

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Administrative Law Judge

Appellate Case No.: 2020-001628

HARDY MARVIN LANIER, #381975,

Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

Respondent.

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Hardy Marvin Lanier, #381975,)	Docket No. 20-ALJ-04-0283-AP
)	
Appellant,)	
)	
vs.)	ORDER
)	
South Carolina Department of Corrections,)	
)	
Respondent.)	
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This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Hardy Marvin Lanier (Appellant), an inmate incarcerated by the South Carolina Department of Corrections (Department or SCDC).

FACTS/PROCEDURAL HISTORY

On December 19, 2019, Appellant pled guilty to Trafficking Methamphetamine 28 grams or more; but less than 100 grams, 1st offense and received a sentence of thirteen years' imprisonment. He also pled guilty to Trafficking Methamphetamine 10 grams or more and was sentenced to ten years' imprisonment, to run concurrently with his other sentence.

On April 6, 2020, Appellant filed a Step 1 Grievance alleging he was improperly classified as not eligible for parole. Appellant asserts that "[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 statute as to (1) and (2) and specifically makes (1) and (2) parole eligible."

The Warden denied Appellant's Step 1 Grievance, finding that "[a]ccording to documentation you are currently serving an 85% non-parole able sentence for trafficking meth offense, dated 8/16/2018. You are currently not eligible for parole." Appellant then filed a Step 2 Grievance, which was also denied. On June 16, 2020, Appellant filed a Notice of Appeal with the Court, in which he argued the "Department of Corrections incorrectly calculated the project release date of Appellant by classifying and treating the offense of Trafficking Methamphetamine more than 28 grams, but less than 100 grams (1st offense) as a 'no parole' offense under the provisions of S.C. Code Ann. §§ 24-13-100 and 150."

FILED

November 23, 2020

SC ADMIN. LAW COURT

On August 28, 2020, Appellant filed his brief. On October 27, 2020, the Department filed its brief. Appellant filed his reply brief on November 2, 2020.

ISSUE ON APPEAL

Did the Department err in calculating Appellant's projected release date by classifying him as ineligible for parole?

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. South Carolina Department of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003). In *Al-Shabazz*, the court held the ALC's jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.* at 382; 527 S.E.2d at 757.¹ Furthermore, when reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. *Id.* at 377, 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2019) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380). Section 1-23-380(A)(5) states:

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;

¹ In *Sullivan v. South Carolina Department of Corrections*, the Supreme Court also found that other conditions of confinement could potentially implicate state-created liberty interests. 355 S.C. 437, 586 S.E.2d 124 (2003). However, those interests are "generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* at 442, 586 S.E.2d at 126 (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)); *see also* *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004).

(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.

S.C. Code Ann. § 1-23-380(5) (Supp. 2019).

Consequently, an Administrative Law Judge may not substitute his judgment for that of an agency “as to the weight of the evidence on questions of fact.” *Id.* Furthermore, an Administrative Law Judge may not reverse or modify an agency’s decision unless the Record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence, arbitrary, or affected by an error of law. *Id.*; *see also Marietta Garage, Inc. v. S.C. Dep’t of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep’t of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). “‘Substantial evidence’ is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.” *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

DISCUSSION

Appellant asserts Department of Corrections erred in calculating his projected release date because it improperly classified his offense of Trafficking Methamphetamine more than 28 grams, but less than 100 grams, 1st offense, as a “no parole” offense under section 24-13-100 and section 24-13-150 of the South Carolina Code. He also asserts this offense is a “parole eligible offense pursuant to the provisions of S.C. Code Ann. § 44-53-375(F)” because it “specifically provides that the offenses which are not parole eligible are § 44-53-375(C)(3), (4) and(5).”

In contrast, the Department asserts “Appellant was charged with and convicted of Trafficking Methamphetamine more than 28G or more 1st offense under S.C. Code Ann. § 44-53-375(C)(2)(a), a violent crime under S.C. Code Ann. § 16-1-60 and a Class B Felony and thus is not eligible for parole as a matter of law.”

First, section 44-53-375 of the South Carolina Code of Laws (2018) provides:

(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 or who knowingly attempts to become 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;

* * *

(3) one hundred grams or more, but less than two hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(4) two hundred grams or more, but less than four hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

(5) four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

* * *

(F) Sentences for violation of the provisions of subsections (C) or (E) may not be suspended and probation may not be granted. **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.

(emphasis added). Subsections 44-53-375(C)(1) and (2), under which Appellant was sentenced, clearly state that neither suspension nor probation may not be granted for first offense sentences

under these subsections, but they do not address parole eligibility. Similarly, subsection 44-53-375(C)(3), (4) and (5) do not address parole eligibility; however, 44-53-375(F) provides that offenses under these particular subsections are not parole eligible based upon their mandatory sentences of 25+ years. Based upon the distinction between subsections 44-53-375(C)(1)-(2) and subsections 44-53-375(C)(3)-(5) created by subsection 44-53-375(F), Appellant argues his offenses under subsections 44-53-375(C)(1)-(2) are parole eligible.

However, Appellant fails to account for how felony classification affects his parole eligibility. In terms of felony classification, trafficking in ice, crank, or crack cocaine in an amount of 28 grams or more, but less than 100 grams, first offense, is a Class B felony under section 16-1-90(B) of the South Carolina Code (2015 & Supp. 2019). In contrast, Trafficking in ice in an amount of 10 grams or more is a Class E felony under section 16-1-90(E) of the South Carolina Code (2015 & Supp. 2019). Therefore, Appellant committed both a Class B and a Class E felony. Pursuant to section 24-13-100, “a class A, B, or C felony” is a “no parole offense.” S.C. Code Ann. § 24-13-100 (2007). Regarding no parole offenses, section 24-13-150(A) provides:

(A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, an inmate convicted of a “no parole offense” as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections . . . is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed. . . . Nothing in this section may be construed to allow an inmate convicted of murder or an inmate prohibited from participating in work release, early release, discharge, or community supervision by another provision of law to be eligible for work release, early release, discharge, or community supervision.

S.C. Code Ann. § 24-13-150(A) (2007 & Supp. 2019) (emphasis added). Because Appellant’s offense is a Class B felony, it is a “no parole offense” that generally requires 85% of the sentence be served (the 85% rule).

