

Brief of Appellant
The State of South Carolina
In the Court of Appeals
Appeal from ALC
Honorable Milton G. Lumpson, S.C. ALC
Case No: 2017-002628

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JAN 16 2018

SC Court of Appeals

James Wesley Patterson # 296129, Appellant

VS

South Carolina Dept. of Corr, Respondent
Initial Brief of Appellant

James Wesley Patterson # 296129
Goodman CI 4-387
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Statement of Issue on Appeal

1. Did the ACC unlawfully decide that the appellant is not eligible for parole, work credits, good time, educational credits, work release that he should not be doing 51% of his time, but 85% and his max out date should not be October 2019 but May 2024, due to his prior drug convictions

Statement of the Case

On January 2, 2017, the Appellant was informed by the S.C. Dept of Corr. (SCDC) classification case manager Kisha Fogle his time had changed to 85%, was no longer 65%, which would be 51% with work credits and good time, was no longer eligible for parole, and his max-out was no longer October, 2019, but is now May, 2024. The reason being was because of SCDC General Counsel's recent interpretation of S.C. Code 44-53-370 and 44-53-375 in conjunction with Bolin v. SCDC and the Appellant's prior drug convictions.

In 2016 SCDC had changed the Appellant's max-out date from May, 2024 to October, 2019 and informed him he was no longer 85% but was now 65%, which would be 51% with work credits and good time because of Bolin vs. SCDC. The appellant was already eligible for parole prior to this and projected parole date was June, 2016.

Upon being notified by Kisha Fogle the appellant filed Step 1 grievance but was turned down. Then he filed Step 2 grievance and was turned down again. The appellant was grieving the fact that SCDC General Counsel's interpretation is wrong, he is eligible for parole and should be doing 65% of his time which would be 51% with work credits and good time pursuant to 44-53-370 and 44-53-375.

The appellant filed a notice of appeal before the Administrative Law Court (ALC) when he was notified of this denial. The ALC affirmed the decision of SCDC General Counsel. Within this notice of appeal the Appellant alleged the ALC violated the South Carolina Law by denying him parole, work credits, good time, educational credits, work ~~release~~ and that he should be doing 51% of his time.

The appellant argues the ALC unlawfully decided the appellant was not eligible for these things due to his prior drug convictions. The appellant's brief supporting this follows.

1. The Administrative Law Court erred in determining the Appellant is not eligible for parole, work credits, good time, work release, education credits, that he should not be doing 51% of his time, but 85% and his max out date should not be October, 2019 but May, 2024 due to his prior drug convictions.

While the interpretation of a statute by the agency charged with its interpretation will be accorded the most respectful consideration. An agency interpretation affords no basis for the perpetuation of a patently erroneous application of the statute. State vs Sweet 386, S.C. 339, 351, 688 SE2d 569, 575-76 (2010)

The Administrative Law Court (ALC) ruled that the Appellant is not eligible for parole, work release, work credits, good time, education credits, that he should not be doing 51% of his time, but 85% and his max out date should not be October, 2019 but May, 2024. The Appellant will reveal to the court he is eligible for all of these things. The Appellant was convicted for Manufacturing 3rd, even though he has no priors for Manufacturing, pursuant to the South Carolina law the Appellant is eligible for the above mentioned things. The South Carolina Code of law 44-53-375(B). Specifically states: "Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a 3rd or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted S.C. Code Ann § 44-53-375(B)"

The statute is clear, an inmate convicted of 3rd offense or subsequent cannot have the sentence suspended nor probation granted. If the legislation had wanted to exclude 3rd offense or subsequent from being eligible for work credits, parole, good time, work release or education credits under 44-53-375(B) no matter of priors, then it would have done so by saying in all other cases

The sentence must not be suspended, nor probation granted and is not eligible for parole, supervised furlough, community supervision, work release, work credits, education credits and good conduct credits, but it does not. Instead, it states in all other cases the sentence must not be suspended nor probation granted. Because the legislature chose not to do this, its intent is clear. Appellant should be eligible for parole, work credits, supervised furlough, community supervision, work release, education credits and good conduct credits. Hear vs State 406 SE2d 334.

In reading the entire statute, it is clear the legislature wished for prisoners who were convicted for 3rd offense or subsequent to be eligible for parole, supervised furlough, community supervision, work release, work credits, education credits and good conduct credits. If the legislature did not wish for all individuals who have committed drug offenses these things then the statute would have limited these things. A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers State vs Sweat 386 SC 339, 351, 688 SE2d 569, 575-76 (2010)

The legislature intended for all individuals sentenced to a 3rd or subsequent under this statute all of these things, if not it would have been stated. Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention State vs Sweat 386 SC 339, 351, 688 SE2d 569, 575-76 (2010). The primary rule of a statutory construction is to ascertain and effectuate the intent of the legislature Gilstrap vs South Carolina Budget and Control Board 423 SE2d 101 (1992) This court must avoid construing a statute so as to lead to an absurd result State vs Allen 431 SE2d 563 (1993). It is clear by reading the statute the legislature wished 3rd offense or subsequent to be eligible for these things.

The statute clearly states parole, supervised furlough, community supervision, work release, work credits, education credits and good conduct credits is afforded to a person convicted of a 3rd or subsequent offense regardless of priors. That intent was included when the legislature wanted all individuals regardless of priors to be eligible for these things. Language of a statute should be resolved in favor of just, equitable and beneficial operation of the law. State vs Sweat 386 SC 339, 351, 688 SE2d 569, 575-76 (2010) The statute is clear, an individual with a 3rd or subsequent is eligible for these things regardless of priors. The appellant is eligible for these things.

Conclusion

Based on the foregoing reasons the appellant respectfully requests this appeal to move forward or the final decision of the Administrative Law Court to be reversed.

Respectfully submitted
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Proof of Service

The State of South Carolina

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Appeal from Administrative Law Court

Milton G. Kimpson, Judge ALL

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SC Court of Appeals

James Wesley Patterson #296129, Appellant

vs

SCOC, Respondent

I certify that I have served a copy of the Initial Brief and designation of matter to be included on all parties by depositing a copy of it in the United States mail postage paid; January 11, 2018 addressed to S.C. Court of Appeals P.O. Box 11629, Columbia, S.C. 29211 and SCOC General Counsel P.O. Box 21787 Columbia, S.C. 29221

January 11, 2018

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