RECEIVED
FEB 20 2019
S.C. SUPREME COURT

The State of South Carolina

In the Supreme Court

Appeal from the Administrative Law Court

The Honorable Deborah Brooks Durden, (ALJ)

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

Appellate Case No.: 2017-000663

Dennis Davis, #288558, Appellant,

V.

S.C. Dept. of Probation, Parole, and Pardon Services, Respondent.

Petition For Writ of Certiorari

Dennis Davis #288558
K.C.I. Mag-18A
4848 Goldmine Hwy.
Wagnaw, S.C. 29067

Index

Table of Authorities

Cases

Statutes

RECEIVED
FEB 20 2019
S.C. SUPREME COURT

The State of South Carolina

In the Supreme Court

Appeal from the Administrative Law Court

The Honorable Deborah Brooks Durden, (ALJ)

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

Appellate Case No.: 2017-000663

Dennis Davis, #288558, Appellant,

V.

S.C. Dept. of Probation, Parole, and Pardon Services, Respondent.

Certificate of Counsel

The undersigned Certifies that this Petition for Writ of Certiorari Complies with Rule 242, SCACR and with the South Carolina Supreme Court's order dated August 13, 2007.

S/ Dennis Davis

Dennis Davis #288558

Petitioner

December 30th, 2018

Petitioner certifies that the Petition For Rehearing was made and finally ruled on by the Court of Appeals on December 13, 2018.

Questions Presented

1. Did the Court of Appeals err in affirming the Lower Court's decision that Petitioner is not eligible for Parole?

2. Did the Court of Appeals err in saying Petitioner is a no-parole offender?

Statement of the Case

On May 21st, 2014, Petitioner entered a guilty Plea and was sentenced by the York County Court of General Sessions by the Hon. Judge Edward G. Welmaker to a non-violent or Parole eligible 175 month Sentence for his plea of guilt. In 2010 the General Assembly passed the Omnibus Crime Reduction and Sentencing reform Act of 2010, which was passed to give inmates Convicted of less Serious offenses at Parole and earlier release dates. Repealing the 85% rule to the amended offenses IN the 2010 Act. After the Respondent's further Investigation they determined from their Interpretation that the Petitioner Wasn't eligible for Parole. The SCDPPPS then violated the Seperation of Powers doctrine (S.C. Constitution Article I §8) and took away Petitioner's parole eligibility on June 27, 2016. On Febuary 22, 2017 the Administrative Law Court issued an order affirming the decision of respondent saying Petitioner was a Class C felony or no parole offense because his prior's aren't for possession only which was Contrary to petitioner's plea agreement and to the Legislative actions to amend 44-53-375(b)(2) and repeal the 85% rule for this offense and other's in the fore mentioned act of 2010. The Case was transferred to the Court of Appeals in which they affirmed the Lower Courts decision also saying Petitioner is Considered a no parole offense his prior's aren't for possession only on October 17, 2018. Petitions for a rehearing was denied on December 13th, 2018. Petitioner now petitions The South Carolina Supreme Court for Writ of Certiorari.

Argument

1. The Court of Appeals did err in affirming the Lower Court's decision that petitioner is not eligible for parole.

The Lower Court's erred in it's decision in affirming the SCDPPPS final decision, not only does it not coincide with the Legislative intent of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 but it also violates the Petitioner's Constitutional rights.

In 2010 S.C. Code Ann. §44-53-370(b)(2) was amended by the legislature to repeal any other provision of law that did not grant offenders earlier release date for less Serious offenses. The intent to repeal the 85% Statutes and rules is shown in the amendments made to Section §44-53-370(b)(2) which 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 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." The only thing Petitioner isn't eligible for is a Suspended Sentence and probation granted! Following the effective date of the Omnibus Crime Reduction and sentencing Reform act of 2010 amended Seperate statutory provisions to indicate that, "Notwithstanding any other provision of Law", a person Convicted and Sentenced pursuant to this item for

a third or subsequent offense is eligible for parole and other sentence reductions, However if you don't meet the (a) and (b) criteria, The sentence must not be suspended nor probation granted. The Legislature's use of the phrase "Notwithstanding any other provision of law in 44-53-370(b)(2) expresses it's intent to repeal section 24-13-100. The phrase Notwithstanding any other provision of law is very clear and unambiguous! Notwithstanding any other provision of law means inspite of any other provision of law this provision will always apply! The Lower Court's based their decision that I'm not eligible for Parole off of other provisions of law that no longer applies or had an effect after the effective date of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 to the statutes amended in this Act. "Notwithstanding or inspite of" any other provision of Law repeals §24-13-100, § 24-21-610, § 24-21-30, and §24-13-150 or the 85% rule! Not only does it repeal these provisions or the 85% rule as stated by the lower Courts for peoples whose priors are for possession only, but it also repeals the 85% rule for a person Convicted and Sentenced pursuant to this item for a third or Subsequent offense period! See Strickland V. State, 276 S.C. 17, 19, 274 S.E. 2d 430, 432 (1981) 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 there in. The intent to repeal the 85% rule is explicitly implied in the phrase "Notwithstanding any other provision of law" and it's for all persons Convicted and sentenced pursuant to this item for a third or Subsequent offense. See also State V. Long, 363 S.C. 360, 364, 610 S.E. 2d 809, 811 (2005) (The Legislature is presumed to intend that it's Statutes are to accomplish Something.) The Lower Court's says that if your priors

aren't for possession only, then your still to be considered a no parole offense. This Cannot be true, the intent to repeal the 85% rule is not based on the prior's being for possession but is based or tied to the amended phrase "Notwithstanding or inspite of anyother provision of law" in 44-53-370(b)(2). It is implicit in both State and federal Constitutions that legislation may not be discriminatory but must give equal Protection to all. Ellison V. Cass, 241 S.C. 96, 127 S.E. 2d 206 (1962) See id at 351, 688 S.E. 2d at 575 (Court's 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 intention.) This is what Should have been done and must be done in this Case. This interpretation that Petitioner is not eligible for parole and is to be Considered a no-parole offense is absurd, illogical, and would defeat the plain legislative intention. The main objective of this Act was to conserve tax payer dollars by allowing earlier release dates for inmates Convicted of less Serious offenses. (There is nothing violent about Marijuana.) Petitioner's prior offenses Can only disqualify him from a Suspended Sentence and Probation being granted. Thus putting him into the in all other Cases Category of the law. See exhibit 1 from the Criminal Law of South Carolina 6th edition on pg. 9. These prior offenses however do not exclude Petitioner from Parole, Supervised furlough, Community Supervision, work release, work Credits, education Credits, and good Conduct credits! Simply Petitioner's Distribution of marijuana 3rd is no longer Considered a no-parole offense. See State V. Sweat, 386 S.C. 339, 351, 688 S.E. 2d 569, 573, 76 (2010) (Further While the interpretation of a statute by the agency Charged with it's admin-istration" will be accorded the most respectful Consideration", an agency's interpretation affords no basis for the perpetuation of a patently erroneous

application of the Statute. Statute §74-13-100 and the 85% rule no longer applies to petitioners offense and therefore is being applied in error. Just like Bolin which is a class A felony and it is no longer considered a no parole offense, so is Petitioners Class C felony no longer considered a no parole offense after the passing of The Omnibus Crime Reduction and Sentencing Reform Act of 2010.

2. The Court of Appeals did infact err in saying Petitioner is a no-parole offender.

Appellant was sentenced by the Courts to a non-violent 125 month Sentence. By the SCDPPPS saying I'm not eligible for parole changes my sentence and the Judgment and order of the Sentencing Court. A non-violent offender by law is eligible for parole, good Conduct Credits (20 days a month) education Credits, work Credits, furlough, etc., etc.. When Petitioner was sentenced by the Courts, this is what the Hon. Judge Edward G. Welmaker sentenced Petitioner to 125 month's non-violent for him pleading guilty. It reflects it in the Sentencing Sheets which are clear and unambiguous. After 1/4 of the sentence has been served an inmate (non-violent) is eligible for parole. When the Court's sentenced Petitioner the Courts Sentenced him to a non-violent Sentence which is a parole eligible Sentence. If the Courts wished for me to not have parole my plea would have not been accepted and I would have not been given a non-violent Sentence. The Courts was aware that I was to be given a chance for good time, good Conduct Credits, Parole and the other Sentence reduction programs to a non-violent inmate. The SCDPPPS has violated the State and federal Constitutional rights of The Petitioner. When the SCDPPPS who is a part of the executive Branch

of the government took my parole it violated the S.C. Constitution Article I §8 Seperation of Powers doctrine, Article I §3 and the 14th Amendment of The United States Constitution When they took my right to see the parole board. The SCDPPPS usurped the power of the Judicial branch when they changed the Court's non-violent parole eligible Sentence to a violent no parole sentence and it is unconstitutional. See Hamilton V. Freeman, 147 N.C. App. 195, 554 S.E. 2d. 856, (N.C. App. 2001) (Where the Department of Corrections Independantly amends Judgments to reflect the DOC's interpretation of State Law, the DOC has usurped power of the Judiciary). Petitioner was sentenced to A parole eligible or non-violent Sentence by the Courts and from the SCDPPPS further investigation they then determined I was not non-violent or Parole eligible and amended the Courts Judgment usurping the Power of the Judiciary! Disrespecting the Honorable Judge Welmaker and his Judiciary authority. South Carolina Courts have willingly held that the executive branch cannot exercise powers reserved for the Judiciary branch. State V. Archie, 322 S.C. 135, 470 S.E. 2d 380 (1996) the exercise of a Sentencing function by the SCDPPPS, an agency of the executive branch, violated the Seperation of Powers Doctrine. In our Sister State of North Carolina Hamilton v. Freeman, 147 N.C. App. 195, 554 S.E. 2d 856. There the Court held that the DOC was required to honor plea agreements and Sentences imposed by the Sentencing Court. (emphasis added) The SCDPPPS took away Petitioner's parole from their interpretation of his Sentence based on the fact he has 2 prior's was infact a Judiciary action. It was based off an erroneous interpretation of §44-53-370(b)(2) and the erroneous application of §24-13-100 the Parole was taken unlawfully and in error by the SCDPPPS. The United States Supreme Court established that the Sentence imposed by the Sentencing Judge is Controlling it is

This sentence that Constitutes the Court's Judgment and authorizes the Custody of a defendant. Hill V. United States ex. rel. Wampler, 298 U.S. 460, 56 S.Ct. 760, 80 L.Ed. 1283 (1936). See also Green V. United States, 358 U.S. 326, 329, 79 S.Ct 340, 3. L.Ed. 2d 340 (1959) (quoting Wampler's assertion that the "only sentence known to the law is the sentence or Judgment entered upon the record of the Court"! Johnson V. Mabry, 602 F. 2d 167, 170 (8th Cir. 1979) (The only cognizable sentence is the one imposed by the Judge.) Wampler thus provides clearly established Supreme Court precedent supporting Petitioner's claim. Wampler articulates a broad holding, "the Judgment of the Court establishes a defendant's sentence and that sentence may not be increased by an administrators amendment." This is exactly what has been done by the SCDPPPS a member of the executive branch charged with administrative duties has increased my sentence. The Court's established Petitioners non-violent or Parole eligible sentence and that sentence may not be increased by the SCDPPPS (The administrators of parole) to a no-Parole or violent sentence. This decision of the SCDPPPS is a violation of clearly established federal law and the United States and South Carolina Constitutions and a violation of ex. Post facto Laws..

Conclusion

Based on the foregoing facts of law that the petitioner is no longer a no-parole offender, The SCDPPPS violated the Petitioner's Constitutional rights, and the ALC decision is based on an erroneous interpretation and application of law; Petitioner respectfully asks that this Court cure this error and grant Petitioner a parole hearing to be held no later than 10 days after this Court's decision that Petitioner is in fact parole eligible or non-violent and therefore should be

recieving all the rights and Sentence reductions of a non-violent or parole eligible offender. Petitioner respectfully asks that every Parole hearing Petitioner should have had since 2016 be given in 30day intervals after the first hearing if Petitioner is not granted parole. Also petitioner respectfully asks the Court give any other relief the Court's may See fit and fair.

Respectfully Submitted,

S/ Dennis Davis

Dennis Davis #288558
K.C.I. Mag-18A
4848 Goldmine Hwy.
Kershaw, S.C. 29067

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).

There is no in
holdings that a convict
a subsequent charge. Tl
on the same day as the
either act. *State v. Pat*
confirmed by the Cou
435 (2007) (reaffirmin
determination of a sub

A prior convic
or subsequent provisic

To constru
contrary t
violate th
Moreover
to include
limitation
that a con
for enhan
mandated

Berry v. State, 381 S.(

If the specifi
offenses and defines a
470, then the languag
S.E.2d 131 (1992). In
of crack cocaine bas
§ 44-53-375(B) prov
"narcotic" drug conv
second offense. In Ju
provide that subsequ
argument based upon
Thomas v. State, 319
offense trafficking ar
with intent to distribu
required prior traffic
Applying the general
read together if they
the general law of § 4
Court reached a simil
Patterson v. State, 3
§ 44-53-375(A) and
subsequent offenders
in *Patterson* into que

9

(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,

Certificate of Service

I hereby Certify that I have served a copy of the forgoing Petition on Counsel for the Respondent by depositing a copy in the United States Mail postage-Prepaid on the 2nd day of January, 2019. addressed as follows:

Tommy Evans Jr.
SCDPPPS
P.O. Box 50666
2221 Devine St.
Columbia, S.C. 29250

S/ Dennis Davis

Dennis Davis #288558
K.C.I. Mag-18A
4848 Goldmine Hwy.
Kershaw, S.C. 29067

State of South Carolina Court of Appeals

[In the Supreme Court]

Dennis Davis, #288558, Appellant,

V.

South Carolina Dept. of Probation, Parole, and Pardon Services,

Respondent.

Appellant Case No.:

2017-000663

Appellant's Initial Brief

Issue on Appeal

Did the ALC Judge err in determining that Appellant is ineligible for parole based off prior convictions and statute 24-13-100?

Statement of the Case

This appeal comes before the South Carolina Court of appeals following the Honorable Deborah Durden affirmation of the South Carolina Dept. of Probation, Parole, and Pardon Services that Appellant Dennis Davis an inmate incarcerated with the South Carolina Dept. of Corrections. The Honorable Judge Deborah Durden made the order on 2/22/17 and this timely appeal followed.

Argument

Appellant argues that the Department as well as the ALC Court erred in finding the Appellant is ineligible for parole based on irrelevant statutes that do not apply to appellant and prior convictions.

Statute 44-53-370(b)(2) States that, "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." The statute is clear and unambiguous, because it tells you what to do if all priors are for possession and if one does not fit, the (C) and (D) clause of statute 44-53-370(b)(2). If one fits the (C) and (D) clause then just like a first or second offense that person is eligible for a suspended sentence and probation. This is a remedy given in general sessions court. If you fall in the all other cases category of statute 44-53-370(b)(2) the sentence must not be suspended nor probation granted. This simply and logically means a person who's prior are not only for possession of a controlled substance, does not have the option of not coming to prison. In which a person with a first or second offense and a person with a third or subsequent who's prior's match or fit the (C) and (D) clause of statute 44-53-370(b)(2)!

The Omnibus Crime Reduction and Sentencing reform Act of 2010 was passed by legislature to preserve public safety, reduce crime and use correctional resources most effectively. It is therefore

the purpose of this Act to reduce recidivism, provide fair and effective sentencing options and employ evidence based practices for smarter use of Correctional funding and improve public safety. 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.

SCDPPS and ALC Judge Deborah Durden has completely ignored the plain language of the statute and also the documented intent of the legislature in Bolin V. SC Dept. of Corrections, 415 S.C. 276, 781 S.E. 2d 914 (CT. App. 2016) The term, "notwithstanding any other provision of law" means no other provision of law affects this Law. Notwithstanding any other provision of law was added to statute 44-53-370(b)(3) to repeal any other provision of law. The ALC Judge disagree's stating, "a review of the relevant statute and Appellant's prior convictions supports the department's determination that appellant is ineligible for parole." The Court also states, "Several different statutes must be reviewed." However the Court is overlooking The notwithstanding any other provision of law, the language added to Statute 44-53-370(b)(2). Notwithstanding any other provision of law means just that, that no other provision of law Controls or effects this law. Notwithstanding any other provision of law is Clear and unambiguous language! The ALC Court says "In interpreting a statute, Words must be given their plain and ordinary meaning without resort to forced or subtle Construction to limit or expand the Statutes operation." Further, the Statute must be read as a whole and Sections which are part of the same general Statutory law must be Construed

together and each one given effect." Barucci V. Crain, 409 S.C. 493, 500, 763 S.E. 2d 189, 192 (2014). Well, my right to parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits isn't subtle or forced nor does it limit or expand the statute, The statute 44-53-370(b)(2) clearly states, "Notwithstanding any other provision of law" so applying laws or reviewing statutes that are repealed by the language in the statute is irrelevant. And actually applying them would be subtle and forced construction and would also limit the statutes operation. Though Bolin V. SC Dept. of Corrections, 415 S.C. 276, 781 S.E. 2d 914 (C.T. App. 2016). Was a second offense the same rules apply! The only difference in rights afforded to a person convicted of 1st or 2nd offense compared to a 3rd or subsequent who does not fit the (C) and (D) criteria of Statute 44-53-370 (b)(2) is the sentence must not be suspended nor probation granted. The The ALC Judge states, "because appellant doesn't fit within the (C)+ (D) clause that the term or "Notwithstanding any other provision of law" part does not apply to Appellant." I was convicted of a violation of Statute 44-53-370(b)(2) which is a third or subsequent offense! Appellant being sentenced under this statute and not fitting the (c) and (D) criteria makes Appellant ineligible for a suspended sentence and probation only, not parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. The ALC Court also states im in-eligible for parole because I was sentenced for a class C felony. In Bolin V. SC Dept. of Corrections, 415 S.C. 276, 781 S.E.

