

From: Pisarik, Holly
To: Salley Elliott (C057924) <Elliott.Salley@doc.sc.gov>
Date: 4/26/2016 10:09:41 AM
Subject: RE: Michael Heath Bolin v. SCDC

We don't typically instruct our agencies on how they should interpret the law. Can the two agencies not work together to create a consistent interpretation? I'm happy to be a part of those discussions if you would find that helpful.

From: Salley Elliott (C057924) [mailto:Elliott.Salley@doc.sc.gov]
Sent: Monday, April 25, 2016 2:19 PM
To: Pisarik, Holly
Subject: RE: Michael Heath Bolin v. SCDC

Holly:

Another matter has arisen respecting application of the *Bolin* decision discussed in the emails below. *Bolin* construes legislative intent regarding certain sentencing provisions of the 2010 Omnibus Crime Reduction and Sentencing Reform Act which rendered certain offenses non-85% offenses. When the Act passed, SCDC and PPPS agreed to designate June 2010 conviction/sentence as the effective date of the changes allowing for credits toward sentence satisfaction and to determine parole eligibility for the impacted drug offenses. Respecting parole, the interpretation made inmates convicted/sentenced after the Act's passage parole eligible, and those convicted/sentenced prior to the law not parole eligible.

A few days after we released the inmates per the *Bolin* decision based upon recalculation of sentences, SCDC learned that PPPS was interpreting *Bolin* as applying retroactively to anyone serving a sentence covered by the Act, and not just inmates sentenced on or after June 2010. It is my understanding that current counsel for PPPS was not aware of the earlier discussions and interpretation. It is also my understanding that PPPS was concerned that if the *Act/Bolin* decision applied only to offenders sentenced on or after the effective date of the Act, some inmates with offense dates prior to the Act would be parole eligible and some would not. It is my understanding that this inconsistency and research on retroactivity/legislative intent led PPPS to conclude the *Act/Bolin* should be fully retroactive. Argument and support exists for both interpretations. Unfortunately, there is now a discrepancy in treatment by SCDC and PPPS. PPPS applies it to anyone who was sentenced at any time, while SCDC applies it to anyone sentenced in June 2010 or after. If SCDC were to apply the Act (as interpreted by *Bolin*) retroactively in order to be consistent with PPPS, we would need to immediately release another approximately 190 inmates based on application of credits toward satisfaction of the sentence, and another 107 inmates' sentences would have to be recalculated. Please advise regarding the Governor's position on what SCDC should do.

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From: Salley Elliott (C057924)
Sent: Friday, March 18, 2016 10:54 AM
To: 'Pisarik, Holly'
Subject: RE: Michael Heath Bolin v. SCDC

CONFIDENTIAL LEGAL COMMUNICATION

Holly – the release of inmates based upon recalculations of sentences in compliance with the Court of Appeals decision in Bolin v. SCDC (discussed below) will occur Monday, March 21. SCDC will not issue a public statement about the matter but we are informing law enforcement associations and the solicitors through the Prosecution Coordination Commission. I will forward any information Stephanie Givens puts together in anticipation of possible questions we might receive. Let me know if you need any additional information. Thanks so much!

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From: Pisarik, Holly [<mailto:HollyPisarik@gov.sc.gov>]
Sent: Wednesday, March 02, 2016 10:57 AM
To: Salley Elliott (C057924)
Subject: RE: Michael Heath Bolin v. SCDC

We are comfortable with SCDC's decision not to appeal. Thanks.

From: Salley Elliott (C057924) [<mailto:Elliott.Salley@doc.sc.gov>]
Sent: Wednesday, March 02, 2016 10:43 AM
To: Pisarik, Holly
Subject: RE: Michael Heath Bolin v. SCDC

Holly – In case you need an official correction, this is to confirm that I intended to advise in the email below that the Director does not intend to pursue an appeal from the Court of Appeals to the S.C. Supreme Court. So sorry for the omission of this very important word! --Salley

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From: Salley Elliott (C057924)
Sent: Friday, February 26, 2016 4:12 PM
To: 'HollyPisarik@gov.sc.gov'; Bryan Stirling (C055056)
Cc: 'matthew.buchanan@ppp.sc.gov'; Christina Bigelow (C057846); Stephanie Givens (C055503)
Subject: Michael Heath Bolin v. SCDC

CONFIDENTIAL LEGAL EMAIL

The Director wanted me to reach out to let you know that he has reviewed and does intend to pursue an appeal from the Court of Appeals to the Supreme Court in Michael Heath Bolin v SCDC. It is the opinion of SCDC that additional appeal will not be successful and that the Court of Appeals' opinion clarified any statutory conflict and specifically stated the legislative intent.

As a matter of background information, the Court of Appeals reversed the decision of former Administrative Law Judge Carolyn Matthews in this case upholding a decision by SCDC regarding sentence credits and projected release date by treating inmate Bolin's convictions as an 85% but parolable offense. Using a statutory construction analysis, the Court of Appeals concluded that the 2010 Omnibus Crime Reduction and Sentencing Reform Act provided for parole eligibility, supervised furlough, work release, work credits, education credits, and good time credits for Bolin's offenses contrary to another statutory provision which previously made the offenses 85% offenses. SCDC petitioned for rehearing and requested for rehearing *en banc*. The Court of Appeals withdrew its November opinion and substituted and refiled an opinion on February 24, 2016. The substituted opinion corrected some factual inaccuracies but left end result of the opinion the same.

SCDC calculated in November that the Court of Appeals' opinion will result in the release of 167 inmates with offenses/sentences falling within the same category as Bolin. It will also reduce the number of individuals supervised by PPPS. We also calculated in November that the opinion will result in the release of 659 inmates in the next 18 months. We are requesting more current information regarding the number of inmates impacted.

Please call me if you have any questions or would like to discuss the appeal!

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