

RECEIVED

FEB 16 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph King Anderson III

FILED CASE NO. 21-ALJ-04-0118-AP

Appellate Case No. 2021-001044

WILLIE YOUNG 285487

APPELLANT

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RESPONDENT

BRIEF OF APPELLANT

WILLIE YOUNG

4848 GOLDMINE HWY

Kershaw S.C

29067

PRO-SE

Willie young

# TABLE OF CONTENTS

TABLE OF AUTHORITIES	<u>ii</u>
STATEMENT OF THE ISSUE ON APPEAL	<u>1</u>
STATEMENT OF THE CASE	<u>1</u>
STANDARD OF REVIEW	<u>1</u>
ARGUMENT	<u>2</u>
CONCLUSION	<u>6</u>

# TABLE OF AUTHORITIES

## CASES

Barton v. S.C. Dept. of Prob, Parole, & Pardon Servs	404 S.C. 395, 414 445 SE2d 110, 120 (2013)	<u>1</u>
Bolin v Dept. of Corrections	415 SE2d 276, 781 SE2d 914, 916-17	<u>4</u>
Broadhurst v. City of Myrtle Beach Electric	342 S.C. 373, 380 537 SE2d 543 (2000)	<u>2</u>
Bryant v State	384 S.C. 525	<u>2</u>
Hodges v. Rainey	341 S.C. 525	<u>2</u>
SCANA Corp v South Carolina Dept. of Revenue	384 S.C. 388, 392	<u>2</u>
State v Blackmon	307 S.C. 270	<u>3</u>
State v Johnson	396 S.C. 182, 189 (2011)	<u>3</u>
State v sweat	380 S.C. 339, 351 698 SE2d 569, 575-76	<u>3, 5</u>
Strickland v state	276 S.C. 17, 19 274 SE2d 430, 432	<u>3</u>

## STATUTES, RULES, OTHER

16-11-330	<u>2 4 5</u>
24-13-125	<u>3</u>
24-13-100	<u>3 4</u>
24-13-150	<u>3 4 5</u>
26 S.C. Jur. Probation, Parole & Pardon §15	<u>3</u>
44-53-375(B)	<u>4</u>
S.C.A.G. 2019 WL 3049589	<u>5</u>
S.C. Code 1-25-610(B)	<u>1</u>

## STATEMENT OF ISSUE ON APPEAL

This court should reverse and modify the decision of the administrative law court as it undermines and contradicts state provisions of state legislation, which mandates section 16-11-330 as a parole eligible and work credit earning offense, negating 95% requirements and circumstances!

## STATEMENT OF THE CASE

This matter comes before this court pursuant to the appeal of Willie Young a inmate in SCDC custody. Appellant submitted a step one Grievance November 22, 2020 noting that his earned work credits had not been applied in the reduction of his release date. This Grievance was denied though appellant raised Sections 24-13-210(a)(B) and 24-13-125 as binding. Appellant submitted a step two Grievance asserting the same December 17, 2020. The Grievance was denied and appellant filed an appeal to the "ALC", noting in briefed argument that section 16-11-330 entitled him to both work credits and parole eligibility for release according to state provisions. On August 30, 2021 the ALC issued an order affirming SCDC's decision. The appellant filed Notice of Appeal.

## STANDARD OF REVIEW

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

## ARGUMENT

Appellant asserts in the framing of his Armed Robbery Conviction he is entitled to both the applications of his earned work credits and parole eligibility for release! Requesting humbly, that this court reverse the Administrative law Court decision as it directly affects a statutory provision of law. As noted by order of

ALC appellant was sentenced to thirty (30) years incarceration for the crime of Armed Robbery which is defined as a class A felony and upon conviction a person must serve a mandatory minimum term of not less than ~~ten~~<sup>ten</sup> ten years or more than thirty years, no part which may be ~~suspended~~ suspended or probation granted, and that a person convicted under this subsection is not eligible for parole until serving at least seven years of the sentence. SCDC, however throughout the record and/or its brief failed to acknowledge the full language of ALC Order or S.C. legislature intent. Respondent (SCDC) in its brief conveniently chose to 'explain' away the section 16-11-330 language which states clearly the eligibility of parole after completion of seven years. Appellant humbly asserts from the record before this court that

