

SOUTH CAROLINA COURT OF APPEALS

Bernard Bagley, #175851,

Petitioner,

v.

South Carolina Department of
Probation, Parole and Pardon
Services,

Respondent.

APPELLATE CASE NO. 2019-002102
OPINION NO. 2022-UP-294 (SC.CT.APP. July 13, 2022)

PETITION FOR REHEARING (EN BANC)

Bernard Bagley
#175851/MB64/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

pro se

Matthew C. Buchanan
SCDPPPS General Counsel
P.O. Box 207
Columbia, SC 29202

Respondent

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SC Court of Appeals

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PETITION FOR REHEARING (EN BANC)

Appellate Case No. 2019-002102

Opinion No. 2022-UP-294-(SC.CT.APP. July 13, 2022)

PLEASE TAKE NOTICE, that Bernard Bagley, pro se, Petitioner/Appellant, comes now before this Honorable Court to Petition for Rehearing and possibly en Banc in the case Bagley v. SCDPPPS, Op. No. 2022-UP-294 (July 13, 2022), in which the Court affirmed in part and reversed in part. Bagley's findings of the Court's ruling was on July 14, 2022, via WESTLAW Law Library app, GTL assigned tablet.

Bagley contends with all do respect to the Honorable Court that it inadvertently overlooked an error of law abuse of discretion by the Parole Board and the Administrative Law Court (ALC) regarding §24-21-640, S.C. Code Ann., and SCDPPPS Criteria, procedure employed for a "routine denial of parole" violates Bagley's eligibility for parole under §24-21-610, of S.C. Code Ann., section (2)(¶4), in which the Parole Board did not include in its decision making process a report as to his mental condition and his ability to adjust to life outside the prison from a duly qualified psychiatrist or psychologist whether to grant or deny parole.

Substantial evidence does not support the Parole Board's nor the ALC findings whether the Parole Board received a report from a duly qualified psychiatrist or psychologist to determine whether or not he pose a threat to society or himself, or pose a public safety risk or any other factors listed in §24-21-640, and the criteria established in accordance to Rule 803(1)(3)(6), SCRE, and Rules 406 and 1004(3), SCRE. Section 24-21-610 secondary evidence is admissible for a decision making process under §24-21-640 and the criteria.

Bagley contends that for the Board to consider factors without a report from a duly qualified psychiatrist or psychologist violate his due process under the procedure employed for eligibility for parole §24-21-610(2)(¶4) that require appellate review of an abuse of discretion whereby an error of law or a factual conclusion is without evidentiary support. The routine denial of parole has occurred with Bagley five (5) previous times which is an issue capable of repetition, yet, evading review as well because the Parole Board will implement a routine denial of parole procedure before the issue can be reviewed upon Bagley's eligibility for parole status in accordance of §24-21-610(2)(¶4), "...no prisoner who has served a total of ten or more consecutive years or more in prison may be paroled until the Board has first received a report as to his mental condition and his ability to adjust to life out-

side of the prison from a duly qualified psychiatrist or psychologist." As a result, Bagley contends the issue of eligibility for parole under §24-21-610 is capable of repetition but evading review in violation of a state created liberty interest. *Curtis v. State*, 345 S.C. 557, 568; 549 S.E.2d 591, 596 (2001) ("[A]n appellate court can take jurisdiction, despite mootness, if the issue is capable of repetition but evading review,"); *Hayes v. State*, 413 S.C. 553, 558, 777 S.E.2d 6,9 (Ct.App. 2015), (taking jurisdiction, despite mootness, because the issue raised was capable of repetition but evading review.); and *Nelson v. Ozmint*, 390 S.C. 432, 434-35, 702 S.E.2d 369, 370 (2010) ("We find this issue is one that is capable of repetition, yet will usually evade review because most inmates will have served the year required by SCDC's interpretation of the statute before the lawfulness of the interpretation can be reviewed.").

