Brief of Appellant

The State of South Carolina
(In the court of Appeals)

Appeal from ALC
Judge Debrah Druten

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case No. 2017-001484

Vincent Rice #316178 -Appellant

.V.

Christina Bigelow -Respondent
Counse for S.C.D.C

(Initial) Brief of Appellant

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Summary / Statement of Case

This appeal involves a decision the Dept made to forfeit Appellant's Sept 1, 2016 release date. The Appellant has appealed because the Dept's made it's decision without affording the Appellant minimum due process against the 14th Amendment.

In March 2014, Appellant was contacted by Lee institutional staff, which informed him that due to the recent Feb 2014 Bolin ruling, Appellant was no longer required to serve an 85% term. As a result, the Applicant's release date was significantly changed from November 1, 2018 to be released on March 1, 2017.

This resulted to Appellant being eligible for furlough by statute. On or about June 2016, Lee staff met with Appellant again to evaluate and screen him for the purpose of ensuring he met all the Furlough qualifications. All documents were screen through HQ1. The Appellant was approved of all qualification and his release date was changed to September 1, 2016.

The Appellant signed all release documents and made all the preparations to have a sucessful transition. On August 31, 2016 the Lee staff informed Appellant he would not be released the following day. The staff was incapable of explaining any judical matters, or when he could expect to go home. He was informed a hearing would be held two weeks later on September 14, 2016

The hearing was held and Appellant was informed he would recieve a decision within (10) days. On September 21, 2016, Appellant recieved a decision from an unknown source verifying the evidence in the September 14, 2016 hearing. Appellant was then informed to appeal to the institutional warden, He submitted his step 1 appeal to the Warden on Sept 22, 2016.

On october 18 2016, Appellant's Step 1 appeal to the warden was denied. The Appellant then submitted a Step 2 appeal to the Division of Operations on Oct 28, 2016. On Dec 14, 2016, Appellants step 2 was denied because "he could not show SCDC committed error." The Appeall filed a appeal the the S.C ALC on Dec 19, 2016. On June 20, 2017 the ALC denied Appeal in which the Appellant properly filed timed and notice in this court

The Depts Misinterpretation of Statute 44-53-370(b)(2) and legislative Intent

The email will show (see exhibit), that the Dept converted Appellate to serve an 85% term do to the following language and subpart in the above statute. "In all other cases, the sentence may not be suspended nor probation granted"

The Dept inadequate argued or "admitted in it's brief to the ALC (pg 3+4), that they took matters into it's hands based on the above subpart, but in it's brief it presents it in such a way to leave the court to interpret the meaning for them.

Appellant asserts the Dept has made an arbitrary construing of this language which is a question of constitutionally. The above ~~sub~~ language does NOT state a offender must serve a 85% term in it's plain language, The ordinary language implies a "pre-sentencing" prohibition; implying that a 3rd offender can not get probation at sentencing, but must serve the minimum in the provision.

In addition, the language doesn't state the offender CAN NOT be released into early release programs "after conviction. The ALC attempts to justify the Depts error here when it states the Depts interpretion of the above language was, "a inference based on the lack of explicit statement". However, Appellant asserts the following rules of interpretation should be applied to determined the intentions of "lack of statement".

Negative Implication (expressio est exlusio alterius) - The expression of one thing implies the exclusion of others

Omitted case (casus omissus pro omisso habendus) - Nothing is to be added to what the text states or reasonably implies

Consequently, the underlined language above clearly, "expresses that probation is the only prohibition or exception of a 3rd offender with priors; therefore this expression excludes the notion of no parole egibility. Secondly, the text "omitted" a parole prohibition, therefore the Dept can not add whats omitted. The ALC considers the applications of these rules to the language to be "inverse" instead of legally sound see (pg 4.). Thaglaw any ambiguity must be construed in favor of Appellant, Dept did expand and force meaning, arbitrarly to it's discretion. No harmonized reading was applied

In Bolin ruling, the court relied on Sweat v. State 488 S.E.2d "legislative intent must prevail if it can be reasonably concluded in the language used and that language must be construed in light of the intended purpose of the statute.

