

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT JUDGE ; RALPH K ANDERSON.

CASE No. 21-ALJ-04-0118-AP

WILLIE YOUNG
Appellant

v.

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

Respondent

RECEIVED

OCT 26 2021

SC Court of Appeals

BRIEF OF APPELLANT

Willie Young
4848 Goldmine HWY.
Kerchaw , SC 29067

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STATEMENT OF ISSUE(S) ON APPEAL

1. Whether the ALC erred in it's ruling, affirming SCDC decision that the Appellant is required to serve 85% OF THE Sentence without his earned work credits?

STATEMENT OF THE CASE

On June 28, 2002 the appellant was convicted of Armed Robbery and sentenced to thirty years imprisonment. Appellant (first) inquired to the Respondent about the application of his earned work credits to reduce his sentence on agency offender management system(july 6, 2021)

The Respondent only noted appellants maxout date in its response.(R.o.A.pg.11,13) Inquiring further, appellant asserted S.C. Code 24-13-125, requesting its application. The respondent in its response, again only noted appellants maxout date.(R.o.A. pg.12)

On 11/22/20 Appellant filed his step one grievance asserting that scdc new classification policy and S.C.Code of Law 24-13-210(A) entitled the appellant to a deduction in his sentence. (R.o.A. pg.9)

The response by Respondent was, appellant was convicted of a " non-parolable" offense and that there was no error in his sentence. r.o.a. pg.9

The Appellant was not satisfied with respondents response and filed his step two grievance(12/17/20) , again asserting that the new classification system and his right to a S.C. State Law to have his sentence reduced. r.o.a.pg. 8

The respondent then asserted Appellant had a mandatory service requirement of 25 years and 6 months. Appellant filed his notice of appeal to the Administrative Law Court, April 1, 2021, and asserted as his claim, " he was being denied a state created liberty right, specifically his earned work credits to release him and noted, his parole eligibility thru statutory construction of §16-11-330(A). R.o.A. pg.25

In his brief to the ALC, Appellant asserted that 16-11-330 mandated both " parole and earned work credits"!

The Respondent filed its brief August 10, 2021. The Appellant thereafter filed his reply.

The ALC denied Appellant August 30, 2021, stating, " Appellant was convicted of a " non-parole" offense, and is therefore required to serve "85%"(percent) OF his sentence. Appellant filed his notice of appeal september 15, 2021.

STANDARD OF REVIEW

S.C.CODE § 1-23-610(B) sets forth the standard of review when this court is sitting in review of a decision by the ALC on an APPEAL from an Administrative agency. S.C.Code 1-23-610(B) allows this court to reverse the ALC decision if it violates a constitutional or statutory provision or is affected by any other error of law. The sole issue here on review involves a question of statutory interpretation, which is a question of law "subject to de novo review". Barton V. S.C.Dept.of Prob,Parole & Pardon Servs.,. 404 S.C. 395,414 745 SE.2d 110,120(2013)

Further, while the interpretation of a statute by the agency with its administration" will be accorded the most respectful consideration", an agency's interpretation "affords no basis for the perpetuation of a patently erroneous application of the statute". State V Sweat, 386 S.C. 339, 351 688 SE.2d 569,575-76 (2010)

ARGUMENT(S)

The ALC erred in its ruling that the Appellant is required to serve 85 percent of his sentence, because S.C. Code § 16-11-330 and 24-13-210(A) both allow Appellant to earn work credits to reduce his sentence.

Law Preserving Related (subjects) Statute.

It is established law in this state that all statutes relating to the same subject must be construed together and harmonized if possible, and each are given effect, if this can be done by any reasonable construction. Spartenburg Co. V Mitchell 214 S.C. 283 ,289

Appellant raised to the Respondent (scdc, alc) he was being denied a state liberty, created by state legislation. Specifically, his earned work credits. Appellant asserted S.C.Code 24-13-210(B)(2010) which stated; inmates convicted of crimes against the state may earn good time credits; these credits entitle inmates to a sentence reduction for each month of incarceration.(R.o.A. pg9)

The Appellant presents the record as evidence, that his claim he is entitled to the application of his earned work credits, which in effect relieve him of the 85 percent rule, and that this denial is a violation of both state constitutional right to due process and a state provision. Furtick V, South Carolina Dept. of Correct.374 S.C. 334, 649 SE2d 35 (S.C. 2007)

Therefore, Respondents contention Appellants argument; " that he should not be required to serve 85 % ", is not preserved for review, alleging Appellant did not raise the issue in his step one or step two grievances, is error.

