

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

James Wesley Petterson # 296129, Appellant

✓

SCDPPPS, Respondent

Final Brief of Appellant

James Wesley Petterson # 296129  
1261 B2-15  
4344 Broad River Rd  
Columbia, SC 29210

**RECEIVED**

MAY 03 2017

**SC Court of Appeals**

## Table of Contents

Table of authorities	ii
Statement of issues on appeal	1
Statement of the case	2, 3
Arguments	4, 5, 6
1. The ALJ erred in determining that the Appellant is not eligible for parole due to prior drug convictions	
Conclusion	6

# Table of Authorities

## Cases

<u>State vs Alun</u>	431 S2d 101 (1993)	5
<u>Gilstrap vs South Carolina Budget and Control Board SC</u>		5
<u>Hair vs State</u>	406 S2d	5
<u>State vs Sweat</u>	386 SC. 339, 351, 688 S2d 569, 575-77 (2010)	4, 5, 6

## Statutes

SC Code Ann § 44-53-315(B)	4
----------------------------	---

## Statement of Issue on Appeal

1. Did the ALJ 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 and 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 Welmaker 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 third offense (R p 4) and one hundred and sixty months for manufacturing methamphetamine third offense (R p. 7)

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. (R pp 10, 13) July 25, 2016 the Appellant was notified as to his not being eligible for parole (R pp 1) His projected parole date was June, 2016, as projected and informed by South Carolina Department of Corrections.

The Appellant filed a notice of appeal before the

Administrative Law Court (ALC) when he was notified of his denial of parole eligibility. The Administrative Law Court affirmed the decision of the South Carolina Parole Board and Probation Service's decision. (R p 21) 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 convictions.

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 S.2d 569, 575-76 (2010)

The Administrative Law Court ruled that the Appellant is not eligible for parole (R p 21) The Appellant will reveal to the Court that he is eligible for parole. The Appellant was convicted for manufacturing methamphetamine third (R pp 4) 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 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. SC Code Ann 44-53-375(B)

The statute is clear, an inmate convicted of third offense or subsequent cannot have their 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 legislature chose not to do this, its intent is clear. Appellant should be eligible for parole. Hair vs State 416 S.E.2d 334.

In reading the entire statute, it is clear that the legislature wished for prisoners who were convicted for third offense 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 consistent with the purpose, design and policy of the lawmakers. State vs Sweet 386 S.C. 339, 351, 688 S.E.2d 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 S.C. 339, 351, 688 S.E.2d 569, 575-76 (2010) The primary role of a statutory construction is to ascertain and effectuate the intent of the legislature. Gilstrap vs South Carolina Budget and Control Board 423 S.E.2d 101 (1992) This court must avoid construing a statute so as to lead to an absurd result. State vs Allen 431 S.E.2d 563 (1993) It is clear by reading the statute the General assembly wished third drug offense or 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 wished 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 S2d 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 for parole 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.

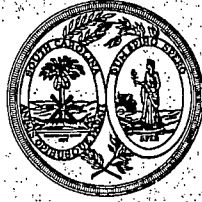
### Conclusion

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

Respectfully Submitted  
James Wesley Peterson #296129  
KCI B2-15  
4344 Broad River Rd  
Columbia, SC 29210

State of South Carolina  
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY  
Governor



JERRY B. ADGER  
Director

2221 DEVINE STREET, SUITE 600  
POST OFFICE BOX 50666  
COLUMBIA, SOUTH CAROLINA 29250  
Telephone: (803) 734-9220  
Facsimile: (803) 734-9440  
[www.dppps.sc.gov/](http://www.dppps.sc.gov/)

July 25, 2016

James Patterson, #296129  
Kirkland Correctional Institution  
4344 Broad River Road  
Columbia, South Carolina 29210

Dear Mr. Patterson:

On June 12, 2013, you were convicted of Possession and Manufacturing of Meth, third offenses, in Indictment Numbers 11-GS-23-9775, 9776. Pursuant to South Carolina law a person convicted of this offense with two or more aggregate violation of the law relating to drugs is not eligible for parole.

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

Sincerely

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan".

Matthew C. Buchanan  
General Counsel

MCB:dn

2

**WITNESSES**

C. Rosier

Greenville County Sheriffs Office

8/16/2011

*V.V.*

DOCKET NO. 2011-GS-23-  
JLK 009775

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November TERM 2011

6-12-13 THE STATE

vs.

