STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Deborah B. Durden, Administrative Law Judge
Case No. 16-ALJ-15-0035-AP

Case No. 2017-000286

Alonzo C. Jeter, III, # 282902.....APPELLANT

V

South Carolina Department of Probation,
Parole and Pardon Services.....RESPONDENT

FINAL BRIEF OF APPELLANT

Alonzo C Jeter, III, # 282902
APPELLANT

Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

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STATEMENT OF ISSUES ON APPEAL

Did the Department of Probation, Parole and Pardon Services error in classifying the Appellant as ineligible for parole?

STATEMENT OF THE CASE

Appellant was indicted at the 2015 term at Cherokee County Grand Jury for two counts of distribution, etc of methamphetamine 2nd Offense, two counts distribute, sell, manufacture or PWID of controlled substance near a school, and one count of trafficking in ice, crank or crack 10 grams or more but less than 28 grams 2nd Offense.

Appellant plead guilty to all charges on July 16, 2015 and was sentenced to 15 years concurrent. Upon being housed at Perry Correctional Institution, Appellant became aware that he was classified as being ineligible for parole. Appellant then sent a letter to SC Department of Probation, Parole and Pardon Services (SCDPPPS) and asked that the SCDPPPS take a look at the classification and correct the problem. SCDPPPS replied by a letter of final decision dated July 29, 2016 to Appellant which stated, "You were convicted of trafficking meth which is defined as a "No Parole" offense under S.C. Code Section 24-13-100. This section is more commonly referred to as the 85% rule. Therefore, you will be required to serve at least 85% of your sentence before release to community supervision."

Appellant the filed a Notice of Appeal on the decision of the SCDPPPS before the Administrative Law Court on August 19, 2016. The Honorable Deborah Brooks Durden, Judge, affirmed the decision of the SCDPPPS by order dated and filed January 26,2017.

This appeal follows.

ARGUMENT

The Department of Probation, Parole and Pardon Services did in fact err in determining that the Appellant is not eligible for parole.

The South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS) relies on SC Code Section 24-13-100, which defines a "No Parole Offense" as all offenses that are classified as Class A, B, or C Felonies. Recognizing this statute, the Appellant asserts that SC Code Section 24-13-100 is a *GENERAL* statute and the statute that he was convicted of and sentenced under is the *SPECIFIC* statute. This is important that the court knows which is general and which is specific because the Specific statute takes precedent over the general statute. See State v Cutler 274 SC 376, 264 SE2d 420 (1980) - Where there is conflict between general statute and specific statute, the specific statute prevails.

The specific statute which is 44-53-375(c)(1)(b) does not specify this offense to be a no parole offense. The Appellant contends that this specific statute does, however, specify "no part of which may be suspended nor probation granted".

By examining the entire statute 44-53-375 in it's entirety, the legislative intent is found in the specific subsection 44-53-375(F). There the Appellant avers that the legislative intent becomes very clear and unambiguous as it states, and reiterates 44-53-375 (c)(1)(b) stating:

"Sentences for violation of the provisions of subsection (C) or (E) may not be suspended and probation may not be granted."

This same specific subsection continues to read:

"A person convicted and sentenced under subsection (C) or (E) to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term 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."

There in the specific subsection 44-53-375(F) the parole issue is specifically addressed and the legislative intent is clearly known. The Appellant argues that he was not sentenced to neither type of sentence that the precise subsection 44-53-375(F) declares as being ineligible for parole as he was sentenced to a fifteen year sentence.