Bagley contends the Parole Board has repeatedly failed to comply the language of §24-21-610(2)(4), S.C. Code by failing to receive a report from SCDC as to Bagley's mental condition and his ability to adjust to life outside of the prison from a duly qualified psychiatrist or psychologist for careful consideration of the Notice of Rejection (2) factors published in Department's Form 1212 (Criteria for Parole Consideration); (3) The factors outlined in §24-21-640, of S.C. Code of Law; and (4) Acturial risk and needs assessment factors pursuant to §24-21-10(f)(1), which producing the report under §24-21-610(2)(4), S.C. Code of Law could furnish a link in the chain of factors needed for careful consideration of (2)(3) and (4) of the Notice of Rejection in accordance to Rule 702, SCRE.

Bagley further contends that the Notice of Rejection (2)(3) and (4) all are intertwined for being paroled because the Board must first receive a report pertaining to his mental condition that is a nexus with the factors for the Board's decision making consideration, conclusion of law, and findings. NOTE: The Notice of Rejection is included in the Record on Appeal to enable the Court to decide whether the ALC made an erroneous or unsubstantiated ruling.

An abuse of discretion occurs when the ruling is based on an error of law or factual conclusion that is without evidentiary support. The Board's ruling was based on an error of law or factual conclusion that is without evidentiary support of a report from a duly qualified psychiatrist or psychologist as required under §24-21-610, and Rules 702, and 803(1)(3)(6), SCRE, Bagley contends.

Simon v. Flowers, 231 S.C. 545, 550, 99 S.E.2d 391, 391-94 (1957), ("[E]rror at law exists: (1) when the circuit judge in issuing [the order], was controlled by

some error of law...or(2) when the order, based upon factual, as distinguished from legal, considerations, is without adequate evidentiary support.").

Bagley contends that producing the report as required under §24-21-610 could furnish a link in the chain of factors needed for careful consideration of (2) (3) and (4) of the Notice of Rejection issued by the Board.

SEE: Fontaine v. Peitz, 291 S.C. 536, 354 S.E.2d 565 (1987); and State v. Grubbs, 353 S.C. 374, 577 S.E.2d 493 (2003), a trial court's ruling on admissibility of an expert's testimony constitute an abuse of discretion where the ruling is manifestly arbitrary, unreasonable or unfair, Rule 702, SCRE.

A report or evaluation of mental condition and ability to adjust to life outside of the prison from a duly qualified psychiatrist or psychologist for being paroled after serving a total of 10 consecutive years or more in prison must first received by the Board under §24-21-610, S.C. Code of Law is recognized in South Carolina by the law.

In addition, the Court overlooked to direct the Parole Board not to consider the 2022 reverse in part ruling in this matter as a prejudicial factor in reaching its decision at any upcoming proceeding or in future decisions.

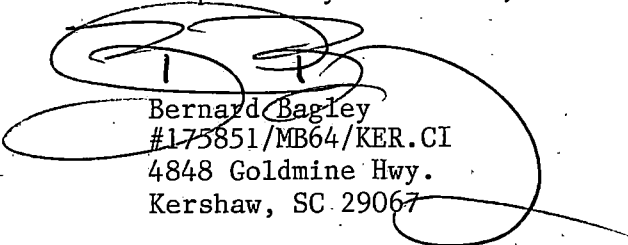
Bagley also asserts that the Parole Board system is not meant to be a trap for the unwary, nor the ALC is not meant to be a trap for the unwary, but is required to construe an inmate's or appellant's arguments in a liberal manner for purposes of determining whether they raise issues on appeal. As such, in situations where a party appeared pro se before the ALC and the Board, a court of appeals may appropriately be less stringent in requiring that the issue have been raised explicitly below.

CONCLUSION

WHEREFORE, the Appellant request that the Court accept his Petition for Rehearing pursuant to Rules 219, and 221, SCACR, and grant the petition based on the merits that he was prejudiced by the Board's routine denial of parole because it did not comply with §24-21-610(2)(4), which is a link in the chain of factors required for careful consideration of (2)(3) and (4) of the Notice of Rejection issued by the Board that could have changed the Board's decision in its proceedings. Also,

to respectfully direct the Parole Board not to consider the 2022 reverse in part ruling in this appeal as a prejudicial factor in reaching its decision at any upcoming proceedings or future decisions.

