The State of South Carolina

In the Court of Appeals

Appeal from the Administrative Law Court

The Honorable Deborah Brooks Durden, Administrative Law Judge

Case No.: 2016-ALJ-15-0034-AP

Appellate Case No.: 2017-000663

Dennis Davis, #288558, Appellant,

v.

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

Petition for Rehearing

Summary

Pursuant to Rule 221, SCACR, Petitioner respectfully petitions for rehearing of the Court's decision in it's original Jurisdiction of October 17, 2018. I believe that the decision of the Court overlooked or misapprehended the Petitioner well established right's to equal protection of the law, Who is in all other cases the sentence must not be suspended nor probation granted, What those not fitting the (C) and (D) Criteria are actually excluded from, and Petitioners right's to parole, Supervised furlough, Community Supervision, Work release, Work Credits, education Credits and good Conduct Credits allowed to these in all other Cases Section of 44-53-370 (b)(2). (Those not fitting the (C) and (D) Criteria) The Omnibus Crime Reduction and Sentencing Reform Act of 2010 which was Inacted by legislature to reduce recidivism, Provide fair and effective Sentencing options and employ evidence based practices for smarter use of Correctional funding! Hence the main objective of the Act was to Conserve Tax Payers dollars by allowing earlier release dates for inmates Convicted of less Serious offenses. This is the intentions of the legislature and the provison of law in which Petitioner is sentenced under Which is infact a parole eligible or non violent offense. Therefore Petitioner respectfully requests that the Court re-Consider it's decision to affirm The Administrative Law Courts decision that the Petitioner is not eligible for Parole.

Argument

Statute 44-53-370(b)(2) states, "Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a Controlled Substance pursuant to Sub-sections (c) and (d) may have the sentence suspended and probation granted, and is eligible for parole, Supervised Furlough, Community Supervision, work release, work Credits, education Credits and good Conduct Credits. In all other cases the sentence must not be suspended nor probation granted. Analyzing Statute 44-53-370(b)(2) a person who's priors are for possession of a Controlled Substance is eligible for a suspended sentence and is eligible for parole, Supervised Furlough, Community Supervision, work release, work Credits, education Credits and good Conduct Credits! In all other Cases Persons sentenced pursuant to 44-53-370(b)(2) the sentence must not be suspended nor probation granted. Analyzing the Statute a person fitting the (c) and (d) Subsections has the opportunity to not come to prison because that's an option in suspending the sentence as well as granting Probation would allow. A person who does not fit into Subsections (c) and (d) can't have the sentence suspended nor probation granted which means that they do not have the option of not coming to prison. So this means the legislature intended for Petitioner to not have a suspended sentence nor probation granted which would give him the option to not come to prison! If parole and the other sentence reduction programs in the Statute were to be excluded, they would have been mentioned like the suspended sentence and probation being granted were. Just Like in State V. Christopher Thomas, 372 S.C. 466, 642 S.E.2d 724, (2007) there is no Provision in 44-53-370(b)(2) Prohibiting parole, Supervised Furlough, Community Supervision, work release, work Credits education Credits, and good Conduct Credits. However, the Suspension of a sentence and having probation granted is restricted to those in the in all other cases Category Such as Petitioner. The Omission of any such provision in the Distribution Statute 44-53-370(b)(2) indicates the legislature did not intend to limit Parole, Supervised Furlough, Community Supervision, work release, work Credits, education Credits, and good Conduct Credits. The Cardinal Rule of Statutory Construction is to ascertain and effectuate the intention of the legislature. Howell V. U.S. Fidelity and Guar. Ins. Co., 370 S.C. 505, 636 S.E.2d 626 (2006). 44-53-370(b)(2) deals with two groups of people not just the people or person's whose prior's are only for possession of a Controlled Substance as Counsel for respondent absurdly stated on page 4 of the Respondents final brief which is absurd and misleading to the Courts! The (c) and (d) Criteria excludes Petitioner