Furthermore, not only does the Supremacy of Text supports Appellant's argument in this issue, but further support of the S.C legislative intent (harmony, climate, purpose, enactments) will also prove the legislation did not intend for ANY offender of provision 44-53-370, to serve a 85% term before release.

ct. Stardancer Casino Inc vs. Stewart 556 S.E.2d 357, 361 (2001) - "The intention of the legislature is determined in light of the overall climate in which the legislation was amended.

ct. 16 Jade St, LLC v. R. Design Const Co, LLC 728 SE.2d 448- "The statute must also be read as a whole and in harmony with its purpose"

Therefore, Appellant's overall arguement on this issue is that the Dept's interpretation and actions are in conflict with the legislative intended purpose of its 2010 amendments to provision 44-53-370. Thus the Appellant heavily relies on and refers the court to cite, The February 1, 2010 Final Report of The Sentencing Reform Commission to the General Assembly. This report is a compiled record of the legislative intent in this matter and solely prompted the enactment of the 2010 Omnibus Crime Reduction Act.

In 2009, the General Assembly created the Sentencing Reform Commission to develop policy from a cluttered state justic Dept, primarily an overpopulated correctional Dept, in which 49% of the prison population were low-risk non-violent drug offenders. (ct. SCDC presentation to the Commission 2009)

Prior to the 2010 amendments 54 drug crimes in S.C were classified as violent and 88 drug crimes prohibited parole. Therefore, the Commission's objective was to head the Justice Dept agencies, conduct research and make recommendations to reform drug offenses.

Consequently, the Commission recommended the Assembly enact evidence-based programs, which would allow low-risk drug offenders into early release programs such as parole, furlough. The basis of the recommendations was to save the tax-payer's funds, by allowing low-risk non-violent drug offenders, early release alternatives, and making bed space for the more violent serious offenders in the state. The General assembly then enacted the June 2010 amendments based on these recommendations (paraphrase of report)

ct. Goldston v. State Farm Auto. Ins. Co 945 SE.2d 511, 527 (2005) "The law making body's construction of its language by means of definitions of terms employed should be followed in the interpretation of the act or section to which it relates and is intended to apply."

Duvall v. S.C Budget and Control Bd 659 SE.2d 125, 130 (2008) - when the legislature adopts an amendment to a statute, this court recognizes presumption that the legislature intended to change the law

Upon review, the facts will show the Dept's interpretation of the language and ~~the~~ it's actions of it's misconstruing is in conflict of the legislative intent regarding the terms of punishment regarding 3rd offenders of 44-53-370(b)(2). The Dept is in error for giving "inference to a lack of statements" within the language of the statute

Does the Bolin Ruling Apply to the Appellant?

Appellant is compelled to begin this arguement by informing the court that Dept has presistently failed to answer or admit in any way that the Bolin ruling, was why they forfeited Appellant's release and that the Bolin case was the topic in the hearing and how they justified Appellant's release forfeiture in the hearing (see exhibit 1. The Appellant has stated that his September 1, 2016 release date, which was confirmed by Bolin; but the Dept has refused to give a definite answer in each step as to how the Bolin ruling was critical to this matter.

Furthermore, the ALC disagreed with the Appellant's reliance on Bolin (pg. 8) and "supported the Dept's determination that Appellant must serve an 85% term" (pg 3). The ALC was in error because it did not state why it disagreed with a case that the Dept actually requested to be clarified. In addition, the ALC basically argued/answer FOR the Dept regarding the Bolin matter. The Dept refused to answer Bolin in its brief.

Appellant contention is that the Bolin ruling was the reason behind why the Dept conducted a hearing. They allowed a former solicitor to clarify the ruling (see email). How ever, the Dept has been untruthful with the courts thus far. The Dept wants the court to believe Bolin had nothing to do with the hearing Sept 14, 2016. They have chosen to fabricate the nature of the hearing by stating, "The hearing was to clarify the imposed sentence by the sentencing judge" (brief pg. 5)

Here, the Appellant will present the Facts that the Dept would rather avoid. They used the language in Bolin to justify keeping him in prison

Being that Appellant is a 3rd offender, The Dept used the following language in the Bolin ruling to "detain" Appellant. In the Bolin ruling it states; S.C Code 44-53-370(b)(2), a person convicted and sentenced to this subsection for a 1st or 2nd offense is eligible for community supervision. In addition, the Court also made the following ruling in Bolin, that appears to confuse the Dept; "Based on the foregoing, we hold that a 2nd offence under 44-53-375", is now eligible for parole.

