

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FOR THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Administrative Law Judge
Appellate Case Number 2013-000042

Bernard Bagley, 175851,

Appellant,

v.

S.C. Department of Probation,
Parole, and Pardon Services,

Respondent.

RECORD ON APPEAL

Bernard Bagley
175851/HA162/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

Without Counsel

Tommy Evans, Jr.
SCDPPPS Legal Counsel
P.O. Box 50666
Columbia, SC 29250

Counsel for Respondent

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SC Court of Appeals

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Bernard Bagley, #175851

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services

Respondent.

Docket No. 12-ALJ-15-0032-AP

ORDER

This comes before the Administrative Law Court (Court or ALC) pursuant to the appeal of Bernard Bagley (Appellant), an inmate incarcerated with the South Carolina Department of Correction. On October 11, 2012, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the South Carolina Board of Pardons and Paroles (Board) had rejected him for parole. Appellant filed his Notice of Appeal of that decision with the Court on October 18, 2012. The Department filed the Record on Appeal on November 8, 2012.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) and Furtick v. S.C. Dep't of Probation, Parole and Pardon Servs., 352 S.C. 594, 576 S.E.2d 146 (2003). Additionally, in Cooper v. S.C. Dep't of Probation, Parole and Pardon Servs., 377 S.C. 489, 661 S.E.2d 106 (2008), the South Carolina Supreme Court addressed the ALC's review of these matters. In that case, an inmate who had been convicted of murder was denied parole by the Board. In its decision letter, the Board cited the following reasons for denying the inmate parole: "(1) the nature and seriousness of the current offense; (2) an indication of violence in this or a previous offense; and (3) the use of a deadly weapon in this or a previous offense." Id. at 492-93, 661 S.E.2d at 108. The inmate appealed the Board's decision claiming the Board did not consider all relevant factors in making its decision, and therefore the Board's denial of his parole

FILED

December 27, 2012
SC ADMIN. LAW COURT

deprived him of a state-created liberty interest under S.C. Code Ann. § 24-21-640.¹ Upon review of the matter, the South Carolina Supreme Court concluded that the Board's decision was "arbitrary and capricious" since the Board "neither offered an explanation nor indicated that it had considered the statutory criteria of section 24-21-640 and the fifteen criteria listed on the parole form." Id. at 500, 661 S.E.2d at 112. The Supreme Court, however, explained that:

We emphasize that in future parole review hearings the Parole Board may avoid the result in the instant case if it clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in its parole form. If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedure. Under that scenario, the ALC can summarily dismiss the inmate's appeal.

Cooper, 377 S.C. at 500, 661 S.E.2d at 112.

DISCUSSION

After Appellant filed his Notice of Appeal, he filed two motions: (1) a Motion for Discovery for Additional Matter and (2) Motion in Response to Certificate of Counsel and Record on Appeal. Neither motion can be granted by this Court. First, the ALC Rules do not allow for discovery in these appellate proceedings. Second, in his Response to Certificate of Counsel and Record on Appeal, Appellant asks that the Record be supplemented. However, the additional materials Appellant wished the Court to consider are irrelevant to this Court's determination. The Court thus denies these motions.

Turning to the merits of this appeal, without a doubt, the Board "is the sole authority with respect to decisions regarding the grant or denial of parole." Cooper, 377 S.C. at 499, 661 S.E.2d at 111. Furthermore, as explained in Cooper, this Court's review is limited to ascertaining whether the Board "followed proper procedure." Cooper, 377 S.C. at 500, 661 S.E.2d at 112.

¹ Section 24-21-640 provides in pertinent part:

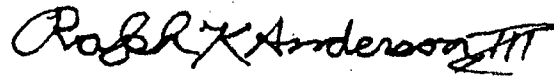
The board must carefully consider the record of the prisoner before, during and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that, in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and, that suitable employment has been secured for him. The board must establish written, specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include a review of a prisoner's disciplinary and other records.

S.C. Code Ann. § 24-21-640 (Supp. 2010).

Therefore, the Court may summarily dismiss Appellant's appeal unless it determines that the Board considered inappropriate factors in making its determination. See, Compton v. S.C. Dep't of Probation, Parole & Pardon Services, 385 S.C. 476, 479, 685 S.E. 2d 175, 177 (2009) (holding that an order denying parole and stating consideration of all statutory and Department criteria is sufficient to support denial of parole). Here, the Record clearly reflects that the Board considered the statutory criteria of section 24-21-640 and the fifteen factors published in its parole form.

IT IS THEREFORE ORDERED that the Motion for Discovery For Additional Matter and Motion in Response to Certificate of Counsel and Record on Appeal are denied.

IT IS FURTHER ORDERED that this appeal is DISMISSED
AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

December 27, 2012
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Bernard Bagley #175851,

Petitioner,

v.

South Carolina Department of Probation,
Pardon and Parole,

Respondent.

Docket No. 12-ALJ-15-0020-IJ

ORDER

This matter is before the Administrative Law Court (ALC or Court) pursuant to a Motion for Adequate Risk Assessment filed by Bernard Bagley (Bagley), an inmate incarcerated with the South Carolina Department of Corrections. Bagley asserts that Court should order the South Carolina Department of Probation, Pardon and Parole (Department or PPP) to provide him an adequate risk assessment to determine whether or not he is suitable for parole in 2012.

