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SC Court of Appeals

Brief of Appellant

The State of South Carolina

In the Court of Appeals

Appeal from Administrative Law Court

Deborah Brooks Durden, S.C. ALC

Case No. 2017-000486

James Wesley Peterson # 296129, Appellant

v

SCDPPPS, Respondent

Final Brief of Appellant

James Wesley Peterson # 296129

KCI B2-15

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Columbia, S.C. 29210

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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 Lemaker 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 and Probation Service's decision. (Rp 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 S2d 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 406 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 consonant with the purpose, design and policy of the lawmakers. State vs Sweat 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 Sweat 386 S.C. 339, 351, 688 S.E.2d 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 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 offender, 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 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
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SC Court of Appeals

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Deborah Brooks Durden, Judge SC. ALC

Case No. 2017-000486

James Wesley Peterson # 296129

vs

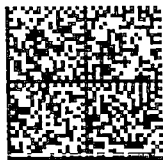
SCDPPPS, Respondent

I certify that I have served a copy of the final Brief on SCDPPPS 90 Tommy Evans Jr 2221 Devine St. Suite 600 P.O. Box 50666 Columbia, S.C. 29250 on May 1, 2017. I am now reserving a copy of this final brief on S.C. Court of Appeals P.O. Box 11629 Columbia, S.C. 29211. Therefore, all parties have received a copy of Final Brief.

May 15, 2017

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