

State of South Carolina
In The Court of Appeals

ORIGINAL

Appeal Administrative Law Court
Honorable S. Phillip Lenski, Adm Judge

C/A 2017-001063

Cornie Morris #227220 Appellant
v.

South Carolina Department of
Probation, Parole and Pardon
Services,

..... Respondent

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JUL 13 2017

Amended

Record on Appeal

SC Court of Appeals

Cornie Morris #227220
Appellant
Perry Corr. Inst.
430 Oaklawn Rd
Pelzer, S.C. 29669

Tommy Evans Jr.
Asst. General Counsel
S.C. Dept of Probation
Parole and Pardon Services
P.O. Box 50660
Columbia, S.C. 29250

State of South Carolina
S.C. Court of Appeals

Carnie Morris #227226 . . . Appellant
✓
South Carolina Dept of PPPS . . . Respondent

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State of South Carolina
In The Court of Appeals

Appeal from Administrative Law Court
Honorable S. Phillip Leuski, Adm Judge
C/A. 2017-001063

Carnie Morris #227226 Appellant

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

Certificate of Service

I, Carnie Morris #227226, hereby certify that I have served the within Record on Appeal on Respondent by depositing a copy of the same in the U.S. mail, postage prepaid, by and through the interagency mail service of Perry Corr. Inst. mailroom personnel, addressed as follows:

Tommy Evans Jr. Esq.
SCDPPPS
P.O. Box 50666
Columbia, SC. 29250

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JUL 13 2017

SC Court of Appeals

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

2

Carnie Morris #227226
Carnie Morris #227226
Appellant
PCI, 04B101
430 Oaklawn Rd
Pelzer, SC 29669

State of South Carolina
In The Court of Appeals

Appeal from Administrative Law Court
Honorable S. Phillip Leuski, Adm Judge
C/A. 2017-001063

Carrie Morris #227226 Appellant

v.

South Carolina Dept. of
Probation, Parole and Pardon
Services

Respondent

Record on Appeal

Carrie Morris #227226
Appellant
Perry Corr. Inst.
430 Oaklawn Rd
Pelzer, S.C. 29669

Tommy Evans Jr.
Asst. General Counsel
S.C. Dept. of Probation,
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P.O. Box 50666
Columbia, S.C. 29250
(803) 734-9220
Attorney For Respondent

State of South Carolina
In The Court of Appeals

Appeal from Administrative Law Court
Honorable S. Phillip Lenski, Adm. Judge

C/A. 2017-001063

Carnie Morris #227226 Appellant

v.

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

Certificate of Appellant

I, Carnie Morris #227226 hereby certify that
this Record on Appeal complies with Rule and
contains all material proposed to be included in
the Record on Appeal by all of the parties and not
any other material.

RECEIVED

JUL 13 2017
SC Court of Appeals

Carnie Morris #227226
Carnie Morris #227226
Appellant

Perry Corr. Inst
430 Oaklawn Rd
Pelzer, S.C. 29669

June 15, 2017
Dated

Carnie Morris #227226
Perry Corr. Inst. Q4B101
430 Oaklawn Rd
Pelzer, S.C. 29669

The Honorable Jenny Kitchings
Clerk, S.C. Court of Appeals
1015 Sumter St - 5th floor
Columbia, S.C. 29201

Re: Carnie Morris #227226 v. S.C. Dept of Probation,
Parole and Pardon Services

Dear Ms Kitchings,

Enclosed, please find for filing the Notice
of Appeal dated April 17, 2017 along with proof
of service in the above entitled case.

Thank you for your assistance in this matter

~~Carnie Morris #227226~~
4-24-17

CC: Tomm Evans Jr., Esq

State of South Carolina
In The Court of Appeal

Appeal from the Administrative Law Court
Honorable S. Phillip Lewski, Judge
Case No: 16-AW-15-0053-AP

Cornie Morris #227226 Appellant

✓
South Carolina Dept of Probation Respondent
Parole and Pardon Services

Notice of Appeal

Cornie Morris #227226 appeals the decision of the Honorable S. Phillip Lewski dated April 17, 2017. Appellant received a copy of the decision on April 30, 2017.

Cornie Morris
Cornie Morris #227226
PCI, G4B01
430 Oaklawn Rd
Pelzer, S.C. 29669
Appellant

Tommy Evans Jr. esq
Attorney for Respondent

SC Dept of PAPS
2221 Devine St. Suite 600
P.O. Box 50666
Columbia, S.C. 29252

State of South Carolina
In The Court of Appeals

Appeal from the Administrative Law Court
Honorable S. Phillip Lenski, Judge
Case No. 16-ALJ-15-0053-AD

Cornie Morris #227220 Appellant

v.

South Carolina Dept. Respondent
Poole and Pardon Ser.

certificate of services

I, Cornie Morris #227220 certify and verify
that I have served notice of Appeal on Respondent
by depositing the same in the U.S. Mail at Perry Cross,
for mailing, postage prepaid addressed as follows.

Tommy Evans Jr. esq
S.C. Dept of PPS
2221 Devine St., Suite 600
Columbia, S.C. 29250

Administrative Law Court
1205 Pendleton St., Suite 224
P.O. Box 11667
Columbia, S.C. 29211-1667

I certify under the penalty of perjury that the foregoing
is true and correct.

7

Cornie Morris

State of South Carolina
In The Court of Appeals

Appeal from the Administrative Law Court
The Honorable Lenski, Administrative Judge
Case No. 16-AW-15-0053-AP

Carnie Morris #227226 Appellant
South Carolina Department
of Probation, Parole and Pardon
Services Respondent

Motion To Proceed
In Forma Pauperis

I, Carnie Morris #227226 hereby apply for a
leave to proceed in this action without prepayment
of fees or cost or security therefor. In support of
my motion, I declare under the penalty of perjury
that the following facts are true:

- 1) I am the appellant in this action and I believe
I am entitled to redress.
- 2) I am an incarcerated prisoner who is not earning
any wages.
- 3) Because of my poverty, I am unable to pay the costs
of the proceeding or give security therefor.

