State of South Carolina Court of Appeals

[In the Supreme Court]



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| Dennis Davis, #288558, Appellant, V. South Carolina Dept. of Probation, Parole, and Pardon Services, Respondent. | Appellant Case No.: 2017-000663 Appellant's Initial Brief |

## Issue on Appeal

Did the ALC Judge err in determining that Appellant is ineligible for parole based off prior convictions and Statute 24-13-100?

## Statement of the Case

This appeal comes before the South Carolina Court of appeals following the Honorable Deborah Durden affirmation of the South Carolina Dept. of Probation, Parole, and Pardon Services that Appellant Dennis Davis an inmate incarcerated with the South Carolina Dept. of Corrections. The Honorable Judge Deborah Durden made the order on 2/22/17 and this timely appeal followed.

## Argument

Appellant argues that the Department as well as the ALC Court erred in finding the Appellant is ineligible for parole based on irrelevant Statutes that do not apply to appellant and Prior Convictions.

Statute 44-53-370(b)(2) states that, "Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (C) and (D), 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." The statute is clear and unambiguous, because it tells you what to do if all priors are for possession and if one does not fit, the (C) and (D) clause of statute 44-53-370(b)(2). If one fits the (C) and (D) clause then just like a first or second offense that person is eligible for a suspended sentence and probation. This is a remedy given in general sessions court. If you fall in the all other cases category of statute 44-53-370(b)(2) the sentence must not be suspended nor probation granted. This simply and logically means a person who's prior are not only for possession of a controlled substance, does not have the option of not coming to prison. In which a person with a first or second offense and a person with a third or subsequent who's prior's match or fit the (C) and (D) clause of statute 44-53-370(b)(2)!

The Omnibus Crime Reduction and Sentencing reform Act of 2010 was passed by legislature to preserve public safety, reduce crime and use correctional resources most effectively. It is therefore

the purpose of this Act to reduce recidivism, provide fair and effective sentencing options and employ evidence based practices for smarter use of Correctional funding and improve public safety. Hence, the main objective of the Act was to Conserve tax payers dollars by allowing earlier release dates for inmates Convicted of less Serious offenses.

SCDPPS and ALC Judge Deborah Durden has Completely ignored the plain language of the statute and also the documented intent of the legislature in Bolin V. SC Dept. of Corrections, 415 S.C. 276, 781 S.E. 2d 914 (CT. App. 2016) The term, "notwithstanding any other provision of law" means no other provision of law affects this Law. Notwithstanding any other provision of law was added to statute 44-53-370(b)(2) to repeal any other provision of law. The ALC Judge disagree's stating, "a review of the relevant statute and Appellant's prior Convictions supports the departments determination that appellant is ineligible for parole." The Court also states, "Several different statutes must be reviewed." However the Court is overlooking The notwithstanding any other provision of law, the language added to Statute 44-53-370(b)(2). Notwithstanding any other provision of law means just that, that no other provision of law Controls or effects this law. Notwithstanding any other provision of law is Clear and unambiguous language! The ALC Court says "In interpreting a statute, words must be given their plain and ordinary meaning without resort to forced or subtle Construction to limit or expand the Statutes operation." Further, the Statute must be read as a whole and Section's which are part of the same general statutory law must be Construed

together and each one given effect." Ranucci V. Craig, 409 S.C. 493, 500, 763 S.E. 2d 189, 192 (2014). Well, my right to parole, supervised furlough, community supervision, work release, work Credits, education Credits, and good Conduct Credits isn't subtle or forced nor does it limit or expand the Statute. The Statute 44-53-370(b)(2) Clearly states, "Notwithstanding any other provision of law" so applying laws or reviewing statutes that are repealed by the language in the statute is irrelevant. And actually applying them would be subtle and forced Construction and would also limit the Statutes operation. Though Bolin V. SC Dept. of Corrections, 415 SC. 276, 781 S.E. 2d 914 (C.T. App. 2016). Was a second offense the same rules apply! The only difference in rights afforded to a person convicted of 1st or 2nd offense compared to a 3rd or subsequent who does not fit the (C) and (D) Criteria of Statute 44-53-370 (b)(2) is the sentence must not be suspended nor probation granted. The The ALC Judge states, "because appellant doesn't fit within the (C)+ (D) clause that the term or "Notwithstanding any other provision of law" part does not apply to Appellant." I was convicted of a violation of Statute 44-53-370(b)(2) which is a third or subsequent offense! Appellant being sentenced under this statute and not fitting the (C) and (D) Criteria makes Appellant ineligible for a suspended sentence and probation only, not parole, supervised furlough, community supervision, work release, work Credits, education Credits, and good Conduct Credits. The ALC Court also states im in-eligible for parole because I was sentenced for a class C felony. In Bolin V. SC Dept. of Corrections, 415 SC. 276, 781 SE.

