

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Bernard Bagley, #175851,

DEC 21 2022
Appellant,
SC Court of Appeals

v.

South Carolina Department of
Probation, Parole and Pardon
Services,

Respondent.

Appellate Case No. 2019-002102

Unpublished Opinion No. 2022-UP-294

Submitted April 1, 2022-Filed July 13, 2022

Withdrawn, Substituted, and Refiled November 23, 2022

MOTION FOR WRIT OF MANDAMUS

This matter comes before the Court of Appeals, Geathers and Hill, JJ., and Lockemy, A.J., seeking for A WRIT OF MANDAMUS pursuant the Court's Unpublished Opinion and ruling refiled November 23, 2022. I, Bernard Bagley, pro se, come before this Court seeking A WRIT OF MANDAMUS, pursuant to the laws of the United States and State of South Carolina and this Court.

PARTIES

Bernard Bagley, #175851, Appellant: At Kershaw Correctional Institution,
4848 Goldmine Hwy., Kershaw, SC 29067

South Carolina Department of Probation, Parole and Pardon Services, Respondent:
Office of General Counsel, P.O. Box 207, Columbia, SC 29202.

ISSUES

1. Appellant has a right to be free from retaliation for redress in the Court system.

Facts: On November 30, 2022, the Appellant appeared before the Parole Board based on him being medically eligible to be considered for medical parole under S.C. Code Ann. §24-21-715(A)(3)(B)(E), on June 23, 2022, Attached and incorporated herein is SCDC Division of Health Services Medical Parole Inmate Correspondence, dated June 23, 2022, and SCDC Office of General Counsel Response to Inmate Correspondence, dated November 10, 2022, that states, "Your medical parole packet has been completed and signed off on by the Director."

The Board Member asked Bagley one question, "Do you want to continue mental health services if release on parole?" Bagley stated yes. The Board Member also stated that I see you are on mental health satus. Afterwards, Appellant was denied medical parole, in which he received written Notice of Rejection on December 7, 2022, that states in relevant part, Conclusion of Law:

"After careful consideration of the petition filed by the director of the Department of Corrections, and your claimed status as either terminally ill, geriatric, permanently incapacitated, or a combination of these "offenses," and "the threat you may pose to society or yourself, the Parole Board has determined that your parole must be denied." Findings of Fact: the three (3) immutable factors that are used again and again. Attached and incorporated herein is SCDPPPS Notice of Rejection, dated November 30, 2022.

- a) Bagley v. SCDPPPS, Appellate Case No. 2019-002102, Affirmed in Part, Reversed in Part, Refiled November 23, 2022;
- b) Bagley v. SCDPPPS, Appellate Case No. 2013-000042, Reversed and Remanded, Filed August 27, 2014;
- c) Geissler, Bagley, and Jackson v. SCDC, Case No. 4:17-cv-01746-MBS; and
- d) T.R., et al., v. SCDC, Case No. 2005-CP-40-02925.

Parole officials may not retaliate against prisoners eligible for consideration for parole for redress in the courts or trying to do so, regardless the form of retaliation. Bagley concurs that the Parole Board has sole discretion to grant or deny parole. However, to deny Appellant medical parole based on "offenses, i.e. geriatric and permanently disabled," or a combination of these offenses, and the threat you may pose to society or yourself, the Parole Board has determined that your parole must be denied." without a pre-parole assessment of a duly qualified psychiatrist or psychologist under §24-21-610, S.C. Code Ann., to determine his mental condition and his ability to adjust to life outside the prison.

Also, because the issue that several Board members not being able to attend hearings, and other factors involved in scheduling a case before the Board, and the one important factor is the completion of a pre-parole investigation which must be completed prior to prisoners case actually being scheduled before the Board. The pre-parole investigation did not include an assessemnt of a psychological individulized evaluation report to determine whether Bagley pose a threat to society or to himself.

Bagley has a protected to redress in the courts, and to retaliate against him by not having in the pre-parole investigation a report from a duly qualified psychiatrist or psychologist for the Board's decision making determination as to whether he pose a threat to society or himself is retaliation, in which the connection between the Board's decision in its Conclusion of Law and Findings of Facts are motivated at least in part by retaliation because of Bagley's protected conduct.