2d 914 (CT. App 2016) that it is unreasonable and illogical 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. The ALC Court based her decision on the pre-existing no-parole offense statute that clearly no longer applies to my offense. My Crime is not Violent, so it's unreasonable and illogical to be classified as such.

In State V. Bolin, 378 S.C. 96; 662 S.E. 2d 38. 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. When interpreting a statute, the words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limit or expand the statute. Statute 44-53-370(b)(2) say, "in all other cases the sentence must not be suspended nor probation granted". It states clearly what a person who does not fit in the (C) and (D) Clause of 44-53-370(b)(2). It does not say that Im ineligible for parole, supervised furlough, Community supervision, work release, work credits, education credits and good conduct credits. The omission of any provision or right in the statute 44-53-370(b)(2) indicates the legislative did not intend to limit the rights of a person in, "the all other cases" category past a suspended sentence or probation. State V. Thomas, 372 S.C. 466; 642 S.E. 2d 724; 2007 The Cardinal rule for statutory construction is to ascertain and effectuate the intention of the Legislature. However, 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. The legislature listed the provisions Appellant is not entitled to which is a Suspended Sentence or probation granted! The ATC Court erred in it's decision that Appellant is Not eligible for parole. In the amended Statute 44-53-370(b)(2) the legislature identifies the parameters of what is to be allowed to all Convicted under this Statute which includes Suspended sentence and probation granted, Parole eligibility, Supervised furlough, Community Supervision, work release, Work Credits, education Credits, and good Conduct Credits. For those Convicted in the Category of In all other Cases the Sentence must not be Suspended nor probation granted. If the legislature intended to disallow any other provisions of those listed in that Category they would have expressedly said so as they did about suspending Sentences and granting probation. Hodges, at 87, 533 S.E.2d at 582 ("The enumerations of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded".) By explicitly stating to these in the "In all other Cases" Category and not addressing the other provisions granted to all Convicted under the Sub-Section it is reasonable to conclude that legislature knows the Court is to construe that to mean these Convicted that falls in the before mentioned Category are eligible for the not mentioned provisions under the rules of Statutory Construction. (The legislature is presumed to be aware of [Courts] interpretation on statutes.) Wigfall V. Tideland Utilities, Inc., 580 S.E. 2d 100, 354 S.C. 100 (2003) and Hodges V. Rainey, 341 SC. 79, 86, 553 S.E. 2d 578, 582 (2000) ("The Canon of Construction expressio unius est exclusio alterius holds that to express or im-

"clude one thing implies the exclusion of another, or of the alternative.")

By Explicitly stating the sentence must not be suspended nor probation granted to those in the "all other Cases" Category and not addressing the other provisions granted to all Convicted under this subsection, it is reasonable to conclude that legislature knows the Court is to Construe that to mean that those Convicted that falls in the before mentioned Category are elgible for the non mentioned provisions under the rules of Statutory Construction. "In the all other Cases" Category the statute Only says they are not to have their sentence suspended nor probation granted. If the legislature intended for any of the other provisions to be disallowed to those in that Category they would have expressedly said so as they did about suspending sentences and granting probation. The enumeration of exclusion from the operation of a statute indicates that the all other Cases not specifically excluded. Exceptions strengthen the force of the general law and enumeration weaken it as to things not expressed. Hodges, at 87, 533 S.E. 2d at 582. Considering the wording of the statute alone, it seems clear that the legislature only wanted the offenders that fell in the Category of "In all other Cases", it would follow that those of 3rd offense and all their priors not being for possession would not be allowed Parole! Applying the principle of "expressio unius est exclusio alterius" it should be the legal Conclusion of this Court that the legislature intended for all the provisions of the statute to be granted to those in the "all other Cases" Category except for having the sentence suspended and probation granted, which were specifically excluded.

Conclusion

Based on the foregoing facts of the law, (1) I ask that SCDPPPS be made to give me an emergency hearing for Parole for the year of 2016 30 to 45 days from the decision of this honorable Court. (2) I also ask that SCDPPPS be made to grant me an emergency hearing for parole for the year of 2017 30 to 45 days after the 1st hearing asked for to make up for 2016. (3) I also ask this honorable Court to order SCDPPPS to take Appellant up on a year to year basis if Parole is not made, I am a non-violent or Parolable offender therefor by law its a right and created liberty interest by the state for any person serving a non-violent or parolable sentence to go up for parole on a yearly basis if or after parole Resections from the board.

X Dennis Davis

Dennis Davis #288558
T.C.I. TA-111
1578 Clarence E. Coker Hwy., 378
Columbia, SC 29162

Certificate of Service

I hereby certify that I served a copy of the foregoing brief on Counsel for the Respondent by depositing a copy in the United States Mail postage prepaid on the 18th day of May, 2017. addressed as follows:

Tommy Evans Jr.
SCDPPPS
P.O. Box 501666
2221 Devine St.
Columbia, SC 29250

X Dennis Davis

Dennis Davis #288558
T.C.I. TA-111
535 Clarence E Coker Hwy, 378
Turbeville, SC. 29162

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.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

INTIAL BRIEF OF RESPONDENT

Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

ATTORNEY FOR THE RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITES

CASES

STATUTES

STATEMENT OF ISSUE ON APPEAL

1. **Did the lower court err in affirming the decision of the Respondent denying the Appellant's parole eligibility due to his prior drug convictions?**

STATEMENT OF THE CASE

On March 8 and April 5 of 2013, the Appellant was caught in the possession of a quantity of marijuana. In both instances the Appellant was arrested and charged with the offenses of possession with intent to distribute marijuana. (PWID marijuana) Upon further investigation it was determined that the Appellant was previously convicted on two separate occasions for drug offenses. Upon this determination, the Appellant's offense was upgraded to a third offense.

On May 21, 2014, the Appellant appeared before the Honorable Edward G. Wellmaker for two counts of PWID Marijuana 3rd offense. (PWID marijuana 3rd) Upon the conclusion of this appearance the Court sentenced the Appellant to a one hundred and twenty-five month period of incarceration for each count. In 2010, the General Assembly passed the South Carolina Reduction of Recidivism Act, which went into effect in January 2011. This law allowed persons convicted of third drug offenses parole eligibility only if their prior convictions were for possession of a controlled substance. The Respondent conducted an investigation to make a determination of the Appellant's parole eligibility. The Respondent discovered that on October 25, 2002, the Appellant was convicted of Trafficking crack cocaine. Due to this previous conviction the Respondent determined that pursuant to South Carolina law he is not eligible for parole. On June 27, 2016, the Appellant was informed that due to his prior drug conviction he is not eligible for parole.

Upon receiving this correspondence the Appellant filed a notice of appeal before the Administrative Law Court (ALC). Within this appeal the Appellant argued that it was not the intention of the General Assembly for a person with a third drug offense to be denied parole eligibility. The Appellant further argued that the denial of parole due to the "no parole" classification is unlawful pursuant to the Bolin decision. The Respondent argued that the Appellant was convicted of a third drug offense, and his prior offenses were not solely for possession;

therefore, he is not eligible for parole. The Respondent further argued that the Appellant in the Bolin was convicted of a second drug offense, so Bolin does not apply.

On February 22, 2017, the Honorable Deborah Brooks Durden issued an order affirming the decision of the Respondent. Within this order the ALC determined that the Respondent's interpretation of the law was lawful and should be upheld. Upon receiving the ALC determination the Appellant filed a notice of appeal before the South Carolina Supreme Court. Per order of the Supreme Court dated March 21, 2017, the case was transferred to the Court of Appeals.

Within this appeal the Appellant argues that the ALC erred in their decision to affirm the decision of the Respondent. The Appellant is of the opinion that the statute allows him to become parole eligible just not eligible to receive a probationary sentence. The Appellant makes an attempt to compare this case to the Bolin decision. The Respondent argues that the decision of the ALC was correct. Due to the Appellant serving a conviction for a third drug offense and with prior drug offenses not being for possession, he is not eligible for parole. The Respondent will also argue that Bolin is not on point with the present case; it does not apply and should not be considered by this Court. The initial brief of the Respondent follows.

ARGUMENTS

1. **The ALC was correct in their determination that the Respondent did not err in deciding that the Appellant is not eligible for parole due to his prior drug convictions.**

The Appellant filed a notice of appeal before the ALC to decide on the validity of the determination of the Respondent in denying the Appellant's parole eligibility. The ALC has jurisdiction over this cause of action due to the decisions of the South Carolina Supreme Court in Al-Shabbaz v. State, 338 S.C. 334, 527 S.E.2d 724 (2000), and Furtick v. S.C. Dept. of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2002). The Supreme Court in each of these decisions gave the ALC the ability to review the Respondent when they decided that an

individual is not eligible for parole, which gives appellant jurisdiction to this court upon the final decision of the ALC.

In Al-Shabbaz, the South Carolina Supreme Court created a new avenue by which inmates could seek review of a final decision of a state agency in "non-collateral" matter related to a conviction or sentence. The Court held that inmates could appeal those final agency decisions to the ALC, and ultimately the Court of Appeals pursuant to the Administrative Procedures Act. Al-Shabbaz, at 376. In Al-Shabbaz, the Court recognized that "these administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed; and, (2) when an inmate believes prison officials have erroneously calculated his sentence; sentence-related credits or custody status." Id., at 369.

In Furtick, the Court noted that appealable final decisions by the Board arises in the latter manner, where the inmate alleges that the Department erroneously determined he was not eligible for parole. The Court held that in order to determine whether an inmate's claim against the Department is entitled review by the ALC, it is first necessary to determine whether the inmate has a liberty interest in gaining access to the Parole Board. Furtick, at 149. The Court decided that the permanent denial of parole implicates a liberty interest sufficient to require at least minimal due process. Id. The ALC had the ability to make this decision in an appellant capacity. They can only make a determination regarding if the Respondent followed the law in the denial of parole eligibility. In that capacity, the decision of the ALC was lawful. The fact the Respondent followed South Carolina law in the denial of the Appellant's parole eligibility.

The Appellant argues that the Respondent erred in making the determination that he is not eligible for parole due to his prior conviction for trafficking crack cocaine. The ALC was correct in affirming this decision. The South Carolina Code of Laws specifically 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 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

committed prior drug offenses regardless of their severity parole eligibility the statute would have not limited parole eligibility for third offenders who priors were only for possession. The Appellant reads one sentence and expects the Court to only apply that sentence and no other portion of the statute to his case. That would be unlawful, as the entire statute must be applied including the portion that specifically denies the Appellant parole eligibility. Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction. Higgins v. State, 307 S.C. 446, 449, 415 S.E.2d 799, 801(1992).

The Legislature never intended for all individuals sentenced to a drug offense under this statute parole eligibility. The Appellant is of the opinion that this law was created to allow inmates easier access to the Parole Board, which is true. This law was created in order for there be a reduction of inmates, and to allow for evidence based practices to be applied in order to lower the amount of recidivism; however, there are limitations. The General Assembly wished for individuals with a first and second offense, to be allowed parole eligibility. They also wished third offenders to be allowed parole eligibility **only** when all the prior drug offenses were for possession. Because this does not apply to the Appellant he was lawfully denied parole eligibility, which was correctly upheld by the ALC.

It is clear that the intention of the General Assembly was to allow parole only for certain drug offenders. If an offender does not fit the criteria he cannot be eligible for parole. The Appellant only uses a single sentence to support his argument and totally ignores the entire statute which clearly denies him parole eligibility. The ALC was correct in considering the entire statute in making their decision in affirming the decision of the Respondent. A Court should consider not merely the language of the particular clause being construed, but the word and its meaning in

conjunction with the purpose of the whole statute and the policy of the law. Whitner v. State, 328 S.C. 1, 16, 492 S.E.2d 777, 779 (1997). It is clearly the intent of the legislature that if an inmate does not fall under the criteria within this statute he should not be granted parole eligibility. The Appellant failed to fall under this criteria so he was denied parole eligibility pursuant to South Carolina law. This decision was lawfully made by the Respondent and properly upheld by the ALC, who followed the intent of the legislature. A law must be interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly. Abell v. Bell, 229 S.C. 1, 4, 91 S.E.2d 548, 550 (1956).

The statute clearly states that parole is only afforded to a person convicted of a third or subsequent offense if their prior drug offenses were only for possession. That criteria would not have been included if the General Assembly wished all individuals regardless of the amount of prior drug offenses be allowed parole eligibility. If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no need to employ rule of statutory interpretation, and the court has no right to look for, or impose another meaning. Pachal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890, 892 (1995). The terms of the statute are clear; no individual with a third drug offense can be allowed to appear before the Parole Board unless all of their prior drug convictions are only for possession. The Appellant has a prior offense for trafficking crack cocaine so he is not eligible for parole. Since it was applied properly the decision of the ALC was correct and it should be affirmed. When the terms of a statute are clear, the court must apply those terms according to their literal meaning. Cooper v. Moore, 351 S.C. 207, 212, 569 S.E.2d 330, 332 (2002).

2. **The Bolin decision does not apply to the present case so it was proper for the ALC not to consider it in the final decision.**

Within his brief the Appellant mentions the South Carolina Court of Appeals decision of Bolin v. S.C. Dept. of Corrections, 425 S.C. 276, 781 S.E.2d 914 (2015). In Bolin this court decided:

> Defendant's convictions for second-offense conspiracy to manufacture methamphetamine were no longer no-parole offenses, for which defendant was required to serve 85% of the sentence before being eligible for parole, following effective date of Omnibus Crime Reduction and Sentencing Reform Act, even though the Act did not amend definition of the term "no parole offense" in statue describing types of offenses for which offender was not eligible for parole, where Act amended separate statutory provision to indicate that "notwithstanding any other provision of law," a person convicted and sentenced as first or second offender pursuant to that subsection was eligible for parole.

Bolin, at 276

The Court in Bolin decided that a second offense PWID or Distribution is paroleable, and not an 85% offense. This is due to the statute allowing an inmate sentenced to a second offense parole eligibility. The Appellant is currently serving a sentence for PWID marijuana 3rd, so Bolin does not apply.

The General Assembly created the Omnibus Crime Reduction and Sentencing Act of 2010. This law stated that notwithstanding any other provision of law a person sentenced to a first or second offense for possession with intent to distribute methamphetamine is eligible for parole; however, since this offense was a C-Felony it still fell within the "no parole offense" classification. In Bolin, the Court decided that the law changed, so the offense of the Appellant was no longer a "no parole offense." So inmates serving a sentence for these offenses are no longer subject to the eighty-five percent term of mandatory imprisonment.

The offense the Appellant is currently serving is classified as a C-Felony the law specifically states that any person sentenced to an A, B, or C felony is not allowed parole. The law

never changed allowing parole eligibility for PWID Marijuana 3rd. The Appellant is responsible for serving at least eighty-five percent before any release from incarceration. The statute states notwithstanding any other provision of law which means an earlier statute does not apply. *See,* Stone v. State, 313 S.C. 533, 443 S.E.2d 544 (1994)(were two statutes are in conflict the more recent and specific statue should prevail so as to repeal the earlier general statute.) The Appellant is of the opinion that this applies to his offense; however, it does not. This only applies to an individual who has committed first and second offenses, or a third offense only when the priors are only for possession, which does not apply to the Appellant. The Bolin decision was clear, the statute changed for first and second offenders so they are the only ones that are guaranteed parole eligibility. There are extra criteria that must be met for a person serving a third offense. The Appellant does not satisfy these criteria so he cannot be allowed parole eligibility. According to the statute the Appellant is not eligible for parole on a third offense unless their prior offenses are only for possession. That is not the case in this cause of action. The ALC did not right thing in affirming the decision of the Appellant, a decision that should be upheld by this Court.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests the final decision of the Administrative Law Court be affirmed.

Respectfully submitted,

Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

Columbia, South Carolina
June 13, 2017

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.

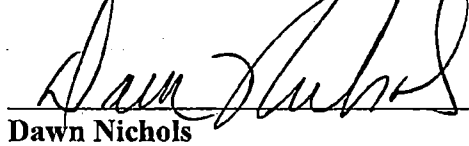
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn Nichols, Executive Assistant, hereby certify that I have served the within the *Initial Brief of Respondent and Designation of Matter,* dated June 14, 2017, on the Appellant this 14th day of June, 2017, by depositing a copy of same in the United States mail, postage paid, addressed to:

Dennis Davis, #288558
Turbeville Correctional Institution-TA-111
1578 Clarence E. Coker Highway 378
Turbeville, S.C. 29162

I further certify that all parties required by Rule 54 to be served have been served.



Dawn Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

The State of South Carolina

In the Court of Appeals

[In the Supreme Court]

RECEIVED

OCT 10 2017

SC Court of Appeals

Appeal from the Administrative Law Court

The Honorable Deborah Durden Administrative Law Judge

Case No.: 2016 ALJ 150034 Ap

Appellate Case No.: 2017-000663

Dennis Davis, Appellant,

V.

