

unless substantial rights of the Appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary, or affected by an error of law. *See* S.C. Code Ann. § 1-23-380(5) (Supp. 2016).

DISCUSSION

On September 17, 2015, Appellant was convicted of Possession with Intent to Distribute Cocaine Base Crack, third offense, and sentenced to a term of imprisonment of ten (10) years.

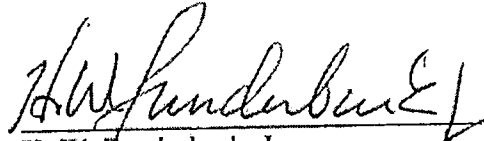
Appellant argues that his sentence should be recalculated because of *Bolin*. Although *Bolin* involved interpretation of S.C. Code Ann. § 44-53-375(B) (Supp. 2016), its application is limited to an inmate convicted of a first or second offense. Based on its interpretation of S.C. Code Ann. § 44-53-375(B), the Court of Appeals concluded that “a second offense under Section 44-53-375(B) is no longer a no-parole offense.” *Bolin* at 286, 781 S.E.2d at 919. Here, Appellant was convicted and sentenced for Possession with Intent to Distribute Cocaine Base Crack, third offense. In addition, Appellant has two prior convictions for distribution of cocaine and a conviction for distribution of crack.

Appellant, in his brief, argues that the Department should not have changed his sentence from non-violent to violent. Whether it is a violent offense is not relevant for its classification for sentencing purposes. Further, SCDC acknowledges that Appellant’s conviction is for a non-violent offense.

S.C. Code Ann. § 24-13-100 (2007) states that a no-parole offense “means a class 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 for twenty years or more.” Possession with Intent to Distribute Cocaine Base Crack, third offense, is a Class A felony. *See* S.C. Code Ann. § 16-1-90 (Supp. 2016). Therefore, Appellant’s conviction for Possession with Intent to Distribute Cocaine Base Crack, third offense, is a no-parole offense. Pursuant to S.C. Code Ann. § 24-13-150(A) (Supp. 2016), a person convicted of a no-parole offense must serve at least 85% of his sentence. Appellant must serve at least 85% of his ten-year sentence. It is therefore,

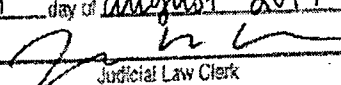
ORDERED that the decision of SCDC is **AFFIRMED**.
AND IT IS SO ORDERED.

Columbia, South Carolina
August 1, 2017


H. W. Funderburk, Jr.
Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 1st day of August 2017
By: 
Judicial Law Clerk

FILED
AUG 01 2017
SC ADMIN. LAW COURT