THE STATE OF SOUTH CAROLINA
In the Court of Appeals
[In the Supreme Court]

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Phillip Lenski Administrative Law Judge.
Case No. 17-ALJ-04-0491-AP

Torrey DeRund Manning #364781. . . . . Appellant,

V.

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

Appellate Case No. 2018-000548
Record ON Appeal

#364781 Torrey DeRund Manning
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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Torrey Deaund Manning, #364781 Appellant, vs. South Carolina Department of Corrections, Respondent.	Docket No.: 17-ALJ-04-0491-AP **ORDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to the Notice of Appeal filed September 15, 2017, by Torrey Deaund Manning (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). In this appeal, Appellant argues the Department has miscalculated his prison sentence. Specifically, the Appellant argues that the offense he was convicted of should be a classified as a non-violent offense, and also argues that his crime of conviction should not be classified as a "no parole" offense, requiring him to serve eighty-five (85) percent of his actual term of imprisonment.

ISSUE ON APPEAL

Whether the Department erred in calculating Appellant's sentence under the relevant statutes.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). The *Al-Shabazz* decision explained that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." *Wicker v. S.C. Dep't of Corrs.*, 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Such as a liberty interest is at stake in the calculation of an inmate's sentence. *Tant v. S.C. Dep't of Corrs.*, 408 S.C. 334, 341, 759 S.E.2d 398, 401 (2014) (citation omitted) ("There can be no doubt the length of an inmate's incarceration implicates a constitutional liberty interest."); *see also Sullivan v. S.C. Dep't of Corrs.*, 355 S.C. 437, 441–42, 586 S.E.2d 124, 126 (2003) (quoting *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750) (recognizing that *Al-Shabazz* created review in the ALC for sentence calculation cases).

In sentence calculation cases, the Court sits in an appellate capacity, applying the appellate standard of the Administrative Procedures Act (APA). *Al-Shabazz*, 338 S.C. at 377–80, 527 S.E.2d at 754–56. Consequently, the Court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2015). Additionally, the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2015). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *Id.*

DISCUSSION

Because this court exists to review the actions of administrative agencies and not the actions of circuit court judges, this court cannot rule on the validity of the Appellant's sentence. *See Engaging & Guarding Laurens County's Environment ("EAGLE") v. S.C. Dep't of Health & Envtl. Control*, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014) (quoting S.C. Const. art. I, § 22) (recognizing ALC's function of reviewing administrative action under the South Carolina Constitution); *Jernigan v. State*, 340 S.C. 256, 259–60, 531 S.E.2d 507, 508–09 (2000) (citations omitted) (distinguishing between collaterally challenging the validity of a sentence under post-conviction relief laws and non-collaterally seeking review of the Department's actions under the procedure established in *Al-Shabazz*). Instead, this court reviews the Appellant's case to determine if the Department is properly enforcing the Appellant's sentence, pursuant to the order of the circuit court judge and under the relevant laws. *See State v. Bennett*, 375 S.C. 165, 170, 650 S.E.2d 490, 493 (Ct. App. 2007).

The Appellant pleaded guilty to Trafficking in Illegal Drugs, less than fourteen (14) grams but more than four (4) grams of Heroin, pursuant to S.C. Code Ann. § 44-53-370(e)(3)(a)(1) and sentenced to seven (7) years. S.C. Code Ann. § 16-1-90(B), defines the offense to which the Appellant pleaded guilty as a Class B Felony. Additionally, S.C. Code Ann. § 24-13-100, defines a "no parole offense" as "a class A, B, or C felony...which is punishable by a maximum term of imprisonment for twenty years or more." Moreover, S.C. Code Ann. § 24-13-150(A) provides that

". . . an inmate convicted of a 'no parole offense' as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, . . . is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eight-five percent of the actual term of imprisonment." Therefore, an inmate serving a no-parole sentence for a conviction of a Class B felony must be incarcerated at least 85% of the total sentence imposed.

The Appellant was sentenced on July 20, 2015, to 7 years confinement, which amounted to two thousand five hundred and fifty-five (2,555) days. Eighty-five (85) percent of 2,555 days is two thousand one hundred and seventy-one (2,171) days. Running the sentence from July 20, 2015, with credit for time served, the earliest possible date the Appellant could be released from confinement is June 27, 2021. The Record on Appeal (Conviction Summary) reflects that the Department reached the same conclusion and the Appellant has established no reason to differ from that conclusion, therefore, this court affirms the Department's decision.

Based upon the foregoing, the decision of the Department is **AFFIRMED.**

AND IT IS SO ORDERED.

S. Phillip Lenski
Administrative Law Judge

March 20, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE

I certify that the undersigned has this date served the above-captioned action upon all parties to this cause by depositing a copy hereof, enclosed in a wrapper with first class postage affixed thereto, in the United States Mail, postage paid, or in the interagency mail system addressed to the party(s) or their attorney(s).

This 20th day of March 2018

Judicial Law Clerk

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: Torrey Dettund Manning

SCDC NUMBER: 364781

INSTITUTION: Kirkland Correctional Institution

HOUSING UNIT: E-A2-33

WORK ASSIGNMENT: Law Library

OFFICE USE ONLY

Grievance No. KCI0751-17

Code: General CC CL

Policy

Disc. Hear.

Class.

PREA

Date Received 7-5-17

IGC Initials SC

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) SCDC has calculated my sentence incorrectly by failing to read the entire statute and there by failing to note 44-53-370 (E)(3)(A)(1) of the drug statute is further governed which states: A person convicted and sentenced under this subsection to a mandatory term of imprisonment of twenty-five years, A mandatory min. mum term of imprisonment of twenty five years or A mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years. Is Not eligible for parole, extended work release, As provide in Section 24-13-610 or supervised furlough As provide in section 24-13-710. Not withstanding section 44-53-420 A person convicted of conspiracy pursuant to this subsection must be sentenced As provided in this section with A full sentence or punishment and not one-half of sentence or punishment prescribed for offense. Because I Am sentenced under §44-53-370 (E)(3)(A)(1) which carries A mandatory minimum of (7) seven years then that makes me eligible for parole, work release and Supervised furlough. By not applying the rules of the entire statute my due process rights Are being violated. Im eligible for parole, work release, supervised furlough. See Kerr V. State, 547 S.E. 2d 494 (S.C. 2001)

Statutes { 241 (1) State V. Blackmon 304, S.C. 270, 273 403 S.E. 2d 660, 662 (1991)
181 (1)
189

Grievant Signature 6/28/17 Date

ACTION REQUESTED: That I receive parole, work release, supervised furlough for Non-violent offenses

ACTION TAKEN BY IGC: ☐ PROCESSED ☐ UNPROCESSED ☐ OTHER

IGC Signature Date

(CONTINUE ON REVERSE SIDE)

SCDC 10-5 (Rev. October 2013)

WARDEN'S DECISION AND REASON:

Inmate Manning, Torrey #364781:

This is in reference to grievance # KCI 0751-17.

I have reviewed your grievance and the facts. Documentation provided reveals that the Classification Committee is in accordance with Policy/ Procedure OP-21.04, "Inmate Classification Plan", reviewed your record. Trafficking in Illegal Drugs state statue 44-53-037 (E) (2) is a no parole (85%) sentence. You are required to serve a mandatory eighty-five percent of your sentence prior to release. You are ineligible for Labor Crew/ Work Release due to SCDC policy. The Reform Act of 6/2/2010 makes you ineligible for work release. Trafficking in Illegal Drugs is a Category 4 and is excluded from the violent crimes eligible for work release.