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

Motion for reinstatment

Appellant makes this motion for reinstatment after the Clerk's recommendation of dismissing this matter. On 9/6/17 I recieved a letter from your office instructing me that I had (10) Ten days to file the Record on Appeal. Prior to that letter, On June 7, 2017, I recieved a letter informing me that I had (10) Ten days to file the designation of matter to be included in the record on appeal. I fixed the deficieneies and on June 29, 2017, a letter was mailed to me stating that the actual designated materials included with my designation of matter

should not be filed at this time and were being returned to me. On 9/15/17 appellant mailed off the designation of matter to be included in the record of appeal. Appellant was under the impression that his designation of matter was being returned as a whole and had not been filled from the letter dated 6/29/17. On 9/20/17 Appellant recieved notice that his appeal was being dismissed. As you can see the situation is difficult to explain and was very confusing to myself. I ask that my appeal be reinstated and heard by this Court based on the facts presented in this motion and exhibits presented along with this motion. Through my testimony and exhibits presented the Courts can see that I did infact meet the (10) Ten day deadline issued on 9/1/17 that I was in reciept of on 9/6/17. Appellant was just confused and mailed in the designation of matter to be included in the record on Appeal. I ask that this Honorable Court reinstate my appeal based on the facts presented.

S/ Dennis Davis

Dennis Davis

Turbeville Corr. Inst. TA-111

1578 Clarence E. Coker Hwy, 378

Turbeville, S.C. 29162

The State of South Carolina

In the Court of Appeals

[In the Supreme Court]

Appeal from the Administrative Law Court

The Honorable Deborah Durden, Administrative Law Judge

Case No.: 2016 ALJ 150034 AP

Appellate Case No.: 2017-000663

Dennis Davis, Appellant,

V.

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

Proof of Service

I certify that I have served the motion for reinstatement on the SCDPPPS by depositing a copy of it in the United States mail, Postage Prepaid on Oct. 2, 2017 addressed to its attorney of record, Tommy Evans, Jr., Esquire, 2221 Devine St., Suite 600, P.O. Box 50606, Columbia, S.C. 29250

October 2, 2017

I futther Certify that all parties required by rule 61 to be served have been served.

S/ Dennis Davis

Dennis Davis, Appellant

Turbeville Corr. Inst. TA-111

1578 Clarence E. Coker Hwy, 378

Turbeville, S.C. 29162

The South Carolina Court of Appeals

Dennis Davis #288558, Appellant,

v.

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

Appellate Case No. 2017-000663

ORDER

This appeal was dismissed due to Appellant's failure to serve the record on appeal. Appellant has now filed a petition to reinstate. Within thirty days of the date of this order, Appellant shall serve the record on appeal, which should contain all the matters designated by both Appellant and Respondent. Within thirty days of the date of this order, Appellant shall also file a proof of service showing the record was served. This court will act on the petition to reinstate upon receipt of the proof of service or the expiration of thirty days.

FOR THE COURT

Columbia, South Carolina

FILED

October 30, 2017

cc:
Dennis Davis, 288558
Tommy Evans, Jr., Esquire
Jana E. Shealy

The State of South Carolina,

In the Court of Appeals

[In the Supreme Court]

Appeal from the Administrative Law Court

Deborah Durden, Administrative Law Judge

Appellate Case NO.: 2017-000663

Dennis Davis, #288558,

Appellant,

v.

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

Proof of Service

I Certify that I have served the Record on appeal on The South Carolina Dept. of Probation, Parole, and Pardon Services by depositing a copy of it in the United States Mail Postage prepaid on Nov. 22, 2017, addressed to SCDPPPS Attorney Tommy Evans, Jr., South Carolina Dept. of Probation, Parole, and Pardon Services, 2221 Devine Street, Suite 600, P.O. Box 50666, Columbia, SC 29250. I further certify that all parties required by Rule 54 to be served have been served.

Tommy Evans, Jr.
Attorney for Respondent
South Carolina Dept. of Probation;
Parole, and Pardon Services
2221 Devine St., Suite 600
P.O. Box 50666
Columbia, SC 29250

S/ Dennis Davis
Dennis Davis #288558
ICI - TA-111
1578 Clarence E. Cole Hwy, 378
Turbeville, SC 29162

The State of South Carolina

In the Court of Appeals

[In the Supreme Court]

Appeal from the Administrative Law Court

Deborah Durden, Administrative Law Judge

Appellate Case No.: 2017-000663

Dennis Davis, #288558,

Appellant,

v.

South Carolina Department of Probation, Parole and Pardon Services,

Respondent.

Record on Appeal

Dennis Davis #288558
TCI. TA-111
1578 Clarence E. Cokar Hwy, 378
Turbeville, SC 29162

Index

State of South Carolina

Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

June 27, 2016

Dennis Davis, #288558
Ridgeland Correctional Institution
PO Box 2039
Ridgeland, South Carolina 29936

Dear Mr. Davis:

On May 21, 2014, you were convicted of Distribution of Marijuana, third offense, in Indictment Numbers 13-GS-46-02970, 02971. Pursuant to South Carolina law a person convicted of this offense with two or more aggregate violation of the law relating to drugs is not eligible for parole.

A review of your prior record reveals prior drug convictions, therefore, your current offense is ineligible for parole pursuant to South Carolina law. You will not be considered for parole on this offense.

Sincerely

Matthew C. Buchanan
General Counsel

MCB:dn

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dennis Davis

Appellant,

vs.

South Carolina Department of Probation, Parole and Pardon Services,

Respondent.

NOTICE OF APPEAL

DOCKET NO. 15-ALC-15-_____-AP

Notice is hereby given that Dennis Davis does hereby appeal the final decision of the South Carolina Department of Probation, Parole and Pardon Services dated 6/27/16 and received on 7-1-16, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

The purpose of this appeal is to keep my Parole eligibility and have my Chance infront of the board, that is legally mine and promised to any individual incarcerated for an Parolable offense. The laws of the State of South Carolina gives me a chance for parole. I saw the Parole examiner on 11-27-16 and was told I would recieve a letter 30 days with my actual date to go up infront of the parole board. So I'm very Confused at how I recieve a letter saying I'm not eligible for parole when the laws of this state says otherwise. I was Sentenced on 5/21/14 for a non-Violent or Parolable offenses. 44-53-370 states in the statue any individual such as myself has a right to earn Good Conduct Credits, EWC's, Parole, supervised furlough, Community supervision, work release and education Credits also. I have met the Criteria for a Chance at Parole by serving 1/4 of my Sentence and being eligible for a Parolable or Non-Violent offense. The Omnibus Crime Reduction and Sentencing Reform act of 2010 also explains as well as made 2nd and 3rd offenses Parolable with Non-Violent. There has to be a mistake or some sort of miscommunication of the laws and Facts!

Dennis Davis

Appellant's Name, Address and Date

Dennis Davis #288558
Livesay B U3-12C
P.O. Box 580
UNA, SC 29378
7-1-16

Subscribed and sworn before me this 8th day of July, 2016

Katherine Lott
Notary Public

County of Spartanburg
State of South Carolina
My commission Expires 9/25/19

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dennis Davis,

Appellant,

vs.

South Carolina Department of Probation, Parole and Pardon Services.

NOTICE OF APPEAL

DOCKET NO ___-ALJ-15-_____-___

Notice is hereby given that Dennis David does hereby appeal the final decision of the South Carolina Department of Probation, Parole and Pardon Services dated 6/27/16 and received on 7/1/16, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

The purpose of this appeal is to keep my parole eligibility and have my Chance at parole infront of the Parole board like the laws of this state promise myself and any other inmate incarcerated for a paroleable offense. I saw the parole examner on 4-27-16 and was told I would recieve a letter 30 days with my actual date to go up infront of the parole board. So I'm very confused at how I recieved this letter saying I'm not eligible for parole when the laws of this State says otherwise. I was sentenced on 5/21/14 for a non-violent & paroleable offense. 44-53-370 states Not withstanding any other provision of law I have a right to earn Good time, EWC's, Parole, Supervised furlough, Community Supervision, work release and education credits etc. SCDPPPS has made a mistake.

Dennis Davis
Appellant's Name

Signed

Live Oak B-12C
P.O. Box 550
Mailing Address

8/9/16
Dated

UNA, SC 29378
City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, Dennis Davis (your name), on the 9th day of August, 2016 in UNA (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows:

Name of person/Agency served: Clerk's office Administrative Law Court

Address: 1205 Pendleton St., Suite 224

City, State, Zip Code: Columbia, SC 29201

FILED
AUG 11 2016
SC ADMIN. LAW COURT

Dennis Davis
Print your name

Sign your name

(See reverse side for instructions)

South Carolina Administrative Law Court

Dennis Davis #288558,
Appellant,
Vs.
South Carolina Department of Probation, Parole, and Pardon Services,
Respondent.

Docket No.: 16-ALJ-15-0034

APPELLANT'S BRIEF

The Honorable Deborah Durden
Administrative Law Court Judge:

FILED
NOV 15 2016
SC ADMIN. LAW COURT

Statement of the Case

This Appeal Comes before the Administrative Law Court following the South Carolina Dept. of Probation, Parole, and Pardon Services erroneous final decision dated June 27, 2016 that the Appellant Dennis Rodger Davis Jr. is ineligible for parole. SCDPPPS made this determination saying the Appellants May 21, 2014 conviction of distribution of marijuana, third offense, with indictment numbers 13-GS-46-02970 and 13-GS-46-02971. These Charges are infact non-violent or Paroloable offenses.

Argument

This Appeal Comes before the Administrative Law Court Pursuant to the South Carolina Dept. of probation, Parole, and Pardon Services final decision that the Appellant Dennis R. Davis Jr. is ineligible for Parole. The Appellant is Currently Securing a sentence for two distributions of marijuana 3rd and two Prox. of a School Zone offenses 3rd, that are Paroloable or non violent offenses. 24-21-620 States after a Prisoner as myself has served 1/4 of hrs or her sentence, the Prisoner is eligible for review by the Parole board. Actually I've had a Parole date since I entered the system in 2014. I was interviewed by the Parole examiner at Ridgeland Corr. Institution on 4/27/16. On the South Carolina Dept. of Probation, Parole, and Pardon Services Criteria for parole Consideration Sheet that I Signed and was given a copy of, nowhere in the many list of Criteria does it say a person Convicted of a 3rd offense as myself is indigible for Parole! It does state an individual as myself Serving time for a non-violent offense defined in 16-1-70 of the South Carolina Code of laws 1976 will be reheard for Parole one year following the date of Parole rejections. But instead of recieving my hearing as the law States, I received a letter saying I was Ineligible for Parole. I was sentenced on 5/21/14 for two distributions of marijuana 3rd, and 2 prox. of a school zone 3rd. As a result of my sentencing date I fall upunder the omnibus Crime Reduction and Sentencing

reform act of 2010, which was passed on 6/2/10, 44-53-370(b)(2), this Statute States "Notwithstanding any other Provision of law a pers 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, 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." As you can see the only thing I'm ineligible for is a suspended sentence or probation. There are remedies that only come from a Judge in the Court Room not SCDC. The Omnibus Crime reduction and sentencing reform Act of 2010 was Enacted to persue Public Safety reduce Crime, and use Correctional resources most effectively. 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. 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. A Controlling or land mark Case is Bolin V. SCDC S.E. 2d 2010 WL 732535. In this Case SCDC's misinterpretation of the law by error or design was noted. Virtue of the Omnibus Crime Reduction and Sentencing reform Act of 2010 which Changed the Statute to say, "Notwithstanding any other Provision of law," Mr. Bolin as well as myself's offenses were made Parolable. Not withstanding any other Provision of law does not do away with non-parolable offenses or 24-21-640 however, it did make my Specific offense Parolable. 24-21-640 which was Enacted on 4/28/10 say a person is ineligible for Parole securing a sentence for a second or Subsequent Conviction, following a Seperate for a prior Conviction for a violent Crime as defined in Section 16-1-60. This Prior is almost 15 years old, should not even be considered anymore, and was also a parolable offense! This is what S.C. Dept. of Probation, Parole, and Pardon Services and SCDC is now trying to use and deprive me of this state Created liberty Intrests and say I'm not eligible for Parole. Perhaps this was the Case before the passing of the Omnibus Crime reduction and Sentencing reform Act of 2010 which was Passed after 4/28/10 on 6/2/10. The Omnibus Crime reduction and sentencing reform Act of 2010 was passed for a number of reasons, but the main objective of the Act was to Conserve tax Payers dollars by allowing earlier release dates to Inmates Convicted of less Serious offenses. The Omnibus Crime reduction and sentencing reform act of 2010 did not do away with Statute 24-21-640, however it did make 24-21-640 no longer apply to 44-55-370(b)(2) that States "not withstanding any other Provision of law an Inmate such as myself is to recive good time, EIWC's, Parole, Supervised furlough, Community Supervision, work release, and education Credits as well. Because of this law and the fact I was Convicted of a parolable offense explains why I've had a Parole date since my incarceration in 2014. It is evident that the Statute 24-21-640 is in Conflict with 44-53-370(b)(2) of the Omnibus Crime reduction and sentencing reform Act of 2010 does not say I'm ineligible, but that I am eligible for Parole. To say I'm not eligible for parole is illogical and absurd. Actually that would be saying that the Omnibus Crime Reduction and Sentencing reform Act of 2010 does not say what it says. It makes no sense that the SCDPPPS and SCDC would Sayer think otherwise that a person Convicted of a Parolable offense Sentenced after the Omnibus Crime reduction and Sentencing reform Act of 2010 is ineligible for Parole when that was the main objective of the Act to get Inmates released earlier who are Convicted of less Serious offenses or Crimes. It has been noted and sited

In Several Cases that When two Statutes are in conflict the later Statute Should prevail So as to repeal the earlier Statute to the extent of repugnancy. Hair V. State, 305 S.C. 77, 79, 406 S.E. 2d 332, 334 (1991). In Barton V. S.C. Dept. of Probation, Parole, and Pardon Services, 404 S.C. 395, 745 S.E. 2d 110 (2013). The Courts decided to Construe Statutes that are Penal in nature Strictly in favor of the defendant and against the State. Ventures S.C. LLC V. S.C. Dept. of Revenue, 378 S.C. 5, 9, 661 S.E. 2d 339, 341 (2008) The Court will reject the plain meaning of the words used in a Statute if it would lead to an absurd result and will Construe the Statute So as to escape the absurdity and carry the Intentions into effect. It is Clear and evident I was sentenced and my offense was Committed after the passing or Enactment of the Omnibus Crime reduction and Sentencing reform Act of 2010. It is Clear and evident that I am eligible for parole and Should not have received an erroneous letter stating that I'm not eligible for Parole! It is also very Clear that by error or design the laws of this State are being misinterpreted or ignored by the Agency.

Conclusion

In Conclusion it is evident the appellent Dennis R. Davis Jr. by law Should have had a parole hearing in July or August of 2016. The offenses Appellant is Currently Serving time for are Paroleable or non-violent offenses. The law 44-53-370(b)(2) Clearly States the Appellant is eligible for parole! Statute 44-53-370(b)(2) also states what I am not eligible for which is a suspended Sentence or probation granted which Can only be given from a Judge before I ever would enter the Department of Corrections. The Omnibus Crime reduction and Sentencing reform act of 2010 made the Appellants offenses Paroleable! Appellant respectfully asks that the South Carolina Dept. of Probation, Parole, and Pardon Services final decision be reversed or overturned and I be granted an emergency Parole hearing to be held within 30 to 45 days of this honorable Courts decision! Appellant also asks that a regularly Scheduled hearing be given after the emergency hearing for 2017 as well. It's my right to have a hearing for 2016 by law and 2017 if necessary. My Case is to be heard on a yearly basis after Parole rejections! The Agency made this mistake by error or by design and I Should not have to Suffer for their mistake. It's my right to have a Parole hearing on a yearly basis after Serving 1/4 of my Sentence. The SCDPPPS by error or by design has denied me the right and Chance at Parole in 2016. This is a Clear violation of my due Process rights and as well an attack on my Constitutional rights. Being released on Parole is not a guarantee but it is a right by law and a State Created liberty interest. Having my Case heard by the parole board is promised to every inmate convicted of a Paroleable or non-violent offense in the South Carolina Dept. of Corrections! It is very Clear and evident that the intent of the legislature in Passing the omnibus Crime reduction and Sentencing reform Act of 2010 was to give inmates Such as myself a Chance at Parole, to be released Sooner. Thus an inmate as myself Sentenced after 2010, June 2nd for a violation of 44-53-370(b)(2) is eligible for good Conduct Credits, EWCS, Parole, supervised furlough, Community Supervision, work release and education Credits as well! By the laws of this State I Should have gone up for Parole instead of receiving an erroneous letter denying me the rights that have been given to me by the laws of this State. I ask that the SCDPPPS final decision be

eversed and I be granted an emergency hearing 30 to 45 days for 2016. I also ask that ~~in 2017 the SCDPPS be made~~ to give me a regularly scheduled hearing as well. I pray not this Court grants my appeal and honor the laws of this State.

State of South Carolina in
The Administrative Law Court
Docket Number 16-ALJ-15-0034
Appeal of Final Decision
Department of Probation, Parole, and Pardon Services

Dennis Davis, #288558 _____ Appellant

V.