"It should be first and foremost," the fundamental Canon... Legislative intent is controlling. SCANA Corp. v South Carolina Dept of Revenue 384 S.C. 388, 392 (2009) Appellant asserts "all rules of statutory construction are subservient to the one that the legislature intent must prevail if it can be reasonably discovered in the language used, as that language must be construed in light of the intended purpose of the statute". Broadhurst v. City of Myrtle Beach Electric 342 S.C. 373, 380 537 SE2d 543 (2000) Hodges v. Rainey 341 S.C. 79, 85 (2008) Bryant v. State 384 S.C. 525

When appellant was convicted of armed robbery June/2002 (see indictment), S.C. legislature statutory construction exacted the eligibility of parole after serving at least seven years. Appellant humbly directs this court (S) attention to both the ALC order and respondents brief which both concede to the appellants earned work credits but however makes clear statute confusion, which amounts to a question of statute interpretation, which is a question of law "Subject to de novo review". Barton v S.C. Dept. of ~~Prob, Parole & Pardon Servs.~~ Prob, Parole & Pardon Servs., 404 S.C. 395 (2011) 745 S.E. 2d 110, 120 (2013)

While it has been noted that the ~~interpretation~~<sup>way</sup> interpretation of a statute by the agency with its administration will be accorded the most respectful consideration, 'an agency's interpretation affords no basis for the perpetuation of a patently erroneous application of the statute.' State v Sweat 386 S.C. 339, 351 698 SE2d 569, 575-76 It has been held 'in computing the date of parole eligibility it is also necessary to account for any deduction for earned work credits, and education or training credits as these may apply. The question whether such credits can be used at all is a deduction in the computation of the date of parole eligibility, and, if so, how, depends entirely on the statute. ~~How~~<sup>way</sup> However, further it should be noted because of the ex post facto problem, the application of such credits depends further on the statute in effect at the time the offense was committed. 26 S.C. Jur. Probation, Parole, & Pardon § 15 When a statute is penal in nature, it must be strictly construed against the state and in favor of the defendant. State v. Blackmon 307 S.C. 270 (1991) As noted by both appellant and respondent (ALC order, SCOC Brief) the crime of armed robbery according to state law allows appellant the earning of good time credits, which entitle him to a sentence reduction, however, he is being denied a state liberty created by legislation based on the misinterpretation of the respondent. 24-13-125

### ALC order is based on misinterpretation of sections 24-13-100 and 24-13-150(A)

Appellant asserts the respondent's order is a denial of a statutory provision mandated by S.C. legislation, as it's order first acknowledges the statutory provision of parole eligibility, then consequentially denies him, a consequence directly affecting the appellant. The ALC based its ruling on its interpretation that because 16-11-330(A) is an offense listed under 24-13-100 as a "no parole" offense appellant is not entitled to the ~~statutory~~<sup>way</sup> statutory provisions of armed robbery, which is error! As noted Armed Robbery is a crime listed under S.C. code 24-13-100, however, the language statutorily mandates 'parole eligibility' under this subsection which then creates a contradiction of clearly established law. Statutes of a specific nature (16-11-330) are not to be considered as repealed in whole or in part by a later general statute (24-13-100) (24-13-150(A)) unless there is direct reference to the former statute or the intent of the legislature to do so is explicitly implied therein. Strickland v. State 276 S.C. 17, 19 274 SE2d 430, 432 (1981)

In effect, the respondent has done just that, first by acknowledging in its order that appellant was 'parole eligible' after completion of seven years, but then denying the appellant a state created liberty by applying a later 'general statute' as though the armed robbery statutory provision had been repealed! A similar interpretation and argument was made by (respondent) SCOC in *Bolin v. Dept. of Corrections*! There the respondent contended the petitioner (*Bolin*) was not eligible for parole, or the earning of work credits for release for the offense of S.C. Code 44-53-375(B), as the offense was labeled as a no parole offense under section 24-13-100, and because of the enactment of 24-13-150(A), required him to serve 85% of his sentence!

Respondent failed to acknowledge by amendment of the omnibus crime bill (act 2010), which made it clear S.C. legislature intent to "implicitly repeal" the no parole offense designation in section 24-13-100 and therefore, in effect, relieved *Bolin* of the 85% rule and its consequences. *Bolin v Dept. of Corrections* 415 S.C. 276 781 SE2d 914, 916-17. The appellant asserted on the record that prior to the passing of the omnibus crime bill, 16-11-330 was both parole eligible and entitled to earn work credits, however prior to the amendment work release was not permitted! While the omnibus act amended "non-eligibility" to "eligibility" for work release for the crime of armed robbery and made clear the earning of work credits are to be applied, the omnibus act 'did not' amend 24-13-100 which controlled no parole offense classification, nor did the act amend 24-13-150(A), which enumerates the consequences of the no parole offense designation. This created an arguable contradiction in South Carolina law, while simultaneously undermining legislature intent because: 1) The omnibus act suggested that the appellant is eligible for work release, which is a criteria attached to earned work credits, early release, and discharge, and 2) S.C. legislature made no amendment to 16-11-330, however, the respondents interpretation that appellant is sentenced for and to, a "no parole" offense, that requires him to serve a 85% requirement, deny's him state due process of a statutory provision!

