

ORIGINAL

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY COURT OF COMMON PLEAS

Honorable Diane S. Goodstein

Case No.: 2011-CP-2032

William A. Cudd, # 280216,.....Appellant,

v.

William R. Byars, Jr., Director, S.C. Dept of Corrections; and Alan  
Wilson, Attorney General for South Carolina,.....Respondents.

**FINAL BRIEF OF RESPONDENTS**

April 8, 2013

South Carolina Department of Corrections

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SC COURT OF APPEALS

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....ii

STATEMENT OF ISSUES ON APPEAL .....1

STATEMENT OF THE CASE .....2

STANDARD OF REVIEW .....4

ARGUMENT AND CITATION OF AUTHORITY.....4

**I. THE CIRCUIT COURT CORRECTLY DISMISSED APPELLANT’S  
PETITION FOR A WRIT OF HABEAS CORPUS BECAUSE CHANGES  
TO THE PENALTY FOR MANUFACTURING MARIJUANA, THIRD  
OFFENSE, DO NOT APPLY RETROACTIVELY .....4**

**II. THE CIRCUIT COURT CORRECTLY DISMISSED APPELLANT’S  
PETITION FOR A WRIT OF HABEAS CORPUS BECAUSE THE  
AMENDED PENALTY WOULD NOT RESULT IN APPELLANT’S  
IMMEDIATE RELEASE.....6**

CONCLUSION.....8

CERTIFICATE OF COUNSEL.....10

CERTIFICATE OF SERVICE.....11

## TABLE OF AUTHORITIES

### I. STATUTES

2010 Act No. 273 (June 2, 2010).....	2, 6
S.C. Code § 24-13-100.....	8
S.C. Code § 24-13-150.....	7-8
S.C. Code § 24-13-210.....	7
S.C. Code § 24-13-230.....	7
S.C. Code § 24-21-560.....	7-8
S.C. Code Ann. § 44-53-370(b)(2).....	2, 6-8

### II. CASES

<u>Butler v. State</u> , 302 S.C. 466, 397 S.E.2D 87 (1990).....	4
<u>Doe v. Marion</u> , 373 S.C. 390, 645 S.E.2d 245 (2007).....	4
<u>Gibson v. State</u> , 329 S.C. 37, 495 S.E.2D 426 (1998).....	4, 6
<u>Hodges v. Rainey</u> , 341 S.C. 79, 533 S.E.2d 578 (2000).....	5
<u>Holmes v. South Carolina</u> , 547 U.S. 319 (2006).....	5
<u>State v. Gay</u> , 343 S.C. 543, 541 S.E.2d 541 (2001) .....	5
<u>State v. Sweat</u> , 386 S.C. 339, 688 S.E.2d 569 (2010).....	5

### III. OTHER AUTHORITY

Rule 12(b)(6), SCRCP.....	4
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**STATEMENT OF THE ISSUES ON APPEAL**

- I. DID THE CIRCUIT COURT CORRECTLY DISMISS APPELLANT'S PETITION FOR A WRIT OF HABEAS CORPUS BECAUSE CHANGES TO THE PENALTY FOR MANUFACTURING MARIJUANA, THIRD OFFENSE, DO NOT APPLY RETROACTIVELY?**
  
- II. DID THE CIRCUIT COURT CORRECTLY DISMISS APPELLANT'S PETITION FOR A WRIT OF HABEAS CORPUS BECAUSE THE AMENDED PENALTY WOULD NOT RESULT IN APPELLANT'S IMMEDIATE RELEASE?**

## STATEMENT OF CASE

Appellant is an inmate incarcerated with the South Carolina Department of Corrections (SCDC). On December 3, 2001, appellant plead guilty to manufacturing marijuana, 3<sup>rd</sup> offense. He was sentenced to fifteen years' incarceration.

On October 10, 2011 appellant filed a petition for a writ of habeas corpus claiming he was entitled to immediate release because of changes to the law he alleged applied retroactively. Specifically, appellant alleged he was entitled to immediate release because of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 (the Sentencing Reform Act), which among other many other provisions, contained changes to the criminal penalty for manufacturing marijuana. See 2010 Act No. 273 (June 2, 2010).<sup>1</sup> (R.pp.9-10).

Respondents submitted a motion to dismiss the petition, arguing the changes in the law did not apply retroactively in cases like appellant's, where the conviction and sentencing occurred before the amendments. (R.pp.15-21). Following a hearing, respondents also submitted a supplemental memorandum in support of the motion to dismiss. (R.pp.23-28).

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<sup>1</sup> The 2010 Act amended S.C. Code Ann. § 44-53-370(b)(2) in relevant part by adding:

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 circuit court granted the motion to dismiss by way of an Order filed December 20, 2012. The court quoted the Sentencing Reform Act's savings clause and found that the savings clause indicated that the legislature intended for the changes to criminal penalties to not apply retroactively. In addition, as an alternative basis for dismissing the petition, the court concluded that even if the amended penalty were applied to appellant's sentence, it would not result in appellant's immediate release. The court therefore dismissed the petition for a writ of habeas corpus. (R.pp.41-43).

In this appeal, appellant argues the circuit court erred in its decision. However, for the reasons stated below, the circuit court correctly dismissed the petition.

## STANDARD OF REVIEW

In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCPP, the appellate court applies the same standard of review as the trial court. Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. Id.

