STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
ADMINISTRATIVE LAW JUDGE H.W. FULMER, JR.
ALC CASE NO. 18-ALJ-04-0184-AP
APPELLATE CASE NO. 2018-001776

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

V.

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

RECORD ON APPEAL

BRETT T. CURTISS #373259
PRD-SE
KIRKLAND CORR. INST. E-32-04
4344 BROAD RIVER RD.
COLUMBIA SC. 29210

ATTORNEY FOR APPELLANT

KENSEY R. BARRETT
DEPUTY GENERAL COUNSEL
OFFICE OF GENERAL COUNSEL
S.C.D.C.
4444 BROAD RIVER RD.
POBOX 21787
COLUMBIA SC. 29221

ATTORNEY FOR RESPONDENT

INDEX

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Brett Thomas Curtiss, # 373259, Appellant, vs. South Carolina Department of Corrections, Respondent.	)	Docket No. 18-ALJ-04-0184-AP [Grievance No.: KCI 1486-17] **ORDER**

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Sherman Graham (Appellant), an inmate incarcerated by the South Carolina Department of Corrections (Department or SCDC).

FACTS/PROCEDURAL HISTORY

Appellant filed a Step 1 Grievance on December 21, 2017, challenging the Department's sentencing calculation. Appellant argued that he should be eligible for work credit, good-time credit, education credit, and work release, as well as for parole eligibility after serving one-third (1/3) of his sentence instead of serving 85% of his sentence, because he was not sentenced to a mandatory minimum of 25-30 years and was not a third-time offender. The Warden denied Appellant's Step 1 Grievance, stating that Appellant was receiving earned work credits but did not have a parole date and was not receiving good-time credit because his current conviction was classified as "violent" and carried "a mandatory sentence requirement of 7 years, 7 months, and 24 days."

Appellant subsequently filed a Step 2 Grievance, in which he made the same argument as in his Step 1 Grievance. The Responsible Official denied Appellant's grievance, stating that Appellant was sentenced on July 10, 2017, after pleading guilty to charges of Marijuana Possession with Intent to Distribute, 1st offense; Possession with Intent to Distribute Methamphetamine, 2nd offense; and Trafficking Crack Cocaine – 28 g or more, 2nd offense. The Responsible Official also noted that the trafficking offense was "classified as no parole and violent." The official further

noted that Appellant had been sentenced to 9 years for each of these offenses, all to run concurrently.[1]

Appellant then filed his Notice of Appeal on April 23, 2018, asserting that the Department violated the 14th Amendment to the United States Constitution by applying the 85%/no-parole provisions of S.C. Code Ann. §§ 24-13-100, -150(A) to S.C. Code Ann. § 44-53-375(c), and that he should instead be eligible for parole after serving 1/3 of his sentence and entitled to work credits, good-time credits, education, and work release. Appellant filed his Initial Brief on May 22, 2018. The Record on Appeal was filed on July 6, 2018. On August 23, 2018, the Department filed its brief. On August 28, 2018, Appellant filed a Reply Brief.

ISSUE

Did the Department err in classifying Appellant as an 85% offender for purposes of its sentencing calculation?

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003). When reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Al-Shabazz*, 338 S.C. at 377; 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2017) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(A)(5) states:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (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;

[1] The Record also reflects that Appellant was convicted on April 19, 2018, of Trafficking Ice, Crank, or Crack Cocaine – 10 g or more, but less than 28 g, 1st offense, for which he was sentenced to three (3) years. However, this sentencing occurred after the Responsible Official's response to Appellant's Step 2 Grievance.

> (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. § 1-23-380(5) (Supp. 2017). *See also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998).

"'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting *Law v. Richland Cty. Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

DISCUSSION

Appellant argues that the Department violated his due process rights under the 14th Amendment by applying Sections 24-13-100,-150(A) and S.C. Code Ann. § 44-53-470 to S.C. Code Ann. 44-53-375(C)[2] to characterize his offenses as no-parole instead of parole-eligible and to thus require him to serve 85% of his sentence. He argues that Sections 24-13-100 and -150(A) only apply to third or subsequent offenses, and that to apply them to first and second offenses is unconstitutional. He further contends that the General Assembly did not intend to enhance the punishment for drug trafficking offenses under Section 44-53-375(C) through Sections 24-13-100 and -150(A) because the former provision contains its own enhancement mechanisms based on the weight of the controlled substances.[3] He further argues that first and second offenders, though required to serve a minimum term of imprisonment, are not precluded from receiving parole, extended work release,

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[2] Appellant did not specifically reference subsection (C) of Section 44-53-375 until his Notice of Appeal and did not reference this subsection in his Step 1 and Step 2 Grievances.

[3] In his Reply Brief, Appellant also discusses Section 44-53-370(e) to argue about a "statutory scheme" for trafficking. However, this provision pertains to trafficking in cocaine, not trafficking cocaine base. Because this case involves trafficking in cocaine base, which is under Section 44-53-375(C), the Court will not consider Appellant's arguments regarding Section 44-53-370(e) and will instead focus only on the language used in Section 44-53-375(C).

or supervised furlough. Appellant cites to *Bolin v. S.C. Dep't of Corr.*, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016), *inter alia*, to support his position.

The Record reflects that on July 10, 2017, Appellant pled guilty to Trafficking Crack Cocaine, 28 g or more, 2nd offense under S.C. Code Ann. § 44-53-375(C)(2)(b).[4] Pursuant to a negotiated sentence, the court sentenced Appellant to nine (9) years, to be served concurrently with credit for time served.

Absent any ambiguity in the sentencing sheet, the Court must presume that the sentencing court's sentence is correct. *See Tant v. S.C. Dep't of Corr.*, 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014), *reh'g denied* (July 10, 2014) ("[T]he Department is generally confined to the face of the sentencing sheets in determining the length of a sentence ... [unless] there is an ambiguity in the sentencing sheets."). Here, the sentencing sheet for Appellant's November 17, 2016 conviction is unambiguous, and thus the Department was required to calculate Appellant's sentence according to that sheet.

The Department acknowledges Appellant's sentence and correctly points out that the offense of which Appellant was convicted is a Class A felony under S.C. Code Ann. § 16-1-90(B) (Supp. 2017). "[A] class A, B, or C felony or an offense exempt from classification" is a "no parole offense." S.C. Code Ann. § 24-13-100 (2007). Regarding no parole offenses, S.C. Code Ann. § 24-13-150(A) (Supp. 2017) sets forth the following:

> (A) **Notwithstanding any other provision of law**, except in a case in which the death penalty or a term of life imprisonment is imposed, an inmate convicted of a "no parole offense" . . . is not eligible for early release, discharge, or community supervision . . . until the inmate has served **at least eighty-five percent of the actual term of imprisonment imposed**. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended ....

(Emphasis added). Because Appellant's offense is a Class A felony, it is a "no parole offense," generally requiring a service of 85% of the sentence.

[4] Appellant also pled guilty to, and was sentenced for, the offenses of Marijuana Possession with Intent to Distribute, 1st offense; Possession with Intent to Distribute Methamphetamine, 2nd offense; and later Trafficking Ice, Crank, or Crack Cocaine – 10 g or more, but less than 28 g, 1st offense. However, the Trafficking Crack Cocaine, 28 g or more, 2nd offense is the controlling offense in this case with respect to Appellant's sentencing.

On June 2, 2010, the Omnibus Crime Reduction and Sentencing Reform Act of 2010 became effective. As the South Carolina Court of Appeals in *Bolin* discussed, the Act did not amend the definition of "no parole offense," but the General Assembly did use "the phrase 'Notwithstanding any other provision of law,' in the amendments to sections 44-53-375 and -370[, which] expresses its intent to repeal section 24-13-100 to the extent it conflicts with amended sections 44-53-375 and -370." 415 S.C. at 282, 781 S.E. 2d at 917. Accordingly, this Court must also consider the amended versions of Sections 44-53-370 and/or -375 (whichever is applicable), as they repealed Section 24-13-100 to the extent that it conflicts with these other two sections. *Id.* 415 S.C. at 282-83, 781 S.E.2d at 917. However, those parts of Section 24-13-100 not expressly repealed remain intact and would implicate the 85% requirement of Section 24-13-150(A) "[n]otwithstanding any other provision of law."

Thus, for Appellant to be eligible for parole for his drug offense, there would have to be language in Section 44-53-375(C)(2)(b), under which his offense falls, that would allow Appellant to be eligible for parole on his drug offense "[n]otwithstanding any other provision of law," including 24-13-100. In this case, however, no amended language repealing Section 24-13-100 exists for Section 44-53-375(C)(2)(b). As such, the principle from *Bolin* does not affect Appellant's parole eligibility or sentence, and Appellant is properly classified as an 85% offender.

