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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from the Administrative Law Court
H.W. Funderburk, Jr., Administrative Law Judge

Opinion No. 2021-UP-447 (S.C. Ct. App. filed 12/15/21)
Appellate Case No. 2022-000126

JAKARTA DESHON YOUNG, #276572,

PETITIONER,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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INDEX

ISSUE PRESENTED

The Court of Appeals properly reversed the decision of the Administrative Law Court and properly rejected Petitioner's assertion that he is eligible for parole, extended work release, and supervised furlough.

STATEMENT OF THE CASE

This matter is before the Court pursuant to a Petition for a Writ of Certiorari by Petitioner following the Court of Appeal's reversal of the Administrative Law Court's decision. Petitioner filed a Step One Grievance on June 28, 2017, claiming Respondent had incorrectly calculated his sentence. Respondent investigated and denied the grievance. Petitioner filed a Step Two Grievance on July 18, 2017. This grievance was also investigated and denied. Petitioner filed a Notice of Appeal in the Administrative Law Court on September 20, 2017. Thereafter, on June 20, 2018, the Honorable H. W. Funderburk, Jr. issued an order reversing and remanding the decision of the Department of Corrections. Pursuant to Administrative Law Court Rule 65, "[t]he decision of the Administrative Law Judge is a final decision and motion for reconsideration will not be considered." Thereafter, Respondent filed a Notice of Appeals in the Court of Appeals on July 11, 2018. The Court of Appeals reversed the Administrative Law Court's decision on December 15, 2021. Petitioner filed this Petition for a Writ of Certiorari on February 8, 2022.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

> The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (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).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

ARGUMENT

The Court of Appeals properly reversed the decision of the Administrative Law Court and properly rejected Petitioner's assertion that he is eligible for parole, extended work release, and supervised furlough.

A Grant of Certiorari is not Warranted

Initially, Respondent disagrees with Petitioner's argument in support of a grant of certiorari. The meaning of the unenumerated paragraph at the end of S.C. Code 44-53-370(e) is not unclear or confusing. Furthermore, a decision from this Court regarding the "interpretation" of this provision will have little impact, if any, on persons sentenced under this code section because other, more specific code sections address eligibility for parole, supervised furlough, community supervision, work release, and good time and work credits for offenders like Petitioner who are not sentenced to mandatory or mandatory minimum terms. These more specific statutes are not in conflict with the language in question from S.C. Code 44-53-370(e). Therefore, as will be discussed in more detail below, the request for certiorari should be denied.

The Court of Appeals Properly Reversed the ALC

On August 25, 2016, Petitioner was sentenced to seven (7) years for Trafficking in Cocaine, more than ten (10) grams but less than twenty-eight (28) grams, second offense, pursuant to S.C. Code Ann. § 44-53-370(e)(2)(a)(2). See R. at p. 14 and 51. Petitioner is also serving a concurrent eight (8) year sentence for manufacturing cocaine base, second offense, in violation of S.C. Code Ann. § 44-53-375 (B)(2). R. at p. 16 and 51.

Petitioner'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). Additionally, S.C. Code 24-21-560(A) requires that all 85% no-parole offenders be released directly to the community supervision program under the supervision of the South Carolina Department of Probation, Parole and Pardon Services for a period not to exceed two years.

Notwithstanding the above, **and despite not disputing that Petitioner qualified as an 85% offender** (see R. at p. 53-55), the ALC used the following language from S.C. Code Ann. § 44-53-370(e)(7) to conclude that Petitioner'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.

The language of this statute is clear and plain: people sentenced under this subsection to mandatory or mandatory minimum terms of twenty-five or twenty-five to thirty years are not eligible for parole, extended work release, or supervised furlough. No further research into the matter is required on these points. Initially, this language has no application to Petitioner's conviction since he did not receive a "mandatory" or "mandatory minimum" term of imprisonment. Furthermore, although this paragraph sets forth instances in which parole may **not** be granted, it does not, implicitly or otherwise, **confer** eligibility for parole, extended work release, or supervised furlough for any offenders. Therefore, as the Court of Appeals properly concluded, the ALC erroneously read into section 44-53-370(e) an implicit parole

eligibility by interpreting the language as having the effect of preempting any contrary statutory language. The Court of Appeals also properly distinguished the case of State v. Taub, 336 S.C. 310, 519 S.E.2d 797 (Ct. App. 1999), by finding that the actual issue in Taub was sentencing and not parole eligibility, and also by finding that the language in Taub mentioning parole eligibility did not go so far as to actually **confer** parole eligibility.

In that vein, the language in -370(e) does not repeal, implicitly or otherwise, the 85% provisions that apply to Petitioner's drug trafficking offense. The language in -370(e) 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 and more specific 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 Ann. § 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 Ann. § 24-13-100, § 24-13-150, and § 24-21-560 - to the extent it could possibly be construed to conflict with the language in S.C. Code Ann. § 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.").

Therefore, Respondent contends that the ALC erred in finding that Petitioner is eligible for parole, extended work release, and supervised furlough, and the Court of Appeals properly reversed that decision. Petitioner, as an 85%, no-parole offender, is required to serve at least 85% of his sentence and then be released directly to community supervision pursuant to S.C. Code Ann. § 24-21-560(A).

CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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