STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from the Administrative Law Court
The Honorable H. W. Funderburk, Jr., Administrative Law Judge
Docket No. 19-ALJ-15-0023-AP

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Case No. 2019-002123

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Jaquese Neely, #308317,.....APPELLANT

v

South Carolina Department of Probation
Parole and Pardon Services,.....RESPONDENT.

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**RECORD ON APPEAL**

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**JAQUESE NEELY, #308317**

Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335
**APPELLANT**

**TOMMY EVANS, JR., Esq.**

SC Department Of Probation
Parole And Pardon Services
2221 Devine Street
Suite 600 Post Office Box 50666
Columbia, South Carolina 29250

**ATTORNEY FOR RESPONDENT**

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**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| Jaquese Neely, #308317,<br><br>Appellant,<br><br>v.<br><br>South Carolina Department of Probation, Parole and Pardon Services,<br><br>Respondent. | Docket No. 19-ALJ-15-0023-AP<br><br>**FINAL ORDER** |

FILED
DEC 03 2019
SC ADMIN. LAW COURT

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by Jaquese Neely (Appellant), an inmate incarcerated in the South Carolina Department of Corrections. On April 2, 2015, Appellant pled guilty before the Honorable John C. Hayes to two (2) counts of Distribution of Crack Cocaine, 3rd Offense, in York County, South Carolina. Pursuant to the terms of the negotiated plea and sentence, Appellant was sentenced to concurrent terms of ten (10) years on each offense. Appellant now appeals the Final Decision of the South Carolina Department of Probation, Parole and Pardon Services (Department or Respondent) in which the Department determined him to be ineligible for parole under South Carolina law due to a prior drug conviction.

## STATEMENT OF THE CASE

Appellant was indicted for two counts of Distribution of Crack Cocaine, 3rd Offense, under S.C. Code Ann. § 44-53-375(B)(3) (2010) with corresponding CDR Code 3039.[1] Both sentencing sheets reflect that the plea agreements and sentences for these charges were negotiated. (Record, p. 2, 5). At the time of his sentencing, Appellant also had a prior 2005 conviction for Possession with Intent to Distribute Marijuana within Proximity of a School (PWID Marijuana Proximity) under S.C. Code Ann. § 44-53-445 (1995).[2] According to Appellant, although not included in the

[1] Indictment Number 14-GS-46-03426 was for an incident that occurred on November 1, 2013. Indictment Number 14-GS-46-03428 corresponds to an incident date of January 22, 2014. (Record, p. 2-7).

[2] According to the sentencing sheet provided by the Department as part of the Record on Appeal, on March 23, 2005, Appellant pled guilty to this charge (Indictment Number 2005-GS-46-1292) and was sentenced to serve five years to run concurrently with another sentence he received for a probation violation. The sentencing sheet reflects that this plea was also negotiated. (Record, p. 8).

Record on Appeal, as part of the plea negotiations in 2005, the State agreed to *nolle pros* an accompanying charge of Possession with Intent to Distribute Marijuana (PWID Marijuana) in exchange for Appellant's plea to PWID Marijuana Proximity. (App. Brief, p. 1).

At the time of Appellant's 2013 and 2014 distribution offenses and during his plea and sentencing in 2015 for two counts of Distribution of Crack Cocaine, 3rd Offense (Distribution 3rd), § 44-53-375(B) provided an offender would not be parole eligible if he were convicted for a third or subsequent offense or if convicted two or more times in the aggregate for any narcotic drug, marijuana, depressant, stimulant, or hallucinogenic drug offense. A conviction for a first or second offense or for a third offense in which all prior convictions were for possession only allows for parole eligibility. *See* S.C. Code Ann. §44-53-375(B) (2010).

Thus, because of Appellant's plea to two counts of Distribution 3rd under § 44-53-375(B) in 2015 and due to his prior conviction for PWID Marijuana Proximity, the Department determined that Appellant was not eligible for parole. In a letter dated March 21, 2017, General Counsel for the Department informed Appellant of his parole ineligibility:

> On April 2, 2015, you pled to Distribution of Crack, third offense, in Indictment Numbers 14-GS-46-03426 and 03428. Pursuant to South Carolina law a person convicted of this offense with two or more aggregate violations of the law relating to drugs is not eligible for parole.
>
> A review of your prior record reveals a prior drug conviction, therefore, your current offense is ineligible for parole pursuant to South Carolina law. You will not be considered for parole on this offense.

(Record, p. 1).

Appellant wrote to the Department on April 12, 2019, asserting that he did not have the requisite prior conviction(s) that would prevent his being considered for parole under § 44-53-375(B)(3). Appellant asked the Department to change his classification to parole eligible or, in the alternative, provide notice and clarification of the prior convictions used to classify the distributions as third offenses as opposed to second drug offenses, which would qualify him as parole eligible under the statute.

In a letter dated April 22, 2019, General Counsel for the Department responded to Appellant's request:

> I am responding to your letter of April 12, 2019, concerning your parole eligibility.

> As previously explained to you, you are ineligible for parole consideration. I am enclosing a copy of our previous letter to you dated March 21, 2017. No further correspondence will be sent regarding this matter.

(*See* Notice of Appeal filed May 21, 2019).[3]

On May 21, 2019, Appellant timely appealed the Final Decision of the Department to this Court asserting that the decision is in error because he does not have the requisite prior conviction(s) to render him parole ineligible under § 44-53-375(B)(3) for a third or subsequent offense.

## ISSUE

Did the Department err in determining that Appellant is not eligible for parole based on his current and prior convictions under S.C. Code Ann. § 44-53-110, et seq. (2010) (hereinafter collectively referred to as the Controlled Substances Act)?

## DISCUSSION

An individual has a right to ALC review of a final decision of the Department or the Parole Board when that decision affects a liberty interest for which due process is required. *See Furtick v. S.C. Dep't of Prob., Parole and Pardon Services*, 352 S.C. 594, 598-99, 576 S.E.2d 146, 149-50 (2003); *see also Sullivan v. S.C. Dep't of Corrections*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003) (explaining the nature of the right to ALC review). In *Furtick*, the South Carolina Supreme Court held that although an inmate has a liberty interest in parole eligibility pursuant to S.C. Code Ann. § 24-21-620 (2007), the statute does not create a liberty interest in the granting of parole itself. *Furtick*, 352 S.C. at 598, 576 S.E.2d at 149 n. 4.

In claiming that the Department erred in determining that he was ineligible for parole, Appellant has properly brought his Appeal before the ALC. *Cooper v. S.C. Dep't of Prob., Parole and Pardon Services*, 377 S.C. 489, 661 S.E.2d 106 (2008). Here, Appellant is not appealing the denial of parole but, rather, is challenging the Department's determination of parole ineligibility on the grounds that the decision is in violation of constitutional or statutory provisions and is affected by an error of law. Thus, under *Cooper*, a sufficient liberty interest is involved to warrant due process review by this Court. *Id.*, 377 S.C. at 502, 661 S.E.2d at 113.

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[3] This letter was not provided by the Department as part of the Record on Appeal. The letter was filed with the Court on May 21, 2019, by Appellant as part of his Notice of Appeal and will be considered by the Court as the Final Decision of the Department.

When acting in an appellate capacity, the ALC must apply the criteria of S.C. Code Ann. § 1-23-380(5) which provides:

> 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;
> (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.

*Id.* (Supp. 2018).

Appellant argues the Department erred in its determination of parole ineligibility under several different theories: (1) PWID Marijuana Proximity is not a prior "drug" conviction for enhancement purposes; (2) the statute under which Appellant was convicted of Distribution 3rd is in conflict with another statute in the Controlled Substance Act defining second and subsequent offenses; and (3), when read together, the statute under which Appellant was convicted of Distribution 3rd and the statute defining second and subsequent offenses are unconstitutionally vague and did not provide fair notice to Appellant that a prior Proximity conviction would be used for enhancement purposes in violation of Appellant's right to due process under the Fourteenth Amendment.

**I.**

Appellant asserts that his prior conviction for PWID Marijuana Proximity cannot be used for enhancement purposes because a conviction under this statute, S.C. Code Ann. § 44-53-445 (1995), is a "separate criminal offense" as opposed to a drug offense. Appellant argues that the dismissed PWID Marijuana would have been his only prior drug offense and since that charge was *nolle prossed* as part of the plea agreement, the remaining Proximity conviction involves only an incidental, "separate criminal offense" unrelated to the controlled substance. Appellant's argument is without merit.

The statutory elements of § 44-53-445 are clear. It is a separate criminal offense for a person to

distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute a controlled substance while in, on, or within a one-half mile radius of the grounds of a school. Appellant was convicted of Possession with Intent to Distribute Marijuana within Proximity of a School under this statute. As an element of the offense, he was in unlawful possession of a quantity of marijuana over twenty-eight grams or one ounce as set forth in S.C. Code Ann. § 44-53-370. While the additional proximity element must be met to afford the separate criminal conviction under § 44-53-445, the underlying element of possession of the controlled substance with intent to distribute must also be satisfied. Thus, Appellant's prior conviction for PWID Marijuana Proximity constitutes a prior drug conviction under the Controlled Substance Act.

**II.**

Appellant also contends that his 2015 convictions for Distribution 3rd pursuant to S.C. Code Ann. § 44-53-375(B)(3) (2010) should not render him parole ineligible because that statute conflicts with the general statute defining second and subsequent drug offenses for purposes of the Controlled Substances Act as a whole. *See* S.C. Code Ann. § 44-53-470 (2010). Appellant argues, quite artfully, that when there is an ambiguity in the statutes that renders them in conflict and produces a result unintended by the Legislature, the rules of statutory construction direct that penal statutes are to be strictly construed. Further, Appellant asserts that the rule of lenity applicable when a criminal statute is ambiguous requires that the ambiguity be resolved in favor of the accused. (App. Brief, p. 3-8). Ever mindful of the rules of statutory construction and the extensive line of cases involving the various interpretations of statutes in the Controlled Substance Act relating to enhancements and sentencing, the Court agrees that an ambiguity exists. *Compare, e.g., Robinson v. State*, 387 S.C. 568, 693 S.E.2d 402 (2010) (abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2017); *Thomas v. State*, 319 S.C. 471, 465 S.E.2d 350 (1995); *Rainey v. State*, 307 S.C. 150, 414 S.E.2d 131 (1992); *State v. Miles*, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017) (cert denied October 18, 2018); *State v. Dupree*, 354 S.C. 676, 583 S.E.2d 437 (Ct. App. 2003); *see also Bolin v. South Carolina Dep't of Corrections*, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016).[4]

[4] The Court recognizes that, while the issues discussed in these cases may parallel Appellant's argument, the majority of these cases stem from writs of certiorari arising from the grant or denial of post-conviction relief (PCR) actions. Two are the result of direct appeals and *Bolin v. South Carolina Dep't of Corrections* is an appeal from an ALC decision.