Appellant also argues that he is entitled to parole eligibility under Section 44-53-375(F) because he was not sentenced "to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years ...." However, this law was enacted prior to the enactment of the "no parole" statutes (Sections 24-13-100 and -150(A)). Consequently, the latter statutes controlled "[n]otwithstanding any other provision of law" (including Section 44-53-375(F)) unless the "notwithstanding" language had been subsequently added as an amendment to Section 44-53-375(F). But Section 44-53-375(F), like Section 44-53-375(C)(2)(b), was not part of the 2010 amendments and, like Section 44-53-375(C)(2)(b), is thus controlled by Sections 24-13-100 and -150(A). For this reason, as stated above, the principle from *Bolin* does not affect Appellant's parole eligibility or sentence, and Appellant is properly classified as an 85% offender.

ORDER

IT IS THEREFORE ORDERED that the Department's decision is **AFFIRMED.**

AND IT IS SO ORDERED.

August 31, 2018
Columbia, South Carolina

H.W. Funderburk, Jr.
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Samuel L. Johnson, hereby certify that I have this date served the enclosed Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Samuel L. Johnson, Esq.
Staff Counsel

August 31, 2018
Columbia, S.C.

RECEIVED

DEC 27 2017

KIRKLAND R&E CENTER

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: Brett Curtiss

SCDC NUMBER: 373259

INSTITUTION: Kirkland

HOUSING UNIT: E-BR-15 12-27-17

WORK ASSIGNMENT: PM - Kitchen Cook CS

3 ADDITIONAL PAGES ARE AVAILABLE TO SUPPORT Claim

OFFICE USE ONLY

Grievance No. KCI 1486-17

Code: General

Policy

Disc. Hear.

Class. ✓

PREA

Date Received DEC 28 2017

IGC Initials

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) REQUEST FOR AUDIT; 17-711520, 17-727117, 17-740871, 17-748834 RESPONSE STATING I DON'T GET PAROLE 2010 Omnibus. I DISAGREE, I AM NOT SERVING A MANDATORY Minimum Sentence OF 25-30 YEARS. THE SPECIFIC LANGUAGE OF THE INTENT OF THE LEGISLATIVE LAW, IS THAT IF I AM NOT A 3RD TIME OFFENDER I AM NOT SERVING A 85% Sentence Without Parole, that I AM TO BE ELIGIBLE FOR PAROLE AT 1/3 OF my SENTENCE AND RECEIVE work CREDIT, Good Conduct Credits, EDUCATIONAL AND WORK RELEASE.

THAT THERE IS NO STATEMENT in Section 37 thru 38 OF THE 2010 OMNIBUS WITH 24-13-150 THAT STATES AN INMATE HAS TO SERVE 85% W/OUT PAROLE. ONLY S.C.D.C. TAKES THAT POSITION ACCORDING TO General Counsel FOR S.C.D.C. DANIEL J. CROOKS III WHERE ONLY A 3RD TIME OFFENDER MUST BE TREATED AS SUCH. I'm NOT A 3RD TIME OFFENDER.

Re Submitted: 12/22/17

Grievance# 1449-17

Brett Curtiss 12/21/17

Grievant Signature Date

ACTION REQUESTED: AUDIT OF CLASSIFICATION: PAROLE AT 1/3 OF Sentence, WORK RELEASE Good Conduct Credits, Work Credits, EDUCATION Credits

ACTION TAKEN BY IGC: ☒ PROCESSED ☐ UNPROCESSED ☐ OTHER

See Warden's Decision

Denied 1/24/18

IGC Signature Date

(CONTINUE ON REVERSE SIDE)

SCDC 10-5 (Rev. October 2013)

E B2 15A

Due 2/14 9

WARDEN'S DECISION AND REASON:
Inmate Curtiss Brett 373259;

This is in response to KCI-1486-17. Pertinent information and documentation has been reviewed. It is documented on your sentencing sheet, signed by the Judge, that you current conviction is classified as Violent. Also, you do have a mandatory sentence requirement of 7 years, 7 months and 24 days. Taking into account the above mentioned facts, that is why you do not have a parole date and are not receiving credit for Good time, however, you are receiving Earned Work Credits. Therefore, SCDC calculations of your Sentence are correct.

Based on this information, your requested action is denied. If not satisfied with my response, see Step 5 below.

Willie Rowe 1-25-18

Warden Signature **Date**

☐ **I accept the Warden's decision and consider the matter closed.**

☒ **I do not accept the Warden's decision and wish to appeal.**

Brett Curtiss 1/30/2018 J Rowe 1/30/18

Grievant Signature **Date** **IGC Signature** **Date**

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. **An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.**
2. **Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.**
3. **Only one (1) issue is to be addressed on each form.**
4. **Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.**
5. **If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.**

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

DUE: 2/4/18 10

RECEIVED
FEB 06 2018
INMATE GRIEVANCE

Office Use Only
Grievance No. KCI-1486-17
Code: General
Policy
Disc. Hear.
Class
Date Received FEB 01 2018
IGC Initials
MAR 28 2018

INMATE NAME: Brett Curtiss
SCDC NUMBER: 373259
INSTITUTION: Kirkland Corr. Inst ✓
HOUSING UNIT: E-B2-15
WORK ASSIGNMENT: Kitchen

2-1-18 CS

INMATE'S REASON FOR APPEAL (state specific dissatisfaction) I AM NOT SERVING A MANDATORY 25 YEAR SENTENCE, NOR MANDATORY MINIMUM OF 25-30 AS SPECIFIC IN MY RECORDS (P), THE SPECIFIC LANGUAGE AND INTENT OF THE LEGISLATURE LAW IS ~~THAT, ALSO I AM NOT~~ SERVING A SENTENCE AS A 3RD TIME OFFENDER THEREFOR I SHOULD NOT BE SERVING AN 85% NO-PAROLE SENTENCE. THERE IS NO SPECIFIC LANGUAGE UNDER SECTION 37 + 38 OF THE 2010 OMNIBUS OR AMENDMENTS THAT STATE 85% W/OUT PAROLE ONLY THE AGENCY OF CLASSIFICATION W THE SCDC TAKES THAT POSSITION. THEREFOR I AM ELIGIBLE FOR PAROLE AT 1/3 OF MY SENTENCE, WORK CREDITS, GOOD CONDUCT CREDITS, EDUCATION AND WORK RELEASE. DANIEL J. Crooks, GENERAL COUNSEL FOR SCDC SUPPORTS THESE FACTS AND THE CONTEXT BOLIN CLAIM UNDER 44-53-375 + 44-53-370 THAT ONLY 3RD TIME OFFENDERS ARE TO BE CLASSIFIED AS 85%, I AM NOT A 3RD TIME OFFENDER

Brett Curtiss 1/31/2018
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. In your grievance you stated that you would like an audit of your inmate record so that you may be eligible to receive good time, parole eligibility, work credits and work release. The Warden responded to your concern on SCDC 10-5, Step 1 Inmate Grievance Form dated 1/25/18. You are currently receiving earned work credits. Your SCDC inmate record is correct, and there is no need to conduct an additional audit at this time. You were sentenced on 7/10/17 for violating SC Code of Laws 44-53-370, offense Marijuana Possession Intent To Distribute; 44-53-375 (b), offense Distribution Etc. Meth, 1st; and 44-53-375 (C), offense Trafficking In Crack Cocaine SC classified as no parole and violent. You were sentenced to 9 years, 9 years, and 9 years to run concurrently. You have not shown that SCDC Staff have performed their job duties inappropriately.

Therefore, your grievance is denied.

You may appeal this decision under the South Carolina Administrative Procedures Act to the South Carolina Administrative Law Court. In order to appeal, you must complete the attached Notice of Appeal Form (Form) and submit it as instructed on the Form within thirty (30) days of receipt.

Signature 3/29/18
Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date

IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

HONORABLE JUDGE FUNDERBURK

THE STATE RESPONDENT, V. BRETT T. CURTISS #373259 APPELLANT	CASE NO: 18CO184 INITIAL BRIEF

STATEMENT OF ISSUES

IS IT CONSTITUTIONAL FOR S.C.D.C. AGENCY CLASSIFICATION USING ITS OWN INTERPRETATION AND APPLICATION OF THE UNCONSTITUTIONAL STATUTES OF 24-13-100 AND 24-13-150 RULED BY S.C. SUPREME COURT IN THE STATUTORY LANGUAGE THAT THE LEGISLATURE DID NOT INTEND OR GIVE PERMISSION THROUGH TO APPLY ON 1ST AND 2ND OFFENSE TRAFFICKING, ONLY FOR 3RD OFFENSE, AND HOW CAN AN AGENCY DICTATE THE INTENT OF THE LEGISLATION LANGUAGE WHEN THE LANGUAGE IS IDENTICLE FOR 1ST AND 2ND OFFENSE ON WEIGHT AND UNDER 44-53-375(C) ARE THE SENTENCES NOT CARRYING THE MANDATORY-MANDATORY MINIMUM OF NOT LESS THAN 25-30 YEARS REQUIRED TO SERVE 85% AND ARE THEY ENTITLED TO PAROLE ELIGIBILITY BECAUSE OF THE ACTUAL STATUTORY CONSTRUCTION?

