

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Quentin Holt, #268198,

Docket No.: 16-ALJ-15-0033-AP

Appellant,

vs.

ORDER

**RECEIVED**

DEC 15 2016

SC Court of Appeals

South Carolina Department of Probation,  
Parole and Pardon Services,

Respondent.

**STATEMENT OF THE CASE**

This matter is before the Administrative Law Court (ALC or court) pursuant to the appeal of Quentin Holt (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On June 20, 2016, the South Carolina Department of Probation, Parole and Pardon Services (Department) issued a final decision letter determining that the Appellant is ineligible for parole based upon his prior drug convictions. On August 8, 2016, Appellant filed a Notice of Appeal with this court challenging the Department's decision. Upon careful consideration of the record on appeal and briefs of the parties, the Department's decision is affirmed.

**BACKGROUND**

The Department determined that Appellant is ineligible for parole based upon his prior convictions. The Appellant is currently serving two concurrent sentences of twenty-five years, pursuant to South Carolina Code Section 44-53-375(B)(3), for "PWID/Dist/Mfg Cocaine Base or Meth, 3rd Offense." He was sentenced on September 22, 2010. Prior to these convictions, the Appellant was convicted of Possession of Powder Cocaine, 2nd Offense, pursuant to Section 44-53-370(d)(3), on December 20, 2007. He also pled guilty to Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II, 1st offense, pursuant to Section 44-53-370(b)(1), on July 24, 2000.

**ISSUE ON APPEAL**

Whether the Department erred in determining that Appellant is ineligible for parole because of his prior drug offenses.

**FILED**

DEC 08 2016

SC ADMIN. LAW COURT

## STANDARD OF REVIEW

The court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court decisions in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an administrative review process for inmate appeals), and Furtick v. S.C. Dept. of Prob., Parole & Pardon Servs., 352 S.C. 594, 576 S.E.2d 146 (2003) (incorporating final decisions of the Department into that review process). The Al-Shabazz decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." Wicker v. S.C. Dept. of Corrs., 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Because being granted parole is a privilege and not a right, the routine denial of parole does not implicate such a liberty interest; however, the denial of eligibility for parole does involve such a liberty interest, and thus is a matter properly before the ALC for review. See James v. S.C. Dept. of Prob., Parole & Pardon Servs., 376 S.C. 392, 395-96, 656 S.E.2d 399, 401-02 (Ct. App. 2008); see also Sullivan v. S.C. Dept. of Corrs., 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003).

When reviewing a decision of the Department, the ALC sits in an appellate capacity. See Furtick, 352 S.C. at 599, 576 S.E.2d at 149; Al-Shabazz, 338 S.C. at 377, 527 S.E.2d at 754. Under the appellate standard of the Administrative Procedures Act, the court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2016). The court may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2016). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

## DISCUSSION

Appellant argues that the Department misinterprets the statutes applicable to his case and the recent decision of the Court of Appeals in Bolin v. South Carolina Department of Corrections, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016), rehearing denied (Feb. 24, 2016). The Court disagrees. A review of the relevant statutes and Appellant's prior convictions supports the Department's determination that Appellant is ineligible for parole.

In determining whether an inmate is eligible for parole, several different statutes must be reviewed. The foundational rules of parole are contained in Title 24 of the South Carolina Code. Specifically, Section 24-21-610 sets the minimum amount of time that must be served of a sentence before an inmate reaches eligibility. See S.C. Code Ann. § 24-21-610 (2007). However, these baseline rules have been modified by other subsequently enacted or amended statutes. Section 24-13-100, enacted in 1995, defines Class A, B, and C felonies as “no parole offenses.” *Id.* at § 24-13-100.<sup>1</sup> When an inmate’s crime is a no-parole offense, the inmate is not eligible for “parole” consideration. *Id.* at § 24-21-30; see also *Bolin*, 415 S.C. at 283, 781 S.E.2d at 917 (“It is without doubt that the statutory definition for the term ‘no-parole offense’ in section 24-13-100, i.e., ‘a class A, B, or C felony . . .,’ simply describes the types of offenses for which the offender is not eligible for parole.”). Instead, the inmate must complete a community supervision program. S.C. Code Ann. § 24-21-30 (2007). Unless provided otherwise, an inmate becomes eligible for the community supervision program after completion of at least eighty-five percent of the actual term of imprisonment imposed. *Id.* at § 24-13-150(A) (Supp. 2016).

However, the rules regarding no parole offenses have been modified for certain offenses. In particular, the part of the sentencing statute under which the Appellant was convicted provides:

Notwithstanding any other provision of law, 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 is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. 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.

