

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H. W. Funderburk, Jr.

ALC Case No. 18-ALJ-04-0507-AP
Appellate Case No. 2018-001293

RECEIVED

JUN 04 2019

SC Court of Appeals

JAKARTA DESHON YOUNG, #276572,

RESPONDENT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

APPELLANT.

RECORD ON APPEAL

Kensley B. Evans
South Carolina Department of Corrections
Office of General Counsel
Post Office Box 21787
Columbia, South Carolina 29221
Evans.Kensley@doc.sc.gov
(803) 896-8508

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(803) 734-1343

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

RECEIVED

SEP 26 2017

Jakarta Deshaun Young

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

GENERAL COUNSEL

NOTICE OF APPEAL

DOCKET NO. -ALJ-04-

GRIEVANCE NO.: 0744-17

Notice is hereby given that Jakarta Deshaun Young does hereby appeal the final decision of the South Carolina Department of Corrections dated 9-13-17 and received on 9-20-17, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): Affirmed pursuant to Rule 220(B), SCACR and the following Authorities: 5 C Ann. § 44-53-370(E) (2016) ("the unenumerated paragraph simply states if a person is sentenced to a mandatory or mandatory minimum of 25 years, or 25 or more than 30 years is not eligible for parole, extended work release, or supervised discharge.") 44-53-370(E)(6) Traff. Code 10-23-gram 2nd is not the equivalent to any of the 25 year "mandatory" terms. SCDC is failing to apply the eligibilities to Appellant sentence. 24-21-610 Parole Eligibility give sub sec (E) 44-53-370 provisions for parole eligibility in traff. See Kerr v. State 345 S.C. 183, 547 S.E.2d 482 (2001) ("the court must ascertain the intention of the legislature.") ("When terms of the statute are clear and unambiguous the court must apply them to their literal meaning...") ("...when penal in nature it must be construed strictly against the state in favor of defendant.") See Sweet 386 S.C. at 350, 688 S.E.2d at 575 ("...statutory construction is subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used...") See. Bolin 415 S.C. 276, 781 S.E.2d 414 (2016), Benifort Cnty v. S.C. State Election Comm'n 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011), State v. Jinnison 396 S.C. 182, 188, 720 S.E.2d 516, 520 (Ct. App. 2011)

Jakarta D. Young
Appellant's Name

J. Young Jr.
Signed

4344 Broad River Rd. Columbia, S.C. 29210
Mailing Address

9-20-17
Dated

City, State, Zip Code

CERTIFICATE OF SERVICE

I hereby certify that I, Jakarta Young (your name), on the 20 day of Sept., 20 17, in Columbia (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:
Name of person/Agency served: General Counsel

Address: 4444 Broad River Rd.

City, State, Zip Code: Columbia, S.C. 29221-1727

Jakarta D. Young J. Young Jr.
Print your name Sign your name
(See reverse side for instructions)

Instructions for filing an appeal of the final agency decision from the South Carolina Department of Corrections:

- 1) You must complete the **Notice of Appeal** on the reverse side of these instructions and mail it to the Administrative Law Court at the following address:

**Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201**

A copy of the Notice of Appeal must also be forwarded to the Office of General Counsel at the Department of Corrections.

- 2) In order for your case to be processed by the ALC, a copy of the final decision from the Department of Corrections must be attached to the Notice of Appeal.

RECEIVED

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

JUL 25 2017

STEP 2

Office Use Only

INMATE NAME/ANCE Young
SCDC NUMBER: 276572
INSTITUTION: Kirkland Correctional
HOUSING UNIT: E-A2-4
WORK ASSIGNMENT: D-Dorm Wardkeeper

Grievance No. KC1 744-17
Code: General CL CL
Policy _____
Disc. Hear. _____
Class. _____
Date Received 7-21-17
IGC Initials SE
Doe 7-24-17

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Under 44-53-370 (E) eff. 2016 it does in fact make my offense parole, work release, and supervised furlough eligible. Trafficking in Cocaine statute 44-53-370 (E)(2) states you're to serve 5-30 years in prison and up to 350,000 in fines. A unenumerated paragraph at the end of 44-53-370 (E) specifically states "A person convicted and sentenced under this subsection to a mandatory term of imprisonment of 25 years, a mandatory minimum term of imprisonment 25 years, or a mandatory minimum term of imprisonment of not less than 25 nor more than 30 years is not eligible for parole, extended work release or supervised furlough." I'm not sentenced or convicted to any of the mandatory 25 year sentences under 44-53-370 (E) subsection which makes me eligible for parole, work release, and supervised furlough. I was sentenced to 7 years under the statute. The Supreme Court ruled in favor of the defendant in Kerr vs. State *25245 (2001), which he to was denied his parole eligibility under 44-53-370 (E) the court ruled that yes he was in fact parole eligible because he was not convicted and sentenced to a "mandatory term" or a "mandatory minimum term" of 25 years, and that it is precise on who was not eligible under that subsection.

*Here, my charge carry a "mandatory term" and "mandatory minimum term" of 5 years under 44-53-370 (E)(2).

J. Young Jr. 7-18-17
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. In your grievance you stated that you wanted your incarceration sentence to be recalculated. You further alleged that according to SC Code of Laws Section 44-53-375 (F) and Subsection C or E that the sections do not state that your offense is considered "no parole" or not eligible for furlough, or for the matter of having to serve 85% of your sentence as of July 7, 2010. You have requested that your sentence be recalculated and that you be made eligible for release. The Warden responded to your concern on SCDC 10-5 Inmate Grievance Form Step 1 dated July 14, 2017. You plead guilty and was sentenced on 5/16/17 to Man/Dist Crack -2nd Offense SC Code of Laws 44-53-375 (B) (2) and you plead guilty and was sentenced on 8/26/2016 to Trafficking in Cocaine SC Code of Laws 44-53-370 (E) (2). SC Code of Laws requires "for a second offense a term of imprisonment of not less than five year nor more than thirty years, no part of which may be suspended nor probation granted...." SCDC Classification Plan, inclusive of its Security Criteria Plan does not allow an inmate with your conviction to be placed on labor crew/work program.

Therefore, your grievance is denied.

You may appeal this decision under the South Carolina Administrative Procedures Act to the South Carolina Administrative Law Court. In order to appeal, you must complete the attached Notice of Appeal Form (Form) and submit it as instructed on the Form within thirty (30) days of receipt.

Datha D. Smith 9-13-17
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

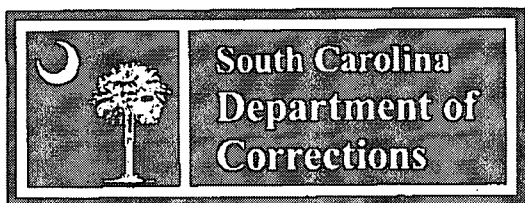
J. Young Jr. 9/20/17
Grievant Signature Date

Shm Y... 9-20-17
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.



HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

November 30, 2017

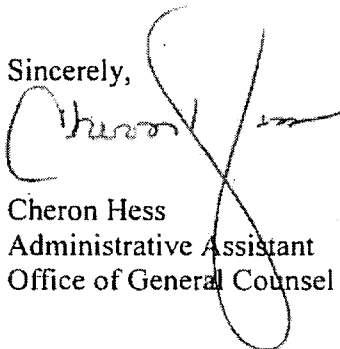
The Honorable H. W. Funderburk, Jr.
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, SC 29201

Reference: Inmate Jakarta Deshon Young, #276572, vs. SCDC
Docket No. 17-ALJ-04-0507-AP

Dear Judge H. W. Funderburk, Jr.:

Find enclosed a copy of the Respondent's Record, consisting of Inmate Grievance KCI 744-17, in the above referenced case. Please file the original and return a clocked-in copy of the cover letter in the enclosed envelope.

Sincerely,



Cheron Hess
Administrative Assistant
Office of General Counsel

Enclosures

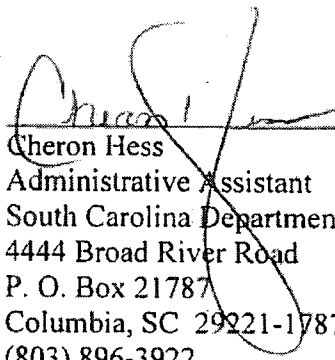
cc: Inmate Jakarta Deshon Young, #276572
File

CERTIFICATE OF SERVICE

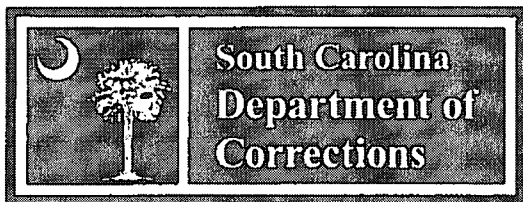
I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same via mail to his/her last known address as follows:

Inmate Jakarta Deshon Young
Inmate Number: 276572
Livesay Correctional Institution
Dorm-Room-Bunk: N6-0036-X

Columbia, South Carolina
November 30, 2017



Cheron Hess
Administrative Assistant
South Carolina Department of Corrections
4444 Broad River Road
P. O. Box 21787
Columbia, SC 29221-1787
(803) 896-3922



HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

November 30, 2017

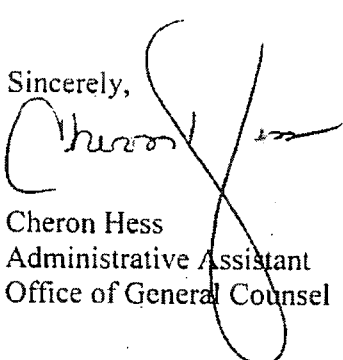
The Honorable H. W. Funderburk, Jr.
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Edgar A. Brown Building, Suite 224
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Columbia, SC 29201

Reference: Inmate Jakarta Deshon Young, #276572, vs. SCDC
Docket No. 17-ALJ-04-0507-AP

Dear Judge H. W. Funderburk, Jr.:

Find enclosed a copy of the Respondent's Record, consisting of Inmate Grievance KCI 744-17, in the above referenced case. Please file the original and return a clocked-in copy of the cover letter in the enclosed envelope.

