

The State of South Carolina

In the Court of Appeals

[In the Supreme Court]

RECEIVED

JAN 22 2018

Appeal from the Administrative Law Court SC Court of Appeals

Deborah Durden, Administrative Law Judge

Appellate Case No.: 2017-000663

Dennis Davis, # 288558,

Appellant,

V

RECEIVED

DEC 01 2017

SC Court of Appeals

South Carolina Department of
Probation, Parole and Pardon
Services,

Respondent.

Record on Appeal

Dennis Davis #288558

TCI TA-111

1578 Clarence E. Collier Hwy, 3978

Turbeville, SC 29162

Index	Page
Respondent's letter dated June 27, 2016.	1
Notice of Appeal to Administrative Law Court filed 7/8/16 and refiled on 8/9/16.	2
Defendant's initial brief dated Nov. 9, 2016.	4
Defendant's response brief dated Dec. 21, 2016.	9
Decision from the (ALC) Judge Deborah Duden dated Feb. 22, 2017.	15
Order from the Supreme Court of South Carolina (Rule 204).	21
South Carolina Department of Corrections Division of Classification & Inmate Records.	23
Sentencing sheet 2013 GSH 602971.	24
Sentencing sheet 2013 GSH 602970.	25
South Carolina Dept. of Corrections Record of Due process hearing 3rd offense Drug offenders.	26
Respondent's entire record of appeal and Initial brief.	27

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.dppps.sc.gov/

RECEIVED

JUN 26 2017

SC Court of Appeals

June 27, 2016

Dennis Davis, #288558
Ridgeland Correctional Institution
PO Box 2039
Ridgeland, South Carolina 29936

Dear Mr. Davis:

On May 21, 2014, you were convicted of Distribution of Marijuana, third offense, in Indictment Numbers 13-GS-46-02970, 02971. Pursuant to South Carolina law a person convicted of this offense with two or more aggregate violation of the law relating to drugs is not eligible for parole.

A review of your prior record reveals prior drug convictions, therefore, your current offense is ineligible for parole pursuant to South Carolina law. You will not be considered for parole on this offense.

Sincerely

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan".

Matthew C. Buchanan
General Counsel

MCB:dn

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dennis Davis

Appellant,

vs.

South Carolina Department of Probation, Parole and
Pardon Services,

Respondent.

NOTICE OF APPEAL

DOCKET NO. 15-ALC-15-_____-AP

Notice is hereby given that Dennis Davis does hereby appeal
the final decision of the South Carolina Department of Probation, Parole and Pardon Services dated 6/27/16
and received on 7-1-16, 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)):

The purpose of this appeal is to keep my Parole eligibility and
have my chance in front of the board, that is legally mine and
promised to any individual incarcerated for a paroleable offense. The
laws of the state of South Carolina gives me a chance for parole. I
saw the Parole examiner on 4-27-16 and was told I would receive a
letter 30 days with my actual date to sign up in front of the parole board.
So I'm very confused at how I receive a letter saying I'm not eligible
for parole when the laws of this state says otherwise. I was sentenced
on 5/21/14 for a non-violent or paroleable offenses. 44-53-370 states in
the statute any individual such as myself has a right to earn Good Conduct
Credits, EWC's, Parole, supervised furlough, Community supervision, work release and
education Credits also. I have met the Criteria for a chance at Parole by
serving 1/4 of my sentence and serving time for a paroleable or non-violent
offense. The Omnibus Crime Reduction and Sentencing Reform Act of 2010 also
explains as well as made 2nd and 3rd offenses Paroleable with Non-Violent. There
has to be a mistake or some sort of miscommunication of the laws and facts!

Dennis Davis

Appellant's Name, Address and Date

Dennis Davis # 288558

Livesay B U3-12C

P.O. Box 580

UNF, SC 29378

7-1-16

Subscribed and sworn before me

this 8th day of July, 2016

Katherine Platt

Notary Public

County of Partanburg

State of South Carolina

My commission Expires 9/25/18

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dennis Davis)
)
Appellant,)
)
vs.)
)
South Carolina Department of Probation,)
Parole and Pardon Services.)

NOTICE OF APPEAL

DOCKET NO -ALJ-15-

Notice is hereby given that Dennis David does hereby appeal the final decision of the South Carolina Department of Probation, Parole and Pardon Services dated 6/27/16 and received on 7/1/16, 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)):

The purpose of this appeal is to keep my parole eligibility and have my chance at parole in front of the parole board like the laws of this state promise myself and any other inmate incarcerated for a paroleable offense. I saw the parole examiner on 4-27-16 and was told I would receive a letter 30 days with my actual date to go up in front of the parole board. So I'm very confused at how I received this letter saying I'm not eligible for parole when the laws of this state says otherwise. I was sentenced on 5/21/14 for a nonviolent or paroleable offense. 44-53-370 states Notwithstanding any other provision of law I have a right to earn Goodtime, EWC's, Parole, supervised furlough, Community Supervision, work release and education credits etc. SCDPPS has made a mistake.

Dennis Davis
Appellant's Name
Live Jay B-12C
P.O. Box 580
Mailing Address
UNA, SC 29378
City, State, Zip Code

Dennis Davis
Signed
8/9/16
Dated

CERTIFICATE OF SERVICE

I hereby certify that I, Dennis Davis (your name), on the 9th day of August, 2016 in UNA (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, and addressed as follows:

Name of person/Agency served: Clerk's Office Administrative Law Court
Address: 1205 Pendleton St., Suite 224
City, State, Zip Code: Columbia, SC 29201

FILED

AUG 11 2016

Dennis Davis
Print your name
(See reverse side for instructions)

Dennis Davis
Sign your name
ADMIN. LAW COURT

South Carolina Administrative Law Court

Dennis Davis # 28658,
Appellant,
vs.
South Carolina Department of
Probation, Parole, and Pardon
Services,
Respondent.

Docket No.: 16-AJ-15-0034

APPELLANT'S BRIEF

The Honorable Deborah Durden
Administrative Law Court Judge:

FILED

NOV 15 2016

Statement of the Case

SC ADMIN. LAW COURT

This Appeal Comes before the Administrative Law Court following the South Carolina Dept. of Probation, Parole, and Pardon Services erroneous final decision dated June 27, 2016 that the Appellant Dennis Roger Davis Jr. is ineligible for parole. SC DPPBS made this determination saying the Appellants May 21, 2014 Conviction of distribution of marijuana, third offense, with indictment numbers 13-GS-46-02970 and 13-GS-46-02971. These charges are in fact non-violent or Parolable offenses.

Argument

This Appeal Comes before the Administrative Law Court Pursuant to the South Carolina Dept. of Probation, Parole, and Pardon Services final decision that the Appellant Dennis R. Davis Jr. is ineligible for parole. The Appellant is currently serving a sentence for two distributions of marijuana 3rd and two Prox. of a School Zone offenses 3rd, that are Parolable or non-violent offenses. 24-21-620 states after a prisoner as myself has served 1/4 of his or her sentence, the prisoner is eligible for review by the Parole board. Actually I've had a Parole date since I entered the system in 2014. I was interviewed by the Parole examiner at Bridgeland Corr. Institution on 4/27/16. On the South Carolina Dept. of Probation, Parole, and Pardon Services Criteria for Parole Consideration sheet that I signed and was given a copy of, nowhere in the many list of criteria does it say a person convicted of a 3rd offense as myself is ineligible for Parole! It does state an individual serving time for a non-violent offense defined in 16-1-70 of the South Carolina Code of Laws 1976 will be reheard for Parole one year following the date of a letter saying I was ineligible for Parole. I was sentenced on 5/21/14 for two distributions of marijuana 3rd, and 2 prox. of a school zone 3rd. As a result of my sentencing date I fall up under the omnibus Crime Reduction and Sentencing