Even so, the Court must also consider the South Carolina Supreme Court’s decision in *Bolin v. South Carolina Department of Corrections*, 415 S.C. 276, 781 S.E. 2d 914 (Ct. App. 2016). In *Bolin*, the Supreme Court held the amended version of section 44-53-375(B) (pursuant to the Omnibus Crime Reduction and Sentencing Reform Act of 2010) repealed section 24-13-100 to the extent section 24-13-100’s classification of non-parole offenses conflicted with the amended section’s granting of parole eligibility. More specifically, the amended version of 44-53-375(B) made certain offenses parole-eligible that were previously classified as non-parole offenses under

section 24-13-100. *Id.* Reviewing the legislative history of section 44-53-375 for the purposes of this case, it is clear that neither subsections 44-53-375(C) nor (F) have been amended to include the repealing language at issue in *Bolin* such that Appellant's sentences under subsections 44-53-375(C)(1) and (2) have become parole-eligible.² *Cf.* Omnibus Crime Reduction and Sentencing Reform Act of 2010, 2010 S.C. Act 273, § 38 (amending subsection 44-53-375(B) to add: "**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." (emphases added)).

Because the application of *Bolin* to this case does not change the parole eligibility of Appellant's sentences under subsections 44-53-375(C)(1)-(2) or (F), all that remains is reconciling subsections 44-53-375(C)(1)-(2) and (F) with the 85% rule under section 24-13-150(A). Ironically, *Bolin* returns to guide us here. *Bolin* instructs that when two statutes conflict, if the more recent statute uses the phrase "notwithstanding any other provision of the law," the legislature is evincing an intent to repeal the older statute and for the more recent statute to control. *Bolin*, 415 S.C. at 282, 781 S.E.2d at 917. Here, the applicable language in section 44-53-375 has remained the same since 1995 and sections 24-13-150(A) became effective in 1996. *See* S.C. Code Ann. §§ 44-53-375(C)-(D) (Supp. 1995) (effective January 12, 1995); S.C. Code Ann. § 24-13-150 (Supp. 1995) (effective Jan. 1, 1996). Because section 24-13-150(A) uses the phrase "notwithstanding any other provision of the law" and it is the more recent statute, its language controls over subsections 44-53-375(C) and (F).³ Therefore, because section 24-13-150(A)

² In 1995, the section 44-33-375 was amended to add subsection (D) which later became subsection (F) that is before the Court today. 1995 S.C. Act No. 7 (effective Jan. 12, 1995). In 1995, subsection (D) read:

(D) Except for a first offense, as provided in subsection (A) of this section, sentences for violation of this section may not be suspended and probation may not be granted. **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.

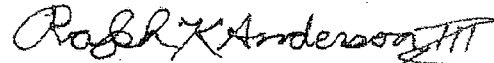
S.C. Code Ann. § 44-53-375(D) (Supp. 1995) (emphasis added)/ In 2005, subsection (D) was re-codified as subsection 44-53-375(F). 2005 S.C. Act No. 127, § 5 (effective June 7, 2005). Section 44-53-375(F) was then amended in 2010, which is the current version now at issue before the Court. 2010 S.C. Act No. 273 (effective June 2, 2010). None of the amendments to section 44-53-375(F) alter the outcome of this case pursuant to the holding in *Bolin*.

³ Applying the last legislative expression rule would also lead to the conclusion that section 24-13-150(A) controls. *See Williams v. Town of Hilton Head Island, S.C.*, 311 S.C. 417, 421, 429 S.E.2d 802, 804 (1993) ("[T]he Last

controls, the Department correctly classified Appellant's conviction as a "no parole" offense. I therefore find the Department did not err in calculating Appellant's projected release date as Appellant is ineligible for parole and must be classified as an 85% offender.

ORDER

IT IS THEREFORE ORDERED that the Department's decision is **AFFIRMED**.
AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

November 23, 2020
Columbia, South Carolina

Legislative Expression Rule requires that in instances where it is not possible to harmonize two sections of a statute, the later legislation supersedes the earlier enactment.”); *Eagle Container Co., LLC v. Cty. of Newberry*, 379 S.C. 564, 572, 666 S.E.2d 892, 896 (2008) (“Under the ‘last legislative expression’ rule, where conflicting provisions exists, the last in point of time or order of arrangement, prevails.” (citing *Ramsey v. County of McCormick*, 306 S.C. 393, 397, 412 S.E.2d 408, 410 (1991))). The Court recognizes that the last legislative expression rule has been interpreted as “an arbitrary rule of construction and is to be resorted to only when there is clearly an irreconcilable conflict, and all other means of interpretation have been exhausted.” *Feldman v. S.C. Tax Comm’n*, 203 S.C. 49, 54, 26 S.E.2d 22, 24 (1943). However, in this instance it further substantiates the Court’s reasoning.

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Perez
Judicial Law Clerk

November 23, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Hardy Marvin Lanier, #381975,) Docket No.: 20-ALJ-04-0283-AP
) Grievance No.: KRCI 284-20
Appellant,) Assigned Judge: Ralph K. "Tripp" Anderson, III
)
v.)
) BRIEF OF THE APPELLANT
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)

I. STATEMENT OF ISSUE ON APPEAL

DID THE DEPARTMENT OF CORRECTIONS ERR IN CONCLUDING THAT THE APPELLANT'S OFFENSE FOR TRAFFICKING METHAMPHETAMINE 28 GRAMS OR MORE (1ST OFFENSE) FALLS UNDER THE NO PAROLE PROVISIONS OF S.C. CODE ANN. §§24-13-100 AND 150, IN LIGHT OF THE PROVISIONS OF S.C. CODE ANN. §44-53-375(F)?

II. STATEMENT OF THE CASE

On December 19, 2019, the Appellant, Hardy Marvin Lanier, entered a plea of guilty on two separate indictments for Trafficking Methamphetamine in the Court of General Sessions for York County. At issue in this appeal is the Appellant's parole eligibility on the offense of Trafficking Methamphetamine 28 grams or more, but less than 100 grams (1st Offense)(S.C. Code Ann. §44-53-375(C)(2)(a))(hereinafter, the offense will be referred to as Trafficking Methamphetamine 28 grams or more). The offense in question occurred on August 16, 2018.

