THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]
APPEAL FROM RICHLAND COUNTY
Administrative Law Court
Phillip S. Lenski: Administrative Law Judge
Case No: 17-ALJ-04-0491-AP

Torrey DeAund Manning #364781 . . . . . Appellant,

V.

South Carolina Dept of. Corrections . . . . . Respondent

Appellate Case No. 2018-000548

Initial Reply Brief of Appellant

2018

#364781 Torrey DeAund Manning
Kirkland C.I
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THE ADMINISTRATIVE LAW COURT ERR BY UPHOLDING 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 DeAmond Manning, an inmate in custody of the South Carolina Department of Corrections (SCDC) Appellant submitted A Step One Grievance on June 28, 2017, challenging his sentence classification. The grievance was denied by (SCDC). Appellant then Submitted a Step (2) Two Grievance on July 21, 2017. This grievance was also denied. Appellant subsequently filed a Notice of Appeal to the (ALC). ON. March 20, 2018 the ALC 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 of review:

The review of the Administrative Law Judge may be reversed or modify 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 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 § 24-13-100 and 150 (stating that offense carrying twenty years or more are 85% No-parole offense) Penal statutes are to be construed strictly against the state in favor of the defendant State v. Burton 301, S.C. 305 (1990) Supreme court has rejected proposition that general statutes affect earlier specific statute. State v. Tisdale 321, S.C. 153 (1996) First offenders though subjected to a required minimum term of imprisonment is not precluded under the state from receiving parole work release

or supervised furlough (legislature's decision to mandate a minimum sentencing term and deny the offender parole eligibility for A (portion) of the sentence thereof is an appropriate exercise of it's power) STATE V. Taub 336 S.C. 310 (1999) It is unreasonable to characterize an offense for which the offender is eligible to receive a parole hearing as a no-parole offense. Even if the maximum sentence for the offense places it in the encompassed of 25 years. Bolin v. South Carolina Department of Corrections 415 S.C. 276 (2016)

ARGUMENT

THE ADMINISTRATIVE LAW COURT ERR BY UPHOLDING THE DEPARTMENTS CLASSIFICATION OF APPELLANT AS 85% NO PAROLE OFFENDER.

S.C. Code Ann § 1-23-610 (B) states if the substantive rights of the petitioner have been prejudiced the order of the ALC may be reversed. Because S.C. Code Ann § 24-13-100 and 24-13-150 is A violation of the constitutional and statutory provisions, when applied to the petitioner's Sentence. S.C. Code Ann § 44-53-370 E)3)A)1. The ALC decision should be reversed. S.C. Code Ann § 44-53-370(E) when read in whole and not in part states who is entitled to the provisions of parole eligibility, Supervised furlough, work release. By categorizing the petitioner's Sentence as a No-parole offense. S.C. Code Ann § 24-13-100 and 24-13-150 deprives the petitioner from receiving his earned work & Educational credits. Also the provisions created in S.C. Code Ann § 44-53-370(E) which establishes Liberty Interest to parole and the other provisions listed above. Making the claim of violating the petitioner's due Process of the 14th Amendment / Equal Protection of the Law valid.

S.C. Code Ann § 24-13-100 and 24-13-150 are clearly erroneous when applied to the sentence of S.C. Code Ann § 44-53-370E)3)A)1. Because the sentence doesn't contain the mandatory language required to be a No-parole offense. Furthermore S.C. Code Ann § 44-53-370(E) is A statute that is specific in nature, general rule of statutory construction is that a specific statute prevails over a more general one. So the enactment of the later and general statutes S.C. Code Ann § 24-13-100 and 24-13-150. do not repeal the earlier more specific statute. If a statute's language is plain and unambiguous, and conveys a clear and definite meaning. There is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning. When a statute is complete and unambiguous legislative intent must be determined from the plain language of the statute. Furthermore penal statutes are to be construed strictly against the state and in favor of the defendent State V. Burton 301, S.C. 305 (1990). The supreme Court has rejected the propostion that a general statute impliedly affects an earlier specific statute State V. Tisdale 321 S.C. 153 (1996) which involved the offense of driving under the influence. In that case the Court held that, to the extent it was conflict the specific DUI statute prevailed. over

