THE STATE OF SOUTH CAROLINA

IN THE COURTS OF APPEALS

[IN THE SUPREME COURT]

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

ADMINISTRATIVE LAW COURT

H.W. FUNDERBURK, JR. ADMINISTRATIVE LAW JUDGE

CASE NO. 18-ALJ-04-0184-AP

BRETT THOMAS CURTISS #373259 .... APPELLANT,

V.

SOUTH CAROLINA DEPT. OF CORRECTIONS ...... RESPONDENT

APPELLATE CASE NO. 2018-001776

[INITIAL BRIEF OF APPELLANT]

BRETT THOMAS CURTISS #373259

E-B2-04

KIRKLAND CORR. INST.

4344 BROADRIVER Rd.

Columbia SC 29210

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NOTE: ALC JUDGES ORDER CONTAINS INCORRECT INFORMATION USED TO SUPPORT ITS CONCLUSION.

1) NAME OF APPELLANT GIVEN IS SHERMAN GRAHAM ?
2) USES MR. GRAHAM'S SENTENCING SHEET (11-17-2016).
3) S.C. CODE 44-53-375(C) IS STATED IN STEP 2 GRIEVANCE, 2ND SENTENCE, UNDER THE RECORDS STAMP, APPELLANT DID STATE IT.

STATEMENT OF THE CASE

THE MATTER IS BEFORE THE SOUTH CAROLINA COURT OF APPEALS, PURSUANT TO THE NOTICE OF APPEAL FILED SEPTEMBER 28, 2018 BY BRETT THOMAS CURTISS (APPELLANT). AN INMATE INCARCERATED WITH THE SOUTH CAROLINA DEPT. OF CORRECTIONS. THE APPELLANT ARGUES THE SOUTH CAROLINA DEPT. OF CORRECTIONS (SCDC), ALTERNATIVE LAW COURT (ALC) IS IN ERROR BY UNCONSTITUTIONALLY APPLYING S.C. CODE § 24-13-100 AND 24-13-150(A) IN CONNECTION WITH TITLE 16 OF THE SOUTH CAROLINA LAWS. (16-1-10, 16-1-20, 16-1-30, 16-1-60 CLASSIFICATION) TO HIS SENTENCE.

THE APPELLANT AGREED TO A PLEA DEAL, AND WAS SENTENCED TO NINE YEARS UNDER S.C. CODE § 44-53-375(C)(2)(b) 28 GRAMS OF METHAMPHETAMINE BUT LESS THAN 100 GRAMS, SECOND OFFENSE.

APPELLANT STATES THAT HIS CONVICTION AND SENTENCE IS A PAROLE ELIGIBLE OFFENSE, UNDER THE S.C. CODE OF LAWS, WHICH IS THE CONTROLLING AUTHORITY.

S.C. CODE § 44-53-370(e) AND 44-53-375(C) ESTABLISH LIBERTY INTEREST TO PAROLE ELIGIBILITY, WORK CREDITS, WORK RELEASE, AND SUPERVISED FURLOUGH. THIS MAKES 24-13-100 AND 24-13-150(A) UNCONSTITUTIONAL TO OFFENDERS NOT SERVING THE TWENTY FIVE (25) YEAR MANDATORY MINIMUM SENTENCE REQUIREMENT, AND VIOLATIONS OF FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS OF THE 14th AMEND. AND THE STATES CODE OF LAW 44-53-370(e) AND 44-53-375(C), THUS THE SCDC/ALC DECISION MUST BE REVERSED.

STATEMENT OF THE ISSUES ON APPEAL

DID THE (ALC) JUDGE ERROR BY NOT CONSIDERING APPELLANT'S REPLY BRIEF BECAUSE APPELLANT'S SENTENCE IS UNDER S.C. CODE 44-53-375(C) TRAFFICKING COCAINE BASE/ METHAMPHETAMINE AND NOT S.C. CODE 44-53-370(e)(2) TRAFFICKING COCAINE, THUS CREATING DUE PROCESS VIOLATION, ALLOWING AN UNCONSTITUTIONAL APPLICATION OF S.C. CODE 24-13-100 AND S.C CODE 24-13-150(A) TO CLASSIFY APPELLANT'S SENTENCE UNDER NO-PAROLE, VIOLATING THE 14th AMENDMENT OF THE CONSTITUTION OF A PROTECTED LIBERTY INTEREST TO A PAROLE ELIGIBLE CONVICTION AND SENTENCE?