from a suspended Sentence and probation being granted, Nothing else! (emphasis added) Statutes must be read as a whole and sections which are part of the same general statutory scheme must be Construed together and each one given effect if reasonable Higgins V. State, 307 S.C. 446, 415 S.E.2d 799 (1992) Those fitting the (C) and (D) Criteria of 44-53-370 (b)(2) and Those in the In all other Cases Category are a part of the Same statutory scheme and must be Construed together and each one given a reasonable effect! Those who fit the (C) and (D) Criteria Can have the Sentence Suspended and Probation granted. Those in the In all other Cases Category Can not! Those fitting the (C) and (D) Criteria and those in the In all other Cases Category are eligible for parole, Supervised furlough, Community Supervision, Work release, Work Credits, education Credits, and good Conduct Credits is Construing the Statute together and is a reasonable effect! Penal statutes are to be construed strictly against the State and in favor of the defendant. State V. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002) The Canon of Construction "expressio unius est exclusio alterius" or "inclusio unius est exclusio alterius" holds that to express or include one thing implies the exclusion of another or of the alternative. In all other Cases the Sentence must not be Suspended nor probation Granted expresses or includes what these not fitting the (C) and (D) Criteria of Statute 44-53-370 (b)(2) Can not have or is not legally entitled to! It does not Say In all other Cases Parole, Supervised Furlough, Community Supervision, Work release, Work Credits, education Credits, and good Conduct which means that the legislature did not intend for Petitioner not to have them! Only a Suspended Sentence and probation granted was intended not to be eligible to Petitioner. See also Strickland V. Strickland, 375 S.C. 76, 650 S.E.2d 465 (2007). When interpreting a Statute, the words must be given their plain and ordinary meaning without resorting to Subtile or forced Construction which limit or expand the Statutes operation. This is what is being done. The States attempting to be Subtile and force the Statute to say Something it's not! It doesn't Say the Petitioner is not eligible for parole but it does State Clearly that in all other Cases the Sentence must not be Suspended nor probation granted! Now that's Concrete. What does in all other Cases mean? Cases that do not apply to the (C) and (D) subsections. And who is the Sentence in all other Cases reffering to? The person's whose priors are not for possession only! Clearly they are not talking about the people who's priors are for Possession as the Counsel for respondent States on Page 4 of the final Brief for Respondent, that's absurd.

By the South Carolina Dept. of Probation, Parole, and Pardon Services (SCDPPPS) denying me parole in error it's in violation of 44-53-370(b)(2), 16-1-70, 21-21-610, and an attack against the U.S. Constitution the 14th Amendment equal Protection of the law! Petitioner is currently serving time for a non-violent or Paroleable offense! 16-1-60 for purposes of definition under South Carolina law, Statute 44-53-370(b)(2) is not included in the list of no parole offenses! Petitioner's Sentencing Sheets reflect a non-violent Sentence having a non-violent CDR Code as well. It is without a doubt that the Statutory definition for the term, "No-Parole offense" in Section 24-13-100, i.e "a Class A, B, C felony" simply describes the types of offenses for which the offender is not eligible for parole. Thus, it is unreasonable to characterize an offense pursuant to Section 24-13-100, even if the maximum Sentence for the offense places it within a classification encompassed by Section 24-13-100. This is the situation with a 3rd offense under amended Section 44-53-370(b)(2) which still carries a maximum Sentence of 20 years rendering the offense a Class C felony. Therefore, the definition of no parole offense in Section 24-13-100 conflicts with the legislative intent of the Act to exempt a 3rd offense under 44-53-370(b)(2) from all the Consequences of a no parole offense! ("In all other cases the Sentence must not be suspended nor probation granted.") emphasis added. How can a non-violent or paroleable off. be made violent, especially if your not sentenced to 20 years as the Stipulation of being a Class C felony? (Law being misused by design) There is a Stark contrast between the Credits allowed for inmates Convicted of non-violent or paroleable offenses and the Credits allowed for violent or no parole offenders. See S.C. Code Ann § 24-13-210(A)(3)(Supp. 2015) (allowing twenty days of good conduct credits for each month Served for inmates Convicted of paroleable offenses. versus three days for each month served for no parole offenders.) S.C. Code Ann § 24-13-230(A)(B)(Supp. 2015)(Allowing zero to one day of work or education Credit for every two days of employment of every month of employment or enrollment for no parole offenders.) Petitioner is in fact serving a Sentence for a paroleable or non-violent offense! Petitioner is in fact classified by SCDC as a Non-violent or paroleable offender by the dept. of Corrections! Petitioner's Sentencing Sheets and CDR Codes reflect this. For purposes of definition under South Carolina Law a non-violent Crime is all offenses not Specifically enumerated in Section 16-1-60. (emphasis added) A