S.C. Department of Probation, Parole, and
Pardon Services, _____ Respondent

Certificate of Service

I, Dennis Davis, Appellant, do hereby Certify that I have served the Appellant's Brief dated November 9, 2016 on Respondent by depositing a copy of the same in the United States mail, Postage Prepaid, the 9th day of November, 2016, addressed to:

Dawn Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

The Honorable Deborah Durden
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

I further Certify that all parties required by rule 61 to be served have been served.

Dennis Davis #288558
Appellant
Turbeville Correctional Institution T3-157
1578 Clarence C. Coker Hwy 378
Turbeville, S.C. 29162

FILED
NOV 15 2016
SC ADMIN. LAW COURT

State of South Carolina Administrative Law Court

Dennis Davis, #286558 Appellant, VS. South Carolina Dept. Of Probation, Parole, and Pardon Services, Respondent.	Docket No.: In opposition to Respondents Brief The Honorable Judge Deborah Durden

Statement of the Case

This Appeal Comes before the Administrative Law Court following the south Carolina's Dept. of Probation, Parole, and Pardon Services erroneous decision and misinterpretation of the law stating that Appellant is not eligible for Parole. On May 21st, 2011 Appellant was Sentenced to 125 months on 2 Counts of Distribution of marijuana 3rd, 5 years for 2 prox. of a school zone Charges, and 1 year for simple possession of marijuana 2nd. At the time of Appellants offenses were Committed, he fell up under the Omnibus Crime Reduction and Sentencing reform Act of 2010. This Act was passed by the legislature to preserve public Safty, reduce Crime, and use Correctional resources most effectively. It is therefore, the purpose of this Act to reduce recidivism, Provide fair and effective sentencing options and employ evidence based practicies for smarter use of Correctional funding and improve public safty. 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. On June 27, 2016, the Appellant was Sentenced informed that due to a Prior

Conviction he is not eligible for parole. After the Appellant was notified about the Dept's decision this Appeal followed.

Argument

On 5/21/14 Appellant was sentenced on 2 counts of 44-53-370(b)(2) Distribution of marijuana 3rd and was sentenced to a non-violent or Pardable Sentence of 125 months by Edward G. Wellmaker. 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 pursant to subsections (C),(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." Nowhere in this statute does it say only a person convicted of a third or subsequent offense in which all priors are only for possession of a controlled substance is eligible for parole as Counsel for respondent has quoted and would like this Court to believe. However, it does state specifically a person with a third or subsequent offense is eligible for parole if all priors are for possession, and if all prior's are not just for possession as well. 44-53-370(b)(2) specifically states, "In all other Cases", which means in cases that do not apply to the (C) and (D) Clause of 44-53-370(b)(2) Counsel's numerous statements that this law only allow's persons convicted of a third drug offense parole eligible only if their prior convictions were for possession only is misinterpreted, misinforming to the

Court, and is illogical! Statute 44-53-370(b)(2) not only tells you what to do if a person has all prior possessions but it also specifically tells you what to do in all other cases which is not suspend the sentence nor grant probation, which can only be done in General Sessions Court by a Judge. Nt where in this statute does it say that a person such as Appellant who's priors are not all possessions is ineligible for parole! Infact the only thing a person convicted of a third or subsequent offense in which all prior's were not for possession of a controlled substance pursuant to subsections (C) and (D) is ineligible for is a suspended sentence or probation granted. So, by law Appellant is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits and good conduct credits. So Appellant being convicted of trafficking over 14 years ago on 10/25/02 that Counsel is offering to would'nt disqualify Appellant for parole, it would put him in the all other cases category and he wouldn't be eligible for probation or a suspended sentence. So it does that the legislature did wish inmates convicted of a third or subsequent offense for a violation of 44-53-370(b)(2) eligible for parole as well as other things. Counsel for Respondent quotes, "that words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statutes operation." Rowe V. Hyatt, 321 SC, 386, 389, 466 S.E. 2d 148, 150 (1996). My right to parole as stated in 44-53-370(b)(2) isn't subtle or forced Construction; nor does it limit the statute as Respondent's counsel is attempting to do! Neither does it expand the statute's operation. This statute does not state that all individuals, persons, prisoners, or inmates are parole eligible; however,

it does state a person such as appellant convicted of a third or subsequent offense is eligible for parole just like a person convicted of a 1st or 2nd offense. For the record, my crime is not violent or non-parolable, and my sentencing sheets as well as CDR Codes reflect that. Reading this statute in whole while being reasonable and practical, appellant is eligible and fits the criteria for parole. The Omnibus Crime Reduction and sentencing reform Act of 2010 was passed to give offenders convicted of certain offenses including 44-53-370(b)(2) regardless if they have prior's for possession. However, the legislature did not intend for the sentence to be suspended or probation granted if the priors are not for possession. This is clearly stated in the statute and also shows the intent of the legislature. Statute 44-53-370(b)(2) language is plain and unambiguous and conveys a clear and definite meaning that a person such as appellant convicted of a third or subsequent offense in all other cases that do not apply to subsection (c) and (d) is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits and good conduct credits. Furthermore the Bolin decision does apply and should be considered in this case. The only difference in Bolin v. S.C. Dept of Corrections, S.C. Ct. App., 2016 WL 732535 is he had a second offense and this being a third. Bolin v. S.C. Dept. of Corrections, S.C. Ct. App., 2016 WL 732535 it shows the intent of the legislature, as well as the effects and how the Omnibus Crime Reduction and sentencing reform Act of 2010 should be applied to the statutes included in this bill. The Bolin case shows the erroneous interpretation by design or mistake of this bill and it's application. This is the same case that the South Carolina Dept. of Probation, Parole, and Pardon Services has misinterpreted this

bill and is in error by denying me parole which is Appellants right by law. I am currently serving a sentence for distribution of Marijuana 3rd 44-53-370 (b)(2) and just like in Burn the language of 44-53-370 (b)(2) changed to make that offense parolable. Appellant is not serving an 85% or non parolable sentence which means clearly that I am eligible for parole as stated in South Carolina law. It is clear and evident that Counsel for Respondent and the SCDPPPS (Respondent) is in error with their misinterpretation of 44-53-370 (b)(2) and Appellant's parole.

Conclusion

Based on the facts of law presented, Appellant respectfully requests that the final decision of the SCDPPPS be overturned and I be granted an emergency hearing for 2016 to take place in 30 to 45 days after your decision is made. And I also respectfully request that the department give me a hearing in 2017 and so on if need be on a yearly basis IF I get rejected as statute 16-1-60 states. Not only does statute 44-53-370 (b)(2) state I'm parole eligible but so does the intent of the legislature in passing the Omnibus Crime Reduction and Sentencing Reform Act of 2010.

Respectfully Submitted,

Dennis Davis

Appellant

Turbeville, South Carolina
December 21, 2016

Dennis Davis #288558
T.C.I. TB-157
1578 Clarence C. Baker Hwy 378
Turbeville, SC. 29162

State of South Carolina in the Administrative Law Court

Document Number 16-ALJ-15-0034

Appeal of Final Decision Dept. of Probation, Parole and Pardon Services

Dennis Davis #288588, Appellant,

V.

S.C. Department of Probation, Parole, and Pardon Services,

Respondent.

Certificate of Service

I, Dennis Davis, Appellant, Certify that I have served the within Brief, dated December 21, 2016 on Respondent by depositing a copy of the same in the United States mail, postage prepaid, the 21st day of December, 2016 addressed to:

The Honorable Deborah Durden
Judge, Administrative Law Court
1205 Pendleton St., Suite 224
Columbia, S.C. 29201

South Carolina Dept. of
Probation, Parole, and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

I further Certify that all Parties required by Rule 54 to be Served have been served.

Dennis Davis

Dennis Davis #288588
T.C.I. TB-157
1575 Clarence E. Coker Hwy 378
Turbeville, S.C. 29162

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dennis Davis, #288558, Appellant, vs. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	Docket No.: 16-ALJ-15-0034-AP ORDER

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Dennis Davis (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On June 27, 2016, the South Carolina Department of Probation, Parole and Pardon Services (Department) issued a final decision letter determining that the Appellant is ineligible for parole based upon his prior drug convictions. On August 11, 2016, Appellant filed a Notice of Appeal with this Court challenging the Department's decision. Upon careful consideration of the record on appeal and briefs of the parties, the Department's decision is affirmed.

BACKGROUND

The Department determined that Appellant is ineligible for parole based upon his prior convictions. Appellant is currently serving two sentences for Distribution of Marijuana, 3rd Offense. Appellant received these 125-month concurrent sentences on May 21, 2014, pursuant to South Carolina Code Section 44-53-370(b)(2). In 2002, Appellant received three other drug-related sentences: five years for Trafficking Crack Cocaine, 10-28 grams, 1st Offense, pursuant to Section 44-53-375(C)(1)(a); ten years for Possession of Crack Cocaine with Intent to Distribute Within Proximity of a College, pursuant to Section 44-53-445(B)(2); and thirty days for Possession of Marijuana, 1st Offense, pursuant to Section 44-53-370(d)(4).

ISSUE ON APPEAL

Whether the Department erred in determining that Appellant is ineligible for parole because of his prior drug offenses.

STANDARD OF REVIEW

The court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court decisions in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an

administrative review process for inmate appeals), and Furtick v. S.C. Dept. of Prob., Parole & Pardon Servs., 352 S.C. 594, 576 S.E.2d 146 (2003) (incorporating final decisions of the Department into that review process). 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. Dept. of Corrs., 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Because being granted parole is a privilege and not a right, the routine denial of parole does not implicate such a liberty interest; however, the denial of eligibility for parole does involve such a liberty interest, and thus is a matter properly before the ALC for review. See James v. S.C. Dept. of Prob., Parole & Pardon Servs., 376 S.C. 392, 395-96, 656 S.E.2d 399, 401–02 (Ct. App. 2008); see also Sullivan v. S.C. Dept. of Corrs., 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003).

When reviewing a decision of the Department, the ALC sits in an appellate capacity. See Furtick, 352 S.C. at 599, 576 S.E.2d at 149; Al-Shabazz, 338 S.C. at 377, 527 S.E.2d at 754. Under the appellate standard of the Administrative Procedures Act, the court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2016). The court 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. 2016). 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

Appellant argues that the Department has erred in concluding that he is not eligible for parole under the language of Section 44-53-370(b)(2), and that the Department has failed to correctly apply the recent decision of the Court of Appeals in Bolin v. South Carolina Department of Corrections, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016), rehearing denied (Feb. 24, 2016). The Court disagrees. A review of the relevant statutes and Appellant's prior convictions supports the Department's determination that Appellant is ineligible for parole.

In determining whether an inmate is eligible for parole, several different statutes must be reviewed. The foundational rules of parole are contained in Title 24 of the South Carolina Code.

Specifically, Section 24-21-610 sets the minimum amount of time that must be served of a sentence before an inmate reaches eligibility. See S.C. Code Ann. § 24-21-610 (2007). However, the baseline rules have been modified by other subsequently enacted or amended statutes. Section 24-13-100, enacted in 1995, defines Class A, B, and C felonies as "no parole offenses." Id. at § 24-13-100.[1] When an inmate's crime is a no-parole offense, the inmate is not eligible for "parole" consideration. Id. at § 24-21-30; see also Bolin, 415 S.C. at 283, 781 S.E.2d at 917 ("It is without doubt that the statutory definition for the term 'no-parole offense' in section 24-13-100, i.e., 'a class A, B, or C felony . . . ,' simply describes the types of offenses for which the offender is not eligible for parole."). Instead, the inmate must complete a community supervision program. S.C. Code Ann. § 24-21-30 (2007). Unless provided otherwise, an inmate becomes eligible for the community supervision program after completion of at least eighty-five percent of the actual term of imprisonment imposed. Id. at § 24-13-150(A) (Supp. 2016). This is known as the "85% rule."

However, this rule for no parole offenses has been modified for certain specific offenses within the language of the sentencing statute. In particular, the legislature has amended certain drug crime sentencing statutes to allow for parole eligibility in certain cases. The Court of Appeals has construed the language of the amendments to repeal the no-parole offense statute insofar as there is a conflict with the more recent and specific amendments. Bolin, 415 S.C. at 282, 781 S.E.2d at 917 (citation omitted) ("The legislature's use of the phrase 'Notwithstanding any other provision of law,' in the amendments to sections 44-53-375 and -370 expresses its intent to repeal section 24-13-100 *to the extent* it conflicts with amended sections 44-53-375 and -370." (emphasis in original)). The holding of the Court of Appeals in Bolin is very specific and does not repeal the 85% rule in regards to all offenses contained in the statutory sections amended by the legislature.

The subsection of the drug statute that Appellant was sentenced under provides:

> Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense 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. 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

[1] Class A, B, and C felonies are listed in Section 16-1-90. Appellant's offense is a Class C felony.

> 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) (Westlaw through 2014). Appellant's argument is based upon an inference derived from the last sentence. He argues that because parole ineligibility was not explicitly stated, it is by implication not included. However, this argument ignores, not only the plain language of the statute, but the larger statutory scheme of parole eligibility.

> In interpreting a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Further, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.

Ranucci v. Crain, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014) (internal quotation marks and citations omitted). Quite simply, the drug statute does not include language making a third offender with non-qualifying prior offenses ineligible for parole because the ineligibility has already been provided for by the no-parole offense statute.

Therefore, unless Appellant fits within the exceptions to the overall rule carved out by the notwithstanding provisions, he is ineligible for parole because he was sentenced for a Class C felony. The exception for a third offense requires that "all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d)" of Section 44-53-370. In this case, Appellant has prior offenses sentenced under Section 44-53-375(C)(1)(a) and Section 44-53-445(B)(2). Thus, Appellant does not fall within the exception and the no-parole offense rule still applies to Appellant.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the decision of the Department is **AFFIRMED**.

AND IT IS SO ORDERED.

FILED
FEB 22 2017
SC ADMIN. LAW COURT

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

February 22, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 22nd day of February 2017
By: _____ Judicial Law Clerk

The Supreme Court of South Carolina

Dennis Davis, Appellant,

v.

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

Appellate Case No. 2017-000663

The Honorable Deborah Brooks Durden
Administrative Law Court
Trial Court Case No. 2016ALJ150034AP

ORDER

Pursuant to Rule 204(a) of the South Carolina Appellate Court Rules, this matter is hereby transferred to the South Carolina Court of Appeals.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina

March 21, 2017

FTJ 61

cc:
Dennis Davis, 288558
Matthew C. Buchanan, Esquire
The Honorable Jenny Abbott Kitchings

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 288558

COUNTY OF York
STATE VS.
Dennis Rodger Davis Jr
AKA:
Race: BLACK Sex: M Age: 31
DOB: SS:
Address:
City,State,Zip: Rock Hill, SC 29730-5560
DL#: SID#:
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2013GS4602970
A/W#: 2013A4610200176
Date of Offense: 3/8/2013
S.C. Code § : 44-53-0370(b)(2)
CDR Code #: 0188

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: DISTRIBUTION OF MARIJUANA, 3RD OFFENSE (5-20 YRS)
in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0188
☒ 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:

ATTEST: _____ 72806 _____ _____ _____ 100254
Hamilton, Marina Bender T Desel SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☑ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 125 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 PTUP _____
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

_____ 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: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100 -
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 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	$ 25 -
§ 14-1-213 (Drug Court Surcharge)	$150	$ 150 -
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5 -
3% to County (if paid in installments)		$
TOTAL		$ 280 -

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton
Court Reporter: Aileen Butler

Presiding Judge
Judge Code: 2137 Willcox
Sentence Date: 5-21-14

SCCA/217 (03/2011)

1/2

288558

STATE OF SOUTH CAROLINA)
COUNTY OF York) IN THE COURT OF GENERAL SESSIONS
STATE VS.)
Dennis Rodger Davis Jr)
AKA:)
Race: BLACK Sex: M Age: 31)
DOB: SS#:)
Address:)
City,State,Zip: Rock Hill, SC 29730-5560)
DL#: SID#:)
CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐)

INDICTMENT/CASE#: 2013GS4602971
A/W#: 2013A4610200214
Date of Offense: 4/5/2013
S.C. Code § : 44-53-0370(b)(2)
CDR Code #: 0188

☐ ORIGINAL
SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: DISTRIBUTION OF MARIJUANA, 3RD OFFENSE (5-20 YRS)

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0188
☒ 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.