Carnie Morris ✓
Carnie Morris #227226
Appellant

sworn and subscribed before me
this 24th day of April, 2017

Nancy C. Mendenhall
Notary Public For South Carolina
My Commission Expires 1-23-2023 8

STATE OF SOUTH CAROLINA,)
In The Court of Appeals)

Carrie Norris #227226)
Appellant)

**MOTION AND AFFIDAVIT TO
PROCEED IN FORMA PAUPERIS**

vs.)

S.C. Dept. of Probation, Parole)
and Pardon Services)
Respondent)

FILE NO. 16-ALJ-15-0053-AP

I, Carrie Norris #227226 being duly sworn, state that I am the Appellant and that I do not have the funds available to pay the costs of filing and service in the present matter. I hereby request my appeal be filed and service made without costs.

Sworn to and Subscribed before me)
this 24th day of April, 2017)
Nancy C. Merchant)
Notary Public for South Carolina)
My Commission expires 1-23-2022)

Carrie Norris ✓
Signature of Appellant

ORDER

- Leave is granted to proceed in forma pauperis without payment of the filing fee.
- Leave is granted to proceed in forma pauperis without payment of the service cost.
- Leave is denied to proceed in forma pauperis.

Dated: _____, 2 _____
_____, South Carolina

JUDGE/CLERK OF COURT

Carnie Norris
Perry Correctional Institution
Q4-B-101 / 227226
430 Oaklawn Road
Pelzer, SC 29669

The Honorable Lenski
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29250

March 30, 2017

RE: Carnie Norris, # 227226 v South Carolina Department of Probation, Parole & Pardon

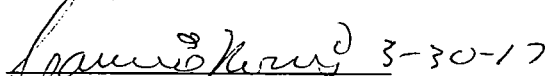
]

Dear Judge Lenski:

Enclosed, please find for filing the *Reply Brief of Appellant* dated March 30, 2017 along with *Certificate of Service* in the above referenced case.

Thank you for your assistance in this matter.

Sincerely,


Carnie Norris, # 227226
APPELLANT

Cc: Tommy Evans, Jr., Esquire

STATE OF SOUTH CAROLINA
In The Administrative Law Court

16P0053

Appeal of Final Decision
SC Department of Probation, Parole; and Pardon Services

Carnie Norris, # 227226.....APPELLANT

V

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

REPLY BRIEF OF APPELLANT

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MAR 30 2017

P.C.I. MAILROOM

Carnie Norris, # 227226
APPELLANT

Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669

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Does the "specific statute" of S.C. Code Ann. §16-11-330(A) extend parole eligibility to a convicted armed robber?

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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 subsection 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, as 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-Parolee 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 is Bolin, 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.

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

In 1996, the General Assembly amended the specific statute for Armed Robbery 16-11-330(A) by way of Act No. 441 § 1 which read 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 16-11-330(A) in 2009. S.C. Code Ann 16-11-330(A) is controlling in this case.

S.C. Court of Appeals have 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 is in error for the following reasons: Appellant did not state that Fowler v. SCDC allows him parole. Appellant stated in his brief that Colin, 781 S.E. 2d 914 and Fowler v. SCDC addressed a contention identical to this case, which deal 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's intent do allow for parole eligibility to a person convicted for Armed Robbery.

No parole offenses § 24-13-100 was created by the General Assembly by way of Act No. 83 § 1 in 1995.

The Respondent would have you to believe that the no parole law was enacted in 1996, which is error. See § 24-13-100 Act. No. 83 § 1 (1995)

The Respondent argues that the general statute, 24-13-100 is the more recent statute. However, the appellant contends that the general statute 24-13-100 was created in 1995 while the specific statute 16-11-330(A) which the Appellant was sentenced under was created one year later in 1996. There is clearly a conflict between the general statute 24-13-100 and the specific statute 16-11-330(A) as the general statute is no parole offenses and the specific statute 16-11-330(A) states that the crime Armed Robbery is a parole offense 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. Stone v. State, 313 S.C. 533, 443 S.E.2d 544 (1994). Applying this remedy to the statutes at bar, the court will find that statute 24-13-100 is the earlier general statute while 16-11-330(A) is the recent specific statute.

The Respondent argues that because the earlier general statute states "notwithstanding 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 S.C. 462, 30 S.E. 2d 65. We must presume that the legislature was familiar with prior legislation dealing with the same subject matter when it 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 2417-100 was created in 1995.

Appellant emphasize 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.

Appellant point out that the cases Respondent cite and rely on in Lores, McKay and Elmore are inapplicable to this case because appellant does not have prior violent convictions.

Conclusion

Based on the foregoing reasons, the appellant respectfully request the final decision of the SCOPPS be vacated and a parole hearing be granted within 45 days

5 18 Lamont Lewis # 207226

STATE OF SOUTH CAROLINA
In The Administrative Law Court

16P0053

Appeal of Final Decision
SC Department of Probation, Parole, and Pardon Services

Carnie Norris, # 227226.....APPELLANT

V

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

CERTIFICATE OF SERVICE

I, Carnie Norris, #227226, hereby certify that I have served the within Appellant's Reply Brief, dated March 30, 2017 by depositing a copy of the same in the United States mail, postage prepaid by and through the Perry Correctional Institution mailroom, addressed as follows:

Deputy Director of Legal Services
SC Dept. of Probation, Parole, and Pardon Services
2221 Devine Street, Suite 600
P.O. Box 50666
Columbia, SC

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

Carnie Norris #227226

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MAR 30 2017

P.C.I. MAILROOM

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

March 20, 2017

The Honorable Phillip Lenski
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

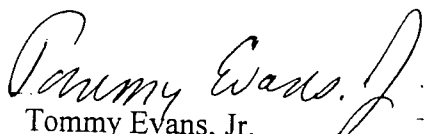
RE: *Carnie Norris, #227226 v. S.C. Department of Probation, Parole and Pardon Services*

Dear Judge Lenski:

Please find enclosed for filing the *Brief* dated March 20, 2017, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

TE:dn

Enclosures
cc: Carnie Norris

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 16-ALJ-15-0053

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

CARNIE NORRIS, #227226 APPELLANT

v.

