The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

N O T I C E

In the Matter of Scott Christen Allmon, Petitioner
Appellate Case No. 2016-000209

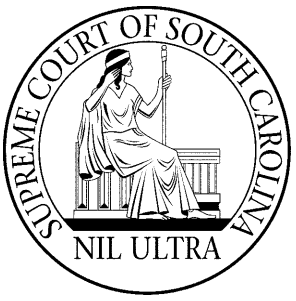
Petitioner was definitely suspended from the practice of law for one (1) year. *In the Matter of Allmon*, 407 S.C. 24, 753 S.E.2d 544 (2014). Petitioner has now filed a petition seeking to be reinstated.

Pursuant to Rule 33(e)(2) of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413 of the South Carolina Appellate Court Rules, notice is hereby given that members of the bar and the public may file a notice of their opposition to or concurrence with the petition. Comments should be mailed to:

Committee on Character and Fitness
P. O. Box 11330
Columbia, South Carolina 29211

These comments should be received within sixty (60) days of the date of this notice.

Columbia, South Carolina
February 18, 2016



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 8
February 24, 2016
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS

PETITIONS - UNITED STATES SUPREME COURT

PETITIONS FOR REHEARING

The South Carolina Court of Appeals

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

2016-UP-084-Esvin Leonel Lopez Perez v. Gino's The King of Pizza

2016-UP-085-State v. Tevin Hart

2016-UP-086-State v. Joseph Williams Dinkins

2016-UP-087-State v. Charles Preston Blackwell

2016-UP-088-State v. Dwayne Lee Rudd

2016-UP-089-William Breland v. S.C. Dep't of Transportation

2016-UP-090-Certus Bank, N.A. v. Kenneth E. Bennett

2016-UP-091-Kyle Pertuis v. Front Roe Restaurants, Inc.

2016-UP-092-State v. Sammie Lee Gerrick

PETITIONS FOR REHEARING

5359-Bobby Joe Reeves v. State	Pending
5361-Michael Bolin v. SCDC	Denied 02/24/16
5366-David Gooldy v. The Storage Center	Denied 02/19/16
5368-SCDOT v. David Powell	Denied 02/19/16
5372-Farid A. Mangal v. State	Denied 02/22/16
5373-Robert S. Jones v. Builders Investment Group	Denied 02/19/16
5374-David Repko v. Cty. of Georgetown	Pending
5375-Mark Kelley v. David Wren	Pending
5376-Paula Russell v. Wal-Mart Stores	Pending
2015-UP-328-Billy Lisenby v. SCDC (7)	Pending
2015-UP-505-Charles Carter v. SCDC (3)	Pending
2015-UP-517-Kevin Fowler v. SCDC	Denied 02/18/16

2015-UP-523-State v. Gary Lane Prewitt	Pending
2015-UP-559-West Webb Mitchum v. State	Denied 02/19/16
2015-UP-564-State v. Tonya McAlhaney	Denied 02/19/16
2015-UP-568-State v. Damian Anderson	Granted 02/24/16
2015-UP-572-KNS Foundation v. City of Myrtle Beach	Pending
2015-UP-574-State v. Brett D. Parker	Denied 02/19/16
2016-UP-010-State v. James C. Dill, Jr.	Pending
2016-UP-011-James C. Helms v. State	Denied 02/22/16
2016-UP-012-Whelthy McKune v. State	Pending
2016-UP-013-Cathy J. Swicegood v. Polly A. Thompson	Denied 02/19/16
2016-UP-015-Onrae Williams v. State	Pending
2016-UP-021-State v. Darius Ransom-Williams	Denied 02/19/16
2016-UP-022-State v. Michael Anderson Manigan	Pending
2016-UP-023-Frankie Lee Bryant v. State	Pending
2016-UP-028-Arthur Washington v. Resort Services	Pending
2016-UP-034-State v. Tyrel R. Collins	Pending
2016-UP-037-Joseph Gelotte v. Davis Roofing	Pending
2016-UP-039-State v. Fritz A. Timmons	Pending
2016-UP-040-State v. Jonathan Xavier Miller	Pending
2016-UP-047-State v. Zinah D. Jennings	Pending
2016-UP-052-Randall Green v. Wayne Bauerle	Pending

PETITIONS-SOUTH CAROLINA SUPREME COURT

5209-State v. Tyrone Whatley	Pending
5247-State v. Henry Haygood	Pending
5250-Precision Walls v. Liberty Mutual Fire Ins.	Pending
5253-Sierra Club v. Chem-Nuclear	Pending
5254-State v. Leslie Parvin	Pending
5295-Edward Freiburger v. State	Pending
5301-State v. Andrew T. Looper	Pending
5304-State v. Kenneth Andrew Lynch	Denied 02/16/16
5307-George Ferguson v. Amerco/U-Haul	Denied 02/12/16
5308-Henton Clemmons v. Lowe's Home Centers	Pending
5312-R. C. Frederick Hanold, III v. Watson's Orchard POA	Pending
5313-State v. Raheem D. King	Pending
5314-State v. Walter M. Bash	Pending
5317-Michael Gonzales v. State	Pending
5322-State v. Daniel D. Griffin	Pending
5324-State v. Charles A. Cain	Pending
5326-Denise Wright v. PRG	Pending
5328-Matthew McAlhaney v. Richard McElveen	Pending
5329-State v. Stephen Douglas Berry	Pending
5331-State v. Thomas Stewart	Pending

5332-State v. Kareem Harry	Pending
5333-Yancey Roof v. Kenneth A. Steele	Pending
5335-Norman J. Hayes v. State	Pending
5336-Phillip Flexon v. PHC-Jasper, Inc.	Pending
5337-Ruben Ramirez v. State	Pending
5338-Bobby Lee Tucker v. John Doe	Pending
5341-State v. Alphonso Thompson	Pending
5342-John Goodwin v. Landquest	Pending
5344-Stoneledge v. IMK Development (Southern Concrete)	Pending
5345-Jacklyn Donevant v. Town of Surfside Beach	Pending
5346-State v. Lamont A. Samuel	Pending
5347-George Glassmeyer v. City of Columbia	Pending
5348-Gretchen A. Rogers v. Kenneth E. Lee	Pending
5351-State v. Sarah D. Cardwell	Pending
5352-Ken Lucero v. State	Pending
5355-State v. Lamar Sequan Brown	Pending
2014-UP-446-State v. Ubaldo Garcia, Jr.	Denied 02/12/16
2014-UP-470-State v. Jon Wynn Jarrard, Sr.	Granted 02/16/16
2015-UP-010-Latonya Footman v. Johnson Food Services	Pending
2015-UP-031-Blue Ridge Electric v. Kathleen Gresham	Pending
2015-UP-041-Nathalie Davaut v. USC	Granted 02/12/16

2015-UP-065-Glenda Couram v. Lula Davis	Denied 02/12/16
2015-UP-069-Amie Gitter v. Morris Gitter	Pending
2015-UP-091-U.S. Bank v. Kelley Burr	Pending
2015-UP-167-Cynthia Griffis v. Cherry Hill Estates	Pending
2015-UP-174-Tommy S. Adams v. State	Pending
2015-UP-176-Charles Ray Dean v. State	Pending
2015-UP-201-James W. Trexler v. The Associated Press	Pending
2015-UP-203-The Callawassie Island v. Arthur Applegate	Denied 02/12/16
2015-UP-208-Bank of New York Mellon v. Rachel R. Lindsay	Pending
2015-UP-209-Elizabeth Hope Rainey v. Charlotte-Mecklenburg	Pending
2015-UP-215-Ex Parte Tara Dawn Shurling (In re: State v.Harley)	Pending
2015-UP-248-South Carolina Electric & Gas v. Anson	Pending
2015-UP-256-State v. John F. Kennedy	Denied 02/16/16
2015-UP-259-Danny Abrams v. City of Newberry	Pending
2015-UP-262-State v. Erick Arroyo	Pending
2015-UP-266-State v. Gary Eugene Lott	Pending
2015-UP-269-Grand Bees Development v. SCDHEC	Pending
2015-UP-273-State v. Bryan M. Holder	Pending
2015-UP-275-State v. David E. Rosier	Denied 02/16/16
2015-UP-280-State v. Calvin Pompey	Pending
2015-UP-300-Peter T. Phillips v. Omega Flex, Inc.	Pending

