State of South Carolina
In The Court of Appeals

Appeal From The Administrative Law Court

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SC Court of Appeals

Honorable Deburah Brooks Durden
Administrative Law Judge

Jeffrey McCoy #355188 ..... Appellant

V.

South Carolina Department of Corrections ..... Respondant

Appellate Case No. 2018-002139

Initial Brief of Appellant

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Table Of Authorities

Cases

Bolin V. South Carolina Department of Corrections, 415 S.C 276, 781, S.E.2d 914 (2015)

Reform Act

2010 Omnibus Crime Reduction and Sentencing Reform

Constitutional Provisions

U.S. Const. amend. IV and XIV ..... passim

Statement Of ISSUES On Appeal

1. Did the Administrative Law Court err When it stated that the 2010 Omnibus Crime Reduction and Sentencing Reform Act does not repeal the eighty-five percent rule and the no-parole rule in Sections 24-13-100 and 24-13-150 (A) to his Safecracking offense.

2. Did the Administrative Law Court err by stateing that the appellants claim of the unconstitutional application of Sections 24-13-100 and 24-13-150 to the Crime of Safecracking was not preserved for appellate review.

Statement of The Case

On November 5, 2018 The Administative Law Court Affirmed the final Decision of the South Carolina Department of Corrections.

Statement Of Facts

Appellant recived respons to request to correct d.s Safe Cracking Sentence on January 8, 2018 Request No. 18-791364 and was told there is no such thing as 65%, I am eather Serving 85% or day for day. Appellant then filed a Step 1 grievance on January 17, 2018 grievance No. KCI 0025-18. Grievance was denied saying Conviction is classified as violent with a sentence requirement of 12 years 9 months with no good time credit but I am reciving earned work credits and that South carolinas Department of Corrections sentencing calculations are correct. Appellant then filed a Step 2 grievance on February 7, 2018. In this grievance appellant ask why he had to serve eighty-five percent of his sentence for Safecracking when South Caroling Law does not Constatute Safecracking as an eighty-five Percent offense. This grievance was also denied saying that Burglary/ Safe vault is considered a non-violent offense but is an eighty-five percent offense and my contention is incorrect. Appellant then filed an appeal to the Administrative Law Court on May 17, 2018. The Administrative Law Court Affirmed the final decision of the Sath Caroling Department of Corrections on November 5, 2018. This appeal follows.

Arguments

The administrative Law Court erroneously ruled that the 2010 Omnibus Crime and Sentencing reform Act does not affect the application of the eighty-five percent no-parole rules in sections 24-13-100 and 24-13-150 to the appellants Safe cracking offense. The omnibus crime reduction and sentencing reform act of 2010 did not amend the term no parole offense in section 24-13-100 nor did it decrease the maximum sentence for the offense of Safecracking but the legislative intent is expressly stated in section 1 of the Act which states,

> 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 supervision requirements. It is there for, 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 2010 Act No. 273, § 1 states that one of the Act's objectives is to conserve taxpayer dollars by allowing earlier release dates for inmates convicted of less serious offenses

The administrative Law Court is ignoring the fact that the appellant is using the purpose of the act to show that the application of Sections 24-13-100 and 24-13-150 should be severed from his safecracking offense. The Administrative Law Court is erroneously arguing and stating that the appellant was implying that the ruling in Bolin V. South Carolina Department of Corrections 415 S.C. 276, 781, S.E.2d 914 repealed the eighty-five percent with regards to his safecracking offense.

The appellant incorporated the Bolin case into his argument to the Administrative Law Court to show that section 24-13-100 has been determand by the South Carolina Sprem Court to simply describe that a class A, B, or C felony has been interpreted to describe the types of offenses for which the offender is not eligible for parole. Bolin also shows that an offender can be eligible for parole even if the maximum sentence for the offense places it within a classification encompassed by Section 24-13-100. This is the situation with safecracking Section 16-11-390 that carrys a maximum sentence of thirty years but is also parole eligible under Section 24-22-20. This conflicts with the legislative intent of the 2010 Omnibus Crime reduction and Sentencing Reform Act. Clearly Safecracking is not considered a serious offense because it is not classified as violent under 16-1-60 and is parole eligible under Section 24-22-20.

The administrative Law Court erroneosley ruled that the appellant was for the first time on appeal argoing that the application of Sections 24-13-100 and 24-13-150 as applied to the crime of Safecracking is unconstitutional. The administrative Law Court erroneously stated that this issue is not preserved for appellate review. Appellant clearly raises Constitutional form to his argument in his Step 2 grievance when he ask why he had to serve eighty-five percent of his sentence for Safecracking when South Caroling Law does not Constatute Safecracking as an eighty-Five percent offense.

Conclusion

Based on the forgoing reson the Administrative Law Courts decision should be reversed and this Court should at there discretion make the determination whether or not South Carolinas Department of Corrections agency is useing its on interpritation and application of the Statutes 24-13-100 and 24-13-150(A) to unconstitutionaly apply them to the appellants Safecracking offense causing him to serve eighty-Five fercent of his sentence without parole eligibility.

Respectfully submitted
Jeff McCoy

December 19, 2018

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Certificate Of Service

The undersigned Appellant hereby certifies that a true copy of the Initial brief of Appellant and Designation of matter in the above referenced case has been served upon respondants Attorney of record Kensey Barrett at the Office of General Counsel P.O. Box 21787 Columbia, S.C. 29221-1787 this 19 day of December 2018.

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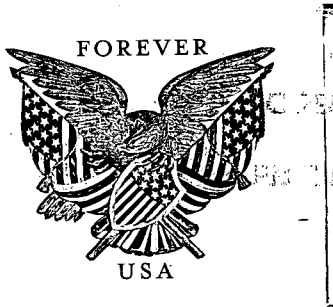

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