At the time of the 2013 and 2014 offenses of Distribution 3rd and during Appellant's plea and sentencing for these charges, § 44-53-375(B) specifically addressed the offense of Distribution of Crack Cocaine, 3rd Offense, providing in pertinent part:

> A person who ... distributes ... cocaine base, in violation of the provisions of Section 44-53-370, is guilty of a felony and, upon conviction:
>
> ...
>
> (3) for a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, **marijuana**, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both.
>
> ...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... 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 may not be suspended nor probation granted.

S.C. Code Ann. § 44-53-375(B)(3) (2010)[5] (emphasis added).

In contrast, § 44-53-470 entitled "Second and subsequent offenses for purposes of drug offenses, defined" provided:

> (A) An offense is considered a second or subsequent offense if:
>
> ...
>
> (3) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has been convicted within the previous ten years of a first violation of a controlled substance provision, **other than a marijuana offense provision,** of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs; and
>
> (4) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has at any time been convicted of a second or subsequent violation of a controlled substance offense provision, **other than a marijuana offense provision**, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs.

[5] This statute was amended as a result of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 and was effective from June 2, 2010 until April 20, 2016. (2010 Act. No. 273, §38).

S.C. Code Ann. § 44-53-470 (2010)[6] (emphasis added).

Reviewing the plain language of each section, Appellant is correct in his contention that the two statutes seem to conflict. Specifically addressing the third or subsequent offense of distribution of crack cocaine, § 44-53-375(B)(3) provides that for purposes of enhancement, a prior conviction can include narcotic drugs, *marijuana*, depressants, stimulants, or hallucinogenic drugs. To the contrary, in defining a second or subsequent offense for purposes of the Controlled Substance Act in general, § 44-53-470(3) provides that a controlled substance offense involving crack cocaine cannot be enhanced by a previous conviction for an offense involving marijuana by the language "...the offender has been convicted within the previous ten years of a first violation of a controlled substance provision, *other than a marijuana offense provision*, of this article or of another state or federal statute relating to *narcotic drugs, depressants, stimulants, or hallucinogenic drugs.*" *Id.* (emphasis added).

In *Rainey v. State*, the Court found a conflict between the statute under which the defendant was sentenced as a second offender, an earlier version of § 44-53-375(B), and the general second offense statute of § 44-53-470. *Rainey*, 307 S.C. 150, 414 S.E.2d 131 (1992). Rainey pled guilty to Distribution of Crack and had a prior conviction for Distribution of Marijuana. He was sentenced as a second offender under the crack cocaine statute which provided for an enhanced sentence for a second offender or one whose first conviction was related to *narcotic* drugs. Applying for post-conviction relief, Rainey argued he should not have been sentenced as a second offender under the crack statute since that statute only enhanced for prior narcotic convictions and marijuana was not a narcotic. *Id.* The State argued that Rainey was a second offender under the general statute, a former version of § 44-53-470, defining second offenses as those convictions involving *any prior drug*. *Id.* Finding a conflict between the two statutes, the Supreme Court held that the later, more specific crack statute under which Rainey was sentenced must prevail over the general second offense statute. *Id.*

In Appellant's case, both § 44-53-375(B) and § 44-53-470 were amended by Act No. 273 and became effective on the same day in 2010. Section 44-53-375(B)(3), involving the Distribution of Crack Cocaine (Third or Subsequent Offense), is the more specific statute and sets forth the

[6] This statute was amended as a result of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 and was effective from June 2, 2010 until April 20, 2016. (2010 Act. No. 273, §41).

sentence for a third or subsequent offense or for two or more aggregate prior convictions for any offenses relating to narcotic drugs, *marijuana*, etc. While the Court may be correct to assume that the more specific statute would prevail under *Rainey*, because both were enacted at the same time, the Court will continue its analysis to ascertain legislative intent. A statute should be read as a whole. *Mid–State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). Further, "[s]tatutes which are part of the same legislative scheme should be read together." *Great Games, Inc. v. S.C. Dep't of Revenue*, 339 S.C. 79, 84, 529 S.E.2d 6, 8 (2000). "Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning." *Mid–State Auto*, 324 S.C. at 69, 476 S.E.2d at 692. "The primary rule of statutory construction is to ascertain and give effect to the intent of the [L]egislature." *Id.*

Appellant points to the 2016 amendments to both of the conflicting statutes as evidence of legislative intent to resolve the ambiguity at issue by expressly precluding enhancement for subsequent offenses when prior convictions involve marijuana offenses.[7] Indicative of such intent, Appellant correctly states that § 44-53-375(B)(3) was amended in 2016 to read "for a third or subsequent offense the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both." S.C. Code Ann. § 44-53-375(B)(3) (Supp. 2016). By deleting the previous directive that all prior offenses were to include narcotic drugs, marijuana, depressants, stimulants, and hallucinogenic drugs, Appellant asserts that the General Assembly intended to resolve the conflict by defining prior offenses solely through the language contained in § 44-53-470, which would have excluded his 2005 PWID Marijuana Proximity as a prior offense for enhancement purposes had his case arisen after April 20, 2016.

Moreover, Appellant asserts that the 2016 amendment to § 44-53-470 provides further evidence of legislative intent to resolve the conflict by continuing to explicitly exclude certain marijuana convictions as prior offenses. While the actual description of what is to be considered a prior offense for enhancement purposes remained unchanged in 2016, the title of § 44-53-470 was revised to "'Second or subsequent offense' defined; **certain convictions considered prior offenses**." S.C. Code Ann. § 44-53-470 (Supp. 2016) (emphasis added). *See Univ. of S.C. v. Elliot*, 248 S.C. 218, 221, 149 S.E.2d 433, 434 (1966) ("[I]t is proper to consider the title or caption of an

[7] Both statutes were amended as a result of 2016 Act. No. 154, §§ 9 & 10, effective April 21, 2016.

act in aid of construction to show the intent of the [L]egislature.") The title of the amended statute is evidence that, in recognizing the ambiguity and conflict presented by the previous statutes, the Legislature intended to repeal the definition of prior convictions set forth in the crack statute in favor of exclusive reliance on the definitions set forth in § 44-53-470 under the amended title.

Also pursuant to the 2016 amendments, Appellant points out that subsection (B) was added to § 44-53-470 to clarify that a conviction for Trafficking Marijuana or any other controlled substance must be considered a prior offense for purposes of any prosecution pursuant to the article. *See* S.C. Code Ann. § 44-53-470 (Supp. 2016). Appellant correctly asserts that prior to the 2016 amendment, pursuant to the language of § 44-53-470 (2010), Trafficking Marijuana could only be considered a prior offense for enhancement purposes when the statute for the offense contained its own enhancement language like that found in § 44-53-375(B) specifically enumerating the controlled substances to be considered as prior convictions. *See Thomas v. State*, 319 S.C. 471, 465 S.E.2d 350 (1995); *State v. Dupree*, 354 S.C. 676, 583 S.E.2d 437 (Ct. App. 2003) (when there is no specific enhancement language in the statute under which defendant was convicted, there is no conflict and the general statute defining a prior offense as any prior drug offense applies); *contra Rainey v. State*, 307 S.C. 150, 414 S.E.2d 131 (1992) (discussed *infra*).

Thus, Appellant argues that the Legislature certainly could not have intended that the lesser included offense of PWID Marijuana Proximity should be considered a prior conviction for enhancement purposes when Trafficking Marijuana could not be used to enhance a trafficking or possession offense under the language of § 44-53-470 (2010). Bolstering his legislative intent argument, Appellant also correctly points out that, as it stands today, a sole prior conviction for PWID Marijuana Proximity cannot be used to enhance a current drug offense involving any other controlled substance under § 44-53-470(3) (Supp. 2019).

Finally, Appellant argues that under the canon of statutory construction, penal statutes are to be strictly construed. When a genuine ambiguity exists as a result of the proposed application of a penal statute to a given situation, the rule of lenity requires that the doubt must be resolved in the defendant's favor. *See State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991) (recognizing the settled rule that penal statutes must be strictly construed in the defendant's favor); *Bryant v. State*, 384 S.C. 525, 683 S.E.2d 280 (2009); *Berry v. State*, 381 S.C. 630, 675 S.E.2d 425 (2009) (holding that the Legislature intended a prior offense to qualify for enhancement

purposes only if the prior offense "relates to" one of the statutorily enumerated drugs).

Dovetailing with the argument that the rule of lenity should apply to resolve the conflict in his favor, Appellant also claims that because of the ambiguity in the statutes, both § 44-53-375(B)(3) (2010) and § 44-53-470 (2010) are unconstitutionally void for vagueness in their "failure to unambiguously provide the fair notice required by the Fourteenth Amendment of the United States Constitution." (App. Brief, p. 6). Appellant contends that neither statute unambiguously and sufficiently forewarned or provided him fair notice that a PWID Marijuana Proximity conviction could be used to enhance his distribution offenses or affect future convictions of other controlled substance provisions. *Id.*

While the Court agrees with Appellant that an ambiguity did exist in the statutes from 2010 until their respective amendments in 2016, the Court does not agree that the ambiguity must be resolved in Appellant's favor pursuant to the rule of lenity in this case, nor does the Court agree that the ambiguity resulted in a failure to apprise Appellant of the enhancement. Appellant neglects to address one important fact in his argument: he pled guilty to two counts of Distribution 3rd as the result of a negotiated plea bargain.