Therefore your grievance is denied. If you do not agree with my decision, you may appeal to the appropriate responsible official, within five (5) days of receipt, via the Institutional Grievance Coordinator.

Warden Signature — Date: 7/27/17

☐ I accept the Warden's decision and consider the matter closed.

☑ I do not accept the Warden's decision and wish to appeal.

Grievant Signature — Date

IGC Signature — Date: 7-21-17

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Torrey D. Manning
SCDC NUMBER: 364781
INSTITUTION: KCI
HOUSING UNIT: E/A1-33
WORK ASSIGNMENT: Law Library

Office Use Only
Grievance No. KCI 07517
Code: General CL CL
Policy
Disc. Hear.
Class.
Date Received JUL 26 2017
IGC Initials
Due: 7-26-17

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): The Agency is failing to fully comprehend what I am arguing. I'm stating that the Agency is failing to apply all the of the language contained in 44-53-370 The Agency is only applying the language contained specifically in 44-53-370(e)(6)(a)(i). It is failing to apply all the language in section E, specifically the language appearing after section 7(b) and before section(8) which further specifies other stipulations to be Applied to persons Sentenced under Section (e). That language allows for anyone not sentenced to A mandatory or mandatory minimum term of 25 years to be serving A parolable non-violent sentence.

Grievant Signature 7-21-17 Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. In your grievance you stated that SCDC has calculated your sentence incorrectly. You feel that you are eligible for parole, work release and supervised furlough. The Warden responded to your concern on SCDC 10-5, Inmate Grievance Form Step 1 dated July 17, 2017. SCDC Policy OP-21.04, Inmate Classification Plan states, "The South Carolina Department of Corrections is committed to upholding public safety and to operating a safe, secure, and humane prison system. To promote positive behavior, an inmate's custody level and privileges while assigned to an institution will be based on behavior driven criteria." Additionally, an "inmate custody classification is based on different factors and embodies correctional discretion. An inmate has no right to any particular custody level." Paragraph 37.1, Job Assignments by ICC, "The ICC will be responsible for inmate job assignments." The ICC will receive requests from inmates for job assignments and modifications. It does not appear that you have made such a request. Finally, your interpretation of the relevant SC statute is incorrect, and your request is inappropriate.

Therefore, your grievance is denied.

You may appeal this decision under the South Carolina Administrative Procedures Act to the South Carolina Administrative Law Court. In order to appeal, you must complete the attached Notice of Appeal Form (Form) and submit it as instructed on the Form within thirty (30) days of receipt.

Signature 9/5/17 Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
ADMINSTRATIVE LAW COURT

Torrey D. Manning #364781
Appellant

V.
South Carolina Department
of Corrections, Respondent

Brief in Compliance
With Rule 60, A.L.C.R.

Case No. 17C0491

Issue on Appeal

Did the South Carolina Department of Corrections incorrectly calculate Appellant's sentence under S.C. Code ANN.§ 44-53-370-(e)(3)(A)(1). Under section 16-1-60 (44-53-370E) Trafficking as defined. Is the agency (SCDC) maliciously disregarding the legislatures full intent? By calculating appellant's sentence as a non-parolable offence and requiring him to serve 85 percent.

Statement of the Case

Appellant was indicted by Sumter County Grand Jury for first offence trafficking heroin 4 grams or more, but less than 14 grams. A hearing was held on July 20, 2015, before the Honorable Roger E. Couch. He was represented by attorney Willie Brunson. The State was represented by Solicitor Tyler Brown. Appellant ultimately agreed to a plea deal and was sentenced to seven years under §44-53-370-(e)(3)(A)(1), 4 grams or more but less than 14 grams, first offense.

Discussion

Appellant contends that the South Carolina Department of Corrections(SCDC), has miscalculated his sentence because it has failed to fully apply all of the language proscribed in S.C. Code ANN.§ 44-53-370(e).

Appellant plead guilty to trafficking in Heroin first offence under § 44-53-370-(e)(3)(A)(1), 4 grams or more but less than 14 grams. He was given a seven year sentence.

SCDC has calculated that sentence as a non-parolable offense, and is requiring appellant to serve 85 percent of the sentence before being eligible for parole. This is incorrect.

When applying section (e) of the statute, it is not enough to only apply the language that appears in the portion of the statute that a defendant is sentenced under (i.e. § 44-53-370-(e)(3)(A)(1)). The statute must be reviewed for all of the language which governs the proper sentence to be served. See S.C. Code Ann.§44-53-375(F).

Under .§44-53-375(F). it states:

> Sentences for violation of the provisions of subsections (c) or (e) may not be suspended and probation may not be granted. A person convicted and sentenced under subsection (c) or (e) to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of not less than twenty-five years is not eligible for parole, extended work release as provided in section 24-13-610, or supervised furlough as provided in section 24-13-710.

Clearly, §375(F) further governs sections (c) and (e) of the statute by applying to them the same language installed in §370(e). Under 375(F), if a person is sentenced under sections 375(c) or (e), and his sentence does not carry a "mandatory 25 years, a mandatory minimum of 25 years, or a mandatory minimum of not less than 25 years nor more than 30 years" then he is eligible for parole.

In Appellant's particular case, SCDC is only applying the language that appears at section 370(e)(3)(a)(1) which states: for the first offence, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars.

16-1-60 violent crimes defined in Sec 44-53-370(E) 44-53-370, 375 are the only offences under 16-1-60 that have "as define" (legislature statute) in the language. Both statutes are specific as to which offences are eligible for parole, work release, supervised furlough therefore being a non-violent offence. They are also specific in which offences under the statutes that are not eligible for parole, and are considered violent. 1st offence 44-53-370 (E)(3)(A)(1) is a parolable offence as defined in the statute. Ineligibility of parole does not occur until the second or subsequent offence of 44-53-370 (E)(3)(A)(2).

The agency fails to note the rest of the instructive sentencing language that appears after subsection (7) on the statute which states:

A person convicted and sentenced under this subsection to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term or imprisonment of 25 years, or a mandatory minimum term of imprisonment of not less than twenty years nor more than thirty years is not eligible for parole, extended work release as provided in section 24-13-610 or supervised furlough as provided in section 24-13-710. not withstanding section 44-53-420 a person convicted of conspiracy pursuant to this subsection must be sentenced as provided in this subsection in this section with a full sentence or punishment and not one-half of the sentence or punishment prescribed for the offence.

The language announced in this portion of section (e) makes it clear that if a person is sentenced under section (e), and his sentence does not carry a mandatory 25 year sentence, a mandatory minimum term of 25 years, nor a mandatory minimum term of 25 nor more than 30 years, therefore, he is eligible for parole , work release and supervised furlough. Kerr v. State, 547 S.E. 2d 494 (2001) (Post Conviction Relief petitioner was eligible for parole under cocaine statute in effect in 1985; Petitioner was not sentenced to a mandatory minimum term of 25 years, which would make him ineligible for parole under the statute, but rather was sentenced to a mandatory term of 25 years).

Under section (e) (3) (a) (1), for the first offence, a person must be sentenced to not less than seen years nor more than 25 years. Because appellant is only sentenced to seven years and not a mandatory 25 years. The appellant contends he is serving a parolable offense and after the Omnibus Crime Reduction & Sentencing Reform Act became effective in (2010), the eighty five percent requirement of section S.C 24-13-150 (Supp.2014), does not apply to his sentence. This then means that he is eligible to receive work, education, and good time credits. See Bolin vs. South Carolina Department of Correction 415,S.C. 276; 781 S.E. 2d 914, & Fowler v. South Carolina Department of Corrections case No. 2014-002040-No.2015-up-517.