reform act of 2010, which was passed on 6/2/10. 44-53-370 (b)(2), this statute states "Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (C) and (D) may have the sentence suspended and probation, 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." So as you can see the only thing I'm ineligible for is a suspended sentence or probation. These are remedies that only come from a judge in the court room not SEDC. The Omnibus Crime Reduction and Sentencing Reform Act of 2010 was enacted to preserve public safety reduce crime, and use correctional resources most effectively. It is therefore, the purpose of this act to reduce recidivism, provide fair and effective sentencing options, employ evidence based practices for smarter use of correctional funding and improve public safety. Hence, the main objective of the Act was to conserve tax payers dollars by allowing earlier release dates for inmates convicted of less serious offenses. A controlling or landmark case is *Bolin v. SEDC* S.E. 2d 2016 WL 732535. In this case SEDC's interpretation of the law by error or design was noted. Virtue of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 which changed the statute to saying "Notwithstanding any other provision of law," Mr. Bolin as well as myself's offenses were made paroleable. Notwithstanding any other provision of law does not do away with non-paroleable offenses or 24-21-640 however, it did make my specific offense paroleable, 24-21-640 which was enacted on 4/28/10 say a person is ineligible for parole serving a sentence for a second or subsequent conviction, following a separate conviction for a violent crime as defined in section 16-1-60. This prior is almost 15 years old, should not even be considered anymore, and was also a paroleable offense! This is what S.C. Dept. of Probation, Parole, and Pardon Services and SEDC is now trying to use and deprive me of this state created liberty interests and say I'm not eligible for parole. Perhaps this was the case before the passing of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 which was passed after 4/28/10 on 6/2/10. The Omnibus Crime Reduction and Sentencing Reform Act of 2010 was passed for a number of reasons, but the main objective of the Act was to conserve tax payers dollars by allowing earlier release dates to inmates convicted of less serious offenses. The Omnibus Crime Reduction and Sentencing Reform Act of 2010 did not do away with that statute 24-21-640, however it did make 24-21-640 no longer apply to 44-53-370(b)(2) that states "Notwithstanding any other provision of law an inmate such as myself is to receive good time, EWC's, Parole, Supervised Furlough, Community Supervision, work release, and education credits as well. Because of this law and the fact I was convicted of a paroleable offense explains why I've had a parole date since my incarceration in 2014. It is evident that the statute 24-21-640 is in conflict with 44-53-370 (b)(2) of the Omnibus Crime Reduction and Sentencing Reform Act of 2010. It does not say I'm ineligible, but that I am eligible for parole. To say I'm not eligible for parole is illogical and absurd. Actually, that would be saying that the Omnibus Crime Reduction and Sentencing Reform Act of 2010 does not say what it says. It makes no sense that the SEDAPP and SEDC would say or think otherwise that a person convicted of a paroleable offense sentenced after the Omnibus Crime Reduction and Sentencing Reform Act of 2010 is ineligible for parole when that was the main objective of the Act to get inmates released earlier who are convicted of less serious offenses or crimes. It has been noted and cited.

In several cases that when two statutes are in conflict the later statute should prevail so as to repeal the earlier statute to the extent of repugnancy. Hair v. State, 305 S.C. 77, 79, 406 S.E. 2d 332, 334 (1991). In Barton v. S.C. Dept. of Probation, Parole, and Pardon Services, 404 S.C. 393, 745 S.E. 2d 110 (2013). The courts decided to construe statutes that are penal in nature strictly in favor of the defendant and against the state. Ventures S.C. LLC v. S.C. Dept. of Revenue, 378 S.C. 5, 9, 661 S.E. 2d 339, 341 (2008). The court will reject the plain meaning of the words used in a statute if it would lead to an absurd result and will construe the statute so as to escape the absurdity and carry the intentions into effect. It is clear and evident I was sentenced and my offense was committed after the passing or enactment of the Omnibus Crime Reduction and Sentencing Reform Act of 2010. It is clear and evident that I am eligible for parole and should not have received an erroneous letter stating that I'm not eligible for parole. It is also very clear that by error or design the laws of this state are being misinterpreted or ignored by the Agency.

Conclusion

In conclusion it is evident the appellant Dennis R. Davis Jr. by law should have had a parole hearing in July or August of 2016. The offenses appellant is currently serving time for are paroleable or non-violent offenses. The law 44-53-370(b)(2) clearly states the appellant is eligible for parole! Statute 44-53-370(b)(2) also states what I am not eligible for which is a suspended sentence or probation granted which can only be given from a judge before I ever would enter the Department of Corrections. The Omnibus Crime Reduction and Sentencing Reform Act of 2010 made the appellant's offenses paroleable! Appellant respectfully asks that the South Carolina Dept. of Probation, Parole, and Pardon Services final decision be reversed or overturned and I be granted an emergency parole hearing to be held within 30 to 45 days of this honorable court's decision! Appellant also asks that a regularly scheduled hearing be given after the emergency hearing for 2017 is held. It is my right to have a hearing for 2016 by law and 2017 if necessary. My case is to be heard on a yearly basis after parole rejection! The Agency made this mistake by error or by design and I should not have to suffer for their mistake. It is my right to have a parole hearing on a yearly basis after serving 1/4 of my sentence. The SCDPPS by error or by design has denied me the right and chance at parole in 2016. This is a clear violation of my due process rights and as well an attack on my constitutional rights. Being released on parole is not a guarantee but it is a right by law and a state created liberty interest. Having my case heard by the parole board is promised to every inmate convicted of a paroleable or non-violent offense in the South Carolina Dept. of Corrections! It is very clear and evident that the intent of the legislature in passing the omnibus crime reduction and sentencing reform act of 2010 was to give inmates such as myself a chance at parole, to be released sooner. Thus an inmate as myself sentenced after 2010, June 2nd for a violation of 44-53-370(b)(2) is eligible for good conduct credits, EWC's, parole, supervised furlough, community supervision, work release and education credits as well! By the laws of this state I should have gone up for parole instead of receiving an erroneous letter denying me the rights that have been given to me by the laws of this state. I ask that the SCDPPS final decision be

reversed and I be granted an emergency hearing 30 to 45 days for 2016. I also ask that
in 2017 the SCDPPs be made to give me a regularly scheduled hearing as well. I pray
that this Court grant's my appeal and honor the laws of this State.

State of South Carolina in
The Administrative Law Court
Docket Number 16-ALJ-15-0034

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

Dennis Davis, # 288558 Appellant

V.

S.C. Department of Probation, Parole, and
Pardon Services, Respondent

Certificate of Service

I, Dennis Davis, Appellant, do hereby certify that I
have served the Appellant's Brief dated November 9, 2016
on Respondent by depositing a copy of the same in the United
States mail, Postage Prepaid, the 9th day of November, 2016,
addressed to:

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

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

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

FILED

NOV 15 2016

SC ADMIN. LAW COURT

Dennis Davis
Dennis Davis # 288558
Appellant

Turbeville Correctional Institution TB-157
1578 Clarence C. Coker Hwy. 378
Turbeville, S.C. 29162

State of South Carolina Administrative Law Court

Dennis Davis, #286658
Appellant,
vs.
South Carolina Dept. of Probation,
Parole, and Pardon Services,
Respondent.

Docket No.:
In opposition to Respondent's
Brief.
The Honorable Judge
Deborah Durden.

Statement of the Case

This Appeal comes before the Administrative Law Court following the South Carolina's Dept. of Probation, Parole, and Pardon Services erroneous decision and misinterpretation of the law stating that Appellant is not eligible for Parole. On May 21st, 2014 Appellant was sentenced to 125 months on 2 counts of Distribution of marijuana 2nd, 5 years for 2 prox. of a school zone charges, and 1 year for simple possession of marijuana 2nd. At the time of Appellant's offenses were committed, he fell up under the Omnibus Crime Reduction and Sentencing reform Act of 2010. This Act was passed by the legislature to preserve public safety, reduce crime, and use correctional resources most effectively. It is therefore, the purpose of this Act to reduce recidivism, provide fair and effective sentencing options and employ evidence based practices for smarter use of correctional funding and improve public safety. Hence, the main objective of the Act was to conserve tax payers dollars by allowing earlier release dates for inmates convicted of less serious offenses. On June 27, 2016, the Appellant was sentenced informed that due to a prior

FILED

DEC 30 2016

SC ADMIN. LAW COURT

Conviction he is not eligible for parole. After the Appellant was notified about the Dept. S decision this Appeal followed.

