STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H. W. Funderburk, Jr.

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SC Court of Appeals

ALC Case No. 17-ALJ-04-0507-AP
Appellate Case No. 2018-001293

JAKARTA DESHON YOUNG, #276572,

RESPONDENT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

APPELLANT.

FINAL BRIEF OF APPELLANT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
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STATEMENT OF ISSUE ON APPEAL

THE ADMINISTRATIVE LAW COURT IMPROPERLY RULED THAT RESPONDENT'S DRUG TRAFFICKING CONVICTION UNDER S.C. CODE ANN. § 44-53-370(E)(2) IS ONE THAT IS ELIGIBLE FOR PAROLE, EXTENDED WORK RELEASE, AND SUPERVISED FURLOUGH.

STATEMENT OF THE CASE

This matter is before the Court pursuant to the appeal of the Department of Corrections. Respondent filed a Step One Grievance on June 28, 2017, claiming Appellant had incorrectly calculated his sentence. Appellant investigated and denied the grievance. Respondent filed a Step Two Grievance on July 18, 2017. This grievance was also investigated and denied. Respondent filed a Notice of Appeal in the Administrative Law Court on September 20, 2017. Thereafter, on June 20, 2018, the Honorable H. W. Funderburk, Jr. issued an order reversing and remanding the decision of the Department of Corrections. Pursuant to Administrative Law Court Rule 65, "[t]he decision of the Administrative Law Judge is a final decision and motion for reconsideration will not be considered." Therefore, 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 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.

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. *Id.*

ARGUMENT

THE ADMINISTRATIVE LAW COURT IMPROPERLY RULED THAT RESPONDENT'S DRUG TRAFFICKING CONVICTION UNDER S.C. CODE ANN. § 44-53-370(E)(2) IS ONE THAT IS ELIGIBLE FOR PAROLE, EXTENDED WORK RELEASE, AND SUPERVISED FURLOUGH.

On August 25, 2016, Respondent was sentenced to seven (7) years for Trafficking in Cocaine, more than ten (10) grams but less than twenty-eight (28) grams, second offense, pursuant to S.C. Code Ann. § 44-53-370(e)(2)(a)(2). *See* R. at p. 14 and 51. Appellant is also serving a concurrent eight (8) year sentence for manufacturing cocaine base, second offense, in violation of S.C. Code Ann. § 44-53-375 (B)(2). R. at p. 16 and 51.

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 Ann. § 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 Ann. § 24-13-100 (the "85% law") to the extent it conflicted with the amended portions of S.C. Code Ann. § 44-53-370 and -375. Accordingly, the *Bolin* court found that these 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.

Respondent's trafficking conviction falls under the 85% "no parole" statute because the offense is a Class A felony which carries a maximum sentence of thirty years. *See* S.C. Ann. Code § 44-53-375(e)(2)(a)(2) (stating that second-offense trafficking in cocaine, 10-28 grams, carries a sentence of five to thirty years); S.C. Code Ann. § 16-1-90 (defining Class A felonies); and S.C. Code Ann. § 24-13-100 and -150 (generally, stating that offenses carrying twenty years or more are 85% no-parole offenses).

Notwithstanding the above, in its order, the ALC used the following language from S.C. Code Ann. § 44-53-370(e)(7) to conclude that Respondent's offense was one that is eligible for parole, extended work release, or supervised furlough:

> 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.

Initially, this language has no application to Respondent's conviction since he did not receive a "mandatory" or "mandatory minimum" term of imprisonment of twenty-five to thirty years. More importantly, this language (which, notably, was never mentioned or discussed in the *Bolin* case), does not repeal, implicitly or otherwise, the 85% provisions as applied to

Respondent's drug trafficking offense. The above language became effective on January 12, 1995. *See* S.C. Code Ann. § 44-53-370(e)(7) (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 Ann. § 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 Ann. § 24-13-100, § 24-13-150, and § 24-21-560 - to the extent it conflicts with the language in S.C. Code Ann. § 44-53-370(e)(7), superseded -370(e)(7). *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.").

For the reasons set forth above, Appellant contends that the ALC erred in finding that Respondent is eligible for parole, extended work release, and supervised furlough. Appellant

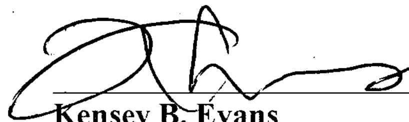
believes that Respondent, as an 85%, no-parole offender[1], is required to serve at least 85% of his sentence and then be released directly to community supervision pursuant to S.C. Code Ann. § 24-21-560(A).

CONCLUSION

Based upon the foregoing, Appellant respectfully contends that the ALC was incorrect in its interpretation of the language in S.C. Code Ann. § 44-53-370(e)(7) and incorrect in concluding that Respondent's drug trafficking conviction is one that is eligible for parole, extended work release, and supervised furlough. Therefore, Appellant requests this Court reverse the decision of the ALC.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS



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June 21, 2019

[1] Notably, the ALC did not dispute that Mr. Young qualified as an 85% offender under S.C. Code Ann. 24-13-100 and -150. (*See* R. at p. 53-55).

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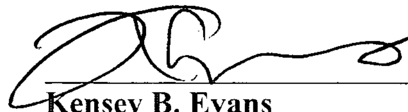
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Appellant** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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