THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph K. Anderson, III.

ALC Case No. 20-ALJ-04-0283-AP
Appellate Case No. 2020-001628

Hardy Marvin Lanier, #381975.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

INITIAL BRIEF OF RESPONDENT

March 17, 2021

South Carolina Department of Corrections

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STATEMENT OF THE ISSUES ON APPEAL

DID THE ADMINISTRAIVE LAW COURT PROPERLY AFFIRM THE DEPARTMENT'S CLASSIFICATION OF APPELLANT AS A VIOLENT OFFENDER AND THEREFORE INELIGIBLE FOR PAROLE?

STATEMENT OF THE CASE

This case comes before this honorable Court pursuant to the appeal of Mr. Hardy Marvin Lanier ("Appellant"), an inmate presently incarcerated within the South Carolina Department of Corrections ("SCDC"). Appellant filed a Step One Grievance on April 6, 2020, alleging he was improperly classified as ineligible for parole by SCDC upon his admission to the agency's custody. In that grievance, Appellant asserted "[u]nder Section 44-53-375(F), the statute specifically provides that the offenses which are not parole eligible are 44-53-375(C)(3), (4) and (5). I however entered a plea to 44-53-375(C)(1) and (2). Thus, the specificity with which the 'no parole' language is omitted in this statue as to (1) and (2) and specifically makes (1) and (2) parole eligible." [See Record to ALC P. 2] This Step One Grievance was timely reviewed and subsequently denied by the Warden on April 17, 2020 following an investigation during which it was determined that Appellant is currently serving an "85% non-parolable sentence for trafficking meth . . . dated 8/16/2018 [and is therefore] not currently eligible for parole." [Id. at 3.] In response, Appellant filed a Step Two Grievance on April 23rd, 2020 that was also denied following review by the Responsible Official. Id. at 1. There, the Responsible Official again determined that Appellant pled guilty first to Trafficking Methamphetamine 28 grams or more, but less than 100 grams, for a first offense, receiving a sentence of thirteen years' incarceration; and second to Trafficking Methamphetamine 10 grams or more, receiving a sentence of ten years' incarceration to run concurrently with the thirteen-year sentence. Id. at 1. The Responsible Official further stated

that Appellant's conviction resulted in a violent offender classification under SCDC policy and South Carolina law and therefore renders him ineligible for parole. [Id.]

Appellant then exercised his right to appeal to the South Carolina Administrative Law Court. There, the reviewing Judge found that the Department properly classified Appellant's conviction as a no parole offense, rendering Appellant a violent offender and requiring an 85% mandatory service term with no parole eligibility. [See ALC Order, p. 7.] This appeal follows.

STANDARD OF REVIEW

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

> The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because of the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

See also S.C. Code Ann. § 1-23-380(5); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. *See* S.C. Code Ann. § 1-23-610(B). A reviewing Court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. *Id.* In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALC reached. DuRant v. S.C.

Dep't of Health & Environmental Control, 361 S.C. 416, 420, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. *Id.*

ARGUMENT

I. THE ADMINISTRAIVE LAW COURT PROPERLY AFFIRMED THE DEPARTMENT'S DETERMINATION OF APPELLANT'S INELIGIBILITY FOR PAROLE.

A. APPELLANT WAS CHARGED WITH AND CONVICTED OF TRAFFICING METHAMPHETAMINE 10 G OR MORE 1ST OFFENSE UNDER S.C. CODE ANN. §44-53-375(C)(1)(A), A VIOLENT CRIME UNDER S.C. CODE ANN. §16-1-60, AND THUS IS NOT ELIGIBLE FOR PAROLE AS A MATTER OF LAW.

On December 19, 2019, Appellant was sentenced to thirteen years imprisonment for a conviction of Trafficking Methamphetamine 28 grams or more, but less than 100 grams, 1st offense and a concurrent sentence of ten years imprisonment for an additional conviction of Trafficking Methamphetamine 10 grams or more. Appellant was sentenced under S.C. Code Annotated §44-53-375(C)(1) and (2), which provides in the following, in relevant part:

> (C) A person who knowingly sells, manufactures, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession of ten grams or more of methamphetamine or cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), is guilty of a felony which is known as "trafficking in methamphetamine or cocaine base" and, upon conviction, must be punished as follows if the quantity involved is:
>
> (1) ten grams or more, but less than twenty-eight grams:
>
> (a) for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;
>
> (2) twenty-eight grams or more, but less than one hundred grams:
>
> (a) for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

Appellant alleges that his classification of ineligible for parole is improper under §44-

53-375(F), which states "[s]entences for violation of the provisions of subsections (C) or (E) may not be suspended and probation may not be granted" and, as Appellant interprets the statute, "the statute specifically provides that the offenses which are not parole eligible are §44-53-375(C)(3), (4), and (5)," and the statute under which Appellant was convicted and sentenced was §44-53-375(C)(1)(A).[1] However, §44-53-375(F) does not narrowly include or exclude specific subsections of §44-53-375(C) with regard to eligibility or non-eligibility for parole. It makes no reference to amount of methamphetamine or cocaine based involved in an individual's charging and conviction as being relevant to sentencing or parole eligibility. *See* S.C. Code Ann. §44-53-375(F).[2] Rather, it only reiterates that parole ineligibility of an individual convicted of an offense under §§44-53-375(C) or (E) who is sentenced to "a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release as provided in Section 24-13-610, or supervised furlough as provided in Section 24-13-710."[3]

It must be emphasized here that the language of S.C. Code. Ann. §44-53-375 is a reiteration and not a *qualification* of other applicable South Carolina law with regard to parole eligibility or ineligibility. On December 19, 2019, Appellant was convicted of Trafficking Methamphetamine, 10 grams or more, 1st Offense, in violation of S.C. Code Ann.