the more general provisions of 24-21-410. The courts should find that analysis Applicable here and hold that the more Specific trafficking statute prevails. A clear and reasonable reading would conclude that the mandatory language within S.C. Code Ann § 44-53-370(E) which prohibits parole eligibility doesn't exist in the language of S.C. Code Ann § 44-53-370E)3)A)1. The petitioner contends S.C. Code Ann § 44-53-370(E) doesn't precluded his sentence from receiving parole, extended work release or supervised furlough see State v. Taub 336 S.C. 310 (1999) 801 Making it clear the legislature assigned an additional meaning within subsection (e) to any sentence described as mandatory or as a mandatory minimum. In addition to requiring a mandatory minimum term of imprisonment. a person sentenced to A second or subsequent offense under the "mandatory" provisions is not eligible for parole, extended work release or supervised furlough when dealing with S.C. Code Ann § 44-53-370(E) and the offense is 4 grams or more but less than 14. (Legislature's decision to mandate a minimum sentencing term and deny the offender parole eligibility for a (portion) of the sentence there of is an appropriate exercise of its power)

In contrast a person sentenced as a first offender though subjected to a required minimum term of imprisonment, is not precluded under the Statute from receiving parole, extended work release, or supervised furlough See State v. Taub 336 S.C. 310 (1999) which conflicts with the NO-parole offense S.C. Code Ann § 24-13-100 and 24-13-150. Making the decision of the ALC to support the Agency's decision a error of Law. Because the petitioner's sentence is a mandate minimum of 7years and not 25 years. He is entitled to a parole hearing make him parole eligible. Which is stated within the statutory provisions making 24-13-100 and 24-13-150 constitutional violations. The petitioner understands that none of the sentence can be suspended or probation granted. But he is entitled to a parole hearing. The two statutes are unconstitutional futhermore unreasonable, it is Arbitrary to characterize an offense for which the offender is eligible to receive A parole hearing as a NO-parole offense. Even if the maximum sentence for the offense places it in the encompassed of 25 years. Bolin v. South Carolina Department of Corrections 415 S.C. 276 (2016) S.C. Code Ann § 24-13-100 and 24-13-150 should be severed from being able to be Applied

to the petitioner's sentence. Because the petitioner is entitled to A parole hearing, he should be Allotted his work and Educational credits he has earned.

CONCLUSION

The petitioner request the courts to sever S.C. Code Ann§ 24-13-100 and 150 from being Applied to the Sentence of S.C. Code Ann§ 44-53-370 E)3)A)1. To receive the provisions created within the Statute S.C Code Ann.§ 44-53-370(E) which establish Liberty Interest causing the constitutional infirmity. Because petitioner is entitled to a parole hearing, which conflicts with the No-Parole offense rule.

Respectfully Submitted,

May 23, 2018

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Proof of Service

I certify that I have served the DESIGNATION OF MATTER / Initial Reply Brief on Respondents by depositing a copy of it in the United States Mail, postage prepaid on May 23, 2018 Addressed to South Carolina Department of Corrections Attorney of record Christina C. Bigelow At 4444 Broad River Rd. Columbia, S.C. 29221 and upon the Honorable Judge Phillip S. Lenski, Administrative Law Court, Edgar A. Brown Building 1205 Pendleton Street, Suite 244 Columbia, S.C. 29201, South Carolina Court of Appeals. P.O. Box 11629 Columbia S.C. 29211

May 23, 2018

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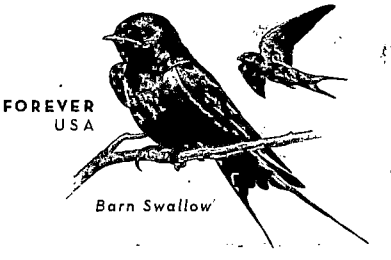

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