As the record clearly shows, the Respondent ruled, erroneously , that Appellant had been given all his earned work credits and that he was required to serve at least twenty-five years and six months because he was convicted of a " no-parole" offense . The Appellant asserts his claim has been raised to ,and ruled upon, preserving it for appellate review. (quoting Wilder Corp. V. Wilke 330 S.C. 71,76 497 SE2d 731,733(1998))

Statutory Interpretation

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Bryant V. State 384 S.C. 535

The S.C. legislature has classified certain offenses as no-parole offenses. Armed Robbery is a crime listed under S.C. Code 24-13-100, however, the statutory language of §16-11-330 by the General Assembly mandated, " In pertinent part-.....a person convicted under this subsection is not eligible for parole until the person has served " at least " seven years of the sentence. (16-11-330) (2015)

" In computing the date of parole eligibility it is also necessary to account for any deductions for earned work credit's and education or training credits, as these may apply. The question of whether such credits can be used at all as a deduction in the computation of the date of parole , and if so, how, depends entirely on the statute.....and because of the ex post facto problem, the application of such credits depends further on the statute in effect at the time the offense was committed. 26 S.C. Jur. Probation, Parole, & Pardon §15

As noted by the Respondent, the Appellant on June 28, 2002 was convicted of Armed Robbery and sentenced to thirty years, further acknowledging Appellant had earned and been credited with 2,507 days of earned work credits, noting " SCDC may award inmates with credits for good behavior and participation in work/educational programs ". (R.o.A. pg.3-4) § 24-13-210(A)

The Appellant noted S.C. code section's 24-13-125(A) and 24-13-210 which stated; inmates convicted of crimes against the state may earn good-time credits; these credits entitle inmates to a sentence deduction for each month of incarceration. " Inmates convicted of no-parole offenses are eligible to earn three days a month ". (R.o.A. pg.9,12)

When a statute is penal in nature, it must be strictly construed against the state and in favor of the defendant. State V. Blackmon 304 S.C. 270, 273(1991)

The Supreme Court held; " If earned work credits are allowed by statute at the time the offense is committed, then subsequent legislation which reduces prisoners benefits results in a substantive violation of the ex post fact clauses. Elmore V. State 305 S.C. 456 (1991)

Appellant asserts the provisions applied by the Respondent are subsequent, and not only reduces, but it also violates a substantive state created liberty right and ex post facto clauses.

Both the ALC and SCDC responded that appellant was convicted of a no-parole offense, and that because of it being classified as a no-parole offense, that section 24-13-150(A) takes precedent, and provides; 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 24-21-510, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed.

This Appellant strongly objects, and asserts the ALC ruling that section 24-13-150(A) is applicable to section 16-11-330, is error, as it fails to carry and effectuate the intent of the legislature.

S.C.A.G. Statutory Interpretation of § 24-13-150(A)

In response to the applicability and enactment of 24-13-150(A) from the respondent(SCDC), The S.C.AG. asserted; The General Assembly enacted 24-13-150 following passage of the trafficking statues, carrying a sentence of twenty-five years, which took effect in 2010 by virtue of the Omnibus crime bill.

Specifically noting, " 24-13-150(A), was clearly a statute passed subsequently to the various trafficking statues requiring a mandatory minimum sentence of twenty-five years with no-parole (day to day). S.C.A.G 2019 WL 3049589

General Statutory Interpretation of § 16-11-330

As noted by the Respondent, the Appellant was sentenced for Armed Robbery, which is a felony and, " Upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years", no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at " LEAST " seven years of the sentence.

[T]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. Hodges V. Rainey 341 S.C. 79,85(2008)

"All 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, as that language must be construed in light of the intended purpose of the statute" Broadhurst V. City of Myrtle Beach Electric 342 S.C. 373 380 537 SE2d 543, 540(2000)

When Appellant was convicted of Armed Robbery June/2002, the statutory construction, exacted the eligibility of parole after serving at least seven years, and further, " the accounting for any deduction should be factored in, while computing the date of parole eligibility as these credits may apply, therefore, it is error of the Respondent to deny the Appellant a state created liberty! 26 S.C.Jur. Probation, Parole, & Pardon §15

The Appellant asserts the RESPONDENT IS IN Error in its application of section(s) 24-13-100 and 24-13-150(A) as controlling to Appellants conviction of Armed Robbery, as they are conflicting, with an " parole eligible offense " !§ 16-11-330 (S)tatues 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. Strickland V State 276 S.C. 17,19 274 SE2d 430,432(1981)

In affect, however, the Respondent has done just that, by first " explaining away the statutory construction of § 16-11-330, and secondly, deny the Appellant a state created liberty, as though they have been repealed by a statute ' directly referencing ' Appellant ' IS NOT ' parole eligible".

