

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.

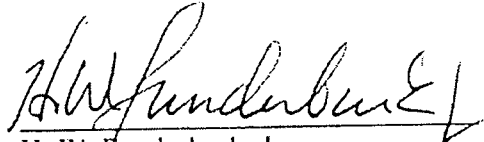
Appellant argues that his sentence should be recalculated because of *Bolin*. Although *Bolin* involved interpretation of S.C. Code Ann. § 44-53-375(B) (Supp. 2016), its application is limited to an inmate convicted of a first or second offense. Based on its interpretation of S.C. Code Ann. § 44-53-375(B), 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,

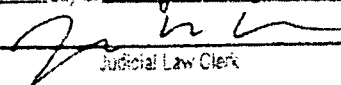
ORDERED that the decision of SCDC is **AFFIRMED**.
AND IT IS SO ORDERED.

Columbia, South Carolina
August 1, 2017


H. W. Funderburk, Jr.
Administrative Law Judge

DECLARATION 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 thereof, 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

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECORD OF DUE PROCESS HEARING
3rd Offense Drug Offenders

TO INMATE: Keith Myers

SCDC #: 250863

INSTITUTION: Evans C.I.

SCDC General Counsel's recent interpretation of S.C. Code § 44-53-0370 and § 44-53-375, in conjunction with Bolin v. South Carolina Department of Corrections, is that inmates convicted of 3rd offense drug offenses are to be treated as 85% offenders unless all of the offender's prior drug offense are for simple possession under the same subsection (either § 44-53-0370 and § 44-53-375). If an offender has prior drug convictions for Manufacturing, Distribution, Possession with Intent to Distribute, or Conspiracy, he or she must be treated as an 85% offender on the 3rd or subsequent offense.

The Inmate Records Office has been informed that because of your prior conviction (s) for Manufacturing, Distribution, Possession with Intent to distribute, or Conspiracy, your current sentence of a 3rd or Subsequent Drug Offense should be calculate at 85%.

Your new projected dates are:

Projected Maxout Date: 3/13/2024 Projected Parole Date: None

If you provide additional information to counter this interpretation, that information will be forwarded to the SCDC General Counsel's office for review and necessary action (if warranted).

You have the right to appeal this decision by filing an inmate grievance pursuant to SCDC Policy GA-01.12, "Inmate Grievance System".

Classification Case Manager/Designee (Print Name): Doreen Roberts

Signature: Doreen Roberts

Inmate Signature: Keith Myers Date: 2/6/17 Time: 12³⁴ PM

Original: Central Record
cc: Institutional Record
Inmate

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

KEITH RODNEY MYERS

AKA: Keith Myer

Race: Black Sex: M Age: 48

DOE. SS#:

Address:

City, State, Zip:

DI# SID# SC00961929

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Distribution Cocaine Base Crack 3rd (10-30)

In violation of § 44-53-0375 (B) of the S.C. Code of Laws, bearing CDR Code # 3039

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is. As indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST.

Stephanie D. Lipper, Assistant Solicitor 72656 SC Bar #

Keith R. Myers Defendant

Demetrius Taylor 10 yrs 5484 SC Bar # Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 2 days T/D

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____ Payment Terms: _____

Obtain CHD

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

prmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: ASTU ATTEST: A TRUE COPY

JULIE J. ARMSTRONG (SEAL) CLERK, C.P., G.S. & F.C.

By: [Signature] DEPUTY CLERK

Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge: [Signature] Judge Code: 63 Sentence Date: 9/17/15

Recipient: _____		
*Fine: _____	\$	_____
§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 47.9 (Public Def/Prob)	\$500	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 8.40
TOTAL		\$ 288.40

Clerk of Court/Deputy Clerk: [Signature] Court Reporter: [Signature]

Certificate of Service

I Keith R. Myers, #250863 hereby certify that I have served a copy of Rule 209 Designation of Matter upon Cheron Hess, Honorable H.W. FunderBurk, JR and South Carolina Court of Appeal by depositing it in the U.S. Mail Postage Pre-Paid address as follow:

South Carolina Court of Appeal Jenny Abbott Kitching, Clerk P.O. Box 11629 Columbia, SC 29211	/	Cheron Hess, Adm. Assit Office of General Counsel's SDC 4444 Broad River Rd Columbia, SC 29221
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Honorable H.W. FunderBurk, JR
South Carolina Administrative Law Court
Edgar A Brown Bldg
1205 Pendleton St, Ste 224
Columbia, SC 29201

10-16-17
Date

RECEIVED

OCT 19 2017

SC Court of Appeals

~~Keith R. Myers~~
Keith R. Myers

Sworn to and Subscribed Before Me,
This 16th Day of October, 2017
Signed: Edward Long
Notary Public of South Carolina
My Commission Expires: 1/20/2022

Certificate of Service

I Keith R. Myers, #250863 hereby certify that I have served a copy of Initial Brief and Copy of Rule 209 Designation of Matter upon Cheron Hess; Honorable H.W. Funder Burk Jr and South Carolina Court of Appeal by depositing it in the U.S. Mail Postage-Pre-Paid addressed as follow:

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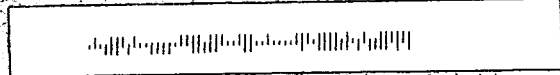
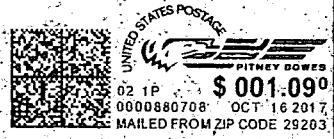
SC Court of Appeals

Keith R. Myers

Keith R. Myers

Sworn to and Subscribed Before Me,
This 16th Day of October 2017
Signed: *Galanda Long*
Notary Public of South Carolina
My Commission Expires: 11/20/2022

15 EITH R MYERS; # 50863
Manning ReEntry & Work Release Center
502 Beckman DR, W-7-C1B
Columbia, SC 29203



RECEIVED
OCT 19 2017
SC Court of Appeals

South Carolina Court
of Appeal
Jenny Abbott Kitching, clerk
P.O. Box 11629
Columbia, SC 29211