The offense of Trafficking Methamphetamine 28 grams or more is punishable by a sentence of seven (7) years to twenty-five (25) years and a fine of Fifty Thousand (\$50,000) Dollars, and is classified as a B Class Felony pursuant to S.C. Code Ann. §16-1-90(B).

After being sentenced to thirteen (13) years on the offense of Trafficking Methamphetamine 28 grams or more, the Appellant was transferred to the South Carolina Department of Corrections, and thereafter he was informed that he was ineligible for parole on said offense.

The Appellant filed a grievance pursuant to the Department of Corrections grievance procedure, which stated that the Department of Corrections Records Division had incorrectly characterized his offenses as “no parole” offenses, and that under the provisions of section 44-53-375(F), he was eligible for parole.

The Appellant’s grievance was denied at Step 1. The Appellant then requested that the denial of his grievance be reviewed at Step 2 of the grievance procedure. The Appellant was informed in writing that his grievance had been denied at Step 2 on June 2, 2020. That on June 15, 2020, the Appellant timely filed a Notice of Appeal with the Administrative Law Court stating as a ground for the appeal that the Department of Corrections had incorrectly treated his offense of Trafficking Methamphetamine 28 grams or more (1st Offense) as a no parole offense.

This matter is before the Court pursuant to the South Carolina Supreme Court’s decision in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000), which vests the Administrative Law Court with appellate jurisdiction to hear matters relating to an inmate’s erroneous sentence calculation, sentence related credits or custody status.

III. STATEMENT OF THE LAW

At issue in the Appellant's case is his parole eligibility on the offense of Trafficking Methamphetamine 28 grams or more. The Appellant contends he is parole eligible under the provisions of section 44-53-375(F). The sole issue before the Court is one of statutory interpretation, which is a question of law. Specifically, the Court is being asked to decide whether the Department of Corrections has correctly applied the provisions of sections 24-13-100 and 150, and section 44-53-375(F) in the Appellant's case.

A. THE PROVISIONS OF S.C. CODE ANN. §§24-13-100 and 150

As noted above, the Department of Corrections has made a determination that the Appellant is ineligible for parole pursuant to the provisions of section 24-13-100, which read:

§24-13-100. Definition of no parole offense; classification.

For purposes of definition under South Carolina law, a "no parole offense" means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment for twenty years or more.

HISTORY: 1995 Act No. 83, §3, eff January 1, 1996.

Section 24-13-100, which was enacted in 1995 and has not been amended since that time, "simply describes the types of offenses for which the offender is not eligible for parole." *Bolin v. South Carolina Department of Corrections*, 415 S.C. 276, 781 S.E.2d 914, 917 (Ct.App. 2016). The significance of a person's offense being classified as a "no parole offense" is that such person is ineligible for parole until he has served at least eighty-five percent (85%) of his sentence. S.C. Code Ann. §24-13-150(A).

The only exception to the provisions of sections 24-13-100 and 150, is when an A, B, or C felony has a statutory exemption that permits parole. For example, pursuant to the amendments to section 44-53-370 and section 44-53-375, as set forth in the Omnibus Crime Reduction and Sentencing Reform Act of 2010, certain offenses classified as A, B, or C felonies were made parole

eligible. See *Bolin v. South Carolina Department of Corrections*, 415 S.C. 276, 781 S.E.2d 914 (Ct.App. 2016)(Court of Appeals held that the Department of Corrections was not correctly applying the amended provisions of section 44-53-375(B)(2), which provided that for second offenses for distribution, manufacturing, possession with intent to distribute, etc., (punishable by up to 30 years) were not to be treated as “no parole” offenses under section 24-13-100).

B. THE PROVISIONS OF S.C. CODE ANN. §44-53-375(C) AND (F)

In 1987, South Carolina first enacted provisions of section 44-53-375 (1987 Act No. 128) to specifically address the “crack cocaine” epidemic that began in the early 1980s. The provisions of section 44-53-375 imposed severe mandatory minimum sentences for offenses involving the possession, distribution, sell etc. of crack cocaine. When the provisions of section 44-53-375 were first enacted in 1987, the statute only applied to crack cocaine, and contained no provisions for the trafficking of crack cocaine.

Subsequent amendments to section 44-53-375 in 1990 and 1993, added provisions to include “ice” or “crank”, i.e., methamphetamine, and provisions for trafficking offenses.

In 1995, (the same year the “no parole” provisions of section 24-13-100 were enacted), the provisions of section 44-53-375 were again amended to add for the first time, the subsection at issue in the matter before the Court, which addressed, in part, parole eligibility for persons convicted of trafficking offenses, and read:

(D) Except for a first offense, as provided in subsection (A) of this section, sentences for violation of this section may not be suspended and probation may not be granted. A person convicted and sentenced under this subsection 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. [emphasis added]

1995 Act No. 7, Part I, §18.

In 2005, section 44-53-375 was substantially amended, and included the adding of a section criminalizing and punishing the possession of ephedrine, pseudoephedrine, or phenylpropanolamine. Notably, the former provisions of subsection 44-53-375(D) that addressed parole eligibility for persons convicted of trafficking offenses, were re-codified as subsection 44-53-375(F) of the amended statute.

In 2010, as part of the Omnibus Crime Reduction and Sentencing Reform Act of 2010, the provisions of section 44-53-375 were again substantially amended, with the amendments changing, *inter alia*, the punishment for offenses involving possession, and possession with intent to distribute, etc., and the parole eligibility of certain offenses previously deemed “no parole” offenses by the Department of Corrections. Importantly, the provisions of subsection 44-53-375(F) addressing parole eligibility for persons convicted of trafficking offenses, were re-codified and amended, so as to read, then and now, as follows:

(F) Sentences for a violation of subsections (C) or (E) may not be suspended and probation may not be granted. 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. [emphasis added]

2010. No. 273, §38

C. STATUTORY CONSTRUCTION

As noted above, the issue before the Court is the statutory construction and interplay between the provisions of sections 24-13-100 and 150, and section 44-53-375(F).