Sincerely,



Cheron Hess
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate Jakarta Deshon Young, #276572
File

567

RECEIVEDSOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

JUL 25 2017

STEP 2

SEP 12 2017

Office Use Only

INMATE GRIEVANCE YoungGrievance No. KC1-74477SCDC NUMBER: 276572Code: General CL CCINSTITUTION: Kirkland CorrectionalDIVISION OF CLASSIFICATION
& INMATE RECORDS

Policy _____

Disc. Hear. _____

Class. _____

HOUSING UNIT: E-A2-4Date Received 7-21-17IGC Initials SFWORK ASSIGNMENT: D-Dorm WardkeeperDue 7-24-17

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Under 44-53-370 (E) eff. 2016 it does in fact make my offense parole, work release, and supervised furlough eligible. Trafficking in Cocaine statute 44-53-370 (E)(2) states you're to serve 5-30 years in prison and up to \$50,000 in fines. A unenumerated paragraph at the end of 44-53-370 (E) specifically states "A person convicted and sentenced under this subsection to a mandatory term of imprisonment of 25 years, a mandatory minimum term of imprisonment 25 years, or a mandatory minimum term of imprisonment of not less than 25 nor more than 30 years is not eligible for parole, extended work release, or supervised furlough." I'm not sentenced or convicted to any of the mandatory 25 year sentences under 44-53-370 (E) Subsection which makes me eligible for parole, work release, and supervised furlough I was sentenced to 7 years under the statute. The Supreme Court ruled in favor of the defendant in Kerr vs. State *25295 (2001), in which he to was denied his parole eligibility under 44-53-370 (E) the court ruled that yes he was in fact parole eligible because he was not convicted and sentenced to a mandatory term or a "mandatory minimum term" of 25 years, and that that it is precise on who was not eligible under that Subsection.

* Hence, my charge carry a "mandatory term" and "mandatory minimum term" of 5 years under 44-53-370 (E)(2).

Grievant Signature J. Young

7-18-17

Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. In your grievance you stated that you wanted your incarceration sentence to be recalculated. You further alleged that according to SC Code of Laws Section 44-53-375 (F) and Subsection C or E that the sections do not state that your offense is considered "no parole" or not eligible for furlough, or for the matter of having to serve 85% of your sentence as of July 7, 2010. You have requested that your sentence be recalculated and that you be made eligible for release. The Warden responded to your concern on SCDC 10-5 Inmate Grievance Form Step 1 dated July 14, 2017. You plead guilty and was sentenced on 5/16/17 to Man/Dist Crack -2nd Offense SC Code of Laws 44-53-375 (B) (2) and you plead guilty and was sentenced on 8/26/2016 to Trafficking in Cocaine SC Code of Laws 44-53-370 (E) (2). SC Code of Laws requires "for a second offense a term of imprisonment of not less than five year nor more than thirty years, no part of which may be suspended nor probation granted..." SCDC Classification Plan, inclusive of its Security Criteria Plan does not allow an inmate with your conviction to be placed on labor crew/work program.

Therefore, your grievance is denied.

You may appeal this decision under the South Carolina Administrative Procedures Act to the South Carolina Administrative Law Court. In order to appeal, you must complete the attached Notice of Appeal Form (Form) and submit it as instructed on the Form within thirty (30) days of receipt.

Signature Patricia D. SmithDate 9-13-17

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature _____

Date _____

IGC Signature _____

Date _____

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: <u>Jakarta Young</u>	OFFICE USE ONLY
SCDC NUMBER: <u>276572</u>	Grievance No. <u>KC10744-17</u>
INSTITUTION: <u>Kirkland Correctional Institution</u>	Code: General <u>CC CC</u>
HOUSING UNIT: <u>E-A2 -4</u>	Policy _____
WORK ASSIGNMENT: <u>D-Dorm Warden Keeper</u>	Disc. Hear. _____
	Class. _____
	PREA _____
	Date Received <u>6-29-17</u>
	IGC Initials <u>87</u>

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.) in Sec. 44-53-375 (F) it states which trafficking charges that are considered "no parole". Which states "A person convicted and sentenced under sub. sec. (c) or (E) to a mandatory term of imprisonment of 25 years, a mandatory minimum term of imprisonment of 25 years, or a mandatory minimum term of imprisonment of not less than 25 years nor more than 30 years is not eligible for parole, extended work release, or supervised furlough." Which nowhere in that sub. sec. it states that my offense is considered "no parole" or not eligible for furlough, or for the matter of having to serve 85% of my sentence as of 7/7/2010 in the Amended sec. 44-53-375 sub. sec. (F). I sent a request to Ms. Foote on the Kiosk on 1/19/2017 #1-434557 and got a response back on 2/6/2017 asking for her to recalculate my release eligibilities and work credits; good time to what the law states. I also sent a paper requesting asking exactly the something on 3/27/17 and I still haven't got a response to my request from her. So as of today it's been 90 days so I proceeded with my step 1 grievance because staff has up to 45 days to respond. It was sent out immediately after I received my Step 1 grievance back on 3/24/17 Friday.

J. Young Jr. 6-28-17
Grievant Signature Date

ACTION REQUESTED: I'm requesting to get my sentence & release eligibilities recalculated on grounds that my trafficking cocaine 10-28 grams 2nd is no longer considered a "no parole" offense as of 7/7/2010 in Sec. 44-53-375 (F). I'm Not serving a mandatory term of 25 years nor do my charge carry that sentence its 5-30 years for my offense under that statute. Please uphold your law.

ACTION TAKEN BY IGC: ☒ PROCESSED ☐ UNPROCESSED ☒ OTHER

See Warden's Response

S. An 7-14-17
IGC Signature Date

(CONTINUE ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

Inmate Young, Jakarta #276572:

This is in reference to grievance # KCI 0744-17.

I have reviewed your grievance and the facts. Documentation provided reveals that the Classification Committee is in accordance with Policy/ Procedure OP-21.04, "Inmate Classification Plan", reviewed your record. Trafficking in Cocaine state statute 44-53-037 (E) (2) is a no parole (85%) sentence. You are required to serve a mandatory eighty-five percent of your sentence prior to release. Upon release, you will be required to serve up to two (2) years on community supervision. You are ineligible for Labor Crew/ Work Release due to SCDC policy. The Reform Act of 6/2/2010 makes you ineligible for work release. Trafficking in Cocaine is a Category 4 and is excluded from the violent crimes eligible for work release.

Therefore your grievance is denied. If you do not agree with my decision, you may appeal to the appropriate responsible official, within five (5) days of receipt, via the Institutional Grievance Coordinator.

Jim Riley 7/14/17
Warden Signature Date

- ☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

J. Young 7-18-17
Grievant Signature Date

S. A. 7-18-17
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.

14:23:21 Thursday, November 02, 2017

CMTI700M SCDC OFFENDER MANAGEMENT SYSTEM 11/02/17
 CMTI700D COMMITMENT APPLICATION C052640
 SCDC# > 276572 COMPLETED SCDC PRIORS
 YOUNG, JAKARTA DESHON CURR LOC: KIRKLAND
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE SCDC CLASSIFICATION...: VIOLENT
 C S
 A E INCARC SENT SENT SENT CONV VIO
 NUM T X CONV OFFENSE YRS MO DYS DATE START PROJ COMP STAT IND

Y00276572

C00001 3 N POSSESSION OF 004 00 000 07/10/01 07/10/01 07/10/2005 ACT N N
 S00002 1 N FAIL RETURN R 000 00 030 08/01/01 07/02/01 08/01/2001 SER N N

MAKE A SELECTION AND PRESS <ENTER>...
 PF4-MODCONV PF6-NON-SCDC PRIORS

PAGE: 0001

14:04:15 Wednesday, October 25, 2017

CMTI100D SCDC OFFENDER MANAGEMENT SYSTEM 10/25/17
 OMCOMITA COMMITMENT APPLICATION C060888
 CONVICTION SUMMARY

SCDC# > 276572 CURR LOC: KIRKLAND
 YOUNG, JAKARTA DESHON SCDC CLASSIFICATION... VIOLENT
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

NUM	CONVICTION OFFENSE	INCARC	SENT	SENT	SENT	CONV	VIO
		YRS	MO	DYS	DATE	START	PROJ COMP STAT IND
- S00002	MARIJUANA POSSESS	000	00	001	12/19/16	12/18/16	12/19/2016 SER N N
- S00003	MANU/DIST CRACK-2ND	008	00	000	05/16/17	08/25/16	08/25/2020 ACT N N
- * S00001	TRAFFICKING IN COCAI	007	00	000	08/25/16	08/25/16	08/05/2022 ACT V V

MAKE A SELECTION AND PRESS <ENTER>...

PAGE: 0001

PF3-ADD PF4-MODIFY/REVOKE PF6-DISPLAY CONSEC PF9-DETAIN PF12-SUMREPT

14:04:55 Wednesday, October 25, 2017

ROAI200D
ROAI200M
OMROAUDA

SCDC OFFENDER MANAGEMENT SYSTEM
RECORD AUDIT APPLICATION
DISPLAY RECORD AUDIT

10/25/17
C060888

SCDC#: 276572
NAME.: YOUNG, JAKARTA DESHON

CURR STATUS.: INCARCERATED
CURR LOC....: KIRKLAND
CURR CUSTODY: MR1B

AUDIT TYPE: 01 RECORDS AUDIT

AUDIT DATE: 08/31/16

UPDATED BY: STREATER, CARMELITA

DATE: 08/31/16

RECORD AUDIT DISPLAYED...

CLEAR:SUMMARY

ENTER:DISPLAY NOTES

PF8:FORWARD

STATE OF SOUTH CAROLINA

349032
IN THE COURT OF GENERAL SESSIONS

7-25 yr.

COUNTY OF Greenville
STATE VS.

Jakarta Deshon Young

AKA:

Race: Sex: Age:

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 2nd offense

INDICTMENT/CASE#: 2013GS2311860

A/W#: 2013A2320601894

Date of Offense: 7/15/2013

S.C. Code §: 44-53-0370(E)(2)

CDR Code #: 0387

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0370(E)(2) of the S.C. Code of Laws, bearing CDR Code # 0387

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☐ Recommendation by the State.