Argument

On 5/21/14 Appellant was sentenced on 2 counts of 44-53-370(b)(2) Distribution of marijuana 3rd and was sentenced to a non-eligible or Paroleable sentence of 125 months by Edward G. Wellmaker. Statute 44-53-370(b)(2) states, "Notwithstanding any other provision of law a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (C), (D) 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." Nowhere in this statute does it say only a person convicted of a third or subsequent offense in which all priors are only for possession of a controlled substance is eligible for parole as Counsel for respondent has quoted and would like this Court to believe. However, it does state specifically a person with a third or subsequent offense is eligible for parole if all priors are for possession, and if all priors are not just for possession as well. 44-53-370(b)(2) specifically states, "in all other cases", which means in cases that do not apply to the (C) and (D) clause of 44-53-370(b)(2) Counsel's numerous statements that this law only allows persons convicted of a third drug offense parole eligible only if their prior convictions were for possession only is misinterpreted, misinforming to the

Court and is illogical! Statute 44-53-370(b)(2) not only tells you what to do if a person has all prior possession's but it also specifically tells you what to do in all other cases which is not suspend the sentence nor grant probation, which can only be done in General Sessions Court by a Judge. No where in this statute does it say that a person such as Appellant who's priors are not all possession's is ineligible for parole! In fact the only thing a person convicted of a third or subsequent offense in which all prior's were not for possession of a controlled substance pursuant to subsections (C) and (D) is ineligible for is a suspended sentence or probation granted. So, by law Appellant is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits and good conduct credits. So Appellant being convicted of trafficking over 14 years ago on 10/25/02 that Counsel is referring to wouldn't disqualify Appellant for parole, it would put him in the all other cases category and he wouldn't be eligible for probation or a suspended sentence. So it shows that the legislature did wish inmates convicted of a third or subsequent offense for a violation of 44-53-370(b)(2) eligible for parole as well as other things. Counsel for Respondent quotes, "that words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation." Howe v. Hyatt, 321 S.C. 346, 369, 466 S.E. 2d 649, 650 (1996). My right to parole as stated in 44-53-370(b)(2) is not subtle or forced construction, nor does it limit the statute as Respondent's Counsel is attempting to do! Neither does it expand the statute's operation. This statute does not state that all individuals, persons, prisoners, or inmates are parole eligible; however,

It does state a person such as appellant convicted of a third or subsequent offense is eligible for parole just like a person convicted of a 1st or 2nd offense. For the record, my crime is not violent or non-parolable, and my sentencing sheets as well as CDR codes reflect that. Reading this statute in whole while being reasonable and practical, Appellant is eligible and fits the criteria for parole. The Omnibus Crime Reduction and Sentencing Reform Act of 2010 was passed to give offenders convicted of certain offenses including 44-53-370(b)(2) regardless if they have priors for possession. However, the legislature did not intend for the sentence to be suspended or probation granted if the priors are not for possession. This is clearly stated in the statute and also shows the intent of the legislature. Statute 44-53-370(b)(2) language is plain and unambiguous and conveys a clear and definite meaning that a person such as Appellant convicted of a third or subsequent offense in all other cases that do not apply to subsection (c) and (d) is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits and good conduct credits. Further more the Bolin decision does apply and should be considered in this case. The only difference in Bolin v. S.C. Dept of Corrections, S.E. 2d, 2016 WL 732535 is he had a second offense and this being a third. Bolin v. S.C. Dept. of Corrections, S.E. 2d, 2016 WL 732535 it shows the intent of the legislature as well as the effects and how the Omnibus Crime Reduction and sentencing reform Act of 2010 should be applied to the statutes included in this bill. The Bolin case shows the erroneous interpretation by design or mistake of this bill and its application. This is the same case that the South Carolina Dept. of Probation, Parole, and Pardon Services has misinterpreted this

bill and is in error by denying me parole which is Appellant's right by law. I am currently serving a sentence for distribution of Marijuana 3rd 44-53-370 (b)(2) and just like in Rabin the language of 44-53-370 (b)(2) changed to make that offense paroleable. Appellant is not serving an 85% or non paroleable sentence which means clearly that I am eligible for parole as stated in South Carolina law. It is clear and evident that Counsel for Respondent and the SEDPPPS (Respondent) is in error with their misinterpretation of 44-53-370 (b)(2) and Appellant's parole.

Conclusion

Based on the facts of law presented, Appellant respectfully requests that the final decision of the SEDPPPS be overturned and I be granted an emergency hearing for 2016 to take place in 30 to 45 days after your decision is made. And I also respectfully request that the department give me a hearing in 2017 and so on if need be on a yearly basis. IF I get rejected as statute 16-1-60 states. Not only does statute 44-53-370 (b)(2) state I'm parole eligible, but so does the intent of the legislature in passing the Omnibus Crime Reduction and Sentencing Reform Act of 2010.

Respectfully Submitted,
Dennis Davis
Appellant

Turbeville, South Carolina

December 21, 2016

Dennis Davis #208658

T.C.I. TB-157

1578 Clarence C. Baker Hwy 378
Turbeville, SC 29162

State of South Carolina in the Administrative Law Court

Document Number 16-ALT-15-0034

Appeal of Final Decision Dept. of Probation, Parole and
Pardon Services

Dennis Davis #255558, Appellant,
V.

S.C. Department of Probation, Parole, and Pardon Services,
Respondent.

Certificate of Service

I, Dennis Davis, Appellant, Certify that I have served
the within Brief, dated December 21, 2016 on Respondent by
depositing a copy of the same in the United States mail,
Postage prepaid, the 21st day of December, 2016 addressed to:

The Honorable Deborah Darden
Judge, Administrative Law Court
1205 Pendleton St., Suite 224
Columbia, S.C. 29201

South Carolina Dept of
Probation, Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

I further Certify that all Parties required by Rule 54 to be served
have been served.

FILED

DEC 30 2016

SC ADMIN. LAW COURT

Dennis Davis

Dennis Davis #255558

TCL TB-157

1578 Clarence E. Coler, Hwy 378

Turbeville, S.C. 29162

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dennis Davis, #288558,

Docket No.: 16-ALJ-15-0034-AP

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

ORDER

FILED

FEB 22 2017

SC ADMIN. LAW COURT

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Dennis Davis (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On June 27, 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 based upon his prior drug convictions. On August 11, 2016, 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.

BACKGROUND

The Department determined that Appellant is ineligible for parole based upon his prior convictions. Appellant is currently serving two sentences for Distribution of Marijuana, 3rd Offense. Appellant received these 125-month concurrent sentences on May 21, 2014, pursuant to South Carolina Code Section 44-53-370(b)(2). In 2002, Appellant received three other drug-related sentences: five years for Trafficking Crack Cocaine, 10-28 grams, 1st Offense, pursuant to Section 44-53-375(C)(1)(a); ten years for Possession of Crack Cocaine with Intent to Distribute Within Proximity of a College, pursuant to Section 44-53-445(B)(2); and thirty days for Possession of Marijuana, 1st Offense, pursuant to Section 44-53-370(d)(4).

ISSUE ON APPEAL

Whether the Department erred in determining that Appellant is ineligible for parole because of his prior drug offenses.

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. Dept. 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. Dept. 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. Dept. 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. Dept. 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-Shabazz, 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. 2016). 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 has erred in concluding that he is not eligible for parole under the language of Section 44-53-370(b)(2), and that the Department has failed to correctly apply the recent decision of the Court of Appeals in Bolin v. South Carolina Department of Corrections, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016), rehearing denied (Feb. 24, 2016). The Court disagrees. A review of the relevant statutes and Appellant's prior convictions 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, the 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 § 24-13-100.¹ When an inmate’s crime is a no-parole offense, the inmate is not eligible for “parole” consideration. *Id.* at § 24-21-30; see also *Bolin*, 415 S.C. at 283, 781 S.E.2d at 917 (“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). Unless provided otherwise, an inmate becomes eligible for the community supervision program after completion of at least eighty-five percent of the actual term of imprisonment imposed. *Id.* at § 24-13-150(A) (Supp. 2016). This is known as the “85% rule.”

However, this rule for no parole offenses has been modified for certain specific offenses within the language of the sentencing statute. In particular, the legislature has amended certain drug crime sentencing statutes to allow for parole eligibility in certain cases. The Court of Appeals has construed the language of the amendments to repeal the no-parole offense statute insofar as there is a conflict with the more recent and specific amendments. *Bolin*, 415 S.C. at 282, 781 S.E.2d at 917 (citation omitted) (“The legislature’s use of the phrase ‘Notwithstanding any other provision of law,’ in the amendments to sections 44-53-375 and -370 expresses its intent to repeal section 24-13-100 *to the extent* it conflicts with amended sections 44-53-375 and -370.” (emphasis in original)). The holding of the Court of Appeals in *Bolin* is very specific and does not repeal the 85% rule in regards to all offenses contained in the statutory sections amended by the legislature.

The subsection of the drug statute that Appellant was sentenced under provides:

Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense 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. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work

¹ Class A, B, and C felonies are listed in Section 16-1-90. Appellant’s offense is a Class C felony.

credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted[.]

S.C. Code Ann. § 44-53-370(b) (Westlaw through 2014). Appellant's argument is based upon an inference derived from the last sentence. He argues that because parole ineligibility was not explicitly stated, it is by implication not included. However, this argument ignores, not only the plain language of the statute, but the larger statutory scheme of parole eligibility.

In interpreting a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Further, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.

Ranucci v. Crain, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014) (internal quotation marks and citations omitted). Quite simply, the drug statute does not include language making a third offender with non-qualifying prior offenses ineligible for parole because the ineligibility has already been provided for by the no-parole offense statute.