Remaining cognizant that the ALC is not the proper venue to determine or attack the validity of a plea, the Court must also render a decision and, in doing so, must recognize that this case involves negotiated pleas to two counts of Distribution 3rd that the Court must presume were valid.[8] In criminal prosecutions, a defendant is free to negotiate a plea bargain and the defendant and prosecutor may enter a plea agreement for a multitude of legitimate reasons. Moreover, it is well-settled that as part of a plea bargain, a defendant may plead guilty to a crime of which he may not be guilty or to an offense for which a valid legal challenge may exist. *See Rollison v. State*, 346 S.C. 506, 552 S.E.2d 290 (2001); *Anderson v. State*, 342 S.C. 54, 535 S.E.2d 649 (2000) (finding that the decision to accept a plea to voluntary manslaughter notwithstanding the lack of any provocation was simply a tactical maneuver to avoid the possibility of a harsher verdict and, as such, was knowing and voluntary). As long as the defendant understands the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, he is free to bargain for multiple offenses, lesser included offenses, or enhanced offenses. *Rollison*,

[8] The Record on Appeal consists only of the Department's 2017 letter to Appellant and the indictments and sentencing sheets for the Distribution 3rd offenses and the 2005 PWID Marijuana Proximity conviction. The Court is limited to these documents and limited in the scope of review pursuant to the nature of the appeal filed with the ALC.

346 S.C. at 511-12, 552 S.E.2d 290, 292-93. When a case involves a plea bargain, the agreement is governed by contract principles and the defendant is free to negotiate the terms. *Id.*

Upon the information provided to the Court in the Record, both of Appellant's sentencing sheets reflect that Appellant pled to "Distribution of Crack 3rd Offense" with the corresponding statute (§ 44-53-375(B)(3)) and CDR Code (3039) listed in two different areas on both pages. Section 44-53-375(B)(3) states that an offense involving marijuana will be considered a prior offense. Both §44-53-375(B)(3) and the language mirrored in CDR Code 3039 provide that a conviction for Distribution of Crack Cocaine, 3rd Offense, will not be considered parole eligible. In addition, both sentencing sheets reflect that the pleas were negotiated and, under the terms of the plea bargain, Appellant received the minimum sentence of ten years, out of a possible thirty, on each charge to run concurrently. Appellant received the benefit of the agreement for which he bargained. Moreover, Appellant pled to not one, but two third offenses. If Appellant only one had prior drug offense from his 2005 PWID Marijuana Proximity conviction, then it would stand to reason that as part of the bargain, he voluntarily agreed to skip a conviction for a second offense by pleading to two third offenses and receiving some benefit thereby.

Finally, Appellant *agreed* to have his convictions deemed third or subsequent offenses by virtue of his negotiated pleas to Distribution 3rd under the contractual terms of his plea agreement. A judge did not discretionarily determine him to be a third or subsequent offender during sentencing, nor did the Department in its determination of parole ineligibility. Instead, Appellant voluntarily chose his third offense classification pursuant to § 44-53-375(B)(3) (2010) which provides "for a third or subsequent offense **or** if the offender has been convicted two or more in the aggregate...." (emphasis added). Appellant negotiated the third offenses on his own accord, he was not erroneously sentenced as a third offender. He had been convicted two or more times in the aggregate.

The Court finds that Appellant was properly classified as ineligible for parole due to his pleas and convictions for Distribution of Crack Cocaine, 3rd Offense, pursuant to S.C. Code Ann. § 44-53-375(B)(3) (2010). It is, therefore,

**ORDERED** that the decision of the Department is **AFFIRMED.**

**AND IT IS SO ORDERED.**

December 3, 2019
Columbia, South Carolina

H.W. Funderburk, Jr.
Administrative Law Judge

CERTIFICATE OF SERVICE
I do certify that the undersigned has this date mailed the order in the above-entitled matter by depositing a copy thereof, in the United States mail, postage paid, or via interagency mail, addressed to the party(ies) at their address(es) of record.

3rd day of December, 2019
Elizabeth A. Patino
Judicial Law Clerk

FILED
DEC 03 2019
SC ADMIN. LAW COURT

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State of South Carolina

# Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

JERRY B. ADGER
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September 20, 2019

The Honorable H. W. Funderburk, Jr.
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

**RE: Jaquese Neely, #308317 v. S.C. Department of Probation, Parole and Pardon Services**

Dear Judge Funderburk:

Please find enclosed for filing the *Brief* dated September 20, 2019, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Tommy Evans, Jr.
Assistant General Counsel

TE:dn

Enclosures
cc: Jaquese Neely, #308317

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 19-ALJ-15-0023

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APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

---

JAQUESE NEELY, #308317 ..... APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, ..... RESPONDENT

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## CERTIFICATE OF SERVICE

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I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within *Brief of Respondent*, dated September 20, 2019, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 20th day of September, 2019, addressed to:

Jaquese Neely, #308317
Tyger River Correctional Institution
200 Prison Road
Enoree, S.C. 29335

I further certify that all parties required by Rule 54 to be served have been served.

**Dawn Nichols**
**Executive Assistant**
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 19-ALJ-0023

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APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

---

JAQUESE NEELY, #308317.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES,.....RESPONDENT

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# BRIEF OF RESPONDENT

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**ATTORNEY FOR RESPONDENT**

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## STATEMENT OF ISSUES ON APPEAL

1. **Did the Respondent err in their determination that the Appellant is not currently eligible for parole due to the fact he has a prior conviction for possession with intent to distribute marijuana in a proximity of a school, when the possession with intent to distribute was nolle prossed?**

## STATEMENT OF THE CASE

On November 1, 2013, in York County the Appellant sold a quantity of crack cocaine. He once again committed the identical offense on January 22, 2014. He was later indicted by the York County Grand Jury for two counts of distribution of crack cocaine. It was later discovered that the Appellant had two prior drug convictions; therefore, these offenses were upgraded to third offenses.

On April 2, 2015, the Appellant appeared before the Honorable John C. Hayes, III for each of these offenses. Upon the conclusion of this appearance the Court sentenced the Appellant to a period of ten years incarceration for each offense. (R. p. 2, 5) The Court also ordered that these offenses are to be served concurrently. At the time the Appellant committed these offenses South Carolina law did not allow an individual serving a sentence for distribution of crack third offense parole eligibility unless that individual prior drug offenses were for only simple possession.

The Respondent later conducted an investigation to determine if the Appellant is in fact not eligible for parole. During this investigation it was discovered that on March 23, 2005, the Appellant was convicted of possession with intent to distribute marijuana within a proximity of a school (PWID marijuana within a proximity of a school). (R. p. 8) Due to this prior conviction it was determined that the Appellant was not eligible for parole. The Appellant was made aware of not being eligible for parole on March 21, 2017. (R. p. 1)

Upon being made aware that he is currently not eligible for parole the Appellant filed a notice of appeal before the Administrative Law Court (ALC). Within this notice the Appellant alleges that since the possession with intent to distribute marijuana was nolle prossed, he should be eligible for parole. The Respondent is prepared to argue that the PWID marijuana within a proximity of a school is a separate drug offense; therefore, he has a prior drug offense that is not

for simple possession. According to South Carolina law he is not eligible for parole; therefore, this decision should be upheld. The Respondent brief supporting this defense follows.

## ARGUMENT

1. **The Appellant has a previous drug conviction that is not for possession; therefore, due to his current offense he is not eligible for parole.**

The ALC's jurisdiction to review a final decision of the Department of Probation, Parole and Pardon Services is derived from the South Carolina Supreme Court decisions of *Al-Shabbaz v. State,* 338 S.C. 334, 527 S.E.2d 724 (2000), and *Furtick v. S.C. Dept. of Probation, Parole and Pardon Services,* 352 S.C. 594, 576 S.E.2d 146 (2002). In *Al-Shabbaz,* the South Carolina Supreme Court created a new avenue by which an inmate could seek review of a final decision of a state agency in a "non-collateral" matter related to a conviction or sentence. The Court held that inmates could appeal those final agency decisions to the ALC and ultimately the Court of Appeals pursuant to the Administrative Procedures Act. *Al-Shabbaz,* at 376. In *Al-Shabbaz,* the Court recognized that "these administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment imposed; and (2) when an inmate believes prison officials have erroneously calculated his sentence; sentence-related credits or custody status." *Id.*, at 369.

In *Furtick,* the Court noted that the appealable final decision arises in the latter manner, where the inmate alleges that the Department erroneously determined he was not eligible for parole. The review by the ALC under the procedure set forth in *Al-Shabbaz,* is necessary to determine whether the inmate has a liberty interest in gaining access to the Parole Board. *Furtick,* at 149. The Court determined that the permanent denial of parole implicates a liberty interest sufficient to require at least minimal due process. *Id.* The Appellant has filed a notice of appeal pursuant to the *Al-Shabbaz* and *Furtick* decisions. This Court has jurisdiction over the denial of

his parole eligibility. The Respondent will argue that pursuant to South Carolina law the Appellant is not entitled parole eligibility; therefore the decision of the Respondent should be upheld.

The Appellant argues that since his offense of PWID marijuana was nolle prossed the determination of the denial of parole eligibility was done in error. The Respondent will reveal to the ALC that the Appellant has a conviction for PWID marijuana within a proximity of a school, a separate drug offense that is not for possession; therefore, he is not entitled to parole eligibility. The Appellant is currently serving a ten year sentence for two counts of distribution of crack cocaine third offense. Pursuant to South Carolina law he can only become eligible for parole if all of this prior drug convictions were only for possession. The South Carolina Code of Laws specifically state:

> 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, credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.

S.C. Code Ann. §44-53-375 (B)(2018)(emphasis added)

The statute is clear, an inmate convicted of a third offense cannot become eligible for parole unless all of his prior drug offenses are for possession. The Appellant has a prior offense of PWID marijuana within a proximity of a school. The Appellant argues that this is an enhancer of the PWID marijuana offense that was nolle prossed, which is untrue. This is a separate drug offense in which he received a term of incarceration for five years. The statute specifically states:

> **It is a separate criminal offense** for a person to distribute, sell, purchase, manufacture, or to unlawfully possess with intent to distribute a controlled substance while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public

> vocational or trade school or technical educational center; or a public or private college or university.

S.C. Code Ann. §44-53-445 (A)(2018)(emphasis added).

Since this is considered a separate criminal offense it must be considered as a previous drug offense. According to South Carolina law unless it is for possession the Appellant is not entitled to parole eligibility.

