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-15-0035-AP

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SC Court of Appeals

Case No. 2017-000286

ALONZO C. JETER, III, #282902...APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,...RESPONDENT

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of authorities....................ii

Statement of issue on appeal....................iii

Statement of the case....................1

Arguments

1. The ALC did not err in affirming the decision of the Respondent denying the Appellant parole eligibility....................2

2. The *Bolin* decision does not apply to the present case....................4

3. This statute is not penal in nature, and there exists no ambiguity so the Appellant is not entitled parole eligibility....................6

Conclusion....................8

TABLE OF AUTHORITIES

CASES

Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)..6

Bolin v. S.C. Dept. of Corrections, 415 S.C. 276, 781 S.E.2d 914 (2015)..............................4

Bryant v. State, 384 S.C. 525, 683 S.E.2d 280 (2009)..7

Cooper v. Moore, 351 S.C. 207, 569 S.E.2d 330 (2002)..6

Mid-State Auto Auction of Lexington Inc. v. Altman, 324 S.C. 65, 476 S.E.2d 690 (1996)..........7

Pachal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995)...............................6

Rowe v. Hyatt, 321 S.C. 366, 369 S.E.2d 649 (1996)..5

State v. Blackman, 304 S.C. 270, 403 S.E.2d 660 (1991)..6,7

Whitner v. State, 328 S.C. 1, 492 S.E.2d 777 (1997)..6

STATUTES

S.C. Code Ann. §24-13-100(1996)..3
S.C. Code Ann. §24-13-150(2015)..3
S.C. Code Ann. §24-21-610(1986)..3
S.C. Code Ann. §44-53-375(B)(2)(2015)..5
S.C. Code Ann. §44-53-375(F)(2015)...2

STATEMENT OF ISSUE ON APPEAL

1. **Did the Department of Probation, Parole, and Pardon Services err in classifying the Appellant is ineligible for parole?**

STATEMENT OF THE CASE

On January 12, 2015, the Appellant sold a quantity of methamphetamine. He was arrested and charged with the offense of trafficking in ice, crank, or crack between ten and twenty-eight grams. This sale was done within a half mile of the Macedonia Baptist Church playground, so he was also charged with distribution within a half mile of a park or school. The authorities investigation later determined that the Appellant had a previous drug conviction so this was upgraded to a second offense.

On July 16, 2015, the Appellant appeared before the Honorable Lee S. Alford for the offenses of trafficking ice, crank or crack second offense, and distribution within a half mile of a school or park.[1] Upon the conclusion of this appearance the Appellant was sentenced to a fifteen year period of incarceration for trafficking ice, crank, or crack; and, ten years for distribution within a half mile of a school or park. (R.p. 47-p. 66).

Prior to possibly becoming eligible for parole the Respondent decided to conduct an investigation to determine parole eligibility. During this investigation it was discovered that this was a trafficking second offense a classified A-Felony. Pursuant to South Carolina law an individual serving a sentence for an A-Felony is not eligible for parole. The Appellant was notified on July 29, 2016, that he was not eligible for parole. (R.p.46). Upon receiving this notification the Appellant decided to file a notice of appeal before the Administrative Law Court (ALC). Within this appeal the Appellant argued that he should be eligible for parole due to the statute not stating specifically that parole cannot be given for this offense. The Appellant also argued that pursuant to the *Bolin* decision the Court of Appeals determined that he should be eligible for parole. (R.p.31-p. 40). The Respondent argued that pursuant to South Carolina law the Appellant is not eligible

[1] The Appellant also appeared before this Court for two counts of distribution of methamphetamine second offense; and two more counts of distribution within a half mile of a school or park.

for parole due to the classification of the offense he was convicted of committing; and *Bolin* does not apply to the present case. (R.p.20-p. 29).

After reviewing briefs presented by both sides, the Honorable Deborah Brooks Durden, Administrative Law Court Judge, issued her decision on January 26, 2017. The ALC decided that pursuant to South Carolina law the decision of the Department denying parole eligibility was correct, so the decision of the Department was affirmed. (R.p.1-p.5). Upon receiving this decision the Appellant filed a notice of appeal before this Court. The Respondent's initial brief supporting the decision of the ALC follows.