Therefore, unless Appellant fits within the exceptions to the overall rule carved out by the notwithstanding provisions, he is ineligible for parole because he was sentenced for a Class C felony. The exception for a third offense requires that "all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d)" of Section 44-53-370. In this case, Appellant has prior offenses sentenced under Section 44-53-375(C)(1)(a) and Section 44-53-445(B)(2). Thus, Appellant does not fall within the exception and the no-parole offense rule still applies to Appellant.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the decision of the Department is AFFIRMED.

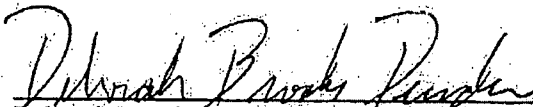
AND IT IS SO ORDERED.

FILED

FEB 22 2017

SC ADMIN. LAW COURT

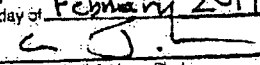
February 22, 2017
Columbia, South Carolina


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Intergovernmental Mail Service addressed to the party(ies) or their attorney(s).

This 22nd day of February 2017

By: 
Judicial Law Clerk

The Supreme Court of South Carolina

Dennis Davis, Appellant,

v.

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

Appellate Case No. 2017-000663

The Honorable Deborah Brooks Durden
Administrative Law Court
Trial Court Case No. 2016ALJ150034AP

ORDER

Pursuant to Rule 204(a) of the South Carolina Appellate Court Rules, this matter is hereby transferred to the South Carolina Court of Appeals.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

March 21, 2017

cc:

Dennis Davis, 288558

Matthew C. Buchanan, Esquire

The Honorable Jenny Abbott Kitchings

South Carolina Department of Transportation

288558

COUNTY OF York STATE VS.

Dennis Rodger Davis Jr

AKA:

Race: BLACK Sex: M Age: 31

DOB: SS:

Address:

City, State, Zip: Rock Hill, SC 29730-5560

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: DISTRIBUTION OF MARIJUANA, 3RD OFFENSE, (5-20 YRS)

INDICTMENT/CASE#: 2013GS4602970

A/W#: 2013A4610200176

Date of Offense: 3/8/2013

S.C. Code §: 44-53-0370(b)(2)

CDR Code #: 0188

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0188

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.

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

ATTEST: Hamilton Marina Bender J Desch SC Bar# Defendant Dennis Rodger Davis Jr Attorney for Defendant 100284 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 125 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: \$ days/hours Public Service Employment

Payment Terms: Obtain GED

Set by SCDPPPS Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning

*Fine: Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$100 -

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25 -

§ 14-1-213 (Drug Court Surcharge) \$150 \$150 -

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$5 -

3% to County (if paid in installments) \$

TOTAL \$280 -

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.

Signature of Presiding Judge

Clerk of Court/ Deputy Clerk David Hamelita

Court Reporter: Alison Butler

Presiding Judge

Judge Code: 2137 Wellman K

Sentence Date: 5-21-14

STATE OF SOUTH CAROLINA)
 COUNTY OF York)
 STATE VS.)
 Dennis Rodger Davis Jr)
 AKA:)
 Race: BLACK Sex: M Age: 31)
 DOB: SS#)
 Address:)
 City, State, Zip: Rock Hill, SC 29730-5560)
 DL#: SID#)
 CDL Yes No CMV Yes No Hazmat Yes No)
 In disposition of the said indictment comes now the Defendant who was)
 TO: DISTRIBUTION OF MARIJUANA, 3RD OFFENSE (5-20-YRS)

IN THE COURT OF GENERAL SESSIONS

1/2
288558

INDICTMENT/CASE#: 2013GS4602971
 A/W#: 2013A4610200214
 Date of Offense: 4/5/2013
 S.C. Code § : 44-53-0370(b)(2)
 CDR Code #: 0188

ORIGINAL

CONVICTED OF or PLEADS

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0188
 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: Matthew Bender 72806 Dennis Davis Craig H. [unclear] 100284
 Hamilton, Matthew Bender J. Desch SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 or a determinate term of 125 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: 2013 GS46 2970
 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
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____ 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: _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100-
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25-
§ 14-1-213 (Drug Court Surcharge)	\$150	\$150-
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5-
% to County (if paid in installments)		\$
TOTAL		\$280-

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

Clerk of Court/ Deputy Clerk David Hamilton
 Court Reporter: Aileen Butler

Presiding Judge [Signature]
 Judge Code: 2137
 Sentence Date: 5-21-14

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DIVISION OF CLASSIFICATION & INMATE RECORDS
CUSTODY AND PRIVILEGES**

Inmate Name Davis, Dennis Inmate Number 288558

Assigned/Recommended Custody NR1B

	MINIMUM OUT (MO)	MINIMUM OUT RESTRICTED (MOR)	MINIMUM IN (MI)	MEDIUM (ME)	SMU (SD, DD, PC, PHD)
ACCESS TO PROGRAMS & ACTIVITIES	Outside the perimeter <i>off</i> institutional property	Inside the perimeter or Outside the perimeter <i>on</i> institutional property	Inside the perimeter	Inside the perimeter	Selected cell activity only
ACCESS TO JOBS	Outside the perimeter <i>off</i> SCDC property	Inside the perimeter or Outside the perimeter <i>on</i> institutional property	All inside the perimeter	All inside the perimeter	None except job assignments <i>within unit for Statewide PC which is closely supervised (none the 1st 90 days)</i>
WORK/EDUCATION CREDITS	2	2	3 until meets behavior & time requirements to MOR, then automatically to 2	5	None, except 7 for <i>Statewide PC (none the 1st 90 days)</i>
ACCESS TO CANTEEN	\$100 week limit	\$100 week limit	\$100 week limit	\$30 week limit	Refer to OP-22.16 for Death Row, OP-22.12 for SMU, OP-22.32 for Statewide PC. Pre-Trial SK inmates are eligible for canteen privileges.
ACCESS TO VISITS	See SCDC Policy/Procedure OP-22.09, Inmate Visitation, OP-22.12, Special Management Unit, OP-22.11, Maximum Security Unit, or OP-22.32, Statewide Protective Custody for information on visitation privileges.				
*ACCESS TO TELEPHONE	Normal	Normal	Normal	4 calls per month	Up to 1 call per month (depending upon Security Detention level designation) Statewide PC - 1 per day

This does not affect access to legal telephone calls.

Projected Release Date as of: October 17, 2016

Max-out 9/13/19 Parole Eligibility 5/31/16 SFII-A 3/17/19

Labor Crew Eligibility NONE

Sentence Start Date 5/21/14 Sentence Length 10yr

Detainers NONE

Annual Hardship Review Month May

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

TO INMATE: Davis, Dennis SCDC #: 288558

INSTITUTION: Turbenille CI

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

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

Your new projected dates are:

Projected Maxout Date: 3/24/2023 Projected Parole Date: _____

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

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

Classification Case Manager/Designee (Print Name): M. Jackson

Signature: [Handwritten Signature]

Inmate Signature: Refuse to Sign Date: 2/8/17 Time: 10:13AM
W. Pugh

Original: Central Record
cc: Institutional Record
Inmate

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.dppps.sc.gov/

June 14, 2017

The Honorable Jenny Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street - 5th Floor
Columbia, South Carolina 29201

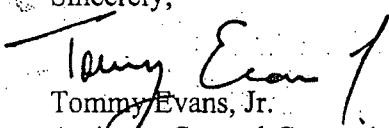
RE: Dennis Davis v. SCDPPPS

Dear Ms. Kitchings:

Enclosed please find the original *Initial Brief of the Respondent and Designation of Matter*, along with proof of service in the above-referenced case.

Thank you for your assistance in this matter.

Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

TE:dn
Enclosures

cc: Dennis Davis

25)

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Deborah Brooks Durden, Administrative Law Judge
Case No.: 2016-ALJ-15-0034-AP

Appellate Case No.: 2017-000663

DENNIS DAVIS, #288558.....APPELLANT

v.

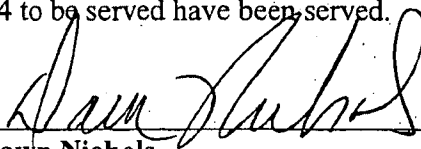
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn Nichols, Executive Assistant, hereby certify that I have served the within the *Initial Brief of Respondent and Designation of Matter*, dated June 14, 2017, on the Appellant this 14th day of June, 2017, by depositing a copy of same in the United States mail, postage paid, addressed to:

Dennis Davis, #288558
Turbeville Correctional Institution-TA-111
1578 Clarence E. Coker Highway 378
Turbeville, S.C. 29162

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 COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Deborah Brooks Durden, Administrative Law Judge
Case No.: 2016-ALJ-15-0034-AP

Appellate Case No.: 2017-000663

DENNIS DAVIS, #288558.....APPELLANT

v.