It appears the Dept needed "clarity" because the Court in Bolin did not state explicited that a 3rd offender is now eligible for parole. The Dept fails to view the provision harmoniously. Appellan must add that Michael Bolin was convicted of a 2nd offense under 44-53-375, therefore a 2nd offense was the subject matter of the contest.

Furthermore, based on the conclusions of law in the Bolin ruling a 3rd offense would have resulted the same decision if it were the subject matter, Not only because code 44-53-370 and 375 are identical in language, but the following argument in Bolin is relied on:

The Dept argued in Bolin; "Only offenders serving sentences for no-parole offenses are required to participate in community supervision.
The court rebutted this argument by stating; "That may have been true before the amendments of section 44-53-370 and 375 were enacted, but these amendments now expressly allow offenders to participate in community supervision as a alternative to use the tax-payer funds to house them in prison

The court clearly emphasized in Bolin that the 2010 amendments (Crime Act) repealed the no-parole statute in relation to the title 44 provision. However, the ALC has defied the higher court when it state's in its order, that 24-13-100 still controls, 44-53-370 (pg 4). The ALC also states, "24-13-100 still applies in all cases unless there is specifically expressed legislative intent to the contrary" (pg 4)

The last statement is clear error, because the legislative did express it's intent to supercede the ~~the~~ old 24-13-100 law. In the admendments to Appellants offense, the legislature added, "Notwithstanding any other provision of law". The Appellant asserts this is superordinating language which shows which provision prevails in the event of a clash.

ct. Dorvil South Carolina Budget and control Bd 654 SE.2d 125 (2007)
"When the legislature adopts an amendment to a statute, this court recognizes presumption that the legislature intended to change the law.

However, the ALC believed the notwithstanding can be applied or only charged "parts" of 44-53-370, primarily the 1st and 2nd offenses. However Notwithstanding is used in the subpart of the statute regarding 3rd offenders also 44-53-370(6)(2).

Thus in the Bolin ruling, the Court stated that "Notwithstanding" expressed intent that the amendment repealed 24-13-100 in whole. Therefore, the language at Bolin's statute prevailed, and Appellant's and Bolin's statute are identical in language.

This is why the Dept would rather evade the factors of the Bolin ruling because it confirms Appellant is no longer required to serve a 85% term since 2010. The Dept admits this in the private email (see exhibit) but refuses to admit it in a open court forum. This is a grave injustice because Appellants right to freedom and pursuit of happiness is being willfully denied.

Did the Dept afford Appellant due process before depriving his freedom?

Ct. South Carolina Constitution Art 1 § 3 note 4

Due process encompasses all rights which are such fundamental importance as to require compliance with due process standards of fairness and justice and includes procedural rights against government actions that threaten the denial of life, liberty and property of a person

477 SE.2d 870- Resolution of the issue whether the administrative procedures provided were constitutionally sufficient

This arguement is intended to reveal how the Dept neglected Appellants 14th amendment right, by arbitrarily stopping his Sept 1, 2016 release; but the Depts ~~[illegible]~~ would rather the court believe, this process was merely an internal audit or error.

The evidence submitted by Appellant only, will show the Dept shunned his 14th amendment right of due process and "liberty in this matter, even for an inmate. First, the Appellant states the infringement began with the lack of fair notice. It was the Dept who challenged or contested Appellants release, This is a civil right, therefore they were entitled to give Appellant at least (30) days notice, under S.C Code 1-23-320, "In a contested case all parties must be given reasonable opportunity for hearing after giving at least (30) days notice,

The Appellant signed 6 months worth of ~~[illegible]~~. Dept release documents in preparation of his Sept 1, 2016 release. To the contrary he was informed on August 31, 2016 that he would not be going home to be a free man the next day. This was devastating. The Dept told him he could challenge this in a Sept 14, 2016 "due process" hearing. This was not a (30) days notice for the action the admin took, nor was it "due process". Because Appellant could not make a challenge until a full two weeks after his expected freedom. This kind of action is against the law of this land.

