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State of South Carolina
In The Court of Appeals

Hon. Ralph King Anderson, III
Trial Court Case No. 2013-ALJ-15-0005-AP
Appellate Case No. 2013-001516

GEORGE M. ADAMS, #181283, Appellant,

v.

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

Appellant's Reply Brief

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Date: August 11, 2014
Bishopville, S.C. 29010

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STATUTES

Question Presented

Did the Administration Law Court err in holding that Appellant's sentencing statute for murder, reads in harmony with SCDPPPS parole statute use of a prior conviction statute, authorizing or denying parole eligibility permanently?

Statement of Reply

Appellant's pro se brief and designation of matter to be included in the record on Appeal was filed November 21, 2013.

Respondent's initial brief and designation of matter was served and dated January 9, 2014. In it's brief, the Respondent Raise several arguments as to why the ALC was correct in affirming the decision to permanently deny parole. On January 21, 2014, Respondent filed a motion To Accept Filing late.

Appellant Reply brief is as follows:

ARGUMENT

THE ALC ERRED IN DECIDING THAT APPELLANT'S PRIOR CONVICTION FOR A VIOLENT CRIME SENTENCING STATUTE CAN BE READ IN HARMONY WITH THE CURRENT CONVICTION FOR VIOLENT CRIME SENTENCING STATUTE, ALONG WITH, THE PAROLE STATUTE AND VIOLENT CRIME STATUTE. AUTHORIZING DPPPS TO PERMANENTLY DENYING ELIGIBILITY OF A MANDATORY MINIMUM TWENTY YEAR LIFE SENTENCE WITH POSSIBILITY OF PAROLE.

SOUTH CAROLINA CODE OF LAWS § 24-21-640 (1992), §16-1-60 (1992) AND §16-3-20 (A)(1992) STATUES ARE NOT READ IN HARMONY WITH THE AUTHORIZATION FOR PPPS'S USE OF A PRIOR CONVICTION PERMANENTLY DENYING APPELLANT'S ELIGIBILITY FOR PAROLE. WHEN APPELLANT WAS SENTENCED IN 1994 THE MURDER SENTENCING PHARSE UNDER §16-3-20-(A)(1992), ENTITLED HIM TO RECEIVE ELIGIBILITY FOR PAROLE AFTER SERVICE OF 20 YRS. UNDER THE OLD LAW. THE LOWER COURT ERRED IN APPLYING § 24-21-640 (1992) TO DENY APPELLANT PERMANENTLY PAROLE DUE TO THE MANIFEST REPUGNANCY CREATED BETWEEN ALL PROVISIONS ON THE THE OMNIBUS CRIME BILL SETTING PAROLE ELIGIBILITY LANGUAGES NOT FOUND IN EACH STATUTE. THE MURDER SENTENCING STATUTE DID NOT REFLECT TERMS IN ITS LANGUAGE TO REFER TO THE USE OF A PRIOR CONVICTION BEING USE BY PPPS UNDER § 24-21-640 (1992) TO PERMANENTLY DENY A DEFENDANT WHEN CONVICTED ELIGIBILITY FOR PAROLE WHEN SENTENCED IN (1992). IF THE LEGISLATURE IN (1992) INTENTED FOR THE READING OF USE OF A DEFENDANT'S PRIOR VIOLENT CRIME TO PERMANENTLY DENY ANY PRIVILEGE WHEN SENTENCING