The Appellant also argues that since the statute is ambiguous he is entitled to the benefit of interpretation. The statue is clear, an inmate convicted of a third drug offense cannot become eligible for parole unless all of his prior drug offenses were only for possession. The Appellant has a prior offense of PWID marijuana within a proximity of a school. It is clear by the reading of the statute that an inmate serving a sentence for a third drug offense can become eligible for parole only if his prior drug offenses were solely for possession. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. *Rowe v. Hyatt,* 321 S.C. 366, 468 S.E.2d 649 (1996). Within the statute it clearly states that an inmate convicted of a third offense is only eligible for parole if all prior drug offenses were for possession. If the legislature wished inmates convicted of a third or greater drug offense be allowed parole regardless of their prior offenses that condition would not be in place. The legislature would have allowed all persons who have committed a third drug offense parole eligibility regardless of their prior convictions.

In reading the entire statue it is clear that the legislature wished all prisoners who were convicted of a first or second offense parole eligibility.[1] If the legislature wished for all individuals who have committed a drug offense be parole eligible, the statue would not have limited parole

[1] 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. S.C. Code Ann. §44-53-375(B)(2018).

eligibility to third offenders. Statute must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction. *Higgins v. State,* 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992).

The legislature never intended for all individuals sentenced to a third drug offense under this statute parole eligibility, or it would have been stated. Court should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statue and the policy of the law. *Whitner v. State,* 328 S.C. 1, 16, 492 S.E.2d 777, 779 (1997). A law must be interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly. *Abell v. Bell,* 229 S.C. 1, 4, 91 S.E.2d 548, 550 (1956). It is clear by the reading of the statute the General Assembly only wished certain drug offenders be allowed parole eligibility. The Appellant does not fall under this criteria, so his parole eligibility was rightfully denied.

The statute clearly states that parole is allowed to a person convicted of a third or subsequent offense only if their prior drug offenses were for possession. That criteria would not have been included if the General Assembly wished all individuals regardless of the amount of drug offenses committed parole eligibility. The statute is clear, when a person has a first or second offense they are allowed parole eligibility, under a third offense you are only allowed parole eligibility if your prior drug offenses are for possession. If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rule or statutory interpretation, and the court has no right to look for, or impose another meaning. *Pachel v. State Election Comm'n,* 317 S.C. 434, 454 S.E.2d 890 (1995). The terms of a statue are clear, no individual with a third drug offense can be allowed to appear before the Parole Board unless all of their priors are for possession. The Appellant has a prior offense of PWID marijuana within a

proximity of a school. This is a separate drug offense according to South Carolina law so it must be considered as a prior drug offense. Since it is not for possession the Appellant is not entitled parole eligibility.

The Appellant argues that his denial of parole eligibility is in violation of this fourteenth amendment right to due process. He argues that during his plea for PWID marijuana within a proximity of a school he made a deal with the solicitor's office that should be upheld. That deal has no bearing on the current offense, nor his parole eligibility. The solicitor nor the courts can determine when or if an inmate would ever be released on parole. Parole eligibility is not a matter within the jurisdiction of the trial court, but falls within the province of the Board of Probation, Parole and Pardon. *Brown v. State,* 306 S.C. 381, 383, 412 S.E.2d 399, 401 (1991). The question of parole eligibility is separate and independent from the court's authority to sentence an offender. *State v. McKay,* 300 S.C. 113, 115, 386 S.E.2d 623 (1989). Parole eligibility is not the decision of the trial court, and parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea. *Griffin v. Martin,* 278 S.C. 620, 300 S.E.2d 482 (1983). The Appellant believes that since he was given a deal by the solicitor during a previous offense he should become eligible for parole. The main determination of the Court is if the defendant committed the crime and what is the appropriate sentence, not whether or not he will become eligible for parole. That is always determined by the Respondent upon applying the appropriate law. Due to the fact this is his third drug offense and his prior offenses were not just for possession, pursuant to South Carolina law he is not eligible for parole. The decision of the Respondent followed South Carolina law so it should be upheld by the ALC.

## CONCLUSION

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Based on the foregoing reasons the Respondent respectfully requests the final decision of the South Carolina Department of Probation, Parole and Pardon Services be affirmed.

Respectfully submitted,

**Tommy Evans, Jr.**
**Assistant General Counsel**

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Columbia, South Carolina
September 20, 2019

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 19-ALJ-15-0023

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

JAQUESE NEELY, #308317, . . . . . APPELLANT,

V

S.C. DEPARTMENT OF PROBATION,
PAROLE AND PARDON SERVICES, . . . . . RESPONDENT.

# BRIEF OF APPELLANT

Jaquese Neely, #308317
Appellant

Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

APPELLANT / Pro Se

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 19-ALJ-15-0023

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

JAQUESE NEELY, #308317, ..... APPELLANT,

v

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, ..... RESPONDENT.

## CERTIFICATE OF SERVICE

I, Jaquese Neely, hereby certify that I have served a copy of the BRIEF OF APPELLANT upon the Respondent by placing a copy of the same inside of a postage prepaid envelope and placing said envelope in the hands of Tyger River Correctional Institution's mail room personnel on this __ day of August, 2019, for mailing via the United States Mail, addressed as follows: Tammy Evans, Jr., Assistant General Counsel, Dept. of Probation, Parole and Pardon Services, 2221 Devine Street, Suite 600, Post Office Box 50666, Columbia, South Carolina 29250.

SWORN and Subscribed before me
this 29 day of August, 2019

Notary Public for South Carolina
My Commission Expires: March 24, 2021

S/ Jaquese Neely
Jaquese Neely, #308317
Appellant / pro se

Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

FILED
SEP 03 2019
SC ADMIN. LAW COURT

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# STATEMENT OF ISSUE ON APPEAL

Did the Department of Probation, Parole and Pardon Services err in classifying Appellant as ineligible for parole due to a prior conviction of Possession With Intent to Distribute Marijuana within proximity of a public school where the marijuana offense was nolle prossed?

## STATEMENT OF THE CASE

Appellant was indicted by the York County Grand Jury for the charges of distribution of cocaine base (crack), 3rd offense (indictment # 2014-GS-4603426) ROA pg. 2; and distribution of cocaine base (crack), 3rd offense (indictment # 2014-GS-4603428) ROA pg. 5. Appellant pled guilty pursuant to a negotiated plea agreement to both charges on April 2, 2015, and was sentenced to a ten (10) year concurrent sentence and thereby committed to the custody of the South Carolina Department of Corrections, (SCDC).

Upon being housed at SCDC, Appellant was initially classified as eligible for parole and was signed a parole hearing date whereby he would appear before the Parole Board for review and consideration to be released on parole. However, Appellant was never afforded this hearing, but rather was deemed ineligible for parole consideration by the South Carolina Department of Probation, Parole and Pardon Services, (Department). Appellant received notice of this determination by a letter which he received from the Department which was dated March 21, 2017, in which stated, "A review of your prior record reveals a prior drug conviction, therefore, your current offense is ineligible for parole.... You will not be considered for parole..." ROA pg. 1.

After taking some time to inquire concerning this determination and perform necessary research in these regards, Appellant then contacted the Department by letter providing a thorough explanation of the unique irregularities of his conviction and asked that the Department would reconsider its determination and provide him a parole eligibility date. The Department replied by sending a copy of its previous March 21, 2017, letter of determination wherein it was demonstrated to Appellant that the Department maintains its reason for deeming Appellant ineligible for parole. Appellant also regarded this as the final decision of the Department.

This appeal follows.

## ARGUMENT

Did the Department of Probation, Parole and Pardon Services err in classifying Appellant as ineligible for parole due to a prior conviction of Possession With Intent to Distribute Marijuana within proximity of a public school where the marijuana offense was nolle prossed?

Appellant pled guilty to two (2) counts of distribution of cocaine base (crack) on the same day and both charges were labeled as 3rd offense. Respondent basis its determination that Appellant is ineligible for parole consideration do to a prior conviction of possession of marijuana with intent to distribute (PWID) within proximity of a public school in which Appellant pled guilty on March 23, 2005, and was sentenced to serve a five (5) year sentence in the SCDC. However, the underlying marijuana offense which was the foundational controlled substance offense for this conviction was nolle prossed.

Appellant was sentenced on April 2, 2015, for the convictions in which he is presently confined to the SCDC. These were two (2) counts of distribution of cocaine base (crack), and both were labeled as 3rd offense. Therefore, Applicant's current convictions are governed by S.C. Code Ann. 44-53-375(B)(3) as was amended by way of 2010 Act No. 273 and the Omnibus Sentencing Reform Act of 2010, (2010 Supplement), which provided at the time:

> "for a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both. Possession of one or more grams of methamphetamine or cocaine base is prima facie evidence of a violation of this subsection. 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."

S.C. Code Ann. 44-53-375(B)(3) (2010 Supplement)

Respondent relies on the language which existed in this statute which stated, "*two or more time in the aggregate of any violation*". This is evident as Respondent's determination letter states, "Pursuant to South Carolina Law a person convicted of this offense with two or more aggregate violations of the law relating to drugs is not eligible for parole." ROA pg. 1.

Appellant would show the Court that this portion of the statute conflicts with legislative intent as shown by the inconsistency with South Carolina's enhancement statute, S.C. Code Ann. 44-53-470 (2010 Supp.). Feldman v South Carolina Tax Commission, 203 S.C. 49, 26 SE2d 22 (1943) - Under the principle that the last expression of the legislative will is the law, where conflicting provisions are found in the same statute, or in different statutes, the last in point of time or order of arrangement prevails.

The enhancement statute serves the purpose as it demonstrates legislative intent and, as Appellant will show the Court, that violations of marijuana offense provisions would not have the ability to enhance or affect any conviction for any other controlled substance violations relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs.

The legislature revealed this intent when it enacted S.C. Code Ann. 44-53-470 (2010 Supp.) as it stated and used the following language within the statute in order to demonstrate its intent; it states in relevant portion as follows:

> S. C. Code Ann. 44-53-470(1) - for an offense involving marijuana;
> S. C. Code Ann. 44-53-470(2) - for an offense involving marijuana
> S. C. Code Ann. 44-53-470(3) - for an offense involving a controlled substance other than marijuana
> S. C. Code Ann. 44-53-470(4) - for an offense involving a controlled substance other than marijuana

S.C. Code Ann 44-53-470 (2010 Supp.)

This distinction is very important to not as the Respondent uses the language which existed in S.C. 44-53-375(B)(3) (2010 Supp.), "if the offender has been convicted two or more times in the aggregate of any violation".