## ARGUMENT AND CITATION OF AUTHORITY

### **I. THE CIRCUIT COURT CORRECTLY DISMISSED APPELLANT'S PETITION FOR A WRIT OF HABEAS CORPUS BECAUSE CHANGES TO THE PENALTY FOR MANUFACTURING MARIJUANA, THIRD OFFENSE, DO NOT APPLY RETROACTIVELY.**

The circuit court correctly dismissed appellant's petition because the Sentencing Reform Act clearly indicated that changes to the penalty for manufacturing marijuana, third offense, do not apply retroactively.

A habeas corpus petition must support the requested relief. Gibson v. State, 329 S.C. 37, 40, 495 S.E.2d 426, 427 (1998). Although the allegations in the petition are to be treated as true, the petition must make out a prima facie case showing petitioner is entitled to relief. Id. A petitioner must exhaust all other remedies and present sufficient factual allegations to support the petition, and the petition must set out a constitutional claim that "violation, which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice." Id. (citing Butler v. State, 302 S.C. 466, 397 S.E.2d 87 (1990)). The only remedy that can be granted in a petition for habeas corpus is release from custody. Id.

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 that language must be construed in light of the intended purpose of the statute. State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id. What the legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature. Id. The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. Sweat, 386 S.C. at 351, 688 S.E.2d at 575. When the legislature expressly states that an amendment to a criminal penalty applies prospectively, the legislature's intent is controlling. See State v. Gay, 343 S.C. 543, 553, 541 S.E.2d 541, 546 (2001) (abrogated on other grounds by Holmes v. South Carolina, 547 U.S. 319 (2006)).

The savings clause to the Sentencing Reform Act provides:

**The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide.** After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining

any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

2010 S.C. Act No. 273, § 65 (June 2, 2010) (emphasis added).

The savings clause dispels any doubt that the legislature intended that the changes to the criminal penalty for manufacturing marijuana, third offense, not apply retroactively.

Specifically, this provision directs that the amendments contained in the Sentencing Reform Act do not alter any penalty incurred under the prior law.

In the case at hand, petitioner's conviction and sentence occurred in 2001, well before the Sentencing Reform Act. According to the plain language of the savings clause, the criminal penalties applicable to petitioner's sentence were not altered by amendments contained within the Sentencing Reform Act. As a result, because petitioner's allegations depended on retroactive application of the Sentencing Reform Act, the circuit court correctly concluded the petitioner did not meet the requirements established by Gibson. Therefore, the court correctly dismissed the petition.

**II. THE CIRCUIT COURT CORRECTLY DISMISSED APPELLANT'S PETITION FOR A WRIT OF HABEAS CORPUS BECAUSE THE AMENDED PENALTY WOULD NOT RESULT IN APPELLANT'S IMMEDIATE RELEASE.**

Even if the amended penalty for manufacturing marijuana, third offense, were applicable in appellant's case, it would not result in his immediate release.

A habeas corpus petition must support the requested relief. Gibson, 329 S.C. at 40, 495 S.E.2d at 427 (1998). The only remedy that can be granted in a petition for habeas corpus is release from custody. Id.

The amended language of S.C. Code Ann. § 44-53-370(b)(2) provides, in relevant part:

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.

In his petition, appellant argued that pursuant to the above quoted language, under the amended law, offenders are no longer required to serve 85% of their sentences. (R.p.9).

However, as the circuit court correctly determined, the amended language does not remove the requirement that an offender serve 85% of his sentence. The plain language of the amended statute states only that an offender is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. None of these items is incompatible with the requirement that an offender serve 85% of their incarcerative sentence. See S.C. Code § 24-13-210(B) (providing for good time credits for offenders who are subject to the 85% requirement); § 24-13-230(B) (providing for work and education credits for offenders who are subject to the 85% requirement); § 24-21-560(A) (requiring participation in the community supervision program for offenders subject to the 85% requirement).

Pursuant to the amended provision, offenders are eligible for parole, but if they are not paroled, they are still required to serve 85% of their sentences. See S.C. Code

Ann. § 24-13-150(A) (“**Notwithstanding any other provision of law . . . an inmate convicted of a ‘no parole offense’ as defined in Section 24-13-100 . . . is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed.**”) (emphasis added); S.C. Code Ann. § 24-13-100 (“For purposes of definition under South Carolina law, a ‘no parole offense’ means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more.”); S.C. Code Ann. § 24-21-560(A) (“No prisoner who is serving a sentence for a ‘no parole offense’ is eligible to participate in a community supervision program until he has served the minimum period of incarceration as set forth in Section 24-13-150.”).

Therefore, because the amended language of S.C. Code Ann. § 44-53-370(b)(2) does not remove the requirement that an offender serve 85% of his sentence, petitioner would not be entitled to immediate release even if the amended law were retroactively applied to his sentence. Consequently, the circuit court correctly dismissed the petition for a writ of habeas corpus.

### **CONCLUSION**

For the reasons stated above, this Court should affirm the circuit court’s decision in this case.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF  
CORRECTIONS

Attorney for Respondent



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**CERTIFICATE OF COMPLIANCE**

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



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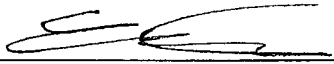
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**CERTIFICATE OF SERVICE**

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I hereby certify that I have served Appellant a copy of Respondents' Final Brief by  
depositing a copy of same in the United States Mail, postage prepaid, April 8, 2013  
addressed to the Appellant as follows:

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