

In the S.C. Supreme Court

Vincent Rice
Petitioner
vs.
State of S.C.
Respondent

Motion for bond
for appeal review

case #
2015-002479

In accordance with the S.C. Rules of Court (243)(k), the Petitioner moves prose, before the court to have a bond pending appellate review. Petitioner's motion is within jurisdiction of this court being his sentence does not exceed (10) years ct. State v. Satterwhite 20 S.C. 574, 255 S.E.2d 155 (1943). "In the courts of sessions and the judges thereof like the Court of the King's bench in England, have the power to admit persons to bail in all cases, even after conviction. The Petitioner deems exceptional circumstances exist in his case due to the following but no limited reasons.

The Forfeiture of Petitioner's Imminent Release

The basis of the Petitioner's forfeiture is whether he is a no-parole offender required to serve 85% of his term before he can be released. In March 2014, Petitioner was contacted by Lee institutional staff, which informed him that due to the recent S.C. Court of Appeals ruling in Bolin vs. SCDC, Petitioner was no longer required to serve 85% of his term for a PWID 3rd offense. As a result of the ruling, Petitioner's release date was significantly changed from Nov 1, 2018 to being released on Supervised Furlough on September 1, 2016.

On or about June 2014, Lee classification contacted Petitioner again to evaluate, and screen him for his Sept 1, 2014 release, as a means of insuring he met all the Furlough qualifications. ct. code 24-13-170. The Petitioner was successfully approved at all qualifications and signed the Furlough certificate along with other institutional release documents. On the morning of Aug 31, 2014, Lee staff informed Petitioner that he would not be released the following day. The staff produced no valid legal documents from legislation or the courts, nor did they explain as to why. The staff repeatedly stated "they didn't know" and it "came from the top". The Petitioner's 5th and 14th amendment rights were abrogated in the process.

It has since come to the Petitioner's attention, that a number of PWID 3rd offenders were "pre-maturely" released by the DOC after the Feb 2014, S.C. court of Appeals Bolin ruling. More importantly, no state agency has re-arrested these offenders, but they have been allowed their right to freedom and pursuit of happiness. The Petitioner has since amended these circumstances in his Johnson brief to the S.C. Supreme Court. Thus, he moves before this court under the applicable rule of (243)(k), and prays that bail is granted upon review.

1- The Court of Appeals ruled that the 2010 Crime Reduction Act repealed, title 24-13-100-150, which defined a no-parole offense as 20 years or more and previously required serving a 85% term for class C Felony (1988). However, the Court specifically emphasized that the language of the convicted statute should be the succeeding penalty.

Misconstruing of Statute 44-53-370(b)(2) and the Legislative Intent

The DOC has stated Petitioner must serve 85% of his prison term due to the following language of his convicted statute; "in all other cases, the sentence may not be suspended nor probation granted"

The Agency's interpretation is unreasonably in error, because the language does not state the offender must serve an 85% term before release. The above language suggest a "pre-sentencing" prohibition and does not infer a "post-conviction" prohibition. Therefore, the DOC has expanded the intended purpose of the statute, and has "forced" the petitioner to serve an 85% term. et § 22 C.J.S., "rules, and regulations of a department of state are not statutes, nor can they in charging crime have the force of statutes."

Furthermore, the court of appeals relied on the following case law; Swent v. State 688 SE.2d, "legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute" et State v. Johnson 720 SE.2d "the court will give words their plain and ordinary meaning."

Petitioner asserts the Agency's and (British All's) construing of statute 44-53-370 is in conflict with the S.C legislative's intended purpose of non-trafficking drug offenders, that is why the legislation gives inference to the amount of drugs possessed. et Watson v. U.S 439 F.2d 442, furthermore § 14 C.J.S suggest, "fixed legislative penalties, must be natural, not arbitrary and must be made with reference to the heinousness or gravity of the act, and not matters disconnected there from."

