STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Deborah Brooks Durden, Administrative Law Judge
Case No.: 16-ALJ-15-0038

Appellate Case No.: 2017-000486

JAMES WESLEY PATTERSON #296129.....APPELLANT

v.

SOUTH CAROLINA DEPARTMENT OF PROBATION
PAROLE AND PARDON SERVICES.....RESPONDENT

INITIAL BRIEF OF RESPONDENT

Tommy Evans, Jr.
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Parole and Pardon Services
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ATTORNEY FOR THE RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

STATEMENT OF ISSUE ON APPEAL

1. **Did the Administrative Law Court err in affirming the decision of the Respondent that the Appellant is not eligible for parole due to his prior drug convictions?**

STATEMENT OF THE CASE

The Respondent has no objection to the statement of the case presented by the Appellant.

ARGUMENTS

1. **The ALC did not err in affirming the decision of the Respondent denying the Appellant parole eligibility due to his prior drug convictions.**

The Administrative Law Court (ALC) correctly determined that the Appellant was legally denied parole eligibility due to his prior drug convictions. In reviewing the record it is clear, on June 12, 2013, the Appellant was sentence to a term of incarceration for one hundred and sixty months for manufacturing methamphetamine third offense. On November 15, 2000, the Appellant was convicted of possession with intent to distribute marijuana. The Respondent notified the Appellant that due to this conviction he is not allowed parole eligibility. The Appellant raised allegations that he was unlawfully denied parole eligibility, and filed a notice of appeal before the ALC.

Pursuant to the South Carolina Supreme Court decisions of *Al-Shabbaz v. State,* 338 S.C. 334, 527 S.E.2d 724 (2000), and *Furtick v. S.C. Dept. of Probation, Parole and Pardon Services,* 352 S.C. 594, 576 S.E.2d 146 (2002) the Supreme Court gave the ALC the ability to review the decisions of the Board in the denial of parole eligibility. In *Al-Shabbaz,* the Court created a new avenue by which inmates could seek review of a final decision of a state agency in "non-collateral" matters related to a conviction or sentence. The Court held that inmates could appeal those final agency decisions to the ALC, and ultimately to the Court of Appeals pursuant to the Administrative Procedure Act.[1] *Al-Shabbaz,* at 376. In *Al-Shabbaz,* the Court recognized that "these administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed;

[1] For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right. S.C. Code Ann. §1-23-610 (2015).

and (2) when an inmate believes prison officials have erroneously calculated his sentence; sentence-related credits or custody status." *Id,* at 369.

In *Furtick,* the Court noted that appealable final decisions by the Board arises in the latter manner, where the inmate alleges that the Department erroneously determined he was not eligible for parole. The Court held that, in order to determine whether an inmate's claim against the Department is entitled to review by the ALC, it is first necessary to determine whether the inmate has a liberty interest in gaining access to the Parole Board. *Furtick,* at 149. The Court decided that the permanent denial of parole implicates a liberty interest sufficient to require at least minimal due process. *Id.* These two cases gave the ALC jurisdiction over the decision of the Parole Board in the denial of the Appellant's parole eligibility.

Within these decisions the Supreme Court gave the ALC only the ability to affirm the decision of the agency, or remand the case for further proceedings. The ALC could only review the procedure used by the Board, they are not given the ability to review and reverse a final decision. An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services. S.C. Code Ann. §1-23-600(D)(2015) The order of the ALC was clear the statute does not allow the Appellant parole eligibility. It is clear, the Appellant is not entitled parole eligibility, so the decision of the Department was correctly affirmed. The Appellant has not brought any argument that will justify a reversal of the ALC's decision in this case.

The Appellant argues that the ALC erred in affirming the decision of the Respondent that he is not eligible for parole. The Appellant is serving a sentence for a third drug offense, this denies

parole eligibility unless all of his prior drug offenses are only for possession. The South Carolina Code of Laws specifically state:

> 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)(3)(2015)

Within his brief the Appellant argues that within the statute it states, "In all other cases, the sentence must not be suspended nor probation granted." The Appellant is of the belief this means that he is not entitled probation; however, is entitled parole eligibility. The ALC determined that in reading the entire statute this was not the intent of the General Assembly.

Within the statute it clearly states that an inmate convicted of a third drug offense is eligible for parole only if the prior offenses were for possession. If the legislature wished for inmates convicted of a third or greater drug offense be allowed parole regardless of their prior offenses that condition would not be in place. The legislature would have allowed all persons who have committed a prior drug offense parole eligibility regardless of the prior amount of convictions or its seriousness. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statutes operation. *Rowe v. Hyatt,* 321 S.C. 366, 369, 468 S.E.2d 649, 650 (1996).

In reading the entire statute it is clear the legislature wished all prisoners who were convicted of a first or second offense parole eligibility.[2] If the General Assembly wished all

[2] 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 eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. S.C. Code Ann. §44-53-375(B)(2)(2015).

individuals who have committed prior offenses regardless of their severity parole eligibility the statute would not have limited a third offender's parole eligibility for individuals who only priors were solely for possession. Statutes must be read as a whole and sections which are part of the same general statutory scheme must be constructed together and each given effect, if it can be done by any reasonable construction. *Higgins v. State,* 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992).