defendant convicted of second degree burglary will be emitted to parole after serving 1/4 of his sentence(1) Since second burglary is not listed as a violent offense under § 16-1-60 and thus is a non-violent offense under § 16-1-70 and (2) § 24-21-610, which sets parole eligibility at 1/4 for non-violent crimes. Hair v. State (S.C. 1991) 305 S.C. 77, 406 S.E. 2d 332. Petitioner's is sentenced for a violation of 44-53-370(b)(2) Distribution of marijuana 3rd and his specific offense is not listed in the enumerated offenses in 16-1-60 Violent Crimes! Petitioner is not sentenced to 20 years or more which is really how this statute 24-13-100 was intended to be used for violent offenses. The use of this law is in direct violation of the U.S. Constitution federally and State. The overall purpose of equal protection provision is to prevent discrimination and to assure that all persons are treated equally, thereby requiring acts of legislature to apply equally to all person's within an appropriate class, which is not being done by the SCDPPPS! Statute 44-53-370(b)(2) deals with 1 class of person's with 2 different circumstances or conditions! The first circumstance or condition is one whose priors are for possession only, and the second circumstance or condition is those in the in all other cases the suspended nor probation granted. The legislature gave the people whose priors are for possession only an option to have the sentence suspended and probation granted. (The option of no jail time.) And they took away that option to have a suspended sentence and probation granted to the person's in the in all other cases category. (Have to come to prison.) But the class of people or persons sentenced under this statute 44-53-370 (b)(2) all have the option for parole, Supervised furlough, Community Supervision, work release, work Credits, education Credits, and good Conduct Credits! That's applying the legislature's act to the class or person's sentenced under Statute 44-53-370(b)(2) equally as the law says. It is implicit in both State and federal Constitutions that legislation may not be discriminatory but give equal protection to all, and special legislation granting special benefits to private individuals as contrasted with the public at large, is not permissable. Ellison v. Cass, (S.C. 1962) 241 S.C. 96, 127 S.E. 2d 266. Thus further showing that the SCDPPPS interpretation of 44-53-370(b)(2) is absurd and in error. Petitioner has an established right Constitutionally to go up for parole after serving 1/4 of his sentence for a non violent offense! (16-1-70 and 24-21-610) Even Counsel for respondent confirms that a person in the all other cases category is eligible for parole on page 4 of the final brief for respondent! The SCDPPPS is attempting to impose my

my rights to parole, Supervised furlough, Community Supervision, work release, work credits, education credits, and good Conduct Credits with Statute 24-13-100 which is illegal and unconstitutional! (24-13-100 was deemed unconstitutional and preempted by Rollin) One whose rights are impaired by a Statute is not, merely because it's provisions are inseparable, precluded from attacking it's Constitutionality upon the ground that it has deprived him of property without due process of law or, because of unreasonable or arbitrary classification, has denied him the equal protection of the laws. Feiroy V. City of Orangeburg (S.C. 1955) 227, S.C. 458, 88 S.E. 2d 617. The SCDPPPS is attempting to utilize statute 24-13-100 which does not apply to my offense to impair, deprive, and take away my rights to Parole, Supervised furlough, Community Supervision, work release, work Credits, education credits and good Conduct Credits. Legally this cannot happen, this Statute does not apply to petitioner! Petitioner is not serving a sentence for a violent or no parole offense, therefore as previously it is unreasonable and unconstitutional to Characterize an offense for which the offender is eligible for parole as a no parole offense pursuant to Section 24-13-100, even if the maximum Sentence for the offense places it within a classification encompassed by Section 24-13-100'. My right to parole, Supervised furlough, Community Supervision, work release, work Credits, education Credits, and good Conduct credits is established by me being sentenced to a non-violent offense and under Statute 44-53-370(b)(2) This Classification the department is attempting to do is unreasonable and arbitrary and violates my Constitutional right's to equal Protection of the law and violates the intention of the legislature with the passing of the Omnibus Crime Reduction and Sentencing reform Act of 2010. You can't be a non-violent offender and a violent offender at the same time if the only offense committed was a non-violent offense. The Credit's are completely different between a non-violent and violent offender. A statute as a whole must receive a practical, reasonable, and fair-interpretation consistent with the purpose, design and Policy of the Law makers. In Statute 44-53-370(b)(2) it is practical, reasonable, and a fair interpretation that a person falling up under the in all other cases Category is eligible for everything in Statute 44-53-370(b)(2) except for a suspended Sentence and probation being granted! Infact Counsel for the respondent even says so on page 4 of the respondent's final brief! It would be forced Construction and limiting the Statutes operation to say a person fitting the in