The language which existed in S.C. Code Ann. 44-53-375(B)(3) (2010 Supp.) stated specifically, "for a third or subsequent offense *or if the offender has been convicted two or more times in the aggregate of any violation...*"

According to the language in the statute, for example, a person who has two (2) prior convictions for marijuana related offenses and then gets convicted of an offense other than a marijuana related offense such as a methamphetamine or cocaine base offense would then be subject to a 3rd offense conviction and sentencing scheme. As Appellant shows the Court, there existed a conflict in the statutes 44-53-375(B)(3) (2010 Supp.) and 44-53-470 (2010 Supp.). It is found that the language which existed in 44-53-375(B)(3) (2010 Supp.) was repugnant and contradictory to the true legislative intent and overall purpose in amending the statues by way of the 2010 Act No. 273 (The Omnibus Sentencing Reform Act of 2010). This is evident as it can now be found that the Legislature discovered this conflict which was repugnant and not in harmony with true legislative intent and has amended this statute by way of Act No. 154 in its 2016 legislative session by removing this contradictory language from the statute. See S.C. Code Ann. 44-53-375(B)(3) (2016 Supp.) as amended and which now states:

"for a third or subsequent offense, the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both"

44-53-375(B)(3) (2016 Supp.)

S.C. Code Ann. 44-53-470 was also amended by way of 2016 Act No. 154 which became active on April 21, 2016. Section 44-53-470(B) was amended by specifying the following:

> "In addition to the above provisions, a conviction of trafficking in marijuana or trafficking in any other controlled substance in violation of this article or of another state or federal statute relating to trafficking in controlled substances must be considered a prior offense for purposes of any prosecution pursuant to this article."

S.C. Code Ann 44-53-470(B) (2016 Supp.)

Kennedy v South Carolina Retirement System, 345 S.C. 339, 549 SE2d 243 (2001) - Where the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself.

State v Sweat, 379 S.C. 367, 665 SE2d 645 (2008) - The legislature is presumed to intend that its statutes accomplish something.

State v Sweat, 379 S.C. 367, 665 SE2d 645 (2008) - when interpreting a law, courts must presume a futile act was not intended and that the law intends to accomplish something.

This amendment is very significant as it illuminates even more true legislative intent as it specifies that, "a conviction of trafficking in marijuana or any other controlled substance... **must be considered a prior offense.**" Before this amendment, the language existing in the statute would not allow a prior conviction for trafficking in marijuana to enhance a future marijuana conviction if the prior marijuana trafficking conviction had not occurred within the previous five years. See 44-53-470(1), (2), (3), (4).

Greenville Baseball v Bearden, 200 S.C. 363, 20 SE2d 813 (1942) - The history of the period in which a statute was passed may be considered in interpreting the statute. Marshall v Dodds, 417 S.C. 196, 789 SE2d 88 (2016) - the construing court may additionally look to the legislative history when determining legislative intent. Timmons v S.C. Tricentennial Comm'n, 254 S.C. 378, 402, 175 SE2d 805, 817 (1970) (noting that in determining the legislative intent, the Court may properly look at the legislative history of the statute).

Prior to this amendment, this statute prevented a trafficking marijuana offense to enhance a violation of a controlled substance offense other than a marijuana offense. This amendment now allows a marijuana trafficking conviction to enhance any other controlled substance offense.

It is unreasonable to infer that the legislative intent would be that a PWID Marijuana proximity offense alone would enhance any other controlled substance offense when prior to this amendment a trafficking offense would not do the same. Greenville Baseball v Bearden, 200 S.C. 363, 20 SE2d 813 (1942) - A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.

However, it is important to know that this pursuant to this 2016 amendment to the statute a prior trafficking offense is the only conviction that would have this effect even now. Appellant does not have a prior trafficking offense, but rather the prior conviction was for a violation of S.C. Code 44-53-445, distribution of a controlled substance within proximity of a public school. The specific controlled substance related to this conviction was a marijuana offense as evidenced by the sentence sheet which clearly states, "Possession of Marijuana With Intent to Distribute Within Proximity of School". ROA pg. 8.

The Appellant would also emphasize that the marijuana offense was nolle prossed and he was not convicted for the actual controlled substance offense. It is repugnant to legislative intent that this prior conviction, which is a proximity conviction, which specifically resulted from a marijuana offense at genesis and which was ultimately dismissed would now be used as a means to enhance or affect Appellant's current conviction of a controlled substance offense that is not in relation to marijuana.

The Appellant will also show the Court and emphasize as well that the proximity conviction would not be considered a controlled substance offense. The language which exists within the proximity statute, S.C. Code Ann. 44-53-445, states: "It is a separate criminal offense".

S.C. Code Ann 44-53-445(C) further reveals that the proximity should be considered a criminal offense and not a controlled substance offense as it states, " A person must not be convicted of an offense pursuant to subsection (A) if the person is stopped by a law enforcement officer within a one-half mile radius of the grounds of a public [school], etc,.. but did not **actually commit the controlled substance offense** within a one-half mile radius of the grounds of a public [school], etc,..."

Appellant was not convicted of the actual controlled substance offense as it was dismissed by the sentencing court. The proximity conviction is a criminal offense and should not be treated as a controlled substance offense standing alone and used as an enhancer or a means to affect a controlled substance offense. Only the actual controlled substance offense violation could be enhanced and in this case, this was a marijuana offense which as dismissed by the sentencing court.

Appellant would also show the Court that it is unreasonable that the Respondent would determine that a proximity conviction which relates to a marijuana offense and was ultimately dismissed by the sentencing court could be used as an enhancer when a proximity conviction relating to an offense involving any controlled substance other than marijuana would not. See 44-53-470(3), which provides that an offense, other than a marijuana conviction, could be enhanced if the offender has been convicted within the previous ten years of a first violation of a controlled substance offense provision. This statute states specifically as follows:

"for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has been convicted within the previous ten years of a first violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs".

S.C. 44-53-470(3) (2010 Supp.)

See Hodges v Rainey, 341 S.C. 79, 86, 533 SE2d 578, 582 (2000) - the canon of construction "expression unius est exclusion alterius" or "inclusion unius est exlusion alterius" holds that "to express or include one thing implies the exclusion of another or of the alternative". Applying the canon of construction, "expression unius est exclusion alterius" or "inclusion unius est exlusion alterius" to S.C. Code Ann. 44-53-470(B) (2016 Supp.) as amended, the legislative intent is clearly revealed in this matter. If the legislative intent was that a prior proximity conviction which

resulted from a marijuana offense which was ultimately dismissed would be intended to serve as an enhancer or to affect a future controlled substance offense other than a marijuana offense, the Legislature certainly would have expressed and stated so by including this specifically in the statute along with amendment. Bell v S.C. Highway Dept., 204 S.C. 462, 30 SE2d 65 (1944) - We must presume that the Legislature was familiar with prior legislation dealing with the same subject matter when it enacted an amendment.

Appellant also submits that this novel question of law should be resolved in favor of the Appellant as S.C. Code Ann. 44-53-375(B)(3) and S.C. Code Ann. 44-53-470 is ambiguous in regards of the irregularities existing in this case. *See* Bryant v State, 384 S.C. 525, 683 SE2d 280 (2009) - When a genuine ambiguity exists as a result of the proposed application of a penal statute to a given situation, the Rule of Lenity requires that the doubt must be resolved in the defendant's favor. See Berry v State, 381 S.C. 630, 675 SE2d 425 (2009) - In construing a criminal statute, courts are guided by the Rule of Lenity - the principle that any ambiguity must be resolved in favor of the accused. See State v Miles, 421 S.C. 154, 805 SE2d 204 (2017) - The Rule of Lenity applies when a criminal statute is ambiguous and requires any doubt about a statute's scope be resolved in the Petitioner's favor.

Appellant would also emphasize that construing this statute any other way frustrates both the March 23, 2005 and April 2, 2015 guilty pleas entered by the Appellant. See State v Thompson, 278 S.C. 1, 5, 292 SE2d 581 (1982) - *(overruled on other grounds)* - When the accused pleads guilty upon the promise of a prosecutor, the agreement must be fulfilled; Bailey v MacDougall, 247 S.C. 1, 145 SE2d 425 (1965) - Plea of guilty must be freely and understandingly made, and if it is induced by promises with deprive it of the character of a voluntary act, plea of guilty is void and should be set aside. United States v Tate, 845 F.3d 571, 575 (4th Cir. 2017) - Plea agreements are grounded in contract law, and both parties to a plea agreement should receive the benefit of their bargain. U.S. v Ringling, 988 F.2d 504 (4th Cir. 1993) - Plea bargains rest on contractual principles, and each party should receive benefit of its bargain, but plea agreement must be analyzed at more stringent level than a commercial contract since rights involved are generally fundamental and constitutionally based.

Construing this statute any other way also violates Appellant's Fourteenth Amendment Due Process rights guaranteed by the United States Constitution, as both S.C. Code Ann. 44-53-375(B)(3) and S.C. Code Ann. 44-53-470 would be unconstitutionally void for vagueness do to its failure to unambiguously provide the fair notice required by the Fourteenth Amendment of the United States Constitution. Neither statute doesn't unambiguously and sufficiently forewarn and provide sufficient fair notice that a proximity conviction which results from a marijuana offense which has been dismissed can be used as an enhancer or to affect future convictions of other controlled substance convictions. S.C. Code Ann. 44-53-

445 states that it is a separate "criminal offense", not a separate controlled substance offense. *See* State v Johnson, 287 S.C. 171, 172, 337 SE2d 204, 205 (1985). (holding a solicitor has broad discretion in choosing the offenses with which a defendant will be charged and in plea negotiations leading up to trial.).

*See* State v Neuman, 384 S.C. 395, 683 SE2d 268 (2009) - The void-for-vagueness doctrine rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication. State v Sullivan, 362 S.C. 373, 608 SE2d 422 (2005) - Regarding a claim that a statute is unconstitutionally vague, the due process standard is whether a statute either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. U.S. v Castleman, 134 Sct 1405 (2014) - A court's construction of a criminal statute must be guided by the need for fair warning; but the Rule of Lenity only applies if, after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute, such that the court must simply guess as to what [Legislature] intended. U.S. v Harriss, 347 U.S. 612, 74 S.ct 808 (1954) - The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. See. U.S. v Cassiagnol, 420 F2d 868 (4th Cir. 1970). Lanzetta v State of N.J, 306 U.S. 451, 59 S.ct 618 (1939) - Penal statute creating new offense must be sufficiently explicit to inform those subject to it what conduct will render them liable for its penalties, and statute so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates due process clause and is also repugnant to due process clause. See U.S. v Cassiagnol, 420 F2d 868 (4th Cir. 1970).