DID THE (ALC) JUDGE ERROR BY ALLOWING THE (SCDC) TO USE S.C. CODE 24-13-100 AND 24-13-150(A) AN UNCONSTITUTIONAL APPLICATION TO APPELLANT'S SENTENCE AS IT'S SUBSTANCIAL EVIDENCE STANDARD AND AS A MATTER OF LAW FOR IT'S CLASSIFICATION PURPOSES?

UNDER S.C. CODE 44-53-375(C), 375(F) AND S.C. CODE 44-53-370(e)(2) ARE THE SENTENCES NOT CARRYING THE MANDATORY, OR MANDATORY MINIMUM OF NOT LESS THAN 25 YEARS, ET. ALL, REQUIRED TO SERVE 85% AND ARE THESE SENTENCES ENTITLED TO PAROLE ELIGIBILITY BECAUSE OF SEVERABILITY OF AN UNCONSTITUTIONAL APPLICATION TO A PAROLABLE OFFENSE?

ARGUMENT.

DID THE (ALC) JUDGE ERROR BY NOT CONSIDERING APPELLANT'S REPLY BRIEF BECAUSE APPELLANT'S SENTENCE IS UNDER S.C. CODE 44-53-375(C) TRAFFICKING COCAINE BASE/METHAMPHETAMINE AND NOT S.C. CODE 44-53-370(E)(2) TRAFFICKING COCAINE, THUS CREATING DUE PROCESS VIOLATION, ALLOWING AN UNCONSTITUTIONAL APPLICATION OF S.C. CODE 24-13-100 AND S.C. CODE 24-13-150(A) TO CLASSIFY APPELLANT'S SENTENCE UNDER NO-PAROLE, VIOLATING THE 14th AMENDMENT OF THE CONSTITUTION OF A PROTECTED LIBERTY INTEREST TO A PAROLE ELIGIBLE CONVICTION AND 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 LAW IS CONTROLLING AUTHORITY, FOR CLASSIFICATION AND STATUTE FOR IT DICTATES SENTENCING. SEE 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. PURSUANT 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. SEE Bolin V. S.C.D.C. 415 S.C. 276, 781 (2016).

HERE THE S.C.D.C./AGENCY RELIES ON THE EXTERNAL APPLICATION OF GENERAL STATUTE S.C. CODE 24-13-100 AND 24-13-150(A) TO THE SPECIFIC NATURE OF STATUTES 44-53-375(C), 44-53-375(F) AND 44-53-370(E). S.C. CODE 44-53-375(C) AND 44-53-370(E) EXPLAINS THE PUNISHMENT OF THE CRIME, INCREASING, AS THE WEIGHT AND NUMBER OF THE OFFENSE INCREASE, UNTIL IT REACHES THE SPECIFIC WRITTEN LEVELS IN THE STATUTES EXPLICITLY IMPLIED THEREIN, THEN AS ENCOMPASSED BY LEGISLATURE DOES THE INTENT FOR NO-PAROLE STAND AS INTENDED IN THE SPECIFIC LANGUAGE MANDATED IN S.C. CODE 44-53-375(F).

S.C. CODE 44-53-375(C)(1)(a) STARTS AT 10 GRAMS, LESS THAN 28, A FIRST (1st), SENTENCE OF THREE (3) TO TEN (10) YEARS. FOR A SECOND (2ND) OFFENCE A SENTENCE OF FIVE (5) TO THIRTY (30) YEARS, AND FOR A THIRD (3RD) OFFENCE, A MANDATORY MINIMUM TERM OF IMPRISONMENT OF NOT LESS THAN 25 NOR MORE THAN 30 YEARS.

S.C. CODE 44-53-375(C)(2)(a) STARTS AT 28 GRAMS, LESS THAN 100, FIRST (1st) A SENTENCE OF SEVEN (7) TO TWENTY-FIVE (25) YEARS. FOR A SECOND (2ND) OFFENCE, A SENTENCE OF SEVEN (7) TO THIRTY (30) YEARS, AND FOR A THIRD (3RD) A MANDATORY MINIMUM TERM OF IMPRISONMENT... 25 TO 30 YEARS.

S.C. CODE 44-53-370(e)(2)(a)(1); (1st), 370(e)(2)(a)(2) (2ND), AND 370(e)(2)(a)(3) (3RD) ALL CARRY THE IDENTICLE STATUTORY LANGUAGE, S.C. CODE 44-53-370(e)(2)(b)(1), (1st), 370(e)(2)(b)(2) (2ND), AND 370(e)(2)(b)(3) (3RD) ALL CARRY THE IDENTICLE STATUTORY LANGUAGE.