all other Cases Category of Statute 44-53-370(b)(2) is not eligible for parole, Super-vised furlough, Community Supervision, work release, Work Credits, education Credits, and good Conduct Credits, and honestly and Clearly the Statute does not say that! However it does say, "the Sentence must not be Suspended nor probation granted in all other Cases. This Simply taking away the option or possibility of no Jail time which is the option a third or Subsequent offense has just like a 1st or 2nd if your priors are only for possession! Excluding me from a Suspended Sentence and probation granted is Consistent with the design of the policy by the law makers. On page 4 of the final brief for Respondent Counsel admits that the person's or people in the "In all other Case's" is eligible for parole! However, by design or error Counsel erroneously interpreted Specifically who those people or person were in the in all other Cases actually were! (In all other Cases the Sentence must not be Suspended nor probation granted.) Counsel by design or error states the last Sentence "relates to individuals serving a third offense whose only priors are for possession. Those individuals are eligible for parole but not probation this does not apply to Appellant." Counsel's interpretation of who's the people or persons in all other Cases the Sentence must not be Suspended nor probation granted is reffering to is erroneous, absurd, illogical and misleading to the Court's! (emphasis added) How can the person's fitting the (C) and (D) Criteria whose prior's are for possession be the Same people or person's that is being identified in the in all other Cases Category? If you fit the (C) and (D) Criteria you can have the Suspended Sentence and probation granted option! If you do not you can't have the Sentence Suspended nor probation granted! So as you can see it is evident this is an error made by Counsel, SCDPPPS, and SCDC. This interpretation Conflicts, is illogical erroneous and emphatically absurd, it's impossible for the Courts to accept Such an absurd interpretation. Logically the Statute cannot be reffering to the Same people or group of person's! These are two different Situation's involving two different groups of people Sentenced under the Same Statute 44-53-370(b)(2). (The people who's prior's are for possession only and those whose prior's are not only for possession is how the groups of people are labeled or identified). Sweat, 386 S.C. at 350, 688 S.E.2d at 575 (" Courts will reject a statutory interpretation which would lead to a result So plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intentions.") This is what must be done in this Case.

The interpretation that petitioner is not eligible for parole is inexact and absurd, and the interpretation which's being offered to in the all other cases Category is so absurd that it could not have been the legislative and defeats the plain legislative intentions of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 and it's amendments to statute 44-53-370(b)(2). It was not the intentions of the legislature to exclude Petitioner or take away parole, Supervised furlough, Community Supervision, Work release, Work Credits, Education Credits, and good Conduct Credits of Statute 44-53-370(b)(2), they only intended for him not to have the option of a Suspended Sentence or probation being granted." (Counsel for respondent did admit that the people or persons in the in all other cases Category are eligible for parole, he just misidentified them by error or design.) As previously the Omnibus Crime Reduction and Sentencing Reform Act of 2010, The main objective of the act was to Conserve tax payers dollars by allowing earlier Release dates for inmates Convicted of less Serious offenses. (emphasis added) The only way to give inmates earlier release dates is to make inmates eligible for parole, Supervised furlough, Community Supervision, Work release, Work Credits, education Credits, and good Conduct Credits which has been done to the Amended Statutes in the 2010 Act. Thus showing that the intention of the legislature is that the Petitioner is eligible for parole, Supervised furlough, Community Supervision, Work release, Work Credits, education Credits, and good Conduct Credits. This is why Statutory Construction is needed from the Courts, because this Statute is being misinterpreted by the dept. Counsel's interpretation of 44-53-370(b)(2) is erroneously absurd and misleading to the Court's, perhaps by design. "All rules of Statutory Construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used and the language must be construed in light of the intended purpose of the Statute." It was the intent of the legislature for the Petitioner to not have a Suspended Sentence nor probation granted, but to leave him eligible for parole, Supervised furlough, Community Supervision, Work release, Work Credits, Education Credits, and good Conduct Credits. You can also refer to the Criminal Law of South Carolina 6th Edition which explains clearly that even a person whose prior's are not only for possession is not eligible for a Suspended Sentence and Probation but still will be eligible for parole and other Sentence reduction programs. The Criminal Law of South Carolina 6th