The application and reasoning in this case should be ruled in favor of Appellant as this is would be also in favor of constitutionality. State v Michau, 355 S.C. 73, 583 SE2d 756 (2003) - Statutes are to be construed in favor of constitutionality. The decision of the Department should be reversed and Appellant should be afforded meaningful opportunity for parole eligibility.

## CONCLUSION

Based on the above, the decision of the Department should be reversed and Appellant should be provided meaningful opportunity of parole consideration.

Respectfully Submitted,

Jaquese Neely
APPELLANT

Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335

This 29 day of August 2019
Enoree, South Carolina.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

41

Jaquese Neely, APPELLANT,

v

South Carolina Department of Probation, Parole and Pardon Services RESPONDENT.

§ MOTION FOR
§ MODIFICATION AND
§ CLARIFICATION OF
§ FINAL DECISION
§
§ Docket No. 19P023

Appellant respectfully moves the Court pursuant to S.C. Code Ann. §1-23-380(4), S.C. Code Ann. §1-23-380(5), and any other applicable authorities, that the Court would remand the letter of final decision to the Respondent for modification and clarification of its reason stated for its decision of denial.

Specifically, Appellant seeks and has sought to know what offense the Respondent has determined to be the prior offense which it uses to classify and deem Appellant as parole ineligible. See Appellant's correspondence attached dated April 12, 2019, where it is plainly and clearly stated that this is sought and see also Respondents letter of final decision which was attached and submitted along with the Notice of Appeal, wherein Respondent declines to provide this information by its intentional and strategic ommission of such information.

Clarification of Respondents reasoning for its decision which provides and informs Appellant of the specific prior conviction in which it refers in its determination is needed as Appellant cannot prepare a dedicated brief without this pertinent information.

FILED
JUL 02 2019
SC ADMIN. LAW COURT

Pursuant to SCALC Rule 60(A), the principal brief shall not exceed ten (10) pages. This ten (10) page limit mandated by SCALC Rule does not provide necessary page space for guessing. Appellant should not have to guess at Respondent's reason or material in which it bases its determination. 42

Appellant, however, does not wish the Court to consider this motion as any retraction of his appeal of Respondent's decision as Appellant maintains to appeal the decision regardless of the specific charge stated. Clarification is pertinent however as this will allow Appellant equitable opportunity to prepare a dedicated brief while complying with the page limit mandated by Rule.

WHEREFORE, the Appellant respectfully request that the Court would remand the letter of final decision to the Respondent for modification and clarification that provides and informs of the specific prior conviction it uses in its determination and decision. Appellant also prays that the Court will not consider or construe this motion as any retraction of his appeal of Respondent decision.

Respectfully submitted, Jaquese Neely

Jaquese Neely
APPELLANT

Tyger River Correctional Inst.
200 Prison Road
Enoree, SC 29335

This 2nd day of July, 2019.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

43

Jaquese Neely, APPELLANT,
v.
South Carolina Department of Probation, Parole and Pardon Services
RESPONDENT.

CERTIFICATE OF SERVICE

Docket No. 19P023

---

I, Jaquese Neely, hereby certify that I have served a copy of the MOTION FOR MODIFICATION AND CLARIFICATION OF FINAL DECISION upon the Respondent by placing a copy of the same inside of a postage prepaid envelope and placing said envelope in the hands of Tyger River Correctional Institution's mail room personnel on this 2 day of July, 2019, for mailing via the United States Mail, addressed as follows: Deputy Director of Legal Services, S.C. Dept. of Probation, Parole and Pardon Services, 2221 Devine Street, Suite 600, P.O. Box 50666, Columbia, SC 29250.

S/ J. Neely
Jaquese Neely
APPELLANT

Sworn and Subscribed before me
this 2nd day of July, 2019

Notary Public for South Carolina
My Commission Expires: Dec 10, 2026

Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

FILED
JUL 02 2019
SC ADMIN. LAW COURT

Jaquese Neely, #308317
Tyger River Correctional Inst.
U-10-217
200 Prison Road
Enoree, SC 29335

44

April 12, 2019



S.C. Dept. of Probation, Parole
and Pardon Services
2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, SC 29250

Dear Sir or Madam:

This is my second writing to you in attempt to get the classification of my parole eligibility rectified. I am enclosing a copy of my first letter to you which I mailed to you on February 25, 2019, (letter dated February 19, 2019).

Please make the correction in your system regarding my parole eligibility, and provide me with my parole eligibility date. I do not have any priors which would prevent me from the benefits of parole eligibility offered to those exclusively mentioned under S.C. Code Ann. § 44-53-375(3) whom are sentenced as 3rd offenses as this statute states:

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. My conviction, in regards of parole eligibility, should be treated as first and second offense convictions would be treated and I should be declared as eligible for parole. A scrivener's error, etc., should not be used to deem me ineligible for parole.

If your office chooses to continue to deem me as ineligible for parole, etc., please clarify and notify me of the prior convictions you use to deem me as a 3rd offender and that this is not a 2nd drug offense - please list the charges/convictions that are used to determine that my current conviction is a 3rd conviction and not a 2nd conviction.

Please respond to these letters I send with your clarification in these regards. Again, If you should choose to continue to deem me as ineligible for parole, etc., please provide me with the proper procedure and forms for appealing your final decision.

Thank you for your understanding and assistance in this matter.

Sincerely,

Jaquez J. Neely, #308317
Tyger River Correctional Inst.
U-9-119
200 Prison Road
Enoree, SC 29335

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S.C. Dept. of Probation, Parole and Pardon Services

Dear Sir or Madam:

February 19, 2019

I am writing seeking that you will make the correction in your system regarding my parole eligibility. My sentencing sheet/ Committment Orders contains a scriveners error as they state that I pled guilty to 3rd offense rather than 1st and 2nd offense. These are parolable offenses.

Furthermore, even as it would appear that I was convicted of 3rd offense distribution of cocaine base, I am still eligible for parole due to my not having the proper priors which would cause me to be ineligible for parole. My criminal history report, records, etc, would reveal to you that I do not have prior convictions which would allow me to be convicted of an enhanced 3rd offense conviction. Furthermore, the records would reveal that I do not have any priors which would prevent me from the benefits of parole offered to those exclusively mentioned whom are convicted and sentenced of 3rd offenses under S.C. Code Ann. § 44-53-375(3), which states: 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. My conviction in regards of parole eligibility should be treated as 1st and 2nd offense convictions would be treated and I should be declared as eligible for parole.

If after thoroughly looking into this matter, you find any convictions that can properly be used to enhance my conviction to a 3rd offense conviction or which would show that this is not simply a scrivener's error, please clarify these priors which you deem can be used. This scrivener's error should not be used to deem me ineligible for parole.

Also, if there are priors that you would ~~[illegible]~~ seek to apply which would prevent me from the special benefit of parole eligibility, etc., for those persons mentioned under SC Code Ann. §44-53-375(3), please clarify and notify me of these convictions.

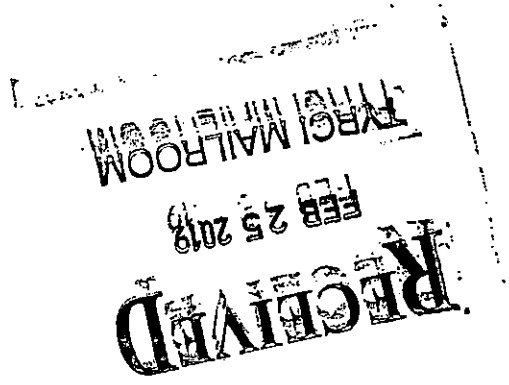
Lastly, If you choose to continue to deem me as ineligible for parole, etc., please provide me with the proper procedure and forms for appealing your final decision.

Thank you for your understanding and assistance in this matter.

Sincerely,

Jaquez Neely

Jaquez J. Neely



# PROOF OF SERVICE



I, Jaquese Neely, hereby certify that I have mailed the within letters dated February 19, 2019 and April 12, 2019, to S.C Department of Probation, Parole and Pardon Services, by depositing the same inside of a postage prepaid envelope and placing the same in the hands of Tyger River Correctional Institutional mail room personnel on this 17 day of April, 2019, for mailing via United States Mail, addressed to: S.C. Department of Probation, Parole and Pardon Services, 2221 Devine Street, Suite 600, Post Office Box 50666, Columbia, SC, 29250.

I further certify under the penalty of perjury that the above statement is true and correct.



Jaquese Neely, #308317
Tyger River Correctional Instt.
200 Prison Road
Enoree, SC 29335

SWORN and Subscribed before me
this 17 day of April, 2019

Notary Public for South Carolina
My Commission Expires: Dec. 10, 2024

**State of South Carolina**

# Department of Probation, Parole and Pardon Services

**HENRY McMASTER**
Governor

**JERRY B. ADGER**
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

April 22, 2019

Jaquese Neely, #308317
Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

Dear Mr. Neely:

I am responding to your letter of April 12, 2019, concerning your parole eligibility. As previously explained to you, you are ineligible for parole consideration. I am enclosing a copy of our previous letter to you dated March 21, 2017. No further correspondence will be sent regarding this matter.

Sincerely

Matthew C. Buchanan
General Counsel

MCB:dn

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State of South Carolina
# Department of Probation, Parole and Pardon Services


HENRY McMASTER
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/


March 21, 2017

Jaquese Neely, #308317
Ridgeland Correctional Institution
PO Box 2039
Ridgeland, South Carolina 29936

Dear Mr. Neely:

On April 2, 2015, you pled to Distribution of Crack, third offense, in Indictment Numbers 14-GS-46-03426 and 03428. Pursuant to South Carolina law a person convicted of this offense with two or more aggregate violations of the law relating to drugs is not eligible for parole.

A review of your prior record reveals a prior drug conviction, therefore, your current offense is ineligible for parole pursuant to South Carolina law. You will not be considered for parole on this offense.