A similiar interpretation and argument was made by the Respondent in Bolin V Dept. of Correction, There the Respondent contended the petitioner was not eligible for parole or the earning of work credits for the offense (S.C.) section 44-53-375(B) because the enactment of 24-13-150 required the petitioner to serve eighty-five percent of his sentence, though, by amendment of the omnibus crime bill act(2010) made clear Legislation's intent to "Implici[tly] repeal " the no-parole offense designation in section 24-13-100. Bolin V. Dept. of Correction 415 S.C. 276, 781 SE2d 914,916-17

General and Statutory Intent of Omnibus Crime Bill Act of 2010;

It is the intent of the General Assembly to preserve public safety, reduce crime, and use correctional resources most efficiently. Currently, the South Carolina correctional system incarcerates people whose times on prison does not result in improved behavior and who often return to south carolina communities and commit new crimes, or are returned to prison for violating supervisor/supervision requirements. It is therefore the purpose of this act to reduce recidivism, provide fair and effective sentencing options, employ evidence based practices for smarter use of correctional funding and improve public safety. 2010 Act No. 273 § 1

As noted, in Bolin, the Respondent acknowledged the amendment in section 44-53-375(B), which allows a person convicted of a second offense to be eligible for parole. However, the respondent asserted, ' that a second offense under this subsection was still considered a no-parole offense, unless the inmate is granted parole.

" Appellant contends these interpretations by the respondent are contradictory, and clearly undermine legislative intent!

As asserted by the Appellant above, " that the determination of parole eligibility and the application of good conduct or education credits to a sentence, depends entirely on the statute. 26 S.C. Jur.Probation, Parole, & Pardon §15

Like Bolin, Appellant asserts the respondent is ignoring a statutory provision, denying him a state constitutional right.

The respondent has basically asserted its defiance to a statutory provision, in its interpretation that section 24-13-100 and 24-13-150 was controlling to section 44-53-375(B) no matter the statutory construction.

However, as noted, the omnibus crime bill enacted other provisions as well, consistent with the acts intent, such as section § 24-13-125, which made direct reference to the offense §16-11-330 now being eligible for work release and the deduction of his sentence by the application of his earned work credits(24-13-210(A)),.....the respondent has not made effort to harmonize legislature intent.

South Carolina law requires the Department of Corrections to adopt a legal interpretation that harmonizes potentially contradictory provisions of statute if possible. Justice V.Pantry 330 S.C. 37 (1998 Ct.App)

The S.C. Court of Appeal observed; It is without doubt that the statutory definition for the term " no-parole"offense in section 24-13-100, ie., " a class A,B,or C felony....."simply describes the types of offenses for which the offender is not eligible for parole but firther noted,; It is unreasonable to characterize an offense for which the offender is eligible for parole as a

no-parole offense pursuant to section 24-13-100, even if the maximam sentence for the offense places it within a classification encompassed by section 24-13-100. Bolin V South Carolina Dept. of Corrections 415 S.C. 276, 781 SE2d 914, 916-17(Ct.App. 2016)

Appellant therefore, strongly objects to the denial of his state constitutional right to " A STATE CREATED LIBERTY", based on the mischaracterization of the respondents application of a ' no-parole ' label on a parole eligible offense.

This court noted in Bolin, a no parole label cannot be applied to a parole eligible offense! Further, Scdc cannot deny the Appellant his earned work credits.

CONCLUSION

Appellant asserts the error of the respondent is obvious. He is not only by law entitled to his earned work credits for his release, he is also entitled to his parole eligibilty. The respondent refuses to carry into effect the intent of legislation, and has favored its own interpretation over that of the courts and statutory provision(s). Appellant requests the application of all his work credits be applied to either release him from the custody of the respondent or to give him his right to parole.

This Appellant humbly prays, Thank You

S _____

Date _____