ATTEST: [signature] 72806 [signature] [signature] 100284
Hamilton, Marina Bender J. Desch SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 120 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: 2013 GS46 2970
☐ 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: ____

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: ____

Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100-
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 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	$ 25-
§ 14-1-213 (Drug Court Surcharge)	$150	$ 150-
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5-
3% to County (if paid in installments)		$
TOTAL		$ 280-

☐ Appointed PD or appointed other counsel, § 47.12 requires $500. be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton
Court Reporter: Aileen Butler

Presiding Judge [signature]
Judge Code: 213
Sentence Date: 5-21-14

SCCA/217 (03/2011)

64

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
DIVISION OF CLASSIFICATION & INMATE RECORDS
CUSTODY AND PRIVILEGES

Inmate Name Davis, Dennis Inmate Number 288558

Assigned/Recommended Custody LRIB

	MINIMUM OUT (MO)	MINIMUM OUT RESTRICTED (MOR)	MINIMUM IN (MI)	MEDIUM (ME)	SMU (SD, DD, PC, PHD)
ACCESS TO PROGRAMS & ACTIVITIES	Outside the perimeter *off* institutional property	Inside the perimeter or Outside the perimeter *on* institutional property	Inside the perimeter	Inside the perimeter	Selected cell activity only
ACCESS TO JOBS	Outside the perimeter *off* SCDC property	Inside the perimeter or Outside the perimeter *on* institutional property	All inside the perimeter Under armed supervision outside the perimeter	All inside the perimeter Under armed supervision outside the perimeter	None except job *assignments within unit for Statewide* PC ~~which is closely supervised (none the 1st 90 days)~~
WORK/EDUCATION CREDITS	2	2	3 until meets behavior & time requirements to MOR, then automatically to 2	5	None, except 7 for *Statewide PC* ~~(none the 1st 90 days)~~
ACCESS TO CANTEEN	$100 week limit	$100 week limit	$100 week limit	$30 week limit	Refer to OP-22.16 for Death Row, OP-22.12 for SMU, OP-22.32 for Statewide PC. Pre-Trial SK inmates are eligible for canteen privileges.
ACCESS TO VISITS	See SCDC Policy/Procedure OP-22.09, Inmate Visitation, OP-22.12, Special Management Unit, OP-22.11, Maximum Security Unit, or OP-22.32, Statewide Protective Custody for information on visitation privileges.				
*ACCESS TO TELEPHONE	Normal	Normal	Normal	4 calls per month	Up to 1 call per month (depending upon Security Detention level designation) Statewide PC – 1 per day

his does not affect access to legal telephone calls.

Projected Release Date as of: October 17, 2016

Max-out 9/13/19 Parole Eligibility 5/31/16 SFII-A 3/17/19

Labor Crew Eligibility None

Sentence Start Date 5/21/14 Sentence Length 10yr.

Detainers NONE

Annual Hardship Review Month May

/Cust & Priv (For Inmate)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECORD OF DUE PROCESS HEARING
3rd Offense Drug Offenders

TO INMATE: Davis, Dennis **SCDC #:** 288558

INSTITUTION: Turbeville CI

SCDC General Counsel's recent interpretation of S.C. Code § 44-53-0370 and § 44-53-375, in conjunction with Bolin v. South Carolina Department of Corrections, is that inmates convicted of 3rd offense drug offenses are to be treated as 85% offenders unless all of the offender's prior drug offense are for simple possession under the same subsection (either § 44-53-0370 and § 44-53-375). If an offender has prior drug convictions for Manufacturing, Distribution, Possession with Intent to Distribute, or Conspiracy, he or she must be treated as an 85% offender on the 3rd or subsequent offense.

The Inmate Records Office has been informed that because of your prior conviction (s) for Manufacturing, Distribution, Possession with Intent to distribute, or Conspiracy, your current sentence of a 3rd or Subsequent Drug Offense should be calculate at 85%.

Your new projected dates are:

Projected Maxout Date: 3/24/2023 Projected Parole Date: _____

If you provide additional information to counter this interpretation, that information will be forwarded to the SCDC General Counsel's office for review and necessary action (if warranted).

You have the right to appeal this decision by filing an inmate grievance pursuant to SCDC Policy GA-01.12, "Inmate Grievance System".

Classification Case Manager/Designee (Print Name): M. Jackson

Signature: [signature]

Inmate Signature: Refuse to Sign Date: 2/8/17 Time: 10:13AM

[signature]

Original: Central Record
cc: Institutional Record
Inmate

Revised 1/30/17

66

State of South Carolina

Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

June 14, 2017

The Honorable Jenny Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street – 5th Floor
Columbia, South Carolina 29201

RE: Dennis Davis v. SCDPPPS

Dear Ms. Kitchings:

Enclosed please find the original *Initial Brief of the Respondent and Designation of Matter*, along with proof of service in the above-referenced case.

Thank you for your assistance in this matter.

Sincerely,

Tommy Evans, Jr.
Assistant General Counsel

TE:dn
Enclosures

cc: Dennis Davis

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.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES,.....RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn Nichols, Executive Assistant, hereby certify that I have served the within the *Initial Brief of Respondent and Designation of Matter,* dated June 14, 2017, on the Appellant this 14th day of June, 2017, by depositing a copy of same in the United States mail, postage paid, addressed to:

Dennis Davis, #288558
Turbeville Correctional Institution-TA-111
1578 Clarence E. Coker Highway 378
Turbeville, S.C. 29162

I further certify that all parties required by Rule 54 to be served have been served.

Dawn Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

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.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES,.....RESPONDENT

INTIAL BRIEF OF RESPONDENT

Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation, Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

ATTORNEY FOR THE RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITES

CASES

STATUTES

STATEMENT OF ISSUE ON APPEAL

1. **Did the lower court err in affirming the decision of the Respondent denying the Appellant's parole eligibility due to his prior drug convictions?**

STATEMENT OF THE CASE

On March 8 and April 5 of 2013, the Appellant was caught in the possession of a quantity of marijuana. In both instances the Appellant was arrested and charged with the offenses of possession with intent to distribute marijuana. (PWID marijuana) Upon further investigation it was determined that the Appellant was previously convicted on two separate occasions for drug offenses. Upon this determination, the Appellant's offense was upgraded to a third offense.

On May 21, 2014, the Appellant appeared before the Honorable Edward G. Wellmaker for two counts of PWID Marijuana 3rd offense. (PWID marijuana 3rd) Upon the conclusion of this appearance the Court sentenced the Appellant to a one hundred and twenty-five month period of incarceration for each count. In 2010, the General Assembly passed the South Carolina Reduction of Recidivism Act, which went into effect in January 2011. This law allowed persons convicted of third drug offenses parole eligibility only if their prior convictions were for possession of a controlled substance. The Respondent conducted an investigation to make a determination of the Appellant's parole eligibility. The Respondent discovered that on October 25, 2002, the Appellant was convicted of Trafficking crack cocaine. Due to this previous conviction the Respondent determined that pursuant to South Carolina law he is not eligible for parole. On June 27, 2016, the Appellant was informed that due to his prior drug conviction he is not eligible for parole.

Upon receiving this correspondence the Appellant filed a notice of appeal before the Administrative Law Court (ALC). Within this appeal the Appellant argued that it was not the intention of the General Assembly for a person with a third drug offense to be denied parole eligibility. The Appellant further argued that the denial of parole due to the "no parole" classification is unlawful pursuant to the Bolin decision. The Respondent argued that the Appellant was convicted of a third drug offense, and his prior offenses were not solely for possession;

therefore, he is not eligible for parole. The Respondent further argued that the Appellant in the Bolin was convicted of a second drug offense, so Bolin does not apply.

On February 22, 2017, the Honorable Deborah Brooks Durden issued an order affirming the decision of the Respondent. Within this order the ALC determined that the Respondent's interpretation of the law was lawful and should be upheld. Upon receiving the ALC determination the Appellant filed a notice of appeal before the South Carolina Supreme Court. Per order of the Supreme Court dated March 21, 2017, the case was transferred to the Court of Appeals.

Within this appeal the Appellant argues that the ALC erred in their decision to affirm the decision of the Respondent. The Appellant is of the opinion that the statute allows him to become parole eligible just not eligible to receive a probationary sentence. The Appellant makes an attempt to compare this case to the Bolin decision. The Respondent argues that the decision of the ALC was correct. Due to the Appellant serving a conviction for a third drug offense and with prior drug offenses not being for possession, he is not eligible for parole. The Respondent will also argue that Bolin is not on point with the present case; it does not apply and should not be considered by this Court. The initial brief of the Respondent follows.

ARGUMENTS

1. **The ALC was correct in their determination that the Respondent did not err in deciding that the Appellant is not eligible for parole due to his prior drug convictions.**

The Appellant filed a notice of appeal before the ALC to decide on the validity of the determination of the Respondent in denying the Appellant's parole eligibility. The ALC has jurisdiction over this cause of action due to the decisions of the South Carolina Supreme Court in Al-Shabbaz v. State, 338 S.C. 334, 527 S.E.2d 724 (2000), and Furtick v. S.C. Dept. of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2002). The Supreme Court in each of these decisions gave the ALC the ability to review the Respondent when they decided that an

individual is not eligible for parole, which gives appellant jurisdiction to this court upon the final decision of the ALC.

In Al-Shabbaz, the South Carolina Supreme Court created a new avenue by which inmates could seek review of a final decision of a state agency in "non-collateral" matter related to a conviction or sentence. The Court held that inmates could appeal those final agency decisions to the ALC, and ultimately the Court of Appeals pursuant to the Administrative Procedures Act. Al-Shabbaz, at 376. In Al-Shabbaz, the Court recognized that "these administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed; and, (2) when an inmate believes prison officials have erroneously calculated his sentence; sentence-related credits or custody status." Id., at 369.

In Furtick, the Court noted that appealable final decisions by the Board arises in the latter manner, where the inmate alleges that the Department erroneously determined he was not eligible for parole. The Court held that in order to determine whether an inmate's claim against the Department is entitled review by the ALC, it is first necessary to determine whether the inmate has a liberty interest in gaining access to the Parole Board. Furtick, at 149. The Court decided that the permanent denial of parole implicates a liberty interest sufficient to require at least minimal due process. Id. The ALC had the ability to make this decision in an appellant capacity. They can only make a determination regarding if the Respondent followed the law in the denial of parole eligibility. In that capacity, the decision of the ALC was lawful. The fact the Respondent followed South Carolina law in the denial of the Appellant's parole eligibility.

The Appellant argues that the Respondent erred in making the determination that he is not eligible for parole due to his prior conviction for trafficking crack cocaine. The ALC was correct in affirming this decision. The South Carolina Code of Laws specifically 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 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

committed prior drug offenses regardless of their severity parole eligibility the statute would have not limited parole eligibility for third offenders who priors were only for possession. The Appellant reads one sentence and expects the Court to only apply that sentence and no other portion of the statute to his case. That would be unlawful, as the entire statute must be applied including the portion that specifically denies the Appellant parole eligibility. Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction. Higgins v. State, 307 S.C. 446, 449, 415 S.E.2d 799, 801(1992).

The Legislature never intended for all individuals sentenced to a drug offense under this statute parole eligibility. The Appellant is of the opinion that this law was created to allow inmates easier access to the Parole Board, which is true. This law was created in order for there be a reduction of inmates, and to allow for evidence based practices to be applied in order to lower the amount of recidivism; however, there are limitations. The General Assembly wished for individuals with a first and second offense, to be allowed parole eligibility. They also wished third offenders to be allowed parole eligibility only when all the prior drug offenses were for possession. Because this does not apply to the Appellant he was lawfully denied parole eligibility, which was correctly upheld by the ALC.

It is clear that the intention of the General Assembly was to allow parole only for certain drug offenders. If an offender does not fit the criteria he cannot be eligible for parole. The Appellant only uses a single sentence to support his argument and totally ignores the entire statute which clearly denies him parole eligibility. The ALC was correct in considering the entire statute in making their decision in affirming the decision of the Respondent. A Court should consider not merely the language of the particular clause being construed, but the word and its meaning in

conjunction with the purpose of the whole statute and the policy of the law. Whitner v. State, 328 S.C. 1, 16, 492 S.E.2d 777, 779 (1997). It is clearly the intent of the legislature that if an inmate does not fall under the criteria within this statute he should not be granted parole eligibility. The Appellant failed to fall under this criteria so he was denied parole eligibility pursuant to South Carolina law. This decision was lawfully made by the Respondent and properly upheld by the ALC, who followed the intent of the legislature. A law must be interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly. Abell v. Bell, 229 S.C. 1, 4, 91 S.E.2d 548, 550 (1956).

The statute clearly states that parole is only afforded to a person convicted of a third or subsequent offense if their prior drug offenses were only for possession. That criteria would not have been included if the General Assembly wished all individuals regardless of the amount of prior drug offenses be allowed parole eligibility. If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no need to employ rule of statutory interpretation, and the court has no right to look for, or impose another meaning. Pachal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890, 892 (1995). The terms of the statute are clear; no individual with a third drug offense can be allowed to appear before the Parole Board unless all of their prior drug convictions are only for possession. The Appellant has a prior offense for trafficking crack cocaine so he is not eligible for parole. Since it was applied properly the decision of the ALC was correct and it should be affirmed. When the terms of a statute are clear, the court must apply those terms according to their literal meaning. Cooper v. Moore, 351 S.C. 207, 212, 569 S.E.2d 330, 332 (2002).

2. The Bolin decision does not apply to the present case so it was proper for the ALC not to consider it in the final decision.

Within his brief the Appellant mentions the South Carolina Court of Appeals decision of Bolin v. S.C. Dept. of Corrections, 425 S.C. 276, 781 S.E.2d 914 (2015). In Bolin this court decided:

> Defendant's convictions for second-offense conspiracy to manufacture methamphetamine were no longer no-parole offenses, for which defendant was required to serve 85% of the sentence before being eligible for parole, following effective date of Omnibus Crime Reduction and Sentencing Reform Act, even though the Act did not amend definition of the term "no parole offense" in statue describing types of offenses for which offender was not eligible for parole, where Act amended separate statutory provision to indicate that "notwithstanding any other provision of law," a person convicted and sentenced as first or second offender pursuant to that subsection was eligible for parole.

Bolin, at 276.

The Court in Bolin decided that a second offense PWID or Distribution is paroleable, and not an 85% offense. This is due to the statute allowing an inmate sentenced to a second offense parole eligibility. The Appellant is currently serving a sentence for PWID marijuana 3rd, so Bolin does not apply.

The General Assembly created the Omnibus Crime Reduction and Sentencing Act of 2010. This law stated that notwithstanding any other provision of law a person sentenced to a first or second offense for possession with intent to distribute methamphetamine is eligible for parole; however, since this offense was a C-Felony it still fell within the "no parole offense" classification. In Bolin, the Court decided that the law changed, so the offense of the Appellant was no longer a "no parole offense." So inmates serving a sentence for these offenses are no longer subject to the eighty-five percent term of mandatory imprisonment.

The offense the Appellant is currently serving is classified as a C-Felony the law specifically states that any person sentenced to an A, B, or C felony is not allowed parole. The law

never changed allowing parole eligibility for PWID Marijuana 3rd. The Appellant is responsible for serving at least eighty-five percent before any release from incarceration. The statute states notwithstanding any other provision of law which means an earlier statute does not apply. *See,* Stone v. State, 313 S.C. 533, 443 S.E.2d 544 (1994)(were two statutes are in conflict the more recent and specific statue should prevail so as to repeal the earlier general statute.) The Appellant is of the opinion that this applies to his offense; however, it does not. This only applies to an individual who has committed first and second offenses, or a third offense only when the priors are only for possession, which does not apply to the Appellant. The Bolin decision was clear, the statute changed for first and second offenders so they are the only ones that are guaranteed parole eligibility. There are extra criteria that must be met for a person serving a third offense. The Appellant does not satisfy these criteria so he cannot be allowed parole eligibility. According to the statute the Appellant is not eligible for parole on a third offense unless their prior offenses are only for possession. That is not the case in this cause of action. The ALC did not right thing in affirming the decision of the Appellant, a decision that should be upheld by this Court.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests the final decision of the Administrative Law Court be affirmed.

Respectfully submitted,

Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

Columbia, South Carolina
June 13, 2017

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.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES,.....RESPONDENT

DESIGNATION OF MATTER

In addition to the matter designated by the Appellant, the Respondent proposes the following to be included in the Record on Appeal:

1. Complete Record on Appeal in the Administrative Law Court Dated Oct. 12, 2016;
2. Order Dated February 22, 2017.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

Tommy Evans, Jr.
Assistant General Counsel

June 14, 2017

State of South Carolina

Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

June 14, 2017

Dennis Davis, #288558
Turbeville Correctional Institution-TA-111
1578 Clarence E. Coker Highway 378
Turbeville, S.C. 29162

Dear Mr. Davis:

Please find enclosed copies of the matter we designated for inclusion in the Record on Appeal.

Sincerely,

Tommy Evans, Jr.
Assistant General Counsel

TE:dn

cc: The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 16-ALJ-15-0034

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

DENNIS DAVIS, #288558.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES,.....RESPONDENT

RECORD ON APPEAL

Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

ATTORNEY FOR RESPONDENT

INDEX

State of South Carolina

Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

June 27, 2016

Dennis Davis, #288558
Ridgeland Correctional Institution
PO Box 2039
Ridgeland, South Carolina 29936

Dear Mr. Davis:

On May 21, 2014, you were convicted of Distribution of Marijuana, third offense, in Indictment Numbers 13-GS-46-02970, 02971. Pursuant to South Carolina law a person convicted of this offense with two or more aggregate violation of the law relating to drugs is not eligible for parole.

A review of your prior record reveals prior drug convictions, therefore, your current offense is ineligible for parole pursuant to South Carolina law. You will not be considered for parole on this offense.