JAMES WESLEY PATTERSON

ARREST WARRANT NUMBER  
J993004

ACTION OF GRAND JURY

**TRUE BILL**  
*Jonathan P. [Signature]*  
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

3016 v Indictment for  
3009

POSSESSION OF METHAMPHETAMINE

VIOLATION § 44-53-0375

Foreperson of Petit Jury  
Date:

**RECEIVED**

DEC 27 2011

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
POSSESSION OF METHAMPHETAMINE

At a Court of General Sessions, convened on **NOV 20 2012** the Grand Jurors of Greenville  
County present upon their oath:

That JAMES WESLEY PATTERSON did in Greenville County, on or about the 16th day of August 2011,  
willfully and unlawfully have in his possession a quantity of Methamphetamine (Crank), a schedule II controlled  
substance. This is in violation of §44-53-0375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*Jane Monte*  
\_\_\_\_\_  
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

INDICTMENT/CASE#: 2011GS2309775

James Wesley Patterson

A/W#: J993004

AKA:

Date of Offense: 8/16/2011

Race: WHITE Sex: M Age: 38

S.C. Code §: 44-53-0375 (A)

DOB: 10-09-1974 SS#: 251-45-3264

CDR Code #: 3016

Address: 19 Eagles View

City, State, Zip: Piedmont, SC 29673

DL#: 9999999999 SID#:

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: possession of methamphetamine 3rd offense

in violation of § 44-53-0375 (A) of the S.C. Code of Laws, bearing CDR Code# 3016

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State

ATTEST: Joyce Motts 65331 Motts, Joyce K. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2011-GS-23-9776
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$

Payment Terms:
Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel, § 47.12 requires \$500 to be paid to Clerk during probation.

Presiding Judge [Signature]
Judge Code: 2137
Sentence Date: 6-12-13

Clerk of Court/ Deputy Clerk Paul B. Wickhamer
Court Reporter: A. Huron
SCCA/217 (03/2011)

WITNESSES

C. Rosier

Greenville County Sheriffs Office

8/16/2011

*WU*

ARREST WARRANT NUMBER  
J993003

ACTION OF GRAND JURY  
**TRUE BILL**  
*Jonathan P. [Signature]*  
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2011-GS-23-  
JLK 009776

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS  
November

TERM 2011 *2012*

6-12-13

THE STATE

vs.

JAMES WESLEY PATTERSON

3200 ✓  
3198

Indictment for

MANUFACTURING METHAMPHETAMINE

VIOLATION § 44-53-0375

RECEIVED

DEC 27 2011

Clerk of Court  
Greenville County

5

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
MANUFACTURING METHAMPHETAMINE

NOV 20 2012

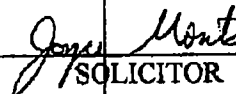
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That JAMES WESLEY PATTERSON did in Greenville County, on or about the 16th day of August 2011, knowingly manufacture methamphetamine or did knowingly provide financial assistance or otherwise attempt, aid, abet or conspire to manufacture methamphetamine or was knowingly in actual or constructive possession of the common ingredient(s) and/or supplies used in the manufacturing of methamphetamine. This is in violation of § 44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
James Wesley Patterson

AKA:
Race: WHITE Sex: M Age: 38
DOB: 10-09-1974 SS#: 251-45-3264
Address: 19 EAGLES VIEW
City, State, Zip: PIEDMONT, SC 29673
DL#: 9999999999 SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: manufacture methamphetamine 3rd offense

in violation of § 44-53-0375 of the S.C. Code of Laws, bearing CDR Code # 3200
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Joyce K. Monts, SC Bar# 65331
Defendant
Attorney for Defendant
SC Bar# 65351

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 160 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment
of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCIA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$.

Clerk of Court/ Deputy Clerk Paul B. Wickenhamer
Court Reporter: A. Hewson
SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2309776
A/W#: J993003
Date of Offense: 8/16/2011
S.C. Code § : 44-53-0375
CDR Code #: 3200

SENTENCE SHEET

CONVICTED OF or PLEADS

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
prmts. of \$ beginning
\$ paid to Public Defender Fund
Other: ATO ME

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge
Judge Code: 2137
Sentence Date: 6-12-13

DOCKET NO. 1999-GS-23-04473  
SPM

WITNESSES

ROBERT BLOSE

SCHP

06/11/98

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

11/15/00

JULY TERM 1999

THE STATE

vs.