2015-UP-303-Charleston County Assessor v. LMP Properties	Pending
2015-UP-304-Robert K. Marshall, Jr. v. City of Rock Hill	Pending
2015-UP-307-Allcare Medical v. Ahava Hospice	Pending
2015-UP-311-State v. Marty Baggett	Pending
2015-UP-320-American Community Bank v. Michael R Brown	Pending
2015-UP-327-State v. Shawn Justin Burris	Pending
2015-UP-330-Bigford Enterprises v. D. C. Development	Pending
2015-UP-331-Johnny Eades v. Palmetto Cardiovascular	Pending
2015-UP-333-Jennifer Bowzard v. Sheriff Wayne Dewitt	Pending
2015-UP-339-LeAndra Lewis v. L. B. Dynasty, Inc.	Pending
2015-UP-344-Robert Duncan McCall v. State	Pending
2015-UP-345-State v. Steve Young	Denied 02/16/16
2015-UP-350-Ebony Bethea v. Derrick Jones	Pending
2015-UP-351-Elite Construction v. Doris Tummillo	Pending
2015-UP-353-Wilmington Savings Fund v. Furmanchik	Pending
2015-UP-357-Linda Rodarte v. USC	Pending
2015-UP-359-In the matter of the estate of Alice Shaw Baker (Fisher v. Huckabee)	Pending
2015-UP-361-JP Morgan Chase Bank v. Leah Sample	Pending
2015-UP-362-State v. Martin D. Floyd	Pending
2015-UP-364-Andrew Ballard v. Tim Roberson	Pending
2015-UP-365-State v. Ahmad Jamal Wilkins	Pending

2015-UP-367-Angela Patton v. Dr. Gregory A. Miller	Pending
2015-UP-372-State v. Sheldon L. Kelly	Pending
2015-UP-376-Ron Orlosky v. Law Office of Jay Mullinax	Pending
2015-UP-377-Long Grove at Seaside v. Long Grove Property Owners (James, Harwick & Partners)	Pending
2015-UP-378-State v. James Allen Johnson	Pending
2015-UP-381-State v. Stepheno J. Alston	Pending
2015-UP-382-State v. Nathaniel B. Beeks	Pending
2015-UP-384-Robert C. Schivera v. C. Russell Keep, III	Pending
2015-UP-388-Joann Wright v. William Enos	Pending
2015-UP-391-Cambridge Lakes v. Johnson Koola	Pending
2015-UP-395-Brandon Hodge v. Sumter County	Pending
2015-UP-402-Fritz Timmons v. Browns AS RV and Campers	Pending
2015-UP-403-Angela Parsons v. Jane Smith	Pending
2015-UP-414-Christopher A. Wellborn v. City of Rock Hill	Pending
2015-UP-417-State v. Raheem Jamar Bonham	Pending
2015-UP-423-North Pleasant, LLC v. SC Coastal Conservation	Pending
2015-UP-427-William McFarland v. Sofia Mazell	Pending
2015-UP-428-Harold Threlkeld v. Lyman Warehouse, LLC	Pending
2015-UP-429-State v. Leonard E. Jenkins	Pending
2015-UP-432-Barbara Gaines v. Joyce Ann Campbell	Pending
2015-UP-439-Branch Banking and Trust Co. v. Sarah L. Gray	Pending

2015-UP-444-Bank of America v. Duce Staley	Denied 02/12/16
2015-UP-446-State v. Tiphani Marie Parkhurst	Pending
2015-UP-455-State v. Michael L. Cardwell	Pending
2015-UP-465-Dushun Staten v. State	Pending
2015-UP-466-State v. Harold Cartwright, III	Pending
2015-UP-474-Edward Whitner v. State	Pending
2015-UP-476-State v. Jon Roseboro	Pending
2015-UP-477-State v. William D. Bolt	Pending
2015-UP-478-State v. Michael Camp	Pending
2015-UP-485-State v. Alfonzo Alexander	Pending
2015-UP-491-Jacquelin S. Bennett v. T. Heyward Carter, Jr.	Pending
2015-UP-501-State v. Don-Survi Chisolm	Pending
2015-UP-513-State v. Wayne A. Scott, Jr.	Pending
2015-UP-518-SCDSS v. Bruce Walters	Pending
2015-UP-540-State v. Michael McCraw	Pending

The Supreme Court of South Carolina

In the Matter of J. Michael Farrell, Respondent.

Appellate Case No. 2016-000293

ORDER

The Office of Disciplinary Counsel asks this Court to place respondent on interim suspension pursuant to Rule 17(a) of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). Respondent consents to the issuance of an order of interim suspension in this matter.

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of this Court.

Respondent is hereby enjoined from taking any action regarding any trust, escrow, operating, and any other law office account(s) respondent may maintain at any bank or other financial institution, including, but not limited to, making any withdrawal or transfer, or writing any check or other instrument on the account(s).

Within fifteen (15) days of this order, respondent shall serve and file the affidavit required by Rule 30, RLDE. Should respondent fail to timely file the required affidavit, respondent may be held in civil and/or criminal contempt of this Court as provided by Rule 30, RLDE.

s/ Costa M. Pleicones C.J.

Columbia, South Carolina
February 19, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Michael Heath Bolin, #341806, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2014-000461

Appeal From The Administrative Law Court
Carolyn C. Matthews, Administrative Law Judge

Opinion No. 5361
Heard September 8, 2015 – Filed November 12, 2015
Withdrawn, Substituted and Refiled February 24, 2016

REVERSED

Trent Neuell Pruett, of Pruett Law Firm, of Gaffney, for Appellant.

Christina Catoe Bigelow, of the South Carolina Department of Corrections, of Columbia, for Respondent.

GEATHERS, J.: Appellant Michael Bolin (Inmate) challenges a decision of the South Carolina Administrative Law Court (ALC) upholding a determination of the South Carolina Department of Corrections (DOC) that Inmate must serve eighty-five percent of his sentence before he is eligible for early release, discharge, or community supervision. Inmate argues that the eighty-five-percent requirement of

section 24-13-150 of the South Carolina Code (Supp. 2015) does not apply to any of the offenses to which he pled guilty because they are not considered "no-parole offenses." We reverse the ALC's decision.

FACTS/PROCEDURAL HISTORY

On May 15, 2012, Inmate pled guilty to possession of methamphetamine, second offense (possession), possession of methamphetamine with intent to distribute, second offense (intent to distribute), conspiracy to manufacture methamphetamine, second offense (conspiracy), and unlawful possession of a pistol. He was sentenced to five years' imprisonment on each methamphetamine offense and one year of imprisonment for the weapon offense, to run concurrently.

Curiously, after Inmate began serving his sentence, DOC informed him that he was eligible for parole on his conspiracy conviction and intent to distribute conviction under section 44-53-375(B) of the South Carolina Code (Supp. 2015) but if he was not granted parole, these offenses would thereafter be treated as no-parole offenses under section 24-13-100 of the South Carolina Code (2007) and section 24-13-150 of the South Carolina Code (Supp. 2015).[1] Section 24-13-150 requires an inmate convicted of a no-parole offense to serve at least eighty-five percent of his sentence before he is eligible for early release, discharge, or community supervision.[2] Section 24-13-100 defines the term "no-parole offense," in pertinent part, as "a class A, B, or C felony."[3] Whether a felony is a Class A, B, or C felony depends on the maximum sentence for the felony—a Class A felony is a felony punishable by not more than thirty years, a Class B felony is a felony

---

[1] Inmate committed these offenses on April 7, 2011, and July 12, 2011, respectively. Both parties agree that Inmate's other offenses, simple possession of methamphetamine, second offense, and possession of a pistol, are not subject to the eighty-five-percent requirement.

[2] Section 24-13-150(A) states, in pertinent part, "Notwithstanding any other provision of law, . . . 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."

[3] Section 24-13-100 was enacted in 1995. *See* Act No. 83, 1995 S.C. Acts 551.

punishable by not more than twenty-five years, and a Class C felony is a felony punishable by not more than twenty years. S.C. Code Ann. § 16-1-20 (2003).[4]

Subsequently, Inmate filed a Step 1 grievance form with DOC, stating that DOC incorrectly calculated his projected release date by requiring him to serve eighty-five percent of his sentence and, thus, treating his conspiracy and intent to distribute offenses as no-parole offenses under section 24-13-100. Inmate asserted that the amended provisions of section 44-53-375(B) preclude DOC from treating these offenses as no-parole offenses.[5] After this grievance was denied, Inmate filed a Step 2 grievance form, which was also denied.

Inmate appealed DOC's determination to the ALC, and the ALC upheld the determination. This appeal followed.

ISSUE ON APPEAL

Did the ALC err in concluding that Inmate must serve at least eighty-five percent of his sentence before he is eligible for early release, discharge, or community supervision?