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

INITIAL 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**

ATTORNEY FOR THE RESPONDENT

TABLE OF CONTENTS

Table of authorities.....i

Statement of issue on appeal.....ii

Statement of the case.....1

Arguments

1. The ALC was correct in their determination that the Respondent did not err in deciding that the Appellant is not eligible for parole due to his prior drug convictions.....2

2. The Bolin decision does not apply to the present case so it was proper for the ALC not to consider it in the final decision.....7

Conclusion.....9

TABLE OF AUTHORITES

CASES

Abell v. Bell, 229 S.C. 1, 4, 91 S.E.2d 548, 550 (1956).....6

Al-Shabbaz v. State, 338 S.C. 334, 527 S.E.2d 724 (2000).....2,3

Bolin v. S.C. Dept. of Corrections, 425 S.C. 276, 781 S.E.2d 914 (2015).....7

Cooper v. Moore, 351 S.C. 207, 212, 569 S.E.2d 330, 332 (2002).....6

Furtick v. S.C. Dept. of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2002).....2,3

Higgins v. State, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992).....5

Pachel v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890, 892 (1995).....6

Rowe v. Hyatt, 321 S.C. 366, 369, 468 S.E.2d 649, 650 (1996).....4

Stone v. State, 313 S.C. 533, 443 S.E.2d 544 (1994).....8

Whitner v. State, 328 S.C. 1, 16, 492 S.E.2d 777, 779 (1997).....6

STATUTES

S.C. Code Ann. §44-53-370(b)(2)(2016).....4

STATEMENT OF ISSUE ON APPEAL

1. Did the lower court err in affirming the decision of the Respondent denying the Appellant's parole eligibility due to his prior drug convictions?

STATEMENT OF THE CASE

On March 8 and April 5 of 2013, the Appellant was caught in the possession of a quantity of marijuana. In both instances the Appellant was arrested and charged with the offenses of possession with intent to distribute marijuana. (PWID marijuana) Upon further investigation it was determined that the Appellant was previously convicted on two separate occasions for drug offenses. Upon this determination, the Appellant's offense was upgraded to a third offense.

On May 21, 2014, the Appellant appeared before the Honorable Edward G. Wellmaker for two counts of PWID Marijuana 3rd offense. (PWID marijuana 3rd) Upon the conclusion of this appearance the Court sentenced the Appellant to a one hundred and twenty-five month period of incarceration for each count. In 2010, the General Assembly passed the South Carolina Reduction of Recidivism Act, which went into effect in January 2011. This law allowed persons convicted of third drug offenses parole eligibility only if their prior convictions were for possession of a controlled substance. The Respondent conducted an investigation to make a determination of the Appellant's parole eligibility. The Respondent discovered that on October 25, 2002, the Appellant was convicted of Trafficking crack cocaine. Due to this previous conviction the Respondent determined that pursuant to South Carolina law he is not eligible for parole. On June 27, 2016, the Appellant was informed that due to his prior drug conviction he is not eligible for parole.

Upon receiving this correspondence the Appellant filed a notice of appeal before the Administrative Law Court (ALC). Within this appeal the Appellant argued that it was not the intention of the General Assembly for a person with a third drug offense to be denied parole eligibility. The Appellant further argued that the denial of parole due to the "no parole" classification is unlawful pursuant to the Bolin decision. The Respondent argued that the Appellant was convicted of a third drug offense, and his prior offenses were not solely for possession;

therefore, he is not eligible for parole. The Respondent further argued that the Appellant in the Bolin was convicted of a second drug offense, so Bolin does not apply.

On February 22, 2017, the Honorable Deborah Brooks Durden issued an order affirming the decision of the Respondent. Within this order the ALC determined that the Respondent's interpretation of the law was lawful and should be upheld. Upon receiving the ALC determination the Appellant filed a notice of appeal before the South Carolina Supreme Court. Per order of the Supreme Court dated March 21, 2017, the case was transferred to the Court of Appeals.

Within this appeal the Appellant argues that the ALC erred in their decision to affirm the decision of the Respondent. The Appellant is of the opinion that the statute allows him to become parole eligible just not eligible to receive a probationary sentence. The Appellant makes an attempt to compare this case to the Bolin decision. The Respondent argues that the decision of the ALC was correct. Due to the Appellant serving a conviction for a third drug offense and with prior drug offenses not being for possession, he is not eligible for parole. The Respondent will also argue that Bolin is not on point with the present case; it does not apply and should not be considered by this Court. The initial brief of the Respondent follows.

ARGUMENTS

- 1. The ALC was correct in their determination that the Respondent did not err in deciding that the Appellant is not eligible for parole due to his prior drug convictions.**

The Appellant filed a notice of appeal before the ALC to decide on the validity of the determination of the Respondent in denying the Appellant's parole eligibility. The ALC has jurisdiction over this cause of action due to the decisions of the South Carolina Supreme Court in Al-Shabbaz v. State, 338 S.C. 334, 527 S.E.2d 724 (2000), and Furtick v. S.C. Dept. of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2002). The Supreme Court in each of these decisions gave the ALC the ability to review the Respondent when they decided that an

individual is not eligible for parole, which gives appellant jurisdiction to this court upon the final decision of the ALC.

In Al-Shabbaz, the South Carolina Supreme Court created a new avenue by which inmates could seek review of a final decision of a state agency in "non-collateral" matter related to a conviction or sentence. The Court held that inmates could appeal those final agency decisions to the ALC, and ultimately the Court of Appeals pursuant to the Administrative Procedures Act. Al-Shabbaz, at 376. In Al-Shabbaz, the Court recognized that "these administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed; and, (2) when an inmate believes prison officials have erroneously calculated his sentence; sentence-related credits or custody status." Id., at 369.

In Furtick, the Court noted that appealable final decisions by the Board arises in the latter manner, where the inmate alleges that the Department erroneously determined he was not eligible for parole. The Court held that in order to determine whether an inmate's claim against the Department is entitled review by the ALC, it is first necessary to determine whether the inmate has a liberty interest in gaining access to the Parole Board. Furtick, at 149. The Court decided that the permanent denial of parole implicates a liberty interest sufficient to require at least minimal due process. Id. The ALC had the ability to make this decision in an appellant capacity. They can only make a determination regarding if the Respondent followed the law in the denial of parole eligibility. In that capacity, the decision of the ALC was lawful. The fact the Respondent followed South Carolina law in the denial of the Appellant's parole eligibility.

The Appellant argues that the Respondent erred in making the determination that he is not eligible for parole due to his prior conviction for trafficking crack cocaine. The ALC was correct in affirming this decision. The South Carolina Code of Laws specifically states:

Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which **all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d)**, 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. §44-53-370(b)(2)(2016)(emphasis added).

The Appellant argues that due to the last sentence of the statute he is eligible for parole. This is incorrect. Within the statute it clearly states that an inmate convicted of a third drug offense is eligible for parole only if their prior drug offenses were for possession. If the legislature wished for inmates convicted of a third or greater drug offense be allowed parole regardless of their prior record that condition would not be in place. That last sentence relates to individuals serving a third offense whose only priors are for possession. Those individuals are eligible for parole but not probation, this does not apply to the Appellant. It is clear by the wording of the statute, the General Assembly wished for an individual convicted of a third offense not be eligible for parole, unless their prior drug offenses are only for possession. This is the intention of the General Assembly and followed by the ALC. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. Rowe v. Hyatt, 321 S.C. 366, 369, 468 S.E.2d 649, 650 (1996).

In reading the entire statute it is clear that the legislature wished all prisoners convicted of a first or second offense be allowed parole eligibility. The statute clearly states, "a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits." S.C. Code Ann. §44-53-370(b)(2)(2016). If the Legislature wished for all individuals who have

committed prior drug offenses regardless of their severity parole eligibility the statute would have not limited parole eligibility for third offenders who priors were only for possession. The Appellant reads one sentence and expects the Court to only apply that sentence and no other portion of the statute to his case. That would be unlawful, as the entire statute must be applied including the portion that specifically denies the Appellant parole eligibility. Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction. Higgins v. State, 307 S.C. 446, 449, 415 S.E.2d 799, 801(1992).

The Legislature never intended for all individuals sentenced to a drug offense under this statute parole eligibility. The Appellant is of the opinion that this law was created to allow inmates easier access to the Parole Board, which is true. This law was created in order for there be a reduction of inmates, and to allow for evidence based practices to be applied in order to lower the amount of recidivism; however, there are limitations. The General Assembly wished for individuals with a first and second offense, to be allowed parole eligibility. They also wished third offenders to be allowed parole eligibility **only** when all the prior drug offenses were for possession. Because this does not apply to the Appellant he was lawfully denied parole eligibility, which was correctly upheld by the ALC.