The Appellant also contends that the mention of the parole issue is addressed and specific as to whom the legislature intends to be eligible for parole. This is also explored in the recent decision of the case of Bolin v South Carolina Dept. of Corrections, 415 SC 276, 781 SE2d 914 (2015). In the Bolin case the inmate was also convicted of an offense which is an Class A felony. However, it was found that even though this was a Class A felony and SC Code Section 24-13-100 defines a no parole offense as a Class A, B, or C felony, this general statute 24-13-100 will not prevent Bolin from being eligible for parole due to the specific statute that he was sentenced and convicted under, 44-53-375(b). This was because the specific statute addressed the issue of parole. See Duke Power Co. V South Carolina Public Service Com'n, 284 SC 81, 326 SE2d 395 (1985) –

Laws giving specific treatment to a given situation take precedence over general laws on the same subject.

The Appellant also contends that by also applying *expression unius est exclusion alterius*, it is found that both statutes, 44-53-375(c)(1)(b) and 44-53-375(F) both agree as to allow parole for one whom has been convicted of 44-53-375 unless he/she has been sentenced to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of twenty-five years or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years. See Hodges v Rainey, 341 SC 79, 86, 533 SE2d 578, 582 (2000) – the canon of construction "expression unius est exclusion alterius" or "inclusion unius est exclusion alterius" holds that "to express or include one thing implies the exclusion of another or of the alternative".

See State v Blackmon, 304 SC 270, 403 SE2d 660 (1991) – As with any statute that is penal in nature, a court must construe the parole state strictly in favor of the defendant and against the state. The Appellant avers that construing this penal statute strictly against the state as the court must, it is found that the Appellant is parole eligible.

Appellant asserts that SC Code Statute 44-53-375 (the specific statute) is also a more recent statute and has been amended as recent as the year of 2016, while SC Code Statute 24-13-100 (the general statute) has not been amended since the year of 1995. See Denman v City of Columbia, 387 SC 131, 691 SE2d 465 (2010) – Where two statutes are in conflict, the more recent and specific statute should prevail so as to repeal the earlier, general statute. See also US v Bormes 133 s.ct 12 (2012) – a precisely drawn, detailed statute pre-empts more general remedies. The Appellant emphasizes that the Legislature has had ample amount of time to address any ambiguity which exists within the specific statute and have not address this issue within the statute because the legislative intent is plain and clear. See also Bell v S.C. Highway Dept. 204 SC 462, 30 SE2d 65 – We must presume that the Legislature was familiar with prior legislation dealing with the same subject matter when it enacted an amendment. The Appellant emphasizes that when the specific statute was amended, of course the Legislature knew that other statutes existed as well and this is why the Legislature chose to be specific in the specific subsection 44-53-375(F) in illuminating the legislative intent. This intent was that not all would be deemed as ineligible for parole. This is realized also in the Bolin decision.

The appellant avers that the Legislature knew that other precautions with regards to parole and recidivism were in place to harmonize with true legislative intent. The Appellant emphasizes that the Legislature knew that SC Code of Laws Section 24-21-640 exists, which reads in relevant part:

"The board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in section 16-1-60."

The Appellant emphasizes, it is clear, that if a person is convicted of ANY violent offense and then that person is ever at ANY TIME in the future convicted of another violent offense, the person will be automatically deemed ineligible for parole. (Note: The charge of Trafficking in ice, crank or crack is listed as a violent crime under SC Code of Law Section 16-1-60.) The Appellant contends that he has been convicted of Trafficking

in ice, crank or crack 2nd offense and if this were truly his 2nd offense this argument would serve no purpose because SC Code of Laws 24-21-640 would automatically prevent him from being eligible for parole. However, this is the Appellant's first time ever being charged and convicted of a trafficking offense. This charge was deemed to be a 2nd offense trafficking charge due to the South Carolina's enhancement law, SC Code of Laws 44-53-470. The Appellant avers that the Legislature was mindful that a person could be convicted of trafficking second offense without ever actually having been convicted of a trafficking offense ever before, as in the case of Appellant. According to the language in the SC Code of Laws statute 44-53-470, ANY prior drug offense can be used to enhance and cause this affect. The Appellant contends that he did have a prior offense, which was a possession of cocaine offense, which was also a misdemeanor offense and listed as a non-violent offense. This in-turn makes the Appellants trafficking offense the only violent offense that he has ever been convicted of. Therefore, SC Code of Laws statute 24-21-640 does not affect the Appellant's parole eligibility because he has not ever been convicted of any other violent offense. However, if the Appellant is ever convicted again of a violent offense, he would be automatically deemed as ineligible for parole due to this statute being in place. The Appellant contends that this is the expressed intent of the Legislature. The legislative intent is a simple rule of thumb in this instance. A prior violent offense deems a person as ineligible for parole.