ATTEST:

Wallace, Mat

13066
SC Bar#

Defendant

Attorney for Defendant

65802
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def. Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/cn	\$
3% to County (if paid in installments)		\$ 8.25

TOTAL

\$ 283.25

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA 217 (07/0016)

Presiding Judge

Judge Code: 2755

Sentence Date: 8-25-2016

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Jakarta Deshon Young

AKA:

Race:

Sex:

Age:

DOB:

SS#

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 2nd offense

in violation of § 44-53-0370(E)(2)(of the S.C. Code of Laws, bearing CDR Code # 0387

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Wallace, Mat

13066

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (DUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% in County (if paid in installments)	\$

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

p. 01

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2311860

A/W#: 2013A2320601894

Date of Offense: 7/15/2013

S.C. Code § : 44-53-0370(E)(2)(

CDR Code #: 0387

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

15
 α' 16
 7-25-2016

Presiding Judge

Judge Code:

Sentence Date:

8-25-2016

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Jakarta Deshon Young

AKA:

Race: [REDACTED] Sex: [REDACTED] Age: [REDACTED]DOB: [REDACTED] SS# [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: DRUGS/MANUFACTURE COCAINE BASE, 2ND OFFE

in violation of § 44-53-0375(b)(2) of the S.C. Code of Laws, bearing CDR Code # 3015

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: [Signature]

Wallace, Mat

13066
SC Bar#J. Young Jr.
DefendantCHAMBERS, RANDALL65302-1209
SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 8/25/16
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 86 DAYS BACK DATE TO 8/25/16

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
 Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Undeferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$

TOTAL

\$

Clerk of Court/ Deputy Clerk

Court Reporter: Brook

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2308711A/W#: 2014A2320601440Date of Offense: 6/17/2014S.C. Code § : 44-53-0375(b)(2)CDR Code #: 3015

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

Presiding Judge

Judge Code: 2130Sentence Date: 9/16/17

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

STATE VS.

Jakarta Deshon Young

AKA:

Race:

Sex:

Age:

DOB:

SS#

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: DRUGS/MANUFACTURE COCAINE BASE, 2ND OFFE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2308711

A/V#: 2014A2320601440

Date of Offense: 6/17/2014

S.C. Code § 44-53-0375(b)(2)

CDR Code #: 3015

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 44-53-0375(b)(2) of the S.C. Code of Laws, bearing CDR Code # 3015

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.ATTEST: *[Signature]*

13066

Wallace, Mat

SC Bar#

Defendant

CHAMBERS, RANDALL

65703-1209

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 8 ~~days~~ months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 8/25/16☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 86 DAYS BACK DATE TO 8/25/16☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 10/25/10)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Del/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-212 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$

TOTAL

\$

Clerk of Court/ Deputy Clerk

Court Reporter: *[Signature]*

SCCA/217 (07/2016)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2130Sentence Date: 8/16/17

JAIL TIME REPORT FOR SCDC TRANSFER
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE RECORDS OFFICE, PO BOX 21787, COLUMBIA, SC 29221-1787
OFFICE #: (803) 896-8531 FAX#: (803) 896-1217

COUNTY SUBMITTING FORM: Greenville

PURSUANT TO SC STATUTE 24-13-40 ... In every case in computing time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing...

Name: Jakarta Deshon Young		Date of Birth: [REDACTED]		
Social Security: [REDACTED]		Race/Sex: [REDACTED]		
SID #:		FBI #:		
Arrest Date	Charge	Warrant# (or) Indictment #	Release Date	Reason for Release*
8/25/16	Trafficking Cocaine 2 nd Offence	W# 2013A2320601894 I#	9/29/16	SCDC
7/15/13	" "	W# " " I#	7/15/13	Bond
	Detainer: H343539	W# I#		
		W# I#		
		W# I#		
		W# I#		
		W# I#		
Approved by: S. Jones 8755		Date: 8/26/16		
Continued Next Page				

*Reason for Release (i.e., Explain if transferred to another county/city jail, or if inmate bonded). Please submit this form at the time of the inmate's transfer and admission to the SCDC, however, if unable to do so, please mail or fax to the address or number listed above.

Jakarta D. Young Sr.
Plaintiff

Case #: 17C0507

South Carolina Department
of Corrections Et. Al.
Defendant

MOTION FOR
APPOINTMENT OF COUNSEL

I, (Plaintiff) Jakarta D. Young Sr., Hereby
file this "Motion For Counsel" to ask the
Honorable Court for the "Appointment of
Counsel" to represent Jakarta D. Young Sr.
during this "Post-Conviction Relief - P.C.R."
proceeding. Due to the fact that Plaintiff is
a legal (layman) and is oblivious to the law
that governs his "Post-Conviction Relief."

RECEIVED

OCT 9 3 2017

GENERAL COUNSEL

Jakarta Young Sr. 10-11-17
print date

J. Young Sr. 10-11-17
sign date

Jakarta D. Young Sr.

Appellant

V.

South Carolina Department
of Corrections, ~~Et Al.~~,

Respondent

Case #: 17C0507

BRIEF IN COMPLIANCE

WITH RULE 60, A.L.C.A.

ISSUE ON APPEAL

Did the South Carolina Department of Corrections Incorrectly calculate the Appellant's sentence under S.C. Code Ann. § 44-53-370 (E)(2), by making it a non-parolable offense?

STATEMENT OF THE CASE

Appellant was indicted by Greenville County grand jury for a second offense trafficking cocaine 10 grams or more, but less than 28 grams. A hearing was held on August 25, 2016 before the Honorable Perry Gravely. He was represented by attorney Randy Chambers. The state was represented by solicitor Matt Wallace. Appellant ultimately agreed to a plea deal and was sentenced to 7 years under § 44-53-370 (E)(2) 10 grams or more but less than 28 grams second offense.

DISCUSSION

Appellant contends that the South Carolina Department of Corrections (SCDC) has miscalculated his sentence because it has failed to fully apply all of the language proscribed in S.C. Code Ann § 44-53-370 (E)

Appellant plead guilty to trafficking cocaine second offense under § 44-53-370 (E)(2) eff. (2016), 10 grams or more but less than 28 grams. He was sentenced to a 7 year sentence. SCDC has calculated that sentence as a non-parolable offense, and is requiring Appellant to serve 85% of the sentence before being eligible for parole. This is incorrect.

In Appellants particular case, SCDC is only applying the language

that appears at Section 44-53-370 (E)(2) which states: for a second offense, a term of imprisonment of not less than 5 years nor more than 30 years, no part of which may be suspended nor probation granted, and a fine of \$50,000.

When applying section (E) of the statute, it is not enough to only apply the language that appears in the portion of the statute that a defendant is sentenced under (i.e. 44-53-370(E)(2)). The statute must be reviewed for all of the language which governs the proper sentence to be served see unenumerated paragraph at the end of S.C. Code Ann § 44-53-370 (E) which states:

"A person convicted and sentenced under this subsection to a mandatory term of imprisonment of 25 years, a mandatory minimum term of imprisonment of 25 years, or a mandatory term of imprisonment of not less than 25 years nor more than 30 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. Notwithstanding section 44-53-420. A person convicted of conspiracy pursuant to this subsection must be sentenced as provided in this subsection in this section with a full sentence or punishment and not one-half of the sentence or punishment prescribed for the offense."

Clearly, the unenumerated paragraph at the end of 44-53-370 (E) governs the entire subsection (E), making it precise that if a person is sentenced under section (E), and his sentence does not carry a mandatory 25 year sentence, a mandatory minimum term of 25 years; nor a mandatory minimum term of 25 years nor more than 30 years; therefore, he is eligible for parole, work release, and supervised furlough Kerr v. State 547 S.E. 2D 494 (2001) (Post Conviction Relief petitioner was eligible for parole under cocaine statute 44-53-370(E) eff. 1985;

Petitioner was not sentenced to a mandatory minimum of 25 years, which would make him ineligible for parole under that statute, but rather was sentenced to a mandatory term of 25 years, the difference rendered him parole eligible.)

Under § 24-21-60 Parole Eligibility a unenumerated paragraph states "The provisions of this section do not affect the parole ineligibility provisions for murder, armed robbery, and drug trafficking as set forth respectively in § 16-3-20, 16-11-330, and subsection (E) of 44-53-370. Therefore, 44-53-370(E) has complete govern authority for parole eligibility guidelines for trafficking offense. See: Bolin 415 S.C. 276, 781 S.E. 2d 914 (2016)

Kerr v. State 547 S.E. 2d 494 (2001) "The primary rule of statutory construction is that the Court must ascertain the intention of the legislature. "When the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning, without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* Furthermore, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.

Akbar v. SC.P.P.S. No. CIV. 9:03-03-037718BG (2003) Akbar was granted his parole eligibility under § 44-53-370(E) from "Kerr v. State (2001)" Supreme Court ruling after being denied twice prior to the "Kerr v. State" Supreme Court decision.

Fowler v. S.C. Dept. of Corrections UP-Case No. 2014-002040-No. 2015-UP-517 (201) ALC decision granted Fowler parole, supervised furlough, extended work credits under § 44-53-370. Spectre, LLC v. S.C. Dept. of Health & Envtl. Control 386 S.C. 357, 372, 688, S.E. 2d 844, 852 (2010) ("Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner,

the more specific statute will be considered an exception to or a qualifier of the general statute and given effect.") Venture S.C. LLC v. S.C. Dept. of Revenue, 378 S.C. 5, 9, 661 S.E.2d 339, 341 (2008) ("[T]he [C]ourt will reject the plain meaning of the words used in a statute if it would lead to an absurd result and will construe the statute so as to escape the absurdity and carry the intention into effect," (internal quotation marks and citation omitted)) Hair v. State 305 S.C. 77, 79, 406 S.E.2d 332, 334 (1991) ("The law clearly provides that if two statutes are in conflict, the latest statute passed should prevail so as to repeal the earlier statute to the extent of the repugnancy.") Howell v. U.S. Fidelity and Guar. Ins. Co., 370 S.C. 505, 636 S.E.2d 626 (2006) ("the statute must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one give effect if reasonable.") State v. Baker 310 S.C. 510, 512, 427 S.E.2d 670, 671-72 (1993) ("A statute as a whole must receive a practical reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.")

Under 44-53-370 (E) (2), for 2nd offense, "a person must be sentenced to not less than 5 years nor more than 30 years, not part of which may be suspended nor probation granted." Because Appellant is only sentenced to 7 years and not a mandatory 25 years, the difference renders him parole eligible. This then means that he is eligible to receive educational, work release, parole, and supervised furlough credits, therefore being a non-violent offender.