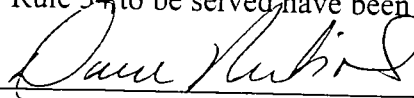
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within *Brief*, dated March 20, 2017, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 20th day of March, 2017, addressed to:

Carnie Norris, #227226
Perry Correctional Institution-Q4B101
430 Oaklawn Road
Pelzer, S.C. 29669

I further certify that all parties required by Rule 54 to be served have been served.



Dawn Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

STATE OF SOUTH CAROLINA
In The Administrative Law Courts
Docket Number 16-ALJ-15-0053

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

CARNIE NORRIS, #227226.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,RESPONDENT

BRIEF OF RESPONDENT

Tommy Evans, Jr.
Assistant General Counsel

**South Carolina Department of Probation,
Parole, and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220**

ATTORNEY-FOR-RESPONDENT

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STATUTES

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S.C. Code Ann. §24-13-100(Supp. 1986).....2

S.C. Code Ann. §24-13-150(Supp. 1995).....3

STATEMENT OF ISSUE ON APPEAL

1. Did the Respondent err in denying the Appellant parole eligibility due to an armed robbery conviction?

STATEMENT OF THE CASE

On July 16, 2008, the Appellant appeared before the victim making him believe he was armed with a deadly weapon. He demanded money or goods and the victim gave him a check card, two gift cards, and six dollars in cash. The Appellant was later caught and charged with the offense of armed robbery.

On July 7, 2009, upon being found guilty by a jury of his peers for the offense of armed robbery, the Appellant appeared before the Honorable Derham J. Cole. Upon the conclusion of this appearance the Court sentenced the Appellant to a twenty-eight (28) year term of imprisonment. (R. pp. 3-5) At the time the Appellant committed of this offense South Carolina did not allow parole for the offense for armed robbery.

While serving his sentence the Appellant filed a grievance against the Department of Corrections regarding the denial of parole eligibility. The Department of Corrections denied his grievance due to the fact parole eligibility is determined by the Respondent. The Appellant wrote a letter to the Respondent requesting information as to why he is not eligible for parole. On November 7, 2016, the Department's General Counsel Matthew Buchanan, responded with a letter informing him that due to his current offense being classified as an A-Felony he is currently not ineligible for parole. (R. pp. 1-2)

Upon being informed as to his not being eligible for parole the Appellant filed a notice of appeal before the Administrative Law Court (ALC). Within this appeal the Appellant argued that pursuant to statute he has to serve a minimum of seven years before being eligible for parole, and the South Carolina Supreme Court decision of *Fowler v. S.C. Dept. of Corrections*, allows him parole eligibility.

The Respondent argues that *Fowler*, does not apply to the present case, and the law that existed at the time he committed this offense does not allow for parole eligibility. Since the law has not changed since it was created in 1996 the Appellant remains not eligible for parole. The Respondent followed the law as it existed at the time the Appellant committed the offense; therefore, there was no wrongdoing in the denial of parole eligibility. The decision of the Board denying parole eligibility should be affirmed or this appeal should be subject to dismissal. The brief of the Respondent supporting their arguments follows.

ARGUMENT

- 1. The Appellant is currently serving a sentence for a classified A-Felony, which is considered a “no parole” offense pursuant to South Carolina law.**

Within his brief the Appellant admits that he is currently serving a twenty-eight year sentence for armed robbery. At the time the Appellant committed this offense armed robbery carried a maximum sentence of thirty years, making this an A-Felony.¹ Since this was classified as an A-felony at the time he committed this offense he is not eligible for parole. The law existing at the time of the offense and not at the time of sentencing determines whether an increase of punishment or reduction of benefits constitutes an ex post facto violation. *Elmore v. State*, 305 S.C. 456, 409 S.E.2d 397 (1991).

In 1996 the General Assembly created “no parole offenses” which consist of 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. S.C. Code Ann. §24-13-100 (Supp. 1996). The Appellant committed his offense in 2008 so it is obvious that his offense falls under this statute. The Appellant committed an A-Felony so his is currently not eligible for parole. Pursuant to South Carolina law a person serving a sentence for a “no parole offense” must

¹ See, S.C. Code Ann. §16-1-90 (A)(Supp. 1986).

serve at least eighty-five (85%) percent of their sentence. The South Carolina Code of Laws specifically state:

Notwithstanding any other provision of law except in a case which the death penalty or a term of life imprisonment is imposed, a prisoner convicted of a "no parole offense" is defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections including a prisoner serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20, is not eligible for early release, discharge or community supervision as provided in Section 24-21-560 until the prisoner has served at least eighty-five percent of the actual term of imprisonment imposed.

S.C. Code Ann. §24-13-150 (Supp. 1995)

This statute was established by the General Assembly prior to the Appellant committing his offense. So the Appellant is not eligible for parole and must serve at least 85% of his sentence.