The S.C legislative intent for the penalties of 44-53-370(b)(2) can be inferred from the "plain language" of the statute along with additional legal authority and state policy such as: The Feb 1, 2010 Final Report of The Sentencing Reform Commission to the General Assembly, which prompted the June 2010 Omnibus Crime Reduction act

The S.C legislation created the Sentencing Reform Commission in 2009 to alleviate the Judicial System and also a cluttered Corrections Dept (see 2009 SCDC report to the Reform Commission) of low-risk, non-violent offenders which accounted for 49% of S.C 2009 correction's population. The Commission's objective was to reform the laws and penalties of drug and property offenses. The Commission's findings and recommendations included that evidence-based programs would allow non-violent offenders into early release programs such as Furlough. And being so, the prison bedspace would be reserved for the more serious violent offenders.

The S.C General Assembly solely relied on the Commission's recommendations before enacting the 2010 Crime Reduction Act. This is the same act that the Court of Appeals agreed repealed title 24-13-100-150, as no-prate 85% offenders. Thereby, Petitioner asserts the Final Report of the Commission, The Crime Act, along with the language of the statute, all support that the law makers intended for 3rd offenders to be released into evidence-based programs to save tax-payer dollars.

Due Process and Arbitrary Decision by the DOC

ct. South Carolina Constitution Art I §3 note 4

Due Process encompasses all rights which are of such fundamental importance as to require compliance with due process standards of fairness and justice and includes procedural rights against government actions that threaten the denial of life, liberty and property of a person. ct 473 SE.2d 870, 505 SE.2d. 548

Petitioner asserts the DOC first denied him adequate procedural rights being they failed to give him at least (30) days notice before depriving him of his Sept. 1, 2014 release. ct. S.C code 1-23-124, "In a contested case all parties must be given reasonable opportunity for hearing after giving at least (30) days notice. The DOC withheld Petitioner's freedom on Sept 1, 2014 and informed him a due process hearing would be held by staff on Sept 14, 2014, two-weeks after Petitioner's expected release.

Petitioner further asserts the Agency's "due process" hearing and decision were constitutionally invalid. The contested issue of the hearing encompassed, "the intent of state law and clarification of that intent, which in turn made Petitioner subjectable to constitutional protection. Petitioner's liberty was a risk, therefore the DOC was required to afford him adequate due process as established in ct. Wolff v. McDonnell 418 US, McNeil v. S.C.D.C., Al-shabazz v. state. To the contrary, the hearing was informal, and held by Lee staff members who were incapable of explaining the constitutional validity of the Agency's actions. They further informed Petitioner that some department entity would make a decision (6) days later.

The Petitioner was not allowed to engage in oral defense, though the burden of proof was shifted from the DOC. There is no written policy of a Dept due process hearing, therefore Petitioner could not adequately prepare for such a hearing. He was not allowed an attorney and received a decision rendered on no facts or conclusions of law. ct. S.C 1-23-124, "the final decision or order of a contested case which is adverse to a party must include findings of facts and conclusions of law, separately stated, Findings of fact must be accompanied by a concise and explicit statement supporting findings". The DOC gave a decision without the benefit of these laws for administrative procedures. Therefore, Petitioner was substantially prejudiced by this process ct. 406 SE.2d 340

The Lee staff stated the hearing was "informal", and that explicit statements and findings of facts were not needed. ct. APA Act U.S.C # 551, "An informal hearing usually is a simple meeting and discussion between an agent of the agency actions."

Consequently, the DOC staff merely "informed" Petitioner of an action made in a email discussion days prior to his Sept 1, 2014 release. The DOC was obligated to afford Petitioner adequate due Process in regards to his liberty. ct. Matthews v. Eldridge 424 U.S 316, "The degree of potential deprivation that may be created by a particular decision is a factor to be considered in assessing the validity of any administrative decision making process."

The Petitioner has attached a copy of the email discussion between several agency staff and a former solicitor whom was no longer a officer of the court, at the time of her, "legal opinion" as to whether Petitioner should serve a 85% term. 1

The Petitioner further asserts he was prejudice by the Agency's reliance of Former Solicitor's All's opinion on statute 44-53-370 (b)(2). The DOC was legally obligated to contact the administration of court or the attorney general's office to clarify a statute pertaining to the release of a person.

Other factors for Consideration

From the state's own evidence, indictment #2012GS4001413 PWID Mar 3rd, weighed 13 grams, which gives inference to a charge of possession. Therefore, it is unlikely the legislation intended for PWID 3rd to be 85% just as most serious violent offenders are. The DOC has forced the language of 44-53-370 (b)(2) to define Petitioner as a no-parole 85% offender. Meanwhile, the S.C legislative intent can be supported by the 2010 Crime Reduction Act, which suggest that, non-trafficking drug offenders are eligible for early release programs to save the tax-payer dollars for low-risk offenders.