Conclusion

Appellant's sentence should be re-calculated as a non-violent parolable offense, eligible for work, education and good time credits. And sanctions under rule 11 for violating the statute.

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
ADMINSTRATIVE LAW COURT

Torrey D. Manning #364781
Appellant

V.
South Carolina Department
of Corrections, Respondent

* Request for Admissions *

Case No. 17C0491

Pursuant to Rule 36 SCRCP Appellant wishes for a Request of Admissions requiring the Respondent SCDC/Lawyers to answer the following questions foregoing all affirmative relief to the appellant within 30 days after service of the request.

1. Under (SCDC) policy is S.C. Code Ann § 44-53-370 E) 3) A) 1 specifically a non-parolable offence?

2. A person sentenced under § 44-53-370 E) 3) A) 1 are they required to serve 85% of their sentence before release if they remain disciplinary free, or without any request for sentence modifications or medical furlough?

3. Under 16-1-60 violent crime act, are all the offences under § 44-53-370 (E) non-parolable offences? If not please specify those that are not, by S.C. Code Ann: please.

4. Under § 44-53-370 E) 3) A) 1 does a particular offence carry a mandatory term of imprisonment of 25 years, or a mandatory minimum term of imprisonment of not less than twenty-five years?

5. A person sentenced under § 44-53-370 E) 3) A) 1 is she or he not eligible for parole, extended work release, or supervised furlough, earned work credits or educational credits? (please Specify)

6. Is the South Carolina Department of Corrections classifications department configuring sentences within the parameters, which in effect construed with legislators specific intent? When classifying offenders under statute § 44-53-370 E) 3) A) 1.

Torrey D. Manning #364781
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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
ADMINSTRATIVE LAW COURT

Torrey D. Manning #364781
Appellant

V.
South Carolina Department
of Corrections, Respondent

Rule 56.

Summary Judgment

Motion

Case No. 17C0491

Pursuant to Rule 56 (SCRCP) the Appellant presents to the Administrative Law Judge a Motion of Summary Judgment resolving the Appeal in favor of the Appellant/ adversely to the Respondent SCDC/Lawyers.

Torrey D. Manning #364781
Kirkland C.I.
4344 Broad River Rd.
Columbia, SC 29210

Grounds for Relief

Appellant's request of admissions was not answered within the 30 days time limit. The respondent SCDC/Lawyer failed to reply or request to the courts for a extension of the time, to answer the request of Admissions. Appellant's intention was to use the request of Admissions to facilitate proof with respect to the issues that can't be eliminated from the case. And secondly to narrow the issues by eliminating those that can be, which would have been influential for appellant's argument in his reply brief. Upon respondent SCDC/Lawyers failure to respond to Appellant's request of Admission is deemed admitted. Hatchell v. Jackson (1986 App.) 290 SC 256, 349 S.E 2d 407(2) by not giving a response for the record the respondent SCDC/Lawyers are admitting that the agency is interpreting the statute of 44-53-370(E)as it sees fit and not by "statutory language". Appellant has Liberty Interest under 44-53-370 (E) (3) (A)1 for parole eligibility, because he isn't serving a mandatory sentence of 25 years. As stated in S.C. Code ann. : 44-53-370(E) and no state shall abridge the privileges or immunities of the citizens of the United States nor shall any state deprive any person of life, liberty or property with the due process of Law nor deny to any person within jurisdiction the equal protection of the law. U.S.C.A. Cont. Amend 14 Bermudez v. Duenas 936 F.2d 1064(2). 44-53-370 (E) (3) (A)1 states for first offence a person must be sentenced to not less than seven years nor more than 25 years. The statute goes on to be more specific with the particular offences carrying a mandatory sentence of 25 years. Then it is also further governed with the language of : A person convicted and sentenced under this subsection to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term or imprisonment of 25 years, or a mandatory minimum term of imprisonment of not less than twenty years nor more than thirty years is not eligible for parole, extended work release as provided in section 24-13-610 or supervised furlough as provided in section 24-13-710. not withstanding section 44-53-420 a person convicted of conspiracy pursuant to this subsection must be sentenced as provided in this subsection in this section with a full sentence or punishment and not one-half of the sentence or punishment prescribed for the offence. 44-53-370 (E) (3) (A)1 has no such language to signify it is a mandatory 25 year sentence.

In interpreting a statute the court will give words their plain and ordinary meaning and will not resort to forced construction that would limit or expand the statute State v. Johnson 396, S.C.

182, 188 720 S.E. 2d 516, 520 (ct. App.2011)[3]. It is with out doubt that the statutory definition for the term No Parole Offence in 24-13-100e... A class A, B or C felony... simply describes the types of offences for which the offender is not eligible for parole. This interpretation is consistent with the provisions in related statutes stating that a non-parole offender is not eligible for parole. Thus it is unreasonable to characterize an offence for which the offender is eligible for parole as a no-parole offence pursuant to section 24-13-100 even if the maximum sentence for the offence places it within a classification encompassed by 23-13-100 which conflicts with the legislative intent. Which allows offenders with parole eligibility to receive more ECW credits than offenders with a no-parole offence. Appellant contends that he is entitled to 20 days for every 30 days served. Unless he receives a disciplinary infraction. See Bolin v. South Carolina Department of Corrections 415 S.C. 276(4) 781 S.E. 2d 914. Appellant also contends that he was entitled to a parole hearing at ¼ of his seven year sentence which has passed. Instead the respondent SCDC/Lawyers interpretation of the statute is that the appellant must serve 85% of the sentence before a parole hearing is granted which is incorrect. Even though parole eligibility does not guarantee parole it does entitle appellant to a parole hearing, and the benefits of ECW's, EEC's and good-time credits, plus supervised furlough which differ from a no-parole offender's status.

Relief Sought

Do to duress the appellant is seeking immediate release from the South Carolina Department of Corrections, for the violation of his due process to a parole hearing, and the benefits that are entitled to offenders that are eligible for parole.

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Torrey Deaund Manning, #364781, Appellant, v. South Carolina Department of Corrections, Respondent.	) Docket No.: 17-ALJ-04-0491-AP) Grievance No.: KCI 751-17)) RESPONDENT'S BRIEF)) *Honorable S. Phillip Lenski*)))

STATEMENT OF THE CASE

This case is before the Administrative Law Court (ALC) pursuant to the appeal of Torrey Deaund Manning (Appellant), an inmate incarcerated with the Department of Corrections (SCDC or Respondent). Appellant filed a Step One Grievance on June 28, 2017, claiming Respondent had incorrectly calculated his sentence. Respondent investigated and denied the grievance. Appellant filed a Step Two Grievance on July 21, 2017. This grievance was also investigated and denied. Appellant subsequently filed his Notice of Appeal. Because Appellant's sentence has been properly calculated, the final determination of the Department should be affirmed.

JURISDICTION

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *McNeil v. South Carolina Department of Corrections*, 00-ALJ-04-00336-AP (September 5, 2001), the ALC interpreted the breadth of its jurisdiction pursuant to *Al-Shabazz*. That decision holds that the ALC's appellate jurisdiction in inmate appeals is limited to two types of cases: (1) cases in which an inmate contends that prison officials

have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which the SCDC has taken an inmate's created liberty interest as punishment in a major disciplinary hearing. Jurisdiction of the ALC was most recently addressed in *Sullivan v. SCDC*, 355 S.C. 437, 586 SE.2d 124 (2003).

