

The State of South Carolina
In The Court of Appeals

Appeal From The Administrative Law Court
S. Phillip Lenski, Administrative Law Judge

Case No: 2017-000-914

Andra Jamison, #337461, Appellant,

VS.

South Carolina Dept of Corrections Respondent.

Amended
“ Final Brief of Appellant ”

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DEC 29 2017

SC Court of Appeals

Andra Jamison #337461
Livesay 4-5c
P.O. Box 580
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Appellant Pro-Se

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"Statement OF ISSUE(S) ON Appeal"

1. Did The Respondent Err For Not Classifying Appellant's Felony DUI/Death Conviction As Being Non-Violent As The South Carolina Statutory Laws Mandated At The Time The Crime Was Committed?

"Standard OF Review"

The South Carolina Court of Appeals jurisdiction to hear this matter is derived entirely from the South Carolina code of Laws, Section 1-23-610 (B) (Supp. 2015). Which sets forth the standard of review when this court is sitting in review of a decision by the ALC on an appeal from an administrative agency.

Specifically, section 1-23-610 (B) allows this court to reverse the ALC's decision if it violates a constitutional or statutory provision or is affected by any other error of law. Here, the sole issue on review involves a statutory interpretation.

"Statement OF The Case"

This matter is before the Court of Appeals pursuant to the appeal of Andra B. Jamison (Appellant). A prisoner within South Carolina Department of Corrections (SCDC). Appellant filed a (Step one) grievance on October 5, 2016, complaining of SCDC misclassifying the appellant to a non-parolable 85.1% sentence of (18) years, for an offense that occurred in July 2008, that resulted in a conviction in 2009, of S.C. Code Ann. Section 56-5-2945, Felony DUI/Death when statute 16-1-60, in conjunction with 16-1-70, clearly defines this charge as a non-violent offense.

"Statement OF Facts"

Appellant is appealing the action (or lack thereof) relating to the misclassification by the South Carolina Department of Corrections, where such is requiring the appellant to serve an eighty-five percent (85.1%) non-parolable sentence on the basis of Felony DUI, resulting in death. Where such omnibus crime Bill did not take effect until June 8, 2010. Thus changing...

... Such crime from non-violent to a violent nature pursuant to S.C. Code Ann. § 56-5-2945, code of laws (1976).¹ Whereas, Appellant's incident pursuant to Section 56-5-2945, of the South Carolina code of Laws occurred July 31, 2008 - August 1, 2008. However, Appellant was not found guilty of the offense (by a jury) until October 15, 2009, in Lexington, South Carolina. Hence, such violation of the above violates clearly established South Carolina Statutory, procedural, and constitutional Laws that were in existence prior to June 2, 2010. Emphasis Added.

"Argument"

Did The Respondent Err For Not Classifying Appellant's Felony DUI / Death Conviction As Being non-Violent As The South Carolina Statutory Laws Mandated At The Time Of Appellant's Incident Date Of The Offense? ...

Ft. n. 1

The court stated in Bolin v. S.C. Dept of Corrections, that the non parolable offense statute would be unreasonably applied to an offender whose sentenced under a statute that authorize parole.

... In Al-Shabazz v. State, 338 S.C. 354, 525 S.E. 2d 742 (S.C. 2000), the South Carolina Supreme Court held that an inmate may seek review of a final decision of the South Carolina Department of Corrections in administrative matters under the South Carolina Administrative Procedures Act. The court noted that "administrative matters typically arise in two ways:

1. When an inmate is disciplined and punishment is imposed and;
2. When an inmate believes prison officials have erroneously calculated his sentence, sentence related credits, or custody status."

Here the Appellant was arrested and charged July 31-August 1, 2008, and convicted on October 15, 2009, for DUI / Felony Driving under the influence, which at that time, was classified as a non-violent offense. Thus, SCDC has classified Appellant's offense as violent which is not the proper classification.

As a result of this present misclassification of Appellant's sentence, Appellant submits that his case falls within the confines of the second category enunciated in Al-Shazz. Appellant's argument is that his sentence should have been classified as non-violent because that was the proper classification for the offense of Felony DUI/Death in the year of 2008/2009, pursuant to S.C. Code Ann. Sections 16-1-60 and 16-1-70.

This court may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- a) Made upon unlawful Procedure
- b) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- c) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted abuse of discretion...

... See, S.C. Code Ann. Section 1-23-380(5) (Supp. 2015).

Wherefore, Appellant contend pursuant to South Carolina Statutes Sections 16-1-70, the only offenses that were classified in 2008, as violent, would be found enumerated in section 16-1-60, of S.C. Code Ann. (1976). Thus, the offense for Felony DUI/Death which appellant was convicted of on October 15, 2009, is not one of the violent offenses enumerated, at that time. See, S.C. Code Ann. Sections 16-1-60, 16-1-70, and S.C. Code Ann. Section 56-5-2945.

The Respondent has offered a traverse argument and one that is unconstitutional or preempted. Recognized as repealed by implication of Bolin v. South Carolina Dept. of Corrections, (S.C. 2016). Where Respondent has stated that Appellant is to serve at least 85% of his sentence pursuant to S.C. Code Ann. § 24-13-100.

Appellant would bring to the court's attention that S.C. Code Ann. § 24-13-100, has no lawful effect in this Appellant's case because in Bolin, supra, the ...

... court stated in part:

It is without doubt the statutory definition for the term "no parole offense" in Section 24-13-100. A class A, B, C felony simply describe the types of offenses for which the offender is not eligible for parole. This interpretation is consistent with provisions in related Statutes stating that a no-parolable offender is not eligible for parole.

Thus, it is unreasonable to characterize an offense for which the offender is eligible for parole as a no parole offense pursuant to Section 24-13-100 even if the sentence for the offense places it within a classification encompassed by section 24-13-100.

This is the situation with a 2nd offense under amended section 44-53-375 (B) which still carries a maximum sentence of (30) years, rendering the offense a...

... Class A Felony.

Therefore, the definition of a no-parole offense in Section 24-13-100, conflicts with the legislature intent of S.C. code Ann. § 56-05-2945 (A)(2), in 2008-2009 and sections 16-1-60-70. Citing, *Bolin v. South Carolina Dept of Corrections*,

“ Conclusion ”

For the foregoing reason(s), Appellant respectfully submits that the court should reverse the Lower Tribunal decision and reclassify his offense for Felony DUI/Death to the non-violent status pursuant to S.C. code sections 16-1-60 and 16-1-70 during the years of 2008-2009, with the proper ratings of service not exceeding 65% with work credits, parole eligibility and good time credits, etc.

Dec 20, 2017.

S/ 
Pro Se Appellant.

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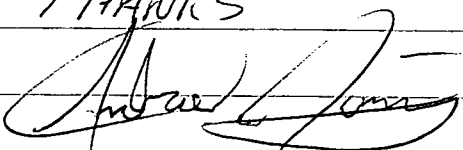
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