Sincerely

Matthew C. Buchanan
General Counsel

MCB:dn

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State of South Carolina
Department of Probation, Parole, and Pardon Services
2221 DEVINE STREET, SUITE 600, POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250

U.S. POSTAGE PITNEY BOWES
ZIP 29205 $ 000.50⁰
02 1W
0001388679 APR. 22. 2019

RECEIVED
APR 25 2019
TYRCI MAILROOM

Jaquese Neely, #308317
Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

29666275B R003

10
21

State of South Carolina

# Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

August 12, 2019

The Honorable H. W. Funderburk, Jr.
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

**RE: Jaquese Neely, #308317 v. S.C. Department of Probation, Parole and Pardon Services**

Dear Judge Funderburk:

Please find enclosed for filing the *Record on Appeal* dated August 12, 2019, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Tommy Evans, Jr.
Assistant General Counsel

TE:dn

Enclosures
cc: Jaquese Neely, #308317

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 19-ALJ-15-0023

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

JAQUESE NEELY, #308317 ..... APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, ..... RESPONDENT

## CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within *Record on Appeal*, dated August 12, 2019, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 12th day of August, 2019, addressed to:

Jaquese Neely, #308317
Tyger River Correctional Institution
200 Prison Road
Enoree, S.C. 29335

I further certify that all parties required by Rule 61 to be served have been served.

Dawn Nichols

**Dawn Nichols**
**Executive Assistant**
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 19-ALJ-15-0023

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APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

---

JAQUESE NEELY, #308317 ..... APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, ..... RESPONDENT

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**RECORD ON APPEAL**

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**Tommy Evans, Jr.**
**Assistant General Counsel**

**South Carolina Department of Probation, Parole and Pardon Services**
**P. O. Box 50666**
**Columbia, South Carolina 29250**
**(803) 734-9220**

**ATTORNEY FOR RESPONDENT**

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State of South Carolina
# Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

March 21, 2017

Jaquese Neely, #308317
Ridgeland Correctional Institution
PO Box 2039
Ridgeland, South Carolina 29936

Dear Mr. Neely:

On April 2, 2015, you pled to Distribution of Crack, third offense, in Indictment Numbers 14-GS-46-03426 and 03428. Pursuant to South Carolina law a person convicted of this offense with two or more aggregate violations of the law relating to drugs is not eligible for parole.

A review of your prior record reveals a prior drug conviction, therefore, your current offense is ineligible for parole pursuant to South Carolina law. You will not be considered for parole on this offense.

Sincerely

Matthew C. Buchanan
General Counsel

MCB:dn

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF GENERAL SESSIONS

57

STATE VS.

JAQUESE JERMAINE NEELY

AKA:

Race: Black Sex: M Age: 31

DOB: 10/13/1983 SS#: 248-63-9568

Address: ~~790 Wofford Street~~ 4354 Lottsplace

City, State, Zip: Rock Hill, SC ~~29730~~ 29732

DL# 090501551 SID#

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

INDICTMENT/CASE#: 2014GS4603426
A/W: 2013A4610201750
Date of Offense: 11/01/2013
S.C. Code §: 44-53-0375 (B) (3)
CDR Code #: 3039

SENTENCE SHEET ORIGINAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Distribution of Crack 3rd Offense

In violation of § 44-53-0375 (B) (3) of the S.C. Code of Laws, bearing CDR Code # 3039

☒ 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:

Leslie D. Robinson, Assistant Solicitor 80151 SC Bar #

Defendant

Attorney for Defendant 65024 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 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: _____

☒ 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. 1 day

☐ 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 (Criminal 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 47.9 (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 | $ |
| Proviso 90.5 (SCCJA Surcharge) | $5 | $ 5.00 |
| 3% to County (if paid in installments) | $ | $ |
| TOTAL | | $ 280.00 |

☐ 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, §47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: David Hamilton

Court Reporter: Wanda Nelson

Presiding Judge: John C Hayes

Judge Bar ID: 0865 Judge Code: 2049

Sentence Date: 4-2-15

SCCA217 (03/2011)

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on November 6, 2014, the Grand Jurors of York County present upon their oath:

**DISTRIBUTION OF CRACK COCAINE**

The defendant, Jaquese Jermaine Neely, did on or about November 1, 2013, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Crack Cocaine, a cocaine base, in violation of the provisions of Section 44-53-370. All in violation of 44-53-375(B) of the *South Carolina Code of Laws* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

LESLIE D. ROBINSON
ASSISTANT SOLICITOR

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**WITNESSES**

DEU / Harrelson

**ARREST WARRANT NUMBER**

2013A4610201750

**ACTION OF GRAND JURY**

TRUE BILL

Rebecca W. Meares
*Foreperson of Grand Jury*
*Date:* 11/6/14

**VERDICT**

*Foreperson of Grand Jury*
*Date:*

**DOCKET NO. 2014-GS-46-** 03426

**The State of South Carolina**

**County of York**

**COURT OF GENERAL SESSIONS**

**NOVEMBER 6, TERM 2014**

**THE STATE**

**VS.**

**JAQUESE JERMAINE NEELY**

**INDICTMENT FOR**

**DISTRIBUTION OF CRACK COCAINE**

SC Code: § 44-53-0375(B)
CDR Code: 3039

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

**Defendant**

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Jaquese Neely
**Defendant**

**Witness:**

L. Benfield Court
**C.C.C. PLS. AND G.S.** Specialist

60

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF GENERAL SESSIONS

STATE VS.

JAQUESE JERMAINE NEELY

AKA:

Race: Black Sex: M Age: 31

DOB: 10/13/1983 SS#: 248-63-9568

Address: ~~798 Wofford Street~~ 1254 Lotts place

City, State, Zip: Rock Hill, SC ~~29730~~ 29732

DL# 090501551 SID#

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

INDICTMENT/CASE#: 2014GS4603428
A/W: 2014A4610200092
Date of Offense: 01/22/2014
S.C. Code §: 44-53-0375 (B) (3)
CDR Code #: 3039

SENTENCE SHEET

#2

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Distribution of Crack 3rd

In violation of § 44-53-0375 (B) (3) of the S.C. Code of Laws, bearing CDR Code # 3039

☒ 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:

Leslie D. Robinson, Assistant Solicitor SC Bar # 80151

Defendant

Attorney for Defendant SC Bar # 65024

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 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: 4/2/15

☒ 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. 1 day

☐ 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 (Criminal 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 47.9 (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 | $_____ |
| Proviso 90.5 (SCCJA Surcharge) | $5 | $5.00 |
| 3% to County (if paid in installments) | $ | $_____ |
| TOTAL | | $280.00 |

☐ 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, §47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: David Hamilton

Court Reporter: Wanda Nason

Presiding Judge: John C Hayes

Judge Bar ID: 2867 Judge Code: 2099

Sentence Date: 4-2-15

STATE OF SOUTH CAROLINA

COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on November 6, 2014, the Grand Jurors of York County present upon their oath:

**DISTRIBUTION OF CRACK COCAINE**

The defendant, Jaquese Jermaine Neely, did on or about January 22, 2014, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Crack Cocaine, a cocaine base, in violation of the provisions of Section 44-53-370. All in violation of 44-53-375(B) of the *South Carolina Code of Laws* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

LESLIE D. ROBINSON
ASSISTANT SOLICITOR

62

**WITNESSES**

DEU / Suchenski

**ARREST WARRANT NUMBER**

2014A4610200092

**ACTION OF GRAND JURY**

TRUE BILL

Rebecca W. Means
*Foreperson of Grand Jury*
*Date:* 11/6/14

**VERDICT**

*Foreperson of Grand Jury*
*Date:*

**DOCKET NO. 2014-GS-46-** 03428

**The State of South Carolina**

**County of York**

**COURT OF GENERAL SESSIONS**

**NOVEMBER 6, TERM 2014**

**THE STATE**

**VS.**

**JAQUESE JERMAINE NEELY**

**INDICTMENT FOR**

**DISTRIBUTION OF CRACK COCAINE**

SC Code: § 44-53-375(B)
CDR Code: 3039

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

**Defendant**

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

**Defendant**

**Witness:**

L. Barfield Court
**C.C.C. PLS. AND G.S.** Specialist

STATE OF SOUTH CAROLINA
COUNTY OF York
STATE VS.
JERMAINE JAQUESE NEELY

AKA: JAQUESE JERMAINE NEELY
Race: B Sex: M Age: 21
DOB: 10-13-1983 SS#: 248-63-9568
Address: 1027 Sylvia Circle
Rock Hill, SC 29730
DL#: _____ SID#: SC01391669

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE# 63
2005-GS-46-1292 ORIGINAL
A/W#: H-776610
Date of Offense: 01-21-2005
S.C. Code § : 44-53-445
CDR Code #: 0107

☐ CASE RESTORED
SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Possession of Marijuana With Intent to Distribute Within Proximity of School
in violation of § 44-53-445 of the S.C. Code of Laws, bearing CDR Code # 0107

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Kristi H Jordan Jacquese Neely [illegible]
Solicitor: Defendant Attorney for Defendant

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 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 Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: [illegible]

☒ The Defendant is given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Heard, ☐ Waived, ☐Ordered
Total: $ _____ plus 20% fee: $ _____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____

| | | |
|---|---|---|
| *Fine: | $ | |
| § 14-1-206 - (Assessments 107.5 %) | $ | |
| § 14-1-211(A)(1) (Surcharge) | $ | 100.00 |
| § 14-1-211(A)(2) (Surcharge) | $ | |
| § 56-5-2995 (DUI Assessment) | $ | |
| 3% to Count (if paid in installments) | $ | |
| § 73.3, 1B TP (Law Enforce. Funding) | $ | 25.00 |
| § 33.7, 1B TP (Drug Court Surcharge) | $ | 100.00 |
| § 50-21-114(BUI Breath Test Fee) | $ | |
| § 56-5-2942(J) (Vehicle Assessment) | $ | |
| TOTAL | $ | 225.00 |

David Hamilton
Clerk of Court/Deputy Clerk
Court Reporter: Shannon McGilberry

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
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,§35.13 TP Reguires $500 be paid to clerk during probation.