S.C. CODE 44-53-375(F) SENTENCES FOR VIOLATION OF THE PROVISIONS OF SUBSECTIONS (C) OR (E)...... A PERSON CONVICTED AND SENTENCED

UNDER SUBSECTION (C) OR (E) TO A MANDATORY TERM OF IMPRISONMENT OF 25 YEARS, A MANDATORY MINIMUM TERM OF 25 YEARS, OR A MANDATORY MINIMUM OF NOT LESS THAN 25 NOR MORE THAN 30 YEARS IS NOT ELIGIBLE FOR PAROLE.

THIS SPECIFIC INCREASE BY LEGISLATURE MANDATES THE NATURE OF THE STATUTES SPECIFIC CONSTRUCTION FOR A SELF CONTAINED STATUTORY PROVISION FOR AND OF "NO PAROLE".

ONLY THE SPECIFIC CLASSIFICATION OF THE STATUTES, MANDATORY AND MANDATORY MINIMUM ARE GIVEN THE SPECIFIC LANGUAGE FOR "NO PAROLE" AND IF THE LEGISLATURE WISHED OR INTENDED THE OTHER PARTS OF THE SPECIFIC STATUTES OF 375(C) AND 370(E) (1st OR 2nd OFFENSES) TO CONTAIN THE PHRASES MANDATORY OR MANDATORY MINIMUM OF 25 YEARS, OR 25 OR 30 YEARS, THEN IT WOULD OF BEEN EASY FOR THEM TO DO SO.

AS IT IS, THE LESSER LEVEL OFFENSES SPECIFY "A TERM OF IMPRISONMENT", THE S.C.D.C. PROVIDES EVIDENCE TO SUPPORT APPELLANT'S ARGUMENT (RESPONDENTS ALC BRIEF PG 5) WHERE S.C.D.C. EXPLAINS THAT S.C. CODE 44-53-375(E) (SUPP. 1995) WAS USED BEFORE THE ENACTMENT OF S.C. CODE 24-13-100 AND 24-13-150(A) (SUPP. 1996) USING ONLY THE MANDATORY 25 AND MANDATORY MINIMUM 25 OR 30 YEARS TO SPECIFY "NOT ELIGIBLE FOR PAROLE" AS THE LEGISLATURE WROTE IN THE STATUTE, ALSO PROVES THAT APPELLANT IS CORRECT THAT THE INTENT OF THE LEGISLATURE WAS ONLY TO PROVIDE "NO PAROLE" AT THEIR INTENTION OF A MANDATORY OR MANDATORY MINIMUM AND THE S.C.D.C. ADMITS THAT. AS

SUCH THE LANGUAGE THE LANGUAGE IN THE TRAFFICKING OFFENSES CONTAIN THE SAME LANGUAGE FROM THE DATE OF THEIR ENACTMENT.

IT IS TRUE THE LEGISLATURE ONLY USED THE TERM "MANDATORY" IN STATING THE SENTENCE FOR A THIRD (3RD) OR SUBSEQUENT OFFENSE AND AS SUCH APPELLANT'S CONVICTION/SENTENCE STATUTE IS 44-53-37 ( )( ) , IT PROVIDES THAT "NO PART OF THE TERM OF IMPRISONMENT MAY BE SUSPENDED NOR PROBATION GRANTED" (Supp. 2016), IT CLEARLY DOES NOT SAY "MANDATORY", "MANDATORY MINIMUM", OR "NOT ELIGIBLE FOR PAROLE". ADDITIONALLY, APPELLANT'S SENTENCING SHEET FOR TRAFFICKING 375(C), 28 BUT LESS THAN 100 GRAMS, INDICTMENT 2016 GS 460 2653 DOES NOT STATE THAT APPELLANT IS NOT ELIGIBLE FOR PAROLE AND AS SUCH THE ALC CAN NOT USE AS A PIECE OF SUBSTANCIAL EVIDENCE FOR IT'S CONCLUSITORY FINDINGS AGAINST APPELLANT.