The legislature never intended all individuals sentenced to a drug offense under this statute parole eligibility. If the legislature wished an individual in the Appellant's position to receive parole eligibility the statute would have stated this. The Court should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. *Whitner v. State,* 328 S.C. 1, 16, 492 S.E.2d 777, 779 (1997). It is clear by the reading of the statute the General Assembly only wished certain drug offenders to be granted parole eligibility. The Appellant does not fall within these parameters, his parole eligibility was correctly denied. The ALC was correct in affirming this decision. A law must be interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly. *Abell v. Bell,* 229 S.C. 1, 4, 91 S.E.2d 548, 550 (1956).

Within his brief the Appellant argues that a third or subsequent drug offense does not allow for probation, however, it does allow parole. He makes this argument due to the last sentence in the statute, "in all other cases, the sentence must not be suspended nor probation granted." That sentence does not mention parole eligibility it states that a sentence cannot be suspended nor probation granted. There are circumstances where the Court can sentence an individual to a suspended sentence with no supervision to follow. (ex. 10 years suspended to 5 years.) The statute does not allow for this nor probation. It is clear by the reading of the entire statute no individual is allowed parole for a third or subsequent offense unless his prior drug convictions are only for

possession. If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no need to employ rule of statutory interpretation, and the court has no right to look for, or impose another meaning. *Pachel v. State Election Comm'n,* 317 S.C. 434, 454, S.E.2d 890 (1995) The terms of the statute are clear, no individual with a third drug offense can be allowed to appear before the Parole Board unless all of their prior drug convictions are for possession. The Appellant has a prior offense possession with intent to distribute marijuana which denies him parole eligibility.

The Appellant is currently serving a sentence for manufacturing methamphetamine third offense. Within his prior offenses he was previously convicted of possession with intent to distribute marijuana so he is not eligible for parole. The statute clearly states, "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." S.C. Code Ann. §44-53-375(B)(3)(Supp. 2015). It is clear that not only a person serving a third or subsequent drug offense not allowed parole without priors only for possession, but that person is not entitled many other credits given to other inmates currently incarcerated. The reason for this is due to the fact a third offense is classified as an A-Felony which is considered a no parole offense.[3] Any one serving a no parole offense must serve at least 85% of their sentence and are not allowed any credits.[4] This is why the statute forbids any person serving a third or subsequent offense to

[3] For purposes of definition under South Carolina law, a "no parole offense" means a class A, B, 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. S.C. Code Ann. §24-13-100(1995).

[4] Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed a prisoner convicted of a "no parole offense" as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, including a prisoner serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20, is not eligible for early release, discharge,

receive parole or any other extra credits unless their prior drug offenses are only for possession. It is clear the intent of the General Assembly is to not allow an individual serving a third drug offense parole eligibility unless certain conditions are met. The Appellant failed to meet statutory requirements so he is not allowed parole eligibility. The decision of the Respondent and the ALC was correct and should be upheld. The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Mid-State Auto Auction of Lexington Inc., v. Altman,* 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996).

Within his brief the Appellant argues that the denial of his parole eligibility led to an absurd result. He alleges that since the statue allows parole eligibility to a person with a third offense this was the intent of the legislature which was not applied by the Respondent nor the ALC. The statute is clear, a person with a third drug offense will only be allowed parole eligibility if their prior convictions were only for possession. To allow the Appellant parole eligibility goes against the basic idea and intent of the General Assembly. This is not an absurd result it is the result the legislature intended. The statute was applied properly by the Respondent and that decision was correctly upheld by the ALC so this decision should be affirmed.

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or community supervision as provided in Section 24-21-560, until the prisoner has served at least eighty-five percent of the actual term of imprisonment imposed. S.C. Code Ann. §24-13-150(1995)

CONCLUSION

Based on the foregoing reasons the ALC correctly affirmed the final decision of the Parole Board; therefore, the Respondent respectfully requests the final decision of the Administrative Law Court be upheld.

Respectfully submitted,

Tommy Evans, Jr.
Assistant General Counsel

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Columbia, South Carolina
April 25, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SOUTH CAROLINA DEPARTMENT OF PROBATION
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CERTIFICATE OF SERVICE

I, Dawn Nichols, Executive Assistant, hereby certify that I have served the within the *Initial Brief of Respondent and Designation of Matter* dated April 25, 2017, on the Appellant this 25th day of April, 2017, by depositing a copy of same in the United States mail, postage paid, addressed to:

James Wesley Patterson, 296129
Kirkland Correctional Institution
4344 Broad River Road
Columbia, S.C. 29210

I further certify that all parties required by Rule 54 to be served have been served.

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April 25, 2017

The Honorable Jenny Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street – 5th Floor
Columbia, South Carolina 29201

RE: James Patterson v. SCDPPPS

Dear Ms. Kitchings:

Enclosed please find the original *Initial Brief of the Respondent and Designation of Matter,* along with proof of service in the above-referenced case.

Thank you for your assistance in this matter.

Sincerely,

Tommy Evans, Jr.
Assistant General Counsel

TE:dn
Enclosures

cc: James Patterson

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