Sincerely

Matthew C. Buchanan
General Counsel

MCB:dn

STATE OF SOUTH CAROLINA)
COUNTY OF York) IN THE COURT OF GENERAL SESSIONS
STATE VS.)
Dennis Rodger Davis Jr)
AKA:)
Race: BLACK Sex: M Age: 31)
DOB: SS#:)
Address:)
City,State,Zip: Rock Hill, SC 29730-5560)
DL#: SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐)

INDICTMENT/CASE#: 2013GS4602970
A/W#: 2013A4610200176
Date of Offense: 3/8/2013
S.C. Code § : 44-53-0370(b)(2)
CDR Code #: 0188

SENTENCE SHEET
ORIGINAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: DISTRIBUTION OF MARIJUANA, 3RD OFFENSE (5-20 YRS)

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0188
☒ 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 Recommendations ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Hamilton/Marina Bender/J Desch — 72806 SC Bar# — Dennis Davis Defendant — Christopher Attorney for Defendant — 100294 SC Bar#

WHEREFORE, the Defendant is commited to the ☑ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 125 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: ____

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: ____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100 -
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 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	$ 25 -
§ 14-1-213 (Drug Court Surcharge)	$150	$ 150 -
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5 -
3% to County (if paid in installments)		$
TOTAL		$280-

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton
Court Reporter: Aileen Butler
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 3137 Willcox
Sentence Date: 5-31-14

45 87

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF MARIJUANA

On or about March 8, 2013, the Defendant, Dennis Rodger Davis Jr. aka Dennis Roger Davis Jr., did manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana, a Schedule I controlled substance. Said incident occurred in York County, South Carolina all in violation of Section 44-53-370 of the Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

WITNESSES

YCMDEU\Avidon

dc

ARREST WARRANT NUMBER

2013A4610200176

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 8/22/13

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-46- 02970

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 22, Term 2013

THE STATE

vs.

DENNIS RODGER DAVIS JR. AKA
DENNIS ROGER DAVIS JR.

Indictment for

DISTRIBUTION OF MARIJUANA

SC Code: 44-53-370(b)(2)
CDR Code: 0188

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I Dennis R. Davis, Jr.
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:
C.C.C. PLS AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF York)
STATE VS.)
Dennis Rodger Davis Jr.)
AKA:)
Race: BLACK Sex: M Age: 31
DOB: SS#:
Address:
City,State,Zip: Rock Hill, SC 29730-5560
DL#: SID#:
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS4602971
A/W#: 2013A4610200214
Date of Offense: 4/5/2013
S.C. Code § : 44-53-0370(b)(2)
CDR Code #: 0188

☐ ORIGINAL (SENTENCE SHEET)

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: DISTRIBUTION OF MARIJUANA, 3RD OFFENSE (5-20 YRS)

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0188

☒ 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.

ATTEST: _____ 72806 _____ _____ 100284
Hamilton, Martha Bender J. Derek SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 125 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: 2013 GS46 2970
☐ 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: _____

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: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5%)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 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	$ 25
§ 14-1-213 (Drug Court Surcharge)	$150	$ 150
§ 56-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5
3% to County (If paid in installments)		$
TOTAL		$ 280

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton
Court Reporter: Aileen Butler
Presiding Judge _____
Judge Code: 2137
Sentence Date: 5-21-14

SCCA/217 (03/2011)

HS 7 90

STATE OF SOUTH CAROLINA)
) INDICTMENT
COUNTY OF YORK)

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF MARIJUANA

On or about April 5, 2013, the Defendant, Dennis Rodger Davis Jr. aka Dennis Roger Davis Jr., did manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana, a Schedule I controlled substance. Said incident occurred in York County, South Carolina all in violation of Section 44-53-370 of the Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

6 ~~49~~ 91

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF MARIJUANA

On or about April 5, 2013, the Defendant, Dennis Rodger Davis Jr. aka Dennis Roger Davis Jr., did manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana, a Schedule I controlled substance. Said incident occurred in York County, South Carolina all in violation of Section 44-53-370 of the Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

1. 507 92

WITNESSES

YCMDEU\Avidon

dc

ARREST WARRANT NUMBER

2013A4610200214

ACTION OF GRAND JURY

TRUE BILL

Jimmy Eakins

Foreperson of Grand Jury

Date: 8/22/13

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-46-02971

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 22, Term 2013

THE STATE

vs.

DENNIS RODGER DAVIS JR. AKA
DENNIS ROGER DAVIS JR.

Indictment for

DISTRIBUTION OF MARIJUANA

SC Code: 44-53-370(b)(2)
CDR Code: 0188

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I Denais R. Davis, Jr.
hereby appear in my own proper person and plead guilty to the within indictment or to

Dennis Davis

Defendant

Witness:
C.C.C. P.S. AND G.S.

WITNESSES

YCMDE/LA/vidon

dc

ARREST WARRANT NUMBER

2013A4610200214

ACTION OF GRAND JURY

TRUE BILL

Jimmy Eakins
Foreperson of Grand Jury
Date: 8/22/13

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-46-02971

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 22, Term 2013

THE STATE

vs.

DENNIS RODGER DAVIS JR. AKA
DENNIS ROGER DAVIS JR.

Indictment for

DISTRIBUTION OF MARIJUANA

SC Code: 44-53-370(b)(2)
CDR Code: 0188

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I Dennis R. Davis, Jr.
hereby appear in my own proper person and plead guilty to the within indictment or to

Dennis Davis
Defendant

Witness:
C.C.C. G.S. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF York)
STATE VS.)
Dennis Roger Davis)
AKA:)
Race: Black Sex: male Age: 20)
DOB: SS#:)
Address:)
Rock Hill SC)
DL#: SID#: SC01357749)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:
2002-GS-46-2404
A/W#: C-787786
Date of Offense: 6-6-02
S.C. Code §: 44-53-375
CDR Code #: 01410
☐ CASE RESTORED
SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Trafficking Crack Cocaine, 10-28 grams 1st offense
in violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 01410
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
Solicitor

Dennis X Davis
Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 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.

☒ The Defendant is to be given credit for 1 days/months jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: [illegible]

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Heard, ☐Waived, ☐Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____

*Fine: ..... $ _____
§14-1-206 (Assessments 100%) ..... $ _____
§14-1-211(A)(1) (Surcharge) ..... $ 100
§14-1-211(A)(2) (Surcharge) ..... $ _____
§56-5-2995 (DUI Assessment) ..... $ _____
3% to County (if paid in installments) ..... $ _____
TOTAL ..... $ 100

PTUP ____
_____ days/hours Public Service Employment
Obtain GED ____
Attend Voc Rehab. or Job Corps ____
May serve W/E beginning _____
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: _____

David Hamilton
Clerk of Court/ Deputy Clerk
Court Reporter: Shannon McGilberry

PRESIDING JUDGE _____
Judge Code: 011113
Sentence Date: 10/25/02

White - Clerk Green - Corrections Canary - Probation Pink - Defendant

SCCA/217 (1/2001)

8 55.5 95

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on August 15, 2002, the Grand Jurors of York County present upon their oath:

TRAFFICKING CRACK COCAINE

That on or about June 6, 2002, in York County, South Carolina, the Defendant, Dennis Roger Davis, did wilfully, unlawfully and knowingly sell, deliver, purchase, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of a quantity of crack cocaine, as defined and otherwise limited in Sections 44-53-375, and did Traffick in crack cocaine in an amount being more than 10 grams but less than 28 grams, in violation of Section 44-53-375, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

E B Sarmo IV
ASSISTANT SOLICITOR

9 SAJ 96

WITNESSES

DEU HARRIS

pt

ARREST WARRANT NUMBER

G 780786

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2002-GS-46-2404

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 15, Term 2002

THE STATE

vs.

DENNIS ROGER DAVIS

Indictment for

TRAFFICKING CRACK COCAINE

SC Code: §44-53-375
CDR Code: 450

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

x Dennis Davis
Defendant

Witness:
Stephanie Cook, Clerk II
C.C.C. PLS. AND G.S.

10

STATE OF SOUTH CAROLINA
COUNTY OF York
STATE VS.
Dennis Roger Davis
AKA:
Race: Black Sex: male Age: 20
DOI SS#:
Address:
Rock Hill S.C.
DL# unknown SID#: SC01357749

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:
2002 GS 46 2405
A/W#: Q-780787
Date of Offense: 6-6-02
S.C. Code §: 44-53-445
CDR Code #: 01101018
☐ CASE RESTORED
SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Possession of Crack Cocaine With Intent to Distribute Within a Proximity Calling in violation of § 44-53-445 of the S.C. Code of Laws, bearing CDR Code # 01101018

☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor

Dennis Davis
Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed ____ years and/or to pay a fine of $ 10,000.00 provided that upon the service of 5 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.

☒ The Defendant is to be given credit for 1 day/months jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all sentences this Date

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Heard, ☐Waived, ☐Ordered
Total: $ ____ plus 20% fee: $ ____
Payment Terms: ____
☐ set by SCDPPPS ____
Recipient: ____

*Fine	$ ____
§14-1-206 (Assessments 100%)	$ ____
§14-1-211(A)(1) (Surcharge)	$ 100
§14-1-211(A)(2) (Surcharge)	$ ____
§56-5-2995 (DUI Assessment)	$ ____
3% to County (if paid in installments)	$ ____
TOTAL	$ 100

PTUP ____
____ days/hours Public Service Employment
Obtain GED ____
Attend Voc Rehab, or Job Corps ____
May serve W/E beginning ____
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: ____

David Hamilton
Clerk of Court/ Deputy Clerk

Court Reporter Shannon McGillivary

PRESIDING JUDGE
Judge Code: 011113
Sentence Date: 10/25/02

White - Clerk Green - Corrections Canary - Probation Pink - Defendant

SCCA/217 (1/2001)

H 567 98

STATE OF SOUTH CAROLINA)
) INDICTMENT
COUNTY OF YORK)

At a Court of General Sessions, convened on August 15, 2002, the Grand Jurors of York County present upon their oath:

POSSESSION OF CRACK COCAINE WITH INTENT TO DISTRIBUTE WITHIN PROXIMITY OF A COLLEGE OR UNIVERSITY

That on or about June 6, 2002, in York County, South Carolina, the Defendant, Dennis Roger Davis, did distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute a controlled substance, to wit: crack cocaine, within a one-half mile radius of the grounds of a college or university, that being Clinton Junior College, located in the city of Rock Hill, South Carolina, such possession with intent to distribute not having been authorized by law, all in violation of Section 44-53-445, Code of Laws of South Carolina (1976), as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

E B Spruill III
ASSISTANT SOLICITOR

12 SP.J 99

WITNESSES

DEJ HARRIS

pt

ARREST WARRANT NUMBER

G 780787

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO: 2002-GS-46- 2405

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 15, Term 2002

THE STATE

vs.

DENNIS ROGER DAVIS

Indictment for

POSSESSION OF CRACK COCAINE WITH INTENT TO DISTRIBUTE WITHIN PROXIMITY OF A COLLEGE OR UNIVERSITY
SC Code: § 44-53-445
CDR Code: 108

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I

hereby appear in my own proper person and plead guilty to the within indictment or to

/s/ Dennis Davis
Defendant

Witness:
Stephanie Cook, Clerk II
C.C.C. PLS. AND G.S.

13

STATE OF SOUTH CAROLINA)
COUNTY OF York)
STATE VS.)
Dennis Roger Davis)
AKA:)
Race: Black Sex: male Age: 20)
DOB ____ SS#: ____)
Address: ____)
Rock Hill SC)
DL# ____ SID#: SC01357749)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:
2002 GS- 46 : 2406
A/W#: 61993BV
Date of Offense: 6-6-02
S.C. Code §: 44-53-370
CDR Code #: D16519
☐ CASE RESTORED
SENTENCE
☑ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☑ PLEADS TO: Possession of Marijuana 1st offense
in violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # D16519
☑ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45
The charge is: ☑ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☑ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor

x Dennis Davis
Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, or ☒ County Detention Center, for a determinate term of 30 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.

☒ The Defendant is to be given credit for 1 days/months jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all sentences this Date

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Heard, ☐Waived, ☐Ordered
Total: $ ____ plus 20% fee: $ ____
Payment Terms: ____
☐ set by SCDPPPS ____
Recipient: ____

*Fine:	$ ____
§14-1-206 (Assessments 100%)	$ ____
§14-1-211(A)(1) (Surcharge)	$ 100
§14-1-211(A)(2) (Surcharge)	$ ____
§56-5-2995 (DUI Assessment)	$ ____
3% to County (if paid in installments)	$ ____
TOTAL	$ 100

PTUP ____
____ days/hours Public Service Employment
Obtain GED ____
Attend Voc Rehab. or Job Corps ____
May serve W/E beginning ____
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: ____

David Hamilton
Clerk of Court/ Deputy Clerk
Court Reporter: Shannon McGilberry

PRESIDING JUDGE
Judge Code: 01113
Sentence Date: 10/25/02

White - Clerk Green - Corrections Canary - Probation Pink - Defendant

14 59) 101

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on September 12, 2002, the Grand Jurors of York County present upon their oath:

POSSESSION OF MARIJUANA

That on or about June 6, 2002, in York County, South Carolina, the Defendant, Dennis Roger Davis, did possess a quantity of marijuana, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

~~60~~ 102

WITNESSES

DEU \ Harris

asg

ARREST WARRANT NUMBER

61993BV

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2002-GS-46-2406

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

September 12, Term 2002

THE STATE

vs.

DENNIS ROGER DAVIS

Indictment for

POSSESSION OF MARIJUANA

SC Code: § 44-53-370
CDR Code: 0659

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

+ Dennis Davis
Defendant

Witness:
Stephanie Cook, Clerk II
C.C.C. PLS. AND G.S.

19

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 16-ALJ-15-0034

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

DENNIS DAVIS, #288558 ..... APPELLANT,

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, ... RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 61 of the Rules of Procedure for the Administrative Law Court and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.

Tommy Evans, Jr.,
Assistant General Counsel

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

October 12, 2016

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dennis Davis, #288558, Appellant, vs. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	Docket No.: 16-ALJ-15-0034-AP ORDER

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to the appeal of Dennis Davis (Appellant), an inmate incarcerated with the South Carolina Department of Corrections. On June 27, 2016, the South Carolina Department of Probation, Parole and Pardon Services (Department) issued a final decision letter determining that the Appellant is ineligible for parole based upon his prior drug convictions. On August 11, 2016, Appellant filed a Notice of Appeal with this Court challenging the Department's decision. Upon careful consideration of the record on appeal and briefs of the parties, the Department's decision is affirmed.

BACKGROUND

The Department determined that Appellant is ineligible for parole based upon his prior convictions. Appellant is currently serving two sentences for Distribution of Marijuana, 3rd Offense. Appellant received these 125-month concurrent sentences on May 21, 2014, pursuant to South Carolina Code Section 44-53-370(b)(2). In 2002, Appellant received three other drug-related sentences: five years for Trafficking Crack Cocaine, 10–28 grams, 1st Offense, pursuant to Section 44-53-375(C)(1)(a); ten years for Possession of Crack Cocaine with Intent to Distribute Within Proximity of a College, pursuant to Section 44-53-445(B)(2); and thirty days for Possession of Marijuana, 1st Offense, pursuant to Section 44-53-370(d)(4).

ISSUE ON APPEAL

Whether the Department erred in determining that Appellant is ineligible for parole because of his prior drug offenses.

STANDARD OF REVIEW

The court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court decisions in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an

administrative review process for inmate appeals), and Furtick v. S.C. Dept. of Prob., Parole & Pardon Servs., 352 S.C. 594, 576 S.E.2d 146 (2003) (incorporating final decisions of the Department into that review process). 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. Dept. of Corrs., 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Because being granted parole is a privilege and not a right, the routine denial of parole does not implicate such a liberty interest; however, the denial of eligibility for parole does involve such a liberty interest, and thus is a matter properly before the ALC for review. See James v. S.C. Dept. of Prob., Parole & Pardon Servs., 376 S.C. 392, 395-96, 656 S.E.2d 399, 401–02 (Ct. App. 2008); see also Sullivan v. S.C. Dept. of Corrs., 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003).

When reviewing a decision of the Department, the ALC sits in an appellate capacity. See Furtick, 352 S.C. at 599, 576 S.E.2d at 149; Al-Shabazz, 338 S.C. at 377, 527 S.E.2d at 754. Under the appellate standard of the Administrative Procedures Act, the court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2016). The court 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. 2016). 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

Appellant argues that the Department has erred in concluding that he is not eligible for parole under the language of Section 44-53-370(b)(2), and that the Department has failed to correctly apply the recent decision of the Court of Appeals in Bolin v. South Carolina Department of Corrections, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016), rehearing denied (Feb. 24, 2016). The Court disagrees. A review of the relevant statutes and Appellant's prior convictions supports the Department's determination that Appellant is ineligible for parole.

In determining whether an inmate is eligible for parole, several different statutes must be reviewed. The foundational rules of parole are contained in Title 24 of the South Carolina Code.

Specifically, Section 24-21-610 sets the minimum amount of time that must be served of a sentence before an inmate reaches eligibility. See S.C. Code Ann. § 24-21-610 (2007). However, the baseline rules have been modified by other subsequently enacted or amended statutes. Section 24-13-100, enacted in 1995, defines Class A, B, and C felonies as "no parole offenses." Id. at § 24-13-100.[1] When an inmate's crime is a no-parole offense, the inmate is not eligible for "parole" consideration. Id. at § 24-21-30; see also Bolin, 415 S.C. at 283, 781 S.E.2d at 917 ("It is without doubt that the statutory definition for the term 'no-parole offense' in section 24-13-100, i.e., 'a class A, B, or C felony . . . ,' simply describes the types of offenses for which the offender is not eligible for parole."). Instead, the inmate must complete a community supervision program. S.C. Code Ann. § 24-21-30 (2007). Unless provided otherwise, an inmate becomes eligible for the community supervision program after completion of at least eighty-five percent of the actual term of imprisonment imposed. Id. at § 24-13-150(A) (Supp. 2016). This is known as the "85% rule."