AS SUCH, THE PENALTY ASSED FOR S.C. CODE 44-53-375(C) AND 370(E) TRAFFICKING OFFENSES IS CLEAR AND UNAMBIGIOUS AND THE LEGISLATURES INTENT FOR CONSTRUCTION PROVIDES THAT ONLY THE "MANDATORY" OR "MANDATORY MINIMUM" UNDER THIRD (3RD) OR SUBSEQUENT OFFENSES ARE INTENDED UNDER THE PLAIN LANGUAGE FOR NO PAROLE. SEE STATE V. TAUB 519 SE. 2d 797, 800-801 (S.C. APP 1999)

APPELLANT STATES BECAUSE OF THIS PLAIN MEANING OF THE WORDS EMPLOYED AND THE STATUTE BEING READ AS A WHOLE INDICATES THAT IT IS NOT NESSESARY FOR THE EXTERNAL APPLICATION OF S.C. CODE 24-13-100 AND 150(A) TO 375(C) OR

370(e)(2) FIRST (1st) OR SECOND (2ND) OFFENSES FOR IT IS OBVIOUS OF THE LEGISLATURES INTENT FOR A SELF CONTAINED ENHANCEMENT RESULTING AT A THIRD (3RD) OR SUBSEQUENT FOR "NO PAROLE".

THE S.C. CODE 24-13-100 AND 150(A), GENERAL DEFINITION AND CLASSIFICATION STATUTES (Supp 1996) CONFLICT WITH 375(C) AND 370(e)(2), THE SPECIFIC MANDATE OF TRAFFICKING STATUTES PREVAIL OVER GENERAL STATUTORY AUTHORITY OF 100 AND 150(A) BECAUSE FIRST (1st) AND SECOND (2ND) OFFENSES ARE PAROLE ELIGIBLE BY LEGISLATIVE INTENT AND APPLYING THEM TO A PAROLABLE OFFENSE IS UNCONSTITUTIONAL AND A VIOLATION OF DUE PROCESS, THE 14th AMENDMENT.

S.C. CODE 44-53-375(f) IS A STATUTE OF SPECIFIC NATURE AS IS 375(C) AND STATUTES OF A SPECIFIC NATURE ARE NOT TO BE CONSIDERED AS REPEALED IN WHOLE OR IN PART BY A LATER GENERAL STATUTE UNLESS THERE IS A DIRECT REFERENCE TO THE FORMER STATUTE OR THE INTENT OF THE LEGISLATURE TO DO SO IS EXPLICITLY IMPLIED THEREIN, SEE STRICKLAND V. STATE 274 S.E.2d 430, 432 (1981). THIS IS SUPPORTED BY THE FACT THAT IF THE LEGISLATURE INTENDED FOR 375(f) TO HAVE NO CURRENT APPLICATION TO 375(C), FIRST (1st) OR SECOND (2ND) OFFENSES, THEN IT WOULD OF BEEN VERY EASY FOR THE LEGISLATURE TO ADD THE "MANDATORY" OR "MANDATORY MINIMUM" AND "NOT ELIGIBLE FOR PAROLE" TO THE STATUTE OF 375(C), FIRST (1st) AND SECOND (2ND) OFFENSES AS WELL AS 370(e)(2) THE LEGISLATURE DID NOT AND THE LANGUAGE IS PLAIN FOR ONLY THIRD (3RD) OR SUBSEQUENT OFFENDERS UNDER THE MANDATORY PROVISIONS. THE APPELLANT IS SENTENCED UNDER A SPECIFIC

STATUTE, AND THAT STATUTE SPECIFICALLY DEALS WITH HOW AN OFFENSE UNDER THAT (CONVICTION) STATUTE IS TO BE ENHANCED FROM A FIRST (1ST) OFFENSE (375(C)(1)(a) PAROLE ELIGIBLE), TO A SECOND (2ND) THAT HAS THE EXACT SAME LANGUAGE CONSTRUCTION, EXCEPT THE POSSIBLE SENTENCE COULD BE UP TO 30 YEARS, INSTEAD OF 10 YEARS. THE PROVISIONS OF THAT STATUTE CONTROL OVER MORE GENERAL ENHANCEMENT STATUTES.

UNDER S.C. CODE 44-53-375(F) THE S.C.D.C. (RESPONDENTS ALC BRIEF PG. 4-5) PROVIDES THAT FIRST (1ST) AND SECOND (2ND) OFFENDERS OF SECTION 375(C) WERE ELIGIBLE FOR PAROLE AND THAT THE STATUTE AT THE TIME "HAD MEANING". THAT ONLY THE MORE SERIOUS TRAFFICKING WITH "MANDATORY" OR "MANDATORY MINIMUM" SENTENCES WERE CLASSIFIED AS "NOT ELIGIBLE FOR PAROLE", AS IT CLEARLY STILL PROVIDES TODAY.