The S.C. Court of appeals observed: It is without doubt that the statutory definition for the term "no parole" offense in section 24-13-100, i.e., "a class A, B, or C felony..." simply describes the types of offenses for which the offender is not eligible for parole, but further noted: It is unreasonable to characterize an offense for which the offender is eligible for parole as a no parole offense pursuant to section 24-13-100, even if the maximum sentence for the offense places it within a classification encompassed by section 24-13-100. *Bolin v South Carolina Dept. of Corrections* 415 S.C. 276, 781 SE2d 914, 916-17 (Ct. App. 2016)

The respondent noted in its order that the appellant has earned a total of 2,507 earned work credit days and forty-eight earned educational credits, but that because he is convicted of a no parole offense they cannot be used to reduce his time, and it is here the respondent draws "two" inconsistent conclusions from this evidence, which makes clear an error in interpretation, which also minimizes legislative intent.

While the interpretation of a statute by the agency charged with its administration will be accorded the most respectful consideration, an agency's interpretation affords "no basis for the perpetuation of a patently erroneous application of the statute." State v. Sweat 386 S.C. 339. The courts will reject a statutory interpretation that would lead to an absurd result not intended by the legislature. State v. Johnson 396 S.C. 182, 189 (2011)

Both, the ALC and SCDC responded that appellant was convicted of a "no parole" offense, and that because of it being classified as a no parole offense that section 24-13-150(A) is applicable to 16-11-330 is error, as it fails to carry and effectuate the intent of the legislature!

In response to the applicability and enactment of 24-13-150(A) from Respondent (Bryan Stirling, SCDC), the S.C. attorney general asserted: The General Assembly enacted 24-13-150 following passage of the trafficking statutes carrying a sentence of twenty five years which took effect in 2010 by virtue of the omnibus crime bill. Specifically noting, "24-13-150, was clearly a statute passed subsequently to the various trafficking statutes requiring a mandatory minimum sentence of twenty five years with no parole!" S.C.A.G. 2019 WL 3049589

The respondent has basically asserted its defiance to a statutory provision in its interpretation that section 24-13-100 and 24-13-150(A) are controlling to section 16-11-330 no matter legislative intent!

The appellant objects, strongly to the denial of his state constitutional right to a state created liberty, and further asserts as this court ruled in Bolin, a no parole label cannot be applied to a "parole eligible" offense.

### Conclusion

This appellant asserts the error of the respondent is obvious, and that he is not only by law entitled to his earned work credits for his immediate release, he is also entitled to his parole eligibility. The respondent has refused to carry in to effect the intent of legislation, and has favored its own interpretations over that of the courts and statutory provisions.

Appellant therefore requests his release from the custody of the Respondent.

The appellant strongly prays.

Willie Young

Date: 2/10/22

## Proof of Service

I williams attest on february 8, 2022 thru Kershaw Correctional mail room received from SCDC General Counsel Brief of the Respondent, and assert a copy of Appellants brief was served february 10, 2022 on SCDC General Counsel, po box 21787 cola sc. 29221 and the S.C. court of appeals po box 11629 cola S.C. 29211

---

I williams Also Attest that on february 8, 2022 thru Kershaw Correctional mailroom I did not receive respondents Designation of matter record but had record of my own.

**RECEIVED**

FEB 16 2022

SC Court of Appeals

---

Willie Young 483-101  
4848 GOLDMINE HWY  
Kershaw S.C. 29067

LEGAL

SC 290

14 FEB '22

EN 41

RECEIVED

FEB 16 2022



SC Court of Appeals

S.C. court of Appeals

Pop 11629

Cola S.C

29211

RECEIVED

FEB 14 2022

RECEIVED



US POSTAGE TM PITNEY BOWES



ZIP 29067 \$ 000.20<sup>0</sup>  
02 4W  
0000378441 FEB. 14 2022

29211-162929