under §16-3-20(A)(1992), Reading of all statutes languages would have refered together with one another, or all statutes languages would have been Amended to reflect the other statute languages concerning that same subject matter. The decision by the lower court to permanently deny Appellant parole Eligibility under Reading in harmony all statutes together require this Court's review of PPPS's general rule. under the circumstances in this case which has established a repugnancy between the statutes needs corrected within the provisions of all Acts, because the languages are not general in it's terms when Appellant was sentenced. And no other paticular sentencing dealing with the same subject in a particular way or particular purpose existed. The statutes cannot be read together and harmonized, if possible, preventing the statutes to stand together. Appellant is a pro se inmate not an Attorney. Appellant states that the languages in the statutes was not understood by the sentencing court in (1992) to reflect to one another, so how could Appellant have had knowledge constitutionally that the other Apply. Provisions of the 1986 omnibus crime bill setting parole Eligibility on the use of a prior violent crime setting parole Eligibility language for a second violent offender provision for sentencing under §16-3-20(A) (1992) is a theory that all statutes are harmonized. The lower court erred by concluding that the statutes should be together when Appellant was sentenced. Appellant points out that these statutes provisions languages does not reflect in harmony under the parole status for a second violent offender. Both the parole and sen-

tencing statutes speaks of Eligibility for parole, one granting and the other permanently preventing parole for a second violent offender. The different languages on the Amount of time to become Eligible and non-Eligible creates a conflict in sentencing of Appellant. The law clearly provided that if two statutes are in conflict, the latest statute passed prevail so as to repeal the Earlier statute to the extent of the repugnancy. That can't be done in this case. In Yannis Coastal, Inc. v. Stroh Brewer, 386 S.E.2d 64 (1984), the court established that such a statute (§16-3-20(A)(1992)) is penal in nature, and is to be construed strictly against the respondent, and in favor of Appellant's sentencing, since the Omibus Crime bill language is not found under the sentencing statute in (1992), the sentencing pharse at that time for Eligibility of parole Apply. The lower court could not conclude that the sentencing section of §16-3-20(A)(1992) for parole on the mandatory minimum of twenty (20) years life sentence with the possibility of parole was constitutionally implicitly Repealed by §24-21-640(1992). If the legislature had wanted to exclude permanently any possible chance of parole under §16-3-20(A)(1992) for a second violent offender under §16-3-20(A)(1992) in (1994), it would have done so by clarifying the languages in both statutes to reflect the other.

This court stated in the past in Lewis v. Gaddy, 173 S.E.2d 376, 378 (1970) (it is, of course, well settled that Repeal by implication is not favored, and a law should not be construed as implied repealing a prior law, a prior law unless no other

REASONABLE CONSTRUCTION CAN be Applied). In this INSTANCE, §16-3-20(A)(1992) CAN Simply OR could HAVE been AMENDED to Reflect the languages of the 1986 omnibus CRIME bill setting of PAROLE FOR first OR SECOND VIOLENT offenders SENTENCING. This COURT HAS PROPERLY STATED the RULE that REPEAL by implication is NOT FAVORED AND CAN be found ONLY WHERE NO REASONABLE CONSTRUCTION CAN be given, Especially WHEN dealing with two OR three totally different STATUTES. In Busby v. STATE FARM Mut. Auto Ins. Co., 312 S.E.2d 716, 719 (Ct. App. 1984) This COURT has stated the following, ('it is WELL ESTABLISHED in this STATE that A STATUTE OF A SPECIFIC NATURE ARE NOT to be CONSTRUED AS REPEAL IN WHOLE OR IN PART BE A later GENERAL STATUTE UNLESS THERE is A direct REFERENCE to the FORMER STATUTE OR the INTENT of the legislature to do so is Explicitly implied therein).

The HARMONIOUS READING of the STATUTES REVEALED that other STATUTES HAVE been PASSED SINCE the NO PAROLE STATUTE which CONTAINS specific USE OF A PRIOR VIOLENT CRIME defined by §16-1-60 (1992). §16-3-20(A)(1992), WAS ENACTED AND IN EXISTENCE during the SAME time §24-21-610(1992), which REFLECTS the OMINBUS CRIME bill defination of A VIOLENT CRIMES. But, §16-3-20(A)(1992), SENTENCING IN (1994) ALLOWED PAROLE FOR those CONVICTED of MURDER, FOR who WAS NOT SENTENCED to death, EVEN though §16-1-60 (1992) AND §24-21-610(1992) WERE IN EXISTENCE AT the time APPELLANT WAS SENTENCED. §16-3-20(A)(1992) SENTENCING STATUTE CONCERNING ANY possible EXCEPTION of PAROLE ELIGIBILITY IS READ IN ISOLATION FROM the OTHER STATUTES CONCERNING PAROLE, BECAUSE the legislature INTENT FOR the READING of the MURDER SENTENCING STATUTE together