CONCLUSION

Appellant's sentence should be re-calculated as a non-violent parole-able offense becoming eligible for parole, extended work release, and supervised furlough under all of the language including the detailed unenumerated paragraph under 44-53-370 (E) which

also governs 44-53-370 (E)(2) the statute that Appellant was sentenced under.

Jakarta D. Young Sr.
Appellant

Case #: 1700501

v.
South Carolina Department of
Corrections Et. Al.
Respondent

Proof of Service

Certificate of Service

I, (Plaintiff) Jakarta D. Young Sr hereby
certify that on the 11th day of October, 2017
in Columbia (city), South Carolina, served a
copy of Proof of Service on all parties to this matter
by depositing the same in the U.S. Mail, postage
paid, or in the mail room of the undersigned's
institution and addressed as follows: VIA "Brief Rule 60"
and "Appointment for Counsel."

Dept. of General Counsel

P.O. Box 21787

Columbia, S.C. 29221

S.C. Administrative Law Court

1205 Pendleton Street, Suite 224

Columbia, S.C. 29201

Jakarta Young Sr. 10-11-17
print date

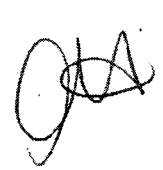
J. Young Sr. 10-11-17
sign date

Jakarta D. Young Sr.
Appellant

South Carolina Department of
Corrections Et. Al.

Respondent

Case #: 17C0507


Motion To Amend

I, (Appellant) Jakarta D. Young Sr. hereby filed this
"Motion to Amend" to make changes to this affixed Rule 60
Brief "Issue of Appeal, Discussion, and Conclusion" to Appellant
Post-Conviction Relief — P.C.R. in this Administrative Law
Court on 30th day of October, 2017.

RECEIVED

NOV - 1 2017

GENERAL COUNSEL

J. Young Sr. 10/30/17
Sign date

Jakarta Young Sr. 10/30/17
print date

Jakarta Young Sr. 276572
Kirkland Correctional
4344 Broad River Rd.
Columbia, S.C. 29210

Jakarta D. Young Sr.
Appellant

South Carolina Department of
Corrections Et. Al.
Respondent(s)

BRIEF IN COMPLIANCE WITH RULE
60 A.L.C.R. (Amended)

case #: 17C0507

ISSUE ON APPEAL

1. Did the South Carolina Department of Corrections incorrectly calculate the Appellant's sentence under § 44-53-370 (E)(2) by making it a non-paroleable offense requiring him to serve 85 % of his sentence.
2. Is SCDC misinterpreting the language in 16-1-60 Violent Crime and unlawfully classifying 44-53-370 (E)(2) trafficking in Cocaine 10-28 grams second offense as a violent crime.

STATEMENT OF THE CASE

Appellant was indicted by Greenville County grand jury for a second offense trafficking cocaine 10-28 grams. A hearing was held on Aug. 25, 2016 before the Honorable Perry Cravelly. He was represented by attorney Ranchy Chambers. The state was represented by solicitor Matt Wallace. Appellant ultimately agreed to a plea deal and was sentenced to 7 years under § 44-53-370 (E)(2) 10-28 grams 2nd offense.

DISCUSSION

1. Appellant contends that SCDC has miscalculated his sentence because it has failed to fully apply all of the language proscribed in § 44-53-370 (E). Appellant pled guilty to trafficking cocaine 2nd offense under 44-53-370 (E)(2) 10-28 grams, he was sentenced to 7 year sentence. SCDC has calculated his sentence as "no parole" violent offense and is requiring Appellant to serve 85 % of his sentence before being eligible for parole. This is incorrect.

In Appellant's particular case SCDC is only applying the language that appears at Sec. 44-53-370 (E)(2) which states: for a second offense, a term of imprisonment of not less than 5 years nor more than 30 years, no part of which may be suspended

nor probation granted, and a fine of \$50,000.

When applying section (E) of the statute, it is not enough to only apply the language that appears in the portion of the statute a defendant is sentenced under (i.e. 44-53-370(E)(2)). The statute must be reviewed for all of the language which governs the proper sentence to be served see unenumerated paragraph at the end of § 44-53-370(E) which states:

"A person convicted and sentenced under this subsection to a mandatory term of imprisonment of 25 years, a mandatory minimum term of imprisonment of 25 years, or a mandatory term of imprisonment of not less than 25 years nor more than 30 years is not eligible for parole, extended work release as provided in Sec. 24-13-610 or supervised furlough as provided in Sec. 24-13-710. Notwithstanding section 44-53-420. A person convicted of conspiracy pursuant to this subsection must be sentenced as provided in this subsection in this section with a full sentence or punishment and not one-half of the sentence or punishment prescribed for the offense".

Howell v. U.S. Fidelity and Guar. Ins. Co., 310 S.C. 505, 636, S.E. 2d 626 (2006) ("the statute must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one give effect if reasonable.")

State v. Baker 310 S.C. 510, 512, 427 S.E. 2d 670, 671-72 (1993) ("A statute as a whole must receive a practical reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers.")

Clearly, the unenumerated paragraph at the end of 44-53-370(E) governs the entire subsection (E) making it precise that if a person is sentenced under Sec(E), and his sentence does not carry a mandatory 25 year sentence, a mandatory minimum term of 25 years, nor a mandatory minimum term of 25 years nor more than 30 years; therefore, he is eligible for parole, work release, and supervised furlough. Kerr v. State 547 S.E. 2d 494 (2001) (Post Conviction Relief petitioner was eligible for parole under cocaine statute 44-53-370(E) (1985);

Petitioner was not sentenced to a mandatory "minimum" of 25 years, which would make him ineligible for parole under 44-53-370 (c) (18, 1925), but rather was sentenced to a "mandatory" term of 25 years, the difference rendered him parole eligible.) (quoting Kerr v. State 547 S.E.2d 494 (2001)) "The primary rule of statutory construction is that the Court must ascertain the intention of the legislature." "When the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning, without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* Furthermore, when a statute is penal in nature, it must be construed strictly against the State and in favor of the Defendant. *Id.*) Akbar v. SCPPPS No. Civ. 9:03-03773B&I (2005) Akbar was granted his parole eligibility under § 44-53-370 (E) from "Kerr v. State (2001)" Supreme Court ruling after being denied twice prior to the "Kerr v. State (2001)" Supreme Court decision.

Under § 24-21-60 "Parole Eligibility" a unenumerated paragraph states ("The provisions for murder, armed robbery, and drug trafficking as set forth respectively" in § 16-3-20, 16-11-330, and subsection (E) of 44-53-370") "Set forth respectively" giving meaning determined, fixed, forward, into view relating to each of several individually therefore, 44-53-370 (E) has complete govern authority for parole eligibility guidelines as outlined for trafficking offenses. Fowler v. S.C. Dept. of Corrections UP-Case No. 7014-002040 - No. 2015-UP-517 (2016) HLE decision granted Fowler parole, supervised furlough, and extended work credits under § 44-53-370 (E). Also See: Belin 415 S.C. 276, 781 S.E. 2d 914 (2016)

Under 44-53-370 (E)(2), for 2nd offense, "a person must be sentenced to not less than 5 years nor more than 30 years, not part of which may be suspended nor probation granted." Because Appellant is only sentenced to 7 years and not a mandatory 25 years, the difference renders him parole eligible. This then means that he is eligible to parole, extended work credits, supervised furlough therefore, making him a non-violent offender.

2. Under §16-1-60 "Violent Crimes Defined" the language in the statute reads:
 "drug trafficking as defined in Section 44-53-370 (E)." 44-53-370, 375 are the
 only offenses under 16-1-60 that has "as defined" in the language. "As defined"
 giving meaning to determine, bring to an end, explain, to fix decide, or prescribe,
 clearly and with authority ~ the power of the a court by statutory (legislation)
 enactment.

SCDC is misinterpreting the legislature intent as they done before with §44-53-370
 375 in her v. State Supreme Court case, Bohm v. SCDC Supreme Court case,
 Fowler v. SCPPPS in ALC case all in favor of Appellants. That they weren't in fact
 "violent offenders" and where awarded their parole, work credits, and supervised
 furlough. §16-1-60 gives authority to reference back to the statute 44-53-370 (E)
 in the language provided "as defined" SCDC is compiling all drug trafficking
 offenses as "violent" no parole, which is incorrect.

Yes some drug trafficking offenses are "violent" no parole but not all drug
 trafficking offenses are "violent" no parole as specified in the unenumerated
 paragraph in 44-53-370 (E) "as defined" outlining the offenses that carries the
 "mandatory 25" year sentences proscribed are "no parole" therefore "violent"
 "as defined" in 44-53-370 (E). Lawmakers intent was to be precise as to
 outlining offenses that are eligible and offense not eligible under statute
 44-53-370 (E) "as defined", the discrepancy renders a difference when determining
 "violent" no-parole offenses. Spectre LLC v. S.C. Dept. of Health & Envtl.
Control 386, S.C. 351, 372, 688 S.E. 2d 344, 352 (2010) ("Where there is one statute
 addressing an issue in general terms and another statute dealing with the
 identical issue in a more specific and definite manner the more specific statute
 will be considered an exception to or a qualifier of the general statute an
 given effect.") Venture S.C. LLC v. S.C. Dept. of Revenue, 372 S.C. 59, 661 S.E. 2d
339, 341 (2008) ("[T]he [C]ourt will reject the plain meaning of the words used

in a statute if it would lead to an absurd result and will construe the statutes so as to escape the absurdity and carry the intention into effect." (internal quotation marks and citation omitted)) Bradford City v. S.C. State Election Comm'n, 345 S.E. 3d, 311, 718, 3 E. 2d 432, 435 (2011) ("It is well settled that statutes dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single harmonious result.")

In the 2010 Omnibus Crime and Reduction and Sentencing Reform Act the legislative intent is expressly stated in Section 1 of the Act which provides in pertinent part,

"It is the intent of the General Assembly to preserve public safety, reduce crime, and use correctional resources most effectively. Currently the South Carolina correctional system incarcerates people whose time in 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 violations of 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.

CONCLUSION

Appellant's sentence should be re-calculated as a non-violent parolable offense becoming eligible for parole, extended work release, and supervised furlough under all of the language including the detailed unenumerated paragraph under 44-53-370 (E) which also governs 44-53-370 (E)(2) the statute that Appellant was sentenced under. And sanctions under Rule 11 for violating the statute to be brought against Respondent(s).

