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.

South Carolina DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES,.....RESPONDENT

FINAL BRIEF OF RESPONDENT

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ATTORNEY FOR THE RESPONDENT

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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 was unaware that the buyer was an uncover 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. (R.p.1-p.3). 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 statue would have not limited parole eligibility. The statue 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 statue 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 statue 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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Columbia, South Carolina
July 20, 2015

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007.

Tommy Evans, Jr.
Assistant General Counsel

July 20, 2015

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CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent* dated July 20, 2015, on Appellant this 21st day of July, 2015, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Ikeef Brailsford, #264172
Evans Correctional Institution
610 Highway 9 West
Bennettsville, South Carolina 29512

I further certify that all parties required by Rule to be served have been served.

Dawn K. Nichols
Executive Administrative Assistant

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Parole, and Pardon Services
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Columbia, South Carolina 29250