However, this rule for no parole offenses has been modified for certain specific offenses within the language of the sentencing statute. In particular, the legislature has amended certain drug crime sentencing statutes to allow for parole eligibility in certain cases. The Court of Appeals has construed the language of the amendments to repeal the no-parole offense statute insofar as there is a conflict with the more recent and specific amendments. Bolin, 415 S.C. at 282, 781 S.E.2d at 917 (citation omitted) ("The legislature's use of the phrase 'Notwithstanding any other provision of law,' in the amendments to sections 44-53-375 and -370 expresses its intent to repeal section 24-13-100 *to the extent* it conflicts with amended sections 44-53-375 and -370." (emphasis in original)). The holding of the Court of Appeals in Bolin is very specific and does not repeal the 85% rule in regards to all offenses contained in the statutory sections amended by the legislature.

> The subsection of the drug statute that Appellant was sentenced under provides:
>
> Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense 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. 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

[1] Class A, B, and C felonies are listed in Section 16-1-90. Appellant's offense is a Class C felony.

> 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) (Westlaw through 2014). Appellant's argument is based upon an inference derived from the last sentence. He argues that because parole ineligibility was not explicitly stated, it is by implication not included. However, this argument ignores, not only the plain language of the statute, but the larger statutory scheme of parole eligibility.

> In interpreting a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Further, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.

Ranucci v. Crain, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014) (internal quotation marks and citations omitted). Quite simply, the drug statute does not include language making a third offender with non-qualifying prior offenses ineligible for parole because the ineligibility has already been provided for by the no-parole offense statute.

Therefore, unless Appellant fits within the exceptions to the overall rule carved out by the notwithstanding provisions, he is ineligible for parole because he was sentenced for a Class C felony. The exception for a third offense requires that "all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d)" of Section 44-53-370. In this case, Appellant has prior offenses sentenced under Section 44-53-375(C)(1)(a) and Section 44-53-445(B)(2). Thus, Appellant does not fall within the exception and the no-parole offense rule still applies to Appellant.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the decision of the Department is **AFFIRMED**.

AND IT IS SO ORDERED.

FILED
FEB 22 2017
SC ADMIN. LAW COURT

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

February 22, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 22nd day of February 2017
By: _____ Judicial Law Clerk

December 22, 2017

The Honorable Jenny Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street - 6th floor
Columbia, SC 29201

Re: Dennis Davis V. SCDPPPS

Dear Ms. Kitchings:

Please find enclosed the Appellants original final Brief along with a Certificate of Service in the above Captioned Case. Please be advised that due to SCDC Policy GA 10.3 Inmate access to Courts policy I was unable to fully Comply with the SCACR 211(b). SCDC policy GA 10.3 Inmate access to Courts States that they will not make Copies of any hand written or generated materials. Because of this policy I was unable to fully Comply with SCACR 211(b). Thank you for your assistance in this matter.

Sincerely,

Dennis Davis

Dennis Davis
Appellant

6

State of South Carolina Court of Appeals

[In the Supreme Court]

Appeal from the Administrative Law Court

The Honorable Deborah Brooks Durden, ALJ

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

Appellate Case No.: 2017-001663

Dennis Davis, #288558, Appellant,

V.

South Carolina Department of Probation, Parole and Pardon Services,

Respondent.

Final Brief of Appellant

Dennis Davis #288558

Appellant

Dennis Davis #288558

T.C.I. TA-111

1578 Clarence E. Coker Hwy, 378

Turbeville, SC 29162

Table of Contents

Table of Authorities

Cases

Statutes

Statement of Issue on Appeal

1. Did the ALC Judge, err in determining that Appellant is ineligible for parole based off prior convictions and Statute 24613-100, That was preemted and deemed unconstitu-tional by Bolin v. S.C. Dept. of Corrections, 415 S.C. 276, 781 S.E. 2d 914 (CT. App. 2016), rehearing denied (Feb. 24, 2016)

State of South Carolina Court of Appeals
[In the Supreme Court]

Dennis Davis, #288658, Appellant, V. South Carolina Dept. of Probation, Parole, and Pardon Services, Respondent.	Appellant Case No.: 2017-000663 Appellants final Brief

Issue on Appeal

Did the ALC Judge, err in determining that Appellant is ineligible for parole based off prior convictions and statute 24-13-100, that was preempted and deemed Un-Constitutional by Bolin V. South Carolina Dept. of Corrections, 415 S.C. 276, 781 S.E. 2d 914 (CT. App 2016), rehearing denied (Feb 24, 2016)?

Statement of the Case

This Appeal comes before the South Carolina Court of Appeals following the Honorable Deborah Brooks Durden's affirmation of the South Carolina Dept. of Probation, Parole, and Pardon Services, that Appellant Dennis Davis an inmate incarcerated with the South Carolina Dept. of Corrections is not eligible for Parole. The Honorable Judge Deborah Brooks Durden made this ruling on 2/22/17 and this timely appeal followed.

Argument

Appellant argues that the Department as well as the ALC Court erred in finding that the Appellant is not eligible for parole based on statutes that do not apply to appellant and prior convictions.

Statute 44-53-370(b)(2) states that, "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." The statute is clear and unambiguous, because it tells you what to do if all priors are for possession and if one does not meet the criteria of subsections (C) and (D) of statute 44-53-370(b)(2). If one meets the criteria of subsections (C) and (D) then just like a first or second offense that person is eligible for a suspended sentence and probation granted. This is a remedy given in General Sessions Court for a non-offender to avoid coming to prison! If you fall in the In all other cases subsection or category of 44-53-370(b)(2) the sentence must not be suspended nor probation granted. This simply means a person who's priors are not only for possession of a controlled substance, that person does not have the

option of not coming to pass! To which a person with a first or second and third or subsequent offense fitting the (C) and (D) clause of 44-53-370(b)(2) can escape a jail or prison sentence.

The Omnibus Crime Reduction and Sentencing reform Act of 2010 was passed by legislature to preserve Public Safety, reduce Crime and use Correctional resources most effectively. It is therefore the purpose of this Act to reduce recidivism, provide fair and effective Sentencing options and employ evidence based practices for smarter use of Correctional funds and improve public safety. 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.

The SCDPPPS (Respondent) and ALC Judge Deborah Brooks Durden Completely ignores the plain language of the Statute and also the documented intent of the legislature in Bolin V. SC Dept. of Corrections, 415 S.C. 276, 781 S.E.2d 914 (CT. App. 2016). The term, "Notwithstanding any other provision of law", means no other provision of law overrides this law! Notwithstanding any other provision of law was added to Statute 44-53-370(b)(2) purposely to repeal any other provision of law. The ALC Judge ignores and states, "a review of the relevant statutes and Appellants prior Convictions supports the departments determination Appellant is ineligible for parole." The

Court Also States that, "Several different Statutes must be reviewed." However the Court is not giving effect to Notwithstanding any other provision of law, the language added to Statute 14A-53-370(b)(12). Notwithstanding any other provision of law means just that, that no other provision of law can oppose or prevent this laws effect! Notwithstanding any other provision of law is Clear and Unambiguous! The ALC Court says, "In interpreting a statute, words must be given their plain and ordinary meaning without resorting to forced or subtile Construction to limit or expand the Statutes operation." Further, the Statute must be read as a whole and sections which are apart of the same general statutory law must be Construed together and each one given effect." Ronucci V. Crain, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014). Well, my right to parole, supervised furlough, Community supervision, work release, work Credits, education Credits and good Conduct Credits is not Subtile or forced Construction nor does it limit or expand the Statute as The ALC Court has done. The Statute 14A-53-370(b)(12) Clearly States, "Notwithstanding any other provision of law" in applying laws or reviewing statutes that are repealed by the language in the Statute is irrelevant and actually applying them would be subtile and forced Construction and would also limit the Statutes operation. Though Bolin V. SC Dept. of Corrections, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016) was a second offense the same rules apply! The only difference in rights afforded to a person convicted of 1st or

second offense Compared to a person for a 3rd or subsequent who does not Fit the (C) and (D) Criteria of Statute 44-53-370(b)(2) is the sentence must not be suspended nor probation granted. The ALC Judge States, "Because Appellant doesn't fit within the (C) and (D) Clause that the term Notwithstanding any other provision of law does not apply to Appellant." I was Convicted and Sentenced for a violation of Statute 44-53-370(b)(2) which is a 3rd or Subsequent offense! Appellant being sentenced under this statute and not fitting the (C) and (D) Criteria makes him ineligible for a suspended Sentence and probation granted only! Not parole, supervised furlough, Community Supervision, work release, work Credits, education Credits, and good Conduct Credits. The ALC Court also States "ineligible for parole because I was Sentenced for a Class C felony. In Bolin V. SC Dept. of Corrections 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016) that it is unreasonable and illogical 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. The ALC Court based her decision on the pre-existing no-parole offense Statute that was Overturned and deemed unconstitutional, that Clearly no longer applies to my offense. My Crime is not violent so it is illogical and unconstitutional to be Classified as such.

In State V. Bolin, 378 SC. 96; 662 S.E.2d 38 The Cannon 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. When interpreting a statute, the words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limit or expand the statute. Statute 44-53-370(b)(2) says, "In all other cases the sentence must not be suspended nor probation granted." It states clearly what a person who does not fit the (c) and (d) clause of 44-53-370(b)(2). It does not say that I'm incligible for parole, supervised furlough, community supervision, work release, work Credits, education Credits, and good Conduct Credits. The omission of any provision or right in the Statute 44-53-370(b)(2) indicates the legislature did not intend to limit the rights of a person in, "The all other cases" Category past a suspended Sentence or probation. State V. Thomas, 377 SC. 466; 642 SE. 2d 714; 2007. The Cardinal rule for statutory Construction is to ascertain and effectuate the intention of the legislature. However, Statutes must be read as a Whole, and sections which are a part of the same general statutory scheme must be Construed together and each one given effect, if reasonable. The legislature listed the provision Appellant is not entitled to which is a suspended Sentence or probation granted. The ALC Court erred in it's decision that Appellant is not eligible for parole. In the amended Statute 44-53-370(b)(2) the legislature identifies the parameters of what is to be allowed to all Convicted under this Statute which includes a suspended Sentence and probation granted, Parole eligibility, supervised furlough, Community supervision, work release, work Credits, education Credits, and good

Conduct credits. For those convicted in the category of In all other cases the Sentence must not be suspended nor probation granted. If the legislature intended to disallow any other provisions of those listed in that category they would have expressedly said so as they did about suspending the Sentence and granting probation. Hodges, at 87, 533 S.E.2d at 582 ("The enumerations of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded.") By explicitly stating to those "in all other cases" Category and not addressing the other provisions granted to all convicted under the subsections it is reasonable to conclude that the legislature knows the Court is to Construe that to mean these Convicted that falls in the before mentioned Category are eligible for the not mentioned provisions under the rules of Statutory Construction. (The legislature is presumed to be aware of [courts] interpretation of Statutes.) Wigfall V. Tideland Utilities Inc., 580 S.E.2d 100, 354 S.C. 100 (2003) and Hodges V. Rainey, 341 S.C. 79, 86, 553 S.E. 2d 578, 582 (2000) ("The Canons of Construction expressio unius est exclusio alterius holds that to express or include one thing implies the exclusion of another, or of the alternative.") By explicitly stating the Sentence must not be suspended nor probation granted to those in the "all other cases" Category and not addressing the other provisions granted to all convicted under this subsection, it is reasonable to conclude that legislature knows the Court is to Construe that to mean that those convicted that falls in the before mentioned Category are eligible for the non mentioned provisions under the rules of Statutory Construction. "In all other Cases", Category the Statute only

says they are not to have their sentence suspended nor probation granted. If the legislature intended for any of the other provisions to be disallowed to those in that category they would have expressedly said so as they did about suspending sentences and granting probation. The enumeration of exclusion from the operation of a statute indicates that the all other cases not specifically excluded. Exceptions strengthen the force of the general law and enumeration weaken it as to things not expressed. Hedges at 87, 533 S.E. 2d at 581. Considering the wording of the statute alone, it seems clear that the legislature only wanted the offenders that fell in the category of "In all other cases", it would follow that those of a 3rd or subsequent offense and all their Priors not being for possession would be allowed Parole. Applying the principle of "expressio unius est exclusio alterius" it should be the legal conclusion of this court that the legislature intended for all the provisions of the statute to be granted to those in the in all other cases category except for having the sentence suspended and probation granted, which were specifically excluded.

Conclusion

Based on the foregoing facts of the law, ① I ask that the SCDPPPS be made to give me an emergency hearing for parole for the year of 2016 30 to 45 days from the decision of this honorable Court. ② I also ask that the SCDPPPS be made to give me an emergency hearing for parole for the year of 2017 30 to 45 days after the last hearing asked for to make up for 2016. ③ I also ask this Honorable Court to order SCDPPPS to take Appellant up on a year to year basis if parole is not granted.

I am an non-violent or Paroloable offender therefore by law its a right and Created liberty interest by the State for any person serving a non-violent or paroleable sentence to go up for parole on a yearly basis if or after parole rejections from the board.

S/ Dennis Davis

Dennis Davis #288558
TCI TA-111
1578 Clarence E. Coker Hwy 378
Tirzah, SC 29162

Certificate of Service

I hereby Certify that I served a copy of the foregoing brief on counsel for the Respondent by depositing a copy in the United States Mail postage-prepaid on the ____ day of ____, 2017. addressed as follows:

Tommy Evans Jr.
SCDPPPS
P.O. Box 50666
7221 Devine St.
Columbia, SC 29250

s/ Dennis Davis
Dennis Davis #288558
T.C.I. TA-111
1578 Clarence E. Cater Hwy, 378
Turbeville, SC. 29162

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

FINAL BRIEF OF RESPONDENT

Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation, Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

ATTORNEY FOR THE RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITES

CASES

STATUTES

STATEMENT OF ISSUE ON APPEAL

1. **Did the lower court err in affirming the decision of the Respondent denying the Appellant's parole eligibility due to his prior drug convictions?**

STATEMENT OF THE CASE

On March 8 and April 5 of 2013, the Appellant was caught in the possession of a quantity of marijuana. In both instances the Appellant was arrested and charged with the offenses of possession with intent to distribute marijuana. (PWID marijuana) Upon further investigation it was determined that the Appellant was previously convicted on two separate occasions for drug offenses. Upon this determination, the Appellant's offense was upgraded to a third offense.

On May 21, 2014, the Appellant appeared before the Honorable Edward G. Wellmaker for two counts of PWID Marijuana 3rd offense. (PWID marijuana 3rd) Upon the conclusion of this appearance the Court sentenced the Appellant to a one hundred and twenty-five month period of incarceration for each count. In 2010, the General Assembly passed the South Carolina Reduction of Recidivism Act, which went into effect in January 2011. This law allowed persons convicted of third drug offenses parole eligibility only if their prior convictions were for possession of a controlled substance. The Respondent conducted an investigation to make a determination of the Appellant's parole eligibility. The Respondent discovered that on October 25, 2002, the Appellant was convicted of Trafficking crack cocaine. Due to this previous conviction the Respondent determined that pursuant to South Carolina law he is not eligible for parole. On June 27, 2016, the Appellant was informed that due to his prior drug conviction he is not eligible for parole. (R.p.1).

Upon receiving this correspondence the Appellant filed a notice of appeal before the Administrative Law Court (ALC). Within this appeal the Appellant argued that it was not the intention of the General Assembly for a person with a third drug offense to be denied parole eligibility. The Appellant further argued that the denial of parole due to the "no parole" classification is unlawful pursuant to the Bolin decision. The Respondent argued that the Appellant was convicted of a third drug offense, and his prior offenses were not solely for possession;

therefore, he is not eligible for parole. The Respondent further argued that the Appellant in the Bolin was convicted of a second drug offense, so Bolin does not apply.

On February 22, 2017, the Honorable Deborah Brooks Durden issued an order affirming the decision of the Respondent. Within this order the ALC determined that the Respondent's interpretation of the law was lawful and should be upheld. (R.p.15-p.18). Upon receiving the ALC determination the Appellant filed a notice of appeal before the South Carolina Supreme Court. Per order of the Supreme Court dated March 21, 2017, the case was transferred to the Court of Appeals.

Within this appeal the Appellant argues that the ALC erred in their decision to affirm the decision of the Respondent. The Appellant is of the opinion that the statute allows him to become parole eligible just not eligible to receive a probationary sentence. The Appellant makes an attempt to compare this case to the Bolin decision. The Respondent argues that the decision of the ALC was correct. Due to the Appellant serving a conviction for a third drug offense and with prior drug offenses not being for possession, he is not eligible for parole. The Respondent will also argue that Bolin is not on point with the present case; it does not apply and should not be considered by this Court. The initial brief of the Respondent follows.

ARGUMENTS

1. **The ALC was correct in their determination that the Respondent did not err in deciding that the Appellant is not eligible for parole due to his prior drug convictions.**

The Appellant filed a notice of appeal before the ALC to decide on the validity of the determination of the Respondent in denying the Appellant's parole eligibility. The ALC has jurisdiction over this cause of action due to the decisions of the South Carolina Supreme Court in Al-Shabbaz v. State, 338 S.C. 334, 527 S.E.2d 724 (2000), and Furtick v. S.C. Dept. of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2002). The Supreme Court in each of these decisions gave the ALC the ability to review the Respondent when they decided that an

individual is not eligible for parole, which gives appellant jurisdiction to this court upon the final decision of the ALC.