It is well settled law that, “[a]ll rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). “A statute as a whole must receive a practical,

reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.”) *id.* at 351, 688 S.E. 2d at 575. “Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.” *id.* at 351, 688 S.E. 2d at 575. “In interpreting a statute, the court will give words their plain and ordinary meaning, and will not resort to forced construction that would limit or expand the statute.” *State v. Johnson*, 396 S.C. 182, 188, 720 S.E.2d 516, 520 (Ct. App. 2011). “A statute should be so construed that no word, clause, sentence or provision or part shall be rendered surplusage, or superfluous.” *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (Ct.App. 2008). Furthermore, as is applicable in this case, the cannon of construction “*expression unius est exclusio alterius*” or “*inclusio unis est exclusio alterius*” holds that “to express or include one thing implies exclusion of another or the alternative.” *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578, 582 (2000).

When it appears that two statutes “are in conflict, the more recent and specific statute should prevail so as to repeal the earlier, general statute”. *Stone v. State*, 313 S.C. 533, 535, 443 S.E.2d 544, 545 (1994). *See also Hair v. State*, 305 S.C. 77, 79, 406 S.E. 2d 332, 334 (1991)(“The law clearly provides that if two statutes are in conflict, the latest statute passed should prevail so as to repeal the earlier statute to the extent of the repugnancy.”); *Strickland v. State*, 276 S.C. 17, 19, 274 S.E.2d 430, 432 (1981)(“statutes of a specific nature are not to be considered as repealed in whole or in part by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to do so is explicitly implied therein.” Without this implicit repeal, the amendments themselves would be meaningless. *See State v. Long*, 363 S.C. 360, 364, 610 S.E. 2d 809, 811 (2005)(“The legislature is presumed to intend that its statutes accomplish something.”).

IV. ARGUMENT

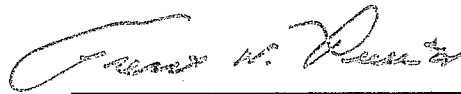
In the matter before the Court, the position of the Department is a simplistic application of the provisions of sections 24-13-100 and 150, to the Appellant's offense. That is, the Appellant pled guilty to the offense of Trafficking Methamphetamine 28 grams or more, which is a Class B felony. Section 24-13-100 defines a no parole offense as a Class A, B, or C felony. Accordingly, because the Appellant was convicted of a Class B felony, i.e., a "no parole" offense, he must serve eighty-five (85%) percent of his sentence as required by section 24-13-150.

The position of the Department is flawed in that it ignores the express and unequivocal intent of the General Assembly to remove certain trafficking offenses found in section 44-53-375 from the "no parole" provisions of sections 24-13-100 and 150, as evidenced by the provisions of subsection (F), being enacted in 1995, re-codified in 2005 and last amended in 2010. Pursuant to the provisions of subsection (F), only those trafficking offenses punishable by mandatory sentences of twenty-five years or more are ineligible for parole. Applying the canon of construction "to express or include one thing implies exclusion of another or the alternative," all other trafficking offenses not being punishable by the said mandatory sentences are thus excluded from the no parole provisions of subsection (F).

Words have meaning. Subsection (F) was enacted as standalone provision of section 44-53-375. It exists for a reason. Subsection (F) was intended to remove certain trafficking offenses from the no parole provisions of section 24-13-100. If this is not the meaning of subsection (F), then what possible meaning can be attributed to the language of subsection (F)? The Department's reading of the statute would nullify any import that subsection (F) might have, and would treat this specifically enacted subsection as mere surplusage, resulting in a meaningless absurdity.

V. CONCLUSION

For the reasons stated above, the Appellant respectfully submits that the decision of the Department of Corrections should be reversed, and that the Court find that the Appellant does not fall under the no parole provisions of sections 24-13-100 and 150 for the offenses for which he is currently incarcerated.



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August 28, 2020

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Hardy Marvin Lanier, #381975,)	Docket No.: 20-ALJ-04-0283-AP
)	Grievance No.: KRCI 284-20
Appellant,)	
)	RESPONDENT'S BRIEF
v.)	
)	<i>Honorable Ralph K. Anderson</i>
South Carolina Department of Corrections,)	
)	
Respondent.)	
_____)	

STATEMENT OF THE CASE

This case comes before the Administrative Law Court (ALC) 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 not eligible for parole. *See* R. p. 2. This grievance was timely reviewed and denied on April 17, 2020 on the basis that Appellant is presently serving an “85% non-parolable sentence for a trafficking meth offense.” *Id.* Appellant subsequently filed a Step Two Grievance on April 23, 2020 wherein he stated, “I disagree with the decision for the reasons set forth in Step One of my grievance, and ask that the matter be reconsidered again in Step Two of the grievance procedure.” R. p. 1. This was again timely reviewed and denied by the Responsible Official, who found Appellant properly classified. *Id.* This appeal follows.

JURISDICTION

The ALC has jurisdiction to hear this matter pursuant to the Supreme Court of South Carolina’s holding in *Al-Shabazz v. State*, 338 S.C. 354, 367-368, 527 S.E.2d 742 (2000) (where the court held that an inmate “may obtain review of [SCDC’s] final decision in non-collateral or

administrative matters under the APA,” under which claims pertaining to sentence-related credits or other conditions of imprisonment fall.) The ALC’s subject matter jurisdiction over such matters was further clarified by *McNeil v. South Carolina Department of Corrections*, 00-ALJ-04-0036-AP (September 5, 2001), wherein the ALC interpreted the breadth of its jurisdiction as established by *Al-Shabazz*. The court held there that the ALC’s appellate jurisdiction in inmate appeals is limited to two types of cases: 1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and 2) cases in which SCDC has taken an inmate’s state-created liberty interest as punishment in a major disciplinary hearing. Here, as articulated by Appellant in his Step One Grievance, the case comes before this Court over the issue of whether Appellant has been properly classified as a violent offender under South Carolina law and is therefore ineligible for parole. As this issue is directly related to Appellant’s custody status with SCDC, this Court has jurisdiction to hear this appeal under *McNeil*.