THE LEGISLATURES CLASSIFICATION FOR "NO PAROLE" IS EVIDENT IN THE PLAIN LANGUAGE OF THE STATUTE AND IT CLEARLY HARMONIZED LEGISLATURES INTENT, THAT THE POSSIBLE LENGTH OF A SENTENCE FOR A FIRST (1ST) AND SECOND (2ND) OFFENDERS DOES NOT PRECLUDE THEM FROM PAROLE ELIGIBILITY, SEE STATE V. TAUB 519 S.E.2d 797, 801 (1999), ONLY IF IT WAS A THIRD (3RD) OR SUBSEQUENT BY THE "MANDATORY" OR "MANDATORY MINIMUM" LANGUAGE FOR "NOT ELIGIBLE FOR PAROLE".

STRICKLY CONSTRUING 375(C) AND 375(F) IT IS CLEAR FROM THE PLAIN LANGUAGE OF THE TWO (2) SECTIONS, THAT IN A TRAFFICKING CASE SUCH AS THIS ONE ONLY THIRD (3RD) OR SUBSEQUENT OFFENDERS FOR SENTENCING/CLASSIFICATION PURPOSES ARE NOT ELIGIBLE FOR PAROLE. THE LEGISLATURE INTENDED

375(C) WITH 375(F) AND 370(e)(2) TO HAVE ITS OWN SET OF ENHANCEMENTS. SEE STATE V. BURTON 391 S.E.2d 583 (1990), STATING THAT SINCE THE LEGISLATURE SPECIFICALLY EXCLUDED YOA SENTENCES FROM CERTAIN OFFENSES, IT CAN BE INFERRED THAT THE LEGISLATURE INTENDED THE Y.O.A. TO APPLY TO YOUTHFUL OFFENDERS GUILTY OF ALL OTHER OFFENSES AND ("IN DETERMINING THE MEANING OF A STATUTE, IT MUST BE INFERRED THAT STATUTES SPECIFICALLY EXCLUDING CERTAIN THINGS EVIDENCE THE INTENT OF THE LEGISLATURE TO INCLUDE ALL OTHER THINGS NOT MENTIONED."). SEE STATE V. TAUB 519 S.E.2d 797, 801 (S.C. App. 1999)

THE SCDC/AGENCY'S GENERAL COUNSEL IN THEIR ALC BRIEF AGREE THAT THERE ARE TWO (2) POSSIBLE INCONSISTANT CONCLUSIONS, CREATING AMBIQUETY, AND YET THEY SAY THEY CAN BE READ WITHOUT ANY CONFLICT, THIS IS INCORRECT. SEE STATE V. SWEAT 688 S.E.2d 569, 575 (2010). THE APPLICATION WOULD RENDER THE LANGUAGE DEFINING FIRST (1st) AND SECOND (2nd) OFFENSE FROM EACHOTHER AS WELL AS FIRST (1st), SECOND (2nd) FROM A THIRD (3rd) OR SUBSEQUENT WITHOUT ANY OPERATIVE MEANING OF "MANDATORY" OR "MANDATORY MINIMUM" THE LEGISLATURE INTENDED. SEE STATE V. TAUB 519 S.E.2d 797, 800-801 (S.C. App 1999), STATE V. TISDALE 467 S.E.2d 270 (Ct. App 1996), STATE V. WOODY 545 S.E.2d 521 (Ct. App 2001). STATUTES THAT ARE PART OF THE SAME STATUTORY SCHEME MUST BE CONSTRUED TOGETHER WHERE REASONABLE. IT IS EVIDENT THAT 375(C) AND 375(F) ARE PART OF THE "SAME" STATUTORY SCHEME". AS SUCH, THE TWO (2) SUB SECTIONS MUST BE CONSTRUED TOGETHER, IF A REASONABLE

CONSTRUCTION EXISTS. SEE BEAUFORT CITY V. S.C. STATE ELECTION COMM'N 718 S.E. 2d 432, 435 (2011) ("IT IS WELL SETTLED THAT STATUTES DEALING WITH THE SAME SUBJECT MATTER ARE IN PARI MATERIA AND MUST BE CONSTRUED TOGETHER, IF POSSIBLE, TO PRODUCE A SINGLE, HARMONIOUS RESULT"). WHEN INTERPRETATION IS IN CONFLICT WITH THE PLAIN LANGUAGE OF THE STATUTE, DEFERENCE IS [NOT] DUE"), NATIONAL R.R. PASSENGER CORP. V. BOSTON AND MAINE CORP. 503 U.S. 407, 417, 112 S.Ct. 1394, 1401 (1992) ("WHERE THE LANGUAGE OF THE STATUTE IS CLEAR, RESORT TO THE AGENCIES INTERPRETATION IS IMPROPER' CHEVERON U.S.A. INC. V. NATIONAL RESOURCES DEFENSE COUNSEL INC 467 U.S. 837, 842-43, 104 S.Ct. 2778 (1984).