It is clear that the intention of the General Assembly was to allow parole only for certain drug offenders. If an offender does not fit the criteria he cannot be eligible for parole. The Appellant only uses a single sentence to support his argument and totally ignores the entire statute which clearly denies him parole eligibility. The ALC was correct in considering the entire statute in making their decision in affirming the decision of the Respondent. A Court should consider not merely the language of the particular clause being construed, but the word and its meaning in

conjunction with the purpose of the whole statute and the policy of the law. Whitner v. State, 328 S.C. 1, 16, 492 S.E.2d 777, 779 (1997). It is clearly the intent of the legislature that if an inmate does not fall under the criteria within this statute he should not be granted parole eligibility. The Appellant failed to fall under this criteria so he was denied parole eligibility pursuant to South Carolina law. This decision was lawfully made by the Respondent and properly upheld by the ALC, who followed the intent of the legislature. A law must be interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly. Abell v. Bell, 229 S.C. 1, 4, 91 S.E.2d 548, 550 (1956).

The statute clearly states that parole is only afforded to a person convicted of a third or subsequent offense if their prior drug offenses were only for possession. That criteria would not have been included if the General Assembly wished all individuals regardless of the amount of prior drug offenses be allowed parole eligibility. If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no need to employ rule of statutory interpretation, and the court has no right to look for, or impose another meaning. Pachal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890, 892 (1995). The terms of the statute are clear; no individual with a third drug offense can be allowed to appear before the Parole Board unless all of their prior drug convictions are only for possession. The Appellant has a prior offense for trafficking crack cocaine so he is not eligible for parole. Since it was applied properly the decision of the ALC was correct and it should be affirmed. When the terms of a statute are clear, the court must apply those terms according to their literal meaning. Cooper v. Moore, 351 S.C. 207, 212, 569 S.E.2d 330, 332 (2002).

2. The Bolin decision does not apply to the present case so it was proper for the ALC not to consider it in the final decision.

Within his brief the Appellant mentions the South Carolina Court of Appeals decision of Bolin v. S.C. Dept. of Corrections, 425 S.C. 276, 781 S.E.2d 914 (2015). In Bolin this court decided:

Defendant's convictions for second-offense conspiracy to manufacture methamphetamine were no longer no-parole offenses, for which defendant was required to serve 85% of the sentence before being eligible for parole, following effective date of Omnibus Crime Reduction and Sentencing Reform Act, even though the Act did not amend definition of the 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 offender pursuant to that subsection was eligible for parole.

Bolin, at 276.

The Court in Bolin decided that a second offense PWID or Distribution is paroleable, and not an 85% offense. This is due to the statute allowing an inmate sentenced to a second offense parole eligibility. The Appellant is currently serving a sentence for PWID marijuana 3rd, so Bolin does not apply.

The General Assembly created the Omnibus Crime Reduction and Sentencing Act of 2010. This 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 eligible for parole; however, since this offense was a C-Felony it still fell within the "no parole offense" classification. In Bolin, the Court decided that the law changed, so the offense of the Appellant was no longer a "no parole offense." So inmates serving a sentence for these offenses are no longer subject to the eighty-five percent term of mandatory imprisonment.

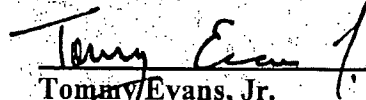
The offense the Appellant is currently serving is classified as a C-Felony the law specifically states that any person sentenced to an A, B, or C felony is not allowed parole. The law

never changed allowing parole eligibility for PWID Marijuana 3rd. The Appellant is responsible for serving at least eighty-five percent before any release from incarceration. The statute states notwithstanding any other provision of law which means an earlier statute does 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 the earlier general statute.) The Appellant is of the opinion that this applies to his offense; however, it does not. This only applies to an individual who has committed first and second offenses, or a third offense only when the priors are only for possession, which does not apply to the Appellant. The Bolin decision was clear, the statute changed for first and second offenders so they are the only ones that are guaranteed parole eligibility. There are extra criteria that must be met for a person serving a third offense. The Appellant does not satisfy these criteria so he cannot be allowed parole eligibility. According to the statute the Appellant is not eligible for parole on a third offense unless their prior offenses are only for possession. That is not the case in this cause of action. The ALC did not right thing in affirming the decision of the Appellant, a decision that should be upheld by this Court.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests the final decision of the Administrative Law Court 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
June 13, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable Deborah Brooks Durden, Administrative Law Judge
Case No.: 2016-ALJ-15-0034-AP

Appellate Case No.: 2017-000663

DENNIS DAVIS, #288558.....APPELLANT

v.

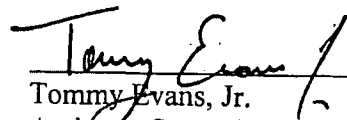
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

DESIGNATION OF MATTER

In addition to the matter designated by the Appellant, the Respondent proposes the following to be included in the Record on Appeal:

1. Complete Record on Appeal in the Administrative Law Court Dated Oct. 12, 2016;
2. Order Dated February 22, 2017.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.


Tommy Evans, Jr.
Assistant General Counsel

June 14, 2017

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

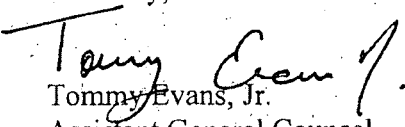
June 14, 2017

Dennis Davis, #288558
Turbeville Correctional Institution-TA-111
1578 Clarence E. Coker Highway 378
Turbeville, S.C. 29162

Dear Mr. Davis:

Please find enclosed copies of the matter we designated for inclusion in the Record on Appeal.

Sincerely,


Tommy Evans, Jr.
Assistant General Counsel

TE:dn

cc: The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 16-ALJ-15-0034

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

DENNIS DAVIS, #288558..... 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

INDEX

	Page
Respondent's Letter Dated June 27, 2016	1
Indictment and Sentencing Sheet 13-GS-46-02970	2
Indictment and Sentencing Sheet 13-GS-46-02971	5
Indictment and Sentencing Sheet 02-GS-46-2404	8
Indictment and Sentencing Sheet 02-GS-46-2405	11
Indictment and Sentencing Sheet 02-GS-46-2406	14

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.dppps.sc.gov/

June 27, 2016

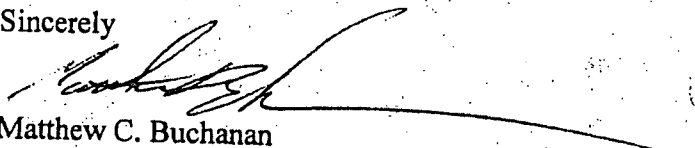
Dennis Davis, #288558
Ridgeland Correctional Institution
PO Box 2039
Ridgeland, South Carolina 29936

Dear Mr. Davis:

On May 21, 2014, you were convicted of Distribution of Marijuana, third offense, in Indictment Numbers 13-GS-46-02970, 02971. Pursuant to South Carolina law a person convicted of this offense with two or more aggregate violation of the law relating to drugs is not eligible for parole.

A review of your prior record reveals prior drug convictions, therefore, your current offense is ineligible for parole pursuant to South Carolina law. You will not be considered for parole on this offense.

Sincerely


Matthew C. Buchanan
General Counsel

MCB:dn

STATE OF SOUTH CAROLINA

COUNTY OF YORK STATE

York

VS.

Dennis Rodger Davis Jr

AKA:

Race: BLACK Sex: M Age: 31

DOB: SS#:

Address:

City, State, Zip: Rock Hill, SC 29730-5560

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: DISTRIBUTION OF MARIJUANA, 3RD OFFENSE (5-20 YRS)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS4602970

A/W#: 2013A4610200176

Date of Offense: 3/8/2013

S.C. Code §: 44-53-0370(b)(2)

CDR Code #: 0188

SENTENCE SHEET ORIGINAL

CONVICTED OF or PLEADS

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0188
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury, Mandatory GPS(CSC w/minor 1st or Lewd Act)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signatures] 72806 [Signatures] 100284
Hamilton Marina Bender Desch SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 125 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
Total: \$ plus 20% fee: \$
Payment Terms: days/hours Public Service Employment

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$280-

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: David Hummelte
Court Reporter: Aileen Butler
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 3137
Sentence Date: 5-21-14

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

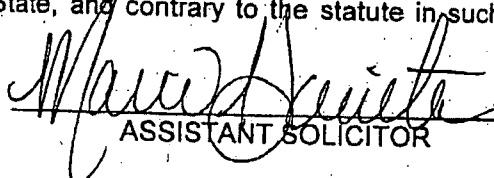
INDICTMENT

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF MARIJUANA

On or about March 8, 2013, the Defendant, Dennis Rodger Davis Jr. aka Dennis Roger Davis Jr., did manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana, a Schedule I controlled substance. Said incident occurred in York County, South Carolina all in violation of Section 44-53-370 of the 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.


