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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., Administrative Law Judge

Appellate Case No. 2018-001293

Jakarta Deshon Young, #276572, ... Petitioner,

v.

South Carolina Department of Corrections, ... Respondent.

PETITION FOR A WRIT OF CERTIORARI

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Pursuant to Rule 242 of the South Carolina Appellate Court Rules, Petitioner Jakarta Deshon Young, #276572 ("Young") petitions this Court to issue a writ of certiorari to review the decision of the Court of Appeals in *Young v. S.C. Dep't of Corr.*, Op. No. 21-UP-447 (S.C. Ct. App. filed December 15, 2021) ("the Opinion"). This Court should grant Young's petition and reverse the Court of Appeals' Opinion.

CERTIFICATION OF COUNSEL

The undersigned hereby certifies that a petition for rehearing was made and finally ruled on by the Court of Appeals on January 11, 2022.

QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals err by reversing the Administrative Law Court's correct determination that Petitioner is eligible for parole, extended work release, or supervised furlough?

STATEMENT OF THE CASE

This is an appeal from the Administrative Law Court's review of an inmate grievance filed by Petitioner Jakarta Deon Young ("Young") and presents an issue of first impression regarding the meaning of the unenumerated paragraph found in S.C. Code Ann. § 44-53-370(e).

Young was sentenced on August 25, 2016 to seven years for the offense of trafficking 10-28 grams of cocaine, 2nd offense, in violation of S.C. Code Ann. § 44-53-370(e)(2)(a)(2). (Sentence Sheet, R. 11-13.) Young filed a Step 1 grievance on June 28, 2017 challenging the South Carolina Department of Corrections' ("the Department") sentencing calculation for this offense.[1] (Step 1 Grievance, R. 9.) Young contended that the offense of trafficking 10-28 grams

[1] As the Administrative Law Judge ("ALJ") explained in his Order, Petitioner referred to § 44-53-375(F) in his Step 1 Grievance, but cited only to § 44-53-370(e)(2) in his Step 2 Grievance, his Notice of Appeal to the Administrative Law Court ("ALC"), and in his merits briefing before the ALC. (*See* Order, R. 51.) Therefore, § 44-53-370(e)(2) is the relevant provision on appeal.

of cocaine, 2nd offense, is not a "no parole" offense, and therefore he should not be required to serve 85% of his sentence. (*Id.*) Young noted that the unenumerated paragraph at the end of S.C. Code Ann. § 44-53-370(e) provides that:

> 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. Notwithstanding Section 44-53-420, a person convicted of conspiracy pursuant to this subsection must be sentenced as provided in this section with a full sentence or punishment and not one-half of the sentence or punishment prescribed for the offense.

S.C. Code Ann. § 44-53-370(e). As Young explained, because he was not 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, he was eligible for parole, extended work release, or supervised furlough under S.C. Code Ann. § 44-53-370. (Step 1 Grievance, R. 9.)

The Warden denied Young'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." (*Id.*)

Young then filed a Step 2 Grievance, reasserting the same argument from his Step 1 Grievance. The Warden also denied the Step 2 Grievance. (Step 2 Grievance, R. 8.)

On September 21, 2017, Young filed a Notice of Appeal to the Administrative Law Court. Young requested that the ALJ appoint counsel, but that motion was denied. After a full round of merits briefing, the ALJ issued an Order on June 22, 2018 reversing the Department of Corrections, finding that it erred in calculating Young's sentence. (Order, R. 51-55.) Specifically, the ALJ

agreed with Young that the unenumerated paragraph following subpart (7) of § 44-53-370(e) supported that Young is eligible for parole, extended work release, or supervised furlough. (*Id.*)

The Department appealed. After consideration of the briefing and oral argument, the Court of Appeals issued an Opinion reversing the ALJ. The Court of Appeals held that Young's sentence is an 85%, no parole offense under S.C. Code Ann. § 24-13-150(A) and the unenumerated paragraph did not change that conclusion.