Ct. Wolff 557 - "Consequently the U.S Supreme Court established specific administrative hearing procedures to be followed Before depriving an inmate of statutorily granted earned credit

The Dept claims it did not have to give Appellant (30) day notice, because the law of governing agencies code 1-23-320, "does not apply to internal SCDC hearings" (pg 4) which suggests they can do what they want; even with inmates freedoms. The Dept also states this wasn't a "wolff type hearing" (pg 6) which also suggest there is no constitutional concern here.

Ct. Wolf v McDonell 418 U.S 539 - "the statutory ... related credit, is a protected "liberty" interest under the 14th Amendment entitling an inmate with minimum due process to ensure that state-created right was not arbitrarily abrogated."

Secondly, the Dept did not afford Appellant adequate due process in the actual Sept. 14, 2016 Agency hearing. Top staff privately made a decision well before the Dept's hearing, upon information and belief this is why the Depart decided it could merely "inform" Appellant of it's decision, two weeks after the prejudice was actually in effect.

The Dept aberdoned the laws for formal hearings, and arbitrarily held a informal hearing. APA Act U.S.C.A §551, "An informal hearing usually is a simple meeting and discussion between an agent and agency actions.

Again, the Appellant asserts the Dept was obligated to comply with the quasi-judicial laws in S.C Code 1-23-320, in regards to the Dept hearing. Dept has defiantly withelt all original records of the hearing; but but from first hand experience, Appellant was told he could not ask questions, have a attorney/counsel, engage in a oral defense, neither could he confront witness/accuser, or compell production of evidence,

ct. Al-shabazz 375 - "Rather the division can determine whether the department afforded an inmate due process in its calculation of sentence, sentence-related credits, or custody status by reviewing the Dept's records and applicable departmental policy.

ct. Al-shabazz vs. state - "That administrative process should be followed when the department makes a quasi-judicial decision.

In the Bolin Ruling (2014) the S.C Court of Appeals established the Appellant's entitlement to the sentence-related credits of 24-57-370(b)(2) after the 2010 amendments. And it were these credits that surrounded Appellant's and confirmed his Sept 1, 2016 furlough release, In addition the ALC is in error when it states "Appellant received ample due process" (pg 5) the ALC also suggest that Appellant was not entitled to minimum due process when it stated, "the Dept merely corrected an administrative error" (pg 5). The Appellant asserts it was bicated for the ALC to make such statements when the Dept hasn't disclosed any record of the actual hearing at any point thus far.

In conclusion, the Appellant must shed light on the Depts detachment to adherence of individual rights. The Appellant refers the court to the Depts statements on this issue in it's reply brief (pg 5), "furthermore, even assuming for arguements sake, that there was some error with respect to sufficient due process..... any purported error was harmless (pg. 5). The Dept statements are appalling and absurd if the facts are concluded with a reasonable mind; additionally it is a written expression of the Depts arbitration To put the statements in some form of simplified laymen's terms the language suggest, "even if there was due process error, it doesn't matter no one got harmed".

Arbitrary Decision

S.C contested case means a proceeding in which the legal rights of a party are required by law to be determined by an agency after opportunity....

S.C code 1-23-320 -- The final discussion in a contested case which is adverse to a party must be in writing or stated in the record. It must include findings of fact and conclusions of law, seperately stated. Findings of fact must accompany a concise and explict statement of the underlying facts supporting the findings.

The Appellant recieved a "original decision" of is Sept 14, hearing (see exhibit) from an "unidentified entity" in the Dept on Sept 21, 2014; meaning it is still unknown who made the FINAL decision of the 9/14/14 hearing. Though this decision deprived Appellant of his imminent freedom, it did not include any findings of fact, conclusions of law or explict recisions of the decisions. Appellant asserts this happen because "Top Dept staff" cloaked themselves in the September 21, 2014 final decision; when in fact they actually made a Arbitrary decision weeks before in a private email correspondents with a former solicitor of the state.