STANDARD OF REVIEW

Section 1-23-610(B) of the South Carolina Code (Supp. 2015) sets forth the standard of review when this court is sitting in review of a decision by the ALC on an appeal from an administrative agency. Specifically, section 1-23-610(B) allows this court to reverse the ALC's decision if it violates a constitutional or statutory provision or is affected by any other error of law.[6] Here, the sole issue on review

---

[4] *See also* S.C. Code Ann. § 16-1-30 (2003) ("All criminal offenses created by statute after July 1, 1993, must be classified according to the maximum term of imprisonment provided in the statute and pursuant to Sections 16-1-10 and 16-1-20, except as provided in Section 16-1-10(D)."); S.C. Code Ann. § 16-1-10(D) (Supp. 2015) (listing offenses that are exempt from classification).

[5] Inmate also complained that DOC incorrectly classified his conspiracy offense as a violent offense. DOC ultimately resolved this particular part of Inmate's grievance in his favor.

[6] S.C. Code Ann. § 1-23-610(B)(a), (d) (Supp. 2015).

involves a question of statutory interpretation, which is a question of law "subject to de novo review." *Barton v. S.C. Dep't of Prob. Parole & Pardon Servs.*, 404 S.C. 395, 414, 745 S.E.2d 110, 120 (2013).

Further, 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, 351, 688 S.E.2d 569, 575-76 (2010) (quotation marks omitted).

LAW/ANALYSIS

Inmate contends that the eighty-five-percent requirement of section 24-13-150 does not apply to his conspiracy and intent to distribute convictions because they are no longer considered no-parole offenses by virtue of the 2010 amendment to section 44-53-375(B), which addresses the possession, manufacture, or trafficking of methamphetamine. We agree.

As previously stated, section 24-13-150 requires an inmate who has been convicted of a no-parole offense to serve eighty-five percent of his sentence before he is eligible for "early release, discharge, or community supervision."[7] In addition

[7] In contrast, most inmates who have been convicted of a parolable, nonviolent offense are required to serve only twenty-five percent of their sentences before becoming eligible for parole. *See* S.C. Code Ann. § 24-21-610 (2007) (requiring a prisoner convicted of a parolable, nonviolent offense to serve "at least one-fourth of the term of a sentence" before the Parole Board "may . . . parole" the prisoner). Of course, an inmate's eligibility for parole merely gives the Parole Board the *authority* to grant parole—the decision to grant or deny parole is within the Parole Board's discretion, as indicated by the legislature's use of the word "may" in section 24-21-610. *See Robertson v. State*, 276 S.C. 356, 358, 278 S.E.2d 770, 771 (1981) ("Ordinarily, 'may' signifies permission and generally means the action spoken of is optional or discretionary."). Notably, if the Parole Board denies parole to an eligible inmate, it must review the inmate's case on a yearly basis. *See* S.C. Code Ann. § 24-21-620 (2007) ("Upon an affirmative determination, the prisoner must be granted a provisional parole or parole. Upon a negative

to the eighty-five-percent requirement, at least three additional consequences attach to a conviction for an offense categorized as "no-parole": (1) no-parole offenders are given significantly less credits for good conduct, work, or education than other offenders, (2) no-parole offenders are required to participate in a community supervision program before their sentences are considered completed, and (3) no-parole offenders are required to serve eighty percent of their sentences before they are eligible for work release.[8]

Prior to June 2, 2010, conspiracy to manufacture methamphetamine, second offense, and possession with intent to distribute methamphetamine, second offense, were in fact considered no-parole offenses. In other words, section 44-53-375(B) imposed a maximum sentence of thirty years for a second offense of possession with intent to distribute methamphetamine or conspiracy to manufacture methamphetamine. *See* Act No. 127, 2005 S.C. Acts 1497 (increasing the maximum sentence from twenty-five to thirty years). Accordingly, these offenses were considered Class A felonies and, thus, no-parole offenses. *See* S.C. Code Ann. § 16-1-20(A) (2003) (stating that a person convicted of a Class A felony must be imprisoned for "not more than thirty years"); S.C. Code Ann. § 24-13-100 (2007) (including a Class A felony in the definition of no-parole offense).

However, on June 2, 2010, the Omnibus Crime Reduction and Sentencing Reform Act of 2010 (the Act) became effective. While the Act did not amend the definition of the term "no-parole offense" in section 24-13-100 or decrease the maximum sentence for a second offense of possession with intent to distribute

---

determination, the prisoner's case shall be reviewed every twelve months thereafter for the purpose of such determination.").

[8] *See* S.C. Code Ann. § 24-13-125(A) (Supp. 2015) (requiring no-parole offenders to serve eighty percent of their sentences before becoming eligible for work release); S.C. Code Ann. § 24-13-210(A), (B) (Supp. 2015) (allowing twenty days of good conduct credits for each month served for inmates convicted of parolable offenses versus three days for each month served for no-parole offenders); S.C. Code Ann. § 24-13-230(A), (B) (Supp. 2015) (allowing zero to one day of work or education credit for every two days of employment or enrollment for inmates convicted of parolable offenses versus six days for every month of employment or enrollment for no-parole offenders); S.C. Code Ann. § 24-21-560(A) (2007) (requiring no-parole offenders to participate in a community supervision program).

methamphetamine or conspiracy to manufacture methamphetamine, it added the following language to section 44-53-375(B): "*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." 2010 Act No. 273, § 38 (emphases added). Similar language was added to subsection (A) of section 44-53-375 and various provisions in section 44-53-370 covering controlled substances.

The legislature's use of the phrase "Notwithstanding any other provision of law," in the amendments to sections 44-53-375 and -370 expresses its intent to repeal section 24-13-100 *to the extent* it conflicts with amended sections 44-53-375 and -370. *See Stone v. State*, 313 S.C. 533, 535, 443 S.E.2d 544, 545 (1994) (holding that when two statutes "are in conflict, the more recent and specific statute should prevail so as to repeal the earlier, general statute"); *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."); *Strickland v. State*, 276 S.C. 17, 19, 274 S.E.2d 430, 432 (1981) ("[S]tatutes of a specific nature are not to be considered as repealed in whole or in part by a later general statute *unless* there is a direct reference to the former statute or *the intent of the legislature to do so is explicitly implied therein*." (emphases added)). Even if the language of section 24-13-100 could be considered more specific than the amendment to section 44-53-375(B), the intent to repeal section 24-13-100 to the extent it conflicts with the amendments to sections 44-53-370 and -375 is "explicitly implied" in the language of the amendments stating, "Notwithstanding any other provision of law." *See Strickland*, 276 S.C. at 19, 274 S.E.2d at 432 ("[S]tatutes of a specific nature are not to be considered as repealed in whole or in part by a later general statute *unless* there is a direct reference to the former statute or *the intent of the legislature to do so is explicitly implied therein*." (emphases added)). Without this implicit repeal, the amendments themselves would be meaningless. *See State v. Long*, 363 S.C. 360, 364, 610 S.E.2d 809, 811 (2005) ("The legislature is presumed to intend that its statutes accomplish something.").

DOC admits that amended section 44-53-375(B) allows a person convicted of a second offense to be eligible for parole. However, according to DOC, a

second offense under section 44-53-375(B) is still considered a no-parole offense unless the inmate is granted parole. During oral arguments, DOC asserted that the terms "parole eligible" and "no-parole offense" are defined differently. DOC argued, "a no-parole offense, as defined in [section] 24-13-100, is not defined by whether or not someone is eligible for parole." DOC further argued that the determination of parole eligibility and the application of good conduct, work or education credits to a sentence for a no-parole offense are two separate "parallel courses and both of those interpretations of [the] statutes do not conflict with one another." We disagree.

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.[9] This interpretation is consistent with provisions in related statutes stating that a no-parole offender is not eligible for parole.[10] Thus, 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.[11] This is the

---

[9] *See Sweat*, 386 S.C. at 350, 688 S.E.2d at 575 ("The Court should give words their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." (quotation marks omitted)); *id.* ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." (quotation marks omitted)).

[10] *See* S.C. Code Ann. § 24-21-30(A) (2007) ("A person who commits a 'no[-]parole offense' as defined in Section 24-13-100 on or after the effective date of this section is not eligible for parole consideration . . . ."); § 24-21-30(B) ("Nothing in this subsection may be construed to allow any person who commits a 'no[-]parole offense' as defined in Section 24-13-100 on or after the effective date of this section to be eligible for parole."); *Beaufort Cnty. v. S.C. State Election Comm'n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011) ("[I]t 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.").

[11] *See Sweat*, 386 S.C. at 350, 688 S.E.2d at 575 ("All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be

situation with a second offense under amended section 44-53-375(B), which still carries a maximum sentence of thirty years, rendering the offense a class A felony. Therefore, the definition of no-parole offense in section 24-13-100 conflicts with the legislative intent of the Act to exempt a second offense under section 44-53-375(B) from all the consequences of a no-parole offense.