JURISDICTION

The ALC may hear cases on appeal from a final decisions of the Department pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2010) of the Administrative Procedures Act (APA). Additionally, S.C. Code Ann. § 1-23-600(D) (Supp. 2010) provides that: "An administrative law judge shall not hear ... an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services." Accordingly, the Administrative Law Judge (ALJ) sits in an appellate capacity under the APA rather than as an independent finder of fact. In South Carolina, the provisions of the APA—specifically Section 1-23-380(A)(5)—govern the circumstances in which an appellate body may reverse or modify an agency decision. That section states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the **decision** if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;

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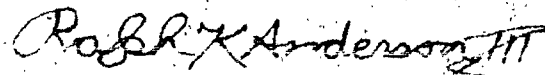
August 21, 2012

SC ADMIN. LAW COURT

As set forth above, when reviewing the Department's decisions in inmate grievance matters, the Court sits in an **appellate capacity**. Id. at 377; 527 S.E.2d at 754 (emphasis added). Consequently, the review in these inmate grievance cases is limited to the Record presented. See S.C. Code Ann. § 1-23-380(4) (Supp. 2011) ("The review must be conducted by the court and must be confined to the record . . ."); see also S.C. Code Ann. § 1-23-600(E) (Supp. 2011) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Here, there exists no PPPS decision concerning Bagley's parole eligibility from which an appeal can be taken. A review of this decision is thus precluded because Bagley has neither obtained a final agency decision nor has he exhausted his administrative remedies. See Richard H. Seamon, Administrative Agencies – General Concepts and Principles 83-96; 98-106 (Randolph R. Lowell & Stephen P. Bates eds., 2004) (discussing generally the concepts of exhaustion of administrative remedies and finality). Because there is no final decision by the Department concerning Bagley's parole, this action must be dismissed for lack of jurisdiction.

IT IS THEREFORE ORDERED THAT this action is DISMISSED.

AND IT IS SO ORDERED.

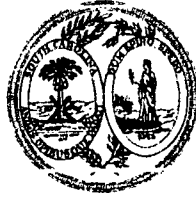


Ralph King Anderson, III
Chief Administrative Law Judge

August 21, 2012
Columbia, South Carolina

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

October 11, 2012

Mr. Bernard Bagley #00175851
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, SC 29067

RE: NOTICE OF REJECTION

Dear Mr. Bagley:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); and (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, the Parole Board concludes that parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Use Of Deadly Weapon In This Or Previous Offense

Sincerely,

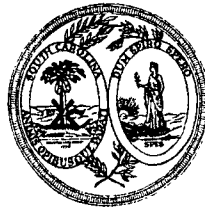
A handwritten signature in cursive script, appearing to read "Catherine Cooper".

Catherine Cooper
Director of Parole Board Support

10/10/2012

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



KELA E. THOMAS
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

November 15, 2012

Mr. Bernard Bagley(#175851)
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, SC 29067

Dear Mr. Bagley:

I am writing this letter on behalf of the S.C. Board of Probation, Parole and Pardon Services.

The Parole Board heard your request for a rehearing on November 14, 2012. After thorough consideration, and after having reexamined the parole file, the Parole Board decided that the reasons stated in your request did not affect the decision of the Parole Board, and would not affect the decision of the Parole Board if they were to rehear this case. Your request for a rehearing was denied by the Parole Board. The Board's decision is final.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cathy Cooper".

Cathy Cooper
Director of Parole Board Support

CC/eaw

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Bernard Bagley, 175851

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

NOTICE OF APPEAL

DOCKET NO. ALC-15 -AP

Notice is hereby given that Bernard Bagley does hereby appeal the final decision of the South Carolina Department of Probation, Parole and Pardon Services dated October 11, 2012 and received on October 16, 2012, a copy of which is attached. A **general** statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1) The Notice of Rejection arbitrary and capricious failed mentioning in its conclusion of law and findings of fact a validated individualized actual risk/needs assessment of Bagley's future dangerousness to society because (1) a stress disorder; and (2) disabilities as a requirement of the Omnibus Crime Reduction and Sentencing Reform Act of 2010. S.C. Code of Laws § 24-21-10(f), § 24-21-13.

2) The Notice of Rejection arbitrary and capricious failed mentioning in its conclusion of law and findings of fact a validated individualized offender risk and criminogenic needs of Bagley's future dangerousness as a requirement of the Omni-

Bernard Bagley, 175851

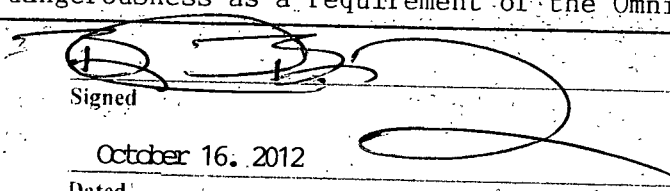
Appellant's Name HA-162/KER.CI

4848 Goldmine Hwy.

Mailing Address

Kershaw, SC 29067

City, State, Zip Code

Signed 

October 16, 2012
Dated

CERTIFICATE OF SERVICE

I hereby certify that I, Bernard Bagley (your name), on the 16th day of October, 20 12, in Kershaw (city), South Carolina, served a copy of the foregoing Notice of Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, or in the mail room of the undersigned's institution and addressed as follows:

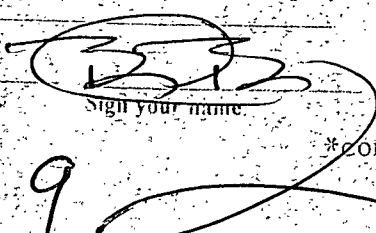
Name of person/Agency served: SCDPPPS Office of General Counsel (Deputy Director of Legal Services)

Address: P.O. Box 50666

City, State, Zip Code: Columbia, SC 29250

Bernard Bagley

Print your name
(See reverse side for instructions)


Sign your name

*continuance on reverse side

9

bus Crime Reduction and Sentencing Act of 2010. S.C. Code of Laws § 24-21-10(f), and §24-21-13.

It's clear the Board Members false risk assessment failed to comply with procedures and denied Bagley's parole apparently without giving credence to §24-21-10(f), §24-21-640, and its own criteria. As a result, it reduce Bagley's chances for parole and created a significant risk of increased punishment upon Bagley when the Board exercised its life-means-life policy, i.e. incarceration for the remainder of his natural life, that will never allow them recommendation of his case or him for parole to the Veterans Affairs Reentry Program and V.A. Hospital.