In addition:

- A.) Petitioner has never committed a violent crime
- B.) Petitioner has went before the non-violent parole board 3 times, now he has been rejected as a non-eligible offender
- C.) Petitioner is not a flight Risk, being that he has completed his prison term, and has been a lifetime S.C resident.
- D.) Similar offenders convicted of 44-53-370(b)(2) were released and not apprehended
- E.) Petitioner was arbitrarily deprived of his immediate release by the Doc staff
- F.) Petitioner has a loving family to support.

1 - The email document was presented to Petitioner on Aug 27, 2014. as the only "legal validation" of forfeiting his release,

Conclusion

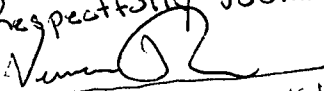
Petitioner was compelled to file this pro se motion because Appellate Attorney L. DuRant has moved to be relieved as counsel and has informed Petitioner to expect no assistance from her office.

In addition, there is no constitutional right to have attorney representation during the criminal appeal process. Secondly, Petitioner did not request for his current attorney, who has openly opposed any further appeal options; therefore it is unethical for an attorney that Petitioner is not entitled to, to exercise control over the appeal case, at § 297 G.D.S., "However, accused is entitled to and preserved actual control."

Under usual circumstances, Petitioner is aware of S.C. courts and the instance of hybrid representation. However, Petitioner prays he is exempted from this general rule for the circumstances within this motion. at U.S. Williams 791 F.2d 1383, "Whether to allow hybrid representation is within the discretion of the court".

In conclusion, Petitioner prays the court grants bail upon a genuine review.

Respectfully Submitted



Vincent Rice #316178

E.C.1

610 Hwy 9

W. Bennettsville, S.C. 29512

2338

Audrey Crum (CrumAud)

received on Aug 31, 2016

From: Christina Bigelow (C057846)
Sent: Tuesday, August 30, 2016 8:44 AM
To: Audrey Crum (CrumAud)
Subject: RE: scdc#316178 Vincent Rice

I agree he needs to be converted to 85% for his 3rd drug offenses after having a due process hearing.

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections Post Office Box 21787
4444 Broad River Road
Columbia, South Carolina 29210
Phone: (803) 896-1738
Fax: (803) 896-1766

-----Original Message-----

From: All, Britton [mailto:BALL@RCSD.NET]
Sent: Monday, August 29, 2016 8:48 PM
To: Audrey Crum (CrumAud) <Crum.Audrey@doc.sc.gov>
Cc: msawyer@sinklaw.com; Wanda Blanding (BlandWa) <Blanding.Wanda@doc.sc.gov>; Joette Scarborough (Scarbor) <Scarborough.Joette@doc.sc.gov>; Christina Bigelow (C057846) <Bigelow.Christina@doc.sc.gov>
Subject: RE: scdc#316178 Vincent Rice

I reviewed Mr. Rice's RAP sheet. There is a 2008 conviction for PWID/MDP Cocaine 1st [44-53-370(b)(1)]. He got 2 years suspended to 1 year probation. To answer your question, in my legal opinion based on his RAP, his prior record contains at least one conviction more serious than a simple possession, and thus, based on the information you're providing to me, he should be classified as an 85% offender.

I cannot speak to the Court's intent. According to my reading of the law, he should be sentenced under 24-13-150 for 85%, and does not meet the exception under Bolin/Fowler vs. SCDC. That being said, I am not offering an official legal opinion; nor should you rely on this. I would advise you independently run a RAP and have your general counsel review it. I don't know what kind of access you all have to RAPs, but if you need me to run it for you and send it, just have your general counsel let me know and I'll send it over.

