



to appoint counsel.

On July 26, 2021, Applicant filed a document titled “Answer to Motion to Dismiss and Request for Appointment of Counsel.” In this response, Applicant essentially disputes this Court’s interpretation of the June 28, 2019, Attorney General’s opinion.<sup>1</sup> Specifically, he contends that the opinion’s conclusion—that a court would likely conclude that the enactment of section 24-13-150(A) is controlling with respect to the mandatory minimum twenty-five year drug trafficking statutes—extends to all cases other than those in which the death penalty or a term of life imprisonment is imposed.

Regarding the June 2019 opinion, the Director of SCDC sought the Attorney General’s opinion regarding whether certain high-level drug trafficking offenses should be treated as “day-for-day” or “no-parole” because the Omnibus Crime Reduction and Sentencing Reform Act of 2010 amended parts of sections 44-53-370 and -375 included language that conflicts with section 24-13-100.

Applicant was convicted under S.C. Code Ann. § 16-3-20(A):

A person who is convicted of or pleads guilty to murder must be punished by death, or by a *mandatory minimum term of imprisonment for thirty years* to life. . . . No person sentenced to a mandatory minimum term of imprisonment for thirty years to life pursuant to this section is *eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years to life required by this section.*

(emphasis added).

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<sup>1</sup> As this Court noted in the Conditional Order of Dismissal, it is well-settled that an Attorney General’s opinion may be persuasive authority, however, it is not binding on any court. *State v. Ramsey*, 409 S.C. 206, 212, 762 S.E.2d 15, 18 (2014).

Under this statute, a person sentenced to a mandatory minimum thirty-year sentence, like Applicant, must serve each day of the sentence. *See Nelson v. Ozmint*, 390 S.C. 432, 436, 702 S.E.2d 369, 371 (2010) (construing the mandatory minimum language of a different sentencing statute as requiring that the inmate “actually be imprisoned” for the whole mandatory minimum term). The language of the murder statute was not altered such that it conflicts with the language of section 24-13-100.

Applicant nonetheless argues that his sentence is included in the normal scheme for “no-parole” offenses—that is, early release after completing eighty-five percent of the actual term of imprisonment. S.C. Code Ann. § 24-13-100 define a “no parole offense” as “a class A, B, or C felony or an offense exempt from classification . . .” Murder is an offense that is exempt from classification. S.C. Code Ann. § 16-1-10(D) (2015). Regarding “no-parole” offenses, S.C. Code Ann. § 24-13-150(A) provides that:

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” . . . is not eligible for early release, discharge, or community supervision . . . until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed.<sup>2</sup>

In Applicant’s case, the mandatory minimum language in section 16-3-20 is the “other provision of law,” which controls. *See Bolin v. S.C. Dep’t of Corr.*, 415 S.C. 276, 282–83, 781 S.E.2d 914, 917 (Ct. App. 2016) (recognizing that a more specific statute generally controls over a general one); *Strickland v. State*, 276 S.C. 17, 19, 274 S.E.2d 430, 432 (1981) (“[S]tatutes of a specific nature are not to be considered as repealed in whole or in part by a later general

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<sup>2</sup> S.C. Code Ann. § 24-13-150(A) further provides that “[n]othing in this section may be construed to allow an inmate convicted of murder . . . to be eligible for work release, early release, discharge, or community supervision.”

statute *unless* there is a direct reference to the former statute or *the intent of the legislature to do so is explicitly implied therein.*" (emphases added)); *see also See State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("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. A statute should be construed so that no word, clause, sentence, provision, or part shall be rendered surplusage, or superfluous.") (internal citations omitted) Applicant's offense is thus excluded from the standard eighty-five percent calculation.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a showing based on the information set forth in his response, and, therefore he is not entitled to an evidentiary hearing nor the appointment of counsel in this matter. *See* Rule 71.1(d), SCRCPP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). Accordingly, this Court finds no reason why the conditional order of dismissal should not become final.

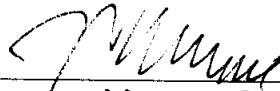
This Court reasserts its finding in the conditional order of dismissal that the current PCR application must be dismissed because it was filed after the statute of limitations had expired; Applicant failed to make a *prima facie* case of newly-discovered evidence; and because continued litigation by Applicant frustrates the need for finality of litigation.

**IT IS THEREFORE ORDERED** that for the reasons set forth in the Court's conditional order of dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

This Court hereby advises Applicant he must file and serve a notice of appeal within thirty

days of the service of this Order to secure appellate review. *See* Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 23 day of September, 2021.

  
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J. CORDELL MADDOX, JR.  
Chief Administrative Judge  
Tenth Judicial Circuit

2021 SEP 27 P 14:00

FILED IN COUNTY SC  
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Anderson, South Carolina.