

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge
Appellate Case No. 2019-002102

Bernard Bagley, #175851

Appellant,

v.

South Carolina Department
of Probation, Parole and
Pardon Services,

Respondent.

FINAL REPLY BRIEF OF APPELLANT

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MAR 26 2020

SC Court of Appeals

Bernard Bagley
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STATEMENT OF ISSUES ON APPEAL

The Appellant submit that he incorporates herein the Statement of Issues on Appeal verbatim as stated in his Initial Brief of Appellant.

STATEMENT OF THE CASE

The Appellant submit that he incorporate herein the Statement of ~~the Case~~ verbatim as stated in his Initial Brief of Appellant.

FACTS

The Appellant submit that he incorporate herein the Facts verbatim as stated in his Initial Brief of Appellant.

ARGUMENTS

The Appellant submit that he incorporated herein the Arguments 1 through 6 verbatim as stated in his Initial Brief of Appellant.

REPLY

The Appellant comes now with his REPLY because of the Respondent's Brief dated February 20, 2020, in which he received on February 26, 2020. In essence, the Respondent's notice of rejection is inefficient because there is no essential evidence contained in the notice of rejection, but more importantly the statement failed to included §24-21-10(f)(1), S.C. Code Ann., "objective criteria" that is required to be considered in the Board's decision-making process. In addition, the Board or Respondent's officials did not provide the Appellant nor any other prisoner within the South Carolina Department of Corrections (SCDC) the "objective criteria."

It's the Appellant's belief and best of knowledge and information in accordance to §24-21-10-(f)(1), the South Carolina legislature "objective criteria parole law" requires parole decisions to be based on forward-looking risk factors rather than the unchanging archaic criteria and unchangable events of the past, which the Board's catch-all reasons to state routine parole denials. Reasons, why Appellant contends that Cooper v. SCDPPPS, 661 S.E.2d 106 (2008), is inefficient twelve (12) years after its ruling based on the foregoing contentions in facts.

Appellant asserts that a routine denial of parole is a permanent denial of parole whereby the Board as well as the Respondent's opinion that Appellant thinks that he is deserving of parole, when he only asserts that he is a good candidate for parole and qualify for the same. The Respondent and the Board employed unlawful procedure which is arbitrary or capricious when it fails to provide the Appellant relevant or statutory conditions to meet, and if he complete one or more stated statutory conditions, the Board may decide that Appellant should be granted parole, and if Appellant fail to complete any one of the stated statutory conditions, or

disobey any rule or regulation of SGDC before satisfying the stated statutory conditions, the Parole Board may reject for parole, in accordance to SCDPPPS Objective Criteria as required under §24-21-10(f)(1), of S.C. Code Ann..

Appellant is not challenging the denial of parole but rather the procedure employed and failure to consider Appellant's request to be provided and request to meet statutory conditions to complete. The General Assembly has made the Board responsible for the establishment of an "objective criteria" for the consideration in its decision-making process for statutory conditions for prisoners to meet and complete, and then the Board may decide should the prisoner be granted parole under §24-21-10(f)(1), and §24-21-645, of S.C. Code Ann..

Furthermore, the Respondent's states that it carefully consider the Appellant's record when it failed to consider Appellant's record regarding mitigating evidence which very well demonstrate that the Appellant has a constitutional and inherent right on the basis of an invalid conviction to be constitutionally released because of an expired invalid conviction and sentence under State v. Belcher, 685 S.E.2d 802 (2009), and State v. Burdette, 832 S.E.2d 575 (2019), along with Fortune v. State, 2019 WL6521051. Also SEE: Article 1, §22, of S.C. Constitution.

Respondent's letter with no date and title "Parole Revocation" in essence demonstrates that the Appellant is being denied a conditional liberty such as family, gainful employment, U.S. Department of Veterans Affairs benefits and compensation, and Vocational Rehabilitation. The Respondent's letter is response to the request for reconsideration of the June 19, 2019, denial of parole, in which the Respondent's letter has no date (Designation of Matter to be Included in the Record on Appeal, item #4).

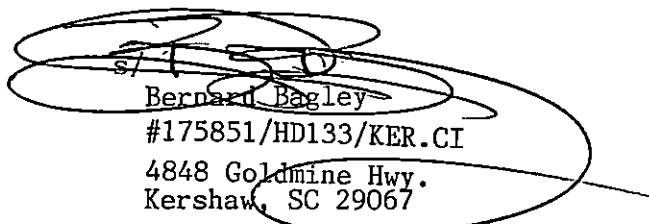
The Respondent open the door when it stated that the Appellant's record was carefully considered, but did not consider the mitigating evidence that demonstrate the Appellant that the Appellant has a constitutional right to be release on an invalid conviction and sentence as asserted in the foregoing.

The Appellant contends that his next scheduled parole hearing date is not September 8, 2020, or soon thereafter, but rather after June 19, 2021, in his 31 years 10 months imprisoned, when the record show that his sentence term started August 1990, in violation of §16-1-60, and §24-21-645, S.C. Code Ann..

CONCLUSION

Based on the foregoing reasons, the Appellant submits that the ALC incorrectly concluded that the Board followed proper due process procedures which has permanently denied him parole under an arbitrary or capricious routine denial of parole. In addition, the ALC incorrectly declined to rule on other issues within its jurisdiction. Appellant respectfully request this Court reverse the ALC decision and the Board's failure to include essential evidence in the notice of rejection.

Respectfully submitted,


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March 26, 2020

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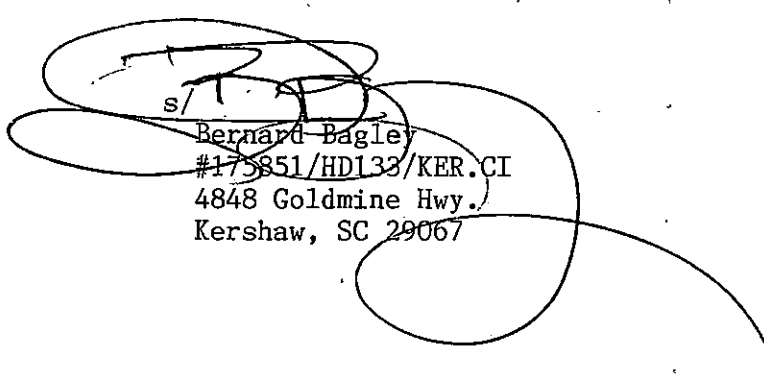
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211(a), SCACR.

March 26, 2020

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