APPELLANT STATES THAT IT IS CLEAR THAT TRAFFICKING 375(C) FIRST (1st) AND SECOND (2nd) OFFENSE'S ARE PAROLE ELIGIBLE OFFENSES FROM THE PLAIN LANGUAGE BY LEGISLATIVE MANDATE AND AS SUCH IT RENDERS THE EXTERNAL ATTACHMENT OF S.C. CODE 24-13-100 AND 150(A) TO AN OFFENSE THAT IS ALREADY PAROLE ELIGIBLE AN UNCONSTITUTIONAL APPLICATION, A VIOLATION OF APPELLANTS 14th AMENDMENT TO PROTECTED LIBERTY INTEREST IN PAROLE ELIGIBILITY, GOOD CONDUCT CREDITS, WORK CREDITS, EDUCATIONS CREDITS, AND WORK RELEASE.

ARGUMENT

DID THE (ALC) JUDGE ERROR BY ALLOWING THE (SCDC) TO USE S.C. CODE § 24-13-100 AND 24-13-150(A) AN UNCONSTITUTIONAL APPLICATION TO APPELLANT'S SENTENCE AS IT'S SUBSTANCIAL EVIDENCE STANDARD AND AS A MATTER OF LAW FOR IT'S CLASSIFICATION PURPOSES?

STANDARD OF REVIEW, S.C. CODE § 1-23-610(B) STATES: A DECISION OF THE ADMINISTRATIVE TRIBUNAL CAN BE OVERTURNED DUE TO UNSUPPORTED SUBSTANCIAL EVIDENCE OR CONTROLLED BY SOME ERROR OF LAW. THE (ALC) JUDGE'S DUTY WAS TO RE-JECT THE RESPONDENTS (SCDC) STATUTORY INTERPRETATION AS SUBSTANCIAL 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 (APP Ct. 2002), STATE V. TAUB 519 S.E. 2d 797 (APP Ct. 1999), STATE V. SMITH 330 S.C. 237 (1998), STATE V. DINSDALE 467 S.E. 2d 270 (Ct. App. 1996).

THE LEGISLATURES INTENTIONS ARE FOR S.C CODE 44-53-375(C) AND 370(e)(2) TO HAVE ITS OWN ENHANCEMENT FROM THE FIRST (1st) OFFENSE, TO SECOND (2nd), TO THIRD (3rd) OR SUBSEQUENT OFFENSES AND BY THE WEIGHT OF THE CONTROLLED SUBSTANCES, ADDITIONALLY APPELLANTS SENTENCING SHEET DOES NOT STATE OR PROVIDE NO PAROLE. AS SUCH THE ALC RULING IN FAVOR OF SCDC/RESPONDENT IS INCORRECT.

THE STATUTES S.C. CODE 24-13-100 AND 150(A) IS UNREASONABLE IN ITS APPLICATION AND UNCONSTITUTIONAL TO APPELLANT'S SENTENCE. THE FACT THAT A GIVEN LAW OF PROCEDURE IS EFFICIENT, CONVENIENT AND USEFUL IN FACILITATING FUNCTIONS OF GOVERNMENT, 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 ASSERTS THAT HIS LIBERTY INTEREST WAS CREATED BY S.C. CODE 44-53-375(C), 375(E) AND 44-53-370(e)(2), TO PAROLE ELIGIBILITY, WORK RELEASE, GOOD CONDUCT CREDITS, WORK CREDITS, EDUCATION CREDITS AND SUPERVISED FURLOUGH. THAT APPELLANT'S DUE PROCESS, U.S.C.A. - 14th AMENDMENT RIGHTS ARE BEING VIOLATED AND THAT APPELLANT IS ENTITLED TO EQUAL PROTECTION OF THE LAW.

THE DECISION OF THE ALC SHOULD BE OVERTURNED BECAUSE IT IS CONTROLLED BY ERROR OF LAW.