In addition to the plain language of the amendment itself, legislative intent is expressly stated in Section I 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.

2010 Act No. 273, § 1 (emphases added). Hence, one of the Act's objectives is to conserve taxpayer dollars by allowing earlier release dates for inmates convicted of less serious offenses.

---

construed in light of the intended purpose of the statute." (quotation marks omitted)); *id.* ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers."); *id.* at 351, 688 S.E.2d at 575 ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention."); *State v. Johnson*, 396 S.C. 182, 188, 720 S.E.2d 516, 520 (Ct. App. 2011) ("In interpreting a statute, the court will give words their plain and ordinary meaning, and will not resort to forced construction that would limit or expand the statute.").

DOC ignores the purpose of the Act and argues that amended section 44-53-375 does not conflict with sections 24-13-100 and -150 because offenders can be afforded each item listed in the amendment, i.e., parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits, without altering an eighty-five-percent service requirement for those not granted parole. DOC explains that none of the items in this list are incompatible with a requirement that an offender not granted parole serve eighty-five percent of his sentence. In support of this argument, DOC cites the following provisions: S.C. Code Ann. § 24-13-210(B) (Supp. 2015) (providing for good conduct credits at the rate of three days for each month served for no-parole offenders subject to the eighty-five-percent requirement); S.C. Code Ann. § 24-13-230(B) (Supp. 2015) (providing for work or education credits at the rate of six days for every month of employment or enrollment for no-parole offenders); S.C. Code Ann. § 24-21-560(A) (2007) (requiring no-parole offenders to participate in a community supervision program).

However, as we previously indicated, *supra*, there is a stark contrast between the credits allowed for inmates convicted of parolable offenses and the credits allowed for no-parole offenders. *See* S.C. Code Ann. § 24-13-210(A), (B) (Supp. 2015) (allowing twenty days of good conduct credits for each month served for inmates convicted of parolable offenses versus three days for each month served for no-parole offenders); S.C. Code Ann. § 24-13-230(A), (B) (Supp. 2015) (allowing zero to one day of work or education credit for every two days of employment or enrollment for inmates convicted of parolable offenses versus six days for every month of employment or enrollment for no-parole offenders).

Further, DOC has not explained away the following language from the amendment: "[A] person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted . . . ." S.C. Code Ann. § 44-53-375(B) (Supp. 2015) The incongruity between this express allowance and the eighty-five-percent requirement that applies to no-parole offenses makes it unlikely that the legislature intended for this requirement to apply to the amended provisions of section 44-53-375(B).

DOC also argues that Inmate's interpretation of the amendment would render the language referencing community supervision meaningless because "only offenders serving sentences for 'no[-]parole offenses' are required to participate in

community supervision." That may have been true before the amendments to sections 44-53-370 and -375 were enacted, but these amendments now *expressly allow* offenders to participate in community supervision as an alternative to the use of taxpayer funds to house them in prison. *See* S.C. Code Ann. § 44-53-375(B) (Supp. 2015) ("Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense . . . is eligible for . . . community supervision . . . ."); 2010 Act No. 273, § 1 ("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." (emphasis added)).

Based on the foregoing, we hold that a second offense under section 44-53-375(B) is no longer a no-parole offense. *See Sweat*, 386 S.C. at 350, 688 S.E.2d at 575 ("All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." (quotation marks omitted)). Therefore, the ALC erred in rejecting Inmate's interpretation of the statutes in question.

CONCLUSION

Accordingly, we reverse the ALC's decision.

REVERSED.

SHORT and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Marc A. Palmer, Appellant.

Appellate Case No. 2013-000700

Appeal From Williamsburg County
W. Jeffrey Young, Circuit Court Judge

Opinion No. 5382
Heard November 3, 2015 – Filed February 24, 2016

AFFIRMED AND VACATED IN PART

Ryan Lewis Beasley, of Ryan L. Beasley, P.A., of Greenville, and Chief Appellate Defender Robert Michael Dudek, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, and Assistant Attorney General Alphonso Simon, Jr., all of Columbia, and Solicitor Ernest Adolphus Finney, III, of Sumter, for Respondent.

SHORT, J.: Marc Palmer appeals his convictions for murder and possession of a weapon during the commission of a violent crime. He argues the trial court erred in: (1) granting the State's *Batson v. Kentucky*, 476 U.S. 79 (1986), motion; (2) denying his motion for a mistrial and a motion for a new trial; (3) denying his motion for a speedy trial; (4) admitting his statement to law enforcement after he invoked his right to counsel; and (5) sentencing him for possession of a weapon during the commission of a violent crime after sentencing him to life imprisonment without parole for murder. We affirm and vacate in part.

FACTS

On October 28, 2010, at about 10:30 p.m., Therris Keels (Victim) was shot and killed. Victim was shot twice: once in the head and once in the abdomen.

There were several witnesses to the shooting. Maurice Smith saw Palmer point a gun at Victim. Victim put his hands up as if to let Palmer know he did not have a gun. Palmer shot Victim two times and walked away. He then turned around, shot Victim another time as he lay on the ground, and ran off. Smith then heard the familiar squealing sound of Palmer's car.

Brittany Croskey also observed the shooting. She saw someone pacing back and forth along the road and recognized the distinctive walk as belonging to Palmer. She saw Victim hold his hands up and heard two gun shots. She then saw the person who was pacing walk over to Victim, who was on the ground, and shoot him again.

Levar Wesley Walker saw a man walk towards Victim, and Victim held his hands out. The man then reached in his pants, pulled out a gun, and shot Victim two times. He testified the man had a "ponytail puffed up with hair." Walker said that prior to the shooting, he had seen Palmer wear his hair in a "ponytail puffed out."

Witnesses also testified that Victim and Palmer had a history of fighting. Smith testified he saw Palmer and Victim in a physical fight prior to the night Victim was shot, and Palmer told Victim it "wasn't over." Smith also saw Palmer fighting a few weeks prior to the shooting with another man, Dominique McBride, and during the fight, Palmer "dropped" a gun.

Detrel Matthews likewise testified he saw Palmer and Victim in an argument prior to the shooting. Matthews also saw Palmer fight McBride a few weeks prior to the shooting and saw what appeared to be a gun fall out of Palmer's waistband. Investigator Wayne McFadden with the Williamsburg County Sheriff's Office testified Matthews told him his brother returned a .45 caliber handgun to Palmer before the shooting.

Investigator McFadden obtained surveillance video from a business close to the shooting, and observed a greenish-colored Neon, missing a hubcap on the front driver's-side tire, traveling down the road at about the same time the 9-1-1 call was received. Smith testified Palmer drove a greenish-blueish Neon. Palmer later admitted it was his car on the video. Police recovered three .45-caliber shell casings from the scene of the shooting.

John Creech, a senior agent with the South Carolina Law Enforcement Division (SLED), interviewed Palmer on October 29, 2010, at 4:40 p.m. He gave Palmer his *Miranda*[1] rights, and Palmer waived them. Palmer told the police he and Victim had an argument earlier on the day of the shooting. He said he left the club that night at about 10:10 p.m. and drove until he ran out of gas. He then called a person named "Smoke" for a ride home at 3:00 a.m. Creech testified no one could account for Palmer's whereabouts from 10:10 p.m. until 3:00 a.m. Investigator McFadden viewed video surveillance at a gas station where Palmer told police he was during the time of the shooting, but he did not see Palmer's vehicle on the footage. The police did not find any gunshot residue or blood on Palmer's clothes. No fingerprints were found on the shell casings or a soda can found at the scene of the shooting. The only DNA recovered that could be analyzed belonged to Victim.

A trial was held March 11-14, 2013. The jury found Palmer guilty of murder and possession of a weapon during the commission of a violent crime. Palmer moved for a new trial for the same reasons asserted in his motion for directed verdict, motion for mistrial, motion in limine, and a speedy trial. The court denied the motion. The court sentenced him to life in prison for murder, plus five years for possession of a weapon during the commission of a violent crime, to be served consecutively. This appeal followed.

[1] *Miranda v. Arizona*, 384 U.S. 436, 475 (1966).

STANDARD OF REVIEW

In criminal cases, this court sits to review errors of law only, and is bound by the trial court's factual findings unless those findings are clearly erroneous. *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). Thus, on review, the court is limited to determining whether the trial court abused its discretion. *Id.* An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). The appellate court "does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." *Edwards*, 384 S.C. at 508, 682 S.E.2d at 822.