STANDARD OF REVIEW

A reviewing court will not disturb findings of an administrative agency if its findings are supported by substantial evidence as shown by the record as a whole. *Pearson v. JPS Converter & Industry Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). “Substantial evidence” is evidence which, considering the record as a whole, would allow a reasonable mind to reach the conclusion reached by the administrative agency. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the

deferential standard of appellate review. *Heater of Seabrook, Inc. v. Public Svc. Comm'n of S.C.*, 332 S.C. 20, 503 S.E.2d 739 (1998).

ARGUMENT

I. APPELLANT WAS CHARGED WITH AND CONVICTED OF TRAFFICKING METHAMPHETAMINE 28G OR MORE 1ST OFFENSE UNDER S.C. CODE ANN. §44-53-375(C)(2)(A), A VIOLENT CRIME UNDER S.C. CODE ANN. §16-1-60, AND A CLASS B FELONY, AND THUS IS NOT ELIGIBLE FOR PAROLE AS A MATTER OF LAW.

Appellant alleges here that he has been improperly classified because, under S.C. Code Ann. §44-53-375(F), “[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)(2)(A). *See* R. p. 2.¹ Appellant appears to be misinterpreting the language of the statutory section. In its entirety, §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 base 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 the 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

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.”)

²*Id.*

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. §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 A 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)(1) (“A person convicted of classified offenses, must be imprisoned as follows: (1) for a Class A felony, not more than thirty 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

³ *Id.*

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 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.

II. RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE, AND APPELLANT HAS FAILED TO PROVIDE EVIDENCE THAT THE DECISION IS CLEARLY ERRONEOUS, ARBITRARY OR CAPRICIOUS, OR AN ABUSE OF DISCRETION.

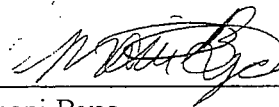
The record conclusively establishes that the "substantial evidence on the whole record" supports the Department's final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See *Porter v. Public Service Comm'n*, 333 S.C. 12, 507 S.E.2d 328 (1998). Appellant

has not met this burden and his claim should be dismissed with prejudice. In reaching its final agency decision in these matters, SCDC is “confined to the face of the sentencing sheets in determining the length of a sentence [unless . . .] there is an ambiguity in the sentencing sheets.” *Tant v. S. Carolina Dep't of Corr.*, 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014), *reh'g denied* (July 10, 2014). Appellant’s sentencing sheets, which were filed with the Record, are in no way ambiguous. *See R.* pp. 6 to 8. Therefore, Respondent respectfully requests the final agency decision be upheld.

CONCLUSION

SCDC’s interpretation of Appellant’s sentencing and its subsequent classification of him as ineligible for parole are proper under applicable South Carolina statutory authority and case precedent. SCDC did not base its interpretation and decision on information beyond the bounds of Appellants’ sentencing sheets as filed with the record. Therefore, SCDC’s final agency decision was based on substantial evidence and Appellant has not met his burden. SCDC respectfully requests its decision denying appellant’s Step Two grievance be upheld.

Respectfully submitted,



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Tuesday, October 27, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Hardy Marvin Lanier, #381975,) Docket No.: 20-ALJ-04-0283-AP
) Grievance No.: KRCI 284-20
Appellant,) Assigned Judge: Ralph K. "Tripp" Anderson, III
)
v.)
) REPLY BRIEF OF THE APPELLANT
South Carolina Department of Corrections,)
)
Respondent.)
_____)

REPLY TO THE RESPONDENT'S ARGUMENT

In the "Respondent's Brief," the Department of Corrections has argued that the Appellant is ineligible for parole under the provisions of S.C. Code Ann. §44-53-375(F): (1) because section 44-53-375(F) was enacted in 1995, before the mandatory "no parole" provisions of S.C. Code Ann. §§24-13-100 and 150 were enacted in 1996, and the provisions of section 44-53-375(F) have been superseded; and (2) the later recodification and amendments after 1996 to section 44-53-375 (F), have had no legal affect as to parole eligibility for any trafficking offense, and merely "reiterated" parole ineligibility for some, but not all, trafficking offenses found under section 44-53-375(C).

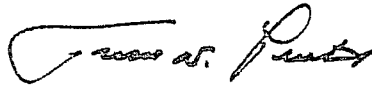
As to the first proposition, the Department argues that the provisions of section 44-53-375(F), which became effective on January 12, 1995, were superseded by the "no parole" provisions of sections 24-13-100 and 150, which were enacted on January 1, 1996. The Department argues in essence, the provisions of S.C. Code Ann. §§24-13-100 and 150, have been repealed by implication. When two statutes are in conflict, the more recent and specific statute should prevail so as to repeal the earlier general statute. *Stone v. State*, 313 S.C. 533, 443 S.E.2d 544 (1994); *Higgins v. State*, 307 S.C. 446, 415 S.E.2d 799 (1992). Repeal by implication is not

avored, and will not be applied if there is any other reasonable construction of the statute. *Stone v. State*, 313 S.C. 533, 443 S.E.2d 544 (1994); *State v. Webb*, 301 S.C. 66, 389 S.E.2d 664 (1990); *State v. Bodiford*, 282 S.C. 378, 318 S.E.2d 567 (1984). It was held in *State v. Alexander*, 14 Rich. 247 (1867), that a repeal of an older statute by a later one will not be implied unless the repugnance between them is so great as to be susceptible of no reasonable reconciliation. If the two statutes can stand together, and have room for operation without conflict and inconsistency, they shall do so. *State v. Hood*, 181 S.C. 488, 188 S.E. 134 (1936). To bring about a repeal by implication, the two acts must be directly antagonistic and repugnant, and there must be such a positive repugnancy as to admit of no other reasonable construction. *State v. Hood*, 181 S.C. 488, 188 S.E. 134 (1936). It is presumed that Legislature was familiar with prior legislation, and that if it intended to repeal existing laws it would have expressly done so; hence, if any fair or liberal construction of the two acts may be made to harmonize, no court is justified in deciding that the last repealed the first. *State v. Hood*, 181 S.C. 488, 188 S.E. 134 (1936). In this instance, the Department's argument that the later enactment of sections 24-13-100 and 150, superseded the provisions of section 44-53-375(F) ignores the subsequent legislative history of section 44-53-375(F) which was amended and recodified after 1996, to repeatedly and consistently contain the language limiting parole ineligibility to trafficking offenses punishable by "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." If the later statute in this case should be controlling, then section 44-53-375(F) should control.