With the other statutes language would have revealed such. The loss of the liberty interest to parole from the use of a prior violent crime, (§16-11-311), is err. Simply, the language in §16-3-20(A)(1992), sentencing statute would have changed given Appellant constitutionally notice, properly, that PPPs would use his prior conviction for a violent crime to restrict his parole Eligibility in sentencing, pursuant to §24-21-610 (1992). Not waiting twenty (20) years later after imprisonment to discovery Appellant's sentencing needs to be restricted. The lower court Reading together of the statutes on parole, after sentencing was err. So how would a pro se prisoner would have known that both statutes were to be read together?

Appellant was sentenced and schduled to be eligible for parole February 8, 2013. December 21, 2013, Appellant was interviewed by PPPs's official. December 21, 2013, Appellant was served a notice on non-eligibility for parole. February 5, 2013, Appellant was then made aware by final notice from PPPs use of his prior conviction for a violent crime denies his parole permanently. Such statute is to be given full effect as long as it does not Expressly Conflict with one another. Palmettonet v. South Carolina Tax Com. N., 456 S.E. 2d 385 (S.C. 1995). Therefore, Appellant's sentencing accordingly to the refered statutes would consist of the no parole by the trial judge's instructions to the jury triggering the language of the omnibus crime bill under §24-21-640 (1992), because of a prior violent crime

conviction for first degree burglary under §16-11-311 (1990). So how was §24-21-640 (1992) constitutionally triggered to override §16-3-20(A)(1992) sentencing in (1991) to the Eligibility of parole? Appellant's main argument is; The murder statute §16-3-20(A)(1992), sentencing phrases for grant of the privilege of parole is denied by a manifest repugnancy not corrected by the lower court, and PPPS review and use of his prior conviction for a violent crime, when sentenced for the presence violent crime. This court of Appeals cannot find under §16-3-20(A)(1992) section the language or terms of permanent denial of parole, general law, in §24-21-640(1992). The special act committed by PPPS of permanently depriving Appellant of parole under above circumstances require this court's review of the PPPS general rule created as a manifest repugnancy between all above provisions. And where the languages are not general in it's terms when Appellant was sentenced. And no other particular sentencing statute dealing with the same subject in a paticular way or particular purpose. The lower court cited no cases where the courts have read these statutes together, and harmonized, if possible, these statutes. Because Applicant is pro se, Hughes v. Rowe, 101 S.Ct. 173 (1973); Estell v. Gamble, 97 S.Ct. 285 (1976), there should have been a more clear understanding between the statutes, in order to gain proper knowledge to refer to the other. Wherefore, the sentencing court did

CORRECTLY SENTENCE APPELLANT AS THE INTENT of the legislature in (1994) for murder committed June 17, 1992. Even if the courts were to repeal and Amend these statutes languages as already done, such could only apply prospective. The lower court's decision are incapable of any reasonable reconcilement, retroactive-ly to apply constitutionally against Appellant. Construing these statutes languages as a whole, each section doesn't contain the same general statutory law to make effective. This court now faces the decision to review this repugnancy between the statutes to establish a well-recognized meaning, from the lower court's presumption that the legislature intended to use the words of each statute in such sense. Small v. Weed, 340 S.E.2d 531 (S.C. App. 1987). Remand to the PPPS by this court is requested where subject matter jurisdiction does not exist.

Conclusion

For the reasons stated in Appellant's pro se brief and this pro se reply brief, this court is to reverse and remand with instructions to reinstate Appellant's parole eligibility.

Respectfull Submitted,
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