LAW/ANALYSIS

I. Preemptory Challenges

Palmer argues the trial court erred in granting the State's *Batson v. Kentucky* motion. We disagree.

In *Batson*, 476 U.S. at 89, the Supreme Court of the United States held the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States forbids a prosecutor from challenging potential jurors solely on account of their race or on the assumption that African American jurors as a group will be unable to impartially consider the State's case against an African American defendant. In *Georgia v. McCollum*, 505 U.S. 42, 59 (1992), the Supreme Court held the Constitution also prohibits a criminal defendant from engaging in purposeful racial discrimination in the exercise of peremptory challenges. Additionally, the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States prohibits the striking of a potential juror based on race or gender. *State v. Evins*, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007). When one party strikes a member of a cognizable racial group or gender, the trial court must hold a *Batson* hearing if the opposing party requests one. *State v. Haigler*, 334 S.C. 623, 629, 515 S.E.2d 88, 90 (1999).

In *State v. Giles*, our supreme court explained the proper procedure for a *Batson* hearing:

> First, the opponent of the peremptory challenge must make a prima facie showing that the challenge was based on race. If a sufficient showing is made, the trial court will move to the second step in the process, which requires the proponent of the challenge to provide a race neutral explanation for the challenge. If the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the opponent of the challenge has proved purposeful discrimination.

407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014) (internal citations omitted).

"While '[m]erely denying a discriminatory motive' is insufficient, the proponent of the strike need only present race or gender neutral reasons." *State v. Casey*, 325 S.C. 447, 451-52, 481 S.E.2d 169, 171-72 (Ct. App. 1997) (quoting *State v. Watts*, 320 S.C. 377, 380, 465 S.E.2d 359, 362 (Ct. App. 1995)). "[A] 'legitimate reason' is not a reason that makes sense, but a reason that does not deny equal protection." *Purkett v. Elem*, 514 U.S. 765, 769 (1995). The explanation "need not be persuasive, or even plausible, but it must be clear and reasonably specific such that the opponent of the challenge has a full and fair opportunity to demonstrate pretext in the reason given and the trial court to fulfill its duty to assess the plausibility of the reason in light of all the evidence with a bearing on it." *Giles*, 407 S.C. at 21-22, 754 S.E.2d at 265. "The burden of persuading the court that a *Batson* violation has occurred remains at all times on the opponent of the strike." *Evins*, 373 S.C. at 415, 645 S.E.2d at 909. The opponent of the strike is required show the race-neutral or gender-neutral explanation was mere pretext, which generally is established by showing the party did not strike a similarly-situated member of another race or gender. *Haigler*, 334 S.C. at 629, 515 S.E.2d at 91.

"Whether a *Batson* violation has occurred must be determined by examining the totality of the facts and circumstances in the record." *Edwards*, 384 S.C. at 509, 682 S.E.2d at 822. "Under some circumstances, the race-neutral explanation given by the proponent may be so fundamentally implausible that the [trial court] may determine . . . the explanation was mere pretext even without a showing of disparate treatment." *Haigler*, 334 S.C. at 629, 515 S.E.2d at 91 (quoting *Payton v.*

Kearse, 329 S.C. 51, 55, 495 S.E.2d 205, 207 (1998)). "The trial [court's] findings of purposeful discrimination rest largely on [its] evaluation of demeanor and credibility." *Edwards*, 384 S.C. at 509, 682 S.E.2d at 823. "Often the demeanor of the challenged attorney will be the best and only evidence of discrimination, and an 'evaluation of the [attorney's] mind [based on demeanor and credibility] lies peculiarly within a trial [court's] province.'" *Id.* (quoting *Hernandez v. New York*, 500 U.S. 352, 365 (1991)). The [trial court's] findings regarding purposeful discrimination are given great deference and will not be set aside by this court unless clearly erroneous. *Evins*, 373 S.C. at 416, 645 S.E.2d at 909-10. "This standard of review, however, is premised on the trial court following the mandated procedure for a *Batson* hearing." *State v. Cochran*, 369 S.C. 308, 312, 631 S.E.2d 294, 297 (Ct. App. 2006). "[W]here the assignment of error is the failure to follow the *Batson* hearing procedure, we must answer a question of law. When a question of law is presented, our standard of review is plenary." *Id.* at 312-13, 631 S.E.2d at 297.

"If a trial court improperly grants the State's *Batson* motion, but none of the disputed jurors serve on the jury, any error in improperly quashing the jury is harmless because a defendant is not entitled to the jury of her choice." *Edwards*, 384 S.C. at 509, 682 S.E.2d at 823 (citing *State v. Rayfield*, 369 S.C. 106, 114, 631 S.E.2d 244, 248 (2006)). "However, if one of the disputed jurors is seated on the jury, then the erroneous *Batson* ruling has tainted the jury and prejudice is presumed in such cases 'because there is no way to determine with any degree of certainty whether a defendant's right to a fair trial by an impartial jury was abridged.'" *Id.* (quoting *Rayfield*, 369 at 114, 631 S.E.2d at 248). If this occurs, the proper remedy in such cases is the granting of a new trial. *Id.*

During jury selection, Palmer exercised peremptory strikes on white and black jurors. He struck nine white jurors and two black jurors. The State requested a *Batson* hearing, asserting Palmer's strikes were not race neutral.

Palmer testified as to the following reasons for striking each white juror:

- Juror 46 had employment with Williamsburg County, and he strikes county employees when the Sheriff's Office makes a case for the county.

- Juror 178 was employed by the South Carolina Department of Natural Resources and potentially had a law enforcement connection and was sympathetic to law enforcement.

- Juror 31 was employed by the Department of Social Services (DSS) and anyone involved in DSS may potentially be sympathetic to law enforcement.

- Juror 97 was employed by the United States Postal Service, and based on his employment, he may have sympathies for law enforcement.

- Juror 136 was a Hemingway resident and worked for the steel company in the electrician field. Palmer explained there were technical issues involving Palmer's car, and the juror could sway other jurors based on his training.

- Juror 173 was a plant supervisor, and given his supervisory capacity, he was potentially unsympathetic to Palmer.

- Juror 7's daughter was involved in a criminal case as a victim or a witness.

- Juror 5's wife was a registered nurse in the operating room, and operating room nurses have relationships with law enforcement and are sympathetic with law enforcement.

- Juror 29 was a paramedic, and paramedics have a close relationship with law enforcement.

In response, the State asserted Palmer testified he struck white jurors because they were government employees. However, Palmer seated Juror 27, a black male, who was retired from the County Transit Authority and would be no different from Juror 97, who was also a government employee. Jurors 27, 61, and 87 were from Hemingway, and Palmer struck Juror 136 for being from Hemingway. Palmer also seated Juror 12, a black female, who worked at the Georgetown Hospital as a certified nursing assistant, and her brother was a witness in the case. The State asserted she was no different from Juror 29, who was a paramedic, and Juror 5, whose wife was a nurse. Therefore, the State argued some of the reasons advanced by Palmer were pretextual because he seated similarly-situated black jurors.

Palmer responded his concern with Juror 136 was more that he was a mechanic than that he was from Hemingway. As to the bus driver who was not struck, Palmer asserted she would not have similar leanings supporting law enforcement as the other government employees because they are employed within the government walls. The court stated it was not convinced the answers were race neutral; therefore, it granted the State's *Batson* motion and redrew the jury.

We acknowledge that Palmer's stated concerns that Jurors 46, 178, 31, and 97 were government employees who interacted regularly with law enforcement were race neutral reasons to strike. *Id.* at 510, 682 S.E.2d at 823 (stating petitioners' stated concern that juror 131 was a state employee who interacted regularly with law enforcement was a race neutral reason to strike). Palmer's concerns about Jurors 136, 173, and 29's jobs also were race-neutral reasons to strike. *Id.* ("Employment is a well-understood and recognized consideration in the exercise of peremptory challenges."); *State v. Ford*, 334 S.C. 59, 65, 512 S.E.2d 500, 504 (1999) (holding place of employment is a race-neutral reason for a strike); *State v. Adams*, 322 S.C. 114, 125, 470 S.E.2d 366, 372 (1996) (finding type of employment is a race-neutral reason for a strike). However, the State demonstrated the explanations were pretextual by showing Palmer did not strike similarly-situated members of another race. *See Haigler*, 334 S.C. at 629, 515 S.E.2d at 91 (providing an opponent of a strike must show the race or gender-neutral explanation was mere pretext, which generally is established by showing the party did not strike a similarly-situated member of another race or gender). Therefore, we find the trial court did not err in granting the State's *Batson* motion.

II. Motions for Mistrial and New Trial

Palmer argues the trial court erred in denying his motion for a mistrial and a motion for a new trial. We disagree.