- 3) In addition, Bagley raises the doctrine of res judicata bars the Parole Board's three (3) limited reasons for rejection. (1) nature and seriousness of current offense; (2) indication of violence in this or previous offense; and (3) use of deadly weapon in this or previous offense. Res judicata prohibits subsequent reasons by the same parties on the same issues. A final decision on the three limited reasons in a prior hearing bars subsequent consideration of those reasons in a new hearing. Res judicata also bars any reason that could have been raised in the former hearing(s). As a result, the three (3) limited reasons that are fixed as the date of the offense and can never be changed by the actions of Bagley while incarcerated are barred by res judicata.
- 4) The Parole Board arbitrary and capriciously changed Bagley's scheduled parole date from the month of September to the month of October, thus, Domestic Violence Awareness Month in an effort to cause significant risk of increased related injury and harm of punishment, and to reduce his chances for parole.
- 5) §24-21-10(F), states that SCDPPPS must use a validated actuarial risk and needs assessment tool in making parole decisions, in which the Parole Board arbitrary and capricious failed to do in Bagley's case.

RELIEF

Provide a validated actuarial risk and need assessment and grant a rehearing with the use of the actuarial risk and needs assessment tool in making the parole decision in this 2012 case. Also, Bagley raises the doctrine of res judicata bars the three (3) limited reasons that are fixed as the date of the offense, and any other reason that could have been raised in the former hearing(s).

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Docket Number 12-AIG-15-0032

SPECIAL APPEAL OF FINAL DECISION
S.C. Department of Probation, Parole and Pardon Services

Bernard Bagley, #175851,

Appellant,

v.

S.C. Department of Probation,
Parole and Pardon Services,

Respondent.

APPELLANT'S BRIEF

STATEMENT OF THE ISSUES ON APPEAL

1. WHETHER THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT IS A DENIAL OF A RATIONAL NEXUS BETWEEN THE EVIDENCE BASED PRACTICES OR FACTORS AND ULTIMATE DETERMINATION OF MY CURRENT DANGEROUSNESS UNDER § 24-21-640, SCDPPPS Form 1212, and § 24-21-10(f)(1)?
2. WHETHER THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT FOR DENIAL OF PAROLE PURPOSES CURRENTLY SHOW THAT I POSES A THREAT TO PUBLIC SAFETY UNDER § 24-21-640, SCDPPPS Form 1212, and § 24-21-10(f)(1)?
3. WHETHER THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT IS DRAWN FROM MY ENTIRE RECORD, INCLUDING THE FACTS OF THE OFFENSE, MY PROGRESS DURING INCARCERATION AND MY ATTITUDE I HAVE ACHIEVED INTO MY PAST BEHAVIOR AND VICTIMS UNDER § 24-21-640, SCDPPPS Form 1212, and §24-21-10(f)(1)?
4. WHETHER THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT SUBSTANTIAL EVIDENCE SUPPORTS THE PAROLE BOARD ARBITRARY AND CAPRICIOUS UNSUITABILITY DECISION UNDER §24-21-10(f)(1)?
5. WHETHER THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT ARBITRARY AND CAPRICIOUS FAILED TO INCLUDE MY VALIDATED INDIVIDUALIZED OFFENDER RISK AND CRIMNOGENIC NEEDS UNDER §24-21-10(f)(1)?
6. WHETHER THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT CREATED A SIGNIFICANT RISK OF INCREASED PUNISHMENT UPON ME WHEN THE PAROLE BOARD EXERCISED ITS LIFE-MEANS-LIFE POLICY FOR THE REMAINDER OF

MY NATURAL LIFE UNDER §16-3-20(A)?

7. WHETHER THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT ARBITRARY AND CAPRICIOUS VIOLATE THE DOCTRINE OF RES JUDICATA BARS TO DENY ME PAROLE ON ANY REASON THAT COULD HAVE BEEN RAISED IN MY FORMER NOTICE OF REJECTION OR PAROLE HEARING UNDER §24-21-640, AND SCDPPPS FORM 1212?
8. WHETHER THE PAROLE BOARD USED A VALIDATED ACTUARIAL RISK AND NEEDS ASSESSMENT TOOL IN MAKING ITS PAROLE DECISION IN THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT IN MY 2012 PAROLE CASE UNDER §24-21-5(2), AND §24-21-10(f)(1)?

STATEMENT OF THE CASE

This matter comes before this Court by way of Notice of Appeal filed November 7, 2012. On August 23, 1990, Appellant kicked in the door of his mother in law's home in Eastover, South Carolina, and shot and killed his wife, Mary Bagley. He was charged with the offenses of burglary and murder. On April 12, 1991, a jury found him guilty of both charges in the Richland County Court of General Sessions, and the late former Judge Dan. F. Laney, sentenced him to two (2) consecutive life terms for the remainder of his natural life. Bagley appealed both convictions. The murder conviction was affirmed and the burglary conviction remanded for a new trial on December 10, 1992, by the South Carolina Court of Appeals. The burglary conviction was subsequently nol prossed and expunged by the late former Judge Marc D. Westbrook, on April 4, 2001, and consented by the Fifth Judicial Circuit Solicitor's Office on March 16, 2001. At the time the Appellant was convicted of these crimes South Carolina law authorized an inmate serving a life sentence for murder parole eligibility upon the service of twenty (20) years.

The Appellant appeared before the Parole Board on October 10, 2012. The Parole Board denied the Appellant the privilege to be released into the parole program, in which the Parole Board Notice of Rejection conclusion of law and findings of fact (1) nature and seriousness of the current offense; and (2) use of deadly weapon in this or previous offense. Since this hearing, Bagley has appeared before the board once, on September 8, 2010, that appearance

MY NATURAL LIFE UNDER §16-3-20(A)?

7. WHETHER THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT ARBITRARY AND CAPRICIOUS VIOLATE THE DOCTRINE OF RES JUDICATA BARS TO DENY ME PAROLE ON ANY REASON THAT COULD HAVE BEEN RAISED IN MY FORMER NOTICE OF REJECTION OR PAROLE HEARING UNDER §24-21-640, AND SCDPPPS FORM 1212?
8. WHETHER THE PAROLE BOARD USED A VALIDATED ACTUARIAL RISK AND NEEDS ASSESSMENT TOOL IN MAKING ITS PAROLE DECISION IN THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT IN MY 2012 PAROLE CASE UNDER §24-21-5(2), AND §24-21-10(f)(1)?