Britton All

-----Original Message-----

From: Audrey Crum (CrumAud) [mailto:Crum.Audrey@doc.sc.gov]
Sent: Thursday, August 25, 2016 10:57 AM
To: All Britton - *Natasha Solicitor*
Cc: msawyer@sinklaw.com; Wanda Blanding (BlandWa); Joette Scarborough (Scarbor); Christina Bigelow (C057846)
Subject: FW: scdc#316178 Vincent Rice

Asst. Solicitor: All

Ref: I/M Vincent Jermaine Rice, SCDC# 316178

This office is seeking clarification in referencing to statute 44-53-0370(b)(2), Drug/Manuf., poss. Of other sub. In Sch. I,II,III or flunitrazepam w.i.t.d - 3rd or sub. Offense (0188), Per the Judicial System CDR 0188 is reflecting a Felony C. which requires the inmate to satisfy 85% of his sentence, but Per Bolin/Fowler vs SCDC this offense may not require 85%. Per General Counsel the interpretation and statute deems inmate ineligible for Bolin/Fowler vs SCDC based on a prior Manuf/Dist of any drug offense. What we are looking for is information concerning the

offender's prior record. If the inmate prior record contains things more serious than simple possession (i.e., distribution, PWID, manufacturing, conspiracy, etc.) then he must be classified as an 85% offender who is not eligible for parole. If his prior drug record contains ONLY simple possession, he would not be an 85% offender. Please inform this office of the court intent of this charge. This inmate is SCHEDULE to be release on September 01, 2016 to SUPERVISED RE-ENTRY. I will be awaiting your response. Please feel free to contact me if you have any question or concerns.

Audrey Crum
Inmate Records Office
Record Processing Supervisor
Crum.Audrey@doc.sc.gov
(803)896-1994

-----Original Message-----

From: DONOTREPLY
Sent: Thursday, August 25, 2016 10:24 AM
To: Audrey Crum (CrumAud) <Crum.Audrey@doc.sc.gov>
Subject: Scan from a Xerox WorkCentre

Please open the attached document. It was scanned and sent to you using a Xerox WorkCentre.

Attachment File Type: PDF

WorkCentre Location: Inmate Records Upstairs (DC000124) 896-8531

For more information on Xerox products and solutions, please visit <http://www.xerox.com>

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 item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), 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;

(3) a substance classified in Schedule IV except for flunitrazepam is guilty of a misdemeanor and, upon conviction, for a first offense must be imprisoned not more than three years or fined not more than three thousand dollars, or both. In the case of second or subsequent offenses, the person is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than six thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item 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 subsections (c) and (d), 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;

(4) a substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, for a first offense must be imprisoned not more than one year or fined not more than one thousand dollars, or both. In the case of second or subsequent offenses, the sentence must be twice the first offense. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item 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 item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), 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;

(c) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article.

(d) A person who violates subsection (c) with respect to:

(1) a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a misdemeanor and, upon conviction, must be imprisoned not

ACI-0471

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

NOTICE AND RECORD OF HEARING FOR
SENTENCE CLARIFICATION

TO: Vincent Rie

SCDC#: 316178

INSTITUTION: Lee

Be advised that the South Carolina Department of Corrections has determined that it may be necessary to revise the calculation of your sentence due to:

- Audit
- New Documentation Received: _____
- Other: _____

This revision may result in a later projected parole date and/or projected maxout date. You will have the opportunity to be heard in this matter on: Inmate was "informed" about this change at the hearing, there was no fact finder, or conclusion of evidence. "No Due Process".

Hearing Date: 9-14-16
Hearing Time: 10:00 AM

Date & Time Notified: 8-31-16 9:24 AM PM

Classification Case Manager/Designee (Printed Name): C. Vandeker

Signature: C. Vandeker

Inmate Signature: [Signature]

SCDC #: 316178

Date: 8/31/16

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD OF HEARING FOR SENTENCE
CLARIFICATION/REVISION

TO: Vincent Rice

SCDC#: 316178

INSTITUTION: Lee

Final Decision
of

Sept 14, 2016 hearing

There was no evidence or "hearing". Inmate was "informed" by classification by a decision that was made prior to the hearing. Based upon the evidence disclosed at the hearing your sentence calculation (circle one) has/has not been revised. As a result, your projected dates are as follows:

Projected Maxout Date: 3-25-17 Projected Parole Date: 3-23-17

The above dates are subject to change if you lose or fail to earn good time, earned work, earned education, or other credits. You have a right to appeal this decision by filing an inmate grievance pursuant to SCDC Policy GA-01.12, "Inmate Grievance System".