ASSISTANT SOLICITOR

WITNESSES

YCMDEUAvidon

dc

ARREST WARRANT NUMBER

2013A4610200176

ACTION OF GRAND JURY

TRUE BILL

Jimmie Eakin
Foreperson of Grand Jury

Date: *8/22/13*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-46- *02970*

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

August 22, Term 2013

THE STATE

vs.

**DENNIS RODGER DAVIS JR. AKA
DENNIS ROGER DAVIS JR.**

Indictment for

DISTRIBUTION OF MARIJUANA

SC Code: 44-53-370(b)(2)
CDR Code: 0188

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Dennis R. Davis, Jr.
hereby appear in my own proper person and plead guilty to the within indictment or to

Wanda Howard

Defendant

Witness:
[Signature]
C.C. PLS. AND G.S.

497

STATE OF SOUTH CAROLINA

COUNTY OF York
STATE VS.
Dennis Rodger Davis Jr.

AKA:
Race: BLACK Sex: M Age: 31
DOB: SS#:
Address:
City, State, Zip: Rock Hill, SC 29730-5560
DL#: STD#:

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: DISTRIBUTION OF MARIJUANA, 3RD OFFENSE (5-20 YRS)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS4602971
A/W#: 2013A4610200214
Date of Offense: 4/5/2013
S.C. Code § : 44-53-0370(b)(2)
CDR Code #: 0188

ORIGINAL

CONVICTED OF or PLEADS

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0188
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.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Hamilton, Maria Bender J. Derch SC Bar# Defendant
Attorney for Defendant 100254 SC Bar#

WHEREFORE, the Defendant is committed to State Department of Corrections, County Detention Center,
for a determinate term of 125 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: 2013 GS46 2970
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:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$280-

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: David Hamilton
Court Reporter: Aileen Butler
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2137
Sentence Date: 5-21-14

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

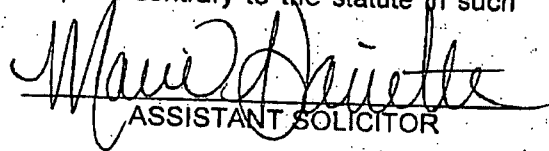
INDICTMENT

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF MARIJUANA

On or about April 5, 2013, the Defendant, Dennis Rodger Davis Jr. aka Dennis Roger Davis Jr., did manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana, a Schedule I controlled substance. Said incident occurred in York County, South Carolina all in violation of Section 44-53-370 of the 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.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

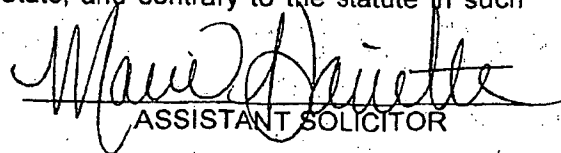
INDICTMENT

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF MARIJUANA

On or about April 5, 2013, the Defendant, Dennis Rodger Davis Jr. aka Dennis Roger Davis Jr., did manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana, a Schedule I controlled substance. Said incident occurred in York County, South Carolina all in violation of Section 44-53-370 of the 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.


ASSISTANT SOLICITOR

WITNESSES
YCMDEUA Avidon

dc
ARREST WARRANT NUMBER
2013A4610200214

ACTION OF GRAND JURY
TRUE BILL

(51)

Jimmy Eakin
Foreperson of Grand Jury
Date: *8/22/13*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-46-02971

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

August 22, Term 2013

THE STATE

vs.

DENNIS RODGER DAVIS JR. AKA
DENNIS ROGER DAVIS JR.

Indictment for
DISTRIBUTION OF MARIJUANA

SC Code: 44-53-370(b)(2)
CDR Code: 0188

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

Dennis R. Davis, Jr.
hereby appear in my own proper person and plead
guilty to the within indictment or to

Dennis Davis
Defendant

Witness:
James Charles Law
C.C.C. & S. AND G.S. *James*

DOCKET NO. 2013-GS-46-02971

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

YCMDEUA Avidon

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

August 22, Term 2013

I Dennis R. Davis, Jr. hereby appear in my own proper person and plead guilty to the within indictment or to

dc

ARREST WARRANT NUMBER

2013A4610200214

Dennis R. Davis
Defendant

THE STATE

vs.

Witness: Chadwick A. Avert
C.C.C. & G.S. Specie

ACTION OF GRAND JURY

TRUE BILL

DENNIS RODGER DAVIS JR. AKA
DENNIS ROGER DAVIS JR.

Johnny Eakin
Foreperson of Grand Jury
Date: 8/22/13

VERDICT

Indictment for

DISTRIBUTION OF MARIJUANA

SC Code: 44-53-370(b)(2)
CDR Code: 0188

Foreperson of Petit Jury
Date:

527

7

C
DB
STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

COUNTY OF York
STATE VS.

2002-GS-46-2404

Dennis Roger Davis

A/W#: G-787786

AKA:

Date of Offense: 6-6-02

Race: Black Sex: male Age: 20

S.C. Code §: 44-53-375

DOF L SS#:

CDR Code #: 0141510

Address:

CASE RESTORED

DL# Rock Hill SC SID# SL01357749

SENTENCE

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Trafficking Crack Cocaine 10-28 grams 1st offense
in violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 0141510

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

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: [Signature]
Solicitor

[Signature]
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 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.

The Defendant is to be given credit for 1 (days/months) jail time.

CONCURRENT or CONSECUTIVE to sentence on: all sentences this date

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____

PTUP _____
_____ days/hours Public Service Employment

Payment Terms: _____
 set by SCDPPPS _____

Obtain GED _____
Attend Voc Rehab. or Job Corps _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling _____

*Fine: \$ _____

Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly

§14-1-206 (Assessments 100%) \$ _____

pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund.

§14-1-211(A)(1) (Surcharge) \$ 100

Other: _____

§14-1-211(A)(2) (Surcharge) \$ _____

§56-5-2995 (DUI Assessment) \$ _____

3% to County (if paid in installments) ... \$ _____

TOTAL \$ 100

David Hamilton
Clerk of Court/ Deputy Clerk

PRESIDING JUDGE [Signature]

Court Reporter: Shannon McSilberny

Judge Code: 011113

Sentence Date: 10/25/02

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (1/2001)

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on August 15, 2002, the Grand Jurors of York County present upon their oath:

TRAFFICKING CRACK COCAINE

That on or about June 6, 2002, in York County, South Carolina, the Defendant, Dennis Roger Davis, did wilfully, unlawfully and knowingly sell, deliver, purchase, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of a quantity of crack cocaine, as defined and otherwise limited in Sections 44-53-375, and did Traffick in crack cocaine in an amount being more than 10 grams but less than 28 grams, in violation of Section 44-53-375, 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.


ASSISTANT SOLICITOR

WITNESSES

DEU HARRIS

pt

ARREST WARRANT NUMBER

G 780786

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2002-0010-2404

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 15, Term 2002

THE STATE

vs.

DENNIS ROGER DAVIS

Indictment for

TRAFFICKING CRACK COCAINE

SC Code: §44-53-375

CDR Code: 450

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

x Dennis Davis

Defendant

Witness:

Stephanie Cook, Clerk II
C.C.C. PLS. AND G.S.

55)

10

STATE OF SOUTH CAROLINA

COUNTY OF York
STATE VS.

Donnis Roger Davis

AKA:

Race: Black Sex: male Age: 20

DOB: _____ SS#: _____

Address: _____

DL# unknown SID#: SC 01357749

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

2002 GS-46 - 2405

A/W#: G-780787

Date of Offense: 6-6-02

S.C. Code §: 44-53-445

CDR Code #: D111018

CASE RESTORED

SENTENCE

PLEA TRIAL

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Possession of Crack Cocaine With Intent to Distribute With Minimum Quantity
in violation of § 44-53-445 of the S.C. Code of Laws, bearing CDR Code # D111018

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

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

[Signature]
Solicitor

[Signature]
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ 10,000.00 provided that upon the service of 5 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.

The Defendant is to be given credit for 1 days/months jail time.