"The decision to grant or deny a mistrial is within the sound discretion of the trial court." *State v. Harris*, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009). "The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." *Id.* "A mistrial should only be granted when absolutely necessary, and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." *Id.* "The granting of a motion for a mistrial is an extreme measure that should only be taken if an incident is so

grievous that the prejudicial effect can be removed in no other way." *Id.* The defendant must show error and resulting prejudice to receive a mistrial. *State v. Council*, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999), *cert. denied*, 528 U.S. 1050 (1999).

During trial, a witness was asked if he took a polygraph test. Palmer objected to the question, and the court overruled the objection. Palmer moved for a mistrial based upon the introduction of the fact that the witness took a polygraph test. The State responded that the reference to the polygraph was from a witness and not Palmer; thus, the motion for mistrial was improper and the witness' testimony that he took a polygraph test was relevant evidence. The court denied the motion for mistrial.

After the jury reached its verdict, Palmer moved for a new trial based upon the admission of the fact that the witness took a polygraph test. Palmer asserted the jury could infer the witness passed the polygraph and was no longer a suspect, and Palmer did not take a polygraph test because he could not pass one. He also asserted it was improper burden shifting. The State again asserted the reference to the polygraph was from a witness and not Palmer. The court denied Palmer's motion for a new trial:

> I find that it certainly appeared that he received a fair trial. I am going to deny your motion for a new trial and I don't believe that, by the witness concerning the polygraph and quite frankly I think that was one of your weaknesses that was called at that time. I am going to deny . . . .

Before our supreme court's decision in *Council*, the law of South Carolina was that evidence of polygraph examinations was generally inadmissible. *See State v. Johnson*, 334 S.C. 78, 90, 512 S.E.2d 795, 801 (1999) ("Evidence regarding the results of a polygraph test or the defendant's willingness or refusal to submit to one is inadmissible."); *State v. Wright*, 322 S.C. 253, 255, 471 S.E.2d 700, 701 (1996) ("Generally, the results of polygraph examinations are inadmissible because the reliability of the polygraph is questionable."). "Although [the court] in *Council* declined to recognize a *per se* rule against the admission of polygraph evidence, it indicated that the 'admissibility of this type of scientific evidence should be

analyzed under Rules 702 and 403, SCRE and the [*State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979)] factors.'" *Lorenzen v. State*, 376 S.C. 521, 533, 657 S.E.2d 771, 778 (2008) (quoting *Council*, 335 S.C. at 24, 515 S.E.2d at 520). Rule 403, SCRE, provides: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." "The general rule is that no mention of a polygraph test should be placed before the jury. It is thus incumbent upon the trial [court] to ensure that should such a reference be made, no improper inference be drawn therefrom." *State v. Johnson*, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007).

The State argues the question was intended solely to show the witness had cooperated with law enforcement during the investigation. The State asserts that no mention of the results of the polygraph were made and there was no mention of whether Palmer took or was offered a polygraph test. The State asserts Palmer suffered no prejudice from the evidence even if the trial court erred in allowing the question because the results of the witness' polygraph were not discussed at trial. Furthermore, the one question during the witness' cross-examination was the only reference to a polygraph during Palmer's trial.

To receive a mistrial, Palmer was required to show error and resulting prejudice. *See Council*, 335 S.C. at 13, 515 S.E.2d at 514. We find the trial court's decision not to grant a mistrial is supported by the evidence. First, the evidence admitted was simply that the witness took a polygraph test. The results of this test were not indicated at trial and are not mentioned anywhere in the record. While the jury could have inferred, as claimed by Palmer, that the witness passed the polygraph test and was no longer a suspect, and Palmer did not take a polygraph test because he could not pass one, an equally plausible inference is that Palmer was not asked to take a polygraph because there was no mention of Palmer being asked to take one. Because there was no evidence regarding the results of the witness' polygraph test, Palmer failed to meet his burden of establishing the prejudicial impact of this evidence. Further, the one reference to the witness taking a polygraph test was an isolated comment. Therefore, we find the trial court did not err in denying his motions.

III. Speedy Trial

Palmer argues the trial court erred in denying his motion for a speedy trial. We disagree.

A criminal defendant is guaranteed the right to a speedy trial. U.S. Const. amend. VI; S.C. Const. art. I, § 14. "This right 'is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges.'" *State v. Pittman*, 373 S.C. 527, 548-49, 647 S.E.2d 144, 155 (2007) (quoting *United States v. MacDonald*, 456 U.S. 1, 8 (1982)). A "'speedy trial does not mean an immediate one; it does not imply undue haste, for the [S]tate, too, is entitled to a reasonable time in which to prepare its case; it simply means a trial without unreasonable and unnecessary delay.'" *State v. Langford*, 400 S.C. 421, 441, 735 S.E.2d 471, 481-82 (2012) (quoting *Wheeler v. State*, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966)). "There is no universal test to determine whether a defendant's right to a speedy trial has been violated." *Evans*, 386 S.C. at 423, 688 S.E.2d at 586.

When determining whether a defendant has been deprived of his or her right to a speedy trial, this court should consider four factors: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion of the right; and (4) prejudice to the defendant. *State v. Brazell*, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997) (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). These four factors are related and must be considered together with any other relevant circumstances. *Barker*, 407 U.S. at 533. "Accordingly, the determination that a defendant has been deprived of this right is not based on the passage of a specific period of time, but instead is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense." *Pittman*, 373 S.C. at 549, 647 S.E.2d at 155. However, in *Doggett v. United States*, 505 U.S. 647, 652 n.1 (1992), the United States Supreme Court suggested in dicta that a delay of more than a year is "presumptively prejudicial." Also, in *State v. Waites*, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978), our supreme court found a two-year-and-four-month delay was sufficient to trigger further review. "[A] delay may be so lengthy as to require a finding of presumptive prejudice, and thus trigger the analysis of the other factors." *Pittman*, 373 S.C. at 549, 647 S.E.2d at 155.

In *State v. Evans*, 386 S.C. at 424-26, 688 S.E.2d at 586-87, this court found a twelve-year delay in bringing a case to trial did not violate the defendant's speedy trial right when the defendant's statement to police was suppressed; the appeals of the suppression order lasted five years; after the appeals, the case was transferred to an assistant solicitor and the solicitor was later elected solicitor of another circuit; and the defendant failed to establish she was prejudiced by the delay. In *State v. Cooper*, 386 S.C. 210, 217-18, 687 S.E.2d 62, 67 (Ct. App. 2009), this court held a delay of forty-four months did not violate the defendant's constitutional right to a speedy trial even though the delay was to some degree the result of prosecutorial and governmental negligence because any presumption of prejudice was persuasively rebutted when the State withdrew its notice to seek the death penalty. Thus, the court found the withdrawal could be construed as a benefit to the defendant resulting from the delay. *Id.*

Palmer responded to a warrant for his arrest by turning himself in to law enforcement on November 15, 2010. Palmer made a timely motion for a speedy trial on March 24, 2011, and renewed his motion on March 26, 2012, along with a motion to dismiss. Palmer was represented initially by Legrand Carraway of the Williamsburg County Public Defender's Office. Carraway was relieved as counsel, and W. James Hoffmeyer was later appointed. He was subsequently relieved as counsel, and William J. Barr was appointed on December 15, 2011. Barr was relieved as counsel on August 24, 2012, and E. Guy Ballenger was appointed on August 16, 2012. Ballenger was Palmer's counsel at the trial on March 11-14, 2013.

On March 5, 2013, Palmer filed a motion in limine. In his motion, he renewed his motion for a speedy trial and requested that his charges be dismissed. The motion was heard by the court after jury selection. The State argued that Carraway had previously represented the victim on an unrelated charge, and Palmer requested new counsel. Palmer also requested that Hoffmeyer file a motion to be relieved as counsel after his bond hearing. Palmer also consented to Barr's motion to be relieved as counsel. Therefore, the State asserted "it's not proper for him now to say because I fired all of these lawyers and my court is two years after I was arrested I'm now somehow prejudiced based on my own conduct."

The court denied his motion, stating:

> Alright based upon the criteria. It is two years out[.] I've seen longer and again the [sic] apparently a highly[-]technical case[.] [W]e've got over thirty something witnesses named in this. One of the reason [sic] obviously it appears to be at least Mr. Palmer being unsatisfied with his attorneys[.] I think he's now got a great attorney. You've tried cases in front of me before and been very successful. I understand that he has asserted this right at [a] point in time as he should have[,] but I don't find where he's [sic] could be unfairly prejudice[d] in this matter[,] and I'm going to deny your motion.