edition is a guide and companion to members of the bench and bar since the 1st edition in 1982. On page 499 section f. Punishments it states The Legislature substantially changed the effects of many drug punishments in the Omnibus Crime Reduction and Sentencing Reform Act of 2010. Now many drug offense punishments that were not eligible for probation, parole or early release credits or other prison programs under the pre-2010 statutes are eligible for such treatments. The essence of the changes were 44-53-370(b) 1-4 were made no longer no-parole offenses! On page 500 it states in subsection(A) "Even third offenders who sell or possess drugs with intent to distribute are eligible for these sentencing and punishment options if all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d)....." In subsection(b) it states If any of the prior offenses were for manufacturing, selling or possessing with intent to distribute or trafficking in drugs then a third offender who violates §44-53-370(a) or 44-53-375(B) is not eligible for a suspended sentence or probation. They would apparently still be eligible for parole and the other sentence reduction programs. 44-53-370(b)(2) is a subsequent offense! The definition to a subsequent offense is charged with a crime and has been previously convicted of the same or similar crime one or more times! Petitioner is charged with a violation of 44-53-370(b)(2) which is a third offense of distribution of marijuana which is a drug conviction! Petitioner's prior offenses are also similar being they are also drug offenses! As the Law State's Petitioner is legally eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits, however petitioner is not eligible for a suspended sentence or probation! So as you can see Counsel for respondent is misleading the Courts by design or error that Petitioner is not eligible for parole and the other sentence reduction programs. The SCDPPPS is in fact in error by design or mistake by denying Petitioner parole and legally owe's Petitioner at least 3 parole hearings for 2016, 2017, and 2018! As the Court's can see not only doesn't 24-13-100 no longer apply to Bolin's offense which was a second offense or Class A felony and it no longer applies to Petitioner's 3rd offense which is a Class C felony. (Was considered a Class C felony)

Conclusion

In the past, this Court has been careful not to allow procedures which would chill the Constitutional rights of any person! It is therefore respectfully asked of the Court to do the same and not let Petitioner's

established Constitutional rights! S.C. Code Ann. §1-23-610(B)(Supp. 2017)(Providing When reviewing ALC decision the Court of Appeals 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 (which this decision has done in violation.) in excess of the Statutory authority of the Agency; (C) made upon unlawful procedure; (denying me Parole and the other Sentence reduction programs is unlawful.) (D) affected by other error of Law; (this decision is in clear violation of the law.) (E) Clearly erroneous in view of the reliable, probative, and substantial evidence on the Whole Record; (With the outstanding evidence presented here and in the record this decision legally Can not stand and must be reversed.) (F) arbitrary or Capricious or Characterized by abuse of discretion or Clearly unwarranted exercise of discretion.) (The ALC had to arbitrarily make this decision dealing with the facts of law and Counsel Statement in the final brief for respondent on page 4) These individuals are eligible for parole in the all other cases Category no way logically or legally be talking about the same group of people who's priods are for possession only in the in all other cases Category!) Therefore based on the foregoing facts of law, The Court Should grant Petitioner's Petition for rehearing, vacate the opinion on October 17, 2018 and either reverse the Judgement of the ALC Court and grant Petitioner parole and the other Sentence reductions programs as the law States. Making the SCDPPPS take petitioner up within 30 days of this reversal for parole then 30 days after the first hearing if Petitioner is denied and 30 days after if a Second denial happens because Petitioner is Owed 3 (three) parole hearing by law! (2016, 2017, and 2018.) Or schedule the case for rehearing.

Respectfully Submitted

s/ Dennis Davis

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> Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which **all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d)**, may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.

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

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

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

(b) a currently accepted medical use in treatment in the United States; and

(c) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

§ 44-53-220 (2002).

Schedules IV and V drugs have the same elements as Schedule III drugs, but should have relatively less danger as compared to each other. Schedule V drugs should have the lowest potential for abuse and the least danger of dependence.

It is the duty of the State Department of Health and Environmental Control to notify the Legislature as to the schedule under which a drug will be classified. Under the Code, when a substance is "added, deleted, or rescheduled as a controlled substance under federal law or regulation" the Department will make the necessary changes to the schedule of drugs per its rule making powers. This action has the force of law "unless overturned by the General Assembly."

The term "narcotic drug," as defined by the statute, does not carry its usual meaning of a sleep-inducing substance. Narcotic includes any extraction of opium, coca leaves, and opiates. The definition includes all compounds containing these substances and derivatives thereof. All chemically identical substances are included in the definition. S.C. Code Ann. § 44-53-110 (Supp. 2012).