In this case, appellant contends that SCDC has incorrectly calculated his sentence. Consequently, the ALC has jurisdiction to hear his appeal.

STANDARD OF REVIEW

A reviewing court will not disturb findings of an administrative agency if its findings are supported by substantial evidence on record as a whole. *Pearson v. JPS Converter & Industry Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering record as a whole, would allow a reasonable mind to reach the conclusion reached by the administrative agency. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. *Heater of Seabrook, Inc. v. Public Svc. Comm'n of S.C.*, 332 S.C. 20, 503 S.E.2d 739 (1998).

ARGUMENT

APPELLANT'S SENTENCE HAS BEEN CORRECTLY CALCULATED BY RESPONDENT

On July 20, 2015, Appellant pleaded guilty to Trafficking in Illegal Drugs (less than fourteen (14) grams but more than four (4) grams of Heroin) pursuant to SC Code

Ann. § 44-53-370(e)(3)(a)(1), for which he was sentenced to seven (7) years. *See* Sentencing Sheet, included in the Record. SC Code Ann. § 44-53-370(e)(3)(a)(1) is defined as a Class B felony under SC Code Ann. § 16-1-90(B). "[A] class A, B, or C felony, or an offense exempt from classification" is a "no parole" offense. SC Code Ann. § 24-13-100 (2007). Pursuant to SC Code Ann. § 24-13-150(A), inmates convicted of a no parole offense are "not eligible for early release, discharge, or community supervision...until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed."

Appellant argues that the Respondent has misapplied the law. However, S.C. Code Ann. § 44-53-370(e)(3)(a)(1) reads:

> (e) Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of: (3) four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210, or four grams or more of any mixture containing any of these substances, is guilty of a felony which is known as "trafficking in illegal drugs" and, upon conviction, must be punished as follows if the quantity involved is: (a) four grams or more, but less than fourteen grams: 1. for a first offense, a term of imprisonment of ***not less than seven years nor more than twenty-five years***, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars. (Emphasis added.)

According to the plain language of the statute, S.C. Code Ann. § 44-53-370(e)(3)(a)(1) qualifies as a Class B felony. Therefore, Appellant must serve 85% of his sentence.

Further, SCDC is "confined to the face of the sentencing sheets in determining the length of a sentence [unless . . .] there is an ambiguity in the sentencing sheets." *Tant v. S. Carolina Dep't of Corr.*, 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014), *reh'g denied*

(July 10, 2014). There is no ambiguity on Appellant's sentencing sheet and SCDC applied the sentence as the judge indicated by the sentencing sheet. Appellant has not carried his burden to demonstrate SCDC is incorrectly calculating his sentence. Therefore, SCDC respectfully requests its decision denying Appellant's Step Two grievance be upheld.

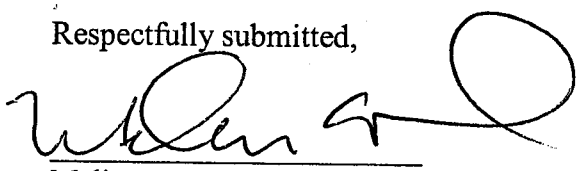
RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE

The record conclusively establishes that the "substantial evidence on the whole record" supports the Department's final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. *See Porter v. Public Service Comm'n*, 333 S.C. 12, 507 S.E.2d 328 (1998). Appellant has not met this burden and SCDC's final agency decision should be affirmed.

CONCLUSION

Appellant has not met his burden to demonstrate SCDC has incorrectly calculated his sentence. Additionally, the Department's calculation is supported by substantial evidence. Therefore, Respondent respectfully requests this Court dismiss this case with prejudice.

Respectfully submitted,



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January 4, 2018

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
ADMINSTRATIVE LAW COURT

Torrey D. Manning #364781
Appellant

V.

South Carolina Department
of Corrections, Respondent

Case No. 17C0491

Reply Brief
Honorable S. Phillip Lenski

Statement of Case

This case is before the ALC pursuant to the appeal of Torrey D. Manning (Appellant). SCDC/Classification/Agency has not proven that the appellant is not eligible for parole et. al. by or through legislative intent, or specific language. The agency is in violation of the 14th Amendment and relevant due process because appellant's sentence has not been properly calculated, do to parole eligibility and ability to earn sentence related credits. The final determination should be in favor of the appellant.

Jurisdiction

The ALC jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz V. State* 338 S.C. 354, 527, S.E. 2d 742 (2000). ALC's jurisdiction in appeals is limited to two types of cases, 1) Inmates contending erroneously calculated sentences by prison officials, related to sentencing credits, 2) Inmate's created liberty Interest cases dealing with punishment in disciplinary hearings. In this case appellant contends that SCDC has incorrectly calculated his sentence, the ALC has jurisdiction to hear his appeal.

Reply Brief

Standard of Review

The reviewing court can change a Administrative Agency's findings because evidence must be looked upon as a whole and not just in part. *State v. Landis* 362 S.C. 97 (2004) "Substantial Evidence" (Statute) as a whole, would allow a reasonable mind to reach the conclusion intended by legislature. *King v. Burwell* 135 S.Ct. 2480, 192 L.E.d 2d 483, the specific terms of a statutory scheme governs the general ones. *D.B. v. Cardall* 826 F.3d 721, 735, 4th Circuit 2016, Administrative Agencies literally has no power upon the agency. *Louisiana Public Service Commission v. F.C.C.*, 476 U.S. 355 106 S.Ct. 1890 74 P.U.R. 4th 1 1986. South Carolina Code of Laws is the controlling authority for classification, statute dictated the sentence. *State v. Bennett* 375 S.C. 164, 173, 2007, when a manifest or gross error of law has been committed by agency courts must not substitute its judgment for the agency's as weight of question of the facts. *Lake v. Bi-Lo* Inc. 276 S.C. 130 1981 the courts turned to cannons of statutory construction to harmonize provisions Chevron 467, U.S. at 843 N.9 104 S.Ct. 2778. It's unreasonable to characterize offences eligible for parole as no-parole offences pursuant to 24-13-100 B*olin v. South Carolina Department of Corrections* 415 S.C. 276, 781 S.E. 2d 914 statutes penal in nature are strictly construed against the State and in favor of defendant *State v. Morgan* 352 S.C. 359, 574 S.E. 2d. 203 (2002), Class A, B, and C felonies are not addressed as whether inmates are required to serve 85% before release. Crash Course in the South Carolina Sentencing Law: Daniel J. Crook III attorney in the office of General Counsel at S.C.D.C.