Palmer argues on appeal that the delay was not his fault. He asserts there is no evidence that any of his attorneys requested a continuance or indicated they needed time to prepare for the case. He argues the delay was caused by the State's failure to schedule the case for trial. He also argues he was prejudiced by the delay because he was incarcerated from his arrest until his trial, which hindered his ability to gather evidence, contact witnesses, or otherwise prepare his defense. Furthermore, there was no direct physical evidence linking Palmer to the murder, and Smith and Croskey were inconsistent in their testimony and statements. Finally, he was prejudiced by the death of a witness and the lack of memory by another witness.

Palmer's trial was held just shy of two years from the date of his first motion for a speedy trial. We find this delay was sufficient to trigger further review of his right to speedy trial, and he asserted his right three times. *See Waites*, 270 S.C. at 108, 240 S .E.2d at 653 (determining a two-year-and-four-month delay was sufficient to trigger further review). As for the reason for the delay, at the July 21, 2011 hearing, the solicitor noted Palmer's case would not be able to be tried until Spring 2012 because of other matters already scheduled. An additional reason for the delay was due to Palmer having four attorneys prior to trial. *See State v. Kennedy*, 339 S.C. 243, 250, 528 S.E.2d 700, 704 (Ct. App. 2000) (finding no violation of the defendant's right to a speedy trial, even though the delay was two years and two months, when the case was clearly complicated and required substantial time to investigate and prepare and there was no evidence the State purposefully delayed the trial); *State v. Smith*, 307 S.C. 376, 380, 415 S.E.2d 409, 411 (Ct. App. 1992)

(holding the burden was on the defendant to show the delay was due to the neglect and willfulness of the State's prosecution). As for prejudice to Palmer, he contended he was prejudiced because his case hinged on eyewitness testimony, and they may have difficulty in recalling. Palmer was able to challenge some witness' credibility by using their prior statements. *See Brazell*, 325 S.C. at 76, 480 S.E.2d at 70-71 (noting the three-year-and-five-month delay was negated by the lack of prejudice to the defense); *Kennedy*, 339 S.C. at 251, 528 S.E.2d at 704 ("While Kennedy may have been slightly prejudiced by the twenty-six month pretrial incarceration, the more important question is whether he was prejudiced because the delay impaired his defense."); *Langford*, 400 S.C. at 445, 735 S.E.2d at 484 (finding a two-year delay in bringing the case to trial did not amount to a constitutional violation in the absence of any actual prejudice to the defendant's case). Furthermore, the death of the one witness was not raised at trial; therefore, it is not preserved. Accordingly, we find the trial court properly weighed the four *Barker* factors, and the evidence supported its decision.

IV. Statement to Law Enforcement

Palmer argues the trial court erred in admitting his statement to law enforcement after he invoked his right to counsel. We disagree.

"A waiver of *Miranda* rights is determined from the totality of the circumstances." *State v. Kennedy*, 333 S.C. 426, 429, 510 S.E.2d 714, 715 (1998). "On appeal, the conclusion of the trial [court] on issues of fact as to the voluntariness of a statement will not be disturbed unless so manifestly erroneous as to show an abuse of discretion." *Id.* "Statements elicited during interrogation are admissible if the prosecution can establish that the suspect 'knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel.'" *Id.* (quoting *Miranda v. Arizona*, 384 U.S. 436, 475 (1966)).

At trial, Palmer moved to suppress his statement given to law enforcement on October 29, 2010. Officer Creech read Palmer his *Miranda* warnings, and Palmer said he would talk to the officers. The transcript of the conversation states in pertinent part:

Creech: Do you wish to talk to us?
Palmer: I wish to talk to you, but I need for you to call Charles Barr too.

Creech: You want him here?
Palmer: I want him to come, yes.
Creech: Before you talk with us?
Palmer: I'll talk to you.
Creech: That's what I'm asking.
Palmer: Okay, w[hat d]o you want to know?
Creech: Are you willing to talk to us?
Palmer: Yes.
Creech: Do you understand your rights and do you understand what your rights are, and you want to talk to us? You want to talk to us without a lawyer present?
Palmer: Yes.
Creech: You understand and know what you're doing, and we haven't promised you anything or threatened you in any[]way.
Palmer: No.
Creech: And no pressure or coercion of any kind has been used against you by anyone?
Palmer: No.

Palmer then signed the waiver of rights form. After Palmer gave his statement, he told Creech he was not going to say anything else, and he wanted to talk to a lawyer. Creech then ended the interview. Palmer stated he wanted to talk to a lawyer when Creech asked him if he would take a polygraph exam. Creech said Palmer was not under arrest at the time.

Palmer testified he was told he was under arrest by Investigator Deborah Collins, but when he arrived at the sheriff's office, he was told he was not under arrest. He testified he kept asking for Barr, and his mother told him to speak to him before he talked to anyone. Palmer said Investigator Collins took his cell phone so he could not call Barr himself, and she took his driver's license so he could not leave. He said he told the police he would talk to them without his lawyer present because he was scared and had never been through anything like it before. He admitted he had been arrested three times prior for simple possession of marijuana, but he had never been subjected to interrogation. Palmer testified Creech told him before they gave him the waiver that he would not really be waiving his right. On cross-examination, Palmer acknowledged he understood the *Miranda* warnings, and he could have stopped talking to the officers at any time. Palmer argued his statement

should be suppressed under *State v. Wanamaker*, 346 S.C. 495, 552 S.E.2d 284 (2001), which reaffirms that if a suspect invokes her right to counsel, the police interrogation must cease unless the suspect herself initiates further communication with police. The court denied the motion to suppress admission of Palmer's statement. Palmer renewed his motion when the audio recording was introduced at trial, and the court overruled the objection. He again renewed the motion after the jury verdict.

On appeal, Palmer argues his request for counsel was sufficiently clear that a reasonable police officer in the circumstances would understand the statement was a request for an attorney. Palmer asserts the officers were required to cease questioning unless an attorney was present.

In *Davis v. United States*, 512 U.S. 452, 461 (1994), the Supreme Court of the United States held that, "after a knowing and voluntary waiver of the *Miranda* rights, law enforcement officers may continue questioning until and unless the suspect clearly requests an attorney." "Of course, when a suspect makes an ambiguous or equivocal statement it will often be good police practice for the interviewing officers to clarify whether or not he actually wants an attorney." *Id.*

Here, Palmer stated he would talk to the officers, but he also wanted his attorney. Because Palmer did not unambiguously invoke his right to counsel, the officers were allowed to ask a few questions for clarification. Palmer indicated he wanted to continue talking to the officers after being advised of his *Miranda* rights, and he voluntarily waived his rights before his statement was taken. Therefore, we find the trial court correctly denied the motion to suppress Palmer's statement.

V. Sentencing

Palmer argues the trial court erred in sentencing him on a possession of a weapon during the commission of a violent crime conviction after sentencing him to life imprisonment without parole for murder. We agree.

Palmer was found guilty of murder and possession of a weapon during the commission of a violent crime. The court sentenced Palmer to five years' imprisonment on the possession of a weapon during the commission of a violent crime after sentencing him to life without parole on the murder. Palmer objected

to the sentence. Palmer argues this was in error because S.C. Code Ann. § 16-23-490(A) (2015) provides the five-year sentence is inapplicable when a court imposes a life without parole sentence.

The State concedes this was in error, and we agree. Therefore, Palmer's sentence for possession of a weapon during the commission of a violent crime should be vacated. *See State v. Owens*, 346 S.C. 637, 666, 552 S.E.2d 745, 760 (2001), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

CONCLUSION

Accordingly, we affirm Palmer's convictions for murder and possession of a weapon during the commission of a violent crime and vacate his sentence for possession of a weapon during the commission of a violent crime.

AFFIRMED and VACATED IN PART.

GEATHERS and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Protection and Advocacy for the People with Disabilities, Inc.; M.J.B. on behalf of and as next friend of J.B.; C.B.B. on behalf of and as guardian of P.B.; G.C. and L.C. on behalf of and as next friend of A.E.; J.H. on behalf of and as next friend of A.J.; G.M. on behalf of and as next friend of E.M.; N.M. on behalf of and as guardian of E.J.M.; R.P. on behalf of and as guardian of S.P.; R.R. and J.R. on behalf of and as guardians of K.D.R.; and J.K. on behalf of and as guardian of S.S.; Appellants,

v.

South Carolina Department of Disabilities and Special Needs; Dr. Beverly Buscemi, in her official capacity as Director of the South Carolina Department of Disabilities and Special Needs; and Nancy Banor, Deborah McPherson, Christine Sharp, Rick Huntress, Fred Lynn, Harvey Shiver, and Kelly Hanson Floyd, as Commissioners of the South Carolina Department of Disabilities and Special Needs, Respondents.