The Appellant argues that according to the armed robbery statute he should be allowed parole eligibility upon the service of seven years.² This portion of the statute does not apply to the current offense due to the fact that the above reference statute does not allow parole eligibility on an A-Felony. The statute clearly states that "notwithstanding any other provision of law, except in a case which the death penalty or term of life imprisonment is imposed," meaning this statute overrides all other statutes unless for a sentence of the death penalty or life imprisonment. Even though the armed robbery statute allows no parole eligibility after the service of seven years, this does not apply to the present case. The Appellant committed his offense when armed robbery was classified as a "no parole offense"

Within his brief the Appellant cites the South Carolina court of appeals case of *Bolin v. S.C. Dept. of Corrections*, 415 S.C. 276, 781 S.E.2d 914 (2015). Within this decision the Court

² A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence. S.C. Code Ann. §16-11-330 (A)(Supp. 1986)

decided that the changing of the law allowing a conviction for a second offense conspiracy to manufacture methamphetamine makes it no longer a "no parole offense." The *Bolin* case is not identical to the present case.

The General Assembly created the Omnibus Crime Reduction and Sentencing Reform Act of 2010. This new law stated that notwithstanding any other provision of law a person sentenced to a first or second offense for possession with intent to distribute methamphetamine is now eligible for parole. In *Bolin*, the Court decided that since this is no longer a "no parole" offense inmates serving a sentence for these offenses are no longer is subject to the eighty-five percent term of mandatory imprisonment. In the present case the law specifically state that any person sentenced to an A, B, or C felony is not allowed parole, this offense was created prior to the commission of this offense. The law was never change allowing parole for an armed robbery. The 85% statute specifically states "notwithstanding any other provision of the law except in a case in which the death penalty or a term of life imprisonment" which means that any earlier statute regarding this sentencing would not apply. *See, Stone v. State*, 313 S.C. 533, 443 S.E.2d 544 (1994)(Where two statutes are in conflict the more recent and specific statute should prevail so as to repeal earlier general statute.) Since the General Assembly specifically stated in this statute "notwithstanding any other provision of the law" it is clear that they wish this statute to prevail. Statutes of a specific nature are not to be considered as repealed in whole or in part by a later general statute unless there is a direct reference to the former statue or the intent of the legislature to do so is explicitly implied therein. *Bolin*, at 283. It is clear that the General Assembly did not wish anyone who has been convicted of an A, B, or C felony parole eligibility. Regardless of what is stated in the armed robbery statute a person convicted of armed robbery must serve a minimum of eight-five percent of their sentence and not allowed parole eligibility.

The Appellant argues that the armed robbery statute as written became law a year after the creation of the "no parole" offense statute. This is incorrect, the 1996 amendments to the armed robbery statute relates as to application to the Youthful offender act not the actual punishment for an adult offender. The sentence relating to any parole was created prior to the 1996 amendments that created "no parole" offenses. Since the Appellant committed this offense in 2008 he committed this offense when it was classified as a no parole offense so he is not eligible for parole.

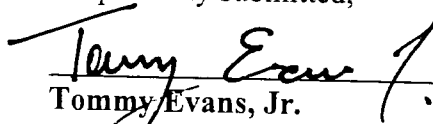
The Appellant argues that these two statutes conflict, they do not conflict. The armed robbery statute only gives a person parole eligibility after the service of seven years. The Appellant is currently not eligible for parole due him having committed an A-Felony. The Appellant was never eligible for parole so this portion of the statute does not apply. It only applies to individuals who have committed their crimes prior to 1996, the Appellant committed his crime in 2008; therefore, he is not eligible for parole. There is exist no conflict over the two statutes since "no parole" offense law was created after the arm robbery statute and was not amended since its creation. There exist no conflict when the portion of the statute only applies to certain individuals, and not the Appellant. *See, State v. Jones*, 344 S.C. 48, 543 S.E.2d 541 (2001)(affirming the defendant's sentence of life imprisonment without the possibility of parole pursuant to section 17-25-45 despite the fact the relevant convictions consisted of three counts of armed robbery under section 16-11-330 (A)); or, *State v. McKay*, 300 S.C. 113, 386 S.E.2d 623 (1989)(recognizing that the defendant's armed robbery conviction under section 16-11-330(A) rendered him ineligible for parole as a subsequent violent offender pursuant to section 24-21-640). Regardless of the language in the armed robbery statute, since the Appellant committed his offense after the "no parole" statute was established he is currently ineligible for parole. The Respondent wishes the ALC affirm the

decision of the Respondent denying the Appellant an opportunity for parole pursuant to South Carolina law.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests the final decision of the South Carolina Department of Probation, Parole and Pardon Services be affirmed.

Respectfully submitted,


Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

Columbia, South Carolina
March 20, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Judge Lenski, Administrative Law Judge
Case No. 16P0053

Case No. 2016-ALJ-15-0053-AP

2017-001063

Carnie Norris, # 227226.....APPELLANT

V

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

INITIAL BRIEF OF APPELLANT

Carnie Norris, # 227226
APPELLANT

Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Tommy Evans Jr. Esq.
SCDPPPS
Respondent

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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 subsection 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 statute states "notwithstanding 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.

Carrie Morris

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal of Final Decision *Adm. Law Court*
SC Department of Probation, Parole, and Pardon Services
Honorable Judge Henski

Carnie Norris, # 227226..... APPELLANT

V

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

C/A. 16P0053
16-ALJ-15-6053-AP
2017-001063
CERTIFICATE OF SERVICE

I, Carnie Norris, #227226, hereby certify that I have served the within Initial Brief of Appellant, dated _____ by depositing a copy of the same in the United States mail, postage prepaid by and through the Perry Correctional Institution mailroom, addressed as follows:

Deputy Director of Legal Services
SC Dept. of Probation, Parole, and Pardon Services
2221 Devine Street, Suite 600
P.O. Box 50666
Columbia, SC

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

Carnie Norris

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

January 30, 2017

The Honorable Phillip Lenski
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

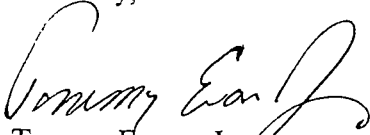
RE: *Carnie Norris, #227226 v. S.C. Department of Probation, Parole and Pardon Services*

Dear Judge Lenski:

Please find enclosed for filing the *Record on Appeal* dated January 30, 2017, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

TE:dn

Enclosures
cc: Carnie Norris

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 16-ALJ-15-0053

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

CARNIE NORRIS, #227226 APPELLANT

v.

