

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

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APR 24 2017

Appellate Case No. 2016-002499

SC Court of Appeals

Quentin Holt #268198.....Appellant,

v.

South Carolina Department of Probation, Pardon and Parole Services.....Respondent.

FINAL BRIEF OF APPELLANT

Elizabeth A. Franklin-Best
Blume Franklin-Best & Young, LLC
SC Bar #72555
900 Elmwood Avenue, Ste. 200
Columbia, South Carolina 29201
(803) 765-1044
betsy@blumelaw.com

Other Counsel of Record:
Tommy Evans, Jr.
SC Dep't of Probation, Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29201

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STATEMENT OF ISSUE ON APPEAL

Whether Appellant, with two prior convictions for drug related crimes, is eligible for parole after his conviction for possession with intent to distribute cocaine, third offense?

STATEMENT OF THE CASE

Appellant, Quentin Holt, was convicted for two counts of distribution of crack cocaine on September 22, 2010. He has two prior convictions, one for possession with intent to distribute drugs, and the other for possession. He has been informed by the South Carolina Department of Probation, Parole and Pardon Services that he is not eligible for parole. On August 1, 2016, the Department confirmed that its letter to Appellant on June 20, 2016 constitutes its final decision denying him parole eligibility.

Appellant timely appealed the department's decision and the Honorable Deborah Brooks Durden issued her order on December 8, 2016.

This appeal of the Administrative Law Court's decision timely follows.

ARGUMENT

Appellant, with two prior convictions for drug related crimes, is eligible for parole after his conviction of possession with intent to distribute cocaine, third offense.

This appeal concerns a matter of statutory construction, and its outcome controlled by the South Carolina Court of Appeals opinion in *Bolin v. South Carolina Dep't of Corrections*, 415 S.C. 276, 781 S.E.2d 914 (2016). For the reasons provided herein, Appellant is entitled to a parole hearing.

On June 20, 2016, General Counsel for the Department of Probation, Parole and Pardon Services rendered its final decision in this matter. The letter to Appellant states:

Dear Mr. Holt:

On September 22, 2010, you were convicted of Possession with Intent to Distribute Cocaine, third offense, in Indictment Number 10-GS-22-00179. Pursuant to South Carolina law, a person convicted of this offense with two or more aggregate violations of the law relating to drugs is not eligible for parole.

A review of your record reveals prior drug convictions, therefore, your current offense is ineligible for parole pursuant to South Carolina law. Therefore, you will not be considered for parole on this offense.

/s/ Matthew Buchanan
General Counsel

A letter from General Counsel on August 1, 2016 confirms this was the "final decision" of the Department of Probation, Parole and Pardon Services.

The pertinent statute, as modified by the Omnibus Crime Reduction and Sentencing Reform Act of 2010, is Section 44-53-375(B)(3):

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** (emphasis added).

Per the statute, if one has a prior non-possession offense, then a sentence cannot be suspended, nor may probation be granted. The language does not state that an inmate may not be considered for parole. Appellant should be granted a parole hearing under the guidance provided by the South Carolina Court of Appeals in its *Bolin* decision.

In *Bolin*, the Court notes that while the Omnibus Crime Reduction and Sentencing Reform Act of 2010 did not amend the definition of “no parole offense” in Section 24-13-100, it added the pertinent parole eligibility language to Section 44-53-375 (B):

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. See *Stone v. State*, 313 S.C. 533, 535, 443 S.E.2d 544, 545 (1994) (holding that when two statutes “are in conflict, the more recent and specific statute should prevail so as to repeal the earlier, general statute”) (emphasis in original).

Id. at 282.

In its July 25, 2016 letter, it appears that the Department of Probation, Parole and Pardon Services has not recognized the effect of the Omnibus Bill on this particular provision:

I appreciate your thoughtful analysis. However, your reading of the statute neglects to factor in Section 24-13-100, which defines a “no parole offense” as, “a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more.”

Distribution, Manufacturing, or PWID of cocaine base or methamphetamine is a class A felony...Consequently, it is clearly and unambiguously a “no parole offense.” The only time such an offense can be parole eligible is when, as per the language of Section 44-53-375(B)(3), all prior offenses were for possession.

Id. But, in fact, the Court of Appeals found that the operative language concerning parole eligibility is dictated by the Omnibus Bill, and not by the repealed language of 24-13-100.

The South Carolina Court of Appeals also noted that the interpretation Appellant is advancing in this appeal is consistent with the legislative intent of the bill:

It is the intent of the General Assembly to preserve public safety, reduce crime, and use correctional resources most effectively. Currently, the South Carolina correctional system incarcerates people whose time in prison does not result in improved behavior and who often return to South Carolina communities and commit new crimes, or are returned to prison for violations of supervision requirements. It is, therefore, the purpose of this act to reduce recidivism, provide fair and effective sentencing options, employ evidence-based practices for smarter use of correctional funding, and improve public safety.

2010 Act No. 273, §1. Hence, one of the Act's objectives is to conserve taxpayer dollars by allowing release dates for inmates convicted of less serious offenses."

Id. at 284-85.

Bolin stands for the proposition that the Omnibus Bill revisions supersede the prior statute that made some of these crimes non-parolable offenses. Given that Appellant's conviction specifically forbade his receiving a suspended sentence or probation, the language granting the right to parole is still effective. In other words, had his prior convictions been for possession, he would have been entitled to have a judge consider a suspended sentence or probation. But now, given the intent of the General Assembly with its passage of the Omnibus Bill, the South Carolina Department of Probation, Parole and Pardon Services should consider him for early release on parole pursuant to the plain language of the statute as modified by the bill.

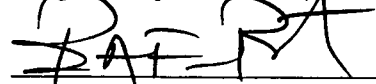
Any other interpretation of the statute violates the rule of lenity. See *Bryant v. State*, 384 S.C. 525, 533, 683 S.E.2d 280, 284 (2009) ("When a genuine ambiguity exists as the result of the proposed application of [a penal statute] to a given situation, the rule of lenity requires that the

doubt must be resolved in the defendant's favor."); *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991) ("[W]hen a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.") And see *Cooper v. South Carolina Dept. of Probation, Parole and Pardon Services*, 377 S.C. 489, 661 S.E.2d 106 (2008) (finding the parole statute penal in nature and applying the rule of lenity).

CONCLUSION

Respectfully, Appellant asks this Court to order the South Carolina Department of Probation Parole and Pardons to allow him a parole hearing.

Respectfully submitted,



Elizabeth Franklin-Best
Blume Franklin-Best & Young, LLC
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Columbia, South Carolina 29201
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betsy@blumelaw.com

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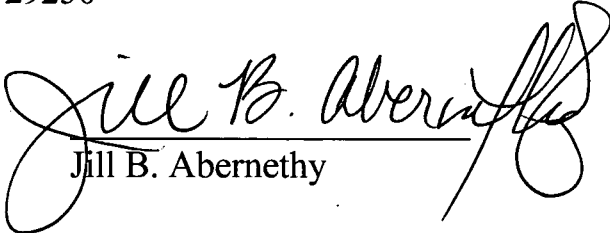
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South Carolina Department of Probation, Pardon and Parole Services.....Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Appellant's Final Brief was served by first class United States mail, postage prepaid, this 24th day of April 2017, upon the following:

Tommy Evans, Jr.
South Carolina Department of Probation,
Pardon, & Parole Services
P.O. Box 50666
Columbia, SC 29250


Jill B. Abernethy