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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Alonzo C. Jeter, III, #282902,

Docket No.: 16-ALJ-15-0035-AP

Appellant,

vs.

ORDER

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

FILED

JAN 26 2017

STATEMENT OF THE CASE

SC ADMIN. LAW COURT

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Alonzo Jeter (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On July 29, 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 methamphetamine trafficking conviction. On August 19, 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

Appellant is currently serving five concurrent sentences, all for drug related offenses. In this case, Appellant's parole eligibility is determined by his most severe sentence. Appellant was sentenced to fifteen years under S.C. Code Section 44-53-375(C)(1)(b) on July 16, 2015. On the same day, Appellant was also sentenced to fifteen years pursuant to S.C. Code Section 44-53-375(B)(3), ten years pursuant to S.C. Code Section 44-53-445(A), fifteen years pursuant to S.C. Code Section 44-53-375(B)(3), and ten years pursuant to S.C. Code Section 44-53-445(A).

ISSUE ON APPEAL

Whether the Department erred in determining that Appellant is ineligible for parole because his offense under SC Code Section 44-53-375(C)(1)(b) falls under the no parole rule.

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 has erred in concluding that he is not eligible for parole under the language of Section 44-53-375(C)(1)(b). The Court disagrees. A review of the relevant statutes 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, the 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

§ 24-13-100.¹ 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 v. S.C. Dept. of Corrs.*, 415 S.C. 276, 283, 781 S.E.2d 914, 917 (Ct. App. 2016), rehearing denied (Feb. 24, 2016) ("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). This is known as the "85% rule."

However, this rule for no parole offenses has been modified for certain specific offenses within the language of the sentencing statute. In particular, the legislature has amended certain drug crime sentencing statutes to allow for parole eligibility in certain cases. The Court of Appeals has construed the language of the amendments to repeal the no-parole offense statute insofar as there is a conflict with the more recent and specific amendments. ~~*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 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 repeal the 85% rule in regards to all offenses contained in the statutory sections amended by the legislature.

The subsection of the drug statute that Appellant was sentenced under provides:

(C) A person who knowingly sells, manufactures, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ten grams or more of methamphetamine or cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), is guilty of a felony which is known as "trafficking in methamphetamine or cocaine base" and, upon conviction, must be punished as follows if the quantity involved is:

(1) ten grams or more, but less than twenty-eight grams:

(b) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars[.]

¹ Class A, B, and C felonies are listed in Section 16-1-90. Appellant's offense is a Class A felony.

(F) Sentences for violation of the provisions of subsections (C) or (E) may not be suspended and probation may not be granted. A person convicted and sentenced under subsection (C) or (E) to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release as provided in Section 24-13-610, or supervised furlough as provided in Section 24-13-710.

S.C. Code Ann. § 44-53-375(C)(1)(b) (Supp. 2016). Appellant's argument is based upon an inference derived from subsection (b). He argues that because parole ineligibility was not explicitly stated, it is by implication not included. Appellant bases his argument on the precept that "to express or include one thing implies the exclusion of another, or of the alternative." State v. Leopard, 349 S.C. 467, 472-73, 563 S.E.2d 342, 345 (Ct. App. 2002). However, this argument ignores, not only the plain language of the statute, but the larger statutory scheme of parole eligibility.

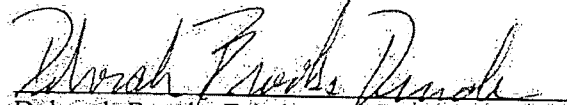
In interpreting a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Further, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.

Ranucci v. Crain, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014) (internal quotation marks and citations omitted). The language in subsection (F) has a plain meaning which gives effect to all relevant portions of the law without rendering any language redundant or absurd or resorting to canons of construction. The "no parole offense" rule applies to all class A, B, and C felonies, including Appellant's. However, some offenses are excluded from the classification system. This includes some of the S.C. Code Section 44-53-375(C) or (E) offenses referenced in subsection (F). S.C. Code Ann. §16-1-10 (2015). Thus, the legislature needed to specifically make these offenses ineligible for parole. Because offenses like Appellant's, which are classified, are already governed by the no parole rule, there is no need for additional, redundant language to be included in the offense-specific statute. Put simply, the drug statute does not include language making Appellant ineligible for parole, because the ineligibility has already been provided for by the no-parole offense statute. Therefore, based on the plain language of the statute the Court concludes that the Department did not err in finding that Appellant is ineligible for parole.

ORDER

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

AND IT IS SO ORDERED.


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

January 26, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE

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

This 26th day of January 2017
By: R. E. Cole
Judicial Law Clerk