STATE OF SOUTH CAROLINA
IN THE COUT OF APPEALS

Appeal from the Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge
Case No. 2016-ALJ-15-0053-AP

Appellate Case No.: 2017-001063

CARNIE NORRIS, #227226.....APPELLANT

v.

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

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

1. **Did the Respondent err in determining that the Appellant is not eligible for parole due to him being convicted of armed robbery?**

STATEMENT OF THE CASE

On July 16, 2008, the Appellant appeared before the victim making him think he was armed with a deadly weapon. He demanded money and received the victim's check card, two gift cards and six dollars in cash. The Appellant was later caught and charged with the offense of armed robbery.

On July 7, 2009, upon being found guilty by a jury of his peers for the offense of armed robbery, the Appellant appeared before the Honorable Derham J. Cole. Upon the conclusion of this appearance he was sentenced to a twenty-eight year term of imprisonment. At the time of this conviction South Carolina law classified armed robbery as a "no parole" offense, so the Appellant is not eligible for parole.

While serving his sentence the Appellant filed a grievance against the Department of Corrections regarding the denial of parole eligibility. The Department of Corrections denied this grievance due to the fact parole eligibility is determined by the Respondent. The Appellant wrote the Respondent requesting information as to why he has been determined ineligible for parole. On November 7, 2016, the Department's General Counsel Mr. Matthew Buchanan informed the Appellant that due to his current offense being classified as a class A-Felony, he is currently ineligible for parole.

Upon being informed as to his parole ineligibility, the Appellant filed a notice of appeal before the Administrative Law Court (ALC). Within this appeal the Appellant argued that pursuant to statute he only has to serve a minimum of seven years before becoming eligible for parole. The Appellant compared the present case to the *Fowler,* and *Bolin* decisions.

The Respondent argued that *Fowler,* nor *Bolin,* applied to the present case. The Respondent also argued that the law existing at the time he committed this offense does not allow parole

eligibility. Since the law had not changed since it was created in 1996 the Appellant remained ineligible for parole. The Respondent followed the law that existed at the time the offense was committed; therefore, no wrongdoing was committed in the denial of parole eligibility.

On April 17, 2017, upon receiving arguments from both sides the Honorable S. Phillip Lenski, Administrative Law Court Judge issued an order in this case. Within this order Judge Lenski determined the Respondent followed the law existing at the time the offense was committed. This denial of parole eligibility was lawful pursuant to South Carolina law. The decision of the Respondent was affirmed by the ALC.

Upon receiving the order of the ALC the Appellant decided to file a notice of appeal before this Court. Within this appeal the Appellant argues that the ALC erred in determining that the Respondent did not commit any error in the denial of the Appellant's parole eligibility. The decision of the ALC is correct. The law existing at the time of this offense did not allow parole eligibility, so the decision of the ALC must be affirmed.

ARGUMENT

1. **The Appellant is currently serving a sentence for a class A-Felony, which is considered a "no parole" offense, so he is not eligible for parole. The ALC was correct in affirming the decision of the Respondent.**

The Appellant admitted that he is currently serving a twenty-eight year sentence for armed robbery. At the time the Appellant committed this offense armed robbery carried a maximum sentence of thirty-years, making this classified as an A-Felony.[1] Since this was classified as a class A-Felony at the time it was committed the Appellant is not eligible for parole. The law existing at the time of the offense and not at the time of sentencing determines whether an increase of

[1]*See,* S.C. Code Ann. §16-1-90 (A)(1986)

punishment or reduction of benefits constitutes an ex post facto violation. *Elmore v. State,* 305 S.C. 456, 409 S.E.2d 397 (1991).

In 1996, the General Assembly created "no parole" offenses, which consist of an 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 of twenty years of more. S.C. Code Ann. §24-13-100(1996). The Appellant committed this offense in 2008 so it is obvious this case falls under this statute. The Appellant committed a class A-Felony so he is currently not eligible for parole. The ALC made the correct decision regarding the legality of the Appellant not being eligible for parole. This decision should not be reversed by this Court. In reviewing a decision by an Administrative Law Judge, the Supreme Court is limited to determining whether the findings were supported by substantial evidence or were controlled by an error of law. *Hill v. South Carolina Dept. of Health and Environmental Control,* 389 S.C. 1, 698 S.E.2d 612 (2010).

The "no parole offense" statue became effective in 1996, he committed this offense after it was established so it applies. The Appellant committed a class A-Felony so he is currently not eligible for parole. Pursuant to South Carolina law a person serving a sentence for a "no parole offense" must serve at least eight-five percent of their sentence. The South Carolina Code of Laws specifically state:

> Notwithstanding any other provision of law except in a case which the death penalty or a term of life imprisonment is imposed a prisoner convicted of a "no parole offense" is 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 or community supervision as provided in Section 24-211-560 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)

This statute was established by the General Assembly prior to the Appellant committing this offense. The Appellant is not eligible for parole and is responsible for serving at least eighty-five percent of his sentence.

The Appellant has argued that that according to South Carolina law he should be allowed parole eligibility upon the service of seven years.[2] This portion of the statue does not provide for parole eligibility, just a limitation on the amount of time that must be served before a person can possibly become eligible. This portion of the statute does not apply to the present case due to the fact the Appellant is not allowed parole eligibility. The statute clearly states that "notwithstanding any other provision of law, except in a case which the death penalty or term of life imprisonment is imposed," S.C. Code Ann. §24-13-100 (1996). This means this statute overrides all other prior statutes. The armed robbery statute states a person cannot be eligible for parole prior to spending seven years incarcerated. It never stated that a person becomes eligible after serving seven years. The Appellant committed this offense after it was considered a "no parole" offense. Due to the language in the statute clearly not allowing parole eligibility, the Respondent was correct in denying the Appellant parole eligibility, a decision correctly upheld by the ALC.