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1 S.C. Code Ann. §44-53-375(F) (1962) (In its entirety, the statutory section reads, "A person convicted and sentenced under subsection (C) or (E) to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release as provided in Section 24-13-610, or supervised furlough as provided in Section 24-13-710.")

§44-53-375(C)(1)(b) and Trafficking Methamphetamine, 28 grams or more, 1st Offense in violation of S.C. Code Ann. §44-53-375(C)(2)(a) for the combination of which he is serving a concurrent sentence of thirteen years. *See* R. pp. 6 to 8. The controlling sentence here is the latter. Appellant's trafficking convictions therefore fall under the 85% "no parole" statute because the latter offense is a Class B felony which carries a maximum sentence of twenty-five years. *See* S.C. Ann. Code § 44-53-375(c)(2)(a) (stating that a first offense of trafficking in methamphetamine of more than 28 grams but less than 100 grams, carries a sentence of not less than seven and not more than twenty-five years); S.C. Code Ann. § 24-13-100 and -150 (generally, stating that offenses carrying twenty years or more are 85% no-parole offenses) and S.C. Code Ann. § 16-1-20(A)(2) ("A person convicted of classified offenses, must be imprisoned as follows: (1) for a Class B felony, not more than twenty-five years[.]").

Although the language contained in subsection F of S.C. Code Ann. § 44-53-375 may facially appear inapplicable to Appellant's conviction since he did not receive a "mandatory" or "mandatory minimum" term of imprisonment of twenty-five to thirty years, it does not repeal, implicitly or otherwise, the 85% provisions as applied to Appellant's drug trafficking offense. The above language became effective on January 12, 1995. See S.C. Code Ann. § 44-53-375(f) (Supp. 1995). At that time, there was no law requiring an inmate to serve an 85%, no-parole term, so the provision prohibiting parole for certain serious drug trafficking offenses had meaning. However, subsequently, on January 1, 1996, the 85% "no-parole" statutes were enacted. *See* S.C. Code Ann. § 24-13-100 and -150 (Supp. 1996). These broader statutes require 85%, no-parole terms for **all** sentences for class A, B, or C

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2 *Id.*
3 *Id.*

felonies or those exempt from classification but carrying a possible penalty of twenty years or more. *See* S.C. Code Ann. § 24-13-100 and -150 (Supp. 1996).

Additionally, as a part of the January 1, 1996 enactments, S.C. Code § 24-21-560 was added, which requires that all inmates sentenced for 85%, "no parole" offenses must be released directly to a community supervision program under the supervision of the Department of Probation, Parole, and Pardon Services for a period not to exceed two years. *See* S.C. Code Ann. § 24-21-560(A) & (B). All of this subsequent legislation - including S.C. Code § 24-13-100, § 24-13-150, and § 24-21-560 - to the extent it conflicts with the language in S.C. Code § 44-53-375(f), supersedes -375(f). See, e.g., Williams v. Town of Hilton Head Island, S.C., 311 S.C. 417, 421, 429 S.E.2d 802, 804 (1993) (in instances where it is not possible to harmonize two sections of a statute, a later legislation supersedes an earlier enactment); *State v. Brown*, 317 S.C. 55, 58, 451 S.E.2d 888, 891 (1994) ("More recent and specific legislation supersedes prior general law."). Therefore, Appellant must be incarcerated for at least 85% of his sentence and is not eligible for parole. See S.C. Code Ann. § 24-13-150(A).

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

> Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection

> for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.

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

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

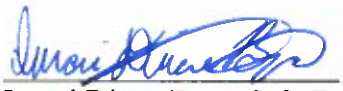
CONCLUSION

WHEREFORE, for all the reasons stated above, the Court should affirm the Administrative Law Court's decision.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Attorney for Respondent



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v.

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PROOF OF SERVICE

I hereby certify that I have served Appellant a copy of Respondent's Initial Brief and Designation of Matter by depositing a copy of same in the United States Mail, postage prepaid, March 17, 2021 , addressed to the Appellant as follows:

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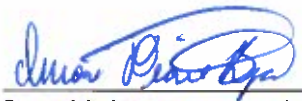

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SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
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March 17, 2021

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

RE: **Hardy Marvin Lanier, #381975 v. South Carolina Department of Corrections**
Appellate Case No. 2020-001628

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter to be Included in the Record on Appeal** in the above captioned appeal, along with **Proof of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

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