Argument

The respondent SCDC/Lawyers have misconstrued the law and shown contempt. The appellant's rule 36 request of admissions was never answered, nor has the courts sent memorandum or motion rejecting the appellant's request of admissions with the 30 day time limit. The respondent has given a respondent brief, but has failed to reply to request of admissions. Making all questions admitted. See, *Hatchell v. Jackson* 1986 290 S.C. 256, 349 S.E 2d. 407. The respondent is taking the position of being afforded a wide latitude in making decisions, but the agency (SCDC) literally has no power to act, let alone preempt validity enacted legislation of sovereign state, unless and until congress confers upon the agency. *Louisiana Public Service Commission v. F.C.C.*, 476 U.S. 355 106 S.Ct. 1890 74 P.U.R. 4th 1 1986, which they have not given to the respondent/ agency. Furthermore, South Carolina Code of Laws are the controlling authority for

classification, statute dictates sentencing *State v. Bennett* 375 S.C. 164, 173, 2007,. Under the two step Chevron framework the courts ask whether the statute is ambiguous and if so, whether the agency's interpretation is reasonable. *King v. Burwell* 135 S.Ct. 2480, 192 L.E.d 2d 483, here the appellant clearly shows how the agency/SCDC's interpretation is not. For its unconstitutional and unreasonable to characterize an offence for which the offender is eligible for parole as a no-parole offence. Pursuant to section 24-13-100 even if the maximum sentence for the offence places it within A classification encompassed by 24-13-100 et. al. *Bolin v. South Carolina Department of Corrections* 415 S.C. 276, 781 S.E. 2d 914, S.C. Code Ann 24-13-150(A) should not apply to the appellant's sentence. When a manifest or gross error of the law has been committed by an agency, the courts must not substitute it's judgment for the Agency's judgment as weight of the question of the facts. *Lake v. Bi-Lo* Inc. 276 S.C. 130 1981. The respondent's evidence is only sham pleading of the statutory provision. For suspended nor probation granted are different provisions than parole. The respondent evidence of the statutory provisions may not seem ambiguous in isolation: 44-53-370 (E)(3)(A)1 Any person who et.al. but is only clarified by the remainder of the statutory scheme. The agency's evidence is insufficient and has failed to interpret the statute in it's entirety as a whole and not in part. *State v. Landis* 362 S.C. 97 (2004) which states: A person convicted and sentenced to this subsection to a mandatory term of imprisonment of 25 years, a mandatory minimum term of imprisonment of 25 years or mandatory minimum term of imprisonment not less than 25 years or more than 30 years is not eligible for parole, extended work release or supervised furlough et.al. The courts turned to cannons of statutory construction to harmonize provisions Chevron 467, U.S. at 843 N.9 104 S.Ct. 2778, which instructs courts to employ traditional tools of statutory construction to ascertain congress clear intent. The specific terms of a statutory scheme (ex. Mandatory term of imprisonment of 25 years) governs the general ones (ex. Not less than (7) seven years no more than 25 years) *D.B v. Cardall* 826 F3d. 721, 735 4th (Cir 2016). "Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions". As it has done in the sentencing context of statutes 44-53-370 & 44-53-375, when read as a whole and not in part as intended by congress and the legislature to provide that (only) sentences specifically imposed with the mandatory minimum language should be the (only) offences that are 85%, and classified as a no-parole offences under 24-13-100 requiring the 85%

pursuant to 24-13-150(A). 44-53-370 (E)(3)(A)1 language isn't identical with 44-53-370 (E)(3)(A)2 because of the mandatory specific term language. However 44-53-375, 3rd or subsequent drug offences have the same language as 44-53-370 (E)(3)(A)2. SCDC takes the position that all 3rd or subsequent drug offences should be calculated at 85%. Exhibit 1 shows proof of how the agency is characterizing offences by the mandatory language, but fail to acknowledge that 44-53-370 (E)(3)(A)1 does not have such language to characterize it under 24-13-150 (A), therefore SCDC, the agency is being arbitrary with the sentencing process. Furthermore, exhibit 2 page (3) shows that the respondent/agency stands alone with the position of the 85 % rule in conjunction with 24-13-150(A) by calculating sentences on their on merits without a legislative instruction Statutes must be read as a whole and sections which are part of the same general scheme must be construed together and each given effect, if it can be done by any reasonable construction (emphasis added). So in cases like this where the statute is penal in nature, it's strictly construed against the state/SCDC/agency and in favor of the defendant/appellant. *State v. Morgan* 352 S.C. 359, 574 S.E. 2d 203 2002, Which should be the overall outcome if Class A, B, and C felonies aren't addressed as to whether inmates are required to serve 85% before release. Crash Course in South Carolina Sentencing Law; Daniel J. Crook III attorney in the office of the General Counsel at S.C.D.C.

Conclusion

Appellant has met the burden to demonstrate how S.C.D.C./Agency is violating his due process to a parole hearing and EWC-EEC with good time credits because of parole eligibility, work release and supervised furlough. Therefore do to duress appellant respectfully request this Honorable court for immediate release from the South Carolina Department of Corrections. If immediate release is not possible because of sentence credits not yet earned, appellant ask for the provisions he is entitled to which are those listed.

Respectfully Submitted

Jan. 16, 2018

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THE STATE OF SOUTH CAROLINA

In the Courts of Appeals

[In The Supreme Court]

APPEAL FROM RICHLAND COUNTY

Administrative Law Court

Phillip S. Lensk. 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

[INTTIAL BRIEF OF APPELLANT]

Torrey DeAund Manning #364781
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STATEMENT OF THE CASE

The matter is before the South Carolina Court of Appeals, pursuant to the Notice of Appeal filed March 20, 2018 by Torrey DeAund Manning (Appellant). A inmate incarcerated with the South Carolina Dept. of Corrections. The Appellant argues the department/ ALC is in err by Applying S.C. Code Ann. § 24-13-100 and 24-13-150 to his sentence. The appellant was indicted by Sumter County Grand Jury. The Appellant ultimately agreed to A plea deal, and was Sentenced to seven years under S.C. Code Ann. § 44-53-370(e)(3)(A)1. 4 grams or more but less than 14 grams, First offense. Appellant argues that his conviction is A parole eligible offense. Under the Code of Laws of South Carolina, which is the controlling authority. S.C. Code Ann. § 44-53-370(E) and 44-53-375(C) establishes liberty interest to parole eligibility, work release and supervised furlough. Which makes 24-13-100 and 24-13-150 unconstitutional to offenders not serving the 25 years mandatory minimum requirment. Resulting in violations of Constitutional and Statutory provisions of the 14th Amendment and State Statutes S.C. Code Ann. § 44-53-370(E) and 44-53-375(C). Because of these violations the agency / ALC decision can and should be reversed by the higher courts.

STATEMENT OF THE ISSUES ON APPEAL

DID THE (ALC) ERR BY RULING IN FAVOR OF THE RESPONDENT (SCDC) AFTER FAILURE TO RESPOND TO THE APPELLANT'S MOTION OF REQUEST OF ADMISSIONS AND MOTION FOR SUMMARY JUDGMENT. DO TO THE RESPONDENT'S (SCDC) FAILURE TO FILE A OPPOSITION TO THE APPELLANT'S MOTION FOR SUMMARY JUDGMENT?

DID THE (ALC) JUDGE ERR BY ALLOWING THE AGENCY (SCDC) TO USE S.C Code ANN: $24-13-100 and 24-13-150 WHICH ARE UNCONSTITUTIONAL TO THE APPELLANT'S SENTENCE. AS SUBSTANTIAL EVIDENCE AND AS MATTER OF LAW?

DID THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, VIOLATE THE APPELLANTE'S DUE PROCESS UNDER THE 14th AMENDMENT AND STATE STATUTORY LAW BY APPLYING SC Code Ann: 24-13-100 and 24-13-150 TO THE APPELLANTE'S SENTENCE?

UNDER SC. CODE ANN'S 44-53-370(E) AND SC. CODE ANN'S 44-53-375(C) SENTENCES NOT CARRYING THE MANDATORY MINIMUM OF NOT LESS THAN 25 YEARS LANGUAGE REQUIRED TO SERVE 85% BEFORE A RELEASE FROM INCARCERATION AND ARE THESE SENTENCES ENTITLED TO PAROLE ELIGIBILITY AND THE OTHER PROVISIONS LISTED WITHIN THE STATUTES?