2d 914 (CT. App 2016) that it is unreasonable and illogical to characterize an offense for which the offender is eligible for parole as a no parole offense pursuant to Section 24-13-100, even if the maximum sentence for the offense places it within a classification encompassed by Section 24-13-100. The ALC Court based her decision on the pre-existing no-parole offense statute that clearly no longer applies to my offense. My Crime is not violent, so it's unreasonable and illogical to be classified as such.

In State V. Bolin, 378 S.C. 96; 662 S.E. 2d 38. The canon of construction "expressio unius est exclusio alterius." or "inclusio unius est exclusio alterius" holds that to express or include one thing implies the exclusion of another, or of the alternative. When interpreting a statute, the words must be given their plain and ordinary meaning without resorting to subtile or forced construction which limit or expand the statute. Statute 44-53-370(b)(2) say, "in all other cases the sentence must not be suspended nor probation granted". It states clearly what a person who does not fit in the (C) and (D) clause of 44-53-370(b)(2). It does not say that Im ineligible for parole, supervised furlough, Community supervision, work release, work credits, education credits and good conduct credits. The omission of any provision or right in the statute 44-53-370(b)(2) indicates the legislative did not intend to limit the rights of a person in, "the all other cases" category past a suspended sentence or probation. State V. Thomas, 372 S.C. 466; 642 S.E. 2d 724; 2007 The Cardinal rule for statutory construction is to ascertain and effectuate the intention of the Legislature. However, statutes must be read as a whole, and sections which are part of the same general statutory scheme

must be construed together and each one given effect, if reasonable. The legislature listed the provisions Appellant is not entitled to which is a Suspended Sentence or probation granted. The ALC Court erred in it's decision that Appellant isn't eligible for parole. In the amended Statute 44-53-370(b)(2) the legislature identifies the parameters of what is to be allowed to all Convicted under this statute which includes Suspended sentence and probation granted, Parole eligibility, Supervised furlough, Community Supervision, work release, work Credits, education Credits, and good Conduct Credits. For those Convicted in the Category of In all other Cases the Sentence must not be Suspended nor probation granted. If the legislature intended to disallow any other provisions of those listed in that Category they would have expressedly said so as they did about suspending Sentences and granting probation. Hodges, at 87, 533 S.E.2d at 582 ("The enumerations of exclusions from the operation of a statute indicates that the statute should apply to all Cases not specifically excluded".) By explicitly stating to these in the "In all other Cases" Category and not addressing the other provisions granted to all Convicted under the sub-section it is reasonable to conclude that legislature knows the Court is to construe that to mean these Convicted that falls in the before mentioned Category are eligible for the not mentioned provisions under the rules of statutory Construction. (The legislature is presumed to be aware of [Courts] interpretation on Statutes.) Wigfall V. Tideland Utilities, Inc., 580 S.E.2d 100, 354 S.C. 100 (2003) and Hodges V. Rainey, 341 SC. 79, 86, 553 S.E.2d 578, 582 (2000) ("The Canon of Construction expressio unius est exclusio alterius holds that to express or im-

clude one thing implies the exclusion of another, or of the alternative.")

By Explicitly stating the sentence must not be suspended nor Probation granted to those in the "all other cases" Category and not addressing the other provisions granted to all Convicted under this subsection, it is reasonable to conclude that legislature knows the Court is to Construe that to mean that those Convicted that falls in the before mentioned Category are elgible for the non mentioned provisions under the rules of Statutory Construction. "In the allother Cases", Category the statute Only says they are not to have their Sentence suspended nor probation granted. If the legislature intended for any of the other provisions to be disallowed to these in that Category they would have expressedly said so as they did about suspending sentences and granting probation. The enumeration of exclusion from the operation of a statute indicates that the all Other Cases not Specifically excluded. Exceptions strengthen the force of the general law and enumeration weaken it as to things not expressed. Hodges, at 87, 533 S.E. 2d at 582. Considering the wording of the statute alone, it seems Clear that the legislature only wanted the offenders that fell in the Category of "In all other Cases", it would follow that those of 3rd offense and all their Priors not being for possession would not be allowed Parole! Applying the principle of "expressio unius est exclusio alterius" it should be the legal Conclusion of this Court that the legislature intended for all the provisions of the statute to be granted to those in the "all other cases" Category except for having the Sentence Suspended and probation granted, which were specifically excluded.

## Conclusion

Based on the foregoing facts of the law, (1) I ask that SCDPPPS be made to give me an emergency hearing for Parole for the year of 2016 30 to 45 days from the decision of this honorable Court. (2) I also ask that SCDPPPS be made to grant me an emergency hearing for parole for the year of 2017 30 to 45 days after the 1st hearing asked for to make up for 2016. (3) I also ask this honorable Court to order SCDPPPS to take Appellant up on a year to year basis if Parole is not made. I am a non-violent or Parolable offender therefore by law its a right and created liberty interest by the state for any person serving a non-violent or parolable sentence to go up for parole on a yearly basis if or after parole rejections from the board.

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## Certificate of Service

I hereby Certify that I served a copy of the foregoing brief on Counsel for the Respondent by depositing a copy in the United States Mail postage-prepaid on the 18th day of May, 2017. addressed as follows:

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