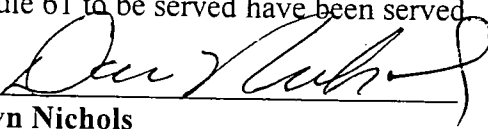
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within *Record On Appeal*, dated January 30, 2017, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 30th day of January, 2017, addressed to:

Carnie Norris, #227226
Perry Correctional Institution-Q4B101
430 Oaklawn Road
Pelzer, S.C. 29669

I further certify that all parties required by Rule 61 to be served have been served.



Dawn Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 16-ALJ-15-0053

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

CARNIE NORRIS, #227226 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

RECORD ON APPEAL

Tommy Evans, Jr.
Assistant General Counsel

**South Carolina Department of Probation,
Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220**

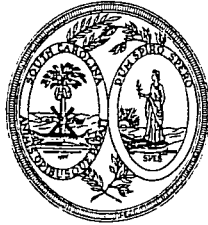
ATTORNEY FOR RESPONDENT

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State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

November 7, 2016

Carnie Norris, #227226
Perry Correctional Institution- Q4B101
430 Oaklawn Road
Pelzer, South Carolina 29669

Dear Mr. Norris:

I am responding to your recent letter concerning your parole eligibility. According to your letter, you were sentenced on July 9, 2009, for Armed Robbery. S.C. Code Ann. § 16-11-330(A) (2003). Since January 1, 1996, the South Carolina Code has provided that:

Notwithstanding any other provision of law . . . a prisoner convicted of a "no parole offense", as defined in Section 24-13-100, and sentenced to the custody of the Department of Corrections . . . is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the prisoner has served at least eighty-five-percent of the actual term of imprisonment imposed.

S.C. Code Ann. § 24-13-150 (2007) (emphasis added). A "no parole offense" is defined as "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 or imprisonment for twenty years or more." S.C. Code Ann. § 24-13-100 (2007). Armed robbery is classified as a "Class A felony." S.C.

Carrie Norris
November 7, 2016
Page 2

Code Ann. § 16-1-90(A) (2003). Thus, pursuant to the terms of Section 24-13-150, you are not eligible for parole on your armed robbery conviction.

Since Section 16-11-330(A) provides that: "A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence." S.C. Code Ann. § 16-11-330(A) (2003) (emphasis added), it may appear that there is a conflict between § 24-13-150 and 16-11-330(A); however, the provisions of the two relevant statutes are not in conflict. Indeed, when a prisoner like yourself is serving a "no parole" sentence, he clearly will not be eligible for parole until serving at least seven years of the sentence. In fact, he will never be eligible for parole, so the eligibility restrictions of both statutes are being met. Despite the long standing reference to seven year parole eligibility in Section 16-11-330(A), the Appellate Courts in this State have never identified a conflict where another more general statutes prohibit certain prisoners from being paroled. See State v. Jones, 344 S.C. 48, 543 S.E.2d 541 (2001) (affirming defendant's sentence of life imprisonment without parole pursuant to section 17-25-45 despite the fact that the relevant convictions consisted of three counts of armed robbery under section 16-11-330(A)); State v. McKay, 300 S.C. 113, 386 S.E.2d 623 (1989) (recognizing that the defendant's armed robbery conviction under section 16-11-330(A) rendered him ineligible for parole as a subsequent violent offender pursuant to section 24-21-640). The same principle applies to section 24-13-150, which prohibits any form of early release until satisfaction of 85% of your sentence for armed robbery. Therefore, you are not eligible for parole.

I hope this answers your questions.

Sincerely,



Matthew C. Buchanan
General Counsel

MCB:dn

SOUTH CAROLINA
 OF SPARTANBURG)
 VS.)
 Carnie Norris III)
 Ract)
 Sex: M Age: 48)
 DOB: SS#:)
 Address:)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS4205631
 A/W#: M022991
 Date of Offense: 7/16/2008
 S.C. Code §: 16-11-0330(A)
 CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
 TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon CONVICTED OF or PLEADS
 in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST: Barry Bannette 13039 Defendant Burton Attorney for Defendant 07913
 BARNETTE, BARRY SC Bar# Defendant BURTON SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 28 ~~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~~ probation
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services 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.
 The Defendant is to be placed on the 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 _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 set by SCDPPPS _____

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	\$
§ 47.12 (Public Def/Prob)	\$500	\$ 25.00
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§ 90.7 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$ 3.75
TOTAL	\$	\$ 133.90

_____ days/hours Public Service Employment
 Obtain GED _____
 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
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____
 Appointed PD or appointed other counsel, §47.12
 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk J. Camp
 Court Reporter: Lind Moffitt
 SCCA/217 (06/2009)

PRESIDING JUDGE Justin Cole
 Judge Code: 2
 Sentence Date: July 7, 2009

THE STATE
SOUTH CAROLINA

DOCS 08-GS-42-5631

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

Safety Dept

SENTENCE MADE

2. REPORT ENDED

Computer

3. CARD PULLED

4. INDEXED

ARREST WARRANT NUMBER

6. CHECKED SIGNATURE

7. ASSESSMENT AND
FINE CARD MADE

M022991

Computer

8. TRAFFIC VIOLATIONS COPY

COURT OF GENERAL SESSIONS

SEP 22 2008

TERM

THE STATE

VS.