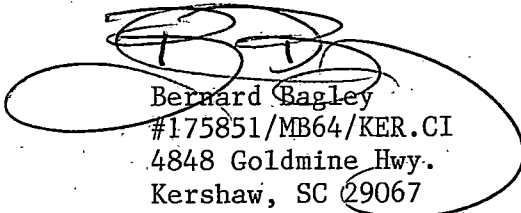
Respectfully submitted,



Bernard Bagley
#175851/MB64/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

July 15, 2022

I declare, certify, and verify under penalty of perjury that the foregoing is true and correct.



Bernard Bagley
#175851/MB64/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

July 15, 2022

SOUTH CAROLINA COURT OF APPEALS

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Bernard Bagley, #175851,

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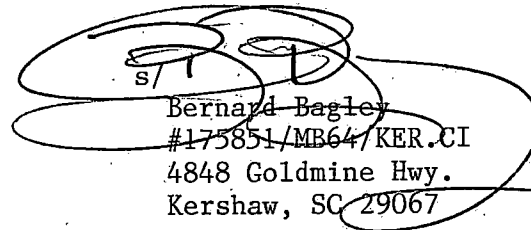
South Carolina Department of
Probation, Parole and Pardon
Services,

Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I, Bernard Bagley, pro.se, on the 18th day of July, 2022, in Kershaw, SC served the Petition for Rehearing (en Banc) on all parties in this matter by depositing the same in the U.S. institution Mail, postage prepaid and addressed as follows:

SCDPPPS Office of General Counsel
Matthew C. Buchanan, Esq.
P.O. Box 207
Columbia, SC 29202


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S.C. Court of Appeals
Jenny A. Kitchings, Clerk
P.O. Box 11629
Columbia, SC 29211

RE: Bagley v. SCDPPPS, Appellate Case No. 2019-002102, Op. No. 2022-UP-294
(July 13, 2022).

Dear Madam Clerk:

Enclosed is my Petition for Rehearing (en Banc) pursuant to Rules 219, and 221, SCACR. Also, the Certificate of Service is attached and served on the Respondent on record.

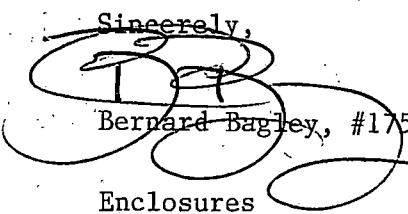
Please be advise that I will submit a Supplement Petition or Motion for Rehearing within a few days pertaining to the 25 additional issues that were not ruled on by the ALC for failure to take jurisdiction over the matter when the Respondent did not include several documents of mitigating evidence that comprise extraordinary compelling reasons in the Record on Appeal.

The Petition for Rehearing presently before the Court, please be advise that there exist an error of law overlooked regarding an abuse of discretion by the Parole Board when it failed to comply with §24-21-610(2)(4), S.C. Code of Law, Eligibility for Parole when it did not receive a report from SCDC from a duly qualified psychiatrist or psychologist as to my mental condition to determine whether or not I pose a threat to society or myself, and the ability to adjust to life outside of the prison whereby I have served 10 or more consecutive years.

The Order issued by the Respondent will show (2)(3)(4) furnish a link in the chain of factors intertwined as a nexus with §24-21-610, in accordance to Rules 702, and 803(1)(3)(6), SCRE. The Board failed to make findings of §24-21-610 required report as a part of its decision making process with the link of factors required for careful consideration for (2)(3)(4) of the Order, specifically when the record shows that I have served 29 consecutive years in 2019.

Thank you for considering this matter and for your time.

Sincerely,



Bernard Bagley, #175851/MB64/KER.CI, 4848 Goldmine Hwy., Kershaw, SC 29067.

Enclosures

cc: Matthew C. Buchanan, SCDPPPS

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