ARGUMENT

UNDER S.C. CODE 44-53-375(C), 375(F) AND S.C CODE 44-53-370(e)(2) ARE THE SENTENCES NOT CARRYING THE MANDATORY, OR MANDATORY MINIMUM OF NOT LESS THAN 25 YEARS, ET. ALL, REQUIRED TO SERVE 85% AND ARE THESE SENTENCES ENTITLED TO PAROLE ELIGIBILITY BECAUSE OF SEVERABILITY OF AN UNCONSTITUTIONAL APPLICATION TO A PAROLABLE OFFENSE?

STANDARD OF REVIEW, FEDERAL RULES OF CIVIL PROCEDURE 54(C) PROVIDES THAT A FINAL JUDGEMENT SHOULD GRANT THE RELIEF TO WHICH EACH PARTY IS ENTITLED, EVEN IF THE PARTY HAS NOT DEMANDED THAT RELIEF IN ITS PLEADINGS." COURTS HELD THAT IF THE ARGUMENTS AND EVIDENCE SHOW THAT A STATUTORY PROVISION IS UNCONSTITUTIONAL ON IT'S FACE AN INJUNCTION PROHIBITING ITS ENFORCEMENT IS "PROPER" SEE CITIZENS UNITED V. FEDERAL ELECTION COMM'N 558 U.S. 310, 333, 130 S.Ct. 876 (2010), THE ALC DID NOT DO. ADDITIONALLY A SEVERABILITY CLAUSE IN A STATUTE IS MERELY AN AIDE, NOT AN INEXORABLE COMMAND SEE 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 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.

THE COURTS HAVE ALREADY REPEALED S.C CODE 24-13-100 AND 150(A) TO SENTENCES THAT CARRY THE POSSIBILITY OF GREATER THAN 20 YEARS. HERE THE APPELLANT'S CONVICTION/SENTENCE IS ALREADY PRESUMED PAROLE ELIGIBLE SEE STATE V. TAUB 519 S.E. 2d 797 (1999), 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 CHALLENGED PORTION OF THE STATUTE IN THE UNCONSTITUTIONAL PROVISION. THE STRONG EVIDENCE IS WITHIN THE STATUTES OF S.C CODE 44-53-375(C), 375(F) AND 44-53-370(e)(2) FOR THESE STATUTES HAVE EXPLICIT LANGUAGE, STATING LEGISLATURES INSTRUCTIONS ON SENTENCING. IT IS CLEAR THAT FIRST (1st) AND SECOND (2ND) OFFENDERS ARE ALREADY PAROLE ELIGIBLE AND ATTACHMENT OF S.C. CODE 24-13-100 AND 150(A) IS UNCONSTITUTIONAL AND AS SUCH SEVERABILITY ARISES (SEPERATION OF POWERS) SEE. STATE V. TAUB 519 S.E. 2d 797, 800-801 (1999), STATE V. TISDALE 321 S.C. 153 (1996).

S.C CODE 44-53-375(F) PROVIDES LEGISLATURE PROOF THAT THE INTENT OF THE LEGISLATURE OF SC. CODE 44-53-375(C) AND 370(e)(2) HAVE A SELF CONTAINED ENHANCEMENT LADDER FOR SENTENCING PURPOSES, THAT "NOT ELIGIBLE FOR PAROLE" IS CLEAR FOR ONLY THE MANDATORY OR MANDATORY MINIMUMS AND AS SUCH THE

LANGUAGE PROVIDES FIRST (1st) AND SECOND (2nd) OFFENCES ARE NOT PRECLUDED FROM RECEIVING PAROLE ELIGIBILITY. A CLEAR AND REASONABLE READING OF 375(F), 375(C) AND 370(E)(2) SHOWS HOW THE STATUTES CONFLICT WITH THE LATER AND GENERAL STATUTES OF SC CODE 24-13-100 AND 150(A) SEE. STATE V. TISDALE 321 S.C. 153 (1996). FURTHERMORE, 375(F), 375(C) AND 370(E)(2) 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, AS SUCH IS THE OPPERATIVE MEANING LEADING UP TO NO PAROLE AS THE LEGISLATURE INTENDED.

OFFENSES CARRYING THE MANDATORY AND MANDATORY MINIMUM LANGUAGE OF NOT LESS THAN 25 YEARS, ETALL., DO HARMONIZE WITH STATUTES S.C. CODE 24-13-100 AND 150(A). BUT THE APPELLANTS SENTENCE S.C. CODE 44-53-375(C)(2)(b) DOES NOT HAVE THE MANDATORY LANGUAGE, THUS IT DOES NOT APPLY.