STATEMENT OF THE CASE

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The Appellant appeared before the Parole Board on October 10, 2012. The Parole Board denied the Appellant the privilege to be released into the parole program, in which the Parole Board Notice of Rejection conclusion of law and findings of fact (1) nature and seriousness of the current offense; and (2) use of deadly weapon in this or previous offense. Since this hearing, Bagley has appeared before the board once, on September 8, 2010, that appearance

resulting in a denial of the privilege in participating in parole release programs, in which the Parole Board Notice of Rejection conclusion of law and findings of fact (1) nature and seriousness of the current offense; (2) use of deadly weapon in this or previous offense; and (3) indication of violence in this or previous offense. Upon being notified of his most recent Notice of Rejection, the Appellant petition the Parole Board requesting a reconsideration. The Parole Board's conclusion and findings of fact determined that the reasons for the request for reconsideration did not affect the original decision of the Parole Board. As a result, rehearing and request for reconsideration were denied by the Parole Board on November 14, 2012.

Wherefore, the Notice of Rejection conclusion of law and findings of fact dated October 11, 2012, the Appellant filed his Notice of Appeal before the Administrative Law Court (ALC).
The Appellant's Brief follows.

ARGUMENTS

1. THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT IS A DENIAL OF A RATIONAL NEXUS BETWEEN THE EVIDENCE BASED PRACTICES OR FACTORS AND ULTIMATE DETERMINATION OF MY CURRENT DANGEROUSNESS UNDER §24-21-640, SCDPPPS FORM 1212, AND §24-21-10(f)(1).

The ALC jurisdiction does not ask whether the prisoner is currently dangerous. That question is reserved for the Parole Board. Nor does the ALC have jurisdiction or empowered to reweigh the evidence. Rather, the ALC has jurisdiction to consider whether there is proof provided by the Respondent pursuant to Rule 58(B), SCALC Rule of a rational nexus between recent substantial evidence anywhere in Bagley's record and the ultimate determination of his current dangerousness to society. The Respondent has never provided recent substantial evidence pursuant to Rule 58(B), SCALC Rule that there is a rational nexus that Bagley's denial of parole was lawful. If the Respondent fails to provide recent substantial evidence based practices and factors in making its parole decision pursuant to §24-21-10(f)(1), and was not followed, Respondent's Notice of Rejection conclusion of law and findings of fact are unreasonable. Section 24-21-10(f)(1), states in relevant part:

A validated actuarial risk and needs assessment tool consistent with evidence based practices and factors that contribute to criminal behavior which the Parole Board **shall** use in making parole decisions, including additional objective criteria that may be used in parole decisions.

When it is clear by the language of the statute that the Legislature intended the Parole Board "shall" use in making parole decisions a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, including additional objective criteria that may be used in parole decisions, that Legislative intent should not be deviated by the Parole Board. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). Because the statute is penal in nature, the Court must construe it strictly in favor of the defendant and against the State. Hair v. State, 305 S.C. 77, 79, 406 S.E.2d 332, 334 (1991). The Notice of Rejection conclusion of law and findings of fact will be set aside if unsupported by recent substantial evidence received or considered from the Respondent, pursuant to §24-21-10(f)(1), all evidence received or considered pursuant to Rule 58(B), SCALC Rule.

2. THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT FOR DENIAL OF PAROLE PURPOSES CURRENTLY SHOW THAT I POSES A THREAT TO PUBLIC SAFETY UNDER §24-21-640, SCDPPPS FORM 1212, AND §24-21-10(f)(1)?

The Notice of Rejection conclusion of law and findings of fact proffers proof of excluded recent substantial evidence that Appellant do not poses a threat to public safety under §24-21-640, SCDPPPS Form 1212, and §24-21-10(f)(1). Appellant's entire record, including facts of the offense, his progress during incarceration, and his attitude he has achieved into his past criminal behavior and towards the victim are considered relevant in a particular case by the board (SCDPPPS Form 1212, #15.), and pursuant to §24-21-10(f)(1), which the Parole Board "shall" use in making parole decisions. Failure to utilize the procedure promulgated by the Legislature in §24-21-10(f)(1), of South Carolina Code, and §24-21-640 of the same, and the criteria established by the Parole pursuant to this statute is clearly unwarranted exercise of discretion or unreasonable. Proffered of proof of excluded evidence under procedure Rule 58(D), SCALC Rule,

The Respondent failed to provide any recent substantial evidence that Bagley poses a threat to the community if released on parole as required by procedure Rule 58(B), SCALC Rule, and that reveals a clear violation of due process of law because the findings by the Respondent are insufficient and unsupported by recent substantial evidence, whereby Appellant had no way to contest any findings of substantial evidence against him. It is entirely conceivable that the board has inferred heinous based on use of a deadly weapon where evidence is and presented in Bagley's trial transcript and witnesses testimony that would reduce, mitigate the homicide. See Sandstrom v. Montana, 442 U.S. 510, 524 (1979), holding that burden shifting presumptions or conclusive presumptions deprive a defendant of the due process of law and therefore unconstitutional. Mullaney v. Wilbur, 421 U.S. 684, 703-04, (1975), holding that the Due Process Clause forbids a State from placing the burden on the accused to prove his actions reduced the crime from "murder to manslaughter." Thus, while acknowledging the Parole Board's discretion, Appellant is firmly convinced that the failure of using a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to his criminal behavior in his 2012 parole procedures, and the board's use of heinous in making its decision to deny parole for use of a deadly weapon is prejudicial where evidence is presented that would reduce and mitigate the homicide.

3. THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT IS NOT DRAWN FROM MY ENTIRE RECORD, INCLUDING THE FACTS OF THE OFFENSE, MY PROGRESS DURING INCARCERATION AND MY ATTITUDE I HAVE ACHIEVED INTO MY PAST BEHAVIOR AND VICTIMS UNDER §24-21-640, SCDPPPS FORM 1212, AND §24-21-10(F)(1).