ACTION OF GRAND JURY

Carnie Norris III

Foreperson of Grand Jury

Date: 9-19-08

VERDICT

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

Foreperson of Petit Jury

Date: July 7, 2009

MARC KITCHENS

2008 SEP 24 AM 11:16

FILED
CLERK OF COURT
SPARTANBURG COUNTY

64
7

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

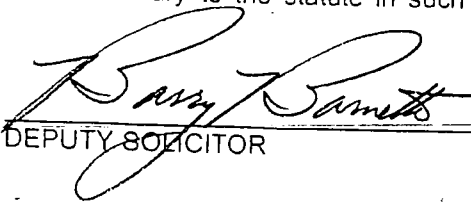
INDICTMENT

At a Court of General Sessions, convened on SEP 19 2008 the Grand Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That the Defendant, Carrie Norris III, did in Spartanburg County, on or about July 16, 2008, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Andrew Foster Bond, by means of force or intimidation goods or monies of Andrew Foster Bond, described as follows: a check card, two gift cards, various business cards and \$6.00 in cash money, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 16-ALJ-15-0053

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

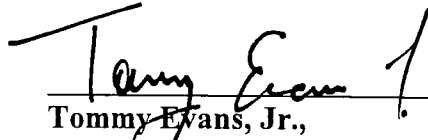
CARNIE NORRIS, #227226 APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES, RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 61 of the Rules of Procedure for the Administrative Law Court and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.



Tommy Evans, Jr.,
Assistant General Counsel

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

January 30, 2017

Re: Information

Dear Director Adger,

I was convicted of Armed Robbery 16-11-330(a) on July 9, 2009 in Spartanburg County. By this specific statute, I am eligible for parole after service of seven (7) years.

When will I be eligible for parole on this charge?

I, Carrie Morris #227226 certify and verify under the penalty of perjury that the foregoing is true and correct.

Carrie Morris

10-31-16

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Carnie Morris #227226

Appellant,

vs.

South Carolina Department PPP Ser.

Respondent.

NOTICE OF APPEAL

DOCKET NO. ALJ-04-
GRIEVANCE NO.: See Parole Letter

Notice is hereby given that Carnie Morris #227226 does hereby appeal the final decision of the South Carolina Department PPP Ser. dated November 10, 2016, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

Appellant Carnie Morris was convicted of Armed Robbery 16-11-330(A) in 2009 and was told it was 85%. Specific statute 16-11-330(A) states that Armed Robbery conviction is eligible for parole after service of seven (7) years. - should appellant be eligible for parole consideration after service of at least seven (7) years on his Armed Robbery conviction? Several statute 34-13-100 has been ruled unconstitutional in Bohn v. SCDC + Forster v. SCDC Due Process and Equal Protection violation

Carnie Morris
Appellant's Name

(Signature)
Signed

Perry Corr. Inst #4B101
Mailing Address

11-17-16
Dated

Pelzer S.C. 29669
City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, Carnie Morris (your name), on the 17 day of November, 2016, in Pelzer (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

Name of person/Agency served: Dept. of Probation, Parole and Pardon Ser

Address: 2221 Devine St. Suite 600, PO Box 50666

City, State, Zip Code: Columbia, S.C. 292501

Carnie Morris
Print your name

53

(Signature)
Sign your name

State of South Carolina
In The Administrative Law Court

C/A # 16PC053 Judge Lenski

Appeal of Final Decision

Carrie Morris # 257726

Appellant

v.
S.C. Dept. of PPS

Respondent

Appellant's Initial Brief

Carrie Morris # 257726
Appellant

Perry Corr. Inst.
430 Oaklawn Rd
Pelzer, SC 29669

RECEIVED

JAN 03 2017

P.C.I. MAILROOM

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Sentencing Reform Act

Should the appellant be eligible for parole consideration after service of at least 7 years on a Armed Robbery conviction?

The appellant was indicted by the Spartanburg County Grand Jury on September 19, 2008 for Armed Robbery and convicted by a jury on July 9, 2009 and sentenced to 28 years.

Appellant was told by his caseworker that he was ineligible for parole consideration and would have to serve 85% of his present sentence of 28 years before being released, parole was not an option.

Appellant recognized that the decisions in Fowler v. SCDC op. 2015-UP-517 and Bolin v. SCDC op. 5361 held that a sentence could not be 85% and parole eligible.

This is a collateral consequence of sentence and parole eligibility and is under the jurisdiction of the S.C. Dept of Probation, Parole and Pardon Service rather than the trial court. 57

Appellant spoke with the grievance coordinator at Perry Correctional and was told by her that this was not a grievable issue.

Appellant wrote a letter to the South Carolina Probation, Parole and Pardon Services to see whether he was eligible for parole considerations after a service of at least 7 years on his 28 year sentence for Armed Robbery § 16-11-330(A) See Response

The specific statute for Armed Robbery § 16-11-330(A) specifically reads as follows:
(A) A person who commits robbery while armed with a pistol, dirk, sling shot, metal knuckles, razor or other deadly weapon or while alleging either by action or words he was armed while using or representation of a deadly weapon is guilty of a felony and upon conviction, must be imprisoned for a mandatory minimum of not less than 10 years or more than 30 years, no part of which may be suspended or probation

granted. A person convicted under this subsection is not eligible for parole until the person has served at least 7 years of the sentence; which the appellant have done. Appellant have been serving time on his Armed Robbery conviction since July 16, 2008 til present.

Here, the sole issue on review involves a question of statutory interpretation which is a question of law "subject to de novo review". Barton v. S.C. Dept of Prob., Parole & Pardon Services, 404 S.C. 395, 414, 745 S.E. 2d 110, 120 (2013)

The primary purpose in interpreting statutes is to ascertain and effectuate the intent of the legislature. Coin v. Nationwide Prop. and Cas. Ins. Co., 378 S.C. 25, 29, 661 S.E. 2d 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 S.E. 2d at 581; Stone v. City of Orangeburg, 313 S.C. 533, 535, 443 S.E. 2d 544, 545 (1994).