The immutable factors are used again and again in violation of the Fifth Amendment of the U.S. Constitution and the S.C. Constitution Article 1, §12, and evading review.

ARGUMENT

The Respondent retaliated against Bagley for excercising his First Amendment rights when the Board stated and denied medical parole upon that he pose a threat to society and himself, without a pre-parole investgation report from a duly qualified psychiatrist or psychologist, and immutable factors use over and over again and

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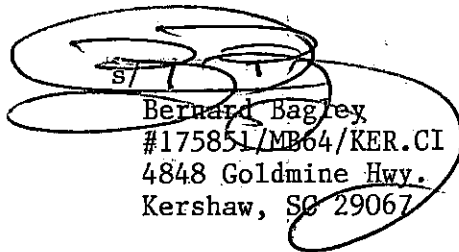
again in violation of the Fifth Amendment and Article 1, §12, of the S.C. Constitution, and yet, still evades review.

CONCLUSION

Based on the information set forth, Appellant asks this Court to Order the Respondents to grant a new medical parole hearing to include a pre-parole investigation with additional research of his mental health evaluation by a duly qualified psychiatrist or psychologist, in which the Board did not have in its decision making determination. Also, not to continue using the fact that he exercises his First Amendment for redress in the courts as a prejudicial factor in reaching its decision at the new hearing proceeding or in future decisions.

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

Respectfully submitted,


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

December 9, 2022

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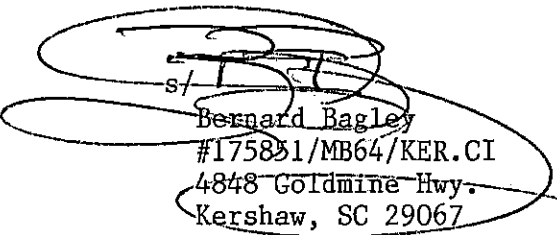
CERTIFICATE OF SERVICE

I certify that I have served the Notice and Motion for Writ of Mandamus, Motion for a Writ of Mandamus, SCDC Division of Health Services Medical Parole Inmate Correspondence, SCDC Office of General Counsel Response to Inmate Correspondence, and SCDPPPS Notice of Rejection on the parties listed below by depositing a copy of the same in the U.S. Mail, postage prepaid, on December 14th 2022.

SCDPPPS Office of General Counsel
P.O. Box 207
Columbia, SC 29202

SC Administrative Law Court
S. Phillip Lenski, ALJ
Edgar A. Brown Bldg.
1205 Pendleton St., Suite 224
Columbia, SC 29201

s/


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

December 9, 2022

December 9, 2022

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

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RE: Bagley v. SCDPPPS, Appellate Case No. 2019-002102.

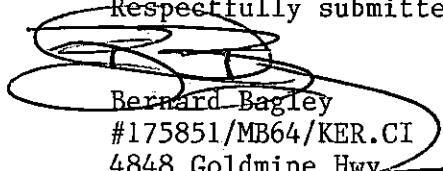
Dear Madam Clerk:

Enclosed for filing are the following:

1. Notice and Motion for Writ of Mandamus;
2. Motion for A Writ of Mandamus;
3. SCDC Division of Health Services Medical Parole Inmate Correspondence dated June 23, 2022;
4. SCDC Office of General Counsel Response to Inmate Correspondence dated November 10, 2022;
5. SCDPPPS Notice of Rejection dated November 30, 2022; and
6. Certificate of Service.

Please hold the remittitur in abeyance until this matter is ruled upon.

Respectfully submitted,


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

pro se

Enclosures

cc: SCDPPPS Office of General Counsel
S. Phillip Lenski, ALJ

P.s. NOTE: I am on covid or someother respiratory disease lockdown.

BERNARD Bagley
#175851-MB64-Ker.C.I.
4848 Godwine Hwy.
Kershaw, S.C. 29067



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S.C. Court of Appeals
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