Jakarta D. Young Sr.
Appellant

v.

case #: 17C0507

South Carolina Dept. of

Corrections Et. Al.

Respondent(s)

* Certificate of Service *

The undersigned hereby certifies that a true copy of the "Brief
Rule 10" and "Motion to Amend" and designation of matter in above
reference case has been served upon the Honorable Judge Funderburk,
Administrative Law Court, 1205 Pendleton Street, Suite 224 Columbia,
South Carolina 29201, Also the Dept. of General Counsel S.C. Dept of
Corrections P.O. Box 21787 Columbia, S.C. 29221 on 30th day of
October 2017.

J. Young Sr. 10/30/17
sign date

Jakarta D. Young 276572
Kirkland Correctional
4344 Broad River Rd.
Columbia, S.C. 29210

11 | 7 | 2017

RECEIVED

NOV 13 2017

GENERAL COUNSEL

RE: "Change of Address Notice"

case No # 17C0507

Dear Administrative Law Court,

I'm submitting this letter to this Court to inform this Court that I've been transferred to a new address.

I.E.

Jakarta Young 276572
59B Livesay Correctional Institution
P.O. Box 580
Una, S.C 29378

RECEIVED

34

NOV 13 2017

GENERAL COUNSEL

* Certificate of Service *

I Appellant Jakarta D Young Sr., hereby file
this Change of Address Notice — On: Nov.
7th, 2017. VIA first-class mail to: South Carolina
Administrative Court 1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201 and Dept. of General
Counsel S.C. Dept. of Corrections P.O. Box 21787
Columbia, S.C. 29221

Jakarta D. Young Sr.

print

J. Young Sr.

sign

11-7-17

date

RECEIVED

DEC - 1 2017

GENERAL COUNSEL

MOTION TO

AMEND | SUPPLEMENT OF RECORD | ADDENDUM

Case #: 17C0507

Jakarta D. Young Sr.
Appellant

v.

South Carolina Dept. of
Corrections Et. Al.

Respondant(s)

I (Appellant) Jakarta D. Young Sr. hereby filed this
"Motion to Amend | Supplement of Record" to add Appellants
"Sentencing sheet" to the above contested case in the
Administrative Law Court on 28th day of November
2017.

J. Young Sr. 11/28/17
sign date

Jakarta D. Young Sr.
Livesay Correctional Institution
P.O. Box 580
Una, S.C. 29378

State of South Carolina Administrative
Law Court

36

Jakarta D. Young Sr.
Appellant

Case # : 17C0507

v.

South Carolina Dept. of
Corrections Et. Al.

Respondents)

* CERTIFICATE OF SERVICE *

The undersigned hereby certifies a true copy of Appellants
"Sentencing Sheet" and "Motion to Amend / Supplement of Record"
and designation of matter in the above reference case has been
served upon the Honorable Judge Funderburk, Administrative
Law Court 1205 Pendleton Street, Suite 224 Columbia, South
Carolina 29201. Also the Dept. of General Counsel S.C.
Dept. of Corrections P.O. Box 21787 Columbia, S.C. 29221 on
28th day of November 2017.

J. Young Sr.

Sign

11-28-17

date

Jakarta D. Young Sr. 276572
Livesay Correctional Institution
P.O. Box 580
Una, S.C. 29378

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

in Court

Jakarta D. Young Sr.
Appellant

with Carolina Dept. of
Corrections Et. Al

Respondent(s)

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DEC - 8 2017

GENERAL COUNSEL

Motion To Amend

case # : 17C0507

I (Appellant) Jakarta D. Young Sr. hereby filed this
"Motion to Amend" to add Addendum / Supplement of Record
to "Statement of the case" to the above contested case in this
Administrative Law Court on 1st day of December 2017.

J. Young Sr. 12-1-17
sign date

Jakarta D. Young Sr. 276572
Livesay Correctional Institution
P.O. Box 580
Una, S.C. 29378

North Carolina Administrative
Law Court

Martha D. Young Sr
Appellant

v

North Carolina Dept. of
Corrections Et. Al
Respondent(s)

Addendum / Supplement of Record

Case #: 17C0507

STATEMENT OF THE CASE

Appellant sent an informal resolution requesting re-calculation of his parole, work release, and supervised furlough eligibilities to one of Kirkland Correctional classification heads on 1/19/2017 via kiosk, the response was denied on 2/6/2017. Appellant then wrote his step 1 grievance on 2/9/2017, it was denied on 3/8/2017 and he was given 5 days to resubmit an new grievance. Appellant re-submitted a new grievance on 3/13/2017 with information that was asked on previous grievance and still was denied on 3/23/2017, Appellant was told to send another informal resolution on a paper copy along with another step 1 grievance. Appellant sent another request back to classification (paper copy) on 3/27/2017 in which he never recieved a response back therefore, keeping him from continuing his grievance process. On 6/28/2017 re-submitted a third step 1 grievance asking for re-calculation of his sentence eligibilities, and on 6/29/2017 sent a paper request along with the prior two step 1 grievances to the Branch Supervisor at SCDG headquarters explaining the different attempts institutional staff was using to not allow him to continue his grievance process. On 7/14/2017 his step 1 grievance was denied by Inmate Grievance Counselor, and by the Warden of Kirkland Correctional Institution. On 7/18/2017 Appellant then submitted his step 2 grievance it to was denied on 9/13/2017, he then appealed to Administrative Law Court on 9/20/2017.

South Carolina Administrative
Court

Jakarta D. Young Sr.

Appellant

South Carolina Dept of
Corrections Et. Al

Respondent(s)

Case #: 17C0507

* CERTIFICATE OF SERVICE *

The undersigned hereby certifies a true copy of Appellants
Addendum / Supplement of Record "Statement of the case" and designation
of matter in the above reference case has been served upon the
Honorable Judge Funderburk, Administrative Law Court 1205 Pendleton
Street, Suite 224 Columbia, South Carolina 29201. Also the
Dept. of General Counsel S.C. Dept of Corrections P.O. Box
21787 Columbia, S.C. 29221 on 1st day of December 2017.

J. Young Sr. 12-1-17
sign date

Jakarta D. Young Sr. 276572
Livesay Correctional Institution
P.O. Box 580
Una, S.C. 29378

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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JAN 30 2018
GENERAL COUNSEL

Jakarta Deshon Young, #276572,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

) Docket No.: 17-ALJ-04-050747
) Grievance No.: K0147-17
)
) **RESPONDENT'S BRIEF**
)
) *Honorable H.W. Fundeburk, Jr.*
)
)
)

STATEMENT OF THE CASE

This case is before the Administrative Law Court (ALC) pursuant to the appeal of Jakarta Deshon Young (Appellant), an inmate incarcerated with the Department of Corrections (SCDC or Respondent). Appellant filed a Step One Grievance on June 28, 2017, claiming Respondent had incorrectly calculated his sentence. Respondent investigated and denied the grievance. Appellant filed a Step Two Grievance on July 18, 2017. This grievance was also investigated and denied. Appellant subsequently filed his Notice of Appeal. Because Appellant's sentence has been properly calculated, the final determination of the Department should be affirmed.

JURISDICTION

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *McNeil v. South Carolina Department of Corrections*, 00-ALJ-04-00336-AP (September 5, 2001), the ALC interpreted the breadth of its jurisdiction pursuant to *Al-Shabazz*. That decision holds that the ALC's appellate jurisdiction in inmate appeals is limited to two types of cases: (1) cases in which an inmate contends that prison officials

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JAN 23 2018

SC ADMIN. LAW COURT

have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which the SCDC has taken an inmate's created liberty interest as punishment in a major disciplinary hearing. Jurisdiction of the ALC was most recently addressed in *Sullivan v. SCDC*, 355 S.C. 437, 586 S.E.2d 124 (2003).

In this case, appellant contends that SCDC has incorrectly calculated his sentence. Consequently, the ALC has jurisdiction to hear his appeal.

STANDARD OF REVIEW

A reviewing court will not disturb findings of an administrative agency if its findings are supported by substantial evidence on record as a whole. *Pearson v. JPS Converter & Industry Corp.*, 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering record as a whole, would allow a reasonable mind to reach the conclusion reached by the administrative agency. *Hendley v. S.C. State Budget & Control Bd.*, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. *Heater of Seabrook, Inc. v. Public Svc. Comm'n of S.C.*, 332 S.C. 20, 503 S.E.2d 739 (1998).

ARGUMENT

APPELLANT'S SENTENCE HAS BEEN CORRECTLY CALCULATED BY RESPONDENT

On August 25, 2016, Appellant pleaded guilty to Trafficking in Cocaine (more than ten (10) grams, but less than twenty-eight (28) grams), second offense, pursuant to

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JAN 30 2018
GENERAL COUNSEL

SC Code Ann. § 44-53-370(e)(2)(a)(2), for which he was sentenced to seven (7) years. See Sentencing Sheet, included in the Record. SC Code Ann. § 44-53-370(e)(2)(a)(2) is defined as a Class A felony under SC Code Ann. § 16-1-90(A). "[A] class A, B, or C felony, or an offense exempt from classification" is a "no parole" offense. SC Code Ann. § 24-13-100 (2007). Pursuant to SC Code Ann. § 24-13-150(A), inmates convicted of a no parole offense are "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."

Appellant argues that the Respondent has misapplied the law. However, S.C. Code Ann. § 44-53-370(e)(2)(a)(2) reads:

(e) Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of: (2) ten grams or more of cocaine or any mixtures containing cocaine, as provided in Section 44-53-210(b)(4), is guilty of a felony which is known as "trafficking in cocaine" and, upon conviction, must be punished as follows if the quantity involved is: (a) ten grams or more, but less than twenty-eight grams: 2. for a second offense, **a term of imprisonment of not less than five years nor more than thirty years**, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

According to the plain language of the statute, S.C. Code Ann. § 44-53-370(e)(2)(a)(2) qualifies as a Class A felony. Therefore, Appellant must serve 85% of his sentence.