Classification Case Manager/Designee: Vanderhul - Caseworker

Inmate Signature: Vin R.

Date: ~~9-14-16~~ 9-14-16

→ This was the "final decision" the department gave the inmate after the "Due Process hearing." Being that this was a state created due process "liberty interest" protected by the 14th Amendment. Due process clause and clarified due process for prisoners in Wolff vs. McDonnell, McNeil vs. S.C.D.C., thus the department was required to state their finding of facts and conclusions of law, including the evidence that weighed their decision.

Certificate of Service

Petitioner, Vincent Rice, has mailed by vial postal mail to a copy of Pro Se Motion for Appellate Bond Review to

Esquire Lanelle Durant

P.O. Box 11589

Columbia, S.C. 29211

↓

Attorney General's office

P.O. Box 11549

Columbia, S.C. 29211

March 2, 2016

To the Honorable Chief Justice of S.C.
RE: Granting of Appeal Bond

February 2, 2016

Good day, I hope this letter has reached you at no inconvenience. I was compelled to write you in a urgent and desperate intrest of justice, because it is apperant that agents of the state have made it a practice denying me full relief of the law. It has come to my attention that I'm qualified and therefore entitled to the relief of ~~an~~ an appeal bond. As a result I've presistently requested for my appellate counsel to file such a motion due to some rare circumstances, on the contrary she and the administrative heads of that office have chosen to deprive me a fair chance of relief.

The unusual circumstances of my case curtails the DOC miscalculating my sentence and forfeiting my release, one day prior to my actual release ~~as a result~~, I was scheduled to be released on supervised furlough on September 1, 2016, however on August 31, 2016 the institutional staff informed me that I would not be leaving and reverted my 1 year sentence to 85% due to the language of code 14-57-770(b)(2) 3rd offense. This was devastating after years in prison and I've also found it to be error, primarily in the interpretation or construing of the statute and also the due process procedures in make such a decision on short notice. My release date was changed to November 2018 because of this.

Furthermore, I have repeatedly requested for my appellate counsel to submit a motion for an appeal bond hearing under SCR (243)(k) on the grounds that my sentence is under (10) years, I have no victims in my case, my offenses are not serious, I'm not a threat to society, never committed a violent crime, I have a current appeal in process, I'm a lifetime S.C resident, I've completed my sentence, other 3rd offenders have been "prematurely" released by the DOC and have been allowed to "remain" free citizens, thus it would be reasonably fair for me to await an conclusion or disposition of my appeal, while at home with my family. In addition, the facts will prove the DOC misis interpretation of my convicting statute is in conflict of the legislative intent as conveyed in the 2010 Crime Act and plain language of my statute, I'm now classified as a 85% "violent offender" severing a mandatory term for a 3rd offense PWID Mari offense in which the marijuana weighed 13grams in one bag.

My appellate counsel blatantly overlooks these ~~case~~ pros and rule (243). She has stated to me that "2019 is around the corner and I should just wait to get out", she consistently says "a judge won't grant me a bond" and that she hadn't seen it in ten years. Her position, disregards her duties as an esquire and officer of the court, this deprives me of justice, or me filing a pro se motion because S.C courts do not recognize hybrid representation. Therefore, I'm requesting for the Bench to grant me an appeal bond hearing in the intrest of justice. I'm serving an illegal prison term and thus I'm seeking the most imminent relief possible. My attorney has assume the role of the judge and is now a obstacle in the face of justice. In conclusion I pray you may consider the urgent of my concern and allow me a full bite of the apple.

RECEIVED

RECEIVED

Respectfully Submitted

Vincent Rice

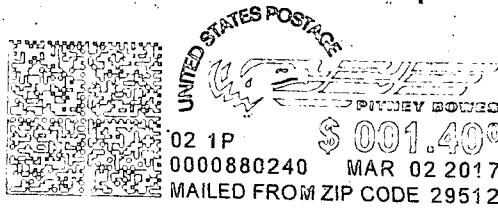
F.C. 1
410 Hwy 9
W. Dunsmuir, S.C 29512

MAR 13 2017

MAR 10 2017

SC Court of Appeals

Vincent Rice # 36678
E.C. 1
RHC
W. Hwy 9
W. Bennettsville, S.C. 29512



Clerk of S.C. Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

