explicitly stating the sentence must not be suspended nor probation granted to those in the "In all other cases" category and not addressing the other provisions granted to all convicted under the subsection, it is reasonable to conclude that legislature knows the court is to construe that to mean those convicted that falls in the before mentioned category are eligible for the not mentioned provisions under the rules of statutory construction. "The canon of construction' *expressio unius est exclusio alterius* holds that'

to express or include one thing implies the exclusion of another, or of the alternative." Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000); The legislature is presumed to be aware of [courts] interpretation of statutes. Wigfall v. Tideland Utilities, Inc., 580 S.E.2d 100, 354 S.C. 100 (2003). In the amended portion of the subsection in question- § 44-53-375(B), legislature identifies the parameters of what is to be allowed to all convicted under the subsection which includes: being able to have the sentence suspended and probation granted, eligibility of parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. For those convicted under the subsection in the "In all other cases" category, the statute only says they are not to have their sentence suspended nor probation granted. If legislature intended for any of the other provision to be disallowed to those in that category they would have expressly say so as they did about suspending sentences and granting probation." The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded. Exceptions strengthen the force of the general law and enumeration weaken it as to things not expressed." Hodges, at 87, 533 S.E.2d at 582.

Considering the wording of the statute alone, it seems clear the legislature only wanted the offenders that fell in the category of "In all other cases" to not have their sentence suspended nor probation granted. If the statute had not contain the sentence that begin with "In all other cases", it would follow that those of 3rd offense and all their priors not being for possession would not be allowed parole. Applying the principle of "expressio unius est exclusio alterius" it should be the conclusion of this Court that the legislature intended for all the provisions of the statute to be granted to those in the "In all other cases" category save for having the sentence suspended and probation granted, which were specifically excluded. See, State v. Bolin, 378 S.C. 96, 662 S.E.2d 38 (2008); State v. Thomas, 372 S.C. 466, 642 S.E.2d 724 (2007); and Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001).

Conclusion

The Court should rule in this appeal that the Appellant is to be parole eligible as determined by S.C. Code Ann. § 44-53-375 (B).

Respectfully Submitted,

Archie Brailsford

Archie Brailsford, # 264172 Appellant
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July 30, 2015

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Parole, and Pardon Services

CERTIFICATE OF SERVICE

I, Ikeef Brailsford #264172, Appellant, hereby certify that I have served the Final Brief of Appellant dated July 30, 2015 on the Respondant this 30th day of July, 2015, by depositing a copy of the same in the United States Mail, postage prepaid, addressed to them at:

Tommy Evans, Jr. Esq.
SCOPPS
P.O. Box 50666
Columbia, S.C. 29250

July 30, 2015

Ikeef Brailsford ✓
Ikeef Brailsford, #264172 Appellant
MacDougall Correctional Institution
1516 Old Gilliard Rd.
Ridgeville, S.C. 29472

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Pardon, and Parole Services

CERTIFICATE OF COUNSEL

I hereby certify that this Final Brief complies with Rule 211(b)
SCACR and with the South Carolina Court of Appeals order dated July 13,
2015.

Ikeef Brailsford
Ikeef Brailsford, #264172
Pro-Se Appellant

July 30, 2015