Further, SCDC is "confined to the face of the sentencing sheets in determining the length of a sentence [unless . . .] there is an ambiguity in the sentencing sheets." *Tant v. S. Carolina Dep't of Corr.*, 408 S.C. 334, 337, 759 S.E.2d 398, 399 (2014), *reh'g denied* (July 10, 2014). There is no ambiguity on Appellant's sentencing sheet and SCDC

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GENERAL COUNSEL

applied the sentence as the judge indicated on the sentencing sheet. Appellant has not carried his burden to demonstrate that SCDC incorrectly calculated his sentence. Therefore, SCDC respectfully requests its decision denying Appellant's Step Two grievance be upheld.

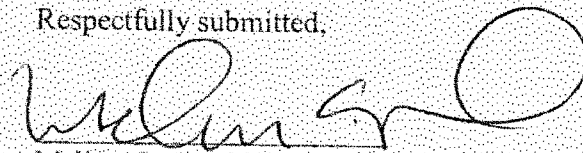
**RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED
BY SUBSTANTIAL EVIDENCE**

The record conclusively establishes that the "substantial evidence on the whole record" supports the Department's final agency decision. Appellant has the burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. *See Porter v. Public Service Comm'n*, 333 S.C. 12, 507 S.E.2d 328 (1998). Appellant has not met this burden and SCDC's final agency decision should be affirmed.

CONCLUSION

Appellant has not met his burden to demonstrate SCDC has incorrectly calculated his sentence. Additionally, the Department's calculation is supported by substantial evidence. Therefore, Respondent respectfully requests this Court dismiss this case with prejudice.

Respectfully submitted,



Melissa J. Arnold
Staff Attorney
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221
(803)896-1943

January 23, 2018

R

JAN 30 2018

GENERAL COUNSEL

FILED

JAN 23 2018

SC ADMIN. LAW COURT

Jakarta Young Sr.
Appellant

v.
South Carolina Dept.
of Corrections Et. Al
Defendant(s)

South Carolina Administrative Law Court
Honorable H.W. Funderburk, Jr.

Motion to Resolve
Appeal
case # 17C0507

I, Jakarta Young Sr. (Appellant) is requesting for judgement in favor of Appellant in Administrative Law Court case #17C0507 therefore, making his offense of trafficking cocaine 10-28 grams 2nd offense classified as a non-violent offense then making him (Appellant) eligible for supervised furlough, extended work credits, and parole eligible at 1/3 of his sentence as a non-violent parolable offense. On the grounds that the defendant(s) (SCDC) failed to comply with the time limit provided by section (V) Special Appeals under Rule 60 (A) by not submitting their brief within the 110 day time allowed for their party after the date of assignment which for this particular case was on 10/05/17.

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FEB 02 2018
GENERAL COUNSEL
(KB)

J. Young Sr. 1/24/2018

Jakarta Young Sr. 276572
Livesay Correctional Institution
P.O. Box 580
Una, S.C. 29378

Jakarta Young Sr.
Appellant

v.

South Carolina Dept.
of Corrections Et Al
Defendant(s)

South Carolina Administrative Law Court
Honorable H.W. Funderburk, Jr.

case # 17C0507

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FEB - 2 2018

* Proof of Service *

I hereby certify that a copy of the foregoing document
"Motion to Resolve Appeal" was this day 24th of Jan.
2018 served upon the following individual(s) by placing a
copy of the same via mail to the following agency/courts
last known address as follows:

Attn: Honorable H.W. Funderburk, Jr.
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

Dept. of General Counsel
Dept. of Corrections
P.O. Box 21787
Columbia, S.C. 29221

J. Young Sr.

Jakarta Young Sr 276572
Livesay Correctional Institution
P.O. Box 580
Una, S.C. 29378

Jakarta D. Young Sr.

Appellant

v.

South Carolina Dept. of
Corrections

Respondent(s)

South Carolina Administrative Law Court

Honorable H.W. Funderburk, Jr.

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Rule 60 Reply Brief

A.L.C.B. - 5 2018

case # 17C0507

(15)

ISSUE ON APPEAL

GENERAL COUNSEL

Did the South Carolina Department of Corrections Incorrectly calculate the Appellants sentence under § 44-53-370 (E)(2) (2016) by making it a no-parole offense requiring him to serve 85% of his sentence.

STATEMENT OF THE CASE

This case is before the Administrative Law Court (ALC) pursuant to the appeal of Jakarta D. Young Sr. (Appellant) and SCDC (Respondent's). Appellant filed his (amended) Notice of Appeal Brief on October 30, 2017 and Respondent(s) filed their Respondent Brief on January 23, 2017.

ARGUMENT

SCDC has responded to the Step 1 & 2 grievances and their Brief without addressing the base of the issue as a whole. Respondent(s) are failing to apply and recognize the detailed unenumerated parole, extended work credits, and supervised furlough eligibility portion of the statute 44-53-370 (E) (eff 2016). There are 2 provisions to the statute 1.) the sentence the drug trafficking offense carries 2.) Which drug trafficking offenses not eligible for parole, extended work credits, and supervised furlough.

§ 44-53-370 (E)(2) reads as a whole with all provisions:

"(e) Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to

become in actual or constructive possession of : (2) ten grams or more of cocaine or any mixtures containing cocaine, as provided in Section 44-53-210 (b) (4), is guilty of a felony which is known as "trafficking in cocaine" and, upon conviction must be punished as follows if the quantity involved is : (a) ten grams or more, but less than twenty-eight grams : 2. for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars ; A person convicted and sentenced under this subsection to a mandatory term of imprisonment of 25 years, a mandatory minimum term of imprisonment of 25 years, or a mandatory term of imprisonment of not less than 25 years nor more than 30 years is not eligible for parole, extended work release as provided in Sec. 24-13-610 or supervised furlough as provided in Sec. 24-13-710. Notwithstanding section 44-53-420. A person convicted of conspiracy pursuant to this subsection must be sentenced as provided in this subsection in this section with a full sentence or punishment and not one-half of the sentence or punishment prescribed for the offense."

It was not the lawmakers intent to void, ignore, or words shall be superfluous as SCDC is doing to the underlined portion of the statute § 44-53-370 (E). Century Aluminum of South Carolina Inc v. South Carolina Public Service Authority F Supp 3d (2017) "It is the cardinal principle of construction that statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." Espinal-Andrades v. Holder 777 F.3d 163 (2015) "When analyzing a statute, Court of Appeals must try to give every word in the statute meaning to avoid rendering its terms superfluous."

The lawmakers intent was to specifically address which trafficking offenses that aren't eligible for parole, extended work credits, and supervised furlough. By not applying the statute as a whole therefore, SCDC is incorrectly classifying Appellant as a no parole offense requiring him to serve 85% of his sentence. See: Kerr v. State 547 S.E. 2d 494 (2001) Supreme Court ruling where Appellant was granted his parole eligibility under the same eligibility portion, but since then have been amended to be even more specific as to who is not eligible under § 44-53-370(E). South Carolina Dept. of Social Services v. Boulware S.E. 2d (2018) "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will; therefore, the courts are bound to give effect to the expressed intent of the legislature." State v. Miles 421 S.E. 154 (2017) "When interpreting a statute Appellate Court's duty is to determine legislative intent, and the text of the statute is often the best evidence of that intent."

Statute 44-53-370 (E) is the controlling statute and provision when determining parole, extended work credits, and supervised furlough eligibility it's provisions is written specifically for drug trafficking offenses with the plain language "A person sentenced and convicted under this subsection..." Broughtman v. Carver 624 F.3d 670 (2010) Under canon of statutory construction providing that "the specific governs the general, specific terms prevail over the general in the same or another statute which otherwise might be controlling." See: D.B. v. Cardall 826 F. 3d 721 (2016) "The specific terms of a statutory scheme govern the general ones, particularly where Congress has enacted a comprehensive scheme and has deliberately target specific problems with specific solutions."

Kerr v. State 547 S.E. 2d 494 (2001) "When a statute is penal in nature, it must be construed strictly against the State and in favor of the Defendant."

CONCLUSION

Appellant's sentence should be re-calculated therefore, re-classifying Appellant as non-violent becoming eligible for parole, extended work credits, and supervised furlough under all the language including the detailed unenumerated paragraph under 44-53-370(E) which also governs 44-53-370(E)(2).

J. Young Sr. 1/30/18

Jakarta D. Young Sr 276572
Livesay Correctional Institution
P.O. Box 580
Una, S.C. 29378

Jakarta Young Sr.
Appellant
v.

South Carolina Dept.
of Corrections Et Al,
Defendant(s)

South Carolina Administrative Law Court
Honorable H.W. Funderburk, Jr.

Case # 17C0507

* PROOF OF SERVICE *

I hereby certify that a copy of the foregoing document
"Reply Brief" was this day 30th of Jan.
2018 served upon the following individual(s) by
placing a copy of the same via mail to the following
agency / courts last know address as follows:

Attn: Honorable H.W. Funderburk, Jr.
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

Dept. of General
Counsel Dept. of Corrections
P.O. Box 21787
Columbia, S.C. 29221

J. Young 1/30/18
Jakarta Young Sr. 276572
Livesay Correctional Institution
P.O. Box 580
Una, S.C. 29378

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Jakarta Deshon Young, #276572,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)

Docket No. 17-ALJ-04-0507-AP
Grievance No.: KCI 744-17

ORDER

06/25/18 KB
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JUN 22 2018

GENERAL COUNSEL

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Jakarta Deshon Young (Appellant), an inmate incarcerated by the South Carolina Department of Corrections (Department or SCDC).

FACTS/PROCEDURAL HISTORY

On August 25, 2016, Appellant was sentenced to seven (7) years for the offense of trafficking cocaine 10-28 grams, 2nd offense, in violation of S.C. Code Ann. § 44-53-370(e)(2). On May 16, 2017, Appellant was sentenced to eight (8) years for the offense of manufacturing cocaine base, 2nd offense, in violation of Section 44-53-375(B)(2). The latter sentence was to run concurrently with the August 25 sentence for trafficking cocaine.

Appellant filed a Step 1 Grievance on June 28, 2017 challenging the Department's sentencing calculation because Appellant alleged that his offense of trafficking cocaine 10-28 grams, 2nd offense, is no longer a "no parole" offense under S.C. Code Ann. § 44-53-375(F) (2018)¹ following the 2010 amendment, and he should therefore not have to serve 85% of his sentence. He asserted that he had not been sentenced to 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, and thus could not be held ineligible for parole, extended work release or supervised furlough, under Section 44-53-375(F).

