RECEIVED
Dec 29 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H.W. Funderburk, Jr.

Case No. 2018-001293

Jakarta Deshon Young, #276572, ... Respondent,

v.

South Carolina Department of Corrections, ... Appellant.

PETITION FOR REHEARING

Blake T. Williams
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Susan B. Hackett
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE
E-mail: shackett@sccid.sc.gov
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorneys for Jakarta Deshon Young, #276572

Introduction

Pursuant to Rule 221(a), SCACR, Respondent Jakarta Deon Young ("Young") respectfully petitions for a rehearing of Opinion No. 2021-UP-447 (S.C. Ct. App. filed December 15, 2021) ("the Opinion") and/or the issuance of a new opinion. The basis for the requested rehearing is that certain facts, points, and arguments were overlooked and misapprehended as discussed below.

Argument

I. The Court overlooked or misapprehended Young's statutory interpretation argument.

When faced with two applicable statutes, the analysis should begin with identifying the more general statute. Here, S.C. Code Ann. § 24-13-150 is the general statute. That section provides the overarching rule that all class A, B, and C felonies are "85% no parole" offenses, meaning an inmate must serve 85% of his or her sentence before becoming eligible for early release, discharge, or community supervision. As the Opinion recognizes, however, there are numerous exceptions to this rule that are found in more specific statutes.

Here, Young was convicted of trafficking 10-28 grams of cocaine, second offense. *See* S.C. Code Ann. § 44-53-370(e)(2)(a)(2). Several provisions of § 44-53-370 contain specific language as to parole eligibility. For § 370(e), the unenumerated paragraph at the end of that subsection qualifies ***all*** of the offenses detailed therein. That paragraph lists three mandatory or mandatory minimum terms of twenty-five plus years, and provides that a person sentenced to any of these terms for the offenses identified in (e) is not eligible for parole, extended work release, or supervised furlough.

A. The rules of statutory construction support the ALJ's conclusion.

Respectfully, the Court overlooked or misapprehended that three statutory interpretation principles support that the ALJ correctly interpreted the impact of the unenumerated paragraph in § 370(e). First, "[t]he general rule of statutory construction is that a specific statute prevails over a more general one." *Denman v. City of Columbia*, 387 S.C. 131, 138-39, 691 S.E.2d 465, 469 (2010). Because, as detailed above, § 370(e) is the more specific statute, it should prevail over the more general provision language of § 24-13-150. The unenumerated paragraph in the section discussing particular offenses and sentence ranges qualifies the more general rule and should prevail.

Second, § 24-13-150 and the unenumerated paragraph in § 370(e) were adopted during the same legislative session.[1] Therefore, these provisions should be "read together as one act, and are not to be construed as inconsistent, if they can fairly and reasonably be construed otherwise." *Locke v. Dill*, 131 S.C. 1, 126 S.E. 747, 748 (1925). When taken together, the legislative intent was to provide for the broad rule that class A, B, and C felonies are 85% no parole offenses, but with the understanding that other provisions, such as § 370(e), provide exceptions to that rule.[2]

Third, the maxim *expressio unius est exclusio alterius* provides that the expression of one thing implies the exclusion of another or its alternative. *Hughes v. W. Carolina Reg'l Sewer Auth.*, 386 S.C. 641, 647, 689 S.E.2d 638, 641 (Ct. App. 2010). By expressly identifying the particular sentences for which an offender is ***ineligible*** for parole, extended work release, or supervised

[1] The unenumerated paragraph in § 370(e) was added in 1995. *See* 1995 S.C. Act No. 7, Part I, § 17. That same year, the General Assembly also enacted the 85% no parole statute. *See* 1995 S.C. Act No. 83, § 3.

[2] As the Opinion recognized, the "notwithstanding" clauses in § 44-53-370(b)(1) and (b)(2) also contain exceptions to the general rule.

furlough under 370(e), the General Assembly implied ***eligibility*** for those sentenced to lesser terms.

Applying these statutory construction principles supports the ALJ's correct finding that this language means precisely what it says. Because Young was sentenced to 7 years for the trafficking offense, he did not receive one of the mandatory terms which would render him ineligible for parole, extended work release, or supervised furlough. As a result, Young is eligible for each of these as the ALJ properly held.

The Opinion highlights that section (e) does not have the words "notwithstanding any other provision of law" unlike other exceptions to the general 85% no parole rule such as those found in § 44-53-370(b)(1) and (b)(2). However, the Opinion overlooks that the 85% no parole statute already contains the "[n]otwithstanding any other provision of law" language, meaning it already anticipated that other statutes would provide exceptions to the general rule. *See* S.C. Code Ann. § 24-13-150. There is no requirement that statutes providing exceptions to that rule ***must*** also include "notwithstanding" language. Likewise, the fact that § 44-53-370(b)(1) and (b)(2) have a "notwithstanding" clause does not mean that this language is ***required*** for an exception to apply. Therefore, the lack of the "notwithstanding" language is not dispositive as to the meaning of the unenumerated paragraph.

Respectfully, the Opinion overlooked or misapprehended the appropriate statutory interpretation principles which support that Young is eligible for parole, extended work release, or supervised furlough. The Court should grant rehearing.

B. The Opinion's holding renders (e) meaningless.

The Opinion also overlooks or misapprehends that the result of its holding renders the unenumerated paragraph meaningless.