Argument

DID THE ALC ERR BY RULING IN FAVOR OF THE RESPONDENT (SCDC) AFTER FAILURE TO RESPOND TO APPELLANT'S MOTION FOR REQUEST OF ADMISSONS AND MOTION FOR SUMMARY JUDGEMENT. DO TO THE RESPONDENT'S FAILURE TO FILE A OPPOSITION TO THE APPELLANT'S MOTION FOR SUMMARY JUDGMENT?

Standard of Review. Failure to reply to request of admissions, All questions are to be deemed admitted. Hatchell v. Jackson 290 S.C. 256, 349, S.E 2d. 407 (1986). Discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game, ambush for either party. Scott v. Greenville Hous. Auth. 353 S.C. 639, 652, 579 S.E. 2d. 151, 158 (Ct. App. 2003). Rights to discovery rules give trial lawyer means to prepare for trial when rights are not Accorded, prejuice must be presumed and unless the party who has failed to submit to discovery can show a lack of prejuice reversal is required. Downey v. Dixon 294 S.C. 42, 46, 362 S.E. 2d. 317, 319 (Ct App. 1987).

Summary judgment should have been granted if the movants shows that there was no genuine dispute as to any material fact. And that the movant is entitled to judgment as a matter of law. Fed R. Civ P. 56(a). A fact is material if proof of it's existence or non-existence would affect the disposition of the case under Applicable law. The non-moving party which was the respondent/SCDC may not oppose a motion for summary judgment with mere allegations or denial of the movant's pleadings, which was the case for the record. To oppose the summary judgment of the appellant the respondent needed to set forth specific facts demonstrating a genuine issue for trial. Fed R. Civ P. 56(e) see Celotex Crop v. Catrett 477 U.S. 317, 324 (1986). see Anderson v. Liberty Lobby, Inc, 477 U.S. 242, 252. (1986). All that was required was sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the party's differing versions of the truth at trial Anderson 477 U.S. at 249. By the respondent's failure to reply to the Appellant's motion for summary judgment, meaning no sufficient evidence was given. Summary judgment was to be granted to the appellant.

Furthermore, the burden of proof came with the failure to answer the request of Admissions. And substantial evidence was shown through statute S.C. Code Ann § 44-53-370(e) stating appellant is entitled to parole eligibility because he doesn't have the 25 years mandatory minimum language. The appellant feels the (ALC) Judge showed prejuice and bias Acts. CJC Rule 501 Rule 3.B(5) States; A judge shall perform the duties of Judical office impartially and Diligently. If the respondent/SCDC filed a motion for summary judgment and the appellant ignored it what would have been the outcome? Furthermore, the (ALC) judge Affirmed the decision of the respondent which is A error of the law. Because South Carolina Codes of Law is the controlling Authority and S.C. Code Ann § 44-53-370(e) doesn't harmonize with 24-13-100 ; it is unconsitutional to the appellant's sentence. Leaving no reason for the ALC judge to rule in favor of the respondent. CJC Rule 501 Rule 3.B(2) A Judge Courts shall be faithful to the law and maintain professional competence in it. And shall not be swayed by partisan interest, public clamor or fear of criticism. Which wasn't the case in the (ALC) proceeding.

Argument

IS THE ALC JUDGE IN ERR BY ALLOWING THE AGENCY (SCDC) TO USE S.C. Code Ann§ 24-13-100 and 24-13-150 WHICH ARE UNCONSTITUTIONAL TO THE APPELLANT'S SENTENCE. AS SUBSTANTIAL EVIDENCE AND AS MATTER OF LAW?

Standard of Review. S.C. Code Ann: § 1-23-610 (B) states: A decision of the administrative tribunal can be overturned due to unsupported substantial evidence or controlled by some error of law. The (ALC) Judge's duty was to reject the respondent's/ SCDC statutory interperation as substantial evidence. for it leads to a absurd result clearly unintended by the legislature. see. Ray Bell Constr. Co. v. Sch. Dist. of Greenville County 331, S.C. 19, 26 501 S.E. 2d. 725, 729 (1998). ("However plain the ordinary meaning of the words used in the statute may be the courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could Not possibly have been intended by the Legislature ...") In this situation the true purpose and intentions of the Legislature will prevail over the literal import of the words. Statutes as a whole, must receive practical, reasonable,

and fair interpretation, Consonant with the purpose, design and policy of lawmakers. See Moon v. City of Greer, 348 S.C. 184, 188 558, S.E. 2d. 527, 529 (ct. App 2002). If the Legislature's intentions were for S.C. Code Ann. § 44-53-370(E) and 375(c) to have it's own enhancement by the first to second or subsequent offenses and by the weight of the controlled Substances. Why would the (ALC) allow or rule in favor of the respondent? For the statutes 24-13-100 and 24-13-150 Should be deem as unreasonable, furthermore unconstitutional to the Appellant's Sentence. The fact that a given law of procedure is efficient, convenient and useful in facilitating functions of goverment, Standing Alone will not save it if it is contrary to the Constitution. (See) I.N.S. v. Chadha 462 U.S. 919 103 S.CT. 2764 (1983). For the appellant contends that Liberty Interest was created by state statutes Code Ann. § 44-53-370(E) and 375(c), to parole eligibility, work release and Supervised furlough. And his due Process 14th Amendment rights are being violated and that he is entitled to equal protecton of the law. So the decision of the (ALC) Should be overturned because it is controlled by error of law.

DID THE SOUTH CAROLINA DEPAPTMENT OF CORRECTIONS VIOLATE THE APPELLANTS DUE PROCESS OF THE 14th AMENDMENT AND STATE STATUTORY LAW BY APPLYING STATE STATUTES 24-13-100 AND 24-13-150 TO THE APPELLANT'S SENTENCE?

Standard of Review. No state shall make or enforce any law which shall Abridge the privileges or immunities of the citizens of the United States, Nor shall any state deprive any person of Life, liberty or property with the due Process of Law, nor shall deny to ANY person within jurisdiction the equal protection of the law. U.S. C.A. Const. Amend 14th Bermudez V. Duenas 936 F.2d 1064. (1991). South Carolina Code of Laws is the controlling Authority, for classification and statute for it dictates sentencing. State v. Bennett 375 S.C. 164, 173, (2007). It is unconstitutional and unreasonable to characterize an offense for which the offender is eligible for parole as a NO-parole offense. Pursant to statute 24-13-100 even if the maximum sentence for the offense places it within a classification encompassed by 24-13-100 et. Al. Bolin V. South Carolina Department of Corrections 415 S.C. 276, 781 S.E. 2d. 914

(2016). The courts turned to cannons of statutory construction to harmonize provisions Chevron 467, U.S. at 843 N.9 104 S.CT. 2778 (1984) which instructs the courts to employ traditional tools of statutory construction to ascertain congress clear intent. The specific terms of a statutory scheme governs the general ones. D.B. v. Cardall 826 F. 3d 721, 735 4th (Cir 2016) Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions. As it has done in the sentencing context of S.C. CODE ANN. ~~§44-53-370(E)~~ and 44-53-375(C) when read as a whole and not in part as intended by Congress and the legislature. To provide that (only) sentences specifically imposed with the mandatory minimum language of not less than 25 years, Are the only sentences that harmonize with S.C. CODE ANN § 24-13-100 and 24-13-150 Statutes. State Statutory law creates liberty Interest to parole eligibility and other provisions listed within S.C. CODE ANN ~~§44-53-370(E)~~ and 44-53-375(C) makeng 24-13-100 and 24-13-150 unconstitutional to the Appellant's Sentence.