JAMES WESLEY PATTERSON

PLEAD GUILTY

(J)

RECEIVED

312

T. Sullivan

ARREST WARRANT NUMBER

E 658105

ACTION OF GRAND JURY  
TRUE BILL

Deetta Rogers  
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0188

POSSESSION OF MARIJUANA WITH INTENT TO  
DISTRIBUTE

VIOLATION § 44-53-370

Foreperson of Petit Jury

Date:

ENTERED  
ACCT.

Can receive driver's license?

AS NO  
if no, explain @ home

James W. Patterson

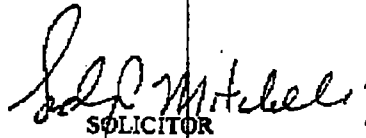
8

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
POSSESSION OF MARIJUANA WITH INTENT TO  
DISTRIBUTE

At a Court of General Sessions, convened on JULY 27, 1999 the  
Grand Jurors of Greenville County present upon their oath:  
That JAMES WESLEY PATTERSON did in Greenville County, on or about the 11th day of June, 1998,  
possess with intent to distribute a quantity of Marijuana, a controlled substance, such possession not  
having been authorized by law. This is in violation of §44-53-370 of the South Carolina Code of Laws  
(1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and  
provided.

  
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville  
STATE VS.

James Wesley Patterson  
AKA: 165 Frontage Rd Ft. Inn SC 29144  
Race: W Sex: M  
DOB: 10-9-74 Age: 26  
SSN: 251 45 3214  
DL#: 00464831  
SID#:

IN THE COURT OF GENERAL SESSIONS  
INDICTMENT/CASE#:

99 -GS- 23 - 4778  
A/W#: E658105  
Date of Offense: 6-11-98  
S.C. Code § : 44-53-370  
CDR Code #: 0111816

SENTENCE

PLEA  TRIAL

in disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Possession of marijuana with intent to distribute

in violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0111816

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

James L. Woots  
Solicitor

James W. Patterson  
Defendant

[Signature]  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 5 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ 500.00, provided that upon the service of 1 days/months/years and/or payment of \$ 500.00, plus costs and assessments as applicable\*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for \_\_\_\_\_ days/months jail time.

CONCURRENT or  CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

RESTITUTION  Heard,  Waived,  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee \$ \_\_\_\_\_

Payment Terms:

set by SCDPPPS

Recipient:

\*Fine: ..... \$ 500  
§ 14-1-206 - Assessments 100%..... \$ 500  
§ 14-1-211 - Surcharge..... \$ 100  
(Exceptions: See § 14-1-211)  
§ 56-5-2995 (DUI)..... \$  
County (3%)..... \$  
TOTAL..... \$

PTUP \_\_\_\_\_  
\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_  
Attend Voc Rehab. or Job Corps \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd. in equal, consecutive weekly/monthly  
prmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund.

Other: \_\_\_\_\_

Clerk of Court/Deputy Clerk [Signature]

PRESIDING JUDGE [Signature]

Judge Code: 1070

Court Reporter: [Signature]

Sentence Date: 4/15/00

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

DOCKET NO. 1999-GS-23-  
SPM 004477

WITNESSES

The State of South Carolina

County of Greenville

Clerk receive driver's license:  
ES \_\_\_\_\_ NO \_\_\_\_\_  
If no. expires home

ROBERT BLOSE

SCHP

08/11/98

COURT OF GENERAL SESSIONS

JULY TERM 1999

11/15/00

X James W. Patterson

THE STATE

vs.

JAMES WESLEY PATTERSON

ARREST WARRANT NUMBER  
E 658106

PLEAD GUILTY

ACTION OF GRAND JURY

TRUE BILL

Devin Rogers  
FOREMAN GRAND JURY  
Foreperson of Grand Jury

VERDICT

Indictment for

T. Sullivan  
V0183

POSSESSION OF COCAINE WITH INTENT TO  
DISTRIBUTE

VIOLATION § 44-53-370

Foreperson of Petit Jury

Date:

ENTERED  
ACCT. ed

209

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
POSSESSION OF COCAINE WITH INTENT TO  
DISTRIBUTE

At a Court of General Sessions, convened on JULY 27, 1999 the

Grand Jurors of Greenville County present upon their oath:

That JAMES WESLEY PATTERSON did in Greenville County, on or about the 11th day of June, 1998, possess with intent to distribute a quantity of Cocaine, a controlled substance, such possession not having been authorized by law. This is in violation of §44-53-370 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*[Handwritten Signature]*  
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville  
STATE VS.