STATEMENT OF FACTS

REQUEST FOR AUDIT 10/11/17 # 17-711520 MS. FOGLE, REPLY: 10/26/17 - TOLD TO REQUEST TO INMATE RECORDS. 10/26/17 INMATE RECORDS REQUEST OF AUDIT, 17-727117 12/4/17 MS. CRUM SAID, I DID NOT FIT THE 2010 OMNIBUS, 17-748834. 12-21-17, FILED STEP I GRIEVENCE, 1-30-18 GRIEVENCE DENIED; SERVING MANDATORY SENTENCE OF 7 YEARS 7 MONTHS AND 24 DAYS, NO PAROLE, BUT EARNING WORK CREDITS, NO GOOD CONDUCT CREDITS. FILED STEP II 1-31-18 AND DENIED, SAME BASIC RESPONSE. 4-18-18 FILED APPEAL TO CORRECT THE ISSUE

ARGUMENT

SOUTH CAROLINA DEPT. OF CORRECTIONS AND IT'S AGENCY, CLASSIFICATION ARE INCORRECTLY APPLYING THE STATUTORY LANGUAGE FOR A NO-PAROLE OFFENSE USING 24-13-100 (DEFINITION), AND 24-13-150(A) (CLASS A, B, OR C FELONY) TO THE SELF CONTAINED AND ENCLOSED STATUTE OF 44-53-375(C) - TRAFFICKING.

THE STATE APPLYS THE INTERPRETATION, THAT BECAUSE THE STATUTE OF 44-53-375(C) AND ITS INTERNAL PARTS FOR TRAFFICKING COULD RECEIVE A SENTENCE OF GREATER THAN 20 YEARS, THAT THE APPLICATION OF 24-13-100 AND 24-13-150(A) ARE VALID.

THIS IS INCORRECT AND FACTUALLY UNCONSTITUTIONAL AND AS SUCH I AM ENTITLED TO THE PROVISIONS OF PAROLE AT 1/3 OF MY SENTENCE, WORK CREDITS, GOOD CONDUCT CREDITS, EDUCATION CREDITS AND WORK RELEASE.

CONGRESS AND THE LEGISLATURE CREATE THE LANGUAGE FOR STATUTORY PROVISIONS, GRANTING POWERS TO ACT UPON SPECIFIC INSTRUCTIONS CONSTRUCTED INSIDE ITS STATUTES LANGUAGE AND UNLESS CONGRESS SPECIFICALLY CONFERS UPON THE AGENCY, THE AGENCY HAS NO POWER TO ACT, CHEVRON 467 U.S. 843 [N,9] 104 S.Ct. 2778 AND LOUISIANA PUBLIC SERVICE COMMISSION V. F.C.C, 476 U.S. 355, 106 S.Ct. 1890, 74 P.U.R. 4th 1, 1986.

SOUTH CAROLINAS CODE OF LAWS IS THE CONTROLLING AUTHORITY FOR CLASSIFICATION, STATUTES DICTATE THE SENTENCE STATE V. BENNETT 375 S.C. 164, 173 (2007).

WHEN A MANIFEST OR GROSS ERROR OF LAW HAS BEEN COMMITTED BY AN AGENCY, COURTS MUST NOT SUBSTITUTE ITS JUDGEMENT FOR THE AGENCY'S AS WEIGHT OF QUESTION OF THE FACTS (LAKE V. BI-LO INC. 276 S.C. 130 (1981).

THE COURTS HAVE TURNED TO CANONS OF STATUTORY CONSTRUCTION TO HARMONIZE PROVISIONS. IT'S UNREASONABLE TO CHARACTERIZE OFFENCES ELIGIBLE FOR PAROLE AS NO-PAROLE OFFENCES PURSUANT TO 24-13-100 AND 24-13-150(A) (KERR V. STATE 345 S.C. 183 (2001), NELSON V. OZMINT 390 S.C. 432 (2010), AND BOLIN V. S.C.D.C. 415 S.C. 276 (2015).

THE AGENCY'S EVIDENCE IS INSUFFICIANT AND HAS FAILED TO INTERPRET THE STATUTE IN ITS ENTIRETY AS A WHOLE AND NOT IN PART STATE V. LANDIS 362 S.C. 97 (2004)

44-53-375(C), TRAFFICKING HAS ITS OWN SELF CONTAINED ENHANCEMENT LADDER FOR THE PURPOSE OF SENTENCING AND AS SUCH ALSO SPECIFICALLY WHAT CONSTITUTES NO-PAROLE FOR AND UNDER 44-53-375(C).

BASICALLY, THE COURT IN RAINEY HELD THAT WHERE A DEFENDANT IS SENTENCED UNDER A SPECIFIC STATUTE, AND THAT STATUTE SPECIFICALLY DEALS WITH HOW AN OFFENSE UNDER THAT STATUTE IS TO BE ENHANCED FROM A FIRST, TO SECOND, OR TO A THIRD, SUBSEQUENT OFFENSE, THE PROVISIONS OF THAT STATUTE CONTROL OVER MORE GENERAL ENHANCEMENT STATUTES SUCH AS 44-53-470, 24-13-100, AND 24-13-150(A)

THE LEGISLATURE DID NOT AMEND SUBSECTION "(C)" OF 44-53-375 DEALING WITH TRAFFICKING OF ICE, CRANK OR CRACK COCAINE. THEREFORE, THAT PORTION OF THE STATUTE CONTAINS EXACTLY THE SAME LANGUAGE THAT IT CONTAINED AT THE TIME THE SUPREME COURT DECIDED RAWLEY V. STATE, SUPRA. RESEARCH HAS NOT REVEALED ANY S.C. APPELLATE COURT DECISIONS CONSTRUING SUBSECTION "(C)" OF 44-53-375 DEALING WITH TRAFFICKING.

UNDER S.C. LAW, THERE IS A BASIC PRESUMPTION THAT THE LEGISLATURE HAS KNOWLEDGE OF PREVIOUS LEGISLATION AS WELL AS OF JUDICIAL DECISIONS CONSTRUING THAT LEGISLATION WHEN LATER STATUTES ARE ENACTED CONCERNING RELATED SUBJECTS, STATE V. COREY D, 339 S.C. 107 (2000), ALSO SCOTT V. STATE 334 S.E 2d 248, 513 S.E. 2d 100 (1999)

FURTHER, WHEN THE LEGISLATURE AMENDED SUBSECTION "(B)" OF 44-53-375 TO CONFORM IT'S ENHANCEMENT PROVISIONS TO THE GENERAL DRUG OFFENSE ENHANCEMENT STATUTE, IT WAS PRESUMED TO KNOW THE CONTENTS OF SUBSECTION "(C)" OF THE SAME STATUTE. HAD THE LEGISLATURE WISHED TO AMEND SUBSECTION "(C)" RELATING TO TRAFFICKING TO INCORPORATE THE SAME GENERAL ENHANCEMENT LANGUAGE INTO THAT SECTION, IT WOULD HAVE BEEN VERY EASY MATTER FOR THE LEGISLATURE TO DO SO. FOR WHATEVER REASON, THEY CHOSE NOT TO, AND SO THIS COURT IS FACED WITH THE PLAIN LANGUAGE OF SUBSECTION "(C)" WHICH MUST BE CONSTRUED MOST STRICTLY

AGAINST THE STATE AS A PENAL STATUTE. FURTHERMORE, 44-53-375(C) DETERMINES ENHANCEMENT OF THE OFFENSE ACCORDING TO THE WEIGHT OF THE AMOUNT OF ICE, CRANK, OR CRACK COCAINE. A CLEAR AND REASONABLE READING OF 375(C) DOES NOT ALLOW OUTSIDE STATUTE(S) INFLUENCE TO ENHANCE THE PUNISHMENT UNDER THIS SUBSECTION. ADDITIONALLY, S.C. CODE 44-53-470 DOES NOT HAVE A BREAKDOWN SCHEME TO ENHANCE SENTENCE ON THE BASIS OF WEIGHT. THEREFORE 470 PROVIDES A DIFFERENT ENHANCEMENT SCHEME FROM THE ONE ENACTED INTO LAW IN 375(C) BY THE GENERAL ASSEMBLY.