The Appellant also emphasizes that the Legislature also knew that SC Code of Laws section 17-25-45 was put in place to cure any recidivism. This statute is known as the "2 Strike and 3 Strike Rule", which simply states that if a person is convicted of two crimes that are labeled as MOST SERIOUS, then the person receives a sentence of Life Without Parole. This same statute states that if a person is convicted of three crimes that are labeled as SERIOUS, then the person receives a sentence of Life Without Parole. The crime of trafficking in ice, crank or crack is on the list of SERIOUS offenses. The Appellant emphasizes that this will never go away and the Appellant will always have this "Strike" on his record. Meaning, even when the Appellant is deemed as eligible for parole he will have 1 Violent Strike in regards of SC Code of Laws 24-21-640 on his record and also he will have 1 SERIOUS Strike in regards of SC Code of Laws 17-25-45 on his record. The Appellant emphasizes that this is the legislative intent in regards of any recidivism. The Appellant contends that trafficking in ice, crank or crack 1st offense is a offense that is parole eligible. This is because the offender get a "second-chance" but will always receive the appropriate "Strike" on his record. Again, this is the Appellant's first time with a trafficking conviction, even though it is deemed a 2nd offense do to South Carolina's enhancement laws. The Legislature knew that this was possible, so therefore, SC Code of Laws 44-53-375(F) remains in place to cure this and to offer a second chance, even though the "Strikes" will be received. Appellant emphasizes, South Carolina has no statute in place that charges a person as being a 2nd drug offender or this being the person's 2nd time being convicted of a drug offense. Therefore, the enhancement statute SC Code of Laws section 44-53-470 is used. This makes it look as though a person has been charged with committing the offense in previous times, but this is not truly so. The Legislature knew that this would happen and therefore why they chose to keep SC Code of Laws section 44-53-375(F) in place.

The Appellant maintains and emphasizes that he should be deemed and classified as being eligible for parole, for this is clearly the intent of the Legislature. This penal code and statute should be ruled in the Appellant's favor pursuant to the *Rule of Lenity* which provides that statutes which are penal shall be ruled strictly against the state and in favor of the Appellant. See Hair v State 305 SC 77, 406 SE2d 332 (1991) – When statue is penal in nature it is construed strictly against State in favor of defendant.

The Appellant also avers that statute 44-53-375(F) must be construed in a way that give meaning. See State v Sweat 386 SC 339, 688 SE2d 569 (2010) – A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.

The Appellant emphasizes that there is a conflict between the general statute and the specific statute and the specific statute should prevail in this case. See State v Cutler 274 SC 376, 264 SE2d 420 (1980) - Where there is conflict between general statute and specific statute, the specific statute prevails.

The Appellant contends that the legislative intent in this case should be honored. See State v Hudson 336 SC 237, 519 SE2d 577 (1999) – All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of this statute. Appellant maintains and emphasizes that he should be deemed and classified as being eligible for parole, for this is clearly the intent of the Legislature.

CONCLUSION

The Appellant requests that this court reverse the decision of the Department of Probation, Parole and Pardon Services and remand to the Parole Board for a meaningful opportunity to be released on parole by providing Appellant with a parole eligibility date.

Respectfully Submitted,

Alonzo C. Jeter, III, #282902
APPELLANT

Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

This 5th day of July, 2017
at Pelzer, South Carolina.