SUMMARY OF REASONS TO GRANT CERTIORARI

The Court should grant certiorari because this case involves novel questions of law and the decision of the Court of Appeals conflicts with prior decisions of this Court. The novel question of law concerns the meaning of the unenumerated paragraph at the end of S.C. Code Ann. § 44-53-370(e). This is an important question which this Court has not had the opportunity to address.[2] The answer will have wide-ranging implications for all persons sentenced under that code section.

Furthermore, the Court of Appeals' decision conflicts with this Court's statutory construction precedent and failed to uphold the principle that criminal statutes should be construed against the State and in favor of the defendant. In fact, the Court of Appeals' analysis did the inverse and strictly construed the statute against ***Young***. Therefore, in light of these issues, the Court should grant certiorari, clarify the meaning of the unenumerated paragraph, and find that the ALJ correctly found that it supports that Young is eligible for parole, extended work release, or supervised furlough.

[2] Because they are novel questions, this Court "is free to decide the question with no particular deference to the lower court." *S.C. Farm Bureau Mut. Ins. Co. v. Durham*, 380 S.C. 506, 510, 671 S.E.2d 610, 612 (2009).

ARGUMENT

I. The meaning of the unenumerated paragraph in § 44-53-370(e) presents a novel question of law and the Court of Appeals' Opinion misapplied this Court's statutory interpretation precedent.

The Court of Appeals' analysis supports that this is an issue of first impression. The Court of Appeals was required to apply the rules of statutory construction to ascertain how the language of the unenumerated paragraph impacts persons sentenced to offenses specified in § 44-53-370(e). Respectfully, however, the Court of Appeals failed to recognize several critical statutory construction principles which support Young's position.

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

1. The general prevails over the specific.

Three statutory interpretation principles recognized in this Court's precedent support that the ALJ correctly interpreted the impact of the unenumerated paragraph in § 370(e).

First, "[t]he general rule of statutory construction is that a specific statute prevails over a more general one." *Denman v. City of Columbia*, 387 S.C. 131, 138-39, 691 S.E.2d 465, 469 (2010). Under this principle, the Court of Appeals' analysis should have begun with identifying the more general statute. Here, S.C. Code Ann. § 24-13-150(A) is the general statute. That section provides the overarching rule that all class A, B, and C felonies are "85% no parole" offenses, meaning an inmate must serve 85% of his or her sentence before becoming eligible for early release, discharge, or community supervision. *See id.* As the Court of Appeals recognized, however, there are numerous exceptions to this rule that are found in more specific statutes.

Here, Young was convicted of trafficking 10-28 grams of cocaine, second offense. *See* S.C. Code Ann. § 44-53-370(e)(2)(a)(2). Several provisions of § 44-53-370 contain specific language as to parole eligibility. For § 370(e), the unenumerated paragraph at the end of that

subsection qualifies ***all*** of the offenses detailed therein. That paragraph lists three mandatory or mandatory minimum terms of twenty-five plus years and provides that a person sentenced to any of these terms for the offenses identified in (e) is not eligible for parole, extended work release, or supervised furlough. Thus, § 370(e) is the more specific statute because it discusses particular offenses and sentence ranges and, as a result, it prevails over the more general rule found in § 24-13-150.

2. The Acts were passed in the same legislative session and should be read together.

Second, § 24-13-150 and the unenumerated paragraph in § 370(e) were both adopted during the same legislative session.[3] Therefore, these provisions should be "read together as one act, and are not to be construed as inconsistent, if they can fairly and reasonably be construed otherwise." *Locke v. Dill*, 131 S.C. 1, 126 S.E. 747, 748 (1925). When taken together, the legislative intent was to provide for the broad rule that class A, B, and C felonies are 85% no parole offenses, but with the understanding that other provisions, such as § 370(e), provide exceptions to that rule.[4] The Court of Appeals also failed to apply this important construction rule.

3. The express identification of three sentences to which the unenumerated paragraph applies implies the exclusion of the others.