THE APPELLANT CONTENDS THAT HE IS ENTITLED TO PAROLE ELIGIBILITY AND THE OTHER PROVISIONS, THAT BEING WITHELD UNCONSTITUTIONALLY BECAUSE OF THE SC CODE 24-13-100 AND 150(A) APPLICATION.

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 (1st) TO SECOND (2nd) OR A SUBSEQUENT OFFENSE, THE PROVISIONS OF THAT STATUTE CONTROL OVER THE

MORE GENERAL STATUTES SUCH AS S.C. CODE 24-13-100 AND 150(A) SEE STATE V. TISDALE 321 S.C. 153 (1996), STATE V. TAUB 519 S.E.2d 797, 800-801 (1999).

THE PLAIN LANGUAGE OF THE LEGISLATIVE INTENT MUST BE CONSTRUED IN FAVOR OF THE APPELLANT AND MOST STRICTLY AGAINST THE STATE. FOR THE INVALID PARTS OF STATUTES 24-13-100 AND 150(A) MUST BE DROPPED WITHOUT AFFECTING THE REMAINDER THEREOF IF VALID IS FULLY OPERATIVE TO THE LAW. SEE CHAMPLIN REFINING CO V. CORPORATION COMM'N OF STATE OF OKL 286 U.S. 210 (1932)

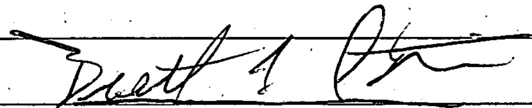
THE APPELLANT IS ASKING THE COURTS TO REPEAL 24-13-100 AND 24-13-150(A) SO THAT THE STATUTES BE CONSTRUED IN SUCH A MATTER AS TO AVOID A CONSTITUTIONAL QUESTION WHEREVER THIS IS POSSIBLE. SEE EATON V. DAVIS 176 VA 330, 339, 10 S.E.2d 893 (1940).

IN THAT CONTEXT, THE COURT MUST NARROWLY CONSTRUE A STATUTE WHERE SUCH A CONSTRUCTION IS REASONABLE AND AVOIDS A CONSTITUTIONAL INFIRMITY. SEE PEDERSON V. CITY OF RICHMOND 219 VA. 1061, 1065, 254 S.E.2d 95 (1979), SEE McCLURE V. DEATON 395 S.C. 85, 716 S.E.2d 887 (2011).

MAKING THE APPELLANT NOT REQUIRED TO SERVE 85% OF HIS SENTENCE BEFORE PAROLE ELIGIBILITY.

CONCLUSION

THE APPELLANT REQUESTS TO RECEIVE HIS PAROLE ELIGIBILITY, GOOD CONDUCT CREDITS, EARNED WORK CREDITS, EARNED EDUCATION CREDITS, WORK RELEASE AND SUPERVISED FURLOUGH



BRETT THOMAS CURTISS #323259
EB2-04
KIRKLAND CORR. INST.
4344 BROAD RIVER Rd.
COLUMBIA, SC. 29210

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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

H.W. FUNDERBURK, JR., ADMINISTRATIVE LAW JUDGE
CASE NO. 18-ALJ-04-0184-AP

BRETT THOMAS CURTISS #373259 . . . . . . APPELLANT,

v.

SOUTH CAROLINA DEPT. OF CORRECTIONS. . . . , RESPONDENT

APPELLATE CASE NO. 2018-001776

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#373259, E-B2-64
KIRKLAND CORR. INST.
4344 BROADRIVER RD
COLUMBIA, SC 29210

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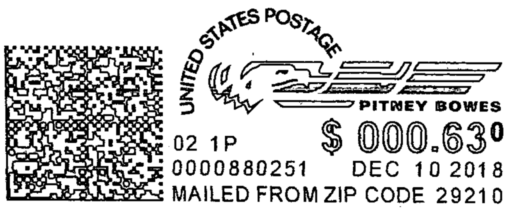

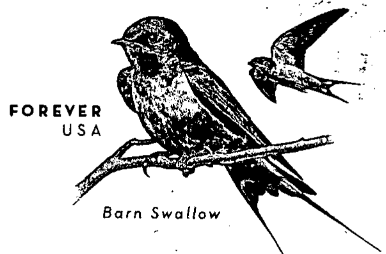

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