James Wesley Pattenman  
AKA: 165 Frontage Rd. Ft. Inn SC 29144  
Race: W Sex: M  
JOB: 10-90-74 Age: 26  
SSN: 251 45 3264  
DL#: 00464831  
SID#:

IN THE COURT OF GENERAL SESSIONS  
INDICTMENT/CASE#:

99 -GS- 23 - 4477  
A/W#: E658106  
Date of Offense: 6-11-98  
S.C. Code §: 44-53-370  
CDR Code #: 011 / 8 / 13

SENTENCE

PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: Possession with Intent to Distribute Cocaine

in violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 011 / 8 / 13

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

James K. Monte  
Solicitor

James W. Pattenman  
Defendant

[Signature]  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 10 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of ~~10~~ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. \* 5 1/2 mo.

The Defendant is to be given credit for \_\_\_\_\_ days/months jail time.

CONCURRENT or  CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

RESTITUTION  Heard,  Waived,  Ordered

Total: \$ \_\_\_\_\_ plus 20% fee \$ \_\_\_\_\_

Payment Terms:

set by SCDPPPS

Recipient:

\*Fine: .....\$  
§ 14-1-206 - Assessments 100%.....\$  
§ 14-1-211 - Surcharge.....\$ 100  
(Exceptions: See § 14-1-211)  
§ 56-5-2995 (DUI).....\$  
County (3%).....\$  
TOTAL.....\$

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_

Attend Voc Rehab. or Job Corps \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol Testing \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ 1000~~00~~ paid to Public Defender Fund.

Other:

Clerk of Court/Deputy Clerk: Paul Wachter

Court Reporter: Watts

White - Clerk

Green - Corrections

Orange - Probation

PRESIDING JUDGE

Judge Code: 10190

Sentence Date: 12/15/10

probation begins today  
PINK - Defendant

14

DOCKET NO. 2004-GS-23-  
JLK 005159  
The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JULY TERM 2004

11-10-05

PLEAD GUILTY THE STATE  
vs.

JAMES WESLEY PATTERSON

WITNESSES

WAMSLEY *Patterson's*

GCSO

05/04/04

ARREST WARRANT NUMBER

*128* G 803759

ACTION OF GRAND JURY  
TRUE BILL

*Ricky G. Spaulding*

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

*VO102*  
*0400*

Indictment for

POSSESSION OF METHAMPHETAMINE  
(CRANK)  
VIOLATION § 44-53-375(A)

Foreperson of Petit Jury

Date:

*2005*



STATE OF SOUTH CAROLINA

COUNTY OF Greenville  
STATE

VS.

James Patterson

AKA:

Race: W Sex: M Age: 31

DOB: 10-09-1974 SS#: 251-53-24.0

Address: 119 COVENANT CT  
PELZER, SC 29669

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2004GS2305159

A/W#: G803759

Date of Offense: 05-04-2004

S.C. Code § : 44-53-0375(A)

CDR Code #: 0102

CASE RESTORED SENTENCE

PLEA  TRIAL

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was TO: POSSESSION OF METHAMPHETAMINE/CRANK, 3RD OFFENSE

in violation of § 44-53-0375(A) of the S.C. Code of Laws, bearing CDR Code # 0102

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

*Joseph K. Monte*  
Solicitor

*James Patterson*  
Defendant

*Thomas A. ...*  
Attorney for Defendant Tom Creech

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 5 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

set by SCDPPPS

Recipient: \_\_\_\_\_

\*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 35.13 (Public Def/Prob)	\$500
§ 73.3, 1B TP (Law Enforce. Funding)	\$25
§ 33.7, 1B TP (Drug Court Surcharge)	\$100
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

*Paul B. Wickens*  
Clerk of Court/ Deputy Clerk

Court Reporter: *D. Kaffokuy*

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: *Complete ATR*

Appointed PD or appointed other counsel, § 35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE *Hamilton*

Judge Code: *2111318*

Sentence Date: *11-10-2005*

16

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

James Wesley Patterson, #296129,

Appellant,

vs.

South Carolina Department of Probation  
Parole and Pardon Services,

Respondent.

