

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM The Administrative Law **RECEIVED**

S. Phillip LenSKI, Administrative Law Judge MAR 25 2020
SC Court of Appeals
Case No: 2018-000548

Torrey DeAund Manning, Appellant,
v.
South Carolina Department of Corrections Respondent.

THE APPELLANT'S MOTION FOR REHEARING

The appellant, TORREY DEAUND MANNING, pursuant to Rule 221, S.C.A.C.R., moves the court to reconsider its 18th March 2020 opinion. In support of motion, the appellant shows the following to the courts.

I. This court overlooked [a material fact in the record / a statute / a decision which is controlling as authority] [I has erroneously construed / misapplied a provision of law / A controlling authority in the following respects:

A. Error I.

The court overlooked the fact that the appellant has raised the issues: of the request of admissions Rule (36) motion which was never denied or dismissed by the Court (ALC). So the respondent (S.C.D.C) had the duty to reply. Which lead to the appellant file of Summary judgment motion which was never denied or dismissed by the ALC. Furthermore because,

The Appellant is pro se. Instructions on the matter would've been proper. Because there was no order to dismiss either motion, the pro se litigant proceeded to continue. Furthermore the material fact in the record within the appellant's Reply Brief to the respondent in the ALC proceedings. Discuss the fact of the respondent's failure to provide any form or reply of a affirmative defense should have been addressed. These matters which were raised by motions and Argument which were preserved in the designation of the matters, should be addressed. Failure to do so only continues the violations of the Appellant's 14th Amendment to Equal Protection and Due Process.

Error 2. The appellant contends that his argument and request of Admission and Summary Judgment state the constitutionality under the statute's which the department of Corrections are applying to his sentence. The issue of constitutionality was the topic of the Appellant's Argument in the ALC. proceeding which was preserved to the designation of the matters.

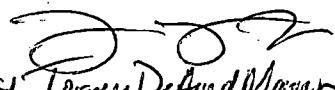
Error 3. The court have misapplied a provision of law. Because 24-13-150 & 24-13-100 should not apply to the sentence/offense of S.C. Code Ann 44-53-370 E)3)A)1 by doing so the court commit a miscarriage of law. Because it precludes the Appellant provisions he is entitled which is parole eligibility which is the legislature's intent. which makes the two statutes of 24-13-150 and 24-13-100 unconstitutional.

2 The material fact that these issues were raised in the ALL proceeding, And the fact that statutes 24-13-150 and 24-13-120 are unconstitutional to the appellant's sentence has been overlooked And requires a different decision from that rendered by the Court of Appeals.

3. The decision that should have been rendered is for Torrey DeAnnand Manning.

WHEREFORE, the Appellant respectfully requests the court to reconsider it 18th March 2020 opinion and rule in favor of the Appellant.

March 20, 2020


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In the Court of Appeals

APPEAL FROM The Administrative Law Court

S. Phillip Lenksi Administrative Law Judge

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Case No. 2018-00548

MAR 25 2020

SC Court of Appeals

Torrey DeAnd Manning,

Appellant

V.

South Carolina Department of Corrections;

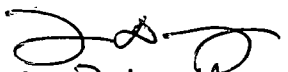
Respondent.

Proof of Service

I certify that I have served the motion for Rehearing on the Respondent South Carolina Department of Corrections by depositing a copy of it in the United States Mail postage prepaid on March 20, 2020. Addressed to their Attorney of record Christina Cathe Bigelow Esquire, at 4344 Broad River Road Columbia, S.C. 29210 ALSO Jenny Abbott Kitchings Post office Box 11629 Columbia South CAROLINA 29211 ON March 20, 2020.

MARCH 20, 2020

364781


Torrey DeAnd Manning E-ML-33
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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Torrey Deaund Manning, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2018-000548

Appeal From The Administrative Law Court
S. Phillip Lenski, Administrative Law Judge

Unpublished Opinion No. 2020-UP-074
Submitted January 1, 2020 – Filed March 18, 2020

AFFIRMED

Torrey Deaund Manning, pro se.

Christina Catoe Bigelow, of the South Carolina
Department of Corrections, of Columbia, for Respondent.

PER CURIAM: Torrey Deaund Manning appeals the decision of the Administrative Law Court (ALC) affirming the South Carolina Department of Corrections' (SCDC) decision classifying him as a Class B felon who must serve eighty-five percent of the total sentence imposed. On appeal, Manning argues (1) the ALC erred in denying his motion for summary judgment in light of SCDC's failure to respond to his requests for admission, (2) sections 24-13-100 and 24-13-150 of the South Carolina Code (2007 & Supp. 2019) are unconstitutional as

applied to him, (3) SCDC denied him due process by applying the aforementioned code sections to his sentence, and (4) he should not be required to serve eighty-five percent of his sentence because he was not sentenced to the statutory maximum sentence for trafficking in illegal drugs. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to issue 1: The issues of Manning's motion for summary judgment and SCDC's failure to respond to requests for admission were not raised to and ruled upon by the ALC. *See Brown v. S.C. Dept. of Health and Evtl. Control*, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002) ("[I]ssues not raised to and ruled on by the AL[C] are not preserved for appellate consideration.").
2. As to issues 2 and 3: Manning's claims regarding alleged violations of his due process rights and the constitutionality of the statutes under which he was sentenced are not preserved for appellate review. *See id.* ("[I]ssues not raised to and ruled on by the AL[C] are not preserved for appellate consideration.").
3. As to issue 4: Manning's sentence was correctly calculated and properly classified as an eighty-five percent "no parole" offense. *See* S.C. Code Ann. § 44-53-370(e)(3) (2018) (defining the offense of "trafficking in illegal drugs"); S.C. Code Ann. § 44-53-370(e)(3)(a)(1) (2018) (detailing a person convicted of trafficking in illegal drugs must be sentenced to no less than seven years' imprisonment but no more than twenty-five years' imprisonment); S.C. Code Ann. § 16-1-90(B) (Supp. 2019) (providing trafficking in illegal drugs is a Class B felony); S.C. Code Ann. § 24-13-100 (2007) (providing Class B felonies are "no parole" offenses); S.C. Code Ann. § 24-13-150 (Supp. 2019) (providing persons convicted of "no parole" offenses are not eligible for early release or discharge until they have served at least eighty-five percent of the actual sentence imposed).

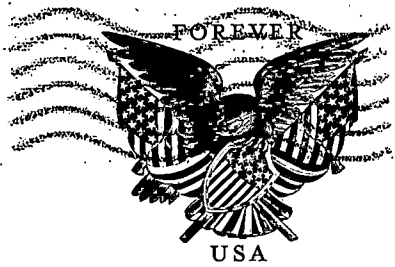
AFFIRMED.¹

HUFF, WILLIAMS, and MCDONALD, JJ., concur.

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

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MAR 25 2020

SC Court of Appeals

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