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State of South Carolina
In The Court of Appeals

ORIGINAL

Appeal from Administrative Law Court
The Honorable Judge Lenski, Adm. Law Judge
C/A. 2017-001063

Carnie Norris #227226 . . . . . . Appellant

v.

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

Final Brief of Appellant

Carnie Norris #227226
Appellant
PCI, 430 Oaklawn Rd
Pelzer, S.C. 29669

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SC Court of Appeals

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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, Carnie Norris was convicted of armed robbery on July 9, 2009 in the Spartanburg County General Sessions Court. Appellant was sentenced 28 years by Judge D. Cole.Appellant filed a timely notice of appeal to the S.C. Court of Appeal which was denied.

Appellant became aware that he was eligible for parole on armed robbery conviction, according to 16-110330(A). Appellant enquired about it to classifications department and grievance coordinator, which stated that Appellant's claim was not a grievable matter. A written response by South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS) stated that Appellant was sentenced under the "No Parole" statute 24-13-100, which is also known as the 85% rule. Appellant filed a notice of appeal of the decision the SCDPPPS before the Administrative Law Court.

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.

This case is ultimately quite easy, SC Legislature enacted specific statute SC Code Ann. 16-11-330 (A) to allow parole eligibility status to a person convicted of armed robbery after the service of 7 years (Act No. 441 subsecton 1, 1996). Therefore, Appellant is parole eligible now and should have been given notice and a parole hearing because he has served the mandatory minimum of 7 years of his 28 year sentence which was imposed on July 9, 2009.

Appellant was convicted of armed robbery in Spartanburg County on July 9, 2009 and was sentenced to 28 years. *See Sentence Sheet Attached.* Appellant recognized that the decisions in Fowler v SCDC, Opinion 2015-UP-517 and Bolin v SCDC, Opinion 5361 held that a sentence cannot be 85% and parole eligible.

This is a collateral consequence of sentencing and parole eligibility and is under the jurisdiction of South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS) rather than the trial court.

The Respondent's reliance on general statute 24-13-100 "No Parole Offense" is error. It is undisputed that the question whether any ambiguity should be resolved for or against the SCDPPPS can have only one answer which points clearly to an interpretation that favors the Appellant. This case will not require breaking new ground because the legislative intent of SC Code Ann. 16-11-330 (A) is controlling. When cases pertaining to 85% or parole eligibility, the South Carolina Court of Appeals has made it abundantly clear that they are not amending the term "No Parole Offense", just if it states differently by statute a prisoner can be eligible for parole, as in the case at bar. The Appellant should be given a parole date and hearing.

The specific statute 16-11-330 (A) reads in part,

A person convicted under this subsection is not eligible for parole until the person has served at least 7 years of his sentence.

The primary purpose in interpreting statutes is to ascertain and effectuate the intent of the Legislature. Cain v Nationwide Prop., 378 S.C. 25, 29, 661 SE2d 349, 351 (2008). Where two statutes are in conflict, the more recent and specific statute should prevail so as to repeal the earlier, general statute. Hodges v Rainey, id at 85, 533 SE2d at 581.

General statute 24-13-100 became law by way of Act. No. 83 subsection 1 in 1995. Specific statute 16-11-330(A) was amended by way of Act No. 441 subsection 1 in 1996. There is a conflict between the two statutes listed above. 24-13-100 and 16-11-330(A) and no other statute.

Appellant is relying on the specific statute 16-11-330(A) armed robbery where it states that Appellant is parole eligible after the service of 7 years. If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation and the Court has no right to look for or impose another meaning. Courts should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless.

Penal statutes are to be construed strictly against the state. When a general statute and a specific statute conflict, the specific statute prevails, is in the case at bar.

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 maximum sentence for the offense places it within a classification encompassed by section 24-13-100. The definition of No Parole 24-13-100 conflicts with the legislative intent of the Act to exempt armed robbery under 16-11-330 (A) from all consequences of No-Parole offense.

Words in a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statutes operation.

Appellant recognized that section 24-13-100 has been ruled unconstitutional or pre-empted and recognized as repealed by implication (S.C. App. February 2016). Title 24-13-100 is inapplicable to this case.

Statute 24-13-150 does not apply to this case, also because 24-13-100 is not applicable. Statute 24-13-560 does not apply to this case, because Appellant has never been convicted of a violent crime, so therefore, 24-21-640 does not apply also.

The Respondent states that there is a conflict between 24-13-150 and 16-11-330(A) which is error. The actual conflict is between 16-11-330(A) and 24-13-100 which the Appellant has fully addressed.

Two cases that are directly on point are Bolin v SCDC, 781 SE2d 914 and Fowler v SCDC, 2015 WL 7075488 in which the SC Court of Appeals addressed the contentions identical to this case.

