STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Phillip Lenski

ALC Case No. 17-ALJ-04-0491-AP

Appellate Case No. 2018-000548

TORREY DEAUND MANNING #364781, Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTION Respondent.

FINAL BRIEF OF APPELLANT

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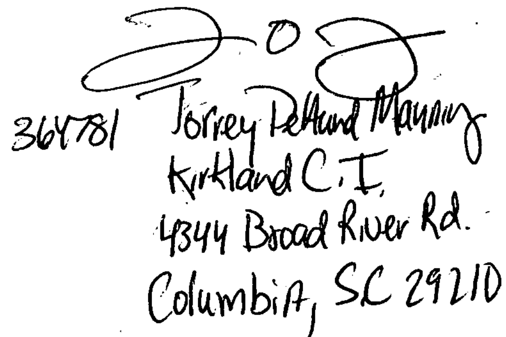

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STATEMENT OF THE CASE

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)(4) 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 S.C. CODE ANN § 44-53-370(E) AND S.C. CODE ANN § 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? Futthermore, 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 Unconstitutional 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) Judges 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's 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 interpeation 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, SC, 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 S.C. Code Ann.'s 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 protection 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) makeing 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 (ALC) 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 enhancement 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 S.C. Code Ann. § 24-13-100 and 24-13-150. Furthermore 370(E) and 375(C) determine enhancement 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.
Offenses carrying the mandatory minimum language of not less than 25 years, do harmonize with statutes S.C. Code Ann § 24-13-100 and 24-13-150. But the Appellant's sentence S.C. 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 enhanced from first to Second Or a Subsequent offense, the provisions of that Statute control over the more general Statutes Such As S.C. Code Ann §§ 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 Com'n 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 sentences 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.

[signature]
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