Appellate Case No. 2014-000244

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 5383
Heard January 7, 2016 – Filed February 24, 2016

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Steven W. Hamm and C. Jo Anne Wessinger Hill, both of Richardson Plowden & Robinson, PA, of Columbia, for Appellants.

William H. Davidson, II and Kenneth P. Woodington, both of Davidson & Lindemann, PA, of Columbia, for Respondents.

LOCKEMY, J.: Protection and Advocacy for the People with Disabilities, Inc. (P&A), et al. (collectively, Appellants), appeal the circuit court's grant of summary judgment for the South Carolina Department of Disabilities and Special Needs (DDSN), et al. (collectively, Respondents), arguing the court erred in (1) finding Appellants did not have standing; (2) failing to consider the fundamental purpose of the Declaratory Judgment Act; (3) ruling on the issue of binding norms; and (4) finding DDSN is not required to promulgate regulations. We affirm in part, reverse in part, and remand.

FACTS/PROCEDURAL BACKGROUND

Appellants filed this action on April 7, 2007. Appellants include anonymous guardians/friends on behalf of eleven anonymous disabled individuals, and P&A, a private, nonprofit corporation established pursuant to federal and state law to advocate for the rights of people with disabilities.

In their complaint, Appellants asserted DDSN, a state agency established to provide services to citizens with disabilities and their families, failed to promulgate regulations as required by sections 44-20-220, 44-20-790, and 44-26-180 of the South Carolina Code. Appellants sought an order requiring DDSN to "promptly promulgate regulations governing the operation of the department and the employment of professional staff and personnel, and to obtain informed consent and to protect the dignity of the individual in research settings." In addition, Appellants asserted DDSN failed to promulgate regulations regarding "issues of critical concern to applicants and recipients of its services, including but not limited to eligibility for its services; appeal procedures; standards for the operation of its residential programs; procedures for its Human Rights Committees; and standards for research on human subjects." Appellants complained DDSN's failure to comply with the requirements of the Administrative Procedures Act (APA) resulted in citizens and entities being "unable to seek information about its policies

in the South Carolina Administrative Code, unable to determine their rights or receive or dispute []DDSN decisions, and [unable to] participate in the rule making process . . . ." Appellants asserted they have been and will continue to be harmed as a result of DDSN's deficiencies, "through denial of services, inadequate services and unequal availability and quality of services, and lack of an appropriate grievance procedure." Appellants further complained about decisions in individual cases, such as claims that an individual was not eligible for autism services and an individual was not waitlisted for residential placement. Appellants did not ask the court to order any affirmative relief in any of their cases, other than requiring DDSN to promulgate regulations.

Appellants also filed a petition to allow the named plaintiffs in the action to proceed anonymously. The circuit court granted the motion, stating "identification of the individually named Plaintiffs potentially poses a risk of retaliatory denial of needed services which may result in physical or mental harm to the individually named Plaintiffs." According to Appellants, each of the named individual Appellants presented affidavits to the circuit court, which were subsequently sealed by the court.

Thereafter, on May 31, 2007, Respondents filed a motion to dismiss and a motion for a more definite statement. The circuit court denied both motions. Respondents subsequently filed an answer, denying for lack of information the specific facts regarding each of the anonymous individual Appellants. As an affirmative defense, Respondents challenged the standing of all of the Appellants. Respondents also denied DDSN had a duty to promulgate regulations.

Thereafter, both parties filed summary judgment motions. In September 2013, the circuit court granted summary judgment for Respondents and denied Appellants' motion. In granting Respondents' motion, the circuit court held there was "no evidence whatsoever before the [c]ourt as to the facts concerning the individual [Appellants]," and as a result, no evidence was presented of actual injury to any of Appellants and they lacked standing. The court also found Appellants' claims in this case, unlike the claims in public importance standing cases, require a case-by-case factual showing as to how specific plaintiffs are, or are not, affected by the absence of regulations in specific situations. The court further noted that while Appellants relied heavily on the Declaratory Judgment Act in their argument, parties seeking declaratory relief still must demonstrate a justiciable controversy. The circuit court held that even assuming Appellants had standing, their claims lacked substantive merit. The court found no statute required the promulgation of regulations in the subject areas of the lawsuit. The court declined to consider

Appellants' argument that DDSN had improperly established binding norms because it was not pled in the complaint.

Appellants subsequently filed a Rule 59(e), SCRCP, motion to reconsider. The circuit court denied the motion but modified its order to clarify that Appellants would not be precluded from raising issues related to binding norms in subsequent administrative appeals. This appeal followed.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard that governs the trial court under Rule 56(c), SCRCP, which provides summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004).

LAW/ANALYSIS

I. Standing

Appellants argue the circuit court erred in finding they did not have standing. We agree.

"To have standing, one must have a personal stake in the subject matter of the lawsuit." *Sloan v. Greenville Cty.*, 356 S.C. 531, 547, 590 S.E.2d 338, 347 (Ct. App. 2003). Here, Appellants contend they have standing to pursue their claims related to the promulgation of regulations by DDSN pursuant to statute, through the rubric of constitutional standing, and under the public importance exception. *See ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) ("Standing may be acquired: (1) by statute; (2) through the rubric of 'constitutional standing'; or (3) under the 'public importance' exception.").

A. P&A

Pursuant to section 43-33-350 of the South Carolina Code, P&A

> shall protect and advocate for the rights of all developmentally disabled persons, including the requirements of Section 113 of Public Law 94-103, Section 105 of Public Law 99-319, and Section 112 of Public Law 98-221, all as amended, and for the rights of other handicapped persons by pursuing legal, administrative, and other appropriate remedies to insure the protection of the rights of these persons.

S.C. Code Ann. § 43-33-350(1) (2015).

P&A asserts it has been injured by DDSN's failure to promulgate regulations "in that it has and will continue to repeatedly expend time and resources attempting to determine and enforce rights of developmentally disabled persons without access to any meaningful or enforceable rules or regulations regarding eligibility and services, and with no access to judicial review of decisions affecting its clients."

Gloria Prevost, Executive Director of P&A, stated in her affidavit the impact and effect the lack of properly promulgated regulations has on P&A and the citizens it is statutorily obligated and mandated to protect. According to Prevost, the lack of regulations harms the population DDSN is mandated to serve through (1) the denial of services for arbitrary and capricious reasons; (2) inadequate services and unequal availability and quality of services; and (3) a lack of an appropriate and defined grievance procedure. Due to the lack of regulations promulgated by DDSN, Prevost contends applicants for and recipients of services do not have officially published information about many aspects of DDSN services, including (1) eligibility; (2) appeal procedures; (3) standards for the operation of the residential facilities operated by DDSN; (4) procedures and standards for human rights committees; (5) standards for research on human subjects, including how consent is obtained for research to be performed; and (5) budget cut decisions and procedures. Prevost asserts P&A must expend resources and time in attempting to find and analyze the directives and standards DDSN has issued as a substitution for promulgating regulations.

We hold the circuit court erred in finding P&A lacked standing. We find P&A has standing under section 43-33-350 and its directive that P&A is entitled to pursue remedies to insure the protection of the rights of disabled persons. Further, we find P&A has sufficiently asserted injuries it has suffered as a result of DDSN's alleged

failure to promulgate regulations. *See Carolina All. for Fair Emp't v. S.C. Dep't of Labor, Licensing & Regulation*, 337 S.C. 476, 487, 523 S.E.2d 795, 800 (Ct. App. 1999) ("An organization has standing only if it alleges that it or its members will suffer an individualized injury; a mere interest in a problem is not enough.").

B. Individual Appellants

Like P&A, the individual Appellants are seeking the promulgation of regulations by DDSN. They are not seeking individual relief for specific alleged harms. As discussed above, P&A is authorized by statute to pursue legal, administrative, and other appropriate remedies to insure the protection of the rights of disabled persons. Thus, we find P&A is the appropriate party to pursue claims for the promulgation of regulations by DDSN. Accordingly, we hold the circuit court did not err in finding the individual Appellants lacked standing.

II. Promulgation of Regulations

In light of our reversal of the circuit court as to the standing of P&A, we vacate the portion of the circuit court's order concerning the merits of Appellants' appeal, including its findings as to the issue of binding norms. We hold the circuit court's findings in regards to the merits of P&A's appeal were not sufficiently detailed as to the specific claims raised. We remand to the circuit court for litigation of the issues regarding the requirements of the specific statutes concerning the promulgation of regulations by DDSN.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

FEW, C.J., and KONDUROS, J., concur.