The Notice of Rejection conclusion of law and findings of fact are insufficient and unsupported and excluded substantial evidence under §24-21-10(f)(1). The Parole Board "shall" use "a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to "criminal behavior" which the Parole Board "shall" use in making parole decisions, including additional objective criteria that may be used in parole decisions." Findings unsupported by substantial evidence by an administrative agency will be set aside. [citation omitted]. The Parole Board did not utilize the procedure promulgated in §24-21-10(f)(1) as a part of its use in making a parole

decision in Bagley's 2012 case. The decision here in the Notice of Rejection is procedurally flawed and arbitrary.

4. THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE PAROLE BOARD ARBITRARY AND CAPRICIOUS UNSUITABILITY DECISION UNDER §24-21-10(f)(1).

Section 24-21-10(f)(1), South Carolina Code, require the Parole Board to present recent substantial evidence anywhere within the Appellant's record in making parole decisions in his 2012 case, not just within the findings cited in the parole decision boilerplate statement. The ALC role in this matter is to review board's decision regarding arbitrary and capricious, or procedurally defective. Appellant is not questioning credibility of the evidence, or the weight given to the evidence, just proof of the "validated actuarial risk and needs assessment consistent with evidence-based practices and factors that contribute to criminal behavior, which the Parole Board "shall" use in making parole decisions, including additional objective criteria that may be used in parole decision."

NOTE: The record of the contested case "shall" consist of Rule 58(B), all evidence received or considered; and Rule 58(D), all proffers of proof of excluded evidence, SCALC Rules. The Respondent never provided evidence that the board applied the validated actuarial risk needs assessment in making its parole decision that was established by the Legislature. In order for the Respondent's judgment not to be disturbed by the ALC, the Respondent must provide substantial evidence that a validated actuarial risk and needs assessment in making its parole decision in this case pursuant to §24-21-10(f)(1), and §24-21-5(2). If the Respondent fail to provide substantial evidence that the statutes were followed its judgment should be reversed or vacated by the ALC. The findings by an administrative agency will be set aside if unsupported by substantial evidence [citation omitted].

5. THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT ARE ARBITRARY AND CAPRICIOUS AND FAILED TO INCLUDE MY VALIDATED INDIVIDUALIZED OFFENDER RISK AND CRIMINOGENIC NEEDS UNDER §24-21-10(f)(1).

STATEMENT OF FACTS: On 6/21/12. Parole Examiner Sandra Ryan stated to to the Appellant that the individualized offender risk and criminogenic needs assess-

ment COMPAS by NorthPointe Institute for Public Management test will not help him, and that she did not know how the Parole Board would use it in decision making. Bagley respectfully asked Ms. Ryan to administer the test for individualized needs assessment, and she further stated, "write the director for it, because she did not know how to do it."

ARGUMENT: Section 24-21-10(f)(1), requires that a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior which the Parole Board "shall" use in making parole decisions, including additional objective criteria that may be used in parole decisions. The record of the contested case "shall" consist of Rule 58 (B), all evidence received or considered; and Rule 58(D), all proffers of proof of excluded evidence, SCALC Rules. In order for the Respondent's judgment to stand by the ALC, the Respondent must provide substantial evidence that Parole Examiner Sandra Ryan administered a validated actuarial risk needs assessment under COMPAS by NorthPointe Institute for Public Management in making its parole decision in Bagley's 2012 parole case pursuant to §24-21-10(f)(1), and §24-21-5(2). If the Respondent fail to provide proof of substantial evidence that Parole Examiner Sandra Ryan administered a validated actuarial risk needs assessment in making its parole decision, its judgment should be reversed and remand by the ALC. The findings by an administrative agency will be set aside if unsupported by substantial evidence [citation omitted].

6. THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT DID CREATED A SIGNIFICANT RISK OF INCREASED PUNISHMENT UPON ME WHEN THE PAROLE BOARD EXERCISED ITS LIFE-MEANS-LIFE POLICY FOR THE REMAINDER OF MY NATURAL LIFE UNDER §16-3-20(A).

The Appellant concede that there is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence. However, there is a constitutional or inherent right of the convicted person to "enjoy the same privilege" to be conditionally released before the expiration of a valid sentence when other convicted person(s) have been afforded that opportunity to do so. The Appellant's position that the Notice of Rejection Conclusion of law and Findings of fact reduces his chances for the remainder of his natural life, based totally on fixed immutable aspects of the underlying

offense. In addition, the life-means-life policy SCDPPPS policy under §16-3-20(A), created a significant risk of increased punishment by keeping the Appellant confined, because the Respondent findings discredits anything from the Appellant on the basis of evasive, manipulative, and the board is not bound by what the Appellant submits to the board regarding suitability and that fact that he will be gainfully employed through the Veterans Affairs Re-entry Program, and that his family and friends have formed enduring attachments for a normal life with him. Article IV, §2 [1], of the United States Constitution states:

The citizens of each State shall be entitled to all privileges and immunities of citizens in several States.

The Privileges and Immunities Clause affords Appellant the same privileges that the parole lifers in South Carolina receive and enjoy. In order for the Appellant to be denied due process there must exist some constitutional right to being released on parole, and there exist such liberty interest implicated for a potentially eligible inmate for consideration of parole under the Privileges and Immunities Clause of the United States Constitution. See: 14th Amendment, §1.

7. THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT ARE ARBITRARY AND CAPRICIOUS AND DO VIOLATE THE DOCTRINE OF RES JUDICATA TO DENY ME PAROLE ON ANY REASON THAT COULD HAVE BEEN RAISED IN MY FORMER NOTICE OF REJECTION OR PAROLE HEARING UNDER §24-21-640, AND SCDPPPS FORM 1212.