As to the second proposition, that the General Assembly was merely reiterating the parole ineligibility for some, but not other, trafficking offenses, this reading is contrary to a plain reading of section 44-53-375(F). As noted above, presumably the General Assembly is aware of its own acts. Accordingly, had the General Assembly desired to merely reiterate the parole ineligibility of any trafficking offense, it could have done so by referencing the “no parole” provisions of sections 24-13-100 and 150, or by not referring to parole eligibility at all. Instead, after 1996, the General Assembly, when it amended or recodified section (F), it repeatedly and consistently used the language limiting parole ineligibility to trafficking offenses punishable by “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.” This is not a mere reiteration of parole ineligibility for some, but not all, trafficking offenses. Such a construction of section (F), as advanced by the Department, would be confusing and misleading at best. Rather, the choice of the language by the General Assembly used in section (F) was a clear and express statement of legislative intent that trafficking offenses not punishable by the aforesaid mandatory sentences be treated as being parole eligible.

CONCLUSION

For the reasons stated above, the Appellant respectfully submits that the decision of the Department of Corrections should be reversed, and that the Court find that the Appellant does not fall under the no parole provisions of sections 24-13-100 and 150 for the offenses for which he is currently incarcerated.



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November 2, 2020

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

DUE
Step 1 of 2
4-27-20

APR 23 2020

Office Use Only

RECEIVED

INMATE NAME: Hardy M. Lanier
SCDC NUMBER: 381975
INSTITUTION: Kershaw Correctional APR 23 2020
HOUSING UNIT: Magnolia B7
WORK ASSIGNMENT: _____

Grievance No. KRCT-0284-20
Code: General _____
Policy _____
Disc. Hear. _____
Class _____
PREA _____
Date Received: 4-23-20
IGC Initials: SE/ML
Date Received: 5/6/20
IGA Initials: KL

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

I disagree with the decision for the reasons set forth in Step One of my grievance, and ask that the matter be reconsidered again in Step Two of the grievance procedure.

Grievant Signature Hardy M. Lanier Date 4-23-20

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. In your grievance you stated that SCDC has you listed as not parole eligible. You would like the characterization of your sentence to be amended so that you will be parole eligible. You also stated that the two (2) offenses that you were convicted of resulted in you pleading guilty. You would like your record to be corrected. The Warden responded to your concern on SCDC Step 1 Inmate Grievance Form 10-5 dated 4/17/20. You were convicted of violating SC Code of Laws 44-53-375 (C) (2) (A), Trafficking Meth 28-100 Grams on 12/19/2019 and sentenced to 13 years. This offense is classified by South Carolina Statute and SCDC as violent and not parole eligible. You have a mandatory service requirement of 11 years and 18 days. Your projected release date as of 5/8/20 is 1/8/30. You are advised to follow SCDC rules, policies and procedures. You have not shown that SCDC staff have failed to perform their job duties properly.

Therefore, your grievance is denied.

You may appeal this decision under the South Carolina Administrative Procedures Act to the South Carolina Administrative Law Court. In order to appeal, you must complete the attached Notice of Appeal Form (Form) and submit it as instructed on the Form within thirty (30) days of receipt.

Responsible Official Signature Adey Kealar Date 5/21/20

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature _____ Date _____

IGC Signature _____ Date _____

(SEE REVERSE SIDE FOR INSTRUCTIONS)

APR 10 2020

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: <u>Hardy Marvin Lanier</u>	OFFICE USE ONLY Grievance No. <u>KBC-0284-20</u> Code: General _____ Policy _____ Disc. Hear. _____ Class. <input checked="" type="checkbox"/> _____ PREA _____ Date Received <u>4-16-20</u> IGC Initials <u>ELM</u>
SCDC NUMBER: <u>381975</u>	
INSTITUTION: <u>Kershaw</u>	
HOUSING UNIT: <u>Magnolia B7</u>	
WORK ASSIGNMENT: _____	

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) 5/31/20

To Whom It May Concern:

South Carolina Department of Correction Records Division has me currently listed as my sentence not being subject to parole eligibility. I hereby request that my sentence characterization be amended so that I will be parole eligible. The basis is this request is on the fact that the two trafficking offenses in methamphetamine to which I plead guilty are parole eligible. Under 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 statute as to (1) and (2) specifically makes (1) and (2) parole eligible. Thank you for your consideration and I look forward to the correction of my record.

Hardy M. Lanier 4-16-20
Grievant Signature Date

ACTION REQUESTED:

Record Correction - Parole Eligibility

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

I have reviewed Pertinent documentation. Please review the warden's Decision.

Elaine Miller 4-16-20
IGC Signature Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

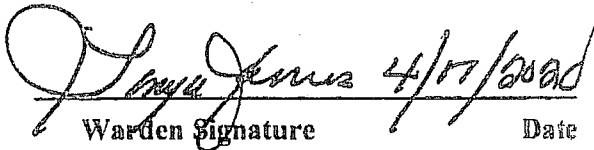
Inmate Lanier #381975

KRCI-0284-20

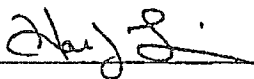
I have reviewed your concerns. In your grievance you stated, SCDC Records Division has you currently listed as not being eligible for parole. You added, the two (2) trafficking offenses to which you pled guilty are parole eligible offenses. You're requesting your record be corrected to reflect you being eligible for parole. According to documentation you are currently serving an 85% non-parole able sentence for trafficking meth offense, dated 8/16/2018. You are currently not eligible for parole.

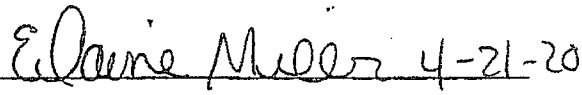
Therefore, your grievance is denied.

If you disagree with this Warden's Decision, you may file an appeal by completing SCDC Inmate Grievance Form 10-5A, provided to you while serving you this Decision, and placing it in the Grievance Box, within five (5) days of your receipt of this decision.,


Warden Signature Date

- I accept the Warden's decision and consider the matter closed.
- I do not accept the Warden's decision and wish to appeal.