In Al-Shabbaz, the South Carolina Supreme Court created a new avenue by which inmates could seek review of a final decision of a state agency in "non-collateral" matter related to a conviction or sentence. The Court held that inmates could appeal those final agency decisions to the ALC, and ultimately the Court of Appeals pursuant to the Administrative Procedures Act. Al-Shabbaz, at 376. In Al-Shabbaz, the Court recognized that "these administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed; and, (2) when an inmate believes prison officials have erroneously calculated his sentence; sentence-related credits or custody status." Id., at 369.

In Furtick, the Court noted that appealable final decisions by the Board arises in the latter manner, where the inmate alleges that the Department erroneously determined he was not eligible for parole. The Court held that in order to determine whether an inmate's claim against the Department is entitled review by the ALC, it is first necessary to determine whether the inmate has a liberty interest in gaining access to the Parole Board. Furtick, at 149. The Court decided that the permanent denial of parole implicates a liberty interest sufficient to require at least minimal due process. Id. The ALC had the ability to make this decision in an appellant capacity. They can only make a determination regarding if the Respondent followed the law in the denial of parole eligibility. In that capacity, the decision of the ALC was lawful. The fact the Respondent followed South Carolina law in the denial of the Appellant's parole eligibility.

The Appellant argues that the Respondent erred in making the determination that he is not eligible for parole due to his prior conviction for trafficking crack cocaine. The ALC was correct in affirming this decision. The South Carolina Code of Laws specifically 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 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

committed prior drug offenses regardless of their severity parole eligibility the statute would have not limited parole eligibility for third offenders who priors were only for possession. The Appellant reads one sentence and expects the Court to only apply that sentence and no other portion of the statute to his case. That would be unlawful, as the entire statute must be applied including the portion that specifically denies the Appellant parole eligibility. Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction. Higgins v. State, 307 S.C. 446, 449, 415 S.E.2d 799, 801(1992).

The Legislature never intended for all individuals sentenced to a drug offense under this statute parole eligibility. The Appellant is of the opinion that this law was created to allow inmates easier access to the Parole Board, which is true. This law was created in order for there be a reduction of inmates, and to allow for evidence based practices to be applied in order to lower the amount of recidivism; however, there are limitations. The General Assembly wished for individuals with a first and second offense, to be allowed parole eligibility. They also wished third offenders to be allowed parole eligibility **only** when all the prior drug offenses were for possession. Because this does not apply to the Appellant he was lawfully denied parole eligibility, which was correctly upheld by the ALC.

It is clear that the intention of the General Assembly was to allow parole only for certain drug offenders. If an offender does not fit the criteria he cannot be eligible for parole. The Appellant only uses a single sentence to support his argument and totally ignores the entire statute which clearly denies him parole eligibility. The ALC was correct in considering the entire statute in making their decision in affirming the decision of the Respondent. A Court should consider not merely the language of the particular clause being construed, but the word and its meaning in

conjunction with the purpose of the whole statute and the policy of the law. Whitner v. State, 328 S.C. 1, 16, 492 S.E.2d 777, 779 (1997). It is clearly the intent of the legislature that if an inmate does not fall under the criteria within this statute he should not be granted parole eligibility. The Appellant failed to fall under this criteria so he was denied parole eligibility pursuant to South Carolina law. This decision was lawfully made by the Respondent and properly upheld by the ALC, who followed the intent of the legislature. A law must be interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly. Abell v. Bell, 229 S.C. 1, 4, 91 S.E.2d 548, 550 (1956).

The statute clearly states that parole is only afforded to a person convicted of a third or subsequent offense if their prior drug offenses were only for possession. That criteria would not have been included if the General Assembly wished all individuals regardless of the amount of prior drug offenses be allowed parole eligibility. If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no need to employ rule of statutory interpretation, and the court has no right to look for, or impose another meaning. Pachal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890, 892 (1995). The terms of the statute are clear; no individual with a third drug offense can be allowed to appear before the Parole Board unless all of their prior drug convictions are only for possession. The Appellant has a prior offense for trafficking crack cocaine so he is not eligible for parole. Since it was applied properly the decision of the ALC was correct and it should be affirmed. When the terms of a statute are clear, the court must apply those terms according to their literal meaning. Cooper v. Moore, 351 S.C. 207, 212, 569 S.E.2d 330, 332 (2002).

2. **The Bolin decision does not apply to the present case so it was proper for the ALC not to consider it in the final decision.**

Within his brief the Appellant mentions the South Carolina Court of Appeals decision of Bolin v. S.C. Dept. of Corrections, 425 S.C. 276, 781 S.E.2d 914 (2015). In Bolin this court decided:

> Defendant's convictions for second-offense conspiracy to manufacture methamphetamine were no longer no-parole offenses, for which defendant was required to serve 85% of the sentence before being eligible for parole, following effective date of Omnibus Crime Reduction and Sentencing Reform Act, even though the Act did not amend definition of the term "no parole offense" in statue describing types of offenses for which offender was not eligible for parole, where Act amended separate statutory provision to indicate that "notwithstanding any other provision of law," a person convicted and sentenced as first or second offender pursuant to that subsection was eligible for parole.

Bolin, at 276

The Court in Bolin decided that a second offense PWID or Distribution is paroleable, and not an 85% offense. This is due to the statute allowing an inmate sentenced to a second offense parole eligibility. The Appellant is currently serving a sentence for PWID marijuana 3rd, so Bolin does not apply.

The General Assembly created the Omnibus Crime Reduction and Sentencing Act of 2010. This law stated that notwithstanding any other provision of law a person sentenced to a first or second offense for possession with intent to distribute methamphetamine is eligible for parole; however, since this offense was a C-Felony it still fell within the "no parole offense" classification. In Bolin, the Court decided that the law changed, so the offense of the Appellant was no longer a "no parole offense." So inmates serving a sentence for these offenses are no longer subject to the eighty-five percent term of mandatory imprisonment.

The offense the Appellant is currently serving is classified as a C-Felony the law specifically states that any person sentenced to an A, B, or C felony is not allowed parole. The law

never changed allowing parole eligibility for PWID Marijuana 3rd. The Appellant is responsible for serving at least eighty-five percent before any release from incarceration. The statute states notwithstanding any other provision of law which means an earlier statute does not apply. *See,* Stone v. State, 313 S.C. 533, 443 S.E.2d 544 (1994)(were two statutes are in conflict the more recent and specific statue should prevail so as to repeal the earlier general statute.) The Appellant is of the opinion that this applies to his offense; however, it does not. This only applies to an individual who has committed first and second offenses, or a third offense only when the priors are only for possession, which does not apply to the Appellant. The Bolin decision was clear, the statute changed for first and second offenders so they are the only ones that are guaranteed parole eligibility. There are extra criteria that must be met for a person serving a third offense. The Appellant does not satisfy these criteria so he cannot be allowed parole eligibility. According to the statute the Appellant is not eligible for parole on a third offense unless their prior offenses are only for possession. That is not the case in this cause of action. The ALC did not right thing in affirming the decision of the Appellant, a decision that should be upheld by this Court.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests the final decision of the Administrative Law Court be affirmed.

Respectfully submitted,

Tommy Evans, Jr.
Assistant General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

Columbia, South Carolina
December 7, 2017

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.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES,.....RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007.

Tommy Evans, Jr.
Assistant General Counsel

December 7, 2017

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.

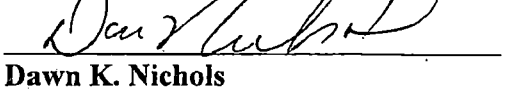
S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES,.....RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant, hereby certify that I have served the within *Final Brief of Respondent,* dated December 7, 2017, on Appellant this 7th day of December, 2017, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Dennis Davis, #288558
Turbeville Correctional Institution-TA-111
1578 Clarence E. Coker Highway 378
Turbeville, S.C. 29162

I further certify that all parties required by Rule to be served have been served.



Dawn K. Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
PO Box 50666
Columbia, South Carolina 29250

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Dennis Davis, Appellant,

v.

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

Appellate Case No. 2017-000663

Appeal From The Administrative Law Court
Deborah Brooks Durden, Administrative Law Judge

Unpublished Opinion No. 2018-UP-385
Submitted September 1, 2018 – Filed October 17, 2018

AFFIRMED

Dennis Davis, pro se.

Tommy Evans, Jr., of the South Carolina Department of Probation, Parole, and Pardon Services, of Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (Ct. App. 2008) (providing "section 1-23-610 of the South Carolina Code ([Supp. 2017]) sets forth the standard of review when the court of appeals is sitting in review of a decision by the [administrative law court (ALC)] on an appeal from an

administrative agency"); S.C. Code Ann. § 1-23-610(B) (Supp. 2017) (providing when reviewing an ALC decision, "[t]he 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; (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. § 44-53-370(b)(2) (2018) (providing a person who is guilty of a third offense for distribution of a controlled substance classified under Schedule I, II, or III should be sentenced to "not less than five years nor more than twenty years, or fined not more than twenty thousand dollars, or both"); S.C. Code Ann. § 44-53-190(D) (2018) (providing marijuana is a Schedule I controlled substance); § 44-53-370(b)(2) ("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.*" (emphasis added)); S.C. Code Ann. § 16-1-90(C) (Supp. 2017) (listing a section 44-53-370(b)(2) offense as a Class C felony); S.C. Code Ann. § 24-13-100 (2007) (providing Class C felonies are no-parole offenses), *repealed in part by Bolin v. S.C. Dep't of Corr.*, 415 S.C. 276, 286, 781 S.E.2d 914, 919 (Ct. App. 2016) (holding a second offense under subsection 44-53-375(B) of the South Carolina Code (2018) is no longer considered a no-parole offense).

AFFIRMED.[1]

HUFF, SHORT, and WILLIAMS, JJ., concur.

---

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

Dennis Davis #288558, Appellant,

v.

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

Appellate Case No. 2017-000663

The Honorable Deborah Brooks Durden
Trial Court Case No. 2016ALJ150034AP

ORDER

The time for serving and filing the petition for rehearing is hereby extended until December 3, 2018.

FOR THE COURT

BY Joy A. Kitchings
CLERK

Columbia, South Carolina

cc:
Dennis Davis, 288558
Tommy Evans, Jr., Esquire

FILED
November 15, 2018

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 over looked 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 these 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 Inferet 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 subsiquent 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 Person's 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 priors 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 apart of the Same Statutory Scheme and must be Construed together and each are 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 subtle or forced Construction which limit or expand the Statutes operation. This is what is being done. The States attempting to be subtle 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 referring 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 bearing 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)(B)(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)(2)(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 entitled to parole after serving 1/4 of his sentence. Since second burglary is not listed as a violent offense under § 16-1-60 and thus it is a non-violent offense under § 16-1-70 and (2) § 21-21-1610, 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 pleads 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 pleads 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 care to parse.) 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 21-21-1610) 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 Rahn) One whose rights are impaired by a statute is not, merely because its provisions are inseparable, precluded from attacking its 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. 455, 88 S.E. 2d 617. The SCDPPS is attempting to utilize statute 24-13-100 which doesn't apply to my offense to impair, depart, 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 rights to equal protection of the laws 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 Credits are completely different between a nonviolent 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 to 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 Respondents 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 parole 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 priors 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 empirically absurd, It's impossible for the courts to accept Such an absurd interpretation. Legically 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). Sweaty, 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 is being offered to in the all other Cases Category is so absurd that it could not have been the legislature 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 priors 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 prior offenses are also similar being they are also drug offenses! As the law States 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 of 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 Petitioners

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 priors 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 have 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 hearings by law! (2016, 2017, and 2018.) Or schedule the case for rehearing.

Respectfully Submitted

s/ Dennis Davis

Dennis Davis #288558
Petitioner/Appellant
K.C.I. Mag-18A
4848 Goldmine Hwy.
Kershaw, S.C. 29067

> 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).

There is no in
holdings that a convict
a subsequent charge. Tl
on the same day as the
either act. *State v. Pat*
confirmed by the Cou
435 (2007) (reaffirmin
determination of a sub

A prior convic
or subsequent provisic

To constr
contrary t
violate th
Moreover
to include
limitation
that a con
for enhan
mandated

Berry v. State, 381 S.(

If the specifi
offenses and defines a
470, then the languag
S.E.2d 131 (1992). In
of crack cocaine bas
§ 44-53-375(B) prov
"narcotic" drug conv
second offense. In Ju
provide that subsequ
argument based upon
Thomas v. State, 319
offense trafficking ar
with intent to distribi
required prior traffic
Applying the general
read together if they
the general law of § 4
Court reached a simil
Patterson v. State, 3:
§ 44-53-375(A) and
subsequent offenders
in *Patterson* into que

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:

Tommy Evans Jr.
SCDPPPS
P.O. Box 50666
2221 Devine St.
Columbia, S.C. 29250

s/ Dennis Davis
Dennis Davis #288558
K.C.I. Mag A-18
4848 Goldmine Hwy.
Kershaw, SC. 29067

The South Carolina Court of Appeals

Dennis Davis, Appellant,

v.

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

Appellate Case No. 2017-000663

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Huff J.

Paul E. Short, Jr. J.

H. Bruce Hill J.

Columbia, South Carolina

cc:
Dennis Davis, 288558
Tommy Evans, Jr., Esquire
The Honorable Deborah Brooks Durden

FILED
December 13, 2019

The Supreme Court of South Carolina

Dennis Davis #288558, Petitioner,

v.

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

Appellate Case No. 2019-000015[1]
Lower Tribunal Court Case No. 2016ALJ150034AP

ORDER

Petitioner has failed to file two copies of an appendix having the content required by Rule 242(e) of the South Carolina Appellate Court Rules, and has failed to pay the filing fee required by Rule 242(c), SCACR. Accordingly, the petition for a writ of certiorari is dismissed.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina
January 7, 2019

cc: Tommy Evans, Jr., Esquire
Mr. Dennis Davis, 288558
The Honorable Jenny Abbott Kitchings

---

[1] Before the South Carolina Court of Appeals, the Appellate Case Number was 2017-000663.

RECEIVED
FEB 20 2019
S.C. SUPREME COURT

State of South Carolina

In the Supreme Court

Appeal from the Administrative Law Court

The Honorable Deborah Brooks Durden, (ALJ)

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

Appellate Case No.: 2019-000015

Dennis Davis, #288558, Petitioner,

v.

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

Appendix

Dennis Davis, 288558
Petitioner
K.C.I. Mag-18A
4848 Goldmine Hwy.
Kershaw, S.C. 29067

Table of Authorities

RECEIVED
FEB 20 2019
S.C. SUPREME COURT

State of South Carolina

In the Supreme Court

Appeal from the Administrative Law Court

The Honorable Deborah Brooks Durden, (ALJ)

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

Appellate Case No.: 2019-000015

Dennis Davis, #288558, Petitioner,

V.

South Carolina Dept. of Probation,

Parole and Pardon Services, Respondent.

Appendix

Dennis Davis, 288558
Petitioner
K.C.I. Mag-18A
4848 Goldmine Hwy.
Kershaw, S.C. 29067

Table of Authorities

RECEIVED
FEB 20 2019
S.C. SUPREME COURT

State of South Carolina

In the Supreme Court

Appeal from the Administrative Law Court

The Honorable Deborah Brooks Durden, (ALJ)

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

Appellate Case No.: 2019-000015

Dennis Davis, #288558, Petitioner,

V.

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

Proof of Service

I hereby Certify that I have served the Complete Petition for Writ of Certiorari on the SCDPPPS by depositing a copy of it in the United States Mail, postage Prepaid on Febuary 13, 2019, addressed to its Attorney of Record Tommy Evans, Jr. South Carolina Dept. of Probation, Parole, and Pardon Services P.O. Box 50666, Columbia, SC 29250.

Febuary 13, 2019

S/ Dennis Davis

Dennis Davis #288558
K.C.I. Mag-18A
4848 Goldmine Hwy.
Kershaw, S.C. 29067

RECEIVED
FEB 20 2019
S.C. SUPREME COURT

State of South Carolina

In the Supreme Court

Appeal from the Administrative Law Court

The Honorable Deborah Brooks Durden, (ALJ)

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

Appellate Case No.: 2019-000015

Dennis Davis, #288558, Petitioner,

v.

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

Certificate of Counsel

The undersigned hereby certifies that the Petition for A writ of Certiorari Contains all materials to be included by Petitioner and not any other material.

Febuary 13, 2019.

S/ Dennis Davis
Dennis Davis #288558
KCI. Mag-18A
4848 Goldmine Hwy
Kershaw, S.C. 29067

Application to proceed without Payment of Costs and affidavit In Support Thereof

I, Dennis Rodger Davis Jr., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under a penalty of perdury that the following facts are true.

(1) I am the Appellant in this action and I believe I am entitled to redress.

(2) Because of my Poverty I am unable to pay the costs of said proceedings or give security there of.

S/ Dennis Davis

Dennis Davis #288558

KCI, Mag-18A

4848 Goldmine Hwy.

Kershaw, S.C. 29067

Sworn or affirmed to and subscribed before me this _____ day of

_____)