AS SUCH, APPLYING DEFINITION OF NO-PAROLE 24-13-100, 24-13-150(A) (A, B, OR C FELONY) AND 470 WOULD CONFLICT WITH THE LEGISLATIVE MANDATE OF THE 375(C). A PLAIN READING OF THOSE WORDS POINTS TO A CONCLUSION THAT THE GENERAL ASSEMBLY INTENDED TO ENHANCE PUNISHMENT AS THE WEIGHT OF THE SUBSTANCE INCREASE. THE LEGISLATURE INTENDED 375(C) TO HAVE IT'S OWN SET OF ENHANCEMENTS, STATE V. BURTON 301 S.C. 305 (1990) THEN IN 2016 ACT NO. 154 (H.3545), SECTION 9, TOOK EFFECT WITH SUBSECTION (F) "SENTENCES FOR VIOLATION OF THE PROVISIONS OF (C) OR (E) MAY NOT BE SUSPENDED AND PROBATION MAY NOT BE GRANTED. A PERSON CONVICTED AND SENTENCED UNDER SECTION (C) OR (E) TO A MANDATORY TERM OF IMPRISONMENT OF 25 YEARS, A MANDATORY MINIMUM TERM OF IMPRISONMENT OF 25 YEARS, OR A MANDATORY MINIMUM TERM OF IMPRISONMENT OF NOT LESS

THAN 25 NOR MORE THAN 30 YEARS IS NOT ELIGIBLE FOR PAROLE, EXTENDED WORK RELEASE AS PROVIDED IN SECTION 24-13-610, OR SUPERVISED FURLOUGH AS PROVIDED IN SECTION 24-13-710." (QUOTED: 2018 S.C. CODE OF LAWS).

THE STATE CONTENDS THAT ANY POSSIBILITY OF A SENTENCE GREATER THAN 20 YEARS IS NO-PAROLE, YET THE LOWER RULING BY THE SUPREME COURT OF S.C. STATED THAT "INTERPRETATION OF THE STATUTE WAS INCORRECT AND HELD THAT THE PHRASES "MANDATORY TERM OF IMPRISONMENT" AND MANDATORY MINIMUM TERM OF IMPRISONMENT" ARE DISTINGUISHABLE". BACKED BY THE COURTS RULING THAT IN BOLIN V. S.C.D.C THE APPLICATION OF 24-13-100 AND 24-13-150(A) ARE UNCONSTITUTIONAL IN APPLICATION UNDER 44-53-370 AND 44-53-375(C) THROUGH THE S.C.D.C./CLASSIFICATION AGENCIES OWN ADMISSION IN EXHIBIT #1 (ATTACHED), S.C.D.C. DUE PROCESS HEARINGS, WHERE ONLY 3RD TIME OFFENDERS ARE TO BE TREATED AS 85% NO-PAROLE. THEREFORE IT WOULD BE UNREASONABLE TO INFER THAT A SENTENCE WITH THE POSSIBILITY OF A SENTENCE OF 20 YEARS OR MORE TO BE NO-PAROLE WHEN P.W.I.D. 2ND CARRIES THE POSSIBILITY OF 30 YEARS AND THAT THE SPECIFIC LANGUAGE IN SUBSECTION "(F)" OF 375 STATES THE GENERAL ASSEMBLY'S INTENT OF NO-PAROLE IS THE ACTUAL GIVEN SENTENCE OF 25 YEARS OR 30 YEARS. NO WHERE IN THE LANGUAGE DOES IT STATE THE POSSIBLE SENTENCE OF, OR A MANDATORY SENTENCE OF 7, 9, OR 12 YEARS BUT SPECIFICALLY 25 OR 30 YEARS. ALSO, NO WHERE IN THE LANGUAGE DOES IT SPECIFICALLY EXCLUDE 375(C)(1)(a) FOR NO PAROLE, YET IT IS PAROLE ELIGIBLE. EXACTLY AS IT IS THE SAME

STATUTORY LANGUAGE FOR 375(C)(1)(A), (C)(1)(B), (C)(2)(A), (C)(2)(B) YET ONLY (C)(1)(A) IS SINGLED OUT TO BE PAROLE ELIGIBLE, WHERE ALL OF THE SAME STATUTORY LANGUAGE SHOULD BE PAROLE ELIGIBLE IN TRAFFICKING BECAUSE IT CLEARLY HAS ITS OWN INTERNAL-SELF CONTAINED STATUTORY SCHEME ACCUMULATING OF WEIGHT THAT LEADS TO THE STATUTORY INTENT OF THE LEGISLATURE FOR NO-PAROLE CLEARLY DEFINED IN ITS OWN LANGUAGE. AS SUCH THE APPLICATION OF 24-13-100 AND 24-13-151(A) TO THE 1ST AND 2ND OFFENCE PORTION OF THE STATUTE IS UNCONSTITUTIONAL AND SEVERANCE IS QUALIFIED, WHOLE WOMAN'S HEALTH V. HELLER STENT 136 S.CT. 2292 (2016). STATUTES THAT ARE PART OF THE SAME STATUTORY SCHEME MUST BE CONSTRUED TOGETHER WHERE REASONABLE, STATE V. WOODY, 345 S.C. 34 (CT. APP. 2001).

IT IS EVIDENT TO THE APPELLANT/INMATE AND SHOULD BE TO THE COURT THAT 375 (B), (C) AND (F) ARE PART OF THE "SAME STATUTORY SCHEME WHERE ONLY 3RD TIME OFFENDERS UNDER DUE PROCESS, LEGISLATIVE LANGUAGE AND S.C. SUPREME COURT REVIEWING FIT THE MANDATORY MINIMUM CRITERIA UNDER SPECIFIC LANGUAGE, AS SUCH, THE (3) SUBSECTIONS MUST BE CONSTRUED TOGETHER, IF A REASONABLE CONSTRUCTION EXISTS.

APPELLANT ASERTS HIS FEDERAL CONSTITUTIONAL CLAIM UNDER THE 14TH AMEND. TO PAROLE ELIGIBILITY AT 1/3 OF HIS SENTENCE. SEVERABILITY CLAUSE CAN IMPOSE SUCH A REQUIREMENT ON THE COURTS, (LEGISLATURE) TO INSULATE UNCONSTITUTIONAL STATUTES FROM MOST FACIAL REVIEWS. WHEN A PART OF A STATUTE IS HELD TO BE UNCONSTITUTIONAL, THE QUESTION

ARISES WHETHER OTHER PARTS OF THE STATUTE MUST GO. IF A STATUTE SAYS THAT PROVISIONS FOUND TO BE UNCONSTITUTIONAL CAN BE SEVERED FROM THE REST OF THE STATUTE, THE VALID PROVISIONS ARE ALLOWED TO STAND.

SUBSTANCIAL EVIDENCE: THE COURTS REPEALED STATUTES 24-13-100 AND 24-13-150(A) WHEN DEEMED UNCONSTITUTIONAL TO OFFENDERS SENTENCED UNDER 44-53-375(B)(2) WHICH CARRIES 5-30 YEARS. BECAUSE 24-13-100, 24-13-150(A) IS DEEMED UNCONSTITUTIONAL IT IS PRESUMED TO BE SEVERABLE. WHEN A PRESUMPTION OF SEVERABILITY ARISES, THE PARTY ASKING THE COURTS TO STRIKE DOWN A PORTION OF THE STATUTE MUST PRESENT "STRONG EVIDENCE" THAT CONGRESS WOULD NOT HAVE ENACTED THE CHALLENGED PORTION OF THE STATUTE IN THE UNCONSTITUTIONAL PROVISION. THE STRONG EVIDENCE IS WITHIN THE STATUTES OF S.C. CODE ANN § 44-53-375 E),(F) FOR THIS STATUTE HAS EXPLICIT LANGUAGE, STATING LEGISLATIVE INSTRUCTIONS ON SENTENCING. 44-53-375(C) HAS A SELF CONTAINED ENHANCEMENT LANGUAGE FOR SENTENCING PURPOSES. A CLEAR AND REASONABLE READING OF 375(C) SHOWS HOW THE STATUTES CONFLICT WITH THE LATER AND GENERAL STATUTES 24-13-100 AND 24-13-150. FURTHER 375(C) DETERMINES ENHANCEMENT OF THE OFFENSE ACCORDING TO THE WEIGHT OF THE AMOUNT OF THE CONTROLLED SUBSTANCE, FOR THE PUNISHMENT INCREASES AND THE FAVORABLE PROVISIONS DECREASE AS THE WEIGHT OF THE AMOUNT OF THE CONTROLLED SUBSTANCE INCREASES. OFFENSES CARRYING THE MANDATORY MINIMUM LANGUAGE OF NOT LESS THAN 25 YEARS - 30 YEARS, DO HARMONIZE WITH

24-13-100 AND 24-13-150. YET THE APPELLANT'S SENTENCE 44-53-375(C)(2)(b) DOES NOT HAVE THE MANDATORY LANGUAGE, AS SUCH IT SHOWS WHY THE COURTS SHOULD SEVER APPLICATION AGAIN OF 24-13-100 AND 24-13-150 BECAUSE SUBSTANCIAL EVIDENCE PROVES THEY ARE ONLY IN HARMONY WITH THE SENTENCES CARRYING THE MANDATORY MINIMUM LANGUAGE OF NOT LESS THAN 25 YEAR, ECT. OFFENCES.

