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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The 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.

FINAL REPLY BRIEF OF THE APPELLANT

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REPLY ARGUMENT

In reply to the Brief of the Respondent, the South Carolina Department of Corrections (Department), the Appellant has set forth below his reply to the arguments made by the Respondent in its Brief.

1. THE RESPONDENT HAS INCORRECTLY STATED THAT THE CLASSIFICATION OF AN OFFENSE AS A VIOLENT CRIME UNDER S.C. CODE ANN. §16-1-60 MAKES SUCH AN OFFENSE A "NO PAROLE" OFFENSE UNDER S.C. CODE ANN. §23-13-100.

In its Brief, the Department has set forth in its "Statement of the Case" and "Argument" that the Appellant was properly denied parole because the Appellant was convicted of Trafficking Methamphetamine, a violent crime as defined by S.C. Code Ann. §16-1-60. This is not the issue that was addressed and ruled upon by the Administrative Law Court, nor is it a correct statement of the law. That a person is convicted of a violent crime is not what determines whether a person is treated as being ineligible for parole under the provisions S.C. Code Ann. §24-13-100. What determines whether a person is ineligible for parole under the provisions S.C. Code Ann. §24-13-100, is whether the offense in question is "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".

Thus, a violent crime such as Trafficking Methamphetamine 10 grams to 28 grams, first offense (S.C. Code Ann. §44-53-375(C) (1)(a)), which is punishable by imprisonment up to ten years, is classified as a Class E felony under S.C. Code Ann. §16-1-90(E), and is therefore a parole eligible offense under section 24-13-100. By contrast, a non-violent offense such as Distribution of Methamphetamine, third offense, (S.C. Code Ann. §44-53-375(B) (3)), which is punishable by imprisonment up to thirty years, is classified as a Class A felony under section 16-1-90(A), and is therefore not a "no parole" offense.

Accordingly, whether a person has been convicted of a violent or non-violent crime is irrelevant in determining such person's parole eligibility under section 24-13-100. This being noted, it appears that in the body of the Department's brief, it has addressed the substantive issue ruled on by the Administrative Law Court, and the issue raised by the Appellant's appeal, which is whether the Appellant is eligible for parole under the provisions of section 44-53-375(F).

2. THE RESPONDENT IS INCORRECT IN ARGUING THAT THE RE-ENACTED OR AMENDED PROVISIONS OF S.C. CODE ANN. §44-53-375 (F), WHICH OCCURRED AFTER THE "NO PAROLE" PROVISIONS OF S.C. CODE ANN. §23-13-100 WERE ENACTED IN 1996, MERELY REITERATED PAROLE ELIGIBILITY FOR SOME, BUT NOT ALL, TRAFFICKING OFFENSES

The sole issue before this Court is whether based upon the re-enacted or amended provisions of the section 44-53-375(F), (hereinafter referred to as subsection (F)), the Appellant is eligible, or ineligible, for parole on the offense of Trafficking Methamphetamine 28 grams to 100 grams, first offense (S.C. Code Ann. §44-53-375(C) (2) (a)).

The Department has argued that the provisions of subsection (F), which originally became effective on January 12, 1995, were superseded by the "no parole" provisions of section 24-13-100, which became effective on January 1, 1996.

This position would have some validity, had the provisions of subsection (F), not been amended after 1996, but they were. With each re-enactment or amendment of subsection (F), the General Assembly included the language at issue in this appeal 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".

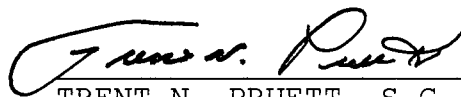
In its Brief, the Department has maintained the steady drum beat that the General Assembly by its re-enactments or amendments to subsection (F) after 1996 are to be given no significance at all. Rather, the Department argues that the language at issue was merely a reiteration of parole ineligibility for some, but not all, persons convicted of trafficking offenses. If the General Assembly was merely reiterating parole ineligibility for some trafficking offenders, such reiteration would be legally incorrect in light of the "no parole" provisions of section 24-13-100 enacted in 1996. Rather than reiterating an incorrect statement of law, the plain reading of subsection (F) is that the General Assembly intended to state which trafficking offenses were parole eligible, or parole ineligible.

In support of its position that the Appellant is ineligible for parole, the Department argues that because the General Assembly in the 2010 Omnibus Crime Reduction and Sentencing Reform Act did not include language relating to parole eligibility for trafficking offenses, as it did for drug offenses involving manufacturing/distribution, that it necessarily follows that all trafficking offenses are parole ineligible. In response to this argument the Appellant would note that no talismanic incantation of any specific language is required by the General Assembly to make an offense parole eligible. Most statutory criminal offenses are silent on the issue of parole eligibility. There is no better

example of this than the Trafficking Methamphetamine statute (section 44-53-375(C)) at issue in this appeal. As noted above, the offense of Trafficking Methamphetamine 10 grams to 28 grams, first offense (S.C. Code Ann. 44-53-375(C)(1)(a)), is a parole eligible offense, although the attendant language referred to by the Department regarding parole eligibility is conspicuously absent from the provisions of section 44-53-375(C). The absence of such language does not in any way affect the parole eligibility of the offense of Trafficking Methamphetamine 10 grams to 28 grams, first offense. If anything, the absence of such language underscores the importance of subsection (F), which is the only provision in section 44-53-375 that addresses parole eligibility for trafficking offenses.

CONCLUSION

For the reasons stated above, and in the Appellant's brief, the Appellant respectfully submits that the decision of the Department of Corrections, as affirmed by the Administrative Law Court, should be reversed, and that this Court find that the Appellant does not fall under the no parole provisions of section 24-13-100 for the offenses for which he is currently incarcerated.

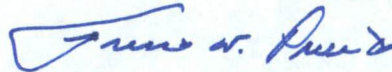


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April 22, 2021

CERTIFICATE OF COUNSEL

I hereby certify that this "Final Reply Brief of the Appellant," complies with Rule 211(b), SCACR.



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