The Appellant submits that doctrine of res judicata bars the Respondent fixed immutable aspects or fixed criteria, (1) nature and seriousness of the current offense; and (2) use of deadly weapon in this or previous offense. Res judicata prohibits subsequent repetition action, or repeated repetition reasons to deny parole by the Parole Board with the same parties on the same fixed immutable aspects or fixed criteria without any new substantial evidence. SEE: Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct.App. 1993). Res judicata also bars any issues that could have been raised in the former action. The Respondent had a full opportunity to deny Appellant on the fixed immutable aspects or fixed criteria in his first parole hearing on September 8, 2010. Respondent continues to raise the meritless fixed immutable aspects or fixed

criteria without any new substantial evidence to support its Notice of Rejection Conclusion of Law and Findings of Fact, just repeated repetition reasons in a boilerplate statement.

8. THE PAROLE DID NOT USE A VALIDATED ACTUARIAL RISK AND NEEDS ASSESSMENT TOOL IN MAKING ITS PAROLE DECISION IN THE NOTICE OF REJECTION CONCLUSION OF LAW AND FINDINGS OF FACT IN MY 2012 PAROLE CASE UNDER §24-21-5(2), AND §24-21-10(f)(1).

The Respondent was required under §24-21-10(f)(1), and 24-21-5(2) to provide Bagley a validated actuarial risk needs assessment for his October 2012, parole consideration to be used in making parole decision in its Notice of Rejection conclusion of law and findings of fact. In addition, Appellant was not allowed to contest the evidence against him, and he was not allowed access to his records in advance to the hearing. Rule 58, SCALC Rule states:

Record after final decision, where applicable, the record of the contested case shall consist of (B) all evidence received or considered; and (D) all proffers of proof of excluded evidence.

Respondent has failed to provide substantial evidence that the statute was followed. The findings by an administrative agency will be set aside upon unsupported by substantial evidence.

CONCLUSION

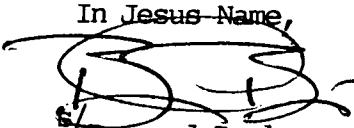
The Appellant pray for the following relief: (1) Relevant or adequate consideration the process Bagley must receive under South Carolina law that entitled previous or other lifers to paroled upon satisfaction of specified criteria; (2) consideration and adequate recommendation to grant parole is whether Bagley currently poses a threat to public safety; (3) adequate consideration and recommendation from his entire record, his progress during incarceration, and his attitude he has achieved into past criminal behavior; (4) adequate judicial review conducted under substantial evidence standard, i.e. the ALC review the entire record, recommendation to determine whether substantial evidence supports the parole unsuitability decision; and (5) The ALC make adequate consideration whether there is a rational nexus between all substantial evidence and

the ultimate determination of Bagley's current dangerousness, or poses a threat to public safety. (6) §24-21-10(f)(1), risk needs assessment granted.

I declare, certify, verify, and state under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge and belief.

December 27, 2012
Kershaw, SC

In Jesus Name,

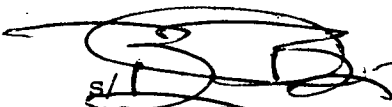

s/ Bernard Bagley
175851/HA162/KER.CI(L2)
4848 Goldmine Hwy.
Kershaw, SC 29067

CERTIFICATE OF SERVICE

I, Bernard Bagley, the Appellant, certify that I have served the within Appellant's Brief, dated December 27, 2012, and the Appendix on Respondent by depositing a copy of the same in the U.S. mail, postage prepaid, the 27th day of December, 2012.

Addressed to: Tommy Evans, Jr.
SCDPPPS Legal Counsel
P.O. Box 50666
Columbia, SC 29250

I further certify that all parties required by Rule 60 to be served have been served.


s/ Bernard Bagley
175851/HA162/KER.CI(L2)
4848 Goldmine Hwy.
Kershaw, SC 29067

Intensive supervision for Youthful Offenders

Youthful Offenders within SCDC are now receiving intensive supervision as part of a parole reentry program. The program assigns each offender an Intensive Supervision Officer (ISO) to assist with return to the community and to help young people gain success and avoid recidivism.

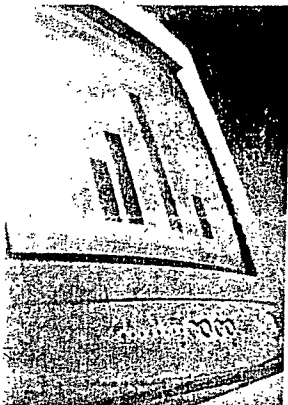
Under the program, offenders are assigned to an ISO within 15 days of admission to SCDC. Each ISO handles a caseload of not more than 20 offenders, allowing the opportunity for meaningful interaction. Rather than going to the South Carolina Department of Probation, Parole and Pardon Services for supervision following release, youthful offenders in the program will remain under their ISO's care through the Department of Corrections.

ISOs will evaluate risk, develop and plan post-release services, utilize community resources to reduce the risk of recidivism, maintain frequent contact and hold youth accountable, use intensive surveillance and treatment services, oversee restitution and community service, and ensure their supervisees are free from crime, substance abuse and gang affiliation.

SCDC's Intensive Supervision program is modeled after the nationally recognized Intensive Aftercare Program Model. The model is currently in use in South Carolina's Department of Juvenile Justice. Its success there has resulted in a reduction of the re-offending rate of high-risk juvenile offenders by more than 37 percent.

MARCH 2012

Risk assessment



The South Carolina Department of Probation, Parole and Pardon Services has chosen COMPAS by Northpointe Institute for Public Management as its risk assessment software tool.

The adoption of COMPAS as a risk/needs assessment tool is part of the requirement of the Omnibus Crime Reduction and Sentencing Reform Act of

2010 that SCDPPPS use an actuarial risk/needs assessment program to identify offender risk and criminogenic needs (factors that may lead to criminal behavior).

Your family members may be interested in gaining understanding about how this tool is used. To do so, they may visit Northpointe's website at www.northpointeinc.com and view an online tour of COMPAS. This may be helpful to them in understanding factors that sometimes are considered by the parole board.



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This document does not contain attorney-client privileged material.

