

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 17-ALJ-04-0491-AP
Appellate Case No. 2018-00548

TORREY DEAUND MANNING, # 364781,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Christina Catoe Bigelow
Deputy General Counsel
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ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY UPHELD THE DEPARTMENT'S CLASSIFICATION OF APPELLANT AS AN 85% "NO PAROLE" OFFENDER.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of Torrey Deaund Manning, an inmate in the custody of the South Carolina Department of Corrections (“SCDC”). Appellant submitted a Step One Grievance on June 28, 2017, challenging his sentence classification. This grievance was investigated and denied when it was determined that SCDC had properly classified Appellant as an 85% offender. Appellant then submitted a Step Two Grievance on July 21, 2017. This grievance was also investigated and denied. Appellant subsequently filed a notice of appeal to the Administrative Law Court. On March 20, 2018, the Administrative Law Court issued an order affirming the decision of the Department of Corrections. This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY UPHELD THE DEPARTMENT'S CLASSIFICATION OF APPELLANT AS AN 85% "NO PAROLE" OFFENDER.

On July 20, 2015, Appellant pled guilty to trafficking in heroin, four grams or more but less than fourteen grams, in violation of S.C. Code § 44-53-370(e)(3)(a)(1). He was sentenced to seven years. (See Sentence Sheet).

Appellant's conviction is specifically classified as "violent" under S.C. Code § 16-1-60 (specifying that "drug trafficking as defined in Section 44-53-370(e)" is a violent offense). Appellant's conviction also falls under the 85% "no parole" statute because the offense is a Class B felony which carries a maximum sentence of twenty-five years. See S.C. Code § 44-53-375(e)(3)(a)(1) (stating that trafficking in heroin, first offense, four grams to fourteen grams, carries seven to twenty-five years); S.C. Code § 16-1-90 (defining Class B felonies); and S.C. Code § 24-13-100 and -150 (stating that offenses carrying twenty years or more are 85% no-parole offenses).

Appellant's argument that the no parole statutes are "unconstitutional" as to his particular sentence and that application of these statutes violates due process and/or equal protection are merely conclusory and are patently without merit.¹ Furthermore, Appellant's citation to Bolin v. South Carolina Dep't of Corrections, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016), is misplaced. The Bolin case does not apply to Appellant's trafficking

¹ Additionally, Appellant's argument that the ALC erred in ruling in favor of Respondent despite Respondent's alleged failure to respond to Appellant's motion for summary judgment and requests for admissions is patently without merit because the Administrative Law Court sits in an appellate capacity when ruling on inmate appeals; therefore, the ALC rules do not provide for discovery or motions for summary judgment.

conviction because the 2010 Omnibus Act, as discussed in Bolin, did not make any amendments to the language in the S.C. Code § 44-53-370(e), the section dealing with trafficking offenses. Bolin applies only to manufacturing/distribution/possession with intent to distribute offenses under section (B) of the drug statute. Accordingly, Appellant is properly classified as a violent, 85% “no parole” offender.

CONCLUSION

For the reasons discussed above, this Court should affirm the Administrative Law Court’s decision.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

BY: 
CHRISTINA CATOE BIGELOW

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May 21, 2018

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TORREY DEAUND MANNING, # 364781,

APPELLANT,

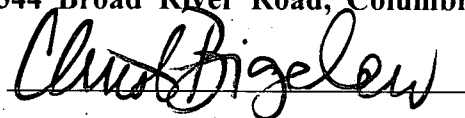
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on this date, she mailed a copy of the **Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal** to Appellant, addressed as follows: **Torrey Deaund Manning, # 364781, Kirkland Correctional Institution, EA2-0033-A, 4344 Broad River Road, Columbia, South Carolina 29210.**



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May 21, 2018



South Carolina
Department of
Corrections

OFFICE OF GENERAL COUNSEL

HENRY McMASTER, Governor

BRYAN P. STIRLING, Director

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The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Torrey Deaund Manning, # 364781, v. South Carolina Department of Corrections
Appellate Case No. 2018-000548

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter** in the above captioned appeal, along with a **Certificate of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections

cc: Torrey Deaund Manning, # 364781 (copy of sentence sheet enclosed)
Kirkland Correctional Institution
EA2-0033-A
4344 Broad River Road
Columbia, South Carolina 29210