Docket No. 16-ALJ-15-0038-AP

ORDER

**FILED**

JAN 23 2017

STATEMENT OF THE CASE

SC ADMIN. LAW COURT

This matter is before the Administrative Law Court (ALC or court) pursuant to the appeal of James Wesley Patterson (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On July 25, 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 24, 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. On June 12, 2013, Appellant was convicted of manufacturing methamphetamine, third offense, pursuant to South Carolina Code Section 44-53-375; and possession of methamphetamine, third offense, pursuant to South Carolina Code Section 44-53-375(A). On November 10, 2005, Appellant was convicted of possession of methamphetamine/crunk, third offense, pursuant to South Carolina Code Section 44-53-375(A). On November 15, 2000, Appellant was convicted of possession with intent to distribute marijuana; and possession with intent to distribute cocaine, pursuant to South Carolina Code Section 44-53-370.

**ISSUE ON APPEAL<sup>1</sup>**

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

<sup>1</sup> The Department also argues that the appeal should be dismissed because Appellant failed to timely file a brief.

## 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 misinterprets the statute applicable to his case. The Court disagrees. A review of the relevant statute and Appellant's prior convictions supports the Department's determination that Appellant is ineligible for parole.

---

Appellant's brief was due November 28, 2016. On September 6, 2016, Appellant filed a Brief that was miscaptioned "Notice of Appeal." The Court declines to dismiss the appeal on the basis of any defect in Appellant's brief.

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, these 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.<sup>2</sup> 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).

However, the rules regarding no parole offenses have been modified for certain offenses. In particular, the part of the sentencing statute under which the Appellant was convicted provides:

Notwithstanding any other provision of law, 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 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 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.

*Id.* at § 44-53-375(B) (Supp. 2016).<sup>3</sup> The Court of Appeals has construed this language to repeal the no-parole offense statute insofar as there is a conflict. *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

<sup>2</sup> Offenses classified as Class A, B, and C felonies are listed in Section 16-1-90.

<sup>3</sup> The relevant language was amended, effective June 2, 2010, by 2010 S.C. Act Number 273, Section 38. That amendment is construed in the recent *Bolin* case cited above. Because Appellant was sentenced on June 12, 2013, that amendment is relevant in this case. See *State v. Dawson*, 402 S.C. 160, 164, 740 S.E.2d 501, 503 (2013) (citation omitted). Section 44-53-375(B) was again amended by 2016 S.C. Act 154, Section 9. However, no changes were made to the language at issue here.

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 Section 24-13-100 in all applications of the Omnibus Bill which amended the sentencing statute. The “notwithstanding any other provision of law” language included by the legislature does repeal Section 24-13-100 in regards to a second offense under subsection (B). S.C. Code Ann. § 44-53-375(B) (“Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense . . . is eligible for parole . . .”). However, the case at hand involves a third offense. For a third or subsequent offense, all previous drug offenses must have been for possession under Section 44-53-375(A) for the Appellant to be parole eligible:

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.

Id.

The law contained in 24-13-100 still applies in all cases unless there is specifically expressed legislative intent to the contrary. See Bolin, 415 S.C. at 283, 781 S.E.2d at 917 (quoting Strickland v. State, 276 S.C. 17, 19, 274 S.E.2d 430, 432 (1981)) (“Statutes of a specific nature are not to be considered as repealed in whole or in part by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to do so is explicitly implied therein.”). The sentences beginning “notwithstanding” express such intent. However, Appellant does not fall into the parameters set by those sentences (first or second offense, or third with only simple possession priors). Rather, Appellant falls into the category for whom Section 24-13-100 is still binding.

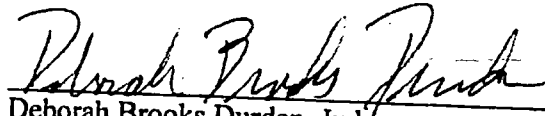
Appellant’s prior drug offenses are not limited to simple possession. Because Appellant does not qualify for the parole eligibility exception for a third offense, the “no parole” rules remain in place. Under those rules, Appellant’s offense is classified as a no-parole offense. S.C. Code Ann. § 24-13-100 (2007) & § 16-1-90(A) (2015). Therefore, the Department did not err in determining that the Appellant is ineligible for parole based upon his prior drug convictions.

8

**ORDER**

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

**AND IT IS SO ORDERED.**

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

January 23, 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 addressed to the party(ies) or their attorney(s).  
This 23<sup>rd</sup> day of January 2017  
By: L.E. Cole  
Judicial Law Clerk