

Brief of Appellant
The State of South Carolina
In the Court of Appeals
Appeal from Administrative Law Court
Deborah Brooks Durden, S.C. Administrative Law Court
Case No. 2017-000486

James Wesley Patterson # 296129, Appellant

v

South Carolina Department Probation, Parole and Pardon
Services Respondent

Initial Brief of Appellant

James Wesley Patterson # 296129
Kirkland Corr. Inst. B2-15
4344 Broad River Rd
Columbia, S.C. 29210

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MAR 29 2017

SC Court of Appeals

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Statement of Issue on Appeal

1. Did the Administrative Law Court unlawfully decide that the Appellant is not eligible for parole due to his prior drug convictions

Statement of the Case

On August 16, 2011 the Appellant was found to be knowingly manufacturing or providing financial assistance for the creation of methamphetamine. He was arrested for the offenses of possession of methamphetamine. It was later discovered that the Appellant had two prior drug offenses; therefore, both offenses were upgraded as third offenses.

On June 12, 2013, the Appellant appeared before the Honorable G. Edward Wehner for the offenses of manufacturing methamphetamine third offense and possession of methamphetamine third offense. Upon the conclusion of this appearance the Court sentenced the Appellant to a ten year period of incarceration for possession of methamphetamine and one hundred and sixty months for manufacturing methamphetamine third offense.

At the time, the Appellant committed these offenses, South Carolina law did not allow a person serving a sentence for manufacturing methamphetamine third offense to be eligible for parole. In 2010 the General Assembly passed the South Carolina Reduction of Recidivism Act, which went into effect in January 2011. The law allowed persons of third or subsequent parole eligibility. The South Carolina Parole, Pardon and Probation Services conducted an investigation to make a determination of the Appellant's parole eligibility. The South Carolina Parole, Pardon and Probation Services determined that the Appellant was not eligible for parole because of his priors: November 15, 2000 convicted for possession with intent to distribute marijuana and possession with intent to distribute cocaine. July 25, 2016 the Appellant was notified as to his not being eligible for parole.

The Appellant filed a notice of appeal before the Administrative Law Court when he was notified of this denial of parole eligibility. The Administrative Law Court affirmed the decision of the South Carolina Parole, Pardon and Probation Services decision, on January 23, 2017. Within this notice of appeal the Appellant alleged that the Administrative Law Court violated the South Carolina law by denying him parole eligibility and made a decision that was clearly erroneous and arbitrary and capricious.

The Appellant argues that the Administrative Law Court unlawfully decided that the Appellant was not eligible for parole due to his prior drug offenses. The Appellant's brief supporting this follows.

1. The Administrative Law Court erred in determining that the Appellant is not eligible for parole due to his prior drug conviction.

While the interpretation of a statute by the agency charged with its interpretation will be accorded the most respectful consideration, an agency interpretation affords no basis for the perpetuation of a patently erroneous application of the statute. *State vs Sweet* 386 SC 339, 351, 688 SE2d 569, 575-76 (2010)

The Administrative Law Court ruled that the Appellant is not eligible for parole. The Appellant will reveal to the court that he is eligible for parole. The Appellant was convicted of manufacturing methamphetamine 3rd, pursuant to the South Carolina law, the Appellant is eligible for parole. The South Carolina Code of Law 44-53-375(B) specifically states: 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. S.C. Code Ann § 44-53-375(B)

The statute is clear, an inmate convicted of third offense cannot have the sentence suspended nor probation granted. If the legislature had wanted to exclude third offense or subsequent from being eligible for parole under 44-53-375(B), no matter of priors, then it could have done so by saying in all other cases the sentence must not be suspended, nor probation granted and is not eligible for parole, supervised furlough, community supervision, work release, work credits,

education credits and good conduct credits, but it does not. Instead, it states in all other cases the sentence must not be suspended nor probation granted. Because the legislator chose not to do this, its intent is clear. Appellant should be eligible for parole. Hair vs. State 406 SE2d, 334.

In reading the entire statute, it is clear that the legislature wished for prisoners who were convicted for third offense or subsequent to be eligible for parole. If the legislature did not wish for all individuals who have committed drug offense parole eligibility then the statute would have limited parole eligibility. A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. State vs Sweet 386 SC 339, 351, 688 SE2d 569, 575-76 (2010)

The legislature intended for all individuals sentenced to a third drug offense or subsequent under this statute parole eligibility, if not it would have been stated. Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention State vs Sweet 386 SC 339, 351, 688 SE2d 569, 575-76 (2010)

The primary rule of a statutory construction is to ascertain and effectuate the intent of the legislature (Gilstrap vs South Carolina Budget and Control Board, SC 423 SE2d 101 (1992)) This court must avoid construing a statute so as to lead to an absurd result. State vs Allen 431 SE2d 563 (1993) It is clear, by reading the statute the Generally assembly wished

third drug offense and subsequent offenders parole eligibility. The Appellant falls under this criteria, so he is eligible for parole.

The statute clearly states parole is afforded to a person convicted of a third or subsequent offense regardless of priors. That criteria was included when the General Assembly wanted all individuals, regardless of priors, to be eligible for parole. The statute is clear, a third or subsequent offense, regardless of priors, is eligible for parole. Language of a statute should be resolved in favor of a just, equitable and beneficial operation of the law. *State vs Sweet* 386 SC 339, 351, 688 S.E.2d 569, 575-76 (2010). The statute is clear, an individual with a third or subsequent drug offense is allowed to appear before the Parole Board regardless of priors. The Appellant is eligible for Parole.

The statute was improperly applied by the Administrative Law Court denying the Appellant parole eligibility and this appeal should move forward allowing the Appellant parole eligibility.

Conclusion

Based on the foregoing reasons the Appellant respectfully requests this appeal to move forward on the final decision of the Administrative Law Court to be reversed.

March 27, 2017

Respectfully submitted

James W. Peterson

James Wesley Peterson # 296129

Kirkland Corr. Inst B2-15

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Proof of Service

The State of South Carolina

In the Court of Appeals

Appeals from Administrative Law Court

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

Case No. 2017-000486

James Wesley Peterson #296129, Appellant

vs

South Carolina Department Pardon, Parole and Pardon Services, Respondent

Proof of Service

I certify that I have served a copy of Motion to Request an Extension of Time and Initial Brief on all parties by depositing a copy of it in the United States Mail, postage paid March 28, 2017 addressed to the S.C. Court of Appeals P.O. Box 11629 Columbia, SC, 29211 and Tommy Evans Jr 2221 Devine Street Suite 600 P.O. Box 50606 Columbia, SC 29250

March 27, 2017

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SC Court of Appeals

March 27, 2017

Court of Appeals

I received your letter today dated March 23, 2017. I didn't know there was no transcript nor what I'm doing. I've enclosed Initial Brief and Motion for Extension of time. I sent Tommy Evans a copy of both too along with Proof of Service. I hope I did it right. Thank you so much for everything.

Sincerely
James W. Peterson

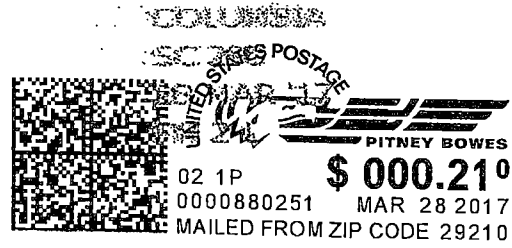
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