If you have been transferred to a different facility, please notify our office of your change of address as soon as possible.

News and Notes

- * Just a reminder that our newsletter will not be delivered to inmates who are in lock-up.
 - * Please note that we may be unable to accept your collect call if Mr. Thomas is not available. This helps keep costs down and benefits our clients in the long run. You are always free to contact us via postal mail or have your family members call or contact our office via email.
 - * We have received a number of questions regarding the 85 percent rule and whether or not it applies in specific cases. Please note that each criminal offense is classified by CDR code, which determines whether or not the crime is a felony, how it is categorized, etc. The date of your sentencing (before or after June 1, 2010) also affects your parole eligibility for certain offenses. This is a complex issue. If you have questions, please contact our office. Please accept our apologies for the interruption in our newsletter production. We recently updated our database software for our clients who are incarcerated and this slowed down our mailing efforts.
-

New parole board members

Norris Ashford and Dr. Beverly Rice McAdams are the newest members of the S.C. Parole Board. Both were appointed recently by Gov. Nikki Haley.

Ashford is a former member of the S.C. Juvenile Justice Parole Board and he previously served as a volunteer with SCDJJ as well as with several schools and other organizations. He has completed Leadership South Carolina and

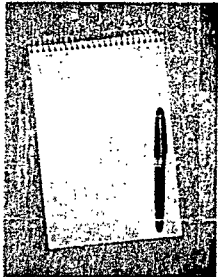
100 Black Men of America's National Leadership Development Institute.

McAdams is the Associate Vice President for Student Development at Anderson University. She serves on the boards of several service and community organizations.

Both members attended two days of training and orientation as required by law.

Parole assessment

July 20, 2011



As part of the Sentencing Reform Act, the SCDPPPS will implement a Risk/Needs Assessment instrument to assess those inmates seeking parole.

No decision has been announced as to what tool will be used in South Carolina to make this assessment.

However, several states use COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) software. South Carolina may or may not adopt something similar, but we wanted to make you aware of at least one type of tool that may become commonplace for those seeking parole.

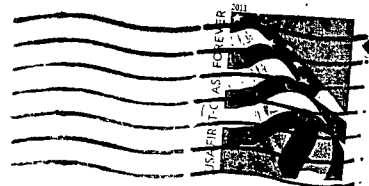
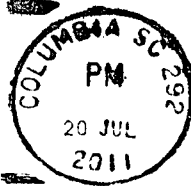
The California Department of Corrections and Rehabilitation uses COMPAS. According to CDCR, the tool is research-based and serves as an objective risk and needs assessment instrument. The program consists of questions used to determine overall risk potential and criminogenic needs (a higher pres-

ence of these needs may indicate a tendency toward criminal activity). COMPAS also includes data on the inmate's history of substance abuse, education, family background, criminal activity and social functioning. *

The goal of this and similar programs is to help inmates with the transition as they reenter society and ultimately, to help them succeed in staying out of prison. Rehabilitation and treatment programs may be a part of that equation. Risk/Needs Assessments can help pinpoint where inmates may need assistance in becoming productive members of society.

Again, we do not know what tool will be used in South Carolina, but a decision will be forthcoming.

*If your family would like to learn more about the California program, details are online at www.cdcr.ca.gov.



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If you have been transferred to
a different facility, please notify
our office of your change of
address as soon as possible.

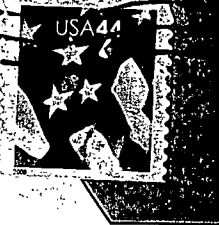
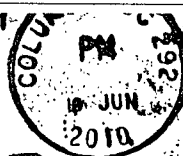
News and Notes

- * Please note that our newsletter is distributed approximately once per quarter. It is not a monthly publication. We have received a number of questions about its frequency.
 - * Female inmates will soon receive new uniforms. The color will be different and they will be made from a women's pattern for a better fit.
 - * A new parole video site has been established at McCormick Correctional. Inmates from McCormick, Leath and Trenton will go to McCormick to videoconference with the parole board for the hearing.
 - * A service was suggested for our clients and their families by a family member of an inmate. Prisoner Connect (www.prisonerconnect.com) may be a way to reduce the cost of collect calls from an inmate. Please note that we merely pass this along for information only. We have not evaluated this company and are unable to vouch for it in any way. You may also be able to secure the same savings (via local number) through your current phone service provider.
-

June 2010

Release and Supervision Provisions

- * Sec. 46 Sec. 24-21-10(A): The **director of SCDPPS** must now have a baccalaureate degree or higher from an accredited institution, as well as at least 10 years of training and experience in parole, probation, corrections, criminal justice, law, law enforcement, psychology, psychiatry, sociology and/or social work.
- * Sec. 24-21-10(B): The parole board's **at-large appointee** must have at least five years or work or volunteer experience in parole, probation, corrections, criminal justice, law, law enforcement, psychology, psychiatry, sociology and/or social work.
- * Sec. 24-21-10(D, E): Within 90 days of appointment, **parole board members** must complete a training course that includes the elements of the decision-making process (including evidence-based practices), SCDC's security classifications, the dynamics of criminal victimization and collaborations with public and private corrections-related stakeholders to increase offender success and public safety. Each parole board member will complete annual training including progress toward public safety goals, the use of data in decision making and more.
- * Sec. 24-21-10(F): SCDPPS must develop a plan to establish a process for adopting a **validated actuarial risk and needs assessment tool** to use in making parole decisions, along with additional objective criteria.
- * Sec. 47 Sec. 24-21-13: Policies will be developed regarding supervision of those on parole, probation, community supervision, etc., that focus on **evidence-based practices** and consideration of offenders' criminal risk factors.
- * Sec. 48 Sec. 24-21-32: Inmates who have been incarcerated for a minimum of two years will be released to a reentry **supervision program 180 days prior to release date**. If the sentence includes probation, the reentry program is reduced by the term of probation. An inmate on reentry supervision is supervised by a probation agent. The terms of the supervision are based on an evidence-based assessment of the inmate's needs and risk. (The Act also sets the procedures to be followed if an inmate violates the terms of reentry supervision.)
- * Sec. 52 Sec. 24-21-100 If financial obligations are not fulfilled at the end of the term of supervision, **quarterly administrative monitoring** may be implemented, but reasonable progress toward fulfilling payments must be made.
- * Sec. 53, 24-21-110 If terms of supervision are violated, **administrative sanctions**, rather than revocation, may be imposed under certain circumstances.