Argument

UNDER S.C. CODE ANN. § 44-53-370(E) AND S.C. CODE ANN. § 44-53-375(C) ARE THE SENTENCES NOT CARRYING THE MANDATORY MINIMUM OF NOT LESS THAN 25 YEARS REQUIRED TO SERVE 85% AND ARE THESE SENTENCES ENTITLED TO PAROLE ELIGIBILITY?

Standard of Review. Federal Rules of Civil Procedure 54(c) provides that a "final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in it's pleadings." Courts held that if the arguments and evidence show that a statutory provision is unconstitutional on it's face, an injunction prohibiting it's enforcement is "proper" Citizens United v. Federal Election Comm'n 558 U.S. 310, 333, 130 S. CT. 876 175 L. Ed. 2d 753 Pp. 2304-2307. which the (A.L.C) didn't do. Furthermore A Severability Clause in a statue is merely an aid not an inexorable command. Whole Woman's Health v. Hellerstedt 136 S. CT. 2292 195 L.Ed 665 (2016). For if a severability clause

could impose such a requirement on the courts, legislature would easily be able to insulate unconstitutional statutes from most facial review. When a part of a statute is held to be unconstitutional, the question arises whether other parts of the statute must go. If a statute says that provisions found to be unconstitutional can be severed from the rest of the statute, the valid provisions are Allowed to stand. Substantial evidence: The courts repealed statutes 24-13-100 when deem unconstitutional to offenders Sentenced under sc.code Ann§ 44-53-375(B)(2) which carrys five years Nor more than thirty years. And sc.code Ann§ 44-53-375(B)(3). which carrys ten years Nor more than thirty years. Because sc.code Ann. § 24-13-100 is deem unconstitutional it is presumed to be severable. But when A presumption of severability arises, the party asking the courts to strike down a portion of the statute must present "strong evidence" that congress would not have enacted the Challegged portion of the statute in the unconstitutional provision. The strong evidence is within the statutes of sc.code Ann§ 44-53-370(E) and 375(C) for these statutes

have explicit language, stating legislature instructions on sentencing. 370(E) and 375(C) have a self-contained enchancement ladder for sentencing purposes. A clear and reasonable reading of 370(E) and 375(C) shows how the statutes conflict with the later and general statutes sc.code Ann § 24-13-100 and 24-13-150. Furthermore 370(E) and 375(C) determine enchancement of the offense according to the weight of the Amount of the Controlled Substance, for the punishment increases and the provisions decrease as the weight of the Amount of the controlled substance increases. Offenies carrying the mandatory minimum language of not less than 25 years, do harmonize with statutes sc code Ann § 24-13-100 and 24-13-150. But the Appellant's Sentence sc.code Ann § 44-53-370 E) 3) A) 1 doesn't have the mandatory language so it doesn't. So the appellant contends that he is entitled to parole eligibility and other provisions. That are being deprive because of the 24-13-100 law. Furthermore when a defendant is sentenced under a statute that is specific in Nature, and that statute specifically deals with how a offense.

under that statute is to be enchanced from first to second or a subsequent offense, the provisions of that statute control over the more general statutes such As SC Code Anno §§ 24-13-100 and 24-13-150. Which shows why the Courts Should sever 24-13-100 and 24-13-150 Again. Because they are only in harmony with the sentences Carrying the mandatory minimum language of not less than 25 years, offenses. Research has revealed that No South CarolinA Appellate Court decision making a amendement to 44-53-370(E) or 375(C). Therefore the plain language of the statute 44-53-370(E) must be Construed in favor of the Appellant and most strictly against the State. For the invalid parts of statutes 24-13-100 and 24-13-150 must be dropped without affecting the remainder there of if valid part is fully Operative to the law. Champlin Refining Co. V Corporation Comin of State of Okl 286 U.S. 210 (1932). The appellant is Asking the Courts to repeal 24-13-100 and 24-13-150 so that the statutes may be construced in such a matter as to avoid a constitutional question.

wherever this is possible. see Eaton v. Davis 176 Va. 330, 339, 10. S.E. 2d. 893, (1940). In that context, the court must narrowly construe A statute where such a construction is reasonable and avoids a constitutional infirmity. Pedersen v. city of Richmond 219 Va. 1061, 1065, 254 S.E. 2d. 95 (1979). see McClurg v. Deaton 395 S.C. 85 716, S.E. 2d. 887 (2011). Making the Appellant not required to do 85% of his sentence before parole eligibility.

Conclusion

The appellant request is to receive his parole eligibility, work release, (EWC) Earned Work Credit, (EEC) Earned Education Credit, supervised furlough.

#364781 Torrey DeHund Manning
Kirkland C. I.
4344 Broad River Rd
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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 . . . . . Plaintiff,

V.

South Carolina Dept. of Corrections. . . . . Defendant.

Appellate Case No. 2018-000548

MOTION FOR PROHIBITORY INJUNCTION

The plaintiff, Torrey DeAund Manning #364781 moves the court, pursuant to Rule 65 of the South Carolina Rules of Civil Procedure to enter a prohibitory injunction enjoining the defendant/ South Carolina Dept of Corrections from Applying S.C. Ann. § 24-13-100 and 24-13-150 to the sentence of S.C. Ann § 44-53-370 E)3)A)1. In support of the motion the defendant shows the following to the court.

1) The Plaintiff will suffer immediate injury because S.C. Code An 24-13-100 and 24-13-150 is depriving him

of earned work credits and Educational credits which should be Applied to his sentence. Resulting the plaintiffs incarceration time to be longer. Furthermore because S.C. Code Ann § 24-13-100 is a State Statute which denies the plaintiff a parole hearing. It is the cause of the irreparable injury, because the time for a parole hearing has passed and a recurrent of the violation is threatening. The plaintiff is requesting the injunction to prevent the immediate injury of doing more incarceration time than he has to. For his Sentence is close to completion with the provisions of parole eligibility and Supervised furlough, work release which are the provisions he is entitled to. Because State Statute S.C. Code Ann § 44-53-370E when read as a whole and not in part establishes Liberty Interest. Making the two State Statute S.C. Code Ann § 24-13-100 and 24-13-150 a Constitutional violation of the plaintiff's due Process of the 14th Amendment.

2) Any legal remedy would be inadequate in this case because the time it would take to litigate on the issues, the plaintiff would suffer the recurrent Constitutional violation of Due Process under the 14th Amendment to parole eligibility and Supervised furlough, work release which is established by South Carolina Code of Laws S.C. Code Ann §

44-53-370(E). Making the plaintiff entitled to these provision. Causing the Dept. of South Carolina Corrections (SCDC), to be Arbitrary of the Law. Because S.C. Code Ann 24-13-100 and 24-13-150 isn't in harmony with the plaintiffs Sentence S.C. Code Ann 44-53-370 E)3) A)1. Because his sentence doesn't contain the mandatory minimum Language of not less than 25 years. So the plaintiff is entitled to a parole hearing, making this Statutes S.C. Code Ann § 24-13-100 and 24-13-150 unconstitutional to his Sentence.

3) The plaintiff offers this affidavit of Torrey DeAund Manning #364781 is support of the motion.

4) Because the plaintiff is a pro se litigate he certifies that prior consultation with counsel for the defendant about this motion would serve no useful purpose. Because plaintiff has requested relief to the defendent, South Carolina Dept. of Correction / SCDC to handle the issue in Administrative Law Court and the attempt was futile. So consulting with the defendent counsel would be useless.

Wherefore, the Plaintiff moves that the Court award it the following relief.