Grievant Signature Date


IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

CMTI100D
OMCOMITA

SCDC OFFENDER MANAGEMENT SYSTEM
COMMITMENT APPLICATION
CONVICTION SUMMARY

08/27/20
C052640

SCDC# > 381975
LANIER, HARDY MARVIN

CURR LOC: KERSHAW
SCDC CLASSIFICATION... VIOLENT

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

NUM	CONVICTION	OFFENSE	INCARC	SENT	SENT	SENT	CONV	VIO			
			YRS	MO	DYS	DATE	START	PROJ	COMP	STAT	IND
-	S00002	TRAF METH/COC	10-28G	010	00	000	12/19/19	12/26/18	03/13/2024	ACT	V V
- *	S00001	TRAFFICK METH	28-100	013	00	000	12/19/19	12/24/18	01/08/2030	ACT	V V

PAGE: 0001

MAKE A SELECTION AND PRESS <ENTER>...

PF3-ADD PF4-MODIFY/REVOKE PF6-DISPLAY CONSEC PF9-DETAIN PF12-SUMREPT

CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 08/27/20
 OMCOMITA COMMITMENT APPLICATION C052640
 SCDC #: 381975 INQUIRY CURR LOC: KERSHAW
 LANIER, HARDY MARVIN NONCONFORM SENT: N RTRN TO COURT: N
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE
 CONVICTION NUM: S00002 INDICT NUM: 19-GS-4606576 WARRANT NUM: 2018A4610202226
 DATE SENTENCED.: 12/19/2019 JUDGE LAST.: HALL FI: D
 STATUTE: 44-53-375(C)(1)(A) CDR CODE.: 0450 GPS IND: N
 OFFENSE: 0450 TRAF METH/COC 10-28GR 1ST OFFENSE DATE: 12/13/2018
 CHARACT: F FACILITATION OF COUNTS: 01 OFFENSE CNTY: 46 YORK
 PLEA...: G GUILTY TYPE OF COURT....: 01 GENERAL SESSIO
 TYPE SENTENCE...: S ADULT-STRAIGHT SCDC JURIS DATE...: 12/19/2019
 TOTAL SENTENCE...: 010 00 000 MAND SERV REQMT...: 000 00 000
 INCARC SENTENCE...: 010 00 000 PAROLE FACTOR....: 2 1/3 SENT. REQ.
 PROBATION SENT...: 000 00 000 PAROLE SERV REQMT: 000 00 000
 HIP SENT.....: 000 00 000 HAYES CRED: 00000
 RESTITUTION REQMT: N AMT: .00 JAIL CRED: 00358 EXTRA CRED: 00000
 CONVICTION STATUS: AC ACTIVE SENT START DATE: 12/26/2018 DOM.IND:
 CONSECUTIVE IND...: N SPOUSE ABUSE: STATUTE CLASSIFICATION...: VIOLENT
 DNA OFFENSE IND...: Y EEC ELIG: N SCDC CLASSIFICATION.....: VIOLENT
 SEX REG: N PRED OFF: N LAST UPDATE: A HOLLAND DATE: 01/23/20
 NO PAROLE: NOT APPLIC CREATED BY.: R ADDY ODELL DATE: 12/31/19

 PF8-NEXT CONVICTION PF9-DETAIN PF4-RESTITUTION PAID(FA ONLY)

COUNTY OF YORK
STATE VS.

JAIL

HARDY MARVIN LANIER

AKA: Hardy M Lanier
Race: [redacted] Sex: [redacted] Age: [redacted]
DOB: [redacted] SS#: [redacted]
Address: [redacted]
City, State, Zip: [redacted]
DL# [redacted] SID# [redacted]

INDICTMENT/CASE#: 2019-GS-46-06576
A/W: 2018A4610202226
Date of Offense: 12/13/2018
S.C. Code §: 44-53-375(C)
CDR Code #: 0450

ORIGINAL

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Trafficking Methamphetamine 10g or more 1st Offense (NLT 3 YEARS TO 10 YEARS & \$25,000)
In violation of § 44-53-375(C)(1)(a) of the S.C. Code of Laws, bearing CDR Code # 0450

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (def.'s initials)
The plea is: With Pre-Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Aaron J. Hayes, Assistant Solicitor 100114 SC Bar # [redacted] Defendant [redacted] Attorney for Defendant 1850 SC Bar # [redacted]

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 SCDOP 90H
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. 2 days

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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§14-1-213 (Drug Court Surcharge)	\$150	\$ 150
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$
TOTAL		\$ 275

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,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/Deputy Clerk: DAVID HAMILTON
Court Reporter: WANDA NELSON

Presiding Judge: [redacted]
Judge Code: 2182
Sentence Date: 12-19-19

CMTI200D SCDC OFFENDER MANAGEMENT SYSTEM 08/27/20
 OMCOMITA COMMITMENT APPLICATION C052640
 SCDC #: 381975 INQUIRY CURR LOC: KERSHAW
 LANIER, HARDY MARVIN NONCONFORM SENT: N RTRN TO COURT: N
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE
 CONVICTION NUM: S00001 INDICT NUM: 19-GS-4603262 WARRANT NUM: 2018A4610201398
 DATE SENTENCED...: 12/19/2019 JUDGE LAST...: HALL FI: D
 STATUTE: 44-53-375(C)(2)(A) CDR CODE.: 0392 GPS IND: N
 OFFENSE: 0392 TRAFFICK METH 28-100GR 1 OFFENSE DATE: 08/16/2018
 CHARACT: F FACILITATION OF COUNTS: 01 OFFENSE CNTY: 46 YORK
 PLEA...: G GUILTY TYPE OF COURT...: 01 GENERAL SESSIO
 TYPE SENTENCE... : S ADULT-STRAIGHT SCDC JURIS DATE...: 12/19/2019
 TOTAL SENTENCE...: 013 00 000 MAND SERV REQMT...: 011 00 018
 INCARC SENTENCE...: 013 00 000 PAROLE FACTOR...: 2 1/3 SENT. REQ.
 PROBATION SENT...: 000 00 000 PAROLE SERV REQMT: 999 99 999
 HIP SENT...: 000 00 000 HAYES CRED: 00000
 RESTITUTION REQMT: N AMT: .00 JAIL CRED: 00360 EXTRA CRED: 00000
 CONVICTION STATUS: AC ACTIVE SENT START DATE: 12/24/2018 DOM.IND:
 CONSECUTIVE IND...: N SPOUSE ABUSE: STATUTE CLASSIFICATION...: VIOLENT
 DNA OFFENSE IND...: Y EEC ELIG: Y SCDC CLASSIFICATION...: VIOLENT
 SEX REG: N PRED OFF: N LAST UPDATE: A HOLLAND DATE: 01/23/20
 NO PAROLE: NO PAROLE CREATED BY.: R ADDY ODELL DATE: 12/31/19