As detailed above, the no parole rule was already in place for all class A, B, and C felonies. S.C. Code Ann. § 24-13-150(A) expressly provides that persons sentenced for such offenses are not eligible for early release, discharge, or community supervision before they have served at least 85% of their term. S.C. Code Ann. § 24-13-150(A). This rule would necessarily apply to the three terms detailed in the unenumerated paragraph (a mandatory term of imprisonment of twenty-five years, a mandatory minimum of twenty-five years, or a mandatory minimum term of imprisonment of less than twenty-five years nor more than thirty years). Under the Opinion's holding, there was no reason to identify these three specific terms since the effect of the unenumerated paragraph was merely to reiterate the same rule that was expressed elsewhere in the statute—that the identified offenses are no parole offenses. Therefore, the unenumerated paragraph has been rendered superfluous. Courts should avoid interpretations that lead to this result. *See Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 364, 798 S.E.2d 555, 558 (2017) (explaining that courts should not interpret statutes in a way that renders words meaningless, superfluous, or a surplusage). Therefore, rehearing is warranted.

Additionally, the General Assembly has amended § 370(e) several times since the enactment of the 85% no parole provision but has continued to include the unenumerated paragraph. "Courts must presume the legislature did not intend to do a futile act" and "to intend that its statutes accomplish something." *State v. Sweat*, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008). By continuing to include this language, the General Assembly intended for it to have some meaning and effect. The Opinion, however, reaches the opposite conclusion in finding that the General Assembly was merely restating the general no parole rule for a subset of identified sentence terms. The Opinion, therefore, overlooks a key question, which is what purpose does (e) serve? Under the Opinion's conclusion, it is entirely redundant and has no independent meaning.

Therefore, for these additional reasons, rehearing is warranted.

II. The Court overlooked or misapprehended Young's argument that the statute is ambiguous at a minimum.

The Opinion also entirely overlooked Young's ambiguity argument. As Young explained, at a minimum the unenumerated paragraph is ambiguous and should thus be construed in his favor and strictly against the State. *See Rainey v. State*, 307 S.C. 150, 151-52, 414 S.E.2d 131, 132 (1992). As this Court has explained, where there is "any doubt" about a penal statute's scope, the interpreting court is "***required***" to resolve it in the defendant's favor. *State v. Miles*, 421 S.C. 154, 164, 805 S.E.2d 204, 210 (Ct. App. 2017) (emphasis added).[3]

The unenumerated paragraph is, at the very least, ambiguous because, as the Opinion notes, it only speaks to a negative (providing that certain sentences mean the offender is "not eligible" without affirmatively stating whether persons sentenced to lesser sentences would be eligible). The Court overlooked the ambiguity of the statute and the resulting strict construction requirement.

Strict construction in Respondent's favor would accord with the purpose of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 which was to, *inter alia*, "[u]se correctional resources most effectively" and "[p]rovide fair and effective sentencing options, employ evidence-based practices for smarter use of correctional funding." 2010 S.C. Act No. 273, § 1; *see also Bolin v. S.C. Dep't of Corr.*, 415 S.C. 276, 284-85, 781 S.E.2d 914, 918 (Ct. App. 2016) (further stating that one of the objectives of the 2010 Omnibus Acts was to "conserve taxpayer dollars by allowing earlier release dates for inmates convicted of less serious offenses").

[3] Applying these principles, in *Kerr v. State*, 345 S.C. 183, 547 S.E.2d 494 (2001), the Supreme Court construed the unenumerated paragraph in 370(e) strictly against the state as to the difference between "mandatory" and "mandatory minimum."

Therefore, rehearing is also appropriate to consider the ambiguity of the statute and to apply the appropriate strict construction rule.

Conclusion

For the reasons discussed above, as well as those set forth in Respondent's brief, which are incorporated herein, this Court should grant rehearing and issue a new Opinion affirming the judgment of the Administrative Law Court.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ Blake T. Williams
Blake T. Williams
SC Bar No. 100794
E-Mail: blake.williams@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Susan B. Hackett
S.C. Bar No. 71238
E-mail: shackett@sccid.sc.gov
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorneys for Respondent Jakarta Young

Columbia, South Carolina

December 29, 2021

RECEIVED
Dec 29 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H.W. Funderburk, Jr.

Case No. 2018-001293

Jakarta Deshon Young, #276572, ... Respondent,

v.

South Carolina Department of Corrections, ... Appellant.

PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent Jakarta Deshon Young, #276572, do hereby certify that on December 29, 2021, I have served all counsel in this action with a copy of the pleading(s) hereinbelow in accordance with the Supreme Court's August 25, 2021 Administrative Order by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System.

Pleadings: Respondent's Petition for Rehearing

Counsel Served:

Kensey Evans, Esquire
Christina Catoe Bigelow, Esquire
S.C. Department of Corrections
4444 Broad River Road
PO Box 21787
Columbia, SC 29221-1787

s/ Blake T. Williams
Blake Williams
Attorney

December 29, 2021

Blake Williams

From: Blake Williams
Sent: Wednesday, December 29, 2021 11:39 AM
To: evans.kensey@doc.sc.gov; bigelow.christina@doc.sc.gov
Subject: Young v. SCDC, No. 2018-001293
Attachments: Young - Petition for Rehearing - 4869-6061-4408 1.pdf

Good morning,

Attached for service please find Respondent's Petition for Rehearing. We will email this to the court for filing shortly.

Thanks,

NELSON MULLINS

BLAKE T. WILLIAMS PARTNER
blake.williams@nelsonmullins.com
MERIDIAN | 17TH FLOOR
1320 MAIN STREET | COLUMBIA, SC 29201
T 803.255.9597 F 803.256.7500
NELSONMULLINS.COM VCARD VIEW BIO