CONCURRENT or CONSECUTIVE to sentence on: all sentences this date

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered

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

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 100%) \$ _____

§14-1-211(A)(1) (Surcharge) \$ 100

§14-1-211(A)(2) (Surcharge) \$ _____

§56-5-2995 (DUI Assessment) \$ _____

3% to County (if paid in installments) ... \$ _____

TOTAL \$ 100

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: _____

PRESIDING JUDGE [Signature]

Judge Code: 011113

Sentence Date: 10/25/02

David Hamilton
Clerk of Court/ Deputy Clerk

Court Reporter Shannon McGilberry
White - Clerk Green - Corrections

Canary - Probation

Pink - Defendant

SCCA217 (1/2001)

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on August 15, 2002, the Grand Jurors of York County present upon their oath:

**POSSESSION OF CRACK COCAINE WITH INTENT
TO DISTRIBUTE WITHIN PROXIMITY OF A COLLEGE OR UNIVERSITY**

That on or about June 6, 2002, in York County, South Carolina, the Defendant, Dennis Roger Davis, did distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute a controlled substance, to wit: crack cocaine, within a one-half mile radius of the grounds of a college or university, that being Clinton Junior College, located in the city of Rock Hill, South Carolina, such possession with intent to distribute not having been authorized by law, all in violation of Section 44-53-445, 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.


ASSISTANT SOLICITOR

WARRANT NO. 2002-0040-2405

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

The State of South Carolina
County of York

Defendant

DEJ HARRIS

COURT OF GENERAL SESSIONS

hereby appear in my own proper person and plead guilty to the within indictment or to

August 15, Term 2002

pt

Dennis Davis
Defendant

ARREST WARRANT NUMBER

G 780787

THE STATE

vs.

Witness:
Mechanic Cook, Clerk II
C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY
TRUE BILL

DENNIS ROGER DAVIS

Foreperson of Grand Jury

VERDICT

Indictment for

POSSESSION OF CRACK COCAINE WITH
INTENT TO DISTRIBUTE WITHIN
PROXIMITY OF A COLLEGE OR UNIVERSITY

SC Code: § 44-53-445

CDR Code: 108

Foreperson of Petit Jury

Date:

13

STATE OF SOUTH CAROLINA

COUNTY OF York
STATE VS.

Dennis Roger Davis

AKA:
Race: Black Sex: male Age: 20

DOE _____ S#: _____

Address: _____

Rock Hill Sc

DL# _____ SID# SC01357749

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

2002-GS-46-2406

A/W#: 619933V

Date of Offense: 6-6-02

S.C. Code §: 44-53-370

CDR Code #: D161519

CASE RESTORED

SENTENCE

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO:

Possession of Marijuana 1st offense

in violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # D161519

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

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:

TS Sprague
Solicitor

x Dennis Davis
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 (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.

The Defendant is to be given credit for 1 (days/months) jail time.

CONCURRENT or CONSECUTIVE to sentence on: All sentences this date

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered

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

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 100%) \$ _____

§14-1-211(A)(1) (Surcharge) \$ 100

§14-1-211(A)(2) (Surcharge) \$ _____

§56-5-2995 (DUI Assessment) \$ _____

3% to County (if paid in installments) ... \$ _____

TOTAL \$ 100

PTUP _____
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: _____

PRESIDING JUDGE [Signature]

Judge Code: 1113

Sentence Date: 10/25/02

David Hamilton
Clerk of Court/ Deputy Clerk

Court Reporter: Shannon McMillberry
White - Clerk Green - Corrections

Canary - Probation

Pink - Defendant

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on September 12, 2002, the Grand Jurors of York County present upon their oath:

POSSESSION OF MARIJUANA

That on or about June 6, 2002, in York County, South Carolina, the Defendant, Dennis Roger Davis, did possess a quantity of marijuana, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law, all in violation of Section 44-53-370, 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.



ASSISTANT SOLICITOR

DOCKET NO. 2002-GS-46-2406

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

DEU \ Harris

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

September 12, Term 2002

I hereby appear in my own proper person and plead guilty to the within indictment or to

asg

ARREST WARRANT NUMBER

61993BV

x Dennis Davis

Defendant

THE STATE

vs.

Witness:
Stephanie Cook, Clerk II
C.C.C. PLS. AND G.S.

DENNIS ROGER DAVIS

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

POSSESSION OF MARIJUANA

SC Code: § 44-53-370
CDR Code: 0659

Foreperson of Petit Jury
Date:

16

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 16-ALJ-15-0034

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

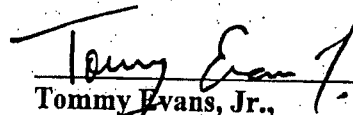
DENNIS DAVIS, #288558.....APPELLANT

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

October 12, 2016

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dennis Davis, #288558,

Docket No.: 16-ALJ-15-0034-AP

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

ORDER

FILED

FEB 22 2017

SC ADMIN. LAW COURT

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Dennis Davis (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On June 27, 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 based upon his prior drug convictions. On August 11, 2016, 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.

BACKGROUND

The Department determined that Appellant is ineligible for parole based upon his prior convictions. Appellant is currently serving two sentences for Distribution of Marijuana, 3rd Offense. Appellant received these 125-month concurrent sentences on May 21, 2014, pursuant to South Carolina Code Section 44-53-370(b)(2). In 2002, Appellant received three other drug-related sentences: five years for Trafficking Crack Cocaine, 10-28 grams, 1st Offense, pursuant to Section 44-53-375(C)(1)(a); ten years for Possession of Crack Cocaine with Intent to Distribute Within Proximity of a College, pursuant to Section 44-53-445(B)(2); and thirty days for Possession of Marijuana, 1st Offense, pursuant to Section 44-53-370(d)(4).

ISSUE ON APPEAL

Whether the Department erred in determining that Appellant is ineligible for parole because of his prior drug offenses.

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. Dept. 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. Dept. 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. Dept. 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. Dept. 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-Shabazz, 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. 2016). 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 has erred in concluding that he is not eligible for parole under the language of Section 44-53-370(b)(2), and that the Department has failed to correctly apply the recent decision of the Court of Appeals in Bolin v. South Carolina Department of Corrections, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016), rehearing denied (Feb. 24, 2016). The Court disagrees. A review of the relevant statutes and Appellant’s prior convictions 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, the 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 § 24-13-100.¹ When an inmate's crime is a no-parole offense, the inmate is not eligible for "parole" consideration. *Id.* at § 24-21-30; see also *Bolin*, 415 S.C. at 283, 781 S.E.2d at 917 ("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). Unless provided otherwise, an inmate becomes eligible for the community supervision program after completion of at least eighty-five percent of the actual term of imprisonment imposed. *Id.* at § 24-13-150(A) (Supp. 2016). This is known as the "85% rule."

However, this rule for no parole offenses has been modified for certain specific offenses within the language of the sentencing statute. In particular, the legislature has amended certain drug crime sentencing statutes to allow for parole eligibility in certain cases. The Court of Appeals has construed the language of the amendments to repeal the no-parole offense statute insofar as there is a conflict with the more recent and specific amendments. *Bolin*, 415 S.C. at 282, 781 S.E.2d at 917 (citation omitted) ("The legislature's use of the phrase 'Notwithstanding any other provision of law,' in the amendments to sections 44-53-375 and -370 expresses its intent to repeal section 24-13-100 to the extent it conflicts with amended sections 44-53-375 and -370." (emphasis in original)). The holding of the Court of Appeals in *Bolin* is very specific and does not repeal the 85% rule in regards to all offenses contained in the statutory sections amended by the legislature.

The subsection of the drug statute that Appellant was sentenced under provides:

Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense 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. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work

¹ Class A, B, and C felonies are listed in Section 16-1-90. Appellant's offense is a Class C felony.

credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted[.]

S.C. Code Ann. § 44-53-370(b) (Westlaw through 2014). Appellant's argument is based upon an inference derived from the last sentence. He argues that because parole ineligibility was not explicitly stated, it is by implication not included. However, this argument ignores, not only the plain language of the statute, but the larger statutory scheme of parole eligibility.

In interpreting a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Further, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.

Ranucci v. Crain, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014) (internal quotation marks and citations omitted). Quite simply, the drug statute does not include language making a third offender with non-qualifying prior offenses ineligible for parole because the ineligibility has already been provided for by the no-parole offense statute.

Therefore, unless Appellant fits within the exceptions to the overall rule carved out by the notwithstanding provisions, he is ineligible for parole because he was sentenced for a Class C felony. The exception for a third offense requires that "all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d)" of Section 44-53-370. In this case, Appellant has prior offenses sentenced under Section 44-53-375(C)(1)(a) and Section 44-53-445(B)(2). Thus, Appellant does not fall within the exception and the no-parole offense rule still applies to Appellant.

ORDER

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


AND IT IS SO ORDERED.

FILED

FEB 22 2017

SC ADMIN. LAW COURT

February 22, 2017
Columbia, South Carolina


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to the cause by depositing a copy herof, in the United States mail, postage paid, or in the Intercity Mail Service addressed to the party(ies) or their attorney(s).

This 22nd day of February 2017

By: 
Judicial Law Clerk