1) Enter a Prohibitory Injunction restraining and enjoining the defendent/SCDC and any person(s) acting in concert or participation with the defendent from Applying S.C. Code Ann § 24-13-100 and 24-13-150 to the Sentence of S.C. Ann § 44-53-370 E)5)A)1.

2) Grant such other and further relief in favor of the plaintiff as the Court deems just and appropriate.

Date of Service
May 17, 2018

#364781 Torrey DeAnd Manning
Kirkland C. I.
4344 Broad River Rd.
Columbia, S.C. 29210

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
Office of General Counsel
South Carolina Dept. of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

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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.

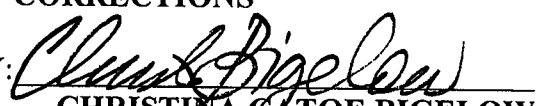
conviction because the 2010 Omnibus Act, as discussed in Bolin, did not make any amendments to the language in the S.C. Code § 44-53-370(e), the section dealing with trafficking offenses. Bolin applies only to manufacturing/distribution/possession with intent to distribute offenses under section (B) 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: 

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May 21, 2018

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

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STATEMENT OF ISSUE ON APPEAL

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 DeAnnd 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 defendent 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 § 44-53-370E) 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 occassion 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 construced 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 with in 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 7 years 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§ 44-53-370E)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

#364781 Torrey DeAnd Manning
Kirkland C.I.
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Columbia, S.C. 29210

STATE OF SOUTH CAROLINA

COUNTY OF Sumter
STATE VS.

IN THE COURT OF GENERAL SESSIONS

Torrey Deaund Manning

CERTIFIED TRUE COPY OF ORIGINAL FILED
CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

INDICTMENT/CASE#: 2011-GS-43-0286
A/W#: M441221
Date of Offense: 5/7/2010
S.C. Code § : 44-53-0370(e)(3)(a)1
CDR Code #: 2361

AKA:
Race: [redacted] Sex: [redacted] Age: [redacted]
DOB: [redacted] SS#:
Address: [redacted]
City,State,Zip: [redacted]
DL#: SID#:
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Drugs / Trafficking in Heroin, morph., etc., 4 g or more, but less than 14 g - 1st offense
in violation of § 44-53-0370(e)(3)(a)1 of the S.C. Code of Laws, bearing CDR Code # 2361
☐ 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. 7 yrs

ATTEST: Brown, Tyler — 7036 SC Bar# — Defendant — Attorney for Defendant — 71990 SC Bar#

WHEREFORE, the Defendant is commited to the ☑ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 7 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: _____
☐ Set by SCDPPPS _____
Recipient: _____

Fine:		
14-1-206 (Assessments 107.5 %)		$
14-1-211(A)(1) (Conv. Surcharge)	$100	$
14-1-211(A)(2) (DUI Surcharge)	$100	$ 100.00
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	$ 25.00
10-21-114(BUI Breath Test Fee)	$50	$ 150.00
56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$
Fee to County (if paid in installments)		$ 5.00
TOTAL		$
		$

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
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: James C. Campbell
Court Reporter: Frances Bakis-Ray
CA/217 (03/2011)

Presiding Judge: [signature]
Judge Code: 2152
Sentence Date: 7-20-15

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
[In the Supreme Court]

APPEAL FROM 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.

FINAL BRIEF

#364781 Torrey DeAund Manning
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ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

DOES THE INTENT OF THE GENERAL ASSEMBLY (2010) AND S.C. Code Ann § 44-53-370(E) COMPLY, RESULTING THE APPELLANT TO BE ENTITLED TO PAROLE ELIGIBILITY AND THE EARLIEST RELEASE POSSIBLE.

STATEMENT OF THE CASE

The matter is before the South Carolina Court of Appeals, pursuant to the Notice of Appeal filed March 20, 2018 by Torrey DeAund Mannings (Appellant). A inmate incarcerated with the South Carolina Dept. of Corrections. The Appellant argues the department/ALC is in err by Applying S.C. Code Ann § 24-13-100 and 24-13-150 to his sentence. The Appellant was indicted by Sumter County Grand Jury. The Appellant ultimately agreed to A plea deal, and was sentenced to seven years under S.C. Code Ann § 44-53-370E)3) A)1. 4 grams or more but less than 14 grams. First offense. Appellant argues that his conviction is A parole eligible offense. Under the Code of Laws of South Carolina, which is the controlling authority. S.C. Code Ann § 44-53-370(E) and 44-53-375(C) establishes liberty interest to parole eligibility, work release and supervised furlough. Which makes 24-13-100 and 24-13-150 unconstitutional to offenders not serving the 25 years mandatory minimum requirement. Resulting in violations of the Constitutional and Statutory provisions of the 14th Amendment and State Statute S.C. Code Ann 44-53-370(E) and 375(C) Because of these violations the agency/ALC decision can and should be reversed by the higher Courts.

Argument

DOES THE INTENT OF THE GENERAL ASSEMBLY (2010) AND S.C. Code Ann § 44-53-370(E) COMPLY, RESULTING THE APPELLANT TO BE ENTITLED TO PAROLE ELIGIBILITY AND THE EARLIEST RELEASE POSSIBLE.

In interpreting any legislative act the primary objective is to ascertain and effectuate legislative intent if at all possible Mid-State Auto Auction of Lexington, Inc v. Altman 324 S.C. 65, 476 S.E. 2d. 690 (1996)

Section 1 of the Omnibus Crime Reduction and Sentencing Act (2010):

> It is the intent of the General Assembly to preserve public safety, reduce crime and use correctional resources most effectively. Currently the South Carolina Correctional system incarcerates people whose time in prison does not result in improved behavior and who often return to South Carolina communities and commit new crimes or are returned to prison for violations of supervison requirements. 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.

The Summary of the act's objective is to conserve taxpayer's dollars. By Allowing earlier release dates for inmates convicted of less serious offenses. Because of the contrast between the legislature's intent and S.C. Code Ann § 24-13-100 and 150 The Appellant contends that he is entitled to the provisions of parole eligibility, work release and supervised furlough for the provisions Are listed in S.C. Code Ann § 44-53-370E which creates Liberty interest, therefore violating the Appellant's Due Process of the 14th Amendment/ Equal Protection Law, Furthermore these Provisions comply with the legislature's intent, Also specific Statutes Are Not to be considered repealed by a later general Statute Unless there IS A direct reference to the earlier Statute or the intent of the legislature to do SO IS explicitly implied Denman v. City of ColumbiA 387 S.C. 131 (2010). MAking S.C. Code Ann § 24-13-100 and 150 unreasonAble to be Applied to the Appellant's sentence, by statutory language. and also conflicting with legislature's intent.

Do to the fact both statutes S.C. Code Ann § 24-13-100 and 150 are depriving the Appellant from receiving (work and educational credits and good time credits) resulting in the maximum deduction a inmate can receive and earliest release possible. It conflicts with the legislature's intent by extending the burden on the taxpayers' longer then need be.

Conclusion

The Appellant request the courts to sever S.C. Code Ann § 24-13-100 and 150 from being applied to the S.C. Code Ann § 44-53-370 E)3)4)1. Also to receive the provisions listed in 44-53-370(E) which are parole eligibility, work release, supervised furlough. Which would entitled the Appellant to work and Educational credits. Also the Appellant request the courts to grant him immediate release.

June 1, 2018

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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 . . . . . Appellant,

V.

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

Appellate Case No. 2018-000548

CERTIFICATE OF COUNSEL

The undersigned certified that this Record of Appeal complies with Rule 211(b) SCACR

Date of Service
June 1, 2018

#364781 Torrey DeAund Manning
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