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SC Court of Appeals

State of South Carolina
In The Court Of Appeals

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

ALC Case No: 18-ALJ-04-0206-AP
Appellate Case No: 2018-002139

Jeffrey McCoy #355188 ..... Appellant

V.

South Carolina Department of Corrections ... Respondant

Final Brief Of Appellant

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Statement of The Case

This case is before this Court because the appellant filed a grievance with the South Carolina Department of correction saying that they incorrectly calculated his sentence as an 85% service requirment under Section 24-13-100 and 24-13-150 for Safecracking 16-11-390. This grievance was denied At both steps One and two. The appellant then appealed his grievance to the Administative Law Court whom AFFIRMED the final decision of the South Carolina Department of corrections and this appeal followed.

Statement Of The ISSUES on Appeal

1. Did the (ALC) Judge error by saying that the Appellant used the South Carolina Supreme Court ruling in Bolin V. S.C. Dept. of Corr. 415 S.C. 276, 781 S.E. 2d 914, (Ct. App. 2016) to determine that 24-13-100 and 24-13-150(A) were unconstitutionaly applyed to his Safe Cracking charge Section 16-11-390.

2. Did the (ALC) Judge error when she stated and ruled that the issue of the application of Section 24-13-100 and 24-13-150 being unconstitutionaly applyed to his safecracking charge was not preserved for appellate review because it was not raised in his step 1 and 2 grievance.

Argument

The (ALC) Judges interpretation that the statute 16-11-390 Safecracking is a no-parolable offense under SC codes 24-13-100 and 24-13-150(A) because it carries a sentence of up to 30 years is incorrect and shalld be reviewed by this court in order to have a proper determination.

The Administrative Law Court erroneously affirmed the decision of the Department of Corrections and improperly stated in there ORDER that I the appellant argued that the repealed 24-13-100 in Bolin V. S.C. Dep't of Corr. 415 S.C. 276, 781, S.E. 2d 914 (Ct App. 2016) directly affected my Safe Cracking Offense.

The appellant only used Bolin to show that the Supreme court has noted that the statutory definition for the term no-parole offense in 24-13-100 Simply describes the

types of offenses for which the offender is not eligible for parole. Bolin also shows that an offense that carrys a max sentence of 20 years or more is a paralable offense unless the language in the offense statute say otherwise.

The legislatives intent is clearly stated in section 1 of the 2010 Ominus Crime Act that there objective is to reduce redivisim, provide fair and effective sentencing options, employ evidence-based practices for smarter use of Correctional funding and improve public Safty. The legislatives intent is also clearly shown in S.C. Code Ann. 24-22-20 (a)(j) that Safe cracking is a paroleable offense even though it carries a sentence of up to 30 years.

Safecracking 16-11-390 does not have any enhancment factors for the purpose of Sentencing. It is considered a non-violent offense and has a ¼ sentence requirment before parole eligibility. (see S.C.D.C. Conviction Summary and Commitment Application Inquiry for this offense that is included in the Record on Appeal). There is nothing in the Statute 16-11-390 that makes it a no-parole offense but there is language in 24-22-20 that pacifically states that Safecracking is paroolable. There is nothing in the Statute 16-11-390 that makes it a no-parole offense there for Severance of 24-13-100 and 24-13-150 is Qualified.

When Statute are penal in nature it is Strictly Construed against the State agency and in the appellants favor. See State V. Morgain 352 S.C. 359, 574 S.E 2d 203 (2002) and shald be the out come when the charged statute is parolable under Statute 24-22-20 showing that it does not require an inmate to Serve 85% of there

Sentence for Safecracking under 24-13-100 and 24-13-150(A).

Only offenses that are considered violent under 16-1-60 or carry a mandatory minimume are in harmany with 24-13-100 and 24-13-150(A). My offence under 16-11-390 has a statute that deems it a paroloble offense and this court should sever the application of 24-13-100 and 24-13-150(A) because they are not in harmany with the Safecracking statute or 24-22-20.

The Administrative Law Court evroneously ruled that I the appellant did not state in his grievance that it is unconstitutional for South Carolina Department of Corrections to classify his Safecracking offense as a no-parole 85% offence when it is clearly stated in his Step 2 grievance that South Carolina Law does not Constatute Safe cracking as an 85% offense and should be classified as a none 85% offence.

Conclusion

Appellant has met his requrments and shown that S.C.D.C has incorrectly calculated his safecracking Sentence as an 85% offense and respectfully request this honorable Court for parole eligibility at ¼ of his sentence, good conduct credits, education credits work credits and when possible work release.

Respectfily Submitted
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Date: 3-14-19

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Certificate Of Counsel

The undersigned certified that this final Brief complies with Rule 211(b), SCACR.

Date: 3-14-19

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Prose of Appeal