PRESIDING JUDGE Jean H. Toal
Judge Code: GT 1113
Sentence Date: 3-23-05

SCCA/217 (6/2003)

STATE OF SOUTH CAROLINA )
)
COUNTY OF YORK )

INDICTMENT

At a Court of General Sessions, convened on April 14, 2005, the Grand Jurors of York County present upon their oath:

**POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE WITHIN PROXIMITY OF A PUBLIC SCHOOL**

That on or about, January 21, 2005, in York County, South Carolina, the Defendant, Jaquese Jermaine Neely aka Jermaine Jaquese Neely, did distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute a controlled substance, to wit: marijuana, within a one-half mile radius of the grounds of Sylvia Circle Elementary School, a public school, located in the city of Rock Hill, South Carolina, such possession with intent to distribute not having been authorized by law, all in violation of Section 44-53-445, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

65

**WITNESSES**

DEU/Cashier

If

**ARREST WARRANT NUMBER**

H-776610

**ACTION OF GRAND JURY**

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*
*Date:*

DOCKET NO. 2005-GS-46- 1292

# The State of South Carolina

**County of York**

**COURT OF GENERAL SESSIONS**

**April 14, Term 2005**

**THE STATE**

**vs.**

**JAQUESE JERMAINE NEELY**
**AKA JERMAINE JAQUESE NEELY**

**Indictment for**

**POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE WITHIN PROXIMITY OF A PUBLIC SCHOOL**

SC Code: § 44-53-445
CDR Code: 107

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Jaquese Neely
Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Jaquese Neely
Defendant

Witness: Cindy DuK Clerk III
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 19-ALJ-15-0023

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

JAQUESE NEELY, #308317 ..... APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, ..... RESPONDENT

***CERTIFICATE OF COUNSEL***

The undersigned certifies that this Record on Appeal complies with Rule 61 of the Rules of Procedure for the Administrative Law Court and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.

**Tommy Evans, Jr.,**
**Assistant General Counsel**

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

August 12, 2019

May 21, 2019

Jaquese Neely, #308317
Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335

67

Administrative Law Court
Office of the Clerk
1205 Pendleton Street, Suite 224
Columbia, SC 29201

RE: Jaquese Neely v South Carolina Department of Probation, Parole, and Pardon Services

Dear Clerk:

Please find enclosed Notice of Appeal and Certificate of Service along with a copy of the final decision of the South Carolina Department of Probation, Parole, and Pardon Services.

Enclosed, please also find a copy of each of these said documents along with a self-addressed stamped envelope. Please return to me file-stamped copies of these documents, bearing the Court's Filed/Received date stamp.

Thank you for your assistance in this matter.

Sincerely, Jaquese Neely
Jaquese Neely
APPELLANT

FILED
MAY 21 2019
SC ADMIN. LAW COURT

4-22-19

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

68

Jaquese Neely, #308317,

Appellant,

vs.

South Carolina Department of Probation, Parole and Pardon Services.

**NOTICE OF APPEAL**

DOCKET NO. ___-ALJ-15-_____-___

Notice is hereby given that Jaquese Neely, #308317 does hereby appeal the final decision of the South Carolina Department of Probation, Parole and Pardon Services dated April 22, 2019 and received on April 25, 2019, a copy of which is attached. A **general** statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

The Department of Probation, Parole, and Pardon Services misinterprets S.C. Code Ann. 44-53-375(B), and thereby errs in deeming me as ineligible for parole. Also, the reasoning as stated in its final decision is displaced. I do not have the requisite prior conviction(s) that would prevent me from receiving the special benefits to these whom are sentenced as third offenders, as allowed by this statute.

Jaquese Neely
**Appellant's Name**
Tyger River Correctional Institution
200 Prison Road
**Mailing Address**
Enoree, SC 29335
**City, State, Zip Code**

Jaquese Neely
**Signed**
May 21, 2019
**Dated**

**FILED**
MAY 21 2019 4:22
SC ADMIN. LAW COURT

**CERTIFICATE OF SERVICE**

I hereby certify that I, Jaquese Neely (your name), on the 21 day of MAY, 2019 in Enoree (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows:

Name of person/Agency served: Matthew C Buchanan - SC Dept Probation, Parole, and Pardon Services

Address: 2221 Devine Street, Suite 600 PO Box 50666

City, State, Zip Code: Columbia, South Carolina 29250

Jaquese Neely
**Print your name**
**(See reverse side for instructions)**

Jaquese Neely
**Sign your name**

69

State of South Carolina

# Department of Probation, Parole and Pardon Services


HENRY McMASTER
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/


April 22, 2019

Jaquese Neely, #308317
Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

Dear Mr. Neely:

I am responding to your letter of April 12, 2019, concerning your parole eligibility. As previously explained to you, you are ineligible for parole consideration. I am enclosing a copy of our previous letter to you dated March 21, 2017. No further correspondence will be sent regarding this matter.

Sincerely

Matthew C. Buchanan
General Counsel

MCB:dn

# PROOF OF SERVICE



I, Jaquese Neely, #308317, hereby certify that I have served Notice of Appeal, copy of Final Decision and Certificate of Service upon the Respondent on this 21st day of May, 2019, by depositing a copy of the same, placing the same in the hands of Tyger River Correctional Institution's mail room personnel (within a postage prepaid envelope), and placing in the hand of mail room personnel for mailing via the United States mail addressed as follows: Administrative Law Court, Office of the Clerk, 1205 Pendleton Street, Suite 224, Columbia, SC 29201; and addressed as: Matthew C. Buchanan, S.C. Dept. of Probation, Parole, and Pardon Services, 2221 Devine Street, Suite 600, P.O. Box 50666, Columbia SC 29250.

S/ _____
Jaquese Neely, #308317
Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335

SWORN and Subscribed before me
this 21st day of MAY, 2019

_____
Notary Public for South Carolina
My Commission Expires: _____

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF GENERAL SESSIONS

STATE VS.

JAQUESE JERMAINE NEELY

AKA: _____

Race: Black Sex: M Age: 31

DOB: 10/13/1983 SS#: 248-63-9568

Address: ~~790 Wofford Street~~ 4254 Lottsplace

City, State, Zip: Rock Hill, SC ~~29730~~ 29732

DL# 090501551 SID# _____

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

INDICTMENT/CASE#: 2014GS4603431
A/W: 2014A4610200247
Date of Offense: 02/20/2014
S.C. Code §: 44-53-0375 (A)
CDR Code #: 3017

71
#3

SENTENCE SHEET
ORIGINAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Poss MJ 2nd Offense

In violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0182

☒ 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:

Leslie D. Robinson, Assistant Solicitor 80151 SC Bar #

Defendant

Attorney for Defendant 65024 SC Bar #

WHEREFORE, the Defendant is committed to the ☐ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 1 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: 4/2/15

☒ 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. 1 day

☐ 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 (Criminal 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 47.9 (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 | $_____ |
| Proviso 90.5 (SCCJA Surcharge) | $5 | $5.00 |
| 3% to County (if paid in installments) | $ | $_____ |
| **TOTAL** | | $280.00 |

☐ **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, §47.12 requires $500 be paid to Clerk during probation.

Presiding Judge: John C Hayes III

Judge Bar ID: 2867 Judge Code: 8049

Sentence Date: 4-2-15

Clerk of Court/Deputy Clerk: David Hamilton

Court Reporter: Wanda Nelson

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable H.W. Funderburk, Jr., Administrative Law Judge
Docketed No. 19-ALJ-15-0023-AP

RECEIVED
MAY 14 2020
SC Court of Appeals

Case No. 2019-002123

Jaquese Neely, #308317, . . . . . APPELLANT,

South Carolina Department of Probation
Parole and Pardon Services, . . . . . RESPONDENT.

## CERTIFICATION OF COUNSEL REGARDING RECORD ON APPEAL

I, Jaquese Neely, #308317, hereby certify that the Record on Appeal contains all of the material designated by the parties to the appeal and no other materials are included therein. (Rule 210(g), SCACR).

Jaquese Neely, #308317
APPELLANT
Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

This 12th day of MAY, 2020.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable H. W. Funderburk, Jr., Administrative Law Judge
Docket No. 19-ALJ-15-0023-AP

Case No. 2019-002123

Jaquese Neely, #308317, .....-APPELLANT,

v

South Carolina Department of Probation
Parole and Pardon Services, .....-RESPONDENT.

# CERTIFICATION OF RELEVANCY

I, Jaquese Neely, hereby certify that this Record on Appeal contains no matter which is irrelevant to this appeal.

Jaquese Neely
APPELLANT

Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

This 12th day of MAY, 2020.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable H.W. Funderburk, Jr., Administrative Law Judge
Docketed No. 19-ALJ-15-0023-AP

Case No. 2019-002123



Jaquese Neely, #308317, ..... APPELLANT,

v

South Carolina Department of Probation
Parole and Pardon Services, ..... RESPONDENT.

## CERTIFICATE OF SERVICE

I, Jaquese Neely, hereby certify that I have served the Designation of Matter To Be Included In Record On Appeal; Record on Appeal, Certification of Counsel, and Certification of Relevancy; on Respondent by placing a copy of the same inside of a postage prepaid envelope and placing said envelope in the hands of Tyger River Correctional Institution's mailroom personnel on this 12 day of May, 2020, for mailing via the United States Mail, addressed as follows: Tommy Evans, Jr., Esquire, SC Dept. of Probation Parole and Pardon Services, 2221 Devine St, Suite 600, Post Office Box 50666, Columbia, South Carolina 29250.

Sworn and Subscribed before me
this 12th day of May, 2020

Notary Public for South Carolina
My Commission Expires: Dec 10 2024

s/ Jaquese Neely, #308317
APPELLANT

Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

MAY 12, 2020

Jaquese Neely, #308317
Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211



RE: Jaquese Neely, #308317 v SCDPPPS
Appellate Case No. 2019-002123

Dear Honorable Clerk:

Enclosed, please find for filing, the Designation of Matter To Be Included In Record On Appeal; Record On Appeal; Certification of Counsel; Certification of Relevancy; and Certificate of Service for the same.

Please also find enclosed, one (1) additional copy of these said documents along with a self-addressed stamped envelope. Please return to me file-stamped copies of these said documents by way of the provided SASE.

Thank you for your assistance in this matter.

Sincerely,

Jaquese Neely, #308317
APPELLANT

cc: Tommy Evans, Jr., Esquire
FILE

Jaquese Neely, #308317
Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335

$ 007.75
MAY 12 2020
MAILED FROM ZIP CODE 29335

The Honorable Jenny Kitchings
Clerk, SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
MAY 12 2020
TYRCI MAILROOM

RECEIVED
MAY 14 2020
SC Court of Appeals