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

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

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

sentences for which an offender is ***ineligible*** for parole, extended work release, or supervised furlough under § 370(e), the General Assembly implied ***eligibility*** for those sentenced to lesser terms.

4. Application of these principles leads to the conclusion that the ALJ correctly interpreted § 370(e).

The Court of Appeals did not consider any of these principles in interpreting the novel question at issue in this case—the meaning of the unenumerated paragraph in § 370(e). Applying these statutory construction principles supports the ALJ's correct finding that this language means precisely what it says. Because Young was sentenced to 7 years for the trafficking offense, he did not receive one of the mandatory terms which would render him ineligible for parole, extended work release, or supervised furlough. As a result, Young is eligible for each of these as the ALJ properly held.

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

In light of the foregoing, this Court should grant certiorari to address the novel question of the meaning of § 370(e) and consider the statutory interpretation principles detailed herein which support that Young is eligible for parole, extended work release, or supervised furlough.

B. Certiorari is also appropriate because the Court of Appeals' holding rendered the unenumerated paragraph meaningless.

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

Additionally, the General Assembly has amended § 370(e) several times since the enactment of the 85% no parole provision but has continued to include the unenumerated paragraph. "Courts must presume the legislature did not intend to do a futile act" and "to intend

that its statutes accomplish something." *State v. Sweat*, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008). By continuing to include this language, the General Assembly intended for it to have some meaning and effect. The Court of Appeals, however, reached the opposite conclusion in finding that the General Assembly was merely restating the general no parole rule for a subset of identified sentence terms. That begs the question: What purpose does (e) serve? Under the Court of Appeals' conclusion, it is entirely redundant and has no independent meaning.

The Court should grant certiorari for these additional reasons.

II. The Court should grant certiorari because the unenumerated paragraph is, at a minimum, ambiguous and the Court of Appeals failed to construe this penal statute strictly against the State.

Finally, as Young explained in the briefing to the Court of Appeals, the unenumerated paragraph is, at a minimum, ambiguous and should thus be construed in his favor and strictly against the State. *See Rainey v. State*, 307 S.C. 150, 151-52, 414 S.E.2d 131, 132 (1992). As this Court has explained, where there is "any doubt" about a penal statute's scope, the interpreting court is "***required***" to resolve it in the defendant's favor. *State v. Miles*, 421 S.C. 154, 164, 805 S.E.2d 204, 210 (Ct. App. 2017) (emphasis added).[5]

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

Strict construction in Petitioner's favor would accord with the purpose of the Omnibus Crime Reduction and Sentencing Reform Act of 2010 which was to, *inter alia*, "[u]se correctional

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

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

Therefore, the Court should grant certiorari to consider the ambiguity of the statute and to apply the appropriate strict construction rule.

CONCLUSION

This case implicates novel issues of South Carolina law and the Court of Appeals' decision conflicts with established precedent from this Court. The Court of Appeals erred by finding that Young is not entitled to parole, extended work release, or supervised furlough pursuant to the unenumerated paragraph in § 44-53-370(e). This Court should grant certiorari to address the issues raised herein, reverse the Court of Appeals' erroneous decision, and reinstate the correct judgment of the Administrative Law Court.

Signature on Following Page

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent Jakarta Deshon Young, #276572, do hereby certify that on February 8, 2022, I have served all counsel in this action with a copy of the pleading(s) hereinbelow in accordance with the Supreme Court's August 25, 2021 Administrative Order by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System.

Pleading: Petition for a Writ of Certiorari

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February 8, 2022

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Attachments: Young - Petition for a Writ of Certiorari - 4881-3385-3197 1.pdf; 2022.02.04 COA Certified Appendix (Jakarta Young) - 4872-2101-7612 1.pdf

Good afternoon,

Attached for service please find a: (1) Petition for a Writ of Certiorari, and (2) Appendix in the above matter. We will send this to the Court for filing shortly.

Thank you,

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