*Id.* at § 44-53-375(B) (Supp. 2016).<sup>2</sup> The Court of Appeals has construed this language to repeal the no-parole offense statute insofar as there is a conflict. *Bolin*, 415 S.C. at 282, 781 S.E.2d at 917 (citation omitted) (“The legislature’s use of the phrase ‘Notwithstanding any other provision

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<sup>1</sup> Offenses classified as Class A, B, and C felonies are listed in Section 16-1-90.

<sup>2</sup> The relevant language was amended, effective June 2, 2010, by 2010 S.C. Act Number 273, Section 38. That amendment is construed in the recent *Bolin* case cited above. Because Appellant was sentenced on September 22, 2010, that amendment is relevant in this case. See *State v. Dawson*, 402 S.C. 160, 164, 740 S.E.2d 501, 503 (2013) (citation omitted). Section 44-53-375(B) was again amended by 2016 S.C. Act 154, Section 9. However, no changes were made to the language at issue here.

of law,' in the amendments to sections 44-53-375 and -370 expresses its intent to repeal section 24-13-100 *to the extent* it conflicts with amended sections 44-53-375 and -370." (emphasis in original)). The holding of the Court of Appeals in Bolin is very specific and does not, as Appellant argues, repeal Section 24-13-100 in all applications of the Omnibus Bill which amended the sentencing statute. The "notwithstanding any other provision of law" language included by the legislature does repeal Section 24-13-100 in regards to a second offense under subsection (B). S.C. Code Ann. § 44-53-375(B) ("Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense . . . is eligible for parole . . ."). However, the case at hand involves a third offense. For a third or subsequent offense, all previous drug offenses must have been for possession under Section 44-53-375(A) for the Appellant to be parole eligible:

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.

Id.

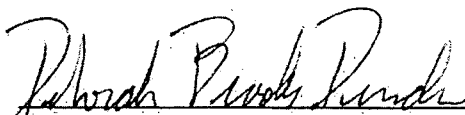
The Court rejects Appellant's somewhat inverse interpretation of this language for third offenses. Appellant argues that "if one has a prior non-possession offense, then a sentence cannot be suspended, nor may probation be granted. The language does not state that an inmate may not be considered for parole." The language need not restate that Appellant is not eligible for parole because the law regarding parole ineligibility still controls. The law contained in 24-13-100 still applies in all cases unless there is specifically expressed legislative intent to the contrary. See Bolin, 415 S.C. at 283, 781 S.E.2d at 917 (quoting Strickland v. State, 276 S.C. 17, 19, 274 S.E.2d 430, 432 (1981)) ("Statutes of a specific nature are not to be considered as repealed in whole or in part by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to do so is explicitly implied therein."). The sentences beginning "notwithstanding" express such intent. However, Appellant does not fall into the parameters set by those sentences (first or second offense, or third with only simple possession priors). Rather, Appellant falls into the category for whom Section 24-13-100 is still binding.

Appellant also argues that to reject his interpretation is to violate the rule of lenity. The Court disagrees. The rule of lenity provides that doubt must be resolved in favor of the defendant where there is a *genuine ambiguity* in a statute. See Bryant v. State, 384 S.C. 525, 533, 683 S.E.2d 280, 284 (2009). In Bolin, the Court found that the legislative intent of the statute was reasonably discoverable, and interpreted the statute accordingly. See Bolin, 415 S.C. at 286, 781 S.E.2d at 919. In this case, the Court does not find the statute to be genuinely ambiguous. The legislature clearly provided an exception to existing law only where an inmate convicted of a third offense has prior offenses that only include simple possession under subsection (A). Miller v. Doe, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994) (“If a statute’s language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.”) Appellant’s prior drug offenses are not limited to simple possession. Because Appellant does not qualify for the parole eligibility exception for a third offense, the “no parole” rules remain in place. Under those rules, a Section 44-53-375(B)(3) offense, such as the Appellant’s, is classified as a Class A felony, and is thus a no-parole offense. S.C. Code Ann. § 24-13-100 (2007) & § 16-1-90(A) (2015). Therefore, the Department did not err in determining that the Appellant is ineligible for parole based upon his prior drug convictions.

**ORDER**

**THEREFORE, IT IS HEREBY ORDERED** that the decision of the Department is **AFFIRMED**.

**AND IT IS SO ORDERED.**

  
Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

December 8, 2016  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**  
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy heretofore, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 8<sup>th</sup> day of December 2016  
By: R. E. Collier  
Judicial Law Clerk