In regards of decision making of goverment agencies, the Dept clearly and openly [redacted] stated that "quasi-judicial law" does not apply to them in it's reply brief in the ALC (pg 4), "It states, code 1-23-320 applies to cases before the [redacted] ALC but not to "internal hearings in SCDC, This statement implies the Dept consider it's Agency above the law. The entire code above is regulated law of goverment Agencies with the power to make a quasi-judical decision.

Furthermore, Appellate assents the Departments above statement supports the Dept's arbitrary actions in the decision making process of forfeiting Appellants release date of Sept 1, 2014.

- The term arbitrary describes a course of action or a decision that is not based on reason or judgement based on personal will or discretion with regard to rules or standards. West Enc Amer Law, edition 2 (2008)

In review of the private email document (see exhibit), It will show that Dept staff and a former solicitor had privately decided the Appellant's fate two days prior to his release. Christie bigelow openly agrees with the former solicitor's opinion without any rebuttal. Therefore, the Sept 14, 2014 hearing was merely a formality to make it appear as if Appellant had a fair opportunity to defend his freedom.

473 SE.2d 870 - Regolution of the issue whether the administrative procedures provided were constitutionally sufficient,

The Dept's decision was arbitrary. The staff within the email had contested and made a decision all in a couple emails, However, they cloaked themselves behind the hearing and evaded sec 1-23-320. They were obligated to at least as a minimum have the former solicitor called as a with ess/accuser, and allow production of evidence, judically noticed matters, and a chance for Appellant to rebutt and present evidence.

Did the Dept submitt existing records for a fair review?

The Dept informed Appellant one day prior to his Sept 1, 2016 release that he would not be going home. The Sept 14, 2016 due process hearing was held two years later to justify it's action.

This portion will attempt to show that the Dept has removed all documents, record, evidence, audio, that was connected with this Departmental hearing held on Sept 14, 2016. And the Dept has refused to give a affirmative answer of it's decision making process surrounding this hearing. Appellant asserts this is why the dept stated in it's brief (pg 5) "assumed there was some error!" And the the, Dept has attempted to erase this evidence, because it will show the error in it's actions.

Al-shabazz - "While we are confident the Dept will resolve most matters without the need for either the ALC or judical review, that review must be available".

The Appellant proclaims the Dept created and failed to disclose the following records for review through every single step of this appeal even departmental review also:

A.) The "Notice" or commencement of action. Notice of Sept 14, 2016 hearing

B.) A private email correspondence between Dept staff and former solicitor Bridion Ali, validating Appellant should not be released.

C.) Copies of departmental policy relied on

D.) A copy of the audio record and transcript of the hearing.

E.) A copy of 35pg of submitted evidence by the Appellant during the hearing

F.) A copy of the original final decision recieved on Sept 24, 2016.

All of the above are records in favor of the Appellant's appeal, that is why these records have not been disclosed by the Dept. Therefore, the ALC was in error to state Appellant had Ample due process.

The Dept submitted no records of the hearing to show it's decision making process, and conclusions of law.

Brown 470 S.E 2d - "such review must be available to determine whether the challenged conditions or degree of confinement are within the sentence imposed and are not otherwise violative of the constitution or whether prison officials have acted arbitrarily, or from personal bias." ct. Crowe 256 S.E 2d 61

Conclusion

To conclude this matter, Appellant suggest the fact's will show the Dept's interpretation, Decision and decision making proces was constitutionally invalid as an "administration of government, when it arbitrarily forfeited Appellant's Sept 1, 2016 release from the Dept.

Furthermore, the fact's will show that the Bolin ruling Validated Appellants Sept Furlough release. But instead of requesting for the attorney general to clarify the new ruling, the Dept rested on the shoulders of a former solicitor to Deprive Appellant of his freedom.

The Appellant prays this court vacates or overturn the Dept's Decision upon a full review of the facts around the Sept 14, 2016 hearing. The Appellant should be free but is prejudiced because the Dept "forced" him to do more time after this court clearly established the intent in Bolin

Respectfully

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Certificate of Service

The Appellant Did forward a copy of a Initial Brief to the Court of Appeals by postal mail on August 22, 2017 to the following address

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