The appellant would show this Court that the General statute § 24-13-100 became law by way of Act. No. 83 § 1 in 1995 which is defined as Definition of no parole offense; classification

Robbery and attempted robbery while armed w/ deadly weapon § 16-11-330(A), which is a specific statute was amended by way of Act. No. 441 § 1 in 1996.

Legislature's intent should be ascertained primarily from the plain language of the statute. Words in a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation.

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. When the terms of a statute are clear, the court must apply those terms according to their literal 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, as in the case at bar.

Title 16-1-90 are crimes classified as felonies. Appellant's sentence for Armed Robbery is a Class A felony and the maximum term established for a Class A felony, not more than thirty years, as set forth in Section 16-1-20(A)

Title 24-13-100 History 1995 Act. No. 53 § 1 Definition of no parole offense; classification. For purposes of definition under South Carolina law, 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. Appellant recognized⁶¹ that his Armed Robbery conviction is considered a no parole offense.

Appellant recognized that § 24-13-100 has been ruled unconstitutional or preempted and recognized as Repealed by implication Bolin v. S.C. Dept. of Correction (S.C. App. Feb. 2016) a violent offense in which Bolin was convicted, a class A felony.

In the case of Bolin, 781 S.E. 2d 914 Defendant's conviction for second offense conspiracy to manufacture methamphetamine and second offense possession with intent to distribute methamphetamine were no longer, no parole offenses, for which defendant was required to serve 85% of sentence before being eligible for parole, following effective date of Omnibus Crime Reduction and Sentencing Reform Act, even though Act did not amend definition of term "no parole offense" in statute describing types of offenses for which offender was not eligible for parole, where Act amended separate statutory provision to indicate that "notwithstanding any other provision of law", a person convicted and sentenced as first or second offense⁶²

pursuant to that subsection was eligible for parole.

Appellant's Armed Robbery conviction specifically states that he (appellant) is parole eligible by its plain and ordinary meaning. See §16-11-330(A)

It is without doubt that the statutory definition for the term "no parole offense" in Section 24-13-100, i.e. a class A, B, or C felony simply describes the types of offenses for which the 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 maximum sentence for the offense places it within a classification encompassed by section 24-13-100. This is the situation with an Armed Robbery conviction §16-11-330(A) was amended by way of Act No. 441 §1 in 1996, which still carries a maximum sentence of thirty years, rendering the offense a class A felony. Therefore, the definition of no-parole offense in section 24-13-100

conflicts with the legislative intent of the Act to exempt Armed Robbery under § 16-11-330(A) from all the consequences of a no-parole offense.

In this case, Montis, the appellant is seeking parole eligibility and considerations under the specific statute of Armed Robbery § 16-11-330(A) in which appellant was convicted of in 2009. Penal statutes that are in conflict are to be construed strictly against the state. When a general statute such as § 24-13-100 which was ruled unconstitutional in Bolen, conflict with the specific statute of Armed Robbery § 16-11-330(A), the specific statute prevails in this case.

Based upon the foregoing, the appellant is parole eligible and should be granted a parole date and hearing.

Respondents letter:

Pursuant to Respondent's letter dated November 7, 2016, § 24-13-100 is a general statute and is inapplicable to this case. Armed Robbery § 16-11-330(A) is controlling in this case, which is a specific statute.

Pursuant to § 24-13-100 (general statute) is inapplicable to this case, which has been ruled unconstitutional in Bolin v. SCDC and Fowler v. SCDC.

• 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.

Respondent's answer to appellant's question is inapplicable. Appellant does not have violent prior convictions.

The cases that the Respondent cite in his letter, State v. Jones, 344 S.C. 48, 543 S.E. 2d 541 (2001) and State v. McKay, 300 S.C. 113, 386 S.E. 2d 623 (1989) does not apply to this case because these cases deal with prior ^{violent} convictions, which the appellant does not have.

The respondent state that there is a conflict between § 24-13-150 and 16-11-330(A). The actual conflict is between 16-11-330(A) and § 24-13-100 which the appellant have fully addressed.

Two cases that are directly on point is Bolin v. SCDC, 781 S.E. 2d 914 and Fowler v. SCDC, 2015 WL 7075488 in which the S.C. Court of Appeals addressed a contention identical to this case. Bolin at 276 the Court specifically stated they are not amending the term "no parole offense" just if it states differently by statute a prisoner can be eligible for parole. So therefore Appellant is parole eligible. see 16-11-330(A). A parole hearing should be scheduled immediately for appellant 66

State of South Carolina
Administrative Law Court

Cornie Morris # 227226
Appellant,

vs.

S.C. Prob., Parole & Pardon Ser.
Respondents.

} Certificate of Service

I, Cornie Morris # 227226 hereby certify that I have served a copy of Appellant's Brief on the Respondents by placing a copy of the same in the Perry mailroom hands for mailing addressed as follows:

Administrative Law Court
Edgar A. Brown Bld.
1205 Pendleton St. Suite 224
Columbia, S.C. 29201

Deputy Dir. Legal Services
Dept of PPS
P.O. Box 50666
Columbia, S.C. 292501

I, Cornie Morris # 227226 certify and verify under the penalty of perjury that the foregoing is true and correct.

REC

JAN 11 2011

P.C.I. MAIL

67 Cornie Morris # 227226

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Carnie Norris, 227226.

Docket No.: 16-ALJ-15-0053-AP

Appellant.

vs.

South Carolina Department of Probation,
Parole and Pardon Services.

ORDER

NOV 17 2017

Respondent.

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or court) pursuant to the appeal of Carnie Norris (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On November 7, 2016, the South Carolina Department of Probation, Parole and Pardon Services (Department) issued a final decision letter determining that the Appellant is ineligible for parole because he falls under the 85% rule. The Department determined that the Appellant is ineligible for parole based upon his conviction for Armed Robbery. The Appellant was convicted as indicted of Armed Robbery on July 7, 2009, pursuant to S.C. Code Ann. § 16-11-330. He was sentenced to twenty-eight (28) years. On November 18, 2016, the Appellant filed a Notice of Appeal with this court challenging the Department's decision. Upon careful consideration of the record on appeal and briefs of the parties, the Department's decision is affirmed.