ARGUMENTS

1. **The ALC did not err in affirming the decision of the Respondent denying the Appellant parole eligibility.**

The Appellant argued that he should be eligible for parole due to subsection (F) of section 44-53-375 of the South Carolina Code of Laws which states:

> Sentences for violation of the provisions of subsections (C) or (E) may not be suspended and probation may not be granted. A person convicted and sentenced under subsection (C) or (E) to a mandatory term of imprisonment of twenty-five years or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole extended work release as provided in Section 24-13-610, or supervised furlough as provided in Section 24-13-710.

S.C. Code Ann. §44-53-375(F)(2015)

The Appellant argues that since he was not sentenced to a mandatory twenty-five years, or to a mandatory minimum of twenty-five years he should be eligible for parole. He argues that the General Assembly intended for him to become eligible for parole; that is why it is not stated within the statute that he is ineligible. The ALC decided that this portion of the statute does not apply,

and due to the classification of the offense he is not eligible for parole. The ALC was correct in their interpretation of the law.

The ALC ruled that the determination of the denial of parole is discovered through the observation of two South Carolina statutes. Section 24-21-610 which sets the minimum amount of time that must be served on a sentence before an inmate reaches parole eligibility. It states, that, "a prisoner sentenced not more than thirty years must serve at least one-third of their term." S.C. Code Ann. §24-21-610(1986) These statutes were later modified by other subsequently enacted or amended statutes. In 1996 the General Assembly created "no parole offenses," when they enacted Section 24-13-100 which states:

> For purposes of definition under South Carolina law, a "no parole offense" means 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.

S.C. Code Ann. §24-13-100(1996)

Pursuant to South Carolina law, the offense of trafficking ice, crack or crank second offense carries a maximum penalty of thirty years which classifies this as an A-Felony. *See,* S.C. Code Ann. §16-1-90. Since this offense is classified as an A-Felony, it is a "no parole offense," and the Appellant cannot be released from incarceration until he has completed at least 85% of his sentence.[2] It is clear the General Assembly did not wish any prisoner convicted of an A-Felony be released from incarceration until the completion of at least eighty-five percent of their sentence. Unless another statute is created that specifically allows parole eligibility, like an individual who has committed

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[2] Notwithstanding any other provision or 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 24-21-560, is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560 until the prisoner has served at least eighty-five percent of the actual term if imprisonment imposed. S.C. Code Ann. §24-13-150(2015).

the offense of possession with intent to distribute second offense, or distribution second offense who are given parole eligibility by statute, there exists no statue that allows any prisoner convicted of trafficking second parole eligibility.

The Appellant wishes to apply section (F) of the statute. This portion of this statute does not apply. This section only applies to individuals who received a mandatory minimum of twenty-five years. The statute is clear individuals convicted of an A-Felony is not allowed parole eligibility. The fact he is not eligible for parole is found in the "no parole offense" statue. Section (F) of the statute does not apply to the present case, the ALC was correct in not applying this portion of the statute to the current offense.

2. The *Bolin* decision does not apply to the current case.

The Appellant argues that pursuant to *Bolin* he should be allowed parole eligibility. The present case is not identical to *Bolin* so the denial of parole is legitimate. Pursuant to *Bolin v. S.C. Dept. of Corrections,* 415 S.C. 276, 781 S.E.2d 914 (2015) this Court decided:

> Defendant's convictions for second-offense conspiracy to manufacture methamphetamine were no longer no-parole offenses, for which defendant was required to serve 85% of the sentence before being eligible for parole, following effective date of the Omnibus Crime Reduction and Sentencing Reform Act, even though the Act does not amend definition of the term "no parole offense" in statute describing types of offenses for which offender was not eligible for parole, were Act amended separate statutory provision to indicate that, "notwithstanding any other provision of law," a person convicted and sentenced as first or second offender pursuant to that subsection was eligible for parole.

Bolin, at 276

In *Bolin* the Court specifically stated they are not amending the term "no parole offense" just if it states differently by statute a prisoner can be eligible for parole. The Court in *Bolin* determined a second offense conspiracy to manufacture methamphetamine is not an 85% offense, due to the

statute allowing an inmate sentenced to this offense parole eligibility.[3] The Appellant is currently serving a sentence for trafficking of ice, crank, or crack second offense, which is classified as an A-Felony, that make this a "no parole offense, so " *Bolin* does not apply.

The statute is clear, that an inmate convicted of an offense classified as an A-Felony cannot be allowed parole eligibility. Words must be given their plain and ordinary meaning without restoring to subtle to forced construction which limits or expands the statute's operation. *Rowe v. Hyatt,* 321 S.C. 366, 369 S.E.2d 649 (1996). If the legislature wished individuals convicted of trafficking second parole eligibility the statute would allow these individuals eligibility as they do for those convicted of distribution or possession with intent to distribute second offense.