[Redacted]
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, SC 29067-8069

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a different facility, please notify
our office of your change of
address as soon as possible.

Effect of the Act on work release and parole

June 10, 2010

- * Note that some of the provisions affecting penalties and classification of offenses have the potential to have profound impact on inmate classification and in turn, the ability of an inmate to participate in work release or other programs. We will continue to update this as SCDC's implementation of the Act takes place. The information in this special edition of the newsletter is general in nature as we do not yet have those details.
- * Because specific criteria is being put in place for parole decisions, this may impact some of the subjectivity of the parole board in determining whether or not to grant parole. The board will be receiving annual training and will be following evidenced-based tools in assessing an inmate's potential risk to society/opportunity for successful release and this could potentially affect many parole decisions. **Please note that this is all in the earliest stages. We are following the implementation of the Act very closely and will keep you informed.**

24

South Carolina Department of Probation, Parole and Pardon Services
Criteria For Parole Consideration

SC Board of Probation, Parole and Pardon Services
P. O. Box 50666
Columbia, SC 29250

Inmate Name

Edward Rayley

SCDC #

175811

Criteria For Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release, nor does it bind the Parole Board in any way to a favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board and it becomes a part of the inmate's parole file. These files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some error or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney, however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating upon the reasonable probability that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours, the inmate's plans for gainful employment;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate;
15. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by-case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that an inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges.

If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejection. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejection.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's Signature

Date

Witness

Date

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FOR THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Administrative Law Judge
Appellate Case Number 2013-000042

Bernard Bagley, 175851, Affiant,

v.

AFFIDAVIT IN SUPPORT

S.C. Department of Probation, Parole,
and Pardon Services, Respondent.

I, Bernard Bagley, being duly sworn, deposes and says:

1. That I am the Appellant, and without counsel in the above-entitled matter.
2. That I make this Affidavit in Support of my appeal and record on appeal upon material proposed therein to be included is not irrelevant nor frivolous.
3. That I make this Affidavit in Support of my appeal and designation of matter contains no matter which is irrelevant in the above-entitled matter.
4. That the Respondent did not provide the parole board proceedings, parole case summary, the COMPAS automated date of the valid risk assessment, or the different set of facts contained in my offender file to the court nor to me for review to perfect this appeal.
5. That my record before imprisonment will show that I am a military service-connected disabled veteran, a law enforcement officer, and did not have a criminal record.
6. That my record during imprisonment will show that I do not have any major disciplinarys, classification custody is level 2, work performance is average, no assaults against sdc employees, nor inmates, and no other violence towards anyone.
7. That my record after imprisonment will only show my re-entry into the Veterans Affairs Program, following the conditions established by the Parole Board and Parole Agent, residing at the Veterans Hospital, and employed with a job provided by the Veterans Affairs Re-entry Program, along with tremendous family support.
8. That I am willing to provide 20% of my salary upon employment to the Victim Assistance Program and Governor's Office Victim Assistance Program.

9. That I will not betray the trust of the public no more, and I take responsibility of my behavior and conduct to obey the law and lead a correct life.
10. That I have reformed and rectified my life from recriminization or deviant thinking.
11. That because of my conduct I have learned from poor prison conditions, poor medical conditions, prison overcrowding, no privacy, institutional lockdowns, and institutional rules, and sdc policies.
12. That I am not a danger to society, nor myself.
13. That there are extraordinary circumstances that warrants my appeal.

I declare, certify, verify, and state under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge and belief.

Executed on March 18. 2013, at Kershaw, South Carolina.

SWORN before me this 18th day of March, 2013

Catharine A. Crossen

NOTARY PUBLIC

My Commission Expires: *December 22, 2018*

s/

B. Bagley
Bernard Bagley
175851/HA162/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal for the Administrative Law Court
Ralph King Anderson, III, Administrative Law Judge
Appellate Case Number 2013-000042

Bernard Bagley, 175851,

Appellant,

v.

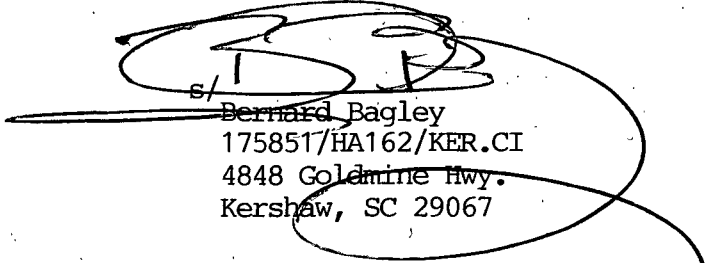
S.C. Department of Probation, Parole,
and Pardon Services,

Respondent.

CERTIFICATE OF SERVICE

I, Bernard Bagley, the Appellant certify that I have served the Record on Appeal, Certificate of Pro se Litigant, and Designation of Matter dated March 18, 2013, on Respondent this 18th day of March, 2013, by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed to:

Tommy Evans, Jr.
SCDPPPS Legal Counsel
P.O. Box 50666
Columbia, SC 29250

s/ 
Bernard Bagley
175851/HA162/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

RECEIVED
MAR 20 2013
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FOR THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Administrative Law Judge
Appellate Case Number 2013-000042

Bernard Bagley, 175851,

Appellant,

v.

S.C. Department of Probation,
Parole, and Pardon Services,

Respondent.

CERTIFICATE OF PRO SE LITIGANT

The undersigned certifies that his Record on Appeal contains all material
proposed to be included by the parties.

March 18. 2013

s/

Bernard Bagley
175851/HA162/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

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