Appellant is requesting a parole hearing within the next 45 days after review of this case and/or whatever this Court deems necessary.

It is beyond dispute that the Respondent can prove no set of facts in support of their claims to deny Appellant parole eligibility and parole hearing after a conviction on 16-11-330(A).

The Respondent's contentions in their brief are a misrepresentation of the facts of the Legislature's intent of Statute 16-11-330(A).

In 1995, the General Assembly created "no parole" offenses 24-13-100 Act No. 83 subsection 1.

In 1996, the General Assembly amended the specific statute for armed robbery 16-11-330(A) by way of Act No. 441 subsection 1, which reads in part:

"A person convicted under this section is not eligible for parole until the person has served at least 7 years of the sentence"

Appellant was convicted of armed robbery in 2009 under section 16-11-330(A) which is controlling in this case.

South Carolina Court of Appeals has made it abundantly clear that they are not amending the term "no parole offense", just if it states differently by statute a prisoner can be eligible for parole as in the case at bar.

The Respondent's statement of the case and argument are in error for the following reasons. Appellant did not state that Fowler v SCDC allows him parole. Appellant stated in his brief that Bolin v SCDC, 781 se2d 914 and Fowler v SCDC addressed the contention identical to this case which deals with general and specific statutes.

The Respondent argues that the law that existed at the time the Appellant committed this offense did not allow for parole eligibility. The specific statute, which is the legislative intent under 16-11-330(A), does allow for parole eligibility to a person convicted for armed robbery.

"No parole offense" 24-13-100 Act No. 83 subsection 1 (1995) was created by the General Assembly. The Respondent would have you believe that the "no parole" law was enacted in 1996, which is an error.

South Carolina Code of Laws armed robbery statute 16-11-330(A) has always had a mandatory minimum service of 7 years before being eligible for parole, even after 24-13-100 was enacted in 1995.

The Respondent argues that the general statute 24-13-100, which defines a "no parole offense" classified as Class A, B, or C Felony is the more recent statute. However, the Appellant contends that the general statute 24-13-100 which defines a "no parole offense" was created in 1995 while the specific statute in which the Appellant was sentenced under was created one year later in 1996. There is clearly a conflict between general statute 24-13-100 and the specific statute 16-11-330(A) as the general statute defines the crime that the Appellant committed as a "no parole offense" and the specific statute states that the offense is a paroleable offense and the offender is parole eligible after service of 7 years.

To remedy this conflict and to illuminate the legislative intent, it is held that where two statutes are in conflict, the more recent and specific statute should prevail so as to repeal earlier general statute. *See* Stone v State, 313 SC 533, 443 se2d 544 (1994). Applying the remedy to the statutes at bar, the court will find that statute 24-13-100 is the earlier and general statute while 16-11-330(A) is the recent and specific statute.

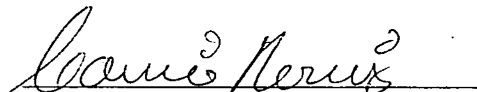
The Respondent argues that because the earlier general statutes states "not withstanding any other provision of the law" that it was the wish of the General Assembly that this earlier general statute would prevail. However, realizing that the more recent and specific statute 16-11-330(A) allows parole for a person sentenced under the specific statute, the legislative intent is clear that it is the wish of the General Assembly that this later and specific statute would prevail. *See* Bell v SC 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 they enacted an amendment. The Appellant emphasizes that if it was not the intent of the Legislature to provide that a person sentenced under the specific statute, then the Legislature would have simply removed the parole provision from the more recent and specific statute when amending the statute. The Appellant avers that the specific statute was amended and allows parole in 1996 amendment after the earlier general statute 24-13-100 was created in 1995.

The Appellant emphasizes that no other South Carolina statutes provide for parole in the specific statute. This is because the parole provisions were removed through amendments. The Appellant further emphasizes that the Legislature would have removed the parole provision from the specific statute if it was not intended to provide that those convicted of this offense to be eligible for parole.

The Appellant points out that the cases that the Respondent cites in their brief, Jones, McKay, and Elmore are inapplicable to this case because the Appellant does not have prior violent convictions.

CONCLUSION

Based on the foregoing reasons, the Appellant respectfully requests the final decision of SCDPPPS be vacated and a parole hearing be granted to the Appellant within 45 days.



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Certificate of Service

I, Carnie Norris #227226 hereby certify that I have served the within Final Brief of Appellant, dated June 15, 2017 by depositing a copy of the same in the U.S. mail, postage prepaid by and through the Perry Corr. Inst mailroom, addressed as follows:

Deputy Dir. Legal Services
SCDPPPS
2221 Devine St. Suite 600
P.O. Box 50666
Columbia, SC 29250

I, Carnie Norris #227226 certify and verify under the penalty of perjury that the foregoing is true and correct

[signature] #227226