THEREFORE THE PLAIN LANGUAGE OF 44-53-375(C) MUST BE CONSTRUED IN FAVOR OF THE APPELLANT AND MOST STRICTLY AGAINST THE STATE.

THE INVALID/UNCONSTITUTIONAL PARTS OF 24-13-100 AND 24-13-150 MUST BE DROPPED/RE-PEALED AND UNEFFECTED REMAINDER OF THE STATUES VALID PART MADE OPERATIVE TO THE LAW, LEGISLATIVE LANGUAGE AND INTENT, CHAMPLIN REFINING CO. V. CORPORATION COMM OF STATE OF 286 U.S. 210 (1932), EATON V. DAVIS, 10 S.E. 2d 893 (1940), MCCLURG V. DEATON 395 S.C. 85 (2011)

THUS CREATING AN UNCONSTITUTIONAL APPLICATION TO APPELLANTS SENTENCE AND AS SUCH APPLICANT IS NOT REQUIRED TO DO 85% OF HIS SENTENCE BEFORE PAROLE ELIGIBILITY.

Conclusion

PAROLE ELIGIBILITY AT 1/3 OF SENTENCE, GOOD CONDUCT CREDITS, EDUCATION CREDITS, WORK CREDITS, AND POSSIBLE WORK RELEASE AS IS APPLIED TO TRAFFICKING 1ST 10-28, 44-53-375(C)(1)(a).

STATE OF SOUTH CAROLINA

IN THE ADMINISTRATIVE LAW COURT

HONORABLE JUDGE FUNDERBURK

THE STATE

V. RESPONDENT,

BRETT CURTISS

#313259 APPELLANT

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES THAT THE ORIGINAL BRIEF WAS MAILED TO HONORABLE JUDGE FUNDERBURK AT EDGAR A. BROWN BUILDING, 1205 PENDLETON ST, SUITE 224, COLUMBIA S.C. 29201 AND A TRUE COPY OF APPELLANTS BRIEF IN CASE KCI-1486-17 MAILED TO THE DEPT OF GENERAL COUNSEL, S.C. DEPT OF CORRECTIONS, P.O. BOX 21787, COLUMBIA S.C. 29221 ON MAY 21 2018.

Brett Curtiss

21 May 2018
Melissa Spigner
Dec. 1, 2025

BRETT T. CURTISS #313259
KIRKLAND CORR. INST. K-BE-4
4344 BROADRIVER RD.
COLUMBIA SC. 29210

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Brett Thomas Curtiss, #373259, Appellant, v. South Carolina Department of Corrections, Respondent	Docket No.: 18-ALJ-04-0184-AP Grievance No.: KCI 1486-17 RESPONDENT'S BRIEF *Honorable H.W. Funderburk, Jr.*

STATEMENT OF THE CASE

This case is before the Administrative Law Court ("ALC") pursuant to the appeal of Brett Thomas Curtiss ("Appellant"), an inmate incarcerated with the Department of Corrections ("SCDC"). Appellant filed a Step One Grievance on December 21, 2017, seeking a change to his sentence calculation. This grievance was investigated and denied when it was determined that SCDC has properly calculated Appellant's sentence. Appellant filed a Step Two Grievance on January 31, 2018. This grievance was also investigated and denied. Appellant subsequently filed his Notice of Appeal. Because Appellant's sentence has been properly calculated, the final determination of the Department should be affirmed.

JURISDICTION

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *McNeil v. South Carolina Department of Corrections*, 00-ALJ-04-00336-AP (September 5, 2001), the ALC interpreted the breadth of its jurisdiction pursuant to *Al-Shabazz*. That decision holds that the ALC's appellate jurisdiction in inmate appeals is

limited to two types of cases: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which the SCDC has taken an inmate's created liberty interest as punishment in a major disciplinary hearing. Jurisdiction of the ALC was most recently addressed in *Sullivan v. SCDC*, 355 S.C. 437, 586 SE.2d 124 (2003).

In this case, appellant contends that SCDC has incorrectly calculated his sentence. Consequently, the ALC has jurisdiction to hear his appeal.

STANDARD OF REVIEW

A reviewing court will not disturb findings of an administrative agency if its findings are supported by substantial evidence on record as a whole. *Pearson v. JPS Converter & Industry Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering record as a whole, would allow a reasonable mind to reach the conclusion reached by the administrative agency. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. *Heater of Seabrook, Inc. v. Public Svc. Comm'n of S.C.*, 332 S.C. 20, 503 S.E.2d 739 (1998).

ARGUMENTS

APPELLANT'S SENTENCE HAS BEEN CORRECTLY CALCULATED BY RESPONDENT

On July 10, 2017, Appellant was sentenced to nine years for Trafficking in Crack Cocaine, 28 grams or more, 2nd Offense, in violation of SC Code Ann § 44-53-375(c)(2)(b). *See* Sentencing Sheet Indictment 2016GS4602653. Appellant also has current convictions for Possession with Intent to Distribute Methamphetamine and Marijuana; however, his Trafficking conviction is the controlling sentence for his maxout date. *See* Sentencing Sheets for Indictments 2015GS4601787 and 2016GS4602655. Appellant argues that S.C. Code Ann. § 24-13-100 was repealed as to his trafficking offense by *Bolin v. S.C. Dep't of Corr.*, 415 S.C. 276, 781 S.E.2d 914, (Ct. App. 2016), *reh'g denied* (Feb. 24, 2016). This is not correct.

On June 2, 2010, the Omnibus Crime Reduction and Sentencing Reform Act of 2010 went into effect. The Act amended portions of S.C. Code § 44-53-370 and § 44-53-375 by adding the following language to certain subsections dealing with manufacturing/distribution-level drug offenses:

> Notwithstanding any other provision of law, 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 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 subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), 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.

This language was **not** added to any of the subsections dealing with trafficking-level offenses. *See* S.C. Code Ann. § 44-53-370(e) and S.C. Code Ann. § 44-53-375(C).

The case of *Bolin v. S.C. Dep't of Corr.*, 415 S.C. 276, 282, 781 S.E.2d 914, 917 (Ct. App. 2016), *reh'g denied* (Feb. 24, 2016), held that the addition of the above-quoted language to the manufacturing/distribution-level subsections signaled the legislature's intent to repeal S.C. Code § 24-13-100 (the "85% law") to the extent it conflicted with the amended portions of S.C. Code § 44-53-370 and -375. Accordingly, the *Bolin* court found that these specific offenses were no longer to be considered to be 85%, "no-parole" offenses. However, since the language discussed in *Bolin* was **not** added to the trafficking subsections of the drug statutes, *Bolin* has no application to convictions for trafficking.

Appellant's trafficking conviction falls under the 85% "no parole" statute because the offense is a Class A felony which carries a maximum sentence of thirty years. *See* S.C. Ann. Code § 44-53-375(c)(2)(b) (stating that second-offense trafficking in cocaine, 10-28 grams, carries a sentence of seven to thirty years); S.C. Code Ann. § 24-13-100 and -150 (generally, stating that offenses carrying twenty years or more are 85% no-parole offenses) and S.C. Code Ann. § 16-1-20(A)(1) ("A person convicted of classified offenses, must be imprisoned as follows: (1) for a Class A felony, not more than thirty years.").

Appellant argues that the following language contained in subsection F of S.C. Code Ann. § 44-53-375 requires that he be eligible for parole, extended work release, or supervised furlough:

> Sentences for violation of the provisions of subsections (C) or (E) may not be suspended and probation may not be granted. A person convicted and sentenced under subsection (C) or (E) to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release as provided in Section 24-13-610, or supervised furlough as provided in Section 24-13-710.

Initially, this language has no application to Appellant's conviction since he did not receive a "mandatory" or "mandatory minimum" term of imprisonment of twenty-five to thirty years. More importantly, this language (which, notably, was never mentioned or discussed in the *Bolin* case), does not repeal, implicitly or otherwise, the 85% provisions as applied to Appellant's drug trafficking offense. The above language became effective on January 12, 1995. *See* S.C. Code Ann. § 44-53-375(f) (Supp. 1995). At that time, there was no law requiring an inmate to serve an 85%, no-parole term, so the provision prohibiting parole for certain serious drug trafficking offenses had meaning. However, subsequently, on January 1, 1996, the 85% "no-parole" statutes were enacted. *See* S.C. Code Ann. § 24-13-100 and -150 (Supp. 1996). These broader statutes require 85%, no-parole terms for **all** sentences for class A, B, or C felonies or those exempt from classification but carrying a possible penalty of twenty years or more. *See* S.C. Code Ann. § 24-13-100 and -150 (Supp. 1996).