 PF8-NEXT CONVICTION PF9-DETAIN PF4-RESTITUTION PAID(FA ONLY)

COUNTY OF YORK
STATE VS.

JAIL

HARDY MARVIN LANIER

INDICTMENT/CASE#: 2019-GS-46-03262
A/W: 2018A4610201398
Date of Offense: 08/16/2018
S.C. Code §: 44-53-375(C)
CDR Code #: 0369

AKA: Hardy M Lanier
Race: [redacted] Sex: [redacted] Age: [redacted]
DOB: [redacted] SS#: [redacted]
Address: [redacted]
City, State, Zip: [redacted]
DL# [redacted] SID# [redacted]

SENTENCE SHEET

ORIGINAL

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Trafficking Methamphetamine 28g or more 1st Offense (NLT 7 YEARS TO 25 YEARS & \$50,000)

In violation of § 44-53-375(C)(2)(a) of the S.C. Code of Laws, bearing CDR Code # 0392

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

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:

Aaron J. Hayes, Assistant Solicitor 100114 SC Bar #

Hardy M. Lanier
Defendant

[Signature]
Attorney for Defendant 7850 SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 13 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 SCDP
 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____

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

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Probation) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25

§14-1-213 (Drug Court Surcharge) \$150 \$ 150

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ _____

TOTAL \$ 275

Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/Deputy Clerk: DAVID HAMILTON

Court Reporter: Wanda Nelson

Presiding Judge: [Signature]

Judge Code: 2153

Sentence Date: 12-19-19

JAIL TIME REPORT FOR SCDC TRANSFER
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE RECORDS OFFICE, PO BOX 21787, COLUMBIA, SC 29221-1787
OFFICE #: (803) 896-8531 FAX#: (803) 896-1217

COUNTY SUBMITTING FORM: York County Detention Center, York, SC

PURSUANT TO SC STATUTE 24-13-40 ...In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing...

Name: LANIER, HARDY		Date of Birth: [REDACTED]		
Social Security #: [REDACTED]		Race/Sex: [REDACTED]		
SID#:		FBI#:		
Arrest Date	Charge	Warrant# (or) Indictment #	Release Date	Reason for Release
8/16/18 1/10/19	TRAFFICKING METH. 1 ST	W# 2018A4610201398 I#	8/31/18 12/31/19	ON BOND R&E -
"	TRAFFICKING METH. 1 ST	W# 2018A4610202226 I#	8/31/19 12/31/19	ON BOND R&E -
1/10/19	HOLD OTHER AGENCY CLINTON, SC	W# I#	 12/31/19	R&E
		W# I#		
		W# I#		
		W# I#		
		W# I#		
Approved By: <i>[Signature]</i>		Date: 12/20/19		

15
343
343

* Reason for Release (i.e., Explain if transferred to another county/city jail or if inmate bonded). Please submit this form at the time of the inmate's transfer and admission to the SCDC, however, if unable to do so, please mail or fax to the address or number listed above.

DISI100D

SCDC OFFENDER MANAGEMENT SYSTEM
DISCIPLINARY SYSTEM

08/27/20
C052640

SCDC ID: 381975

DISPLAY INMATE OFFENSE HISTORY

LANIER, HARDY MARVIN

CURR LOC: KERSHAW

OFFENDER TYPE: ADULT-STRAIGHT

PURCHASED TV Y
SERIOUS MENTAL ILLNESS: N

CASE#	OFFENSE DESCRIPTION	TYPE ACTION	OFFENSE DATE	HEARING DATE	NET GT LOST	DHO DECISION	OFF LVL
END OF LIST							

PAGE 0001

SELECT A RECORD AND PRESS <ENTER> TO DISPLAY OR <PF04> TO MODIFY
PF4-MODIFY PF6-DISMISSED/NOT GUILTY PF11-QUIT PF10-MAIN MENU

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Administrative Law Judge

Docket No.: 20-ALJ-04-0283-AP

HARDY MARVIN LANIER, #381975,

Appellant,

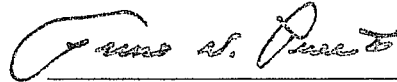
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

Respondent.

NOTICE OF APPEAL

That Hardy Marvin Lanier, Inmate Number 381975, appeals the Order issued by the Honorable Ralph King Anderson, III, Administrative Law Judge, dated November 23, 2020, affirming the final decision of the South Carolina Department of Corrections, that denied the grievance and relief sought by the aforesaid inmate.

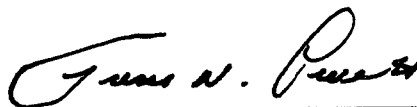


TRENT N. PRUETT, S.C. Bar No. 4585
Pruett & Cook Law Firm
202 North Petty Street
Gaffney, South Carolina 29340
Telephone: (864) 488-0120
Fax: (864) 488-0803
pruettlawfirm@bellsouth.net
Attorney for the Appellant

December 7, 2020

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCACR, I hereby certify that this Record on Appeal contains all material proposed to be included by the parties to this appeal, and not any other material.



TRENT N. PRUETT, S.C. Bar No. 4585
Pruett & Cook Law Firm
202 North Petty Street
Gaffney, South Carolina 29340
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Facsimile: (864) 488-0803
email: pruettlawfirm@bellsouth.net

Attorney for the Appellant

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APR 23 2021

SC Court of Appeals