In reading the statute it is clear, the legislature wished all prisoners convicted of an A-Felony not be given parole eligibility. If the legislature wished all individuals who have committed a drug offense parole eligibility the statute would allow parole. It is clear that only certain drug offenses are allowed parole eligibility, trafficking in ice, crank, or crack second offense is not one of those offenses. The ALC was correct in affirming the decision of the Respondent denying the Appellant parole eligibility pursuant to statute.

The legislature never intended individuals sentenced to trafficking in ice, crank or crack second offense to become eligible for parole. If they wish this to occur the statute would have allowed this. The Appellant argues that since the statute does not say he is not eligible for parole he should be eligible: however, it is clear in the "no parole offense" statute, any individual serving a sentence for an A-Felony is not eligible for parole. The ALC correctly determined that the intent of the General Assembly was that they did not wish an individual serving a sentence for trafficking

[3] 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).

in ice, crank, or crack second offense be eligible for parole. Courts 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). 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). It is clear by the reading of the statute parole is not allowed for an individual convicted of committing an A-Felony. The statute is clear, when a person commits an A, B, or C felony it is considered a "no parole offense," so an inmate cannot be released from incarceration until they have completed 85% of their sentence. If a statute's language is plain an 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. *Pachal v. State Election Comm'n,* 317 S.C. 434, 454 S.E.2d 890 (1995). The terms of the statute are clear, no individual who has committed an A-Felony is allowed parole eligibility. The Appellant was convicted of trafficking ice, crank, or crack second offense, an offense that carries a maximum punishment of thirty years, which classifies it as an A-Felony. Since it is classified this way, pursuant to South Carolina law it is considered a "no parole offense." The ALC made the correct decision in affirming the determination of the Respondent in denying the Appellant parole eligibility. When the terms of a statute are clear, the court must apply those terms according to their literal meaning. *Cooper v. Moore,* 351 S.C. 207, 212, 569 S.E.2d 330, 332 (2002).

3. **This statute is not penal in nature, and there exists no ambiguity so the Appellant is not entitled parole eligibility.**

The Appellant argues that pursuant to *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991), he is entitled parole eligibility. In *Blackmon* it states, "Penal statutes must be construed

strictly against State and in favor of defendant." *Blackmon,* at S.C. 274. However, the Appellant is not entitled leniency regarding a statute that is not ambiguous. Under the rules of lenity it requires that any law that is unclear regarding the intent of the legislature the Court must side with the defendant. When a genuine ambiguity exist as a 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. *Bryant v. State,* 384 S.C. 525, 683 S.E.2d 280 (2009). In the present case however, there exists no ambiguity, the General Assembly made it clear, anyone in the Appellant's position will not be allowed parole eligibility.

The Appellant is currently serving a sentence for trafficking in ice, crank or crack second offense. This offense is classified as an A-Felony which makes it a "no parole offense." It is clear by the reading of the statute a person convicted of an A-Felony cannot be eligible for parole. 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).

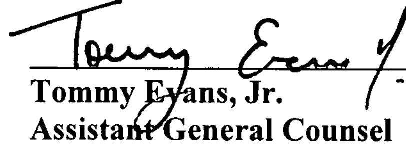
The Appellant will only get the benefit of the doubt if there exists any ambiguity. If the intent of the legislature is not clear, the decision would have to fall on the side of the Defendant. This is not the fact in the present case. There is no doubt the legislature wanted any inmate serving an A-Felony not to become eligible for parole. The statue is clear an unambiguous.

The Appellant raises section (F) of the statute to mean that since it does not state his situation he should be eligible for parole. However, this statute does not apply to this cause of action. The statute that applies is the "no parole offense" statute which specifically states that a person serving a sentence for an A-Felony is not allowed parole eligibility. The offense the Appellant is serving is classified as an A-Felony which means the Appellant is not eligible for parole. The decision of the ALC was correct and should be upheld by this Court.

CONCLUSION

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

Respectfully submitted,



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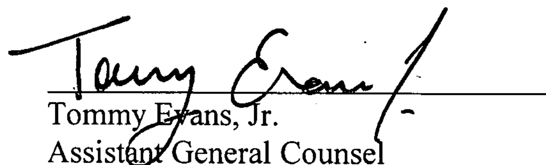
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007.



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May 2, 2017