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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James Wesley Patterson, #296129,

Docket No. 16-ALJ-15-0038-AP

Appellant,

vs.

ORDER

South Carolina Department of Probation
Parole and Pardon Services,

FILED

JAN 23 2017

Respondent.

STATEMENT OF THE CASE

SC ADMIN. LAW COURT

This matter is before the Administrative Law Court (ALC or court) pursuant to the appeal of James Wesley Patterson (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On July 25, 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 24, 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. On June 12, 2013, Appellant was convicted of manufacturing methamphetamine, third offense, pursuant to South Carolina Code Section 44-53-375; and possession of methamphetamine, third offense, pursuant to South Carolina Code Section 44-53-375(A). On November 10, 2005, Appellant was convicted of possession of methamphetamine/crank, third offense, pursuant to South Carolina Code Section 44-53-375(A). On November 15, 2000, Appellant was convicted of possession with intent to distribute marijuana; and possession with intent to distribute cocaine, pursuant to South Carolina Code Section 44-53-370.

ISSUE ON APPEAL¹

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

¹ The Department also argues that the appeal should be dismissed because Appellant failed to timely file a brief.

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 statute applicable to his case. The Court disagrees. A review of the relevant statute and Appellant's prior convictions supports the Department's determination that Appellant is ineligible for parole.

Appellant's brief was due November 28, 2016. On September 6, 2016, Appellant filed a Brief that was miscaptioned "Notice of Appeal." The Court declines to dismiss the appeal on the basis of any defect in Appellant's brief.

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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 § 24-13-100.² 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).³ 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

² Offenses classified as Class A, B, and C felonies are listed in Section 16-1-90.

³ 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 June 12, 2013, 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 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 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'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, Appellant's offense is classified as 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.

8

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

January 23, 2017
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 thereof in the United States Mail postage paid, or in the Emergency Mail Service addressed to the parties) or their attorney(s).
This 23rd day of January 2017
By: L.E. Lee
Judicial Law Clerk