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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dennis Davis, #288558,

Appellant,

vs.

South Carolina Department of Probation, Parole and Pardon Services,

Respondent.

Docket No.: 16-ALJ-15-0034-AP

ORDER

FILED

FEB 22 2017

SC ADMIN. LAW COURT

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Dennis Davis (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On June 27, 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 11, 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. Appellant is currently serving two sentences for Distribution of Marijuana, 3rd Offense. Appellant received these 125-month concurrent sentences on May 21, 2014, pursuant to South Carolina Code Section 44-53-370(b)(2). In 2002, Appellant received three other drug-related sentences: five years for Trafficking Crack Cocaine, 10–28 grams, 1st Offense, pursuant to Section 44-53-375(C)(1)(a); ten years for Possession of Crack Cocaine with Intent to Distribute Within Proximity of a College, pursuant to Section 44-53-445(B)(2); and thirty days for Possession of Marijuana, 1st Offense, pursuant to Section 44-53-370(d)(4).

ISSUE ON APPEAL

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

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 44-53-370(b)(2), and that the Department has failed to correctly apply 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, 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, 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). 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:

> 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

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

> credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted[.]

S.C. Code Ann. § 44-53-370(b) (Westlaw through 2014). Appellant's argument is based upon an inference derived from the last sentence. He argues that because parole ineligibility was not explicitly stated, it is by implication not included. 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). Quite simply, the drug statute does not include language making a third offender with non-qualifying prior offenses ineligible for parole because the ineligibility has already been provided for by the no-parole offense statute.

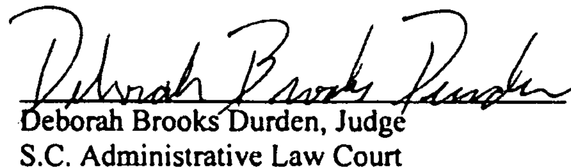
Therefore, unless Appellant fits within the exceptions to the overall rule carved out by the notwithstanding provisions, he is ineligible for parole because he was sentenced for a Class C felony. The exception for a third offense requires that "all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d)" of Section 44-53-370. In this case, Appellant has prior offenses sentenced under Section 44-53-375(C)(1)(a) and Section 44-53-445(B)(2). Thus, Appellant does not fall within the exception and the no-parole offense rule still applies to Appellant.

ORDER

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

AND IT IS SO ORDERED.

FILED
FEB 22 2017
SC ADMIN. LAW COURT



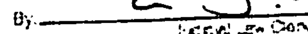
Deborah Brooks Durden, Judge
S.C. Administrative Law Court

February 22, 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 hereof, in the United States mail, postage paid, or in the Interagency Mail Service and addressed to the party(ies) or their attorney(s).

This 22nd day of February 2017



By: ______
Judicial Law Clerk