¹ Appellant refers to Section 44-53-375(F) in his Step 1 Grievance. However, he cites only to Section 44-53-370(e)(2) in his Step 2 Grievance, Notice of Appeal, and briefs. Also, Respondent only addresses Section 44-53-370(e)(2)(a)(2) in its brief. Therefore, the Court will only address Section 44-53-370(e)(2)(a)(2).

FILED

JUN 20 2018

SC ADMIN. LAW COURT

The Warden denied Appellant's Step 1 Grievance, finding that the offense of trafficking in cocaine under S.C. Code Ann. § 44-53-370(E)(2) requires a "no parole (85%) sentence." Appellant then filed a Step 2 Grievance, reasserting the same argument from his Step 1 Grievance. Appellant's Step 2 Grievance was also denied. On September 21, 2017, Appellant filed a Notice of Appeal to the ALC, in which he repeated his argument from his Step 1 and Step 2 Grievances.

On October 11, 2017, Appellant filed a brief.² The Department filed the Record on Appeal on November 30, 2017. The Department filed Respondent's Brief on January 23, 2018. Appellant filed a Reply Brief on January 30, 2018.

ISSUE ON APPEAL

Did the Department err in its sentencing calculation?

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003). When reviewing the Department's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Al-Shabazz*, 338 S.C. at 377; 527 S.E.2d at 754; *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2017) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(A)(5) states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or

² On the same day, Appellant filed a "Motion for Appointment of Counsel," in which he refers to appeal as a "Post-Conviction Relief - P.C.R." proceeding." First, this is not a PCR proceeding, and Appellant has cited no authority conferring on him the right to court-appointed counsel in grievance appeals to the ALC. Therefore, his motion is denied. On October 30, 2017, Appellant filed a Motion to Amend, seeking to submit an amended brief. Similarly, on December 7, 2017, the Court received a document from Appellant entitled "Motion to Amend" and also "Addendum/Supplement of Record." It appears to be a motion to amend his brief by adding expanding on his Statement of the Case section of his brief. The Department has not objected to these motions, so the Court hereby grants the motions. On November 28, 2017, Appellant filed a document entitled "Motion to Amend/Supplement of Record/Addendum," seeking to include a sentencing sheet from August 25, 2016 in the Record. However, this sentencing sheet already exists in the record and would be duplicative. Therefore, this motion is denied. Finally, on January 24, 2018, Appellant filed a document entitled "Motion to Resolve Appeal," seeking to have the Court rule in his favor because the Department allegedly failed to file its brief within 110 days after the date of assignment (October 5, 2017), as required by Rule 60(A) of the Rules of Procedure for the Administrative Law Court. However, 110 days from the date of assignment is January 23, 2018, which is the date on which the Department filed its brief. Therefore, Appellant's motion is denied.

modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (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.

S.C. Code Ann. § 1-23-380(5) (Supp. 2017); *see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998).

DISCUSSION

Appellant acknowledges that he was sentenced according to S.C. Code Ann. § 44-53-370(e)(2) (more specifically 44-53-370(e)(2)(a)(2)), which imposes the following sentence for a second offense of "trafficking in cocaine" where the quantity is more 10 grams or more but less than 28 grams: "a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars[.]" However, Appellant argues that the "unenumerated paragraph at the end of S.C. Code Ann. § 44-53-370(e)" (which is actually located after subpart (7), before subpart (8)) controls subsection (e). According to this paragraph, in pertinent part, one who is "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 . . . or supervised furlough" Appellant argues that because he was only sentenced to seven (7) years for his offense of trafficking in cocaine, 10 grams or more but less than 28 grams, second offense, he is eligible for parole, work release, and supervised furlough.

Appellant's sentencing sheet dated August 25, 2016 reflects a sentence of seven (7) years for the offense of "Drugs/Trafficking in cocaine, 10g or more, but less than 28g – 2nd offense" in violation of S.C. Code Ann. § 44-53-370(e)(2). The Department acknowledges the Appellant's sentence and correctly points out that the offense of which Appellant was convicted is a Class A felony under

S.C. Code Ann. § 16-1-90(A) (Supp. 2017). “[A] class A, B, or C felony or an offense exempt from classification” is a “no parole offense.” S.C. Code Ann. § 24-13-100 (2007).

Regarding no parole offenses, S.C. Code Ann. § 24-13-150(A) sets forth the following:

(A) 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**. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended. . . .

(Emphasis added). Because Appellant’s offense is a Class A felony, it is a “no parole offense,” generally requiring a service of 85% of the sentence. However, on June 2, 2010, the Omnibus Crime Reduction and Sentencing Reform Act of 2010 (Act) became effective. As the South Carolina Court of Appeals in *Bolin v. S.C. Dep’t of Corr.* discussed, the Act did not amend the definition of “no parole offense,” but the General Assembly did use “the phrase ‘Notwithstanding any other provision of law,’ in the amendments to sections 44-53-375 and -370[, which] expresses its intent to repeal section 24-13-100 to the extent it conflicts with amended sections 44-53-375 and -370.” 415 S.C. 276, 282 781 S.E. 2d 914, 917 (Ct. App. 2016). Accordingly, this Court must also consider the amended versions of Sections 44-53-370 and/or -375 (whichever is applicable), as they repealed Section 24-13-100 to the extent that it conflicts with these other two sections. *Id.*

415 S.C. at 282-83, 781 S.E.2d at 917.

S.C. Code Ann. § 44-53-370(e)(2)(a)(2) (2018) provides that for a second offense of trafficking in cocaine in a quantity of ten grams or more but less than twenty-eight grams, will result in “a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars[.]” For each of the sentences imposed for each of the offenses listed under subsection (e), the phrase “no part of which may be suspended nor probation granted” is included, but the mandatory sentences vary in range. In the paragraph immediately following subpart (7) of subsection (e), a further ineligibility is imposed - for parole, extended work release, and supervised furlough. This restriction on eligibility for parole, extended work release, and supervised furlough applies where the sentence imposed is “a mandatory term of imprisonment of twenty-five years, a mandatory minimum of imprisonment of

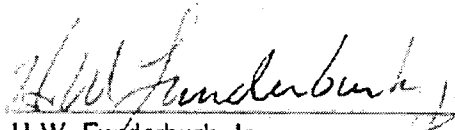
twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years"

In this case, the Record reflects that on August 25, 2016, Appellant was convicted of Trafficking in Cocaine, 10 grams or more but less than 28 grams, 2nd Offense, a violation of Section 44-53-370(e)(2)(a)(2), requiring a mandatory minimum sentence of five (5) years. The Record also reflects that the Appellant was sentenced to seven (7) years upon his conviction of this offense. Because Appellant was not convicted and sentenced to a mandatory term of imprisonment of twenty-five years, a mandatory minimum of twenty-five years, or a mandatory sentence between twenty-five and thirty years, Appellant is eligible for parole, extended work release, or supervised furlough.

ORDER

IT IS THEREFORE ORDERED that the Department's decision is **REVERSED AND REMANDED**.

AND IT IS SO ORDERED.



H.W. Funderburk, Jr.
Administrative Law Judge

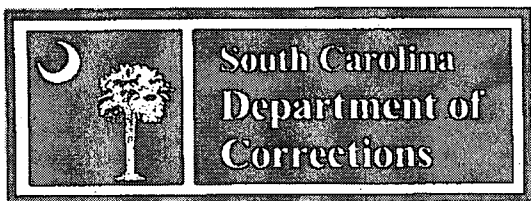
June 20, 2017
Columbia, South Carolina

2018 June 2018

FILED

JUN 20 2018

SC ADMIN. LAW COURT



HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

July 11, 2018

RECEIVED

JUL 16 2018

GENERAL COUNSEL

The Honorable H. W. Funderburk, Jr.
South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

Reference: Inmate Jakarta Young, #276572, vs. SCDC
Docket No. 17-ALJ-04-05507-AP

Dear Judge Funderburk:

Find enclosed an original and one copy of the *Motion for Supersedeas Pending Outcome of Appeal Pursuant to Rule 241, SCACR* on the above referenced case. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope.

If you have any questions or concerns, please do not hesitate to contact me at (803) 896-8508.

Sincerely,

Kensey Barrett
Administrative Assistant
Office of General Counsel

Enclosures

cc: Inmate Jakarta Young, #276572
File

FILED

JUL 11 2018

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Jakarta Young, #276572,	)	Docket No.: 17-ALJ-04-0507-AP
	)	
Appellant,	)	MOTION FOR SUPERSEDEAS
	)	PENDING OUTCOME OF APPEAL
v.	)	PURSUANT TO RULE 241, SCACR
	)	
South Carolina Department of Corrections,	)	Honorable H.W. Funderburk, Jr.
	)	
Respondent.	)	

This matter came before the Administrative Law Court ("ALC") pursuant to the appeal of Jakarta Young, an inmate incarcerated with the Department of Corrections (hereinafter "Respondent" or "SCDC"). In an order dated June 20, 2018, this Court held that Mr. Young's second-offense drug trafficking conviction under S.C. § Code 44-53-370(e) was one that is eligible for parole, extended work release, or supervised furlough. Pursuant to Rule 241(d), SCACR, Respondent hereby moves this Court for an order granting supersedeas and staying the execution of its June 20, 2018 order pending a resolution of Respondent's appeal from this order.¹ The grounds supporting a grant of supersedeas are set forth below.

FACTUAL BACKGROUND

Mr. Young filed a Step One Grievance on June 28, 2017 asserting that his conviction for drug trafficking under S.C. Code Ann. § 44-53-370(e)(2)(a)(2) is not an 85% offense following *Bolin v. SCDC* and is eligible for parole, extended work-release, or supervised furlough. The Department subsequently denied this grievance. Mr. Young filed a Step Two Grievance on July 18, 2017. This grievance was also denied. Mr. Young filed his brief to the ALC on October 11, 2017. Respondent subsequently filed the record on November 30, 2017, and filed its brief on

¹ A Notice of Appeal has been filed in the South Carolina Court of Appeals as of this date.

FILED

JUL 11 2018

SC ADMIN. LAW COURT

January 23, 2018. Mr. Young filed a Reply Brief on January 30, 2018. The Court issued its order reversing and remanding Respondent's decision on June 20, 2018.

ARGUMENT

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 § 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 § 24-13-100 (the "85% law") to the extent it conflicted with the amended portions of S.C. Code § 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.