Within his brief the Appellant cites this Court's decisions of *Bolin* v. *S.C. Dept. of Corrections,* 415 S.C. 276, 781 S.E.2d 914 (2015); and, *Fowler v. S.C. Dept. of Corrections,* 2015 WL 7075488 (2015).[3] In *Bolin,* this Court decided that the changing of the law allowing a conviction for a second offense conspiracy to manufacture methamphetamine makes it no longer a "no parole" offense. The Appellant argued that *Bolin* is on point with the present case. The *Bolin* decision is not identical to the present case, and does not apply. The General Assembly created the

[2] A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence. S.C. Code Ann. §16-11-330(A)(1986).

[3] This is an unpublished opinion which shall be of no precedential value. *See,* Rule 220, SCACR.

Omnibus Crime Reduction and Sentencing Act of 2010. This new law stated that notwithstanding any other provision of law a person sentence to a first or second offense for possession with intent to distribute methamphetamine is now eligible for parole. In *Bolin*, the Court decided that since the law has changed, this is no longer a "no parole" offense. Inmates serving a sentence for these offenses are no longer subject to the eighty-five percent term of mandatory imprisonment.

The Appellant also attempts to compare this case to the *Fowler* decision. In *Fowler,* this court ruled that an individual convicted of distribution of heroin second offense is eligible for parole, due to the change in the law. The law now allows for a person convicted of this offense parole eligibility. These two cases are a product of a change in the statute allowing parole eligibility. The armed robbery statute was never changed allowing it to override the "no parole" offense statute.

The law specifically states that any person sentenced to an A, B, or C felony is not allowed parole, a statute created prior to the commission of this offense. The law never changed allowing parole for armed robbery, so the Appellant must serve at least eighty-five percent of his sentence before any release from incarceration. The eighty-five percent statute specifically states, "notwithstanding any other provision of the law except in a case in which the death penalty or a term of life imprisonment," S.C. Code Ann. §24-13-150 (1996), which means that any earlier statute regarding this sentencing does not apply. *See, Stone v. State,* 313 S.C. 533, 443 S.E.2d 544 (1994)(where two statutes are in conflict the more recent and specific statute should prevail so as to repeal earlier general statute.) Since the General Assembly specifically stated in this statute "notwithstanding any other provision of law" it is clear that they wish this statute to prevail. 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. *Bolin*, at 283. It is clear that the General Assembly did not wish anyone convicted of an A, B, or C felony to become eligible for parole. The Appellant is not allowed parole eligibility due to the present no parole statute that became effective prior to the Appellant committing this offense.

Within its decision the ALC made the determination that different statutes must be reviewed in order make a decision on the legality of the decision of the Respondent. The ALC first reviewed Section 24-21-610 which determined the minimum amount of time allowed for parole eligibility. *See,* S.C. Code Ann. §24-21-610 (2007). The General Assembly trumped this statue by the creation of the "no parole offense." It is clear on the face of this statute that the General Assembly wished anyone serving a sentence for a class A-Felony not become eligible for parole. 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).

The Appellant argues that these two statutes conflict; however, there exists no conflict between these two statutes. The armed robbery statute does not give an individual parole eligibility. It just states that a person cannot be eligible prior to serving seven years. Nothing within this statute states that an individual is eligible upon the service of seven years. The Appellant is currently not eligible for parole due to him being convicted of committing a class A-Felony. The armed robbery statute never allowed parole, it just states a limitation prior to a person possibly becoming eligible. If that person was never eligible, that portion of the statute does not apply. There exists no conflict between statutes, the "no parole offense" law was created after the armed robbery statute. The armed robbery statue was never amended allowing parole eligibility. There exists no conflict when a portion of the statute only applies to certain individuals, and not the Appellant. *See, State v. Jones,* 344 S.C. 48, 543 S.E.2d 541 (2001)(affirming the defendant's

sentence of life imprisonment without the possibility of parole pursuant to section 17-25-45 despite the fact the relevant convictions consisted of three counts of armed robbery under 16-11-33(A)); or, *State v. McKay*, 300 S.C. 113, 386 S.E.2d 623 (1989)(recognizing that the defendant's armed robbery conviction pursuant to section 16-11-330(A) rendered him ineligible for parole as a subsequent violent offender pursuant to section 24-21-640). Regardless of the language in the armed robbery statute, the Appellant committed his offense after the "no parole" statute was established, so he is currently not eligible for parole. The Appellant's denial of parole eligibility was lawful, which was correctly affirmed by the ALC. Since the ALC made the proper decision the Respondent respectfully request this Court to affirm the decision of the ALC.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests the final decision of the Administrative Law Court be affirmed.

Respectfully submitted,

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Columbia, South Carolina
June 8, 2017

STATE OF SOUTH CAROLINA
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v.

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

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 June 8, 2017, on the Appellant this 8th day of June, 2017, by depositing a copy of same in the United States mail, postage paid, addressed to:

Carnie Norris, #227226
Perry Correctional Institution
430 Oaklawn Road
Pelzer, S.C. 29669

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

Dawn Nichols
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June 8, 2017

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

RE: Carnie Norris 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: Carnie Norris

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