Additionally, as a part of the January 1, 1996 enactments, S.C. Code § 24-21-560 was added, which requires that all inmates sentenced for 85%, "no parole" offenses must be released directly to a community supervision program under the supervision of the Department of Probation, Parole, and Pardon Services for a period not to exceed two years. *See* S.C. Code Ann. § 24-21-560(A) & (B). All of this subsequent legislation - including S.C. Code § 24-13-100, § 24-13-150, and § 24-21-560 - to the extent it conflicts with the language in S.C. Code § 44-53-375(f), supersedes -375(f). *See, e.g., Williams v. Town of Hilton Head Island*, S.C., 311 S.C. 417, 421, 429 S.E.2d 802, 804 (1993) (in instances where it is not possible to harmonize two sections of a statute, a later

legislation supersedes an earlier enactment); *State v. Brown*, 317 S.C. 55, 58, 451 S.E.2d 888, 891 (1994) ("More recent and specific legislation supersedes prior general law.").

Therefore, Appellant must be incarcerated for at least 85% of his sentence. *See* S.C. Code Ann. § 24-13-150(A). Appellant's sentence start date is March 16, 2017. *See* Conviction Summary printout from SCDC's Offender Management System. Eighty-five percent of Appellant's nine year sentence is approximately seven years seven months and twenty-four days. Appellant's current projected maxout date is November 5, 2024, which is approximately seven years seven months and twenty-four days from his sentence start date.

Appellant has not carried his burden to demonstrate SCDC is incorrectly calculating his sentence. Therefore, SCDC respectfully requests its decision denying appellant's Step Two grievance be upheld.

RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE

The record conclusively establishes that the "substantial evidence on the whole record" supports the Department's final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. *See Porter v. Public Service Comm'n*, 333 S.C. 12, 507 S.E.2d 328 (1998). Appellant has not met this burden and his claim should be dismissed with prejudice.

CONCLUSION

Appellant has not met his burden to demonstrate SCDC is incorrectly calculating his sentence, and the Department's calculation is supported by substantial evidence. Therefore, Respondent respectfully requests this Court dismiss this case with prejudice.

Respectfully submitted,

Kensey E. Barrett
Staff Attorney
S.C. Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803) 896-8508

August 21, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

BRETT THOMAS CURTISS, #373259 APPELLANT, V. SOUTH CAROLINA DEPT. OF CORRECTIONS, RESPONDENT	DOCKET NO.: 18-ALJ-04-0184-AP GRIEVANCE NO.: KCI 1486-17 REPLY BRIEF HONORABLE H.W. FLOWERBURR, JR.

STATEMENT OF THE CASE

APPELLANT FILED A STEP ONE GRIEVANCE ON DECEMBER 21, 2017, STATING SENTENCE CALCULATION, NO PAROLE ARE INCORRECT, GRIEVANCE WAS DENIED. APPELLANT FILED A STEP TWO GRIEVANCE ON JANUARY 31, 2018. GRIEVANCE WAS DENIED. APPELLANT SUBSEQUENTLY FILED A NOTICE OF APPEAL TO THE ALC, BECAUSE APPELLANT'S SENTENCE HAS NOT BEEN PROPERLY CALCULATED AND S.C.D.C. ADMITS THAT APPELLANT IS SERVING A MINIMUM TERM SENTENCE NOT A "MANDATORY" OR A "MANDATORY MINIMUM" SENTENCE, NOR A 3RD, SUBSEQUENT OFFENSE (RESPONDENT'S BRIEF PG 4-5). THE FINAL DETERMINATION OF THE DEPARTMENT SHOULD BE REVERSED.

JURISDICTION

THE ALC'S JURISDICTION TO HEAR THIS MATTER IS DERIVED ENTIRELY FROM THE DECISION OF THE SOUTH CAROLINA SUPREME COURT IN AL-SHABAZZ V. STATE, 338 S.C. 354, 527 S.E.2d 742 (2000).

STANDARD OF REVIEW

THE REVIEWING COURT CAN CHANGE A ADMINISTRATIVE AGENCY'S

FINDINGS BECAUSE EVIDENCE MUST BE LOOKED UPON AS A WHOLE AND NOT JUST IN PART, STATE V. LANDIS 362 S.C. 97 (2004). "SUBSTANCIAL EVIDENCE" AS A WHOLE, WOULD ALLOW A REASONABLE MIND TO REACH THE CONCLUSION INTENDED BY LEGISLATURE AND REACHED BY APPELLANT, KING V. BURWELL 135 S.Ct. 2480.

ADMINISTRATIVE AGENCIES ARE NOT AFFORDED A WIDE LATITUDE WHEN MAKING DECISIONS THAT THE LEGISLATURE IS CLEAR ON AND EFFECTS APPELLANTS 14th AMEND RIGHT AND AS SUCH MUST BE CONSTRUED STRICTLY AGAINST THE STATE IN FAVOR OF THE DEFENDANT (APPELLANT), STATE V. TAUB 519 S.E.2d 797, 800-801 (1999).

ARGUMENTS

APPELLANTS SENTENCE HAS NOT BEEN CORRECTLY CALCULATED BY RESPONDANT AND IS ELIGIBLE FOR PAROLE AT 1/3 OF HIS SENTENCE. ON JULY 10, 2017, APPELLANT WAS SENTENCED TO 9 YEARS FOR TRAFFICKING, 28 GRAMS OR MORE, 2ND OFFENSE, 44-53-375(C)(2016). HERE TRAFFICKING IS WRITTEN BY LEGISLATURE WITH A SPECIFIC INTENT IN THE STATUTE OF 44-53-375(C) AND 370(E) TO CONTAIN ITS OWN ENHANCEMENT. GENERAL COUNSEL AGREED WITH THIS, ALTHOUGH THEY SAY THE 1996 ENACTMENT OF 24-13-100 AND 150 (RESPONDENTS BRIEF PG 5-6) SHOWING THAT THE TWO SECTIONS OF THE STATUTES DO NOT HARMONIZE AND USES STATE V. BROWN 317 S.C. 55, 58 (1994) FOR SUPERSEDING AN EARLIER SPECIFIC STATUTE AND THIS CAN NOT BE DONE IN ITS APPLICATION TO LEGISLATIVE INTENT, WHERE IN STATE V. TAUB 519 S.E.2d 797 (1999) THE SOUTH CAROLINA SUPREME COURT PREVIOUSLY ADDRESSED THIS ISSUE IN STATE V. DISDALE 321 S.C. 153 (Ct. App 1996) QUOTING: "WHICH INVOLVED

THE OFFENSE OF DRIVING UNDER THE INFLUENCE. IN THAT CASE WE HELD THAT, "TO THE EXTENT THEY CONFLICTED, THE SPECIFIC DUI STATUTE PREVAILED OVER THE MORE GENERAL PROVISIONS OF 24-21-410. WE FIND THAT ANALYSIS APPLICABLE HERE AND HOLD THAT THE MORE SPECIFIC TRAFFICKING STATUTE PREVAILS").

CLEARLY THE SUBSECTIONS DEALING WITH TRAFFICKING-LEVEL OFFENSES 44-53-370(e) AND 375(C) BECAUSE THEY CONTAIN IT'S OWN ENHANCEMENT PROVISION FOR NO-PAROLE AND THE COURTS HAVE TURNED TO CANNON'S OF STATUTORY CONSTRUCTION TO HARMONIZE PROVISIONS. IT'S UNREASONABLE TO CHARACTERIZE OFFENSES ELIGIBLE FOR PAROLE AS NO-PAROLE OFFENSES PURSUANT TO 24-13-100 AND 150, KERR V. STATE 345 S.C. 183 (2001), STATE V. TISDALE 321 S.C. 153 (1996), STATE V. TAUB 519 S.E. 2d 797 (1999).

THE S.C.D.C. AGENCY RELY ON THEIR INTERPRETATION, NOT LEGISLATURES INTENT (RESPONDENT BRIEF PG. 5) WHERE THEY ADMIT THAT APPELLANT IS NOT SERVING A "MANDATORY" OR "MANDATORY MINIMUM" BUT A MINIMUM TERM IMPRISONMENT WHICH CONTRADICTS WHAT THE AGENCY CLASSIFICATION STATES IN RESPONSE (SEE STEP 1 GRIEVANCE) "YOU DO HAVE A MANDATORY SENTENCE REQUIREMENT OF 7 YEARS, 7 MONTHS AND 24 DAYS. TAKING INTO ACCOUNT THE ABOVE FACT, THAT IS WHY YOU DO NOT HAVE A PAROLE DATE".