ISSUE ON APPEAL

Whether the Department erred in determining that Appellant is ineligible for parole.

STANDARD OF REVIEW

The court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court decisions in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an administrative review process for inmate appeals), and *Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003) (incorporating final decisions of the Department into that review process). The *Al-Shabazz* decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." *Wicker v. S.C. Dep't of Corrs.*, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Because being granted parole is a privilege and

not a right, the routine denial of parole does not implicate such a liberty interest; however, the denial of eligibility for parole does involve such a liberty interest, and thus is a matter properly before the ALC for review. *See James v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 376 S.C. 392, 395-96, 656 S.E.2d 399, 401-02 (Ct. App. 2008); *see also Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003).

When reviewing a decision of the Department, the ALC sits in an appellate capacity. *See Furtick*, 352 S.C. at 599, 576 S.E.2d at 149; *Al-Shubazz*, 338 S.C. at 377, 527 S.E.2d at 754. Under the appellate standard of the Administrative Procedures Act, the court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2016). The court may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2015). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

DISCUSSION

Appellant argues that the Department's decision violates the statutes applicable to his case and precedent. The Court disagrees. A review of the relevant statutes supports the Department's determination that Appellant is ineligible for parole.

In determining whether an inmate is eligible for parole, several different statutes must be reviewed. The foundational rules of parole are contained in Title 24 of the South Carolina Code. Specifically, Section 24-21-610 sets the minimum amount of time that must be served of a sentence before an inmate reaches eligibility. *See* S.C. Code Ann. § 24-21-610 (2007). However, these baseline rules have been modified by other subsequently enacted or amended statutes. Section 24-13-100, enacted in 1995, defines Class A, B, and C felonies as "no parole offenses." *Id.* at § 24-13-100. When an inmate's crime is a no-parole offense, the inmate is not eligible for "parole" consideration. *See id.* at § 24-21-30; *see also Bolin v. S.C. Dep't of Corrs.*, 415 S.C. 276, 283, 781 S.E.2d 914, 917 (Ct. App. 2016) ("It is without doubt that the statutory definition for the term 'no-parole offense' in section 24-13-100, i.e., 'a class A, B, or C felony . . . ' simply describes the types of offenses for which the offender is not eligible for parole."). Instead, the inmate must

complete a community supervision program. S.C. Code Ann. § 24-21-30 (2007). An inmate becomes eligible for the community supervision program after completion of at least eighty-five (85) percent of the actual term of imprisonment imposed. *Id.* at § 24-13-150 (Supp. 2016). This is sometimes referred to as the 85% rule.

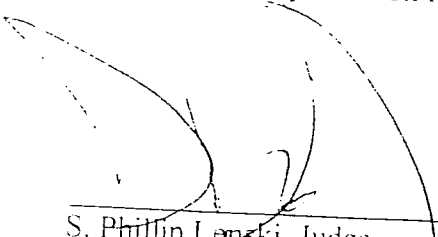
The Appellant was convicted of a Class A felony and thus falls under the 85% rule. See S.C. Code Ann. § 16-1-90(A) (2015) (defining "[r]obbery while armed with a deadly weapon" pursuant to Section 16-11-330(A) as a Class A felony). However, the Appellant argues that language specific to his offense overrides this law. In support, he cites *Bolin*, which held that a more recent, specific offense statute that included a "notwithstanding" provision repeals any conflicting older and more general statutory language. The armed robbery statute provides: "[a] person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence." S.C. Code Ann. § 16-11-330(A) (2015). The Appellant argues that this more specific statute grants him parole eligibility. However, the Appellant misapprehends the analysis in *Bolin*. Although, this older statute¹ might be considered more specific, it does not conflict with the newer statutory language² providing for Class A felony parole ineligibility. Section 16-11-330(A) does not in fact provide for parole eligibility, but instead places a limitation on it. The no parole offense language further limits parole ineligibility. Thus, not only is there not more recent language, there is no conflict. Because there is no statutory construction requiring disregard for the no parole provisions, they still apply and the Appellant is ineligible for parole.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the agency decision is **AFFIRMED**.

AND IT IS SO ORDERED.

April 17, 2017
Columbia, South Carolina


S. Phillip Lenski, Judge
S.C. Administrative Law Court

¹ The language regarding parole eligibility predates the 1985 edition of Title 16.
² See 1995 S.C. Act 83.

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS.

Carrie Norris III

AKA:

Race: Sex: Age:

DOB: SS:

Address:

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS4205631

A/W#: M022991

Date of Offense: 7/16/2008

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Barry BARNETTE, BARRY SC Bar# 13039 Defendant
Dennis Defendant Attorney for Defendant SC Bar# 07913

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 28 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 Services 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.
The Defendant is to be placed on the 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
Total: \$ plus 20% fee: \$
Payment Terms: days/hours Public Service Employment
set by SCDPPPS Obtain GED 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 pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Table with columns for Recipient, *Fine, and various assessment codes (e.g., § 14-1-206, § 14-1-211(A)(1), etc.) with corresponding dollar amounts.

Obtain GED
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 pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

A CERTIFIED COPY
Clerk of Court Signature
CLERK OF COURT
SPARTANBURG COUNTY
Appointed PD or appointed clerk requires \$500 be paid to Clerk of Court

Clerk of Court/ Deputy Clerk: T. Camp
Court Reporter: Lind Moffitt
SCCA/217 (06/2009) 21

PRESIDING JUDGE: [Signature]
Judge Code: 01513
Sentence Date: July 7, 2009