There is a significant difference between the statutory definition of a "counterfeit substance" and an "imitation controlled substance." *See* S.C. Code Ann. § 44-53-110 (Supp. 2012). The essential difference is that counterfeit substances are controlled substances that are labeled to appear to be the product of a legitimate drug manufacturer. Imitation substances are non-controlled substances packaged to appear to be a contraband substance. As previously stated, a contraband substance is one that is illegal for anyone to possess. Although it is illegal to *distribute* imitation substances under S.C. Code Ann. § 44-53-390(a)(6), it is not illegal to possess the imitation substance with the intent to distribute. *Murdock v. State*, 311 S.C. 16, 426 S.E.2d 740 (1992). Ordinarily, "fake" drugs are not counterfeit substances because drug companies do not manufacture contraband drugs and prosecution for "fake" drugs is limited to those cases in which the defendant has actually distributed or delivered the "fake" drug to another.

f. Punishments

The Legislature substantially changed the effects of many of the drug punishments in the Omnibus Crime Reduction and Sentencing Reform Act of 2010. Now many drug offense punishments that were not eligible for probation, parole or early release credits or other prison programs under the pre-2010 statutes are eligible for such treatments. The essences of the changes are:

(a) first, second and subsequent offense violations of all possession of drug crimes under §§ 44-53-370(c) and 44-53-475(A) are eligible for a suspended sentence and probation, as well as "parole, supervised furlough,

community supervision, work release, work credits, education credits, and good conduct credits." § 44-53-370(d)(1)-(4) & § 44-53-375(A) (Supp. 2012);

(b) first and second offense violations for sale and possession with intent to distribute drug crimes under §§ 44-53-370(a) and 44-53-375(B) are eligible for a suspended sentence and probation, as well as "parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits." § 44-53-370(b)(1)-(4) & § 44-53-375(B) (Supp. 2012);

a. Even third offenders who sell or possess drugs with intent to distribute are eligible for these sentencing and punishment options if "all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d)...."

b. If any of the prior offenses were for manufacturing, selling or possessing with intent to distribute, or trafficking in drugs then a third offender who violates § 44-53-470(a) or § 44-53-475(B) is not eligible for a suspended sentence or probation. They would apparently still be eligible for parole and the other sentence reduction programs.

A chart is provided in subpart 4 of this section listing the maximum punishments applicable to possession for each schedule. Subpart 5 is a listing of more common drugs by generic name in the various schedules.

In addition to any fine imposed for a violation of a misdemeanor or felony drug offense, the trial court is to assess a $150 surcharge on the defendant and no portion of this surcharge may be "waived, reduced or suspended." S.C. Code § 14-1-213(A) (Supp. 2012). The former provisions of § 56-1-745 suspending a person's driving license for a conviction of a drug offense were removed in 2011 when the Legislature revoked this statute.

A "second or subsequent offense" is defined at § 44-53-470 (Supp. 2012), which was rewritten in 2005 and 2010. Under subsection (A), an offense is considered a second or subsequent offense if, "for any offense involving marijuana . . . the offender has been convicted within the previous five years of a first violation of a marijuana possession . . . ." § 44-53-470(A)(1). Likewise, an offense is considered a second or subsequent offense if, "for an offense involving a controlled substance other than marijuana . . . the offender has been convicted within the previous ten years of a first violation of a controlled substance offense . . . other than a marijuana offense . . . ." § 44-53-470(A)(3) (Supp. 2012). The time period (whether it be five or ten years) begins to run from the date of the sentencing on the prior offense or from the date of release from confinement if the prior sentence involved a prison sentence, "whichever is later." § 44-53-470(B) (Supp. 2012).

Certificate of Service

I hereby Certify that I served a copy of the foregoing Petition on Counsel for the Respondent by depositing a copy in the United States Mail postage-prepaid on the 19th day of November, 2018 addressed as follows:

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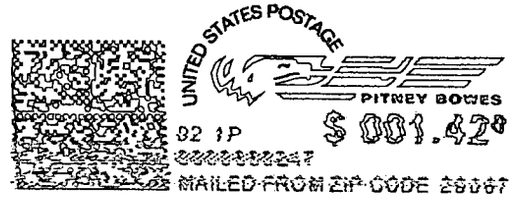

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