THE DEPARTMENT AGENCY USES THE 24-13-100 AND 150 (SUPP 1996) TO SUPPORT IT'S CLAIM, YET UNDER LEGISLATIVE INTENT AND BECAUSE TRAFFICKING HAS IT'S OWN SELF CONTAINED ENHANCEMENT FOR NO PAROLE, IT THUS BECOMES CLEAR THAT THE SUPREME COURT OF SOUTH CAROLINA CLARIFIES THE INSTANCE WHERE IT IS NOT POSSIBLE TO HARMONIZE TWO SECTIONS IN IT'S STATE V. TAUB RULING AFTER THE 1996 ENACTMENT OF 24-13-100 AND 150 THAT STATES; "PURELY A MATTER OF LEGISLATIVE PREROGATIVE" AND THE LEGISLATURES JUDGMENT WILL NOT BE DISTURBED" STATE V. DE LA CRUZ

CONTINUED, RUMMEL V. ESTELLE 445 U.S. 263 (1980) "THE CARDINAL RULE OF STATUTORY CONSTRUCTION IS TO ASCERTAIN AND EFFECTUATE THE LEGISLATIVE INTENT" STATE V. SMITH 330 S.C. 237 (1998) "PENAL STATUTES ARE TO BE CONSTRUED STRICTLY AGAINST THE STATE AND IN FAVOR OF THE DEFENDANT" STATE V. BURTON 301 S.C. 305 (1990) "WE CONCLUDE THAT THE MANDATORY NATURE OF 44-53-370(E)(2)(D) IS CLEAR UNDER THE PLAIN MEANING OF THE ENDLOSED, NOT WITHSTANDING THE FACT THAT THE WORD "MANDATORY" IS ONLY USED TO DESCRIBE THE SENTENCE FOR A THIRD OR SUBSEQUENT OFFENSE," SEE STATE V. WILSON 433 S.E. 2d 864, 867 (1993) (STATING THE PRECISE QUANTITY OF DRUGS INVOLVED IN TRAFFICKING IN COCAINE IN VIOLATION OF 370(E)(1) "IS PERTINENT, NOT TO THE CLASSIFICATION OF TRAFFICKING, BUT TO THE MINIMUM PENALTY PRESCRIBED (SIC)" STATE V. DE LA CRUZ (NOTING JOHNSON CASE "DEALT WITH MANDATORY MINIMUM SENTENCE") JOHNSON 279 S.E. 2d 606, 607 (1981) "IT IS TRUE THE LEGISLATURE ONLY USED THE TERM "MANDATORY" IN STATING THE SENTENCE FOR A 3RD AND SUBSEQUENT. HOWEVER, A REVIEW OF THE OVERALL SENTENCING SCHEME REVEALS THAT THIS IS NOT INCONSISTANT." SEE STATE V. ALLS 500 S.E. 2d 781, 782 (1998) ("IN CONSTRUING STATUTORY LANGUAGE, THE STATUTE MUST BE READ AS A WHOLE, AND SECTIONS WHICH ARE OF THE SAME GENERAL STATUTORY LAW MUST BE CONSTRUED TOGETHER AND EACH ARE GIVEN EFFECT, IF IT CAN BE DONE BY ANY REASONABLE CONSTRUCTION"). "SUBSECTION (E) OF 44-53-370 (ADDED 325(E)) PROVIDES A STATUTORY SCHEME OF SENTENCING FOR TRAFFICKING OFFENSES" SEE DE LA CRUZ "SENTENCES BECOME PROGRESSIVELY GREATER, BASED UPON THE TYPE AND QUANTITY OF CONTROLLED SUBSTANCE INVOLVED AND THE NUMBER OF THE OFFENSE." "IT THUS BECOMES CLEAR THE LEGISLATURE ASSIGNED AN ADDITIONAL MEANING WITHIN SECTION (E) ((E) ADDED) TO ANY SENTENCE DESCRIBED AS "MANDATORY" OR AS A "MANDATORY MINIMUM" "IN ADDITION TO REQUIRING A MANDATORY MINIMUM TERM OF IMPRISONMENT, A PERSON SENTENCED AS A 3RD

OR SUBSEQUENT OFFENDER UNDER THE "MANDATORY" PROVISION IS NOT ELIGIBLE FOR PAROLE, SEE STATE V. JOHNSON. C "LEGISLATURES DECISION TO MANDATE A MINIMUM SENTENCING TERM AND DENY THE OFFENDER PAROLE ELIGIBILITY FOR A PORTION THEREOF IS AN APPROPRIATE EXERCISE OF ITS POWER). "IN CONTRAST, A PERSON SENTENCED AS A FIRST OR SECOND OFFENDER, THOUGH SUBJECTED TO A REQUIRED MINIMUM TERM OF IMPRISONMENT, IS NOT PRECLUDED UNDER THE STATUTE FROM RECEIVING PAROLE, EXTENDED WORK RELEASE, OR SUPERVISED FURLOUGH" CALL QUOTED FROM STATE V. TALBOT 519 S.E. 2d 797 IN 1999, 3 YEARS AFTER THE 1996 SUPP. OF 24-13-100 + 150 ARGUMENT THAT THE AGENCY USE (RESPONDENTS BRIEF PG 2 +5) TO CLAIM THAT EVEN THOUGH THESE ARE TWO INCONSISTANT CONCLUSIONS THAT THEIR INTERPRETATION OF THE LEGISLATURES INTENT IS SUPPORTED BY SUBSTANCIAL EVIDENCE AND THAT THE PLAIN LANGUAGE IN KERR AND CLEARLY IN TALBOT RULED ON BY THE S.C. SUPREME COURT IN 1999 IS NOT.

APPELLANTS SUBSTANCIAL EVIDENCE

APPELLANT HAS SHOWN THAT THE ADMINISTRATIVE AGENCY IS NOT SUPPORTED BY SUBSTANCIAL EVIDENCE ON RECORD AS A WHOLE AND THAT THEIR WIDE LATITUDE IS ABUSIVE AGAINST THE LEGISLATIVE INTENT FOR NO-PAROLE WHICH CLEARLY EFFECTS AND VIOLATES APPELLANTS 14th AMEND RIGHT FROM RECEIVING PAROLE, EXTENDED WORK RELEASE OR SUPERVISED FURLOUGH.

CONCLUSION

APPELLANT HAS CARRIED THE BURDEN TO DEMONSTRATE, SCDC AGENCY IS INCORRECTLY CALCULATING HIS SENTENCE. THEREFOR, APPELLANT RESPECTFULLY REQUESTS THIS COURT TO GRANT HIS CASE FOR PAROLE ELIGIBILITY AT ONE THIRD OF HIS SENTENCE.

RESPECTFULLY SUBMITTED,

AUGUST 28 2018

Brett Curtiss #373259

COLUMBIA, SOUTH CAROLINA

BRETT T. CURTISS R-B2-4

(S) MILLIONS CORR. INST.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H. W. Funderburk, Jr.

ALC Case No. 18-ALJ-04-0184-AP
Appellate Case No. 2018-001776

BRETT CURTISS, # 373259,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Kensey E. Barrett
Deputy General Counsel
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT FAILED TO SHOW THE DEPARTMENT'S CALCULATION OF HIS SENTENCE WAS INCORRECT.

STATEMENT OF THE CASE

This matter is comes before the Court pursuant to the appeal of Brett Thomas Curtiss, an inmate incarcerated with the Department of Corrections. Appellant filed a Step One Grievance on December 21, 2017, seeking a change to his sentence calculation. This grievance was investigated and denied when it was determined that SCDC has properly calculated Appellant's sentence. Appellant filed a Step Two Grievance on January 31, 2018. This grievance was also investigated and denied. Appellant filed a Notice of Appeal in the Administrative Law Court on April 19, 2018. Thereafter, on August 31, 2018, the Honorable H. W. Funderburk, Jr. issued an order affirming the decision of the Department of Corrections. This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

> The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it 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. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE DECISION OF THE DEPARTMENT OF CORRECTIONS WHERE APPELLANT FAILED TO SHOW THE DEPARTMENT'S CALCULATION OF HIS SENTENCE WAS INCORRECT.

In this case, the Administrative Law Court properly affirmed the decision of the Department of Corrections, and Appellant has failed to show that the Department of Corrections committed any error with respect to calculation of his sentence. On July 10, 2017, Appellant was sentenced to nine years for Trafficking in Crack Cocaine, 28 grams or more, 2nd Offense, in violation of SC Code Ann § 44-53-375(c)(2)(b), which is his controlling sentence. *See* ALC Order, p. 4.[1] Appellant argues that Respondent is incorrectly applying S.C. Code Ann. § 24-13-100 to his sentence. *See* App. Initial Brief, p. 2. This is not correct.