Mr. Young'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, this Court used the following language from S.C. Code § 44-53-370(e)(7) to conclude that Mr. Young'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 Mr. Young'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 Mr. Young'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 § 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 § 24-13-100, § 24-13-150, and § 24-21-560 - to the extent it conflicts with the language in S.C. Code § 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.").

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

WHY SUPERSEDEAS IS WARRANTED

As a general rule, Rule 241, SCACR serves to automatically stay matters during the pendency of an appeal. However, Rule 241(b)(11) provides an exception for appeals from administrative tribunals. Accordingly, it is necessary for Respondent to seek supersedeas under Rule 241(d). See Rule 241(d)(1), SCACR ("Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal.").

As fully set forth above, Respondent contends that this Court erred in finding that Mr. Young is eligible for parole, extended work release, and supervised furlough. Respondent believes that Mr. Young, as an 85%, no-parole offender², is required to serve at least 85% of his sentence and then be released directly to community supervision pursuant to S.C. Code § 24-21-560(A). Mr. Young's current projected release date is October 2022. If a stay is not granted, and Mr. Young is immediately eligible for parole, extended work release, and supervised furlough, this could have the bizarre result of an 85% offender - who is supposed to be released directly to community supervision in October of 2022 - being released on parole over four years prior to his scheduled release date. In the event Mr. Young is granted parole, the South Carolina Department of Probation, Parole, and Pardon Services will be required to invest substantial time and resources to monitor an individual that would not otherwise be, and should not be, parole eligible. Further, if Mr. Young is released on parole and the Administrative Law Court's order is subsequently reversed by an appellate court, the South Carolina Department of Probation, Parole, and Pardon Services and Respondent will be required to locate and re-take custody of Mr. Young, and Respondent will be required to re-process him back into an institution to serve the remainder of his sentence. Again, in light of Respondent's contention that Mr. Young's conviction clearly falls under the 85% "no parole" statutes, Respondent believes a grant of supersedeas is necessary to prevent an 85% "no parole" offender from being immediately eligible for parole.

² Notably, this Court did not dispute that Mr. Young qualified as an 85% offender under S.C. Code 24-13-100 and -150. (See Order filed June 20, 2018, p. 3-5).

CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court grant supersedeas and stay the execution of its June 20, 2018 order pending the resolution of this matter on appeal.

Respectfully submitted,



Kensey Barrett
Staff Attorney
Office of General Counsel
S.C. Department of Corrections
4444 Broad River Rd.
Columbia, SC 29221
(803) 896-8508

July 11, 2018
Columbia, South Carolina

FILED

JUL 11 2018

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Jakarta Young, #276572,

Appellant.

v's.

South Carolina Department of Corrections.

Respondent.

Certificate of Service

Docket# 17-ALJ-04-0507-AP

I hereby certify that a copy of the foregoing motion was this date served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Inmate Jakarta Young
Inmate Number: 276572
Evans Correctional Institution
610 Highway 9 West
Bennettsville, SC 29512
Dorm-Room-Bunk: 3A-0287-A

Paul

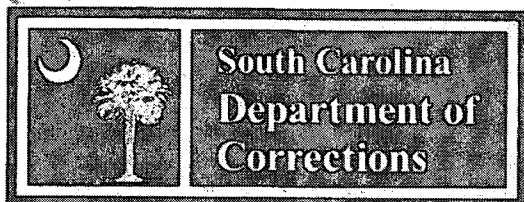
Kensley Barrett
Staff Attorney
Office of General Counsel
South Carolina Department of Corrections
4444 Broad River Road
P.O. Box 21787
Columbia, South Carolina 29221-1787
(803) 896-8508

July 11, 2018

FILED

JUL 11 2018

SC ADMIN. LAW COURT



OFFICE OF GENERAL COUNSEL

HENRY McMASTER, Governor

BRYAN P. STIRLING, Director

July 26, 2018

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
JUL 26 2018
SC Court of Appeals

RE: Jakarta Young, #276572, v. South Carolina Department of Corrections
ALC Case No. 17-ALJ-04-0507-AP
Appellate Case No. 2018-001293

Dear Ms. Kitchings:

Enclosed is the original and one copy of Appellant's **Proof of Service**, in the above referenced appeal.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Kensey Barrett
Staff Attorney
South Carolina Department of Corrections

cc: Honorable H.W. Funderburk, Jr.
South Carolina Administrative Law Court
1205 Pendleton Street
Columbia, South Carolina 29201

Jakarta Young, 276572
Evans Correctional Institution
610 Highway 9 West
Bennettsville, SC 29512
Dorm-Room-Bunk: 3A-0287-A

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge H.W. Funderburk, Jr.

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

RECEIVED

JUL 26 2018
SC Court of Appeals

JAKARTA YOUNG, #276572,

RESPONDENT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

APPELLANT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on July 11, 2018, she mailed a copy of the **Notice of Appeal** filed that same date in this Court to the Honorable H.W. Funderburk, Jr. via U.S. Mail addressed as follows: **Honorable H.W. Funderburk, Jr.**, South Carolina Administrative Law Court, 1205 Pendleton Street, Columbia, South Carolina 29201.



Kensey Barrett
Staff Attorney
Office of General Counsel
S. C. Department of Corrections
Post Office Box 21787
Columbia, S. C. 29221
(803) 896-8508

July 26, 2018

August 2, 2018

The Honorable H.W. Funderburk Jr.
South Carolina Administrative Law Court
Edgar A. Brown Building Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

RECEIVED

AUG 06 2018

GENERAL COUNSEL

Reference: Jakarta Young 276572 v. SCDE

Docket No: 17-ALJ-04-0507-AP

Dear Judge Funderburk:

After receiving your Order for the Motion to Supersedeas Pending Outcome of Appeal Pursuant Rule 224, SCACH I noticed that you did not receive my Original Reply to the Motion which I did send. You will find enclosed a copy of the certified receipt addressed (U.S. Mail) to your office dated July 17, 2018. Also enclosed is a Motion to Amend Reply, the Amended document, and Proof of Service, after noticing your request to remand the June 20, 2018 Order back to your Court.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

J. Young Jr.
Jakarta Young #276572
Appellant
Pro SE

August 2, 2018

cc: General Counsel
P.O. Box 21787
Columbia, S.C. 29221

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Jakarta Young 276572

Appellant

Docket #: 17-ALJ-04-0507-AP

v

South Carolina Dept. of Corr.

Respondent

MOTION TO LEAVE TO AMEND REPLY
TO MOTION FOR SUPERCEDEAS RULE 241, SCACA

I ask this Honorable Court to allow me to Amend my original Reply to the Motion for Supercedeas Pending Outcome of Appeal Pursuant Rule 241, SCACA after noticing your request to Remand the June 20, 2018 Order back to this Court due to err of law.

Respectfully Submitted,

J. Young Jr.
Jakarta Young 276572
Evans Correctional Institution
610 Highway 9 West
Bennettsville, S.C. 29512

August 2, 2018

cc: General Counsel
P.O. Box 21787
Columbia, S.C. 29221

Administrative Law Court
1205 Pendleton St. Suite 224
Columbia, S.C. 29201

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Jakarta Young 276572

Appellant

Docket #: 17-ALJ-04-0507-AP

v.

South Carolina Dept. of Corr.

Respondent

Amended Reply to Motion for Supercedas
Pending Outcome of Appeal Pursuant
Rule 241, SCACR

The Respondent err in interpreting which statute is controlling in determining Appellant's parole, extend work release and supervised furlough eligibility.

§ 44-53-370 (E)(1) was enacted in (Supp. 1995) but since was Amended and the terminology was changed to the current ~~version~~ ^{version} in (Supp. 2000). While SCDC argue that 24-13-100, 150 is the newer statute of the two which was enacted in (Supp. 1996) the earlier of the two statutes. They are incorrect. North River Ins. Co. v. Gibson 244 S.C. 393, 398, 137 S.E. 2d 264, 266 (1964) ("Where the Court recognized the rule of construction that the adoption of an amendment which materially changes the terminology of statute raise a presumption that a departure from the original law as intended.") See: Kerr v. State (2001) Supreme Court case is the controlling case on Appellant's Appeal ^① Kerr was sentenced under § 44-53-370 (E) also and Kerr's parole eligibility was determined from the same Subsection as Appellant argue and ALC court agreed as well § 44-53-370 (E)(1). Kerr's ruling was well after the (Supp. 1996) enactment of 24-13-100, 150. See: Akbar v. S.C. Probation Parole & Pardon Service (2003) he to was GRANTED parole under the same Subsection 44-53-370 (E)(1) from Kerr v. State (2001) Ruling.

^① Cited on pg. 2 & 3 of Appellant's original Brief and pgs. 3 & 4 of his Reply Brief

Respectfully Submitted,

August 2, 2018

J. Young Sr.
Jakarta Young 276572
Evans Correctional Institution
610 Highway 9 West
Bennettsville, S.C. 29201

cc: General Counsel
P.O. Box 21787
Columbia, S.C. 29221

Administrative Law Court
1205 Pendleton St. Suite 224
Columbia, S.C. 29201

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Jakarta Young 276572

Appellant

Docket # 17-ALJ-04-0507-AP

v.

Certificate of Service

South Carolina Dept. of Corr

Respondent

I hereby certify that a copy of the foregoing Amended Reply to Motion for Supercedeas along with the Motion to Amend, Proof of Service and a copy of the certified (U.S. Mail) receipt of my Original Reply to the Motion for Supercedeas on this date August 2 of 2018 served upon the following individuals by placing a copy via to his/her last known address as follows:

Attn: Honorable Judge Funderburk Jr.

S.C. Administrative Law Court

1205 Pendleton St. Suite 224

Columbia, S.C. 29201

General Counsel Office

P.O. Box 21787

Columbia, S.C. 29221

Sincerely,

J. Young Sr.

Jakarta Young 276572

Evans Correctional Institution

610 Highway 9 West

Bennettsville, S.C. 29512

JAKARTA

Young

3A0287

m/p outn

7016 0750 0000 0779 6492

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Hon. H.W. Funderburk Jr., SC (dam. law)	
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1205 Pendleton St, Ste 224	
City, State, ZIP+4®	Eden SC 29221
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

Response to
Motion for Suppcedas
7/17/18