On June 2, 2010, the Omnibus Crime Reduction and Sentencing Reform Act of 2010 went into effect. The Act amended portions of S.C. Code § 44-53-370 and § 44-53-375 by adding the following language to certain subsections dealing with manufacturing/distribution-level drug offenses:

> Notwithstanding any other provision of law, 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 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 subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), 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.

---

[1] Appellant was also sentenced on July 10, 2017 for Marijuana Possession with Intent to Distribute, 1st Offense; Possession with Intent to Distribute Methamphetamine, 2nd Offense; and on April 19, 2018 for Trafficking Ice, Crank, or Crack Cocaine- 10g or more, but less than 28g, 1st Offense. *See* ALC Order, p. 4 fn. 4.

This language was **not** added to any of the subsections dealing with trafficking-level offenses. 41

See S.C. Code Ann. § 44-53-370(e) and S.C. Code Ann. § 44-53-375(C).

The case of *Bolin v. S.C. Dep't of Corr.*, 415 S.C. 276, 282, 781 S.E.2d 914, 917 (Ct. App. 2016), *reh'g denied* (Feb. 24, 2016), held that the addition of the above-quoted language to the manufacturing/distribution-level subsections signaled the legislature's intent to repeal S.C. Code § 24-13-100 (the "85% law") to the extent it conflicted with the amended portions of S.C. Code § 44-53-370 and -375. Accordingly, the *Bolin* court found that these specific offenses were no longer to be considered to be 85%, "no-parole" offenses. However, since the language discussed in *Bolin* was **not** added to the trafficking subsections of the drug statutes, *Bolin* has no application to convictions for trafficking. *See* ALC Order, p. 5

Appellant's trafficking conviction falls under the 85% "no parole" statute because the offense is a Class A felony which carries a maximum sentence of thirty years. *See* S.C. Ann. Code § 44-53-375(c)(2)(b) (stating that second-offense trafficking in cocaine, 10-28 grams, carries a sentence of seven to thirty years); S.C. Code Ann. § 24-13-100 and -150 (generally, stating that offenses carrying twenty years or more are 85% no-parole offenses) and S.C. Code Ann. § 16-1-20(A)(1) ("A person convicted of classified offenses, must be imprisoned as follows: (1) for a Class A felony, not more than thirty years.").

Appellant argues that the following language contained in subsection F of S.C. Code § 44-53-375 requires that he be eligible for parole, extended work release, or supervised furlough:

> Sentences for violation of the provisions of subsections (C) or (E) may not be suspended and probation may not be granted. A person convicted and sentenced under subsection (C) or (E) to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five

> years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release as provided in Section 24-13-610, or supervised furlough as provided in Section 24-13-710.

Initially, this language has no application to Appellant's conviction since he did not receive a "mandatory" or "mandatory minimum" term of imprisonment of twenty-five to thirty years. More importantly, this language (which, notably, was never mentioned or discussed in the *Bolin* case), does not repeal, implicitly or otherwise, the 85% provisions as applied to Appellant's drug trafficking offense. The above language became effective on January 12, 1995. *See* S.C. Code Ann. § 44-53-375(f) (Supp. 1995). At that time, there was no law requiring an inmate to serve an 85%, no-parole term, so the provision prohibiting parole for certain serious drug trafficking offenses had meaning. However, subsequently, on January 1, 1996, the 85% "no-parole" statutes were enacted. *See* S.C. Code Ann. § 24-13-100 and -150 (Supp. 1996). These broader statutes require 85%, no-parole terms for **all** sentences for class A, B, or C felonies or those exempt from classification but carrying a possible penalty of twenty years or more. *See* S.C. Code Ann. § 24-13-100 and -150 (Supp. 1996).

Additionally, as a part of the January 1, 1996 enactments, S.C. Code § 24-21-560 was added, which requires that all inmates sentenced for 85%, "no parole" offenses must be released directly to a community supervision program under the supervision of the Department of Probation, Parole, and Pardon Services for a period not to exceed two years. *See* S.C. Code § 24-21-560(A) & (B). All of this subsequent legislation - including S.C. Code § 24-13-100, § 24-13-150, and § 24-21-560 - to the extent it conflicts with the language in S.C. Code § 44-53-375(f), supersedes -375(f). *See, e.g., Williams v. Town of Hilton Head Island*, S.C., 311 S.C. 417, 421, 429 S.E.2d 802, 804 (1993) (in instances where it is not possible to harmonize two

sections of a statute, a later legislation supersedes an earlier enactment); *State v. Brown*, 317 S.C. 55, 58, 451 S.E.2d 888, 891 (1994) ("More recent and specific legislation supersedes prior general law.").

Therefore, Appellant must be incarcerated for at least 85% of his sentence. *See* S.C. Code Ann. § 24-13-150(A); *see also* ALC Order, p.5. Appellant's sentence start date is March 16, 2017. *See* Conviction Summary printout from SCDC's Offender Management System. Eighty-five percent of Appellant's nine year sentence is approximately seven years seven months and twenty-four days. Appellant's current projected maxout date is November 5, 2024, which is approximately seven years seven months and twenty-four days from his sentence start date. Appellant has failed to show that the Department's calculation is incorrect in any way. Therefore, Respondent respectfully requests that the order of the Administrative Law Judge be upheld.

CONCLUSION

For the foregoing reasons, the Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

KENSEY E. BARRETT
Deputy General Counsel
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

January 25, 2019

STATE VS.

BRETT THOMAS CU[illegible]S

AKA:

Race: [redacted] Sex: [redacted] Age: [redacted]

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: [redacted]

DL# [redacted] SID# [redacted]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2016GS4602653
A/W: 2016A4610201117
Date of Offense: 05/23/2016
S.C. Code §: 44-53-375(C)
CDR Code #: 0349

07

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Trafficking Crack Cocaine 28g or more 2nd Offense
In violation of § 44-53-375(C) of the S.C. Code of Laws, bearing CDR Code # 0389

☐ 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. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Jennifer S. Colton, Assistant Solicitor 68591 SC Bar # | Defendant | Attorney for Defendant 65326 SC Bar #

WHEREFORE, the Defendant is committed to the ☐ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 9 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 7/30/17 ghcn

☒ 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. 116 days

☐ The Defendant is to be placed on 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing**
Total: $_____ plus 20% fee: _____ $_____
Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____		$_____
§14-1-206 (Assessments 107.5%)		$_____
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$_____
§56-5-2995 (DUI Assessment)	$12	$_____
§56-1-286 (DUI Breath Test)	$25	$_____
Proviso 61.6 (Public Def/Prob)	$500	$_____
§14-1-212 (Law Enforce. Funding)	$25	$25.00
§14-1-213 (Drug Court Surcharge)	$150	$150.00
§50-21-114 (BUI Breath Test Fee)	$50	$_____
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$_____
3% to County (if paid in installments)	$	$_____
TOTAL		$275.00

☐ **Ordered** **PTUP** _____
_____ days/hours Public Service Employment
Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____
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: _____

☐ Appointed PD or appointed other counsel, Proviso §61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: David Hamilton
Court Reporter: Wanda Nelson
Presiding Judge: [signature]
Judge Bar ID: _____ Judge Code: 2131
Sentence Date: 7-10-17

SCCA/217 (07/2016)

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

TO INMATE: **SCDC #:**

INSTITUTION: Kirkland Correctional Institution

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: _____ Projected Parole Date: N/A

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): V. Smith

Signature: [signature]

Inmate Signature: _____ Date: _____ Time: _____

Original: Central Record
cc: Institutional Record
Inmate

Revised 1/30/17

CERTIFICATE OF COUNSEL FOR APPELLANT

COUNSEL FOR APPELLANT CERTIFIES THAT THIS RECORD ON APPEAL CONTAINS ALL MATERIAL PROPOSED TO BE INCLUDED BY ANY OF THE PARTIES AND NOT ANY OTHER MATERIAL AND THAT THIS RECORD ON APPEAL COMPLIES TO THE BEST OF MY ABILITY WITH THE APRIL 15, 2014 ORDER FROM THE SOUTH CAROLINA SUPREME COURT ENTITLED "REVISED ORDER CONCERNING PERSONAL IDENTIFYING INFORMATION AND OTHER SENSITIVE INFORMATION IN APPELLATE COURT FILINGS".

RESPECTFULLY SUBMITTED,

Brett T. Curtiss

BRETT T. CURTISS #373259
PRO-SE
KIRKLAND CORR. INST E-B204
4344 BROADRIVER RD